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

13 MARCIANO PLATA, et al.,  
 14  
 Plaintiffs,  
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 v.  
 16 GAVIN NEWSOM, et al.,  
 17  
 Defendants.

CASE NO. 01-1351 JST

**DEFENDANTS' RESPONSE TO ORDER  
 TO SHOW CAUSE RE: BASELINE  
 STAFF TESTING FOR COVID-19**

Judge: Hon. Jon S. Tigar

18  
 19 **INTRODUCTION**

20 Defendants' respectfully submit this response and objection to the Court's Order to Show  
 21 Cause on the grounds that (1) an order from the Court requiring baseline testing is unnecessary  
 22 because CDCR already intended to conduct baseline testing at some institutions and now, after  
 23 considering Plaintiffs' and the Court's concerns, intends to conduct baseline testing at each of the  
 24 institutions and (2) it is not feasible to conduct baseline testing at all of the institutions between  
 25 now and July 6, 2020, but CDCR should be able to complete the baseline testing by July 16, 2020.

26 **I. CDCR HAS ALREADY CONDUCTED SIGNIFICANT STAFF TESTING IN**  
 27 **THE INSTITUTIONS.**

28 The Court's Order to Show Cause indicated that, aside from the Court ordered testing at

1 San Quentin and California State Prison, Corcoran, the Court may not have been aware of staff  
 2 testing at other institutions. CDCR's testing efforts to date have been extensive and are  
 3 summarized below:

- 4 • 1,603 staff tested at California Institution for Men in May and June;
- 5 • 1,725 staff tested at San Quentin in mid-June and retesting of all San Quentin staff  
 6 is scheduled to begin today;
- 7 • 1,949 staff tested at Corcoran in mid-June;
- 8 • 286 staff tested at California Institution for Women on June 8, 2020;
- 9 • 380 staff tested at California Men's Colony on June 11, 2020;
- 10 • 1,164 staff tested at Avenal State Prison in late May and serial testing at Avenal  
 11 commenced on June 23, 2020;
- 12 • 1,939 staff tested at California Medical Facility from June 24-30, 2020;
- 13 • 2,959 staff tested at California Health Care Facility from June 24-30, 2020;
- 14 • 1,018 staff tested at Central California Women's Facility from June 26-30, 2020;  
 15 and
- 16 • 1,142 staff tested at California State Prison, Solano from June 26-30, 2020. (Decl.  
 17 J. Osborn ¶ 3.)

18 Furthermore, voluntary staff testing commenced at California Correctional Center on June  
 19 18, 2020. Mandatory testing of the remaining staff at that institution is already scheduled to  
 20 commence on July 1, 2020, and serial testing is scheduled to begin on July 15, 2020. (*Id.* at ¶ 4.)  
 21 Finally, testing of all staff at High Desert State Prison was already scheduled to commence on July  
 22 1, 2020. (*Id.* at ¶ 5.) As this data shows, CDCR takes staff testing extremely seriously, and has  
 23 made significant efforts to test staff even before a statewide staff testing plan has been  
 24 implemented.

25 **II. THE COURT'S PROPOSED TESTING ORDERS ARE UNNECESSARY AND**  
 26 **WOULD IMPOSE AN UNREASONABLE DEADLINE.**

27 The Court is correct that the staffing plan Defendants filed with the Court did not require  
 28 baseline testing at every institution, but as Defendants have repeatedly emphasized, CDCR's

1 planned responses to the pandemic are subject to frequent changes as the situation evolves and  
2 new information and recommendations are evaluated. On the issue of staff testing, CDCR has  
3 decided to change course and now plans to conduct baseline staff testing at each institution and  
4 will prioritize the testing at California Correctional Institution and other prisons that have  
5 significant outbreaks. (*Id.* at ¶ 6.) In addition, retesting of all staff at San Quentin was already  
6 scheduled to commence on June 30, 2020, before the Court issued the Order to Show Cause. (*Id.*  
7 at ¶ 3.) And testing of the remaining staff at California Correctional Center was already scheduled  
8 to commence on July 1, 2020, again, before the Court issued the Order to Show Cause. (*Id.* at ¶  
9 4.) Thus, the Court's proposed order for baseline testing at all prisons is not necessary.

10         Additionally, the Court's proposed order is objectionable because the deadline it would  
11 impose for completion of testing is simply not feasible. (*Id.*) This is due to the time required to  
12 complete contracts with testing providers, the time required to schedule and arrange for testing,  
13 additional administrative complications related to completing contracts during the transition from  
14 one fiscal year to the next, and anticipated difficulties in making progress on this project through  
15 the holiday weekend when many staff will be on vacation. (*Id.*) Based on consultations with the  
16 primary contractor that will likely conduct the bulk of the baseline staff testing, CDCR estimates  
17 that it can complete the baseline testing by July 16, but will endeavor to complete it sooner. (*Id.*)  
18 CDCR anticipates, however, that staff testing at institutions with significant outbreaks, including  
19 California Correctional Institution, will be completed well before July 16 because testing at those  
20 institutions will be completed first. (*Id.*)

21         Lastly, in light of the fact that some of the staff testing contemplated in the Court's Order  
22 to Show Cause was already underway, and the fact that CDCR now intends to conduct baseline  
23 staff testing at every institution and will complete that testing by July 16 at the latest, the orders  
24 contemplated in the Order to Show Cause could not satisfy the Prison Litigation Reform Act's  
25 (PLRA) needs-narrowness-intrusiveness requirements. 18 U.S.C. § 3626(a)(2). To the contrary,  
26 those contemplated orders would not be the least intrusive means to correct a constitutional  
27 violation, and they extend further than necessary to correct a harm in violation of the of the PLRA.

