STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 20CVS500110

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, DISABILITY RIGHTS NORTH CAROLINA, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, KIM T. CALDWELL, JOHN E. STURDIVANT, SANDARA KAY DOWELL, and CHRISTINA RHODES,

Plaintiffs-Petitioners,

v.

ROY COOPER, in his official capacity as Governor of North Carolina, ERIK A. HOOKS, in his official capacity as Secretary of the North Carolina Department of Public Safety, and BILL FOWLER, ERIC MONTGOMERY, ANGELA BRYANT, and GRAHAM ATKINSON, in their official capacities as Post-Release Supervision and Parole Commissioners,

Defendants-Respondents.

MOTION TO ENFORCE THE INJUNCTION, OR IN THE ALTERNATIVE, MOTION TO SHOW CAUSE

Come now Plaintiffs and move the Court, pursuant to its inherent constitutional powers to enforce orders, to require Defendants to comply with the Court's June 16, 2020 Preliminary Injunction and subsequent June 24, 2020, and

July 10, 2020, orders in this matter, or, in the alternative, to require Defendants, pursuant to N.C.G.S. §5A-23(a1), to appear and show cause why they should not be held in civil contempt for failing to comply with prior orders of this Court.

1. On April 20, 2020, Plaintiffs filed this emergency litigation, along with motions for a temporary restraining order and preliminary injunction, because the conditions of confinement in North Carolina Department of Public Safety ("DPS") prisons during this unprecedented global pandemic pose deadly threats to people incarcerated there, particularly to those who are older or have underlying health conditions that cause them to be vulnerable to the COVID-19 virus.
2. These individuals are utterly at the State's mercy. They are unable to maintain social distancing, to control their exposure to vectors for disease transmission, to choose the type or quality of their mask, to seek independent medical treatment, or otherwise protect themselves from COVID-19.
3. Already, at least ten people in Defendants' custody have died from COVID-19.[1] Many more have suffered pain and disability from this virus, and many will suffer future health consequences, including neurological, lung, heart, and other organ damage.

[1] N.C. Dep't of Public Safety ("NC DPS"), *Offender-Related COVID-19 Data*, *Confirmed COVID-19-Related Offender Deaths by Facility,* https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-info-covid-19, last visited Aug. 13, 2020.

4. On June 16, 2020, the Court issued a Preliminary Injunction, finding that the conditions of confinement in Defendants' prisons likely violated the state Constitution's prohibition against cruel or unusual punishment. The Court issued supplemental orders on June 24, 2020, and July 10, 2020.

5. For the reasons below, Plaintiffs request that the Court order Defendants and their agents to take affirmative steps to comply with the Court's orders, and to desist in other conduct, including conduct by their agents, which contravene the Court's orders.

6. In the alternative, Plaintiffs move the Court to order Defendants to show cause why they should not be held in contempt for noncompliance with the Court's orders.

7. Under N.C.G.S. §5A-21(a), "[f]ailure to comply with an order of a court is a continuing civil contempt as long as:

   (1) The order remains in force;
   (2) The purpose of the order may still be served by compliance with the order;
   (2a) The noncompliance by the person to whom the order is directed is willful; and
   (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order."

8. Here, the Court's orders remain in force.

9. As our country and state struggle to combat the pandemic, the Court's orders are crucial for keeping vulnerable people in Defendants' custody healthy and alive.

10. As laid out below, Defendants are in willful noncompliance of the Court's orders in the following ways: (a) they have failed to develop and share an effective plan for early release of incarcerated people to safely manage their large and shifting prison population; (b) they have continued to subject incarcerated people who are entitled to medical isolation to punitive conditions; and (c) they have contravened the goal of the Order restricting inter-prison transfers by transferring individuals on the basis of old COVID-19 test results.
11. Defendants are able to comply with the Court's orders.
12. Where there is probable cause to believe that a party has failed to comply with a court order, the court may issue a notice or order to that party to show cause why that party should not be held in contempt. N.C.G.S. §5A-23(a). For the reasons below, there is probable cause to believe that Defendants have failed to comply, warranting issuance of an order to enforce or to show cause.

