

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) 703-58443
7 Email: Nasstaran.Ruhparwar@doj.ca.gov

PRISON LAW OFFICE
DONALD SPECTER (83925)
STEVEN FAMA (99641)
ALISON HARDY (135966)
SARA NORMAN (189536)
RANA ANABTAWI
(267073)
SOPHIE HART (321663)
1917 Fifth Street
Berkeley, California 94710
Telephone: (510) 280-2621
Fax: (510) 280-2704
dspecter@prisonlaw.com

8 HANSON BRIDGETT LLP
PAUL B. MELLO - 179755
9 SAMANTHA D. WOLFF - 240280
KAYLEN KADOTANI - 294114
10 425 Market Street, 26th Floor
San Francisco, California 94105
11 Telephone: (415) 777--3200
Facsimile: (415) 541-9366
12 pmello@hansonbridgett.com

Attorneys for Plaintiffs

13 Attorneys for Defendants

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: June 19, 2020
Time: 3:00 p.m.
Crtrm.: 6, 2nd Floor
Judge: Hon. Jon S. Tigar

1 The parties submit the following joint statement in advance of the June 19, 2020
2 Case Management Conference (CMC).

3 Since the last CMC, the parties have met and conferred on a number of occasions
4 regarding multiple topics relating to Defendants' response to the COVID-19 pandemic,
5 including: staff testing, resumption of intake, measures to decrease population density,
6 intra-prison transfers of medically high-risk incarcerated people from dorms to cells,
7 transfer protocols, and further efforts to achieve physical distancing and compliance with
8 safety precautions and mandates. The outcome of the parties' discussions, and their
9 positions on the topics, are relayed below.

10 **I. EFFORTS TO DECREASE POPULATION DENSITY**

11 Before discussing the plan to further reduce the prison population, Defendants note
12 that in three months, from March 19 to June 17, CDCR's institution population has
13 decreased by 7,914 people, while CDCR's in-custody population has decreased by 8,372
14 people¹. These decreases are largely the result of measures implemented by CDCR to
15 reduce the prison population in response to the pandemic. They have assisted CDCR in
16 mitigating and managing the spread of the virus.

17 In addition to these population reduction measures, as Defendants explained last
18 week, CDCR is in the process of implementing a new community supervision plan to
19 further safely reduce the prison population under California Government Code section
20 8658. Under the plan, incarcerated people who are within 180 days of their release date
21 will be supervised in the community if they meet the following criteria:

- 22 • They are not serving a current term of incarceration for a violent felony
23 offense as defined by California Penal Code section 667.5(c);

24
25
26 ¹ CDCR's "institution population" refers to people housed within CDCR's 35 adult institutions.
27 CDCR's "in-custody population" refers to people housed outside of the institutions, including, for
28 instance, in camps, another state, Bureau of Prisons, out to court, in transit, or in the Male
Community Reentry Program.

- 1 • They are not serving a current term of incarceration for a serious felony
- 2 offense as defined by California Penal Code section 1192.7(c);
- 3 • They are not required to register under California Penal Code section 290;
- 4 • They are not serving a current term of incarceration for a domestic violence
- 5 offense;
- 6 • They do not have a California Static Risk Assessment score indicating a high
- 7 risk for violence; and
- 8 • They have a post-release housing plan.

9 Under CDCR's plan, released offenders will be supervised in the community until
10 the individuals reach their natural release date. At that time, the individuals will either
11 transition to county supervision or state parole, whichever is consistent with the
12 commitment offense.

