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8 CITY OF COSTA MESA and KATRINA FOLEY

9
10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

13 CITY OF COSTA MESA and
14 KATRINA FOLEY,

15 Plaintiffs,

16 vs.

17 UNITED STATES OF AMERICA,
18 THE DEPARTMENT OF HEALTH
19 AND HUMAN SERVICES, THE
20 UNITED STATES DEPARTMENT OF
21 DEFENSE, THE UNITED STATES
22 AIR FORCE, THE CENTERS FOR
23 DISEASE CONTROL AND
24 PREVENTION, THE STATE OF
25 CALIFORNIA, FDC (FAIRVIEW),
26 THE CALIFORNIA GOVERNOR’S
27 OFFICE OF EMERGENCY
28 SERVICES, and THE CALIFORNIA
DEPARTMENT OF GENERAL
SERVICES,

Defendants.

Case No. 8:20-cv-368

**PLAINTIFFS’ QUESTIONS
REGARDING DEFENDANTS’
PROPOSAL TO TRANSFER
COVID-19 PATIENTS TO THE
FDC**

1 Pursuant to the Court's Order (Dkt. 29), Plaintiffs City of Costa Mesa and
2 Katrina Foley hereby serve upon all Defendants the following questions relating to
3 Defendants' proposal to transfer COVID-19 patients to the Fairview Developmental
4 Center.

5 **I. Medical/Public Health Questions**

- 6 1. What are the details and characteristics of COVID-19 patients? We have no
7 information regarding the health status, total number, timeline of prior tests,
8 timing of transport, and method of transport to Fairview Developmental
9 Center (FDC).
- 10 2. Is the transport of patients from their current locations to FDC consistent with
11 Centers for Disease Control and Prevention guidance on transport of COVID-
12 19 positive patients?
- 13 a. What are the current plans for transporting patients from their current
14 locations to FDC?
- 15 3. Will COVID-19 patients who become symptomatic be cared for at FDC or
16 transported to local hospitals?
- 17 a. What is the current plan for transporting patients from FDC to local
18 hospitals if the patients become symptomatic or otherwise need to be
19 transported?
- 20 b. What are the current criteria for determining whether a COVID-19
21 patient is symptomatic?
- 22 4. In the event COVID-19 positive patients are transported to local hospitals,
23 who will be monitoring exposed health care workers, other staff, and
24 transportation providers?
- 25 5. In the event COVID-19 positive patients are transported to local hospitals,
26 how will exposed health care workers other staff, and transportation providers
27 be monitored?
- 28

- 1 6. Who will pay for transport and medical care, and will the 911 system be used
2 for transport?
- 3 7. How will COVID-19 patients be cleared? Will it be two consecutive negative
4 specimens separated by 24 hours, and which laboratory and which tests will
5 be used?
- 6 8. How can COVID-19 testing be conducted at Fairview in a safe manner
7 given that there are no Airborne Infection Isolation Rooms (AIIR) at
8 Fairview?
- 9 9. Will patients be transported to a hospital for COVID-19 testing in an AIIR?
- 10 10. How will specimens be processed and sent for testing?
- 11 11. Is there onsite capacity to care for patients' other medical conditions and for
12 blood draw, oropharyngeal and nasopharyngeal swabbing, and chest X-ray?
 - 13 a. If there is no onsite capacity for blood draw, oropharyngeal and
14 nasopharyngeal swabbing, or chest X-rays, how will these tests be
15 conducted? Where will they be conducted?
 - 16 b. Will there be an ability to take care of other simple medical conditions
17 such as a urinary tract infection, skin infection, hypertension, diabetes,
18 etc.?
- 19 12. After clearing how will COVID-19 patients travel to their county of
20 residence?
- 21 13. What are the cleaning and disinfection plans/protocols for FDC to assure no
22 further transmission?
- 23 14. What are the planned provisions for isolating patients?
- 24 15. Are those provisions for isolating patients consistent with Centers for Disease
25 Control and Prevention guidance, such as use of individual living quarters?
- 26 16. What are the plans for enforcing isolation orders to prevent possible
27 community exposure of COVID-19?
 - 28 a. What are the plans in the event that isolation is inadvertently breached?
17. Who is assessing infection control risk at FDC?