Failure to Comply with the Court's Orders as to Early Release

13. In their Motion for Preliminary Injunction, Plaintiffs, with the support of multiple public health experts, sought immediate reduction of the prison population as the single most important COVID-19 harm reduction measure that Defendants could undertake, with a focus on individuals with upcoming release dates and at high risk of medical harm.
14. In its June 16, 2020 order granting the Preliminary Injunction, this Court directed Defendants to consider population reduction measures as a means to address the crowded living conditions giving rise to the likely constitutional

violation, because population reduction is "a necessary measure for population management of facilities to achieve the safety and protection of each person in custody." Prelim. Inj. ¶ 3(b)(i). The Order specifically stated "[w]ith regard to overcrowding":

> Defendants are **directed** to apply **additional factors** [to calculate sentence credits] as outlined below . . . [including] known vulnerabilities and high-risk factors as identified by the CDC and/or DHHS.
> ….
>
> Defendants **shall** identify those incarcerated people who are or will be within 30 days of the date of this Order eligible for consideration for release according to this paragraph.
> **….**
>
> For incarcerated people who are eligible for release due to sentence credits awarded or extension of their limits of confinement, or who may have become eligible under the factors outlined above, Defendants **shall** take affirmative steps to apply the factors to effectuate such releases and make individuals aware of their eligibility.

Prelim. Inj. ¶ 3(b), at 4-5 (emphases added).

15. The Court subsequently ordered Defendants to provide the Court "[a]n update regarding compliance with the acceptance of new admissions to the **early release program** to include but not limited to notification of potential residential partners, review of eligible inmates, etc." Order on Defs' Mot. Reconsider (Jul. 10, 2020) ¶ 5(c), at 10 (emphasis added).

16. On July 24, 2020, Defendants submitted in response to the Court's July 10, 2020 Order the Fifth Supplemental Affidavit of Commissioner Todd E. Ishee, which contains no reference to early release by sentence reduction credits, and

no mention of any "additional factors" that Defendants have identified regarding eligibility for release or for Extended Limits of Confinement ("ELC"). Rather, it states only that "Prisons continues [sic] to systematically review all offenders who have not committed a crime against the person and who may otherwise be eligible for ELC under the **current criteria**." Ishee Fifth Affidavit ¶ 10(d) (Ex D to Defs' 7/27/20 Filing) (emphasis added).

17. The ELC program moves incarcerated people under DPS custody to placements outside DPS prisons. Commissioner Ishee's affidavit discusses only the preexisting ELC program, and, despite the Court's order to do so, does not explain whether Defendants have taken any affirmative steps to apply additional criteria to expand eligibility for ELC. To the contrary, Defendants have *added a serious restriction* on consideration for ELC: Defendants now permit a local district attorney to veto the ELC placement of any individual convicted in their district. Ishee Fifth Affidavit ¶ 10(f)).[2] Despite strenuously arguing that separation of powers precludes the Court from ordering Defendants to act with regard to the prison population, Defendants have ceded

[2]A memorandum describing DPS's ELC program, which was circulated to legislators in April 2020, contains no requirement that the prosecuting district attorney's office "consent" to ELC before an incarcerated person can be approved for the program. N.C. DPS, "Extending the Limits of Confinement (ELC) Frequently Asked Questions," attached hereto as Exhibit A. Neither does the NCDPS webpage describing the ELC program. NC DPS, *FAQs on Serving Sentences Outside a Prison*, https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-info-covid-19#which-offenders-(and-how-many)-will-be-impacted (last visited Aug. 13, 2020). This is a new requirement that shrinks rather than expands the pool of incarcerated people eligible for ELC.

their authority to local officials—and they have done so in a way that circumvents this Court's Preliminary Injunction. In addition, the release data discussed below also suggests that Defendants have failed to take such additional steps to expand the eligibility for ELC.