13 **Plaintiffs' Position:**

14 Plaintiffs welcome this population reduction measure because it may provide a
15 limited amount of additional space that is necessary to protect people in prison from the
16 virus and its related disease. The actual effect on the prison population is unknown
17 because of the uncertainty surrounding the resumption of intake and the number of people
18 who will be actually released or removed from prison. Plaintiffs understand Defendants
19 estimate approximately 530 people will be released early on parole each month, in addition
20 to the roughly 3,000 who are released normally on parole. Even if these projections are
21 understood correctly and actually happen, the population will not decrease by an additional
22 530 because other people will be received by CDCR through intake. Currently, CDCR is
23 accepting a maximum of 200 people for the month of June but no decision has been made
24 for July. Assuming the intake number does not increase, the population will drop by an
25 additional approximately 330 people each month. In six months the total additional
26 population reduction will be about 2,000. If the level of intake is increased, the expected
27 population drop will be commensurately less.

28 More importantly, the Community Supervision Program does not directly address

1 the plight of those most in need of relief. The program does not release to community
2 supervision those at the highest risk of serious injury and death and at the lowest risk to
3 public safety.

4 While we very much appreciate the Secretary's action in reducing the population,
5 Plaintiffs believe that further reductions are necessary and should be targeted at those most
6 at risk. Because those released early generally will be people convicted of lower level
7 offenses who are housed in dormitories and thus their release will not increase the number
8 of cells available for medically vulnerable people currently housed in dormitories. The
9 prisons will remain seriously overcrowded and unable to provide the social distancing that
10 is necessary to reduce the risk of infection to an acceptable level.

11 **Defendants' Position:**

12 CDCR has begun the process of reviewing the inmate population to identify inmates
13 who might potentially meet all of these criteria, and anticipates that the first inmates
14 released to community supervision under this plan will occur on July 1, 2020. Based on
15 the information reviewed so far, CDCR has identified a group of approximately 3,500
16 inmates who might satisfy the criteria for release in July, but CDCR has not yet determined
17 which individuals in this group satisfy all of the criteria. Thus, in the first month of
18 community supervision under this new plan, it is not expected that the total releases will
19 exceed 3,500 inmates, and the total number could be less depending on the number of
20 candidates who satisfy all of the criteria. Determining whether every eligible candidate
21 has a post-release housing plan is one of the more challenging and time-consuming criteria
22 to confirm.

23 Whatever the total number of releases in July will be, CDCR currently anticipates
24 that community supervision under the new plan will continue on a rolling basis beyond
25 July, and that on a weekly basis, CDCR will identify a new group of inmates who are
26 newly within 180 days of release, and who will become potentially eligible for community
27 supervision.

28 ///

1 **II. TESTING STAFF FOR COVID-19**

2 On June 16, 2020, CDCR produced its comprehensive COVID-19 staff-testing plan,
3 which is attached as **Exhibit A** to this statement. As discussed during last week's Case
4 Management Conference and stated in the parties' June 9, 2020 Case Management
5 Conference Statement, the plan sets out three different protocols for staff testing at: (1)
6 California Health Care Facility (CHCF), California Medical Facility (CMF), and Central
7 California Women's Facility (CCWF); (2) all other prisons without COVID-19 cases; and
8 (3) all other prisons with active COVID-19 cases.

9 For the first group of institutions (CHCF, CMF, and CCWF), the plan requires those
10 institutions to adopt the California Department of Public Health's (CDPH)
11 recommendations for staff testing at skilled nursing facilities (SNF), which is an
12 aggressive testing protocol. (Exhibit A at 1; *see* Memorandum from Deputy Director
13 Heidi Steinecker to Skilled Nursing Facilities (May 22, 2020), available at:
14 <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-53.aspx>.) The CDPH SNF
15 Guidance calls for universal baseline testing of all staff, followed by regular surveillance
16 testing of 25% of staff each week, such that 100% of staff are re-tested every month. *Id.*
17 The CDPH SNF Guidance also calls for testing all staff and serial re-testing every seven
18 days thereafter until no new cases are identified in two sequential rounds of testing, after
19 one (or more) individuals (resident or staff) tests positive for COVID-19. *Id.*

