1 │ DONALD SPECTER – 083925
RITA K. LOMIO – 254501
2 │ MARGOT MENDELSON – 268583
PRISON LAW OFFICE
3 │ 1917 Fifth Street
Berkeley, California 94710-1916
4 │ Telephone: (510) 280-2621
Facsimile: (510) 280-2704
5
MICHAEL W. BIEN – 096891
6 │ GAY C. GRUNFELD – 121944
PENNY GODBOLD – 226925
7 │ MICHAEL FREEDMAN – 262850
ROSEN BIEN
8 │ GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
9 │ San Francisco, California 94105-1738
Telephone: (415) 433-6830
10 │ Facsimile: (415) 433-7104

11 │ LINDA D. KILB – 136101
DISABILITY RIGHTS EDUCATION &
12 │ DEFENSE FUND, INC.
3075 Adeline Street, Suite 201
13 │ Berkeley, California 94703
Telephone: (510) 644-2555
14 │ Facsimile: (510) 841-8645

15 │ Attorneys for Plaintiffs

16

17 │ UNITED STATES DISTRICT COURT

18 │ NORTHERN DISTRICT OF CALIFORNIA

19

20 │ JOHN ARMSTRONG, et al.,   Case No. C94 2307 CW

21 │   Plaintiffs,   **DECLARATION OF ERNEST
                                                GALVAN IN SUPPORT OF
22 │   v.   PLAINTIFFS' MOTION TO
                                                PROTECT *ARMSTRONG* CLASS
23 │ GAVIN NEWSOM, et al.,   MEMBERS DURING COVID-19
                                                PANDEMIC**
24 │   Defendants.
                                                Judge: Hon. Claudia Wilken
25

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28
                                                            Case No. C94 2307 CW

1   I, Ernest Galvan, declare:

2   1.   I am an attorney duly admitted to practice before this Court. I am a partner

3 in the law firm of Rosen Bien Galvan & Grunfeld LLP ("RBGG"), counsel of record for

4 Plaintiffs. I have personal knowledge of the facts set forth herein, and if called as a

5 witness, I could competently so testify. I make this declaration in support of Plaintiffs'

6 Motion to Protect *Armstrong* Class Members During COVID-19 Pandemic

7   2.   I have represented the Plaintiff class in the above-captioned matter since

8 1999. I am also counsel for many of the same class members in the mental health class

9 action, *Coleman v. Newsom,* No. 90-520 KJM (E.D. Cal.). I am familiar with the data

10 produced to Plaintiffs' counsel by CDCR regarding *Armstrong* and *Coleman* class

11 members

12   3.   During the past several months I have reviewed many iterations of data from

13 the California Department of Corrections (CDCR) and from California Correctional Health

14 Care Services (CCHCS) regarding the Covid-19 risks faced by persons incarcerated in

15 CDCR facilities.

16   4.   I have become familiar with the various Covid-19 reporting systems used by

17 CDCR and CCHCS. Among the metrics employed by CDCR and CCHCS is a "COVID

18 Weighted Risk Score." On the CCHCS's Covid Monitoring Patient Registry, CCHCS

19 provided, as of July 13, 2020, the following definition of COVID Weighted Risk Score,

20 with each risk factor followed by the number of points that the factor contributes to the

21 weighted score:

22   The COVID Weighted Risk Score Factors and their weights in
23   parentheses include: Age 65+ (4), Advanced Liver Disease (2),
    Persistent Asthma (1), High Risk Cancer (2), Chronic Lung
24   Disease - Other (including Cystic Fibrosis, Pneumoconiosis, or
    Pulmonary Fibrosis) (1), COPD (2), Diabetes (1), High Risk
25   Diabetes (1), On Dialysis (2), Heart Disease (1), High Risk
26   Heart Disease (1), HIV/AIDS (1), Poorly Controlled
    HIV/AIDS (1), Immunocompromised (2), Morbid Obesity (1),
27   Other High Risk Chronic Conditions (1), and Pregnancy (1).