18. Moreover, again in contravention of the Court's Order, Commissioner Ishee's affidavit does not provide data regarding early release and sentence reduction credits at all, nor does it discuss whether and what **additional factors** have been considered to effectuate early release by sentence reduction credits.

19. Defendants' Counsel acknowledged that Defendants have refused to exercise their authority to expand eligibility for release when he said the following at the July 2, 2020, hearing: "And on that note, the ELC, the number of the pool of people that are even eligible for release under ELC is fairly small. It's about 1,100 people. So, we're not talking about half the prison population that might could be released if only we would just sign the right paperwork." Transcript of July 2, 2020 Hearing at 78, attached hereto as Exhibit B.

20. Defendants' statements to the Court thus evince an unwillingness to exercise their lawful authority to **expand** the pool of people eligible for ELC or release, even though the Court directed them to do so to remedy the likely unconstitutionally dangerous prison conditions.

21. Defendants' only method by which they are addressing the need to reduce their prison population is through the preexisting ELC program, which

Commissioner Ishee's affidavit admits automatically disqualifies all individuals who have been convicted of crimes against people (who make up 70 percent of the total prison population and 94 percent of the prison population over age 65, Finholt Seventh Aff. ¶¶6-7, attached hereto as Exhibit C), and requires that local elected prosecutors give consent, Ishee Fifth Aff. ¶10(f), (h).

22. These arbitrary rules that limit the ELC pool to so few individuals are not prescribed by statute, *see* N.C.G.S. §148-4, and are entirely within the power of the Secretary of Public Safety to expand.

23. Accordingly, in the month-and-a-half since the Court's Preliminary Injunction deemed additional factors for release "a necessary measure for population management of facilities to achieve the safety and protection of each person in custody" during the pandemic, Commissioner Ishee's Fifth Affidavit reports that *only 323 incarcerated people* have received community placement through the ELC program. Ishee Fifth Aff. ¶10(h). In their filings, Defendants have reported no other steps to reduce the population through sentence reduction credits and early release, or any other power or authority.

24. Defendants therefore admit that they have failed to take meaningful steps to address reduction of the prison population - the most important action to address the imminent harm to the most vulnerable incarcerated individuals.

25. Defendants' inaction reflects a troubling mentality that the Court's orders need not be given effect, and appears to suggest that individuals who have been convicted of certain crimes are unworthy of safety and should not even be

considered for ELC or early release, no matter how grave a risk of serious injury and death they face if left in prison during this pandemic.

26. Candidates have been rejected, or not even considered for release by DPS due to their failure to expand strict guidelines assessing health risk, age, severity of the crime, and projected release date.

27. Many elderly incarcerated people were convicted as younger people. They face a severe risk of serious illness and death if infected with COVID-19, and medical and sociological literature establish that such individuals are rarely dangerous once they reach a fully mature age.[3]

28. For example, at North Carolina Correctional Institution for Women ("NCCIW"), one of the Canary Unit's oldest members has already died from COVID-19. Faye Brown was a 67-year-old grandmother-figure to many of the women there. She was serving a parole-eligible life sentence. When she was a young woman in 1975, she participated in a bank robbery in which her co-defendant killed a State Trooper. [4]

29. Faye Brown was so trusted by the State that she rode the Raleigh city bus unsupervised every day to her job as a teacher and hairstylist at Sherrill's School of Cosmetology, where she used scissors and razors without any issue.

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[3] *See e.g.*, Laurence Steinberg, et al., *Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders*, March 2015 (describing the phenomenon in which individuals generally cease criminal activity by their mid-twenties due to psychosocial maturation), attached hereto as Exhibit D.

[4] Josh Shaffer, *She sought freedom from prison. Nothing but the coronavirus could get her out*, NEWS & OBSERVER (May 15, 2020), attached hereto as Exhibit E.