20 With respect to prisons with no recent COVID-19 cases, the plan requires
21 surveillance testing of 10% of all staff every 14 days, such that all staff will be tested in
22 five months. The plan also calls for monthly testing of staff regularly assigned to transport
23 duty, guarding duty at a community hospital, or culinary areas. Finally, the plan calls for
24 testing of staff pursuant to the CDPH SNF Guidance if they are regularly assigned to
25 inpatient medical or mental health beds. . (*Id.*)

26 Finally, at institutions where there have been recent COVID-19 cases, the plan calls
27 for serial retesting of staff every 14 days until no new cases have been identified in two
28 sequential rounds of testing. This testing may be limited to the yard where the incarcerated

1 person who has tested positive is housed or the staff person who has tested positive is
2 assigned. (*Id.* at 4.)

3 Plaintiffs submitted a number of follow-up questions about the staff-testing plan on
4 June 17, 2020, which Defendants will endeavor to answer.

5 **Plaintiffs' Position:**

6 Plaintiffs strongly support the decision to begin regular, organized testing of staff,
7 and believe this testing should begin as soon as possible. In general, Plaintiffs agree with
8 the testing protocols proposed for CMF, CCWF, and CHCF, and for the staff regularly
9 assigned to the inpatient medical and mental health units. We have some questions and
10 concerns about the protocols proposed for the remaining prisons, which we provided to
11 Defendants on Wednesday afternoon. Among others, these include the following
12 observations and questions:

- 13 • Plaintiffs have asked whether staff will be obligated to report positive test
14 results if they are tested privately. As we understand it, this is not currently
15 required.
- 16 • For prisons with COVID-19 cases, the plan calls for serial retesting of all
17 staff, but indicates that “[i]t is not necessary to test staff across multiple
18 yards as long as staff are not moving among buildings to provide services.”
19 Plaintiffs do not agree with this carve-out. Even if staff do not work on the
20 same yard, they are likely to interact with each other during shift change and
21 outside of work, as many staff members live and recreate in the same
22 communities. We believe all staff should be re-tested whenever there is a
23 new COVID-19 case at a prison.
- 24 • The plan calls for more frequent testing of staff “regularly assigned” to
25 inpatient medical or mental health beds, transport duty, guarding duty at a
26 community hospital, and culinary areas. However, the plan does not define
27 “regularly assigned.” Plaintiffs believe these provisions should apply to all
28 staff members who actually work in these areas, and have asked whether

1 there are any restrictions on staff covering/swapping these shifts.

- 2 • The plan defines staff as those “who interact with inmates.” Plaintiffs
3 believe this definition is too narrow. Staff who are not in direct contact with
4 incarcerated people may be in contact with staff who are, and thus could still
5 introduce and spread the virus.
- 6 • The plan only calls for surveillance testing of 10% of the staff each month at
7 prisons without COVID-19 cases. When asked for the factual basis or
8 reasoning for testing 10% Defendants refused to respond.
- 9 • The plan only calls for testing transportation staff once per month, while
10 CCHCS states that incarcerated persons should be tested within 7 days of
11 transfer. Since the virus does not distinguish between those who live and
12 work in the prisons, the testing regimen should be the same for both.

13 **Defendants’ Position:**

14 On an emergency basis, CDCR has already entered into a contract with a lab to
15 provide the staff testing for California Medical Facility, California Health Care Facility,
16 and Central California Women’s Facility, and testing under that contract should commence
17 this week. CDCR is working on the completion of expedited emergency contracts that will
18 cover the remainder of the testing called for by the testing plan, and that process is nearly
19 complete. CDCR anticipates that testing under those contracts will commence next week.

20 In the meantime, and in response to the Court’s directive, from June 11 through
21 June 15, 2020, CDCR tested 1,668 staff (94.9% of staff) at San Quentin and 1,872 staff
22 (92.6% of staff) at California State Prison – Corcoran.² The June 11, 2020 testing at San
23 Quentin and Corcoran was focused on the custody and healthcare staff who may have
24 come into contact with the CIM inmate-transferees.