28

1   Case No. C94 2307 CW

DECLARATION OF ERNEST GALVAN IN SUPPORT OF PLAINTIFFS' MOTION TO PROTECT *ARMSTRONG*
CLASS MEMBERS DURING COVID-19 PANDEMIC

1   5.   In late June and early July 2020, I undertook the task of cross-referencing the

2   information Plaintiffs' counsel had received from CCHCS regarding vulnerability to

3   Covid-19 complications with other data regarding membership in the *Armstrong* and

4   *Coleman* classes on account of physical or psychiatric disability. This declaration focuses

5   on *Armstrong* class membership. The work described in this declaration is derived

6   principally from three data sources:

7   a.   **CCHCS Worksheet with Covid Weighted Risk Scores.** On or

8   about June 22, 2020, attorney Marc Shinn-Krantz at RBGG received an email from Stave

9   Fama at the Prison Law Office containing an Excel workbook named "PLO High Risk

10   Population 20200608.xlsx." The table "PLO High Risk Population 20200608.xlsx"

11   includes 14,009 persons with a CovidRiskFactorCount and CovidWeightedRiskScore of 0.

12   I am informed and believe that these persons are present because the Receiver decided to

13   include persons aged 50 and over on the list, even though the accepted threshold for

14   counting age as a factor is 65. I confirmed this by filtering the list for

15   CovidWeightedRiskScore of 0 and then used a filter on the Age column to see that all

16   records with a CovidWeightedRiskScore of 0 were for persons aged 50 or over. This table

17   therefore is properly understood as containing persons with 1 or more Covid-19 risk

18   factors, plus persons who are 50 years or older. The table includes records for 41,455

19   unique individuals. I am informed and believe that the Receiver's office sent this

20   spreadsheet to Mr. Fama. The "PLO High Risk Population 20200608.xlsx" workbook

21   includes one worksheet with the following columns:

22

A	PID
B	CDCNumber
C	Institution
D	LastName
E	FirstName
F	Age
G	Gender
H	Facility
I	CellBed
J	BedType

2

DECLARATION OF ERNEST GALVAN IN SUPPORT OF PLAINTIFFS' MOTION TO PROTECT *ARMSTRONG* CLASS MEMBERS DURING COVID-19 PANDEMIC

[3575577.3]

K	ClinicalRiskLevel
L	AllRiskFactors
M	COVIDRiskFactorCount
N	COVIDWeightedRiskScore
O	AdvancedAge
P	AsthmaPersistent
Q	LungDisease
R	Immunocompromised
S	AdvancedLiverDisease
T	OtherChronic
U	CancerHighRisk
V	Diabetes
W	COPD
X	CVD
Y	HIV
Z	Pregnant
AA	Dialysis
AB	BMI40orMore

b.　　***Armstrong* Program Access List.** On June 8, 2020, Tamiya Davis transmitted by email to Plaintiffs' counsel in *Armstrong* a spreadsheet named "June-20.xlsx," containing several separate tabs. The tab named "CountData" contains approximately 113,869 records for individuals, with, among other things, CDCR numbers and disability identifying codes and Mental Health codes. I refer to this spreadsheet below as the "Program Access data". The CountData tab contains the following columns:

A	Cdcno
B	LastName
C	Institution
D	Facility
E	BedType
F	DDP
G	DPPHearing
H	DPPKidney
I	DPPMobility
J	DPPSpeech
K	DPPVision
L	DPPLearningDisability
M	DPPCode
N	MHLOC
O	DisabilityStatus

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[3575577.3]

c.   ***Armstrong* Disability Placement Program (DPP) Roster.** On June 1, 2020, Alexander Powell transmitted by email to Plaintiffs' counsel in *Armstrong* three pdf documents, including a document named "DPP Roster Report - By Name June 2020.pdf." I converted this PDF to an Excel file. This is an imperfect process, as some of the information carries over into extra rows that do not work well in Excel. But for the limited purpose here it was adequate. The "DPP Roster Report - By Name June 2020" contains the following columns.

A	Inst.
B	Name
C	CDC Number
D	Current Facility\Bed
E	Code
F	Housing Restrictions
G	Durable Medical Equipment
H	DME Comments
I	LD
J	LD Comments
K	SLI

6.   The spreadsheets described above are quite large, and contain personally identifiable medical information for thousands of individuals. I therefore have not attached the underlying data to this declaration. I am informed and believe that the data is equally available to counsel for the Defendants, as in each instance either they or the Receiver produced it.

7.   I took the single worksheet from "PLO High Risk Population 20200608.xlsx," and copied it my working workbook, and renamed it "PLOHIGHRISK and CountData." I also put a copy of the "CountData" worksheet from the Program Access data workbook into my working workbook. Columns A though AB in "PLOHIGHRISK and CountData" are from the original worksheet. I added columns AD through AL and extended the table formatting across the entire worksheet. The purpose of columns AD through AL is to contain information from the "CountData" worksheet of the Program Access data, specifically Columns F-O from the "CountData" worksheet that

DECLARATION OF ERNEST GALVAN IN SUPPORT OF PLAINTIFFS' MOTION TO PROTECT *ARMSTRONG* CLASS MEMBERS DURING COVID-19 PANDEMIC

[3575577.3]

contain the disability information. I gave Columns AD through AL in "PLOHIGHRISK and CountData" the same heading names as Columns F through O of the "CountData Worksheet."

