

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, *et al.*,

Plaintiff-Petitioners,

v.

ROY COOPER, in his official capacity
as Governor of North Carolina,
et al.,

Defendant-Respondents.

**PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSES TO THE COURT'S
ORDERS FOR ADDITIONAL INFORMATION**

Pursuant to the Court's order of October 27, 2020, Plaintiffs submit this reply to Defendants' submission providing additional information. As the Court contemplates ordering additional relief, Defendants' filing underscores the need for a special master who can obtain timely, accurate, and complete information from Defendants as the threat from COVID-19 persists and grows in state prisons. Plaintiffs also suggest that the Court follow up on several of Defendants' answers that are vague or incomplete.

I. Defendants have not provided information showing that the ELC process is applied consistently, nor have they justified why anyone convicted of a “crime against a person” is automatically disqualified from ELC.

As to the ELC program, the Court asked Defendants what crimes qualify as “crimes against persons”; what materials DPS staff rely on to define that term; what the legal definition of that term is; and what is “the review process to ensure consistent interpretation of ELC definitions and determinations throughout” the prison system. (Oct. 27, 2020 Order at 3.)

In response, Defendants admit that the term has no legal definition. Rather, DPS created the term decades ago for statistical reporting purposes—not for determining who should be released during a pandemic. (*See* Def. Resp. at 2.) Based on the only document Defendants produced in response to the Court’s questions, the term “crimes against persons” is quite broad; some candidates are automatically disqualified from ELC for crimes such as murder or assault, while others may be disqualified for crimes such as communicating threats or selling tobacco to an incarcerated person. (Ex. A to Def. Response at 5.) When a crime does not automatically disqualify someone—but might depending on the circumstances—Defendants leave that potentially life-or-death question to a group of unnamed DPS employees who apparently have unchecked discretion. Defendants produced no rubrics, manuals, or other materials that guide this process, nor do they offer a description as to how the process is applied consistently for all candidates.

This Court has already recognized the need to expand ELC consideration, specifically for those at greater medical risk. (Prel. Inj. at 5 (deeming “the additional

factors [from CDC and DHHS] . . . a necessary measure for population management . . . to achieve the safety and protection of each person in custody”)) Even so, more than half of the current population remains automatically disqualified from ELC (Def. Resp. at 2) and thousands of people in state custody continue to face acute risk from COVID-19. In discovery, Defendants have reported that nearly 14,000 people have at least one CDC risk factor, and over 1,000 people are 65 or older. (Ex. A, Defendants’ Responses to Plaintiffs’ First Requests for Production of Documents at 6-7 and selected documents.) For the relative few who may qualify for ELC, the process is slow; Defendants reported that of the 3,723 candidates eligible on October 12, 2020, just 54 percent had been evaluated, and there was no timeline for completing the rest. (*See* Defendants’ Update in Advance of Status Conference at 9.)

Plaintiffs know of multiple people eligible for ELC—based on conviction, release date, medical conditions, and age—who have not been released. One such person, Ms. Pamela Humphrey, is 59, has documented heart conditions and asthma, and is serving time for forgery. Before the pandemic, she was on work release with a January 29, 2021 release date, but remains incarcerated at NCCIW where there have been multiple outbreaks. (Ex. B, Simpson Aff.) For Ms. Humphrey and everyone else who remains in prison, adequate social distancing is still impossible, as the overall prison population is not significantly smaller today than it was seven months ago.¹

¹ When this litigation began, the population was approximately 34,042, and is now 30,416. *See* Department of Public Safety Statistics (updated Nov. 12, 2020), <https://www.ncdps.gov/about-dps/departments-public-safety-statistics>.

Given the ongoing need to reduce the prison population, Plaintiffs urge the Court to require a more detailed answer as to how the ELC process works, who has been disqualified for what crimes, and a substantive justification for why certain crimes should result in disqualification, whether automatically or through the discretionary process identified by Defendants. Simply being convicted of a “crime against a person”—a term of no legal or constitutional significance—does not authorize Defendants to keep people in unconstitutionally dangerous conditions. *See Brown v. Plata*, 563 U.S. 493, 511 (2011) (affirming order that would likely release over 46,000 people and noting that courts “must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners”) (quotation marks omitted).

Therefore, Plaintiffs again respectfully urge the Court to appoint a special master who can efficiently review this matter and, if Defendants remain unwilling to meaningfully reduce the prison population and release the most vulnerable, make recommendations to that end. *See id.* at 511 (“Courts faced with the sensitive task of remedying unconstitutional prison conditions must consider a range of available options, including appointment of special masters or receivers . . . [and] may enter orders placing limits on a prison’s population.”).

II. A lack of funds or other resources is not a legal defense against claims for prospective injunctive relief.

In its order for supplemental information, the Court asked several questions concerning Defendants’ budgetary constraints. Plaintiffs understand the need for

this information, but must respectfully emphasize that a lack of resources is not a valid defense against claims for prospective injunctive relief under the Eighth Amendment or Section 27.

“Lack of resources is not a defense to a claim for prospective relief because prison officials may be compelled to expand the pool of existing resources in order to remedy continuing Eighth Amendment violations.” *Peralta v. Dillard*, 744 F.3d 1076, 1093 (9th Cir. 2014) (en banc). Federal courts have reached a broad consensus on this point. *See Williams v. Bennett*, 689 F.2d 1370, 1388 (11th Cir. 1982) (“[W]hen a court is considering injunctive relief against the operation of an unconstitutionally cruel and unusual prison system, it should issue the injunction without regard to legislative financing.”); *Smith v. Sullivan*, 611 F.2d 1039, 1043-44 (5th Cir. 1980) (“It is well established that inadequate funding will not excuse the perpetuation of unconstitutional conditions of confinement.”); *Ramos v. Lamm*, 639 F.2d 559, 573 n. 19 (10th Cir. 1980) (“The lack of funding is no excuse for depriving inmates of their constitutional rights.”); *see also Watson v. City of Memphis*, 373 U.S. 526, 537 (1963) (finding it “obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them”).