See id. There is no reason why she could not have been safely placed outside the prison under ELC, but because she was convicted of a "crime against a person," she was automatically ineligible for ELC. Ishee Fifth Aff. ¶10(d).

30. Other candidates for release have been rejected for ELC by DPS as *per se* ineligible due to age, such as Shuvon Mitchell. *See* Ishee Fifth Aff. (explaining "50-64 with qualifying health conditions with PRD 2020 or 2021" as among the criteria for ELC). Ms. Mitchell is a 42-year-old woman with breast cancer, lupus, and asthma. Her doctor has opined that her medical condition and continued incarceration put her at a substantially elevated risk of contracting COVID-19 and dying as a result. Miles Aff. ¶¶6-7 & Ex. 1 (Ltr fr Dr. Jolly), attached hereto as Exhibit F. Defendants have been provided this information regarding Mitchell's medical condition but asserted that because of her age she is not eligible to be considered for release. She is actively undergoing chemotherapy and is incarcerated at North Carolina Correctional Center for Women, a facility that has experienced hundreds of positive COVID-19 tests. Her current Projected Release Date is January 26, 2021. Miles Aff. ¶¶2-9

Failure to Comply with the Court's Orders as to Medical Isolation

31. In its June 16, 2020 order granting a Preliminary Injunction, the Court additionally ordered that:

> Isolation, for purposes of the preceding subparagraph, must not be effectuated with actions or in a manner that would have otherwise been used for punitive or disciplinary purposes prior to the COVID-19 pandemic.

Prelim. Inj. ¶ 4(b), at 7.

32. Despite this Court's direct order, undersigned counsel have received reports of the continued use of punitive segregation rooms for individuals with COVID-19.

33. For example, at NCCIW, incarcerated women endure complete isolation in a solitary cell, without recreation or phone use, for 14 days straight. Barefoot Aff. ¶11, attached hereto as Exhibit G; Wright Aff. ¶12, attached hereto as Exhibit H.

34. At Carteret Correctional Center, the only quarantine option available for people who display symptoms of the virus is "the hole"—the lock-up segregation unit used for disciplinary purposes. For people in quarantine, "[t]here was no outside time and people could only use the shower once or twice each week on specific time schedules. If you tried to talk with someone, they would not come to the door so that you could talk to them." As a result, many people experiencing common cold symptoms avoid informing prison staff out of fear of being placed in the segregation unit. Spears Aff. ¶¶12-14, attached hereto as Exhibit I.

35. At Lumberton Correctional Institution, incarcerated individuals placed in medical isolation for quarantining purposes are treated as if they have been placed in isolation for disciplinary reasons. After testing positive for COVID-19, Mr. Craig Munn, for example, was first instructed to "not tell anyone" and was sent back to his dormitory for hours before being moved to a different dormitory. Munn Aff. ¶¶6-7, attached hereto as Exhibit J. After blacking out

and being transported to the hospital, being diagnosed with double pneumonia, and a doctor telling him he was lucky to be talking to him, he returned to Lumberton CI and was placed inside a closed cell with a locked door for 11 to 12 days. *Id.* ¶¶11-17. A nurse would come by to check his vital signs twice each day and he did not have regular access to cold drinking water, despite orders from the doctor to stay hydrated. *Id.* ¶¶18-19, 21. During this time in medical isolation, Mr. Munn was only allowed outside once and was not allowed to use the phone, despite making requests to do so. *Id.* ¶¶20, 22.

36. Undersigned counsel continue to hear similar reports from other prisons: that persons possibly exposed to COVID-19 are being placed in a solitary cell, and have the same restrictions regarding shower, phone, and recreation, that adhere to a disciplinary placement.

37. Fear of retribution has prevented currently incarcerated people who have provided these accounts directly to undersigned counsel or through their loved ones from providing signed affidavits. For instance, Ethan Spears explained that he was only willing to provide his affidavit because he has now been released. Spears Aff. ¶ 20.