28

**CONCLUSION**

The orders contemplated in the Court’s Order to Show Cause are unnecessary because CDCR already planned to conduct baseline testing at some of the prisons and is now committed to conducting baseline testing at all of the prisons. Additionally, the Court’s deadlines for completing the baseline testing are objectionable because they are simply not feasible. But as discussed above, CDCR expects that baseline testing can be completed at all prisons by July 16 and will endeavor to complete baseline testing sooner. Finally, the Court should not issue the orders contemplated in the Order to Show Cause because they cannot satisfy the PLRA’s needs-narrowness-intrusiveness requirement.

DATED: June 30, 2020

HANSON BRIDGETT LLP

By:           /s/ Paul B. Mello          

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SAMANTHA D. WOLFF  
KAYLEN KADOTANI  
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DATED: June 30, 2020

XAVIER BECERRA  
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By:           /s/ Damon McClain          

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

## CERTIFICATE OF SERVICE

Case Name: Plata, et al. v. Brown, et al.

No. 01-cv-01351-JST

I hereby certify that on June 30, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- 1. DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE RE: BASELINE STAFF TESTING FOR COVID-19**
- 2. DECLARATION OF JENNIFER OSBORN IN SUPPORT OF DEFENDANTS' RESPNOSE TO ORDER TO SHOW CAUSE RE: BASELINE STAFF TESTING FOR COVID-19**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 30, 2020, at San Francisco, California.

N. Codling

Declarant

/s/ N. Codling

Signature

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Attorney General of California  
2 MONICA N. ANDERSON  
Senior Assistant Attorney General  
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11 **NORTHERN DISTRICT OF CALIFORNIA**  
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13 MARCIANO PLATA, et al.,  
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15 Plaintiffs,  
16 v.  
17 GAVIN NEWSOM, et al.,  
18 Defendants.

CASE NO. 01-1351 JST

**DECLARATION OF JENNIFER OSBORN  
IN SUPPORT OF DEFENDANTS'  
RESPNOSE TO ORDER TO SHOW  
CAUSE RE: BASELINE STAFF TESTING  
FOR COVID-19**

Judge: Hon. Jon S. Tigar

19  
20 I, Jennifer Osborn, declare:

21 1. I am employed by the California Department of Corrections and Rehabilitation  
22 (CDCR) as the Director of the Division of Administrative Services. I have held this position since  
23 since December 2018. I have personal knowledge of the matters set forth in this declaration and  
24 could and would competently testify to them. I submit this declaration in support of Defendants'  
25 response to the Court's order to show cause regarding staff testing.

26 2. The Division of Administrative Services has been responsible for obtaining COVID-19  
27 testing services for staff at CDCR's prisons. Accordingly, the Division has kept track of the staff  
28 testing it has arranged and also conducts contact tracing based on testing results.

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3. The following summarizes the staff testing that CDCR has conducted since May:
- 1,603 staff tested at California Institution for Men in May and June;
  - 1,725 staff tested at San Quentin in mid-June and retesting of all San Quentin staff is scheduled to begin on June 30, 2020;
  - 1,949 staff tested at Corcoran in mid-June;
  - 286 staff tested at California Institution for Women on June 8, 2020;
  - 380 staff tested at California Men’s Colony on June 11, 2020;
  - 1,164 staff tested at Avenal State Prison in late May and serial testing at Avenal commenced on June 23, 2020;
  - 1,939 staff tested at California Medical Facility from June 24-30, 2020;
  - 2,959 staff tested at California Health Care Facility from June 24-30, 2020;
  - 1,018 staff tested at Central California Women’s Facility from June 26-30, 2020; and
  - 1,142 staff tested at California State Prison, Solano from June 26-30, 2020.

4. Voluntary staff testing commenced at California Correctional Center on June 18, 2020, mandatory testing of the remaining staff is scheduled to commence on July 1, 2020, and serial testing is scheduled begin on July 15, 2020. These plans were made before the Court issued the Order to Show Cause.

5. Testing of all staff at High Desert State Prison was already scheduled to commence on July 1, 2020, before the Court issued the Order to Show Cause.

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1           6. CDCR has decided to conduct baseline staff testing at all institutions. My staff and I  
2 have been working to put contracts in place that will provide all needed staff testing. Yesterday, I  
3 consulted with the contractor that will likely perform most of the baseline testing to inquire  
4 whether it would be possible to complete baseline staff testing at all prisons by July 6, 2020. The  
5 contractor advised that it would not be possible to complete the testing by July 6, but predicted  
6 that the baseline testing could be completed at all prisons by July 16. Based on my experience  
7 working with contractors to complete staff testing, I agree with this assessment. This is due to the  
8 time required to complete the contracts with testing providers, the time required to schedule and  
9 arrange for testing, additional administrative complications related to completing contracts during  
10 the transition from one fiscal year to the next, and anticipated difficulties in making progress on  
11 this project through the holiday weekend when many staff at the institutions are on vacation.

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I declare under penalty of perjury that the information in this declaration is true and correct to the best of my knowledge. Executed on this 30 day of June 2020 in Sacramento, California.

/s/ JENNIFER OSBORN  
Jennifer Osborn