25 ///

26 _____
27 ² Not all staff were tested at these facilities for a number of reasons, including employees out on
28 sick leave, disability leave, parental leave, vacation, and remote assignment.

1 **III. TRANSFERS**

2 **A. The Transfer Of Medically High-Risk Individuals From Dorms To Cells**

3 **Plaintiffs' Position:**

4 The parties and the Receiver have agreed in principle on a plan to move as many
5 medically vulnerable patients living in dorms to cells as possible, based on the Receiver's
6 determination that celled housing presents a significantly lower risk of contracting
7 COVID-19 than dorm housing. That agreement is as follows:

8 CCHCS will immediately identify all patients who are 65 and over and living in a
9 dorm. CCHCS will share that information with DAI and with healthcare at the
10 institutions. The healthcare staff at institutions with these patients will discuss with
11 each of these patients the risks and benefits of staying in the dormitory or
12 transferring to a cell either at that institution or another institution. These
13 discussions with patients will occur in reverse chronological order so that the oldest
14 patients are selected first. CCHCS will inform DAI of all the patients who consent
15 to be transferred. DAI will endeavor to transfer these patients to a cell at the
16 existing institution or another institution. Patients will not be transferred to another
17 institution until the Receiver approves the transfers.

18 In order to evaluate how to operationalize this agreement, Defendants have
19 provided Plaintiffs' counsel with a recent Institutional Bed Report and have agreed to
20 provide a list of available cells. In addition, the parties and the Receiver met by
21 conference call on June 16 to discuss several operational issues, including the process for
22 identifying eligible patients, the classification process and the procedure for providing
23 information to the patients about the risks and benefits of moving from their existing
24 housing to cells in other parts of the prison or, if applicable, to another prison. The parties
25 also discussed the need to address mental health and other disability accommodations
26 when making placement decisions. The parties expect these discussions to continue until
27 these issues are resolved.

28 **Defendants' Position:**

On June 16, 2020, the Receiver, Plaintiffs, and Defendants reached agreement in
principle regarding the intra-prison transfer of medically high-risk individuals from dorms
to cells. Under the terms of this agreement, CCHCS will immediately begin the process of

1 identifying all patients age 65 and over who are presently living in a dorm setting.
2 CCHCS will prioritize patients who are at highest risk for a bad outcome if they were to
3 contract COVID-19, including in reverse chronological order by age. CCHCS will then
4 share that list with DAI and with healthcare at the institutions. The healthcare staff at the
5 institutions where these patients are located will then discuss with the patients the risks and
6 benefits of transferring from the dormitory setting into a cell at that same institution.
7 CCHCS will inform DAI of the patients who consent to be transferred. DAI will then
8 endeavor to transfer these patients who consent to be transferred in the order they appear
9 on the list.

10 The parties and CCHCS participated in a telephonic meet-and-confer discussion on
11 June 16, 2020, to further discuss the details of this agreement. DAI indicated it is in the
12 process of analyzing the availability of cell beds at each institution where dorms are
13 located. This is not an easy process because certain cell beds, while not occupied, must
14 remain vacant for a number of reasons, and are thus not “available” for purposes of these
15 transfers. For instance, while cells may typically accommodate two beds (and thus, two
16 inmates), a number of cells are occupied by inmates who have been classified as “single-
17 cell status,” meaning, for security reasons, they may not share a cell. Additionally, other
18 cells have been “deactivated” due to their condition or some other physical limitation and
19 thus are no longer inhabitable. Other cell beds are considered “not in service” because
20 they are temporarily uninhabitable and undergoing maintenance or renovation. Further,
21 cells housing units should not be crowded up to 200% capacity because it would make
22 appropriate physical distancing in those units and facilities difficult or impossible in
23 common areas. This, in turn, would likely have an adverse impact on programming, the
24 ability to provide an appropriate amount of treatment space and medical care, and normal
25 functioning and services in these units. A certain number of cells must also remain
26 available for medical isolation. It is also likely that many of the inmates who will be
27 considered for transfer from dorms to cells will require lower bunks due to health care
28 factors, further limiting the availability of appropriate cell beds. DAI anticipates that it

1 will complete its analysis of available cell beds by June 24, 2020.

