

1 XAVIER BECERRA  
Attorney General of California  
2 MONICA N. ANDERSON  
Senior Assistant Attorney General  
3 DAMON G. MCCLAIN  
Supervising Deputy Attorney General  
4 NASSTARAN RUHPARWAR - 263293  
Deputy Attorney General  
5 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
6 Telephone: (415) 703-5500  
Facsimile: (415) 703-3035  
7 Email: Nasstaran.Ruhparwar@doj.ca.gov

HANSON BRIDGETT LLP  
PAUL B. MELLO - 179755  
SAMANTHA D. WOLFF - 240280  
KAYLEN KADOTANI - 294114  
425 Market Street, 26th Floor  
San Francisco, California 94105  
Telephone: (415) 777--3200  
Facsimile: (415) 541-9366  
pmello@hansonbridgett.com

8 Attorneys for Defendants  
9

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **OAKLAND DIVISION**

14 MARCIANO PLATA, et al.,

15 Plaintiffs,

16 v.

17 GAVIN NEWSOM, et al.,

18 Defendants.

CASE NO. 01-1351 JST

NOTICE OF FILING PROPOSED ORDER  
REGARDING STAFF TESTING FOR  
COVID-19

19  
20 The parties were unable to reach an agreement as to the form of the order that the  
21 Court asked Plaintiffs to prepare at the Case Management Conference on June 9, 2020.  
22 Accordingly, Defendants hereby attach as Exhibit A their preferred form of the order,  
23 which only slightly modifies the order that Plaintiffs prepared and submitted for  
24 Defendants consideration. To shed some light on the disagreement, Defendants also attach  
25 as Exhibit B an email string in which the parties discussed the order.  
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DATED: June 10, 2020

HANSON BRIDGETT LLP

By:           /s/ Samantha Wolff          

PAUL B. MELLO  
SAMANTHA D. WOLFF  
KAYLEN KADOTANI  
Attorneys for Defendants

DATED: June 10, 2020

XAVIER BECERRA  
Attorney General of California

By:           /s/ Damon McClain          

DAMON MCCLAIN  
Supervising Deputy Attorney General  
NASSTARAN RUHPARWAR  
Deputy Attorney General  
Attorneys for Defendants

# **EXHIBIT A**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE No. 01-1351 JST

**[PROPOSED] ORDER REGARDING  
STAFF TESTING FOR COVID-19**

The Joint Case Management Conference Statement filed by the parties on June 8, 2020 states that 194 medically high risk patients were transferred from the California Institution for Men (CIM) to San Quentin State Prison (SQ) and California State Prison, Corcoran (CSP-COR) between May 28 and May 30. *See* ECF 3345 at 9-10. The patients who were transferred had previously tested negative for COVID-19, but in many cases the tests were done two to three weeks before the transfer. *Id.* Unfortunately, some of those

1 people tested positive shortly after their arrival at SQ and CSP-COR. *Id.* Prior to the  
2 transfer, SQ had no confirmed cases of COVID-19 in the incarcerated population. *Id.* at  
3 10. The Receiver has since ordered the suspension of all transfers from CIM, and is  
4 reconsidering a testing strategy for all transfers. *Id.* at 9-10.

5 The Receiver has also identified prison staff as the main vector for spreading  
6 COVID-19 in the state prisons, and has recommended that all staff at all institutions be  
7 tested for COVID-19. *Id.* at 3. According to the parties' Statement, "Defendants agree  
8 that staff testing is critical, and are developing a staff-testing plan with assistance and  
9 guidance from the California Department of Public Health." *Id.*

10 Given the urgency of this issue, this Court issued the following order regarding staff  
11 testing for COVID-19 from the bench during the June 9 Case Management Conference.  
12 This written order is issued to memorialize that bench order.

13 IT IS HEREBY ORDERED:

14 1. All custodial and medical staff who had contact during the transfer process  
15 with any incarcerated person who transferred from the California Institution for Men  
16 (CIM) and into San Quentin State Prison (SQ) or California State Prison, Corcoran (CSP-  
17 COR) between May 28, 2020 and May 30, 2020 shall be tested for COVID-19 by June 11,  
18 2020.