38. Similarly, April Wright reports fear notwithstanding her release, and states that despite her fear: "I feel like I have to speak out because it is so bad in that prison. I just hope they don't come get me and take me back to prison." Wright Aff. ¶ 16.

39. At the last hearing, Counsel for Defendants stated on the record that it is "not feasible" to refuse to place people in solitary confinement conditions when they are quarantined, and compared solitary confinement to a non-incarcerated person being forced to stay in their private home during quarantine, without the privilege of going to the store, church, or movies. Ex. B (Transcript of July 2, 2020 Hearing), at 77.

40. Defendants' actions in contravention of a direct court order are inflicting injury and trauma upon incarcerated people, and are contemptuous of the Court's orders. Human rights officials have opined that solitary confinement is a form of torture that is not remotely akin to staying at home without being able to go to the grocery store, as Defendants have implied.[5]

41. In the context of this pandemic, ensuring that medical isolation is distinct from and not punitive like solitary confinement also serves an important public health purpose because it ensures that incarcerated people who are experiencing symptoms of COVID-19 will report their symptoms and cooperate in measures to mitigate the spread of COVID-19 in state prisons.[6]

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[5] *See, e.g.*, Report of the Special Rapporteur, *Torture and other cruel, inhuman or degrading treatment or punishment* (20 March 2020) ("The severe psychological and physical effects of incommunicado detention, solitary confinement and social exclusion [] are well documented and, depending on the circumstances, can range from progressively severe forms of anxiety, stress and depression to cognitive impairment and suicidal tendencies."), attached hereto as Exhibit K.

[6] *See, e.g.*, David Cloud, JD, MPH, *et al.*, *The Ethical Use of Medical Isolation -- Not Solitary Confinement -- to Reduce COVID-19 Transmission in Correctional Settings* (Apr. 9, 2020), attached hereto as Exhibit L.

42. If it is truly infeasible under current conditions to quarantine without relying on solitary conditions, Defendants must find another way to comply - such as providing for auxiliary spaces such as mobile units. In addition, and in the alternative, Defendants can create more space that can be used for medical isolation by releasing more people, as the Court has directed.

Failure to Comply with the Court's Orders as to Transfers

43. In its June 16, 2020 Preliminary Injunction, the Court ordered the Defendants to stop all transfers unless the person transferred was first tested for COVID-19; the person transferred was quarantined in medical isolation after transfer; or the transfer was for "medical or health reasons or to address an immediate and serious risk to the person's safety or another's safety." Prelim. Inj. ¶4(a), at 6.

44. Defendant's filings indicate that they have performed at least six transfers in direct violation of the Court's June 16, 2020 order by transferring individuals for administrative reasons without testing or isolating these people. Woollard Aff. ¶7(b), attached hereto as Exhibit M.

45. Since Defendants began reporting transfer data to the court, DPS has averaged approximately 325 transfers per week. Woollard Aff. ¶7(a). The sheer number of transfers completed every week is dangerous in and of itself. In the past few weeks, new scientific evidence has come to light that highlights the danger of inter-facility transfers. Transfers were directly linked to the recent

catastrophic outbreak of COVID-19 in two California prisons. Brinkley-Rubinstein Fourth Aff. ¶ 5, attached hereto as Exhibit N.

46. Alarmingly, Defendants' weekly submissions show that many people who are transferred between facilities do not have recent negative COVID-19 tests. Over 1,300 transfers were performed during the first four weeks of recorded data. Woollard Aff. ¶ 7(c)(i). Of those transferred, only approximately half were given a COVID test within the preceding 20 days. Many had not been tested in weeks or months before transfer. *Id.* ¶ 7(c)(ii)(1)-(2).

47. To prevent the spread of the virus among incarcerated people and facilities, testing must be performed as close to the date of transfer as possible. Defendants' submissions show they have repeatedly relied on weeks- or months-old negative tests before transferring incarcerated people without a subsequent medical isolation.