2 Once DAI completes the process of identifying available cell beds and CCHCS has
3 compiled its list of medically high-risk inmates who consent to transfer from dorm to cell,
4 DAI will then review CCHCS' list to determine where inmates may be placed. This
5 process will take into consideration an inmate's compatibility with a potential cellmate,
6 enemy list, case factors, security level, and health care factors. Additionally, if an inmate
7 has to move to another yard within an institution, the Unit Classification Committee must
8 meet to consider the transfer and identify any issues with respect to potential enemy
9 concerns or security concerns, for instance.

10 **B. Educating Medically Vulnerable Individuals in Dorms About Transfers**

11 After asking for and receiving input from Plaintiffs, CCHCS circulated a one-page
12 information sheet they intend to provide patients whom they offer a transfer from a dorm
13 to a cell, plus a Refusal Form that patients would sign if they decline the offered transfer.
14 When Plaintiffs suggested an addition to the information sheet that would more directly
15 quantify the risk of being infected with COVID-19 in a dorm compared to celled housing,
16 CCHCS explained among other things that additional information would be provided to
17 patients by medical staff when a possible transfer is discussed, and that medical staff
18 would use a script prepared for that purpose. Plaintiffs have asked to see a copy of that
19 script, and CCHCS stated that it would be provided when done. CCHCS also said patients
20 would not be counseled and asked to make a decision about a dorm to cell move unless
21 and until a specific location for the move could be specified.

22 **Plaintiffs' Position:**

23 The education of medically vulnerable patients regarding the risks if infected with
24 COVID-19 is crucial for individuals to make an informed decision regarding whether to
25 move from a dorm to a cell. Although the information sheet is mostly well done, Plaintiffs
26 cannot say whether the education to be provided is adequate until we consider the script to
27 be used by medical staff when counseling patients. Plaintiffs agree that patients should not
28

1 be asked to decide whether to move from a dorm until a cell at a specific location is
2 offered.

3 **C. The CIM Transfers and Updated Transfer Protocols**

4 **Plaintiffs' Position:**

5 At the time of the late May transfers of hundreds of medically vulnerable patients
6 from the California Institution for Men (CIM) to San Quentin and Corcoran State Prison –
7 done to try to remove those patients from the massive COVID-19 outbreak at CIM –
8 CCHCS protocols, issued on May 22, provided that patients must test negative for
9 COVID-19 before transfer, but did not specify a pre-transfer time frame for that test. Nor
10 were CIM staff specially told by Headquarters any time frame for testing these particular
11 patients before the transfers, which were ordered by Headquarters. Nor were any
12 directives given regarding testing after Plaintiffs' May 22nd email raising concerns about
13 CIM housing practices possibly exposing patients who previously tested negative,
14 including those up for transfer, to the virus. It also appears that CDCR staff who drive the
15 buses and provide security may not have been tested prior to transfer, increasing the risk of
16 transmission.

17 Patients were transferred from CIM at the end of May based on negative COVID-19
18 negative tests done in the middle or near the start of the month. Some of those tested
19 positive for COVID-19 shortly after arrival at San Quentin and Corcoran, meaning they
20 were likely positive at the time they were transferred. Others transferred to San Quentin
21 on the same bus as those patients subsequently tested positive for the virus. One of them
22 is hospitalized, in an ICU and on a ventilator.