19 2. All remaining staff at SQ and CSP-COR shall be tested by June 15, 2020.

20 3. Defendants shall produce their comprehensive plan for testing staff at all  
21 prisons in the California Department of Corrections and Rehabilitation—even if it is only  
22 an interim plan—to Plaintiffs by June 16, 2020.

23 IT IS SO ORDERED.

24 Dated: June \_\_, 2020

25  
26 THE HONORABLE JON S. TIGAR  
27 UNITED STATES DISTRICT COURT  
28 JUDGE

# **EXHIBIT B**

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**From:** Damon McClain

**Sent:** Wednesday, June 10, 2020 10:14 AM

**To:** Sophie Hart; Samantha Wolff; Paul B. Mello; Nasstaran Tara Ruhparwar; Scofield, Bryant; Stafford, Carrie@CDCR

**Cc:** Don Specter; Sara Norman; Steven Fama; Alison Hardy; Rana Anabtawi

**Subject:** Re: Plata | Proposed Order re Staff Testing

Hi Sophie,

Our understanding of Judge Tigar's order was that it was intended to compel CDCR to produce its comprehensive staff-testing plan, whatever that plan might be, by Tuesday. We do not believe Judge Tigar intended to make an order regarding what the plan must entail, or otherwise make an order mandating what the plan must do or how the plan must work. In fact, we think that Judge Tigar made this order so that Plaintiffs and the Court could evaluate the contents of CDCR's plan, whatever they might be. For that reason, we cannot approve your proposed language, which, in our view, appears to include an order regarding what the plan must entail.

Also, our notes indicate that Judge Tigar ordered the production of the staff-testing plan by Tuesday, even if it is only an interim plan at that time. That is the reason we included that language.

Because we do not agree to the form of the order you will submit, we propose that you also submit Defendants' version of the order that we previously sent to you, along with this email chain so that the Court can understand why there is a disagreement. Please let us know if that proposal will work for Plaintiffs. Thank you.

-Damon

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**From:** Sophie Hart <sophiehart@prisonlaw.com>

**Sent:** Tuesday, June 9, 2020 9:03 PM

**To:** Damon McClain; Samantha Wolff; Paul B. Mello; Nasstaran Tara Ruhparwar; Scofield, Bryant; Stafford, Carrie@CDCR

**Cc:** Don Specter; Sara Norman; Steven Fama; Alison Hardy; Rana Anabtawi

**Subject:** RE: Plata | Proposed Order re Staff Testing

Hi Damon,

Thanks for reviewing. We agree about CIM in #2 – sorry about that, we've taken that out as you've suggested.

We don't agree with all the edits you've suggested to #3. Specifically, we did not accept your deletion of "all" before "staff" -- we believe Judge Tigar ordered a plan for testing all staff, as stated in the Civil Minutes (attached here). We also did not accept your addition of "even if it is only an interim plan," as we do not believe Judge Tigar ordered the production of an interim plan.

Otherwise, we've accepted your changes.

Please let me know whether we have Defendants' approval to file this version.