Accordingly, the Court should not consider any lack of resources when contemplating whether to order additional relief.

III. Defendants' responses concerning testing and quarantine merit further scrutiny.

Defendants say that when a positive case is identified, “[i]n many, if not most, instances, the entire quarantined unit is tested to determine additional positive cases.” (Resp. at 8.) It is unclear how it could *ever* be appropriate to not test an entire unit that was potentially exposed. Defendants also note that starting this month, they began weekly random testing of five percent of DPS employees. (Resp. at 9.) It is unclear how Defendants arrived at this number and whether it can provide a representative sample in any given week of staff spread across 55 prisons and other offices. To prevent further outbreaks, Defendants should be implementing far more comprehensive testing of staff—the people who come and go from prisons (and travel through different parts of prisons) every day.

The Court also asked why each transferee cannot be tested before quarantine (a measure recommended by Plaintiffs’ expert). Defendants appear to misunderstand the question, responding that “delaying the quarantine until after additional tests are administered and results are obtained has the potential to create significant exposures.” (*Id.* at 14.) Plaintiffs do not believe the Court was suggesting a delay in quarantine until test results become available, but was asking why a test could not be administered immediately before a quarantine that continues at least until the test comes back negative. If that is correct, Defendants should supplement their response.

As for quarantine strategy, Defendants give a general description of how people are quarantined or isolated. Because Defendants continue to make large

numbers of inter-prison transfers every week, however, they should provide more detail as to how these transferees are being quarantined—*i.e.*, where specifically does the quarantine occur? If not single cells, are transferees placed in the same quarantine dorms that may also house people recently exposed to someone who tested positive? Further, per Defendants’ reports, the facilities that report receiving a high number of transfers often do not report a corresponding rise in the number of entries into medical isolation/quarantine, suggesting that transfer quarantining is not conforming to DPS’s stated policy. (*See Ex. C, Woollard Aff.* ¶ 22.)

Moreover, in Defendants’ reports, when facilities report high numbers of positive cases, they often do not report correspondingly high numbers of medical isolation/quarantines, suggesting that Defendants are not imposing quarantine/isolation as widely as they claim. Analysis of inter-facility transfers and the number of people in medical isolation/quarantine indicate that these discrepancies do not result from re-testing those already in isolation/quarantine or transferring the positive people out of the facility. (*See id.* ¶¶ 18-21.)

CONCLUSION

Plaintiffs urge the Court to revisit the issues discussed above, appoint a special master, and order additional relief as necessary to remedy the ongoing constitutional violations.

Respectfully submitted, this the 13th day of November, 2020.

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I certify that counsel for Defendants have stipulated to service via electronic mail, and that on November 13, 2020, I served the foregoing on:

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**DEFENDANTS' RESPONSES TO
PLAINTIFFS' FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS**

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents identified or referenced in, or used in the preparation of, any of your responses or answers to the foregoing Interrogatories.

RESPONSE: Objection. Defendants incorporate by reference all objections stated in their answers to Plaintiffs' First Set of Interrogatories.

Without waiving the objections referenced above, see the documents enumerated under each interrogatory as well as DPS 000001-002572.

2. All documents pertaining to DPS's compliance with the Court's Orders that have not previously been filed with the Court.

RESPONSE: Objection. Defendants object to this request as overly broad and unduly burdensome. Providing *all* such documents would require the review of countless documents to determine which may pertain in some form or fashion to compliance with this Court's orders. This is overly broad and unduly burdensome. Defendants object further to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Without waiving the above-stated objections, see DPS 002573-002586. Additionally, subject to and without waiving the objection(s) asserted in Defendants' answer to Interrogatory 9, see the documents referenced therein.

Discovery About COVID-19 Response Protocols and Procedures

3. Documents sufficient to show the protocols and procedures governing COVID-19 response in DPS facilities, including protocols and procedures related to testing, visitors, social distancing, “cohort-distancing,” sanitation, and quarantine, medical isolation, and cohorting.

RESPONSE: Defendants object to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Without waiving the above-stated objection, the Department does not use the term “cohort-distancing.” Otherwise, see DPS 002587-003538.

4. Documents and communications discussing the creation of or relating to the protocols and procedures governing COVID-19 response in DPS facilities, including protocols and procedures related to testing, visitors, social distancing, “cohort-distancing,” sanitation, and quarantine, medical isolation, and cohorting.

RESPONSE: Objection. Defendants object to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Defendants further object to this request as unduly burdensome. Responding to this request would medical and other staff to collect, review, and organize information from all across the Department, including dozens of facilities, and various divisions, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Without waiving these objections, the parties have been engaged in meet and confer efforts to reach agreement on a set of parameters that will govern the scale and scope of documents that Defendants will review in responding to this request. Defendants will supplement this response in accordance with the terms of such an agreement.

Moreover, subject to and without waiving the objections asserted in their answers to Interrogatories 6, 14, and 15, see the documents referenced therein.

5. Documents and communications relating to DPS preparation for, or response to, a pandemic, other outbreak of infectious disease, or other natural disaster, including documents and communications relating to DPS medical equipment, staff capacity, and preparedness planning relating to a pandemic, outbreak of infectious disease, or other natural disaster, whether real or hypothetical. Include in your response any and all documents and communications showing projections, estimates, studies, graphs, charts, spreadsheets, memos, reports, models, or calculations concerning the actual or potential impact of COVID-19; notice to DPS of the emergence of COVID-19 in the United States and/or North Carolina; and DPS’s actions in response to such notice.