- 1 18. What is the workforce infection control plan and living arrangements to
2 prevent possible community exposure as well as who will provide active
3 monitoring for the workforce?
- 4 19. What is the infection control training for workforce on the property including
5 medical, custodial, food service, and maintenance staff, among others?
- 6 20. What are the infection control plans for other individual residing or working
7 at the FDC?
- 8 21. Will FDC only be used to house asymptomatic patients, or will it also house
9 patients who are symptomatic, but deemed not to require hospitalization?
- 10 22. As Dr. Bell testified in his declaration, “whether and to what extent
11 individuals without obvious symptoms are able to transmit infection to others
12 is currently undetermined.” As it may be possible for asymptomatic
13 individuals to transmit the disease via viral shedding, why are the federal and
14 state governments’ isolation protocols for asymptomatic and symptomatic
15 patients different?
- 16 23. Have the state and federal governments developed a protocol for identifying
17 the underlying and chronic medical conditions the patients may suffer from to
18 ensure that their medical needs can be met while isolated at FDC?
- 19 24. Have the state and federal governments developed a protocol for
20 communicating with local hospitals/medical centers to prepare them to meet
21 the potential needs of the patients?

22 **II. Public Safety Questions**

- 24 1. Who are the lead agencies and what are their roles?
- 25 2. Who are the incident commanders from the federal and state agencies?
- 26 3. Will Costa Mesa and Orange County be part of the Unified Command?
- 27 4. Who will be the Federal point of contact (POC) for local government
28 requests for information?

- 1 5. Who will be the State point of contact for local government requests for
2 information?
- 3 6. Who will be the Federal POC for resources and mutual aid?
- 4 7. Who will be the State POC for resources and mutual aid?
- 5 8. Who will be the Federal POC for media and public inquiries?
- 6 9. Who will be the State POC for media and public inquiries?
- 7 10. What will be the information sharing process between lead federal and State
8 agencies and Costa Mesa and the County?
- 9 11. How often will the City and County be updated regarding: FDC site,
10 patients/clients, staff, problems, local support requests or potential requests,
11 breaches of security, etc.?
- 12 12. Who will handle any attempt by a patient to leave FDC before they are
13 medically cleared?
- 14 13. What is the plan in case someone does successfully leave FDC despite being
15 positive for the virus?
- 16 14. Will Costa Mesa Police Department be expected to respond to any calls for
17 service at FDC during the operation?
- 18 15. How will people be excluded from FDC?
- 19 16. Will there be physical barriers such as walls, fencing, etc.?
- 20 17. If there will be physical barriers to prevent access to the site, where will they
21 be located?
- 22 18. If there will be physical barriers to prevent access to the site, what will the
23 barriers be?
- 24 19. Will patients be kept a certain distance away from any physical barriers
25 around the site?
- 26 20. Will the site perimeter be guarded?
- 27 21. Will any part of the site remain accessible to the public?
- 28

- 1 22. How will individuals currently living on the site (see Map attached as
- 2 Exhibit A) be protected?
- 3 23. Will security be static or roving?
- 4 24. Will security be armed?
- 5 25. Will security be authorized to use deadly force?
- 6 26. What are the protocols for entering FDC during an emergency?
- 7 27. What are the common communications systems and protocols to be used at
- 8 FDC?
- 9 28. Does the federal government know with a high level of certainty how
- 10 COVID-19 is transmitted?
- 11 29. How far can COVID-19 travel? Is it airborne?
- 12 30. What is the level of personal protective equipment necessary for complete
- 13 protection from COVID-19?
- 14 31. How long can the virus remain on various surfaces, such as porous and non-
- 15 porous?
- 16 32. What is the decontamination procedure for porous and non-porous
- 17 equipment?
- 18 33. What is the decontamination procedure for personnel?
- 19 34. What is the screening process for contaminated emergency response
- 20 personnel?
- 21 35. Who will pay the financial obligation associated with the reconstitution of
- 22 equipment and supplies, and screening of City personnel involved in a
- 23 response?
- 24 36. If emergency responders are infected with COVID-19, what is the protocol?
- 25 37. Will air operations be conducted at FDC or nearby?
- 26 38. How much warning will Costa Mesa be provided prior to the arrival of air
- 27 ambulance or other helicopters?
- 28