Sophie

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**From:** Damon McClain [mailto:[Damon.McClain@doj.ca.gov](mailto:Damon.McClain@doj.ca.gov)]  
**Sent:** Tuesday, June 9, 2020 7:00 PM  
**To:** Sophie Hart <[sophieh@prisonlaw.com](mailto:sophieh@prisonlaw.com)>; Samantha Wolff <[SWolff@hansonbridgett.com](mailto:SWolff@hansonbridgett.com)>; Paul B. Mello <[Pmello@hansonbridgett.com](mailto:Pmello@hansonbridgett.com)>; Nasstaran Tara Ruhparwar <[Nasstaran.Ruhparwar@doj.ca.gov](mailto:Nasstaran.Ruhparwar@doj.ca.gov)>; Scofield, Bryant <[Bryant.Scofield@cdcr.ca.gov](mailto:Bryant.Scofield@cdcr.ca.gov)>; Stafford, Carrie@CDCR <[Carrie.Stafford@cdcr.ca.gov](mailto:Carrie.Stafford@cdcr.ca.gov)>  
**Cc:** Don Specter <[dspecter@prisonlaw.com](mailto:dspecter@prisonlaw.com)>; Sara Norman <[snorman@prisonlaw.com](mailto:snorman@prisonlaw.com)>; Steven Fama <[sfama@prisonlaw.com](mailto:sfama@prisonlaw.com)>; Alison Hardy <[ahardy@prisonlaw.com](mailto:ahardy@prisonlaw.com)>; Rana Anabtawi <[rana@prisonlaw.com](mailto:rana@prisonlaw.com)>  
**Subject:** Re: Plata | Proposed Order re Staff Testing

Hi Sophie,

We made a few revisions to the draft order (see attached) based on our notes and understanding of Judge Tigar's orders from the bench. We removed CIM from the second paragraph because we do not think Judge Tigar included CIM when he made that order, but please note that testing of all staff at CIM was just completed. If Plaintiffs are okay with these changes, please submit the order.

Thank you.

-Damon

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**From:** Sophie Hart <[sophieh@prisonlaw.com](mailto:sophieh@prisonlaw.com)>  
**Sent:** Tuesday, June 9, 2020 3:10 PM  
**To:** Samantha Wolff; Paul B. Mello; Nasstaran Tara Ruhparwar; Damon McClain; Scofield, Bryant; Stafford, Carrie@CDCR  
**Cc:** Don Specter; Sara Norman; Steven Fama; Alison Hardy; Rana Anabtawi  
**Subject:** RE: Plata | Proposed Order re Staff Testing

Hi again,

My apologies – I caught a formatting issue. I realized that rather than styling as a joint filing, I should include a line for you to sign to approve as to form. Here's a version with those formatting edits. The text of the order is the same.

Thanks,

Sophie

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**From:** Sophie Hart [mailto:[sophieh@prisonlaw.com](mailto:sophieh@prisonlaw.com)]  
**Sent:** Tuesday, June 9, 2020 2:19 PM

**To:** 'Samantha Wolff' <[SWolff@hansonbridgett.com](mailto:SWolff@hansonbridgett.com)>; 'Paul B. Mello' <[Pmello@hansonbridgett.com](mailto:Pmello@hansonbridgett.com)>; 'Nasstaran Tara Ruhparwar' <[Nasstaran.Ruhparwar@doj.ca.gov](mailto:Nasstaran.Ruhparwar@doj.ca.gov)>; 'Damon McClain' <[Damon.McClain@doj.ca.gov](mailto:Damon.McClain@doj.ca.gov)>; 'Scofield, Bryant' <[Bryant.Scofield@cdcr.ca.gov](mailto:Bryant.Scofield@cdcr.ca.gov)>; 'Stafford, Carrie@CDCR' <[Carrie.Stafford@cdcr.ca.gov](mailto:Carrie.Stafford@cdcr.ca.gov)>  
**Cc:** Don Specter <[dspecter@prisonlaw.com](mailto:dspecter@prisonlaw.com)>; 'Sara Norman' <[snorman@prisonlaw.com](mailto:snorman@prisonlaw.com)>; 'Steven Fama' <[sfama@prisonlaw.com](mailto:sfama@prisonlaw.com)>; Alison Hardy <[ahardy@prisonlaw.com](mailto:ahardy@prisonlaw.com)>; Rana Anabtawi <[rana@prisonlaw.com](mailto:rana@prisonlaw.com)>  
**Subject:** Plata | Proposed Order re Staff Testing

Hi everyone,

As instructed by the Judge during today's CMC, I've drafted a proposed order regarding staff testing. Please let me know if Defendants approve ASAP. If possible, I'd like to get this to Judge Tigar before the end of the day.

Thanks,

Sophie

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