RESPONSE: Objection. Defendants object to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Defendants further object to this request as overly broad and unduly burdensome. This request seeks documents related to expansive topics such as natural disasters, medical equipment, and staff capacity, and thus is overly broad. Responding to this request would require staff to collect, review, and organize information and documents from all across the Department, including dozens of facilities, and various divisions, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. This is particularly true when balancing the extraordinary efforts that would be required to compile and organize such information and documents against the likely benefit of the same sought by this request. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Without waiving this objection, the parties have been engaged in meet and confer efforts to reach agreement on a set of parameters that will govern the scale and scope of documents that Defendants will review in responding to this request. Defendants will supplement this response in accordance with the terms of such an agreement.

6. Documents and communications from February 1, 2020, to the date of these requests discussing or related to inter-prison transfers. For each transfer of an incarcerated person after June 16, 2020, include documents sufficient to show the date on which the incarcerated person was tested for COVID-19, the date and outcome of the COVID-19 test, the date of the transfer, the prison from which the person was transferred, the prison to which the person was transferred, the date on which any medical isolation or quarantine of the person began, and the date on which any medical isolation or quarantine of the transferred person ended.

RESPONSE: Objection. Defendants object to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Defendants further object to this request as overly broad and unduly burdensome. Responding to this request would require medical and other staff to collect, review, and organize information from all across the Department, including dozens of facilities, and various divisions, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. Moreover, much of this information requested has been produced through weekly reports beginning on July 20, 2020. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Without waiving these objections, the parties have been engaged in meet and confer efforts to reach agreement on a set of parameters that will govern the scale and scope of documents that Defendants will review in responding to this request. Defendants will supplement this response in accordance with the terms of such an agreement.

7. Documents and communications from February 1, 2020, to the date of these requests discussing or related to new admissions of incarcerated people from local jails.

RESPONSE: Objection. Defendants object to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Defendants further object to this request as overly broad and unduly burdensome. The request is also overly broad as it seeks documents related to an expansive topic, admitting newly sentenced offenders. This request is unduly burdensome in that responding to this request would staff to collect, review, and organize information and documents from all across the Department, including dozens of facilities and various divisions, all while managing staffing shortages and maintaining safe and orderly operations. This is particularly true when balancing the extraordinary efforts that would be required to compile and organize such information and documents against the likely benefit of the same sought by this request. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Without waiving this objection, the parties have been engaged in meet and confer efforts to reach agreement on a set of parameters that will govern the scale and scope of documents that Defendants will review in responding to this request. Defendants will supplement this response in accordance with the terms of such an agreement.

8. Documents sufficient to show each incarcerated person who was hospitalized from February 1, 2020, to the date of these requests, the hospital to which they were sent, the date they returned to a DPS facility, and the reason for the hospitalization.

RESPONSE: Objection. Defendants object to this request as overly broad and unduly burdensome. This request seeks documents related to any hospitalization and thus is overly broad. Responding to this request would require medical and other staff to collect, review, and organize information and documents from all across the Department, including dozens of facilities and various divisions, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. This is particularly true when balancing the extraordinary efforts that would be required to compile and organize such information and documents against the likely benefit of the same sought by this request. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Defendants further object to this request to the extent that it calls for the disclosure of protected health information and personally identifiable information.

Without waiving these objections, see DPS 3539-3541.

9. Death records, including internal reports and autopsies, for all people in DPS custody who have died, whether in a DPS facility or non-DPS facility, such as a hospital, since March 1, 2020.

RESPONSE: Objection. Defendants object to this request as overly broad and unduly burdensome. This request seeks documents related to any death and thus is overly broad. Responding to this request would require medical and other staff to collect, review, and organize information and documents from all across the Department, including dozens of facilities and various divisions, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. This is particularly true when balancing the extraordinary efforts that would be required to compile and organize such information and documents against the likely benefit of the same sought by this request. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Additionally, certain potentially responsive documents may be protected from discovery by statute. *See* N.C.G.S. §§ 131E-95, -107. Moreover, the Department does not conduct autopsies nor does it maintain those records in its normal course. Autopsies can be obtained from North Carolina Office of the Chief Medical Examiner. Lastly, Defendants object to this request to the extent that it calls for the disclosure of protected health information, and personally identifiable information.

Without waiving these objections, see DPS 3542-3523.

10. Documents and communications discussing or relating to the monitoring of DPS facilities' compliance or noncompliance with DPS's COVID-19 protocols and procedures and/or the Court's Orders, including checklists, inspection plans, and documents discussing or relating to inspections of DPS facilities by the Commissioner of Prisons, Regional Directors, Incident Command teams, and Incident Command teams' multidisciplinary team or and any other DPS employee, contract staff, or third party tasked with inspecting and monitoring DPS facilities.

RESPONSE: Objection. Defendants object to this request as overly broad and unduly burdensome. This request seeks documents related to a variety of expansive topics and thus is overly broad. Responding to this request would require medical and other staff to collect, review, and organize information from all across the Department, including dozens of facilities and various divisions, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Defendants further object to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Without waiving these objections, the parties have been engaged in meet and confer efforts to reach agreement on a set of parameters that will govern the scale and scope of documents that Defendants will review in responding to this request. Defendants will supplement this response in accordance with the terms of such an agreement.

Additionally, subject to and without waiving the objection(s) asserted in Defendants' answer to Interrogatory 10, see the documents referenced in Defendants' answer to Interrogatory 10.

11. Grievances and complaints filed by incarcerated people or DPS employees or contract staff from March 1, 2020, to the date of these requests, related to COVID-19 or related to this Lawsuit.

RESPONSE: Objection. Defendants object to this request as unduly burdensome. Offender grievances are not organized or tracked by the issues complained of. Thus, responding to this request would require staff to review all offenders grievances and determine which relate to COVID-19 or this Lawsuit. This would be an enormous undertaking. Since March 1, 2020, there have been 6,824 grievances that have been fully exhausted through Step 3 of the Administrative Remedy Procedure. There are many more which have not yet been exhausted. Moreover, because the vast majority of these grievances were filed by nonparties to this litigation, Defendants would have to redact the personally identifiable information or protected health information which may appear on any such grievances or related documents.