1 **III. Questions Regarding the Integrity of Fairview**

2 **A. Mechanical/HVAC**

- 3 1. According to the State’s own findings in its 2016 report on FDC (see state
4 report attached as Exhibit B), the current ventilation system for FDC is beyond
5 its useful life and failing. If FDC is used to isolate anyone who may in fact
6 be capable of spreading the infection, does the government intend to make
7 any changes to the existing ventilation system such that it meets the CDC
8 guidelines for isolation?
- 9 2. What are the plans to make the current mechanical system capable of creating
10 negative ventilation?
- 11 3. Is the current mechanical system capable of creating at least six air changes
12 per hour, per the CDC guidelines?
- 13 4. What are the plans to add HEPA filtration on building exhaust systems?
- 14 5. How long will it take to install filters and retrofit to create negative
15 ventilation?
- 16 6. If additional rooftop equipment is added, are the buildings structurally sound
17 to support that weight?

18 **B. Seismic/Structural**

19
20 The State’s 2016 report (Exhibit B) by CHHS and DGS Referred to Seismic
21 Safety Deficits at FDC. According to Part 6 of Exhibit B, in 1994, DGS evaluated
22 the structural status of the buildings at FDC by from nearly perfect (Risk Level I) to
23 unsafe even in the absence of an earthquake (Risk Level VII).

24 Out of 53 “major” FDC buildings, 28 were evaluated (94% of total square
25 footage):

- 26 • 3 (11%) were designated as Risk Level VI,
27 • 4 (14%) at Risk Level V
28

- 13 (46%) at Risk Level IV
- 8 (29%) at Risk Level III

25 “major” buildings (6% of total square footage) were not assigned a risk level. “Smaller one-story structures” were excluded from evaluation “due to funding limitations.”

According to the Section of Exhibit B entitled “Special Repairs and Other Major Projects,” as of 2016, no structural retrofit work has been conducted on the FDC buildings.

7. Which 28 buildings exactly were assigned the aforementioned Risk Levels?
8. Which of those 28 buildings are currently being considered for occupancy?
9. Which document was used for risk level assignment? How does this document relate to current standards (for example, ASCE 41-13)?
10. Which 25 buildings were not assigned a risk level? Are these buildings to be avoided or should they be evaluated?
11. What is the actual structural configuration of these buildings (wood framing, concrete masonry, steel frames, etc.)?
12. What was the reason for the risk classification, particularly, at the higher risk levels?
13. What is the actual condition of the “smaller one-story structures” (can be structurally deficient and hazardous, and/or should be cordoned)?
14. What is the risk rating of the buildings according to current building standards (for example, ASCE 41-13)?
15. Which (if any) FDC buildings can be approved for safe occupancy according to current standards?

IV. Fairview Operations and Site Certification Questions

1. If the Court’s order is dissolved on March 2, what time and date will FDC actively begin housing COVID-19 patients?

- 1 2. For how long will FDC be used for this purpose?
- 2 3. What is the maximum number of patients to be housed simultaneously at
- 3 FDC due to COVID-19 exposure?
- 4 4. Given Defense counsel's statements at Monday's hearing that they have
- 5 identified "10 units" at FDC that meet CDC requirements, what is the
- 6 Defendants' plan if they need to house more patients than can be
- 7 accommodated in those 10 individual rooms?
- 8 5. Which buildings will be used to house patients?
- 9 6. Which buildings (if any) will be used to house support staff?
- 10 7. Will you need to put trailers on the property?
- 11 8. Will the site be expanded?
- 12 9. Will additional buildings at FDC, besides the "pod" identified as useable be
- 13 used in the future?
- 14 10. What other sites are being considered for FDC overflow?
- 15 11. Have other sites in more remote areas been explored?
- 16 12. During the hearing, counsel for defendants mentioned that the FDC was
- 17 "certified" by CDC on Monday, February 24. Under what
- 18 guidelines/authority was such certification granted?
- 19 13. Please provide us with a copy of the actual certification and any
- 20 documentation (applications, declarations, etc.) supporting the certification
- 21 14. Have the water/sewer/power systems been tested?
- 22 15. What analysis has been done to determine the sufficiency of the
- 23 water/sewer/power systems for the intended use?
- 24 16. What are the conditions of the water/sewer/power systems?
- 25 17. Who will be doing the repair work in the event any of these systems fail?
- 26 18. Where will the patients in the facility be relocated to during a failure?
- 27 19. Will you rely on FDC's existing maintenance staff to support FDC's
- 28 systems?