23 It is deeply unfortunate that transfers done to keep people safe have resulted in
24 some becoming positive, and have introduced the virus to a prison – San Quentin – where
25 previously there were no confirmed cases. Although it cannot be said for certain that
26 negative tests done closer in time to the transfer date would have prevented what has now
27 occurred, it was a poor decision to not require such tests to incarcerated people and staff,
28 given public health principles and common sense, and the alert about CIM housing

1 practices we sent to CCHCS on May 22. CCHCS’s current comprehensive reconsideration
2 of its testing and transfer protocols is clearly necessary.

3 The more general lessons are also clear. CCHCS must specify timeframes for
4 testing, transfers, the staff who should be tested and all related matters involving patient
5 safety.³ Similarly, CCHCS must mandate action, including regarding the timing of tests,
6 so that the message is clear and staff can be held fully accountable for noncompliance. In
7 this regard, the use of discretionary language, such as the “may” and “should not” in the
8 June 2 and June 5 policy statements regarding testing, cannot continue. The new policy,
9 strategy, or protocol must use unambiguous language.

10 Plaintiffs have asked to review the new testing and transfer policy or protocol in
11 advance of implementation later this month, so that if necessary we can comment on it, as
12 has been the standard practice for years with dozens of other policy changes. Such
13 reviews, which we will do on an expedited basis if so asked, have previously resulted in
14 changes that reduce the risk of harm to patients. CCHCS has not indicated whether it will
15 share the new testing and transfer policy or protocol in advance. Plaintiffs ask that the
16 Court direct the Receiver to do so.

17 Finally, and fundamentally, the Receiver must prohibit all inter-prison transfers
18 except those necessary for healthcare reasons or other emergencies until the new testing
19 and transfer policy or protocol is fully implemented, piloted in a substantial way, and
20 deemed adequate. In addition to the CIM to San Quentin transfers, Plaintiffs this week
21 discovered that people on or about June 8th were moved from San Quentin for purely
22 custody reasons and that one of those persons – who had tested negative six days before
23 transfer, subsequently tested positive for COVID-19 at the new prison. When asked about
24 this, CCHCS stated the patient is believed to have infected a nurse and two officers at the
25

26 ³ On June 17, 2020, CCHCS informed Plaintiffs that last week, it provided CDCR with
27 recommendations to reduce the risk of COVID-19 transmission during bus transports, including
28 limits on bus capacity, but did not know whether CDCR would adopt them.

1 new prison. In addition, CCHCS stated this week that an officer who drove patients to
2 California Medical Facility in Vacaville tested positive for COVID-19, and those who
3 were in the bus may have been infected. As noted above, the Receiver, for public health
4 reasons, should prohibit all except essential transfers until it is clear that the revised testing
5 and transfer policy or protocol is adequate.

6 **Defendants' Position:**

7 As reported in the May 27, 2020 Joint Case Management Conference Statement, on
8 May 22, 2020, CCHCS issued a memorandum to all wardens and chief executive officers
9 jointly signed by Connie Gipson, Director of the Division of Adult Institutions, Dr. Joseph
10 Bick, Director of the Division of Health Care Services, and Dr. Steven Tharratt, Director
11 of Health Care Operations and Statewide Chief Medical Executive at CCHCS, entitled
12 "COVID 19 Pandemic – Road Map to Reopening Operations." Attached to that
13 memorandum was a "Covid Screening and Testing Matrix for Patient Movement," which
14 set forth direction to institutions regarding the testing and housing of inmates under
15 particular movement scenarios. That memorandum did not provide specific time frames
16 for the testing of inmates prior to inter-prison transfers, for instance, in circumstances like
17 the transfers from CIM to San Quentin and Corcoran, that were discussed during the June
18 9, 2020 Case Management Conference. As a result of the lessons learned from the CIM
19 transfers (which are described more fully below), all inmates: (1) must be administered a
20 COVID-19 test no more than seven days before transfer and; (2) must receive a negative
21 test result before transfer. This modification to the transfer protocol was memorialized in
22 an email from CCHCS's Vince Cullen to all Chief Executive Officers on June 5, 2020. A
23 copy of this email is attached as **Exhibit B**.