48. Moreover, testing before transfer, alone, does not ensure that the virus will not spread through transfers because testing cannot always accurately predict the presence of COVID-19. A person can be infected for days, potentially be contagious, and still test negative for the virus. So, even if an instantaneous test were possible, a person who tests negative shortly before stepping into a transfer vehicle may still be a carrier of the virus. Brinkley-Rubinstein Fourth Aff. ¶¶ 5-6.

49. Defendants' reliance on weeks- or months- old test results risks spreading the virus between people and facilities. These practices violate the intent of the

Preliminary Injunction and the Court's Orders, the purpose of which was to limit transfers to only those that are most necessary and absolutely safe.

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50. Defendants' failures to comply with the Courts' orders are part of a broader pattern of noncompliance that Defendants have exhibited since the beginning of this case. As the Court has noted, the Defendants and their agents have repeatedly taken court Orders as "recommendations or invitations to discuss" rather than binding directives from a court with jurisdiction, continuing the pattern of conduct that left the Court "extremely concerned by the apparent indifference with which Defendants have treated the Court's Orders." Order re Defs' Mot. Reconsider (July 10, 2020) at 7-8.

51. For example, as the Court noted in its most recent Order, Defendants have already "failed to comply with the Court's directions in several meaningful ways":

    - "Defendants failed to request reasonable modifications to the Court's Order including but not limited to in camera review, attorneys' eyes-only designation, or the sealing of the court record. Instead they willfully failed to provide census and sleeping room information, relying on a purported argument of safety and impossibility that was **already considered, and dismissed**, by the Court."

    - "Instead of providing a plan that highlights and fixes disparities in treatment and resource allocation . . . Defendants provide the Court with voluminous spreadsheets . . . [with data that] was **inconsistent** in its application to the various institutions maintained by DPS, **incomplete** and **potentially incorrect**."

    - "Despite the Court's Order to provide a picture of, and distribution numbers of, masks provided to offenders, Defendants only provided a

> digital graphic rendering of a mask and the total number of masks distributed collectively but not to individual [incarcerated people.]"

Id. at 5-7 (emphases added).

52. Even after these admonitions, Defendants continue to act with apparent impunity toward court orders that would not be tolerated by an indigent criminal defendant. This double standard in the legal system is emblematic of the urgent calls for change embodied in the Black Lives Matters protests roiling our state. Recognition of these deep inequities has led the Governor—one of the Defendants—to establish a Task Force for Racial Equity in Criminal Justice to remedy racial bias in North Carolina's criminal justice system. Such changes cannot be achieved if Defendants—the people who run this state's prison system—are not held accountable.

53. The need for further enforcement of the Court's orders is particularly pressing because Defendants' agents have repeatedly retaliated against or threatened retaliation against individuals who speak to family, friends, media, or attorneys about the conditions inside the prison system. For instance, one criminal defense attorney reported that her client was disciplined for "Incite Riot" for speaking publicly about the conditions in the prison. Initially, this infraction delayed his imminent release date, though intervention by the criminal defense attorney and a prominent figure reversed that decision. Simpson Second Aff. ¶¶2-3, attached hereto as Exhibit O.

54. Mr. Spears, who was recently released from Carteret Correctional, stated that they had a meeting in the prison with the warden and prison staff where the

incarcerated individuals were told that, "they were basically going to lock down the prison because some people were talking to the media." Spears Aff. ¶ 20.

55. Meanwhile, conditions inside Defendants' prisons worsen. Entire housing units of incarcerated people are currently locked down 23 hours a day in their hot congregate dorm rooms, which do not have air conditioning, without access to programs or visits in heat over 100 degrees. For those who lack money to make phone calls, they are completely isolated and have no contact with the outside world aside from two 5-minute calls per month. Necessary accommodations or policy changes to uniformly address COVID-related isolation have not been implemented.