Reviewing each of these grievances individually to determine which relate to COVID-19 or this Lawsuit in any way is unduly burdensome. Reviewing each of these grievances individually and redacting the personally identifiable information and/or protected health information from the vast majority of those grievances is unduly burdensome. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Defendants further object to this request to the extent that it seeks documents related to grievances or complaints made by employees or contract staff as ambiguous. There is no standard for what constitutes an employee “grievance” or “complaint” or how such a grievance or complaint must be communicated to the Department.

Moreover, to the extent that Plaintiffs seek documents generated through the formal employee grievances process, Defendants object to such a request as unduly burdensome. The Department maintains a Grievance Intake Office which processes appeals of grievable issues by employees as specifically identified by the Office of State Human Resources, Grievance Policy, see DPS 003524-003544. Thus, responding to this request would require the individually review of each grievance form and the supporting documentation to determine whether any such grievance related to COVID-19 or this Lawsuit. This is unduly burdensome.

12. Documents showing the daily schedules of each housing unit in each DPS facility, including the number of hours incarcerated people in each housing unit spend locked down in their respective housing units.

RESPONSE: Objection. Defendants object to this request as unduly burdensome. Responding to this request would require staff to collect, review, and organize information and documents from all facilities while experiencing staffing shortages and other administrative constraints. Doing so is unduly burdensome. This is particularly true when balancing the extraordinary efforts that would be required to compile and organize such

information and documents against the likely benefit of the same sought by this request. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Without waiving the objection, see DPS 003545-002691.

13. Documents and communications sent or received by Defendants or their counsel discussing or related to COVID-19 and prison population reduction; prison overcrowding; the ELC program, early release, sentence reduction credits, and MAPP; and changing or expanding the factors and/or process involved in the administration of ELC, early release, sentence reduction credits, and MAPP, including but not limited to any such documents or communications that resulted from the Court's entry of the Preliminary Injunction in this lawsuit.

RESPONSE: Objection. Defendants object to this request as overly broad and unduly burdensome. This request seeks documents related to a variety of expansive topics and thus is overly broad. Responding to this request would require staff to collect, review, and organize documents from across the Department and the Commission. Doing so is unduly burdensome. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Objection. Defendants further object to this request to the extent that it calls for material produced in anticipation of litigation, communications subject to attorney-client privilege, and/or material protected from discovery as work product.

Without waiving this objection, the parties have been engaged in meet and confer efforts to reach agreement on a set of parameters that will govern the scale and scope of documents that Defendants will review in responding to this request. Defendants will supplement this response in accordance with the terms of such an agreement.

14. Documents sufficient to show each incarcerated person who was considered for ELC, early release, sentence reduction credits, and MAPP since February 1, 2020, the factors that were considered, and the reasons why each was granted or denied. Include in your response any documents related to whether any individuals were released pursuant to the Court's entry of the Preliminary Injunction in this lawsuit.

RESPONSE: Objection. Defendants object to this request as unduly burdensome. Responding to this request would require staff to collect, review, and organize documents from across the Department, including dozens of facilities, various divisions, and the Commission, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Subject to and without waiving the objection(s) asserted in Defendants' answers to Interrogatories 12 and 13, see the documents referenced therein.

15. Documents showing the physical layout of each DPS facility, including the features, dimensions, and ventilation of each living and sleeping space, including dorms, cells, dining rooms, toilets, sinks, shower and bathing facilities, rooms with telephones that incarcerated

people can use, hallways, the infirmary, and common areas to which incarcerated people have access, and the number, dimensions, and placement, including vertical and horizontal dimensions, of furnishings (beds/bunks, tables, chairs, toilets, sinks, etc.) and windows within those spaces. With regard to ventilation, specify whether each window is able to be opened, the number of hours per day that the windows are kept open, whether the windows open up to the outdoors to allow for natural ventilation by outdoor air, whether the space is equipped with an heating ventilation and air conditioning (“HVAC”) system, air filtration system, and/or fan, and the type of HVAC system, air filtration system, and/or fans that are installed.

RESPONSE: Objection. Defendants object to this request as unduly burdensome. Responding to this request would require staff to collect, review, and organize information and documents from across the Department, including dozens of facilities, various divisions, and the Commission, all while managing staffing shortages and maintaining safe and orderly operations. Doing so is unduly burdensome. This is particularly true when balancing the extraordinary efforts that would be required to compile and organize such information and documents against the likely benefit of the same sought by this request. Thus, this request exceeds the scope of discovery as prescribed in Rule 26(b)(1).

Additionally and importantly, producing the documents sought in this request creates grave security concerns. Offenders routinely plot escapes. As of the middle of June 2020, 112 offenders had pled guilty to or have been found guilty of Disciplinary Offense A06 (escaping or attempting to escape). Additionally, the Special Operations and Intelligence Unit of the Department regularly gathers intelligence in which references are made, either directly or indirectly, to escape attempts. Accordingly, the Department takes very seriously the security threat posed by offenders escaping, attempting to escape, or even planning to attempt to escape from custody. Thus, producing the documents sought in this request creates a grave security risk that jeopardizes public safety, as well as the safety of correctional staff. The consequences of allowing this type of information being disclosed could be catastrophic.

This 21st day of October, 2020.