24 As it pertains to the CIM transfers, on May 23, 2020, CCHCS provided the Division
25 of Adult Institutions (DAI) with a list of 691 inmates at CIM who were deemed "medically
26 high risk" and who had tested negative for COVID-19. CCHCS directed DAI to transfer
27 the listed inmates out of CIM. DAI immediately started the classification process required
28 to transfer the inmates to San Quentin and Corcoran. DAI kept CCHCS apprised of the

1 anticipated schedule for transferring the inmates, and CCHCS did not object to that
2 schedule. CCHCS did not notify DAI that a retest would be necessary of the inmates
3 before they were transferred, nor had CCHCS issued a general directive concerning the
4 timing of COVID-19 tests in relation to inmate transfers. On May 28—four business days
5 after CCHCS sent the transfer list to DAI—the transfers commenced. CCHCS suspended
6 the transfers on June 4, 2020, when it was discovered that some of the transferred inmates
7 tested positive for COVID-19 after they arrived at San Quentin and Corcoran. On June 5,
8 2020, CCHCS issued a new “testing and transfer strategy” dictating that “a patient should
9 not transfer if the date of their NEGATIVE test is past 7 days on the date of transfer. This
10 means 7 days from the date the test was administered.” There have been no additional
11 transfers from CIM since CCHCS suspended transfers on June 4.

12 **IV. RESUMPTION OF INTAKE**

13 As reported in the parties’ June 8, 2020 Joint Case Management Conference
14 Statement, CDCR has maintained the closure of county jail intake, with the exception of
15 the intake of approximately 50 county jail inmates per week, for a total of 200 inmates.
16 Four counties (Los Angeles, San Bernardino, Fresno, and San Diego) are permitted to send
17 inmates to CDCR according to a set schedule.⁴ Due to the number of positive COVID-19
18 cases in Los Angeles County jails, CDCR temporarily suspended the intake of inmates
19 from Los Angeles County jails on June 5, 2020 and replaced that intake with inmates from
20 Kern County. After receiving assurances from Los Angeles County that it is testing and
21 screening its inmates prior to transfer, CDCR will resume limited intake from Los Angeles
22 County on June 24, 2020. CDCR will continue to limit county jail intake to 50 county jail
23 inmates total per week from these same four counties through July 3, 2020. The parties
24 discussed intake at the meet and confer on June 16, 2020 and with CCHCS on the June 17,
25 2020 informational call.

26
27 ⁴ Should any of these four counties be unable to fulfill their quota, two other counties – Orange
28 County and Kern County – may send people to complete the quota.

1 CCHCS has made recommendations to DAI regarding intake, including (a)
2 providing a list of current outbreaks in county jails based on data from the Department of
3 Public Health with a recommendation that people not be received from counties where
4 there are outbreaks; (b) the suggestion that DAI accept on a preferential basis those people
5 in the county jails who have recovered from the virus; and (c) recommendations about
6 transportation procedures, such as having bus passengers masked and keeping windows
7 open. CCHCS noted on the June 17 call that it has become apparent that custody staff in
8 the Reception Centers will need additional protective equipment (N95 respirators).

9 **Plaintiffs' Position:**

10 Plaintiffs maintain their position that intake should be suspended until CDCR
11 completes the process of moving medically vulnerable people to cells, until transfers can
12 be accomplished safely, and until the population decreases to the point that social
13 distancing can be safely practiced. Plaintiffs continue to be concerned about intake from
14 counties with active outbreaks, including Los Angeles and San Bernardino.

15 **Defendants' Position:**

16 In the interim, CDCR is continuing to evaluate when and how it will resume more
17 normalized county intake. It will update the Court and the parties on its future intake plans
18 when additional information becomes available.