56. One recently-released woman reported: "In the summer it is very hot in these dorms. It is over 100 degrees, with no air conditioning or ventilation system in most of them. . . . People were very depressed at this time because they were staying on their bed 23 hours a day. With masks on, and 100-degree heat, it was very hard to breathe and very sweaty. People were getting in more fights and crying a lot. It was very sad." Barefoot Aff. ¶¶ 9-10.

57. Defendants' agents have repeatedly told incarcerated people that the miserable conditions of their lockdowns and medical isolation are "because of the judge in the lawsuit" or "because of the lawyers." Undersigned counsel have heard these reports from multiple sources at multiple prisons.

58. Incarcerated people also continue to report lack of access to hygiene supplies and other concerns.

59. For example, Mr. Spears explains that there was never any hand sanitizer available at Carteret while he was there, and that it was not uncommon to be without soap. Spears Aff. ¶8.

60. Mr. Spears also reported inconsistent use of masks among staff and incarcerated people. *Id.* ¶ 9.

61. Ms. Barefoot reported that she never saw any incarcerated people receive or gain access to hand sanitizer while she was incarcerated. Barefoot Aff. ¶7.

62. Amber Nance, the spouse of an incarcerated person, reports that when all of the incarcerated people at Caswell were lined up to be tested, the National Guard did not employ the same method on each person. Some people received a single swab to one nostril, some received a swab to each nostril, and others received a swab to the back of the throat. Nance Aff. ¶5, attached hereto as Exhibit P. Per LabCorp, the test utilized by NCDPS should be swabbed along the entire inside edge of each nostril at least 3 times. LabCorp COVID-19 Nucleic Acid Amplification Nasal Swab Collection Instructions, attached hereto as Exhibit Q (LabCorp Instructions)

63. Plaintiffs' Counsel rely upon some reports without individually signed affidavits. We are forced to do so because our clients—as well as DPS staff—have reasonable fear of retaliation. We are unable to visit incarcerated people or speak to them confidentially due to the pandemic.

64. Undersigned counsel continue to receive disturbing reports from incarcerated people of Defendants inconsistently administering the protocols they have

publicly stated and told this Court they are undertaking to protect incarcerated people from COVID-19 infection.

WHEREFORE, Plaintiffs respectfully move the Court for an Order to enforce the Preliminary Injunction, including through appointment of a Special Master, or in the alternative, an Order requiring Defendants to show cause why they should not be held in contempt for failure to comply with the Preliminary Injunction and the Court's Orders. Plaintiffs respectfully request that the Court:

I. Order Defendants to expand the criteria for Extended Limits of Confinement ("ELC") and for early release by sentence reduction credits, and prohibit them from applying limits on release, including the automatic disqualification of people based on the categories of crimes for which they were convicted, their age, and the requirement that the local District Attorney must provide approval before an incarcerated person may be granted ELC or early release;

II. Enforce the Court's injunction prohibiting the use of punitive conditions for medical isolation, and require Defendants to report to the Court the affirmative measures they are taking to ensure that their agents are following the Court's orders;

III. Enjoin retaliation by Defendants and their agents against individuals who file grievances regarding COVID-19, make oral complaints, or speak to family, friends, attorneys, or media;

IV. Enforce the Court's injunction prohibiting unsafe prison transfers;

V. Require access to soap and sanitizer, and require proper swabbing for test-taking;

VI. Appoint a Special Master to be paid by the Defendants at an hourly rate commensurate with the Indigent Defense Services schedule for expert witnesses, to monitor Defendants' compliance with the Court's orders, including by implementing a plan for release of incarcerated people; and

VII. Require Defendants to include in their weekly reports to the Court information sufficient to ensure that the above actions are being quickly and effectively carried out.

This the 17th day of August 2020.

/s/ Leah J. Kang

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CERTIFICATE OF SERVICE

I certify that counsel for Defendants have stipulated to service via electronic mail, and that on August 17, 2020, I served the foregoing motion and accompanying exhibits on:

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This the 17th day of August, 2020.

/s/ Leah J. Kang

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