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CERTIFICATE OF SERVICE

I certify that the hereby certify that on this date, I served **DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS** upon counsel for Plaintiffs by email, pursuant to agreement between the parties, as follows:

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| FACILITY NAME | OFFENDERS OVER 65 |
|----------------------|-------------------|
| CTR-COMMUNITY TRANS. | 1 |
| NC CI WOMEN | 25 |
| NEUSE CI | 45 |
| TYRRELL PWF | 6 |
| DAN RIVER PWF | 11 |
| CRAVEN CI | 3 |
| CENTRAL PRISON | 65 |
| CALEDONIA CI | 37 |
| EASTERN CI | 8 |
| PIEDMONT CI | 16 |
| SOUTHERN CI | 8 |
| NASH CI | 47 |
| FOOTHILLS CI | 6 |
| MARION CI | 2 |
| PASQUOTANK CI | 6 |
| HARNETT CI | 27 |
| MORRISON CI | 2 |
| CARTERET CC | 10 |
| GREENE CI | 53 |
| PENDER CI | 36 |
| NEW HANOVER CC | 8 |
| HYDE CI | 27 |
| FRANKLIN CC | 8 |
| JOHNSTON CI | 28 |
| ORANGE CC | 9 |
| WAKE CC | 9 |
| WARREN CI | 11 |
| SAMPSON CI | 6 |
| COLUMBUS CI | 8 |
| SANFORD CC | 5 |
| LUMBERTON CI | 32 |
| CASWELL CC | 8 |
| DAVIDSON CC | 9 |
| FORSYTH CC | 7 |
| RANDOLPH CC | 34 |
| GASTON CC | 6 |
| LINCOLN CC | 6 |
| CATAWBA CC | 7 |
| ANSON CI | 41 |
| ALBEMARLE CI | 42 |
| CALDWELL CC | 10 |
| CRAGGY CC | 10 |
| SWANNANOA CCW | 3 |
| RUTHERFORD CC | 8 |
| WILKES CC | 2 |
| AVERY-MITCHELL CI | 13 |

| | |
|------------------|-------------|
| PAMLICO CI | 26 |
| MOUNTAIN VIEW CI | 49 |
| SCOTLAND CI | 38 |
| ALEXANDER CI | 41 |
| MAURY CI | 43 |
| BERTIE CI | 10 |
| TABOR CI | 22 |
| | 1000 |

| Individual | Facility | Cell |
|-------------------|-------------------|-------------|
| 1 | Alexander CI | NPODA016 |
| 2 | Anson CI | LPODF011 |
| 3 | Dan River PWF | EDM-008 |
| 4 | Pamlico CI | FPD-101A |
| 5 | Franklin CC | BDM-006 |
| 6 | Anson CI | 6DDM-005 |
| 7 | Forsyth CC | DDM-024 |
| 8 | Craven CI | ALBBU29L |
| 9 | New Hanover CC | 6BDM-005 |
| 10 | Rutherford CC | ADM-001 |
| 11 | Greene CI | ADM-063 |
| 12 | Caswell CC | MDM-029 |
| 13 | Maury CI | T1C-26 |
| 14 | Orange CC | DDM-008 |
| 15 | Nash CI | 3CL-018 |
| 16 | Bertie CI | KPODB028 |
| 17 | Sampson CI | 3DDM-018 |
| 18 | Craven CI | HATBL002 |
| 19 | Marion CI | DU4S-008 |
| 20 | Caldwell CC | TRANS? |
| 21 | Scotland CI | T2F-23 |
| 22 | Sampson CI | 2ADM-010 |
| 23 | Harnett CI | N2DM-014 |
| 24 | Catawba CC | EDM-002 |
| 25 | Craggy CC | MOD-015 |
| 26 | Albemarle CI | BADNC211 |
| 27 | Alexander CI | LPODD010 |
| 28 | Maury CI | KPODC030 |
| 29 | Neuse CI | B1DM-024 |
| 30 | Craggy CC | 1ADM-021 |
| 31 | NC CI Women | KCDM-027 |
| 32 | Maury CI | JPODB030 |
| 33 | Avery-Mitchell CI | ABD-212 |
| 34 | Tabor CI | KPDLE09A |
| 35 | Central Prison | HBKU1082 |
| 36 | Scotland CI | LPODD016 |
| 37 | Anson CI | 8CDM-002 |
| 38 | Mountain View CI | APOD-107 |
| 39 | Southern CI | ADM-003 |
| 40 | Craggy CC | 1BDM-018 |
| 41 | Maury CI | T1B-53 |
| 42 | Caledonia CI | 5BDM-028 |
| 43 | Caledonia CI | 7ADM-004 |
| 44 | Lumberton CI | A4DM-026 |
| 45 | Pasquotank CI | 2H4S-042 |
| 46 | Pender CI | B1DM-024 |

13912 Maury CI
13913 Hyde CI
13914 Central Prison
13915 Lumberton CI

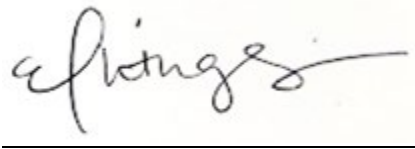
LPODF040
OJL-019
HBKU1092
B2DM-023

AFFIDAVIT OF ELIZABETH SIMPSON

1. My name is Elizabeth Simpson. I am an attorney licensed in the State of North Carolina (State Bar # 41596). I am employed by Emancipate NC and I serve as co-counsel on this case.
2. I represent Ms. Pamela Humphrey, OPUS 0197099, a 59-year-old white woman currently incarcerated at the North Carolina Correctional Center for Women, in Raleigh, North Carolina.
3. Ms. Humphrey is serving a term of 12 years and 6 months as a Habitual Felon for multiple offenses of forgery out of Buncombe County, North Carolina. Her projected release date is January 29, 2021.
4. Ms. Humphrey has a custody classification of Minimum 3. Prior to the pandemic, she was on Work Release, and was at liberty to leave the prison to go to her job in Raleigh.
5. I have interviewed Ms. Humphrey multiple times over the course of the last several months over the telephone. I have previously examined her medical records over the course of a prior representation related to a different matter in 2019. Based on recent telephone interviews and knowledge gained from my prior representation of Ms. Humphrey, I have the understanding that she has a heart condition and bronchial asthma.
6. Ms. Humphrey provided me with a document illustrating that she has signed the terms and conditions for eligibility for Extended Limits of Confinement (ELC). That document is attached hereto.
7. Based on my understanding of the North Carolina Department of Public Safety's ELC program related to COVID-19, Ms. Humphrey is eligible for release through that program for two separate reasons. First, she was on work release with a projected release date in 2021. Additionally, she has a 2021 release date and has underlying health conditions deemed by the CDC to increase a person's risk of severe illness from COVID-19, namely a heart condition and asthma.

