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 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO**

12 MARCIANO PLATA, et al.,

Plaintiffs,

13 v.

14 GAVIN NEWSOM., et al.,

Defendants.

Case No. C01-1351 JST

**[PROPOSED] ORDER ON
 ISOLATION AND QUARANTINE
 SPACE**

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 17 The Court finds that in light of recent events, especially at San Quentin, it is
 18 imperative for Defendants to have sufficient physical space in each prison to reduce the
 19 risk of serious harm and death from COVID-19. At the present time, neither party has
 20 developed a plan to ensure that there is adequate physical space to keep the incarcerated
 21 population reasonably safe from the virus. Accordingly, the Receiver was asked to
 22 develop principles that would for the first time in this litigation quantify the space needs
 23 of the CDCR in light of toll that COVID-19 has taken on the prison population.
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1 Pursuant to that request, the Receiver drafted a statement “of principles and
2 strategies that guide how the department should manage physical space and prison
3 populations in order to both prevent the introduction of COVID-19 into the prison and to
4 contain the spread of COVID-19 infection once introduced. A fundamental underlying
5 tenet of this proposal is that each institution must have adequate space to allow for the
6 housing, feeding, and programing of all inmates under its care.” Kelso, COVID-19
7 Space Needs for Prevention, Isolation and Quarantine, July 11, 2020, at 1.

8 Based on his experience with the tragic toll that the virus has taken to the present
9 day and his firsthand experience managing the pandemic response in institutions that
10 have had outbreaks, the Receiver has developed a methodology for determining the space
11 needs of each institution. Specifically, the Receiver states,
12

13 The methodology for determining the number of empty beds . . . was based
14 upon our experience during the pandemic with outbreaks of different sizes.
15 We have experienced four large outbreaks (total positives greater than 500),
16 six medium-sized outbreaks (total positives greater than 100 and less than
17 500), and fourteen small outbreaks (total positives between 1 and 99). The
18 goal of this analysis and its associated methodology is to ensure to the
19 extent reasonably feasible that each institution has enough beds to handle
20 the beginning phases of an outbreak in order to significantly reduce the risk
21 of it blossoming into a medium-sized or large outbreak.

22 *Id.*

23 The Court finds that at this time there is no disagreement among public health
24 experts that separating individuals through the use of quarantine and isolation is essential
25 to managing an outbreak. The Receiver’s methodology applies the distancing principle
26 to the prison environment in a sound and sensible manner and should be implemented.
No party has put forth a competing proposal despite several months of litigation. As the

1 Court has already ruled, in this situation “every day counts.” Order to Show Cause re
2 Baseline Staff Testing for COVID-19, ECF No. 3366, June 28, 2020, at 3. Therefore, the
3 Court will order Defendants to implement the guidelines set forth in Receiver’s statement
4 as set forth below. As experience with the virus and advances in treatment and
5 prevention occur, modifications of the methodology should be considered. Accordingly,

6 IT IS HEREBY ORDERED that:

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- 8 (1) Defendants, their agents and employees (collectively “Defendants”) shall
9 identify within 10 days in each facility in each prison space that will allow for
10 rapid isolation and quarantine of impacted patients. Each facility shall also
11 identify its largest congregate living space.
- 12 (2) Defendants shall take immediate steps to ensure that each facility shall
13 maintain empty beds equivalent to the capacity of its largest congregate living
14 space or 20% of the current population of the facility, whichever is larger.
15 Priority shall be given to those prisons where the population is at highest risk,
16 as determined by the Receiver.
- 17 (3) Defendants shall within fifteen days run “table-top” exercises at each facility to
18 determine whether the space needs at each facility should be adjusted.
- 19 (4) The Receiver shall consider on an expedited basis, with input from counsel,
20 any request by either party to modify the number of empty beds as set forth
21 above based on the results of the “table-top exercise,” the architecture of the
22 prison, the classification factors, the availability of alternative housing
23 arrangements, the healthcare needs of the population, accommodations
24 necessary for people with disabilities or any other factors that are relevant to
25 determining the minimum space requirements necessary to ensure reasonable
26 safety.
- (5) The Receiver shall continually evaluate the methodology set forth in his
statement in light of experience as well as advances in medical science in
treatment and prevention. If the Receiver determines that the methodology
should be adjusted he shall consult with the parties to determine whether an
agreement can be reached. If so, the parties shall file a stipulation modifying
this order. If not, the Receiver shall so inform the Court that the parties have
been unable to agree.

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The Court finds that this Order is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

IT IS SO ORDERED.

Dated: July __, 2020

THE HONORABLE JON S. TIGAR
U.S. DISTRICT COURT JUDGE