- 1 20. If you will rely on FDC's existing maintenance staff to continue working on-
- 2 site, when will you inform them of the change in their working conditions?
- 3 21. If you will rely on FDC's existing maintenance staff to continue working on-
- 4 site, when will you provide them training to protect them from exposure?
- 5 22. If you will rely on FDC's existing maintenance staff to continue working on-
- 6 site, what steps are you taking to prevent them from accidentally introducing
- 7 the virus into the community?
- 8 23. If you will rely on FDC's existing maintenance staff to continue working on-
- 9 site, what personal protective equipment will you provide them?
- 10 24. Are there any contracts in place for service and repairs, if so who and are
- 11 they available 24 hours a day to respond to an isolation zone?
- 12 25. How will contract repair workers be protected and screened for
- 13 contamination?
- 14 26. What are the air monitoring capabilities?
- 15 27. How will the rooms be retrofitted to provide wi-fi, TV, exercise facilities,
- 16 etc. to reduce the risk of patients trying to leave the site?
- 17 28. Will access to any of the adjacent housing (on or off the facility) be
- 18 affected?
- 19 29. There is an on-site community of individuals with developmental disabilities
- 20 (see Exhibit A). Will access to their housing be affected by the isolation
- 21 plan?
- 22 30. How will on-site security personnel be trained to deal with these individuals
- 23 with developmental disabilities, who may not be able to fully understand or
- 24 comply with orders?
- 25 31. How will the on-site security deal with individuals, including children, who
- 26 are used to accessing the site for recreation and other purposes?
- 27 32. Will non-governmentally owned vehicles be used to transport materials into
- 28 or out of FDC? Will rented vehicles be used? If so, how will these vehicles

1 be assessed for decontamination needs before being used by members of the
2 general public?

- 3 33. Will all waste be treated as biohazard, including but not limited to
4 unfinished food, scrap paper, etc.? How will the waste be transported from
5 FDC and to where?
- 6 34. Has a biohazard site been identified with adequate safeguards and capacity
7 to handle the waste, including everything from bodily fluids to unfinished
8 meals to contaminated fixtures?
- 9 35. Will any roads not on the FDC campus need to be closed or restricted during
10 the use of the facility as an isolation center?

11
12 **V. Burden Sharing**

- 13 1. What plan is in place to address costs incurred by Costa Mesa due to:
- 14 a. Clean up of any areas off FDC site that become contaminated or
15 potentially contaminated due to FDC COVID-19 patients or materials.
- 16 b. Comprehensive personal protective equipment procurement,
17 sustainment, decontamination, and replacement. The City should have
18 the best available protection for its Police and Fire personnel as well as
19 other City staff (maintenance) working in the adjacent properties.
- 20 c. Decontamination of ambulances and other public safety apparatus used
21 to move FDC patients with worsening health to local hospitals.
- 22 d. Public information campaign and messaging to address public safety,
23 health and awareness regarding the FDC in Costa Mesa.
- 24 2. What happens if a worker infects someone in the local community?
- 25 a. Who will pay for the costs of all secondary infections?
- 26 b. Who will respond to secondary infections in the community?
- 27
28

1 Dated: February 25, 2020

KELLER/ANDERLE LLP

2 By: /s/ Jennifer L. Keller
3 Jennifer L. Keller
4 Attorneys for Plaintiffs,
5 CITY OF COSTA MESA and
6 KATRINA FOLEY
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am over the age of 18 and not a party to the within action. My business
4 address is 18300 Von Karman Avenue, Suite 930, Irvine, California 92612-1057.

5 On February 25, 2020 I served the foregoing document described as:

6 **PLAINTIFFS' QUESTIONS REGARDING DEFENDANTS' PROPOSAL**
7 **TO TRANSFER COVID-19 PATIENTS TO THE FDC**

8 on the interested parties and counsel identified on the attached service list by the
9 following means of service:

10 BY E-MAIL: The document was sent electronically to each of the individuals
11 at the email addresses indicated on the attached service list. The transmission was
12 made with no error reported.

13 Executed February 25, 2020.

14
15 /s/ Courtney McKinney

Courtney McKinney

SERVICE LIST

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United States Department of Justice

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State of California, Department of Justice

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County of Orange

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