VERIFICATION

I affirm, under penalties for perjury, that the foregoing representations are true.



Elizabeth Simpson, November 13, 2020

INMATE AGREEMENT FOR EXTENSION OF LIMITS OF CONFINEMENT
INMATE AGREEMENT

- (1) I will remain within the area designated for my leave, and will promptly and directly proceed to and return from my stated destination using the approved route and method of transportation.
- (2) I will NOT use alcoholic beverages, narcotics, or other drugs not lawfully prescribed for me.
- (3) I will contact my Facility in the event any unusual circumstances may arise, and return to my assigned Facility at the scheduled time.
- (4) I will return to my assigned Facility immediately if the approved activity ceases prior to the scheduled time for its termination.
- (5) I will comply with all conditions imposed upon me by the authority granting the leave, all Federal, State and local laws, Division of Prison Rules and Regulations, and special handling instructions binding upon me.
- (6) If the leave is granted to participate in Off-site work assignment, I will remain in the company of the approved supervisor at all times while away from Facility.
- (7) If the leave is granted to participate in the Community Leave program, I will remain with the approved volunteer at all times while away from the Facility.
- (8) If the leave is being granted to participate in a Home Leave program, I will remain in the company of the approved Home Leave sponsor and within the limits that may be imposed.
- (9) If the leave is granted to participate in the Study Release program, I will remain within the approved study release location(s) at all times while away from Facility.
- (10) If the leave is granted to participate in the Work Release program, I will remain with the approved work release supervisor(s) at all times while away from Facility.
- (11) I further understand that willful failure to remain within the extended limits of my confinement or willful failure not to return to the prison facility within the time prescribed shall be deemed an escape punishable as provided in N.C. General Statute 148-45.
- (12) I, Pamela Humphrey, fully understand that the limits of confinement are being extended consistent with provisions of G.S. 148-4. I further agree to adhere to any and all special limits set out at the time the limits of confinement are actually extended beyond the confines of the Facility as stated on Initial Classification (IC04) or the Reclassification (IC05), consistent with the training objective.

Pamela Humphrey
Inmate Signature

11-8-19
Date

3010
Location

SPONSOR/VOLUNTEER AGREEMENT

(Home Leave Sponsor & Community Volunteer Sponsor ONLY)

- (1) I will remain in the company of the inmate at all times while away from the Facility.
- (2) I will NOT use alcoholic beverages, narcotics, or similar drugs except those lawfully prescribed for me.
- (3) I agree to return the inmate to the Facility and immediately report by telephone to the Facility if any condition of the leave is violated.

I, _____, have read or had explained to me the foregoing conditions and/or limitations placed on the person in custody being granted leave. I understand that it is my responsibility to adhere to the conditions set out and to review with the said Inmate, at the time of the _____

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, *et al.*,

Plaintiff-Petitioners,

v.

ROY COOPER, in his official capacity
as Governor of North Carolina,
et al.,

Defendant-Respondents.

**Third Affidavit of Luke Woollard Regarding Analysis of Transfer, Testing,
and Medical Isolation/Quarantine Data Provided by Defendants**

- 1) My name is Luke Foster Woollard. I am over 18 years of age and an attorney in good standing with the North Carolina State Bar.
- 2) I am currently employed as a staff attorney by Disability Rights North Carolina, a plaintiff in this case.
- 3) I have been reviewing the Defendants' court-ordered filings regarding transfer, testing, and medical isolation/quarantine of incarcerated persons conducted by the North Carolina Department of Public Safety (NCDPS).
- 4) As of the date of this affidavit, NCDPS has filed transfer and testing reports for each of sixteen weeks, beginning on July 12, 2020 and continuing through November 7, 2020.
- 5) The filings regarding transfers include the following information:

- a) The name of the origin facility;
 - b) the name of the destination facility;
 - c) the date of transfer;
 - d) the test date;
 - e) the test result; and
 - f) whether or not the transferee was quarantined or isolated.
- 6) The filings regarding testing include:
- a) The number of tests performed at each facility; and
 - b) the number of positive test results obtained at each facility.
- 7) Defendants recently responded to Plaintiffs' first set of interrogatories. In response to Plaintiffs' seventh interrogatory requesting the number of people quarantined or medically isolated since February 1, 2020, Defendants responded by citing Bates numbers 000325-000518¹ from their recently delivered discovery.² For ease of filing, I am not including the full 194 pages of data as an attachment, but will produce the full data set to the Court upon request. Defendants stated that this list made no distinction between medical isolation or quarantine, as the recording system does not differentiate between the two.³ The data set includes the following:
- a) The date that an instance of medical isolation/quarantine began;
 - b) the date an instance of medical isolation/quarantine expired; and
 - c) the facility where medical isolation/quarantine took place.
- 8) I received the documents outlined in paragraphs 5-7 as PDF attachments to emails from opposing counsel. I downloaded them in PDF format and transferred the relevant portions into Excel format for easier analysis.
- 9) I organized the data from Defendants' discovery response into segments by week to match the formatting of Defendant's weekly filings regarding testing and transfers (e.g. Week 1, Week 2, etc.). I organized the discovery data to show

¹ NCDPS filing stated "00325-00518", likely a typo given the numbers on the relevant discovery

² Defendants' Answers to Plaintiffs' First Interrogatories, Oct. 21, 2020, p. 7.

³ *Id.*

the number of entries into and exits from medical isolation/quarantine per week at each facility.