19 **V. STRATEGIES TO CREATE AND ENCOURAGE SOCIAL DISTANCING
20 FOR INDIVIDUALS LIVING IN CELLS AND DORMS**

21 With respect to incarcerated persons, on Wednesday, June 10, 2020, plaintiffs
22 provided Director Gipson a list of suggestions for creating and encouraging healthy
23 behavior in cells and dorms, including social distancing. Plaintiffs' suggestions included:
24 (1) talking to incarcerated people, including by consulting the Inmate Advisory Councils,
25 conducting (distanced) town hall style meetings, and using the closed circuit television to
26 solicit their input on these issues; (2) empowering incarcerated people to respectfully
27 remind staff to wear their masks; (3) providing "substantial value" benefits to mark
28 measurable compliance success, including include tablets, magazines/books, additional

1 free phone calls, and (properly distanced) group celebrations, (4) consulting with
2 Department of Juvenile Justice officials regarding their incentive programs, and (5)
3 consulting with CDCR staff, including staff who work in the Developmentally Disabled
4 Program.

5 During the parties' telephonic meet-and-confer discussion on June 16, 2020,
6 Director Gipson stated that she had communicated with the wardens regarding Plaintiffs'
7 proposals and soliciting best practices. She noted numerous incentives that were under
8 discussion.

9 With respect to staff, on June 11, 2020, Secretary Diaz and the Receiver jointly
10 issued a memorandum to all custody and health care staff reminding them to adhere to
11 cleaning and disinfection protocols, wash hands frequently, answer daily screening
12 questions, physically distance at all times possible, and wear cloth or other approved face
13 barrier coverings at all times (with limited exceptions). The memorandum indicates that
14 failure to wear an appropriate face barrier covering "may result in progressive discipline."
15 This disciplinary process is overseen by the Office of the Inspector General and discipline
16 can range from training to counseling to dismissal according to a disciplinary matrix. A
17 copy of this June 11, 2020 Memorandum is attached as **Exhibit C**.

18 During the first half of June, the Corrections Services staff of CCHCS conducted
19 site visits at each of the 35 state prisons to assess compliance with social distancing
20 guidelines, including whether staff and incarcerated people are wearing masks. According
21 to the schedule of visits, all should have been completed by June 17, and the report should
22 be completed on June 19, 2020.

23 **Plaintiffs' Statement:**

24 Plaintiffs welcome these efforts. We have requested the memo that Director Gipson
25 sent to the Wardens, and will continue to monitor Defendants efforts to promote
26 compliance with distancing guidance.

27 **Defendants' Statement:**

28 DAI continues to work with each institution to ensure that physical distancing,

1 cleaning, and other measures are appropriately implemented to ensure the health and
2 wellbeing of both inmates and staff at each institution. However, a one-size-fits-all
3 approach to cleaning schedules and physical distancing is not appropriate for every
4 housing unit at every institution. Each housing unit is different and therefore, it is best left
5 to the discretion of the wardens to determine how to implement CDCR directives
6 pertaining to cleaning and physical distancing.

7 Director Gipson is also in the process of working with the wardens at each
8 institution to encourage them to implement incentives for inmates who comply with
9 cohorting principles and mask-wearing directives. Wardens have been very receptive to
10 this directive and are in the process of meeting with Inmate Advisory Committees and
11 health care staff to brainstorm potential incentives and are also in the process of
12 considering suggested incentives provided by Plaintiffs' counsel.

13
14 DATED: June 18, 2020

HANSON BRIDGETT LLP

15
16
17 By: /s/ Samantha Wolff

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

21 DATED: June 18, 2020

XAVIER BECERRA
Attorney General of California

22
23 By: /s/ Damon McClain

24 DAMON MCCLAIN
25 Supervising Deputy Attorney General
26 NASSTARAN RUHPARWAR
Deputy Attorney General
Attorneys for Defendants

1 DATED: June 18, 2020

PRISON LAW OFFICE

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Bv: /s/ Alison Hardy
ALISON HARDY
Attorney for Plaintiffs