- 10) For several facilities, I created a table to indicate the numbers of entries and exits that occurred at that particular facility as well as other data. The tables are attached as “Attachment 1”. The tables in Attachment 1 stop at Week 12 (9/27/2020 – 10/3/2020) as none of the data received included an entry into medical isolation/quarantine dated after 9/30/2020.
- 11) Due to the large amount of data, I have not yet completed a full review for every NCDPS facility. I have thus far prioritized facilities that have experienced significant outbreaks. I have completed my review of the data for the five facilities outlined below and in Attachment 1, all of which have experienced large COVID-19 outbreaks since the pandemic began⁴
- 12) I calculated the total number of people in medical isolation/quarantine per week by first determining how many people were in medical isolation/quarantine at the end of mass testing, 8/8/2020 (end of Week 4). I determined this number by subtracting the total number of exits on or before 8/8/2020 from the total number of entries on or before 8/8/2020.
- 13) I calculated the number of people in medical isolation/quarantine each week by taking the total number of people in quarantine in the previous week, adding the number of entries for that week, and subtracting the number of exits for that week.⁵
- 14) I included in the table the number of transfers into and out of the facility each week. I also included the number of transfers into the facility that underwent quarantine per Defendant’s filings, and the number of transfers out of the facility that tested positive for COVID-19 on their last test.

⁴ While Attachment 1 does not indicate any positive tests for Neuse CI, that facility experienced a catastrophic outbreak of COVID-19 in April, eventually accruing 465 positive test results per the DPS Dashboard. <https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-info-covid-19#data>

⁵ For example, in Week 5, the total number of people in medical isolation/quarantine was calculated by adding the number of entries during Week 5 to the total entries from before mass testing (represented in the tables by “Before Wk. 5”), then subtracting the number of exits that occurred during Week 5.

- 15) Data indicates NCDPS is failing to follow both the standards that they have set for themselves and CDC guidelines.
- 16) In my review thus far, I have seen several instances where the number of positive tests at a facility in a given week is far higher than the number of entries into, or number of people in, medical isolation/quarantine at that facility for that week.⁶
- 17) It is possible that the number of weekly positive test results could be higher than the number of entries into medical isolation/quarantine due to re-testing of people already in medical isolation/quarantine. However, the discrepancy between the number of positive tests and the number of people in quarantine during a given week is often so great that this is not likely to be the case⁷, especially given the time necessary to process the tests⁸ as re-testing while still awaiting the results of a previous test would seem to be a waste of resources.
- 18) It is also possible that the medical isolation/quarantine numbers are low despite high weekly positive test rates because people who test positive are being transferred to other facilities.⁹ However, a review of weekly transfers indicates that transfers out of facilities are not the cause of the discrepancies¹⁰. I found that, even in instances where a large number of people were transferred out in a week with a high positive test count, few to none of these transferees had tested positive before their transfer.¹¹
- 19) As of August 16, 2020 (the first day of Week 6), people transferred into these facilities each week should be quarantined for 14 days per NCDPS's stated protocol.¹² Per NCDPS filings, a significant majority of transfers are marked as

⁶ See e.g. Attachment 1, Tables for Scotland CI, Dan River PWF, Albemarle CI, Pender CI, and Craven CI

⁷ See e.g. Attachment 1, Tables for Craven CI, Albemarle CI (weeks 5-8), Scotland CI (wks. 10-12), Dan River PWF, Pender CI

⁸ Test processing takes between 24-72 hours. Defendants' Response to the Court's Order for Additional Information, November 6, 2020, p. 9-10.

⁹ NCDPS admits that the CDC recommends against the transfer of a person who has tested positive unless absolutely necessary. Defendants' Response to the Court's Order for Additional Information, November 6, 2020, p.11.

¹⁰ See generally Attachment 1

¹¹ See Attachment 1, Table for Craven CI

¹² Defs' Update, Oct. 13, 2020, p. 7

having undergone quarantine upon arrival. However, the number of weekly entries into medical isolation/quarantine in a given facility is often far below the number of transfers into that facility during that same week.¹³ Were NCDPS following their own transfer protocol, the number of people transferred into a facility each week would always be equal to or less than the number of entries into medical isolation/quarantine for that week.

¹³ See Attachment 1 Tables for Neuse CI, Pender CI, and Dan River PWF

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true.



Luke Foster Woollard

November 13, 2020

ATTACHMENT 1

Chart Key and Definitions:

Timeframes

Before Wk. 5: Beginning of Reporting – August 8, 2020

Wk. 5: August 9, 2020 – August 15, 2020

Wk. 6: August 16, 2020 – August 22, 2020

Wk. 7: August 23, 2020 – August 29, 2020

Wk. 8: August 30, 2020 – September 9, 2020

Wk. 9: September 6, 2020 – September 12, 2020

Wk. 10: September 13, 2020 – September 19, 2020

Wk. 11: September 20, 2020 – September 26, 2020

Wk. 12: September 27, 2020 – October 3, 2020

Terms

Entries: Number of entries into medical isolation/quarantine

Exits: Number of exits from medical isolation/quarantine

Total Med Iso/Q: Total number of people in medical isolation/quarantine, calculated as [Total Med Iso/Q of previous week] + [Entries for that week] – [Exits for that week]

Positives: Total positive COVID-19 tests at the facility

Tr Out: Total transfers out of the facility

Tr Out Det: Total transfers from the facility where the transferee's last COVID-19 test detected the presence of COVID-19

Tr. In: Total transfers into the facility

Tr. In Quar: Total transfers into the facility where the person was quarantined upon arrival

Tables

Craven CI

| Time | Entries | Exits | Total Med Iso/Q | Positives | Tr Out | Tr Out Det | Tr In | Tr In Quar |
|--------------|---------|-------|-----------------|-----------|--------|------------|-------|------------|
| Before Wk. 5 | 23 | 22 | 1 | | | | | |
| Wk. 5 | 5 | 0 | 6 | 56 | 139 | 0 | 0 | 0 |
| Wk. 6 | 0 | 1 | 5 | 93 | 1 | 0 | 0 | 0 |
| Wk. 7 | 1 | 5 | 1 | 2 | 189 | 3 | 0 | 0 |
| Wk. 8 | 3 | 0 | 4 | 14 | 0 | 0 | 0 | 0 |
| Wk. 9 | 0 | 3 | 1 | 9 | 1 | 0 | 0 | 0 |
| Wk. 10 | 0 | 1 | 0 | 17 | 1 | 0 | 0 | 0 |
| Wk. 11 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| Wk. 12 | 0 | 0 | 0 | 0 | 109 | 4 | 0 | 0 |

Pender CI

| Time | Entries | Exits | Total Med Iso/Q | Positives | Tr Out | Tr Out Det | Tr In | Tr In Quar |
|--------------|---------|-------|-----------------|-----------|--------|------------|-------|------------|
| Before Wk. 5 | 14 | 14 | 0 | | | | | |
| Wk. 5 | 7 | 0 | 7 | 0 | 22 | 0 | 32 | 3 |
| Wk. 6 | 0 | 0 | 7 | 0 | 2 | 0 | 0 | 0 |
| Wk. 7 | 0 | 7 | 0 | 0 | 0 | 0 | 30 | 30 |
| Wk. 8 | 1 | 0 | 1 | 0 | 11 | 0 | 3 | 3 |
| Wk. 9 | 0 | 0 | 1 | 0 | 14 | 0 | 32 | 32 |
| Wk. 10 | 0 | 1 | 0 | 0 | 7 | 2 | 3 | 3 |
| Wk. 11 | 0 | 0 | 0 | 13 | 0 | 0 | 0 | 0 |
| Wk. 12 | 0 | 0 | 0 | 58 | 0 | 0 | 0 | 0 |

Neuse CI

| Time | Entries | Exits | Total Med Iso/Q | Positives | Tr Out | Tr Out Det | Tr In | Tr In Quar |
|--------------|---------|-------|-----------------|-----------|--------|------------|-------|------------|
| Before Wk. 5 | 86 | 84 | 2 | | | | | |
| Wk. 5 | 0 | 0 | 2 | 0 | 0 | 0 | 29 | 12 |
| Wk. 6 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |
| Wk. 7 | 1 | 0 | 2 | 0 | 0 | 0 | 29 | 29 |
| Wk. 8 | 1 | 1 | 2 | 0 | 3 | 2 | 6 | 6 |
| Wk. 9 | 0 | 0 | 2 | 0 | 17 | 9 | 28 | 28 |
| Wk. 10 | 1 | 1 | 2 | 0 | 2 | 0 | 2 | 2 |
| Wk. 11 | 0 | 1 | 1 | 0 | 1 | 0 | 25 | 25 |
| Wk. 12 | 0 | 0 | 1 | 0 | 0 | 0 | 5 | 5 |

Albemarle CI

| Time | Entries | Exits | Total Med Iso/Q | Positives | Tr Out | Tr Out Det | Tr In | Tr In Quar |
|--------------|---------|-------|-----------------|-----------|--------|------------|-------|------------|
| Before Wk. 5 | 86 | 85 | 1 | | | | | |
| Wk. 5 | 0 | 0 | 1 | 38 | 0 | 0 | 2 | 2 |
| Wk. 6 | 2 | 0 | 3 | 35 | 10 | 0 | 0 | 0 |
| Wk. 7 | 0 | 0 | 3 | 27 | 0 | 0 | 1 | 1 |
| Wk. 8 | 3 | 2 | 4 | 54 | 5 | 0 | 4 | 4 |
| Wk. 9 | 115 | 16 | 103 | 50 | 0 | 0 | 2 | 2 |
| Wk. 10 | 5 | 59 | 49 | 3 | 1 | 0 | 1 | 1 |
| Wk. 11 | 29 | 45 | 33 | 30 | 0 | 0 | 1 | 1 |
| Wk. 12 | 0 | 3 | 30 | 2 | 0 | 0 | 2 | 2 |

Dan River PWF

| Time | Entries | Exits | Total Med Iso/Q | Positives | Tr Out | Tr Out Det | Tr In | Tr In Quar |
|--------------|---------|-------|-----------------|-----------|--------|------------|-------|------------|
| Before Wk. 5 | 0 | 0 | 0 | | | | | |
| Wk. 5 | 0 | 0 | 0 | 0 | 1 | 0 | 26 | 1 |
| Wk. 6 | 0 | 0 | 0 | 0 | 6 | 0 | 0 | 0 |
| Wk. 7 | 0 | 0 | 0 | 0 | 0 | 0 | 33 | 33 |
| Wk. 8 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| Wk. 9 | 0 | 0 | 0 | 1 | 1 | 0 | 12 | 12 |
| Wk. 10 | 0 | 0 | 0 | 21 | 1 | 0 | 0 | 0 |
| Wk. 11 | 0 | 0 | 0 | 13 | 1 | 1 | 0 | 0 |
| Wk. 12 | 0 | 0 | 0 | 72 | 0 | 0 | 0 | 0 |

Scotland CI

| Time | Entries | Exits | Total Med Iso/Q | Positives | Tr Out | Tr Out Det | Tr In | Tr In Quar |
|--------------|---------|-------|-----------------|-----------|--------|------------|-------|------------|
| Before Wk. 5 | 196 | 176 | 20 | | | | | |
| Wk. 5 | 1 | 2 | 19 | 4 | 10 | 8 | 1 | 1 |
| Wk. 6 | 2 | 0 | 21 | 46 | 4 | 1 | 3 | 3 |
| Wk. 7 | 3 | 1 | 23 | 23 | 7 | 0 | 2 | 2 |
| Wk. 8 | 0 | 3 | 20 | 23 | 3 | 0 | 2 | 2 |
| Wk. 9 | 1 | 3 | 18 | 12 | 2 | 0 | 3 | 3 |
| Wk. 10 | 5 | 0 | 23 | 61 | 2 | 0 | 1 | 1 |
| Wk. 11 | 1 | 1 | 23 | 119 | 3 | 0 | 0 | 0 |
| Wk. 12 | 0 | 5 | 18 | 50 | 0 | 0 | 4 | 4 |