8.   In order to facilitate spot-checking to catch any errors in matching the records from "PLO High Risk Population 20200608.xlsx" and "CountData," I created Column AC in "PLOHIGHRISK and CountData," after the end of the "PLO High Risk Population 20200608.xlsx" data and before the beginning of the information pulled from the "CountData" worksheet. I named Column AC "COUNTMATCH." This column shows the row number in "CountData" that contains the record matching the CDC number in Column B of "PLO High Risk Population 20200608.xlsx", which is identified as "CDCNumber" in the column headings. With this number visible, I can quickly spot check that the data is pulling correctly. The formula in Column AC "COUNTMATCH" is =MATCH([@CDCNumber],CountData!A:A, 0).

9.   To get the disability-identifying information from the "CountData" worksheet into the "PLOHIGHRISK and CountData" worksheet in the correct rows, I used an Excel Index function to lookup the correct row in "CountData" based on the matching CDC number, and to capture the data in the cell under the correct heading. The function used is a table formula: = INDEX(CountData!$A:$O, [@COUNTMATCH], MATCH(Table2[[#Headers],[DPPHearing]:[DisabilityStatus]],CountData!$1:$1, 0)). If the person does not appear in "CountData," the function returns the value "#N/A".
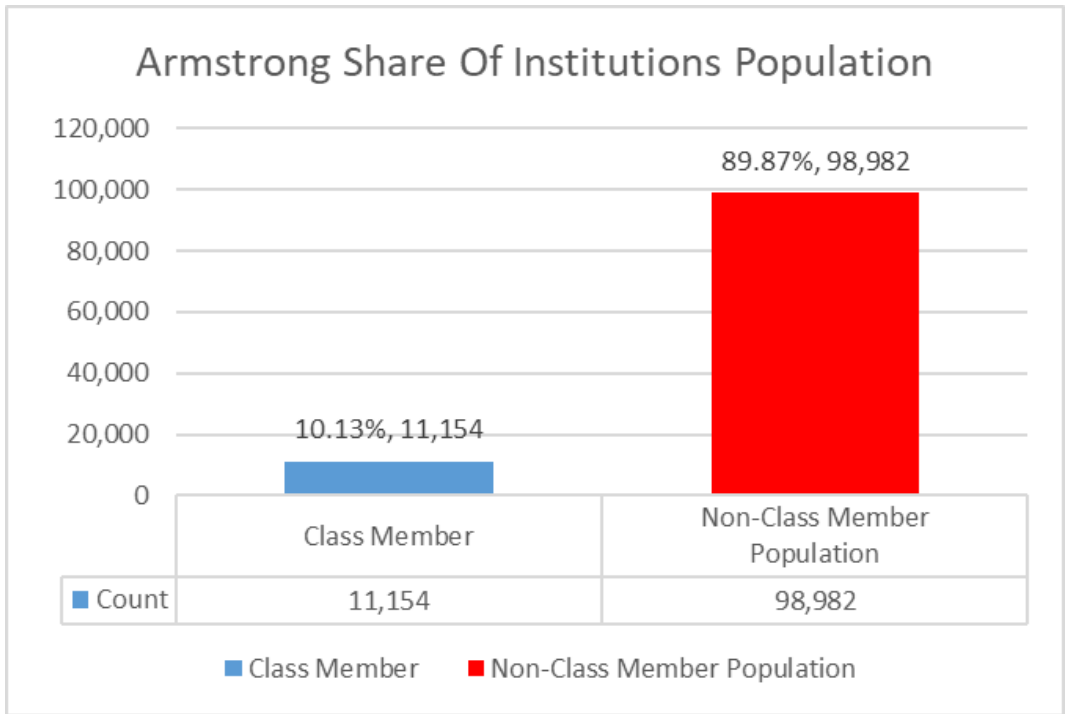
10.   As a double check, and to account for persons who are not in the Program Access data's "CountData" sheet, and who thus return "#N/A" in the INDEX function described above, I also created two columns to pull information from the worksheet "DPP Roster Report - By Name June 2020." These are Columns AM and AN in "PLOHIGHRISK and CountData", which I have labelled "DPPRow" and "Combined ARM Class Status," respectively. Column AM is a Match function which looks up the incarcerated person's CDC number in the worksheet "Export of June DPP log" and returns the row if found, and "#N/A" if not found. The function used is a table formula:

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[3575577.3]

=MATCH([@CDCNumber], 'Export of June DPP'!C:C, 0). Column AN in "PLOHIGHRISK and CountData" is a conditional function which only has three possible results: "NonClass Member," "Class Member," and "UNKNOWN." If the function finds a number in the COUNTMATCH column, indicating that the incarcerated person is present on the Program Access worksheet, then the function returns the "Disability Status" from the Program Access spreadsheet, which can be either Class Member or NonClass Member. Otherwise, the function looks to see whether the person is present on the DPP DECs log, i.e., whether the function in Column AM found the person on the DPP DECs log. If the person was found on the DPP DECs log, then the function returns "Class Member." If not found, the function returns "Unknown." The function used is a table formula:

=IF(ISNUMBER([@COUNTMATCH]), [@DisabilityStatus], IF(ISNUMBER([@DPPRow]), "Class Member", "UNKNOWN")).

11.   Combining the data as described above resulted in Armstrong class membership information for all but 185 entries in the PLO High Risk spreadsheet. (In the breakdowns described in the rest of this declaration, these 185 persons are omitted.) After spot checking the match between the records in the three spreadsheets, I created a pivot table to tabulate the numbers of individuals in various categories. To keep track of the tabulations, I copied the pivot table into separate tabs for each tabulation.

12.   Before analyzing the pivot tables, I created a simple table to derive the overall percentage of Armstrong class members in the CDCR institutional population. I entered the total institution population as of June 10, 2020 from the CDCR Website, https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/06/Tpop1d200610.pdf, for the total population, the count of unique CDCR numbers in the "DPP Roster Report - By Name June 2020.pdf" as the class population, and the difference between those two numbers as the non-class member population. Below is the resulting table and bar chart, showing that the persons CDCR recognizes as part of the *Armstrong* class represent just over 10% of the institutions population.

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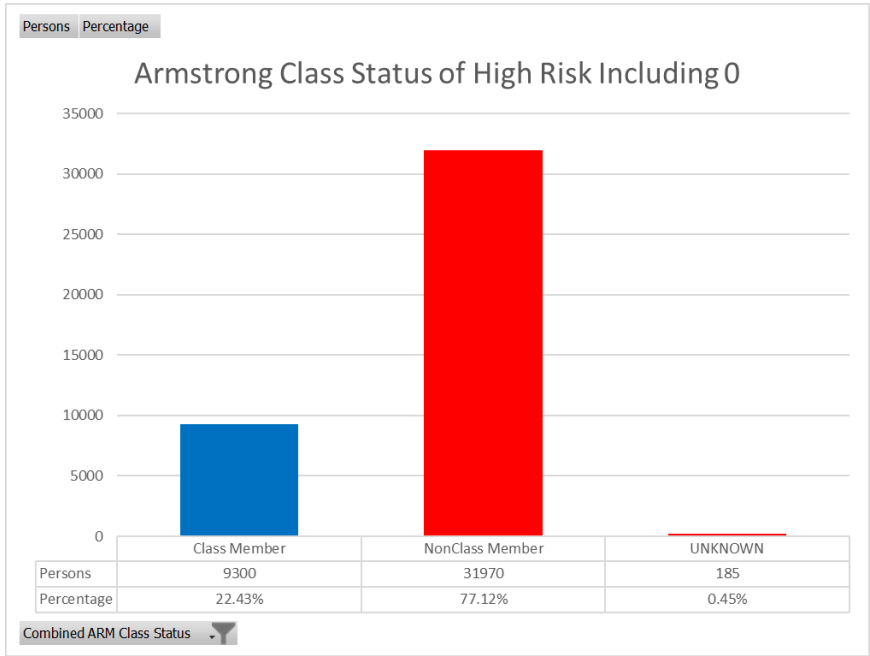
[3575577.3]

13.   I created a tab labelled "Class Share Including 0" with the pivot table set up to split the entire population of the PLO High Risk table into Armstrong Class Members and Non-Armstrong Class Members, based on Column AN, described above, "Combined ARM Class Status." This tabulation includes all persons listed on the PLO High Risk table, including those with risk scores of 0 who were included because they are aged 50 or older. The breakdown is 9,300 Class Members (22.43%), 31,970 Non Class Members (77.12%) and 185 persons whose class status is unknown (0.45%), as shown in the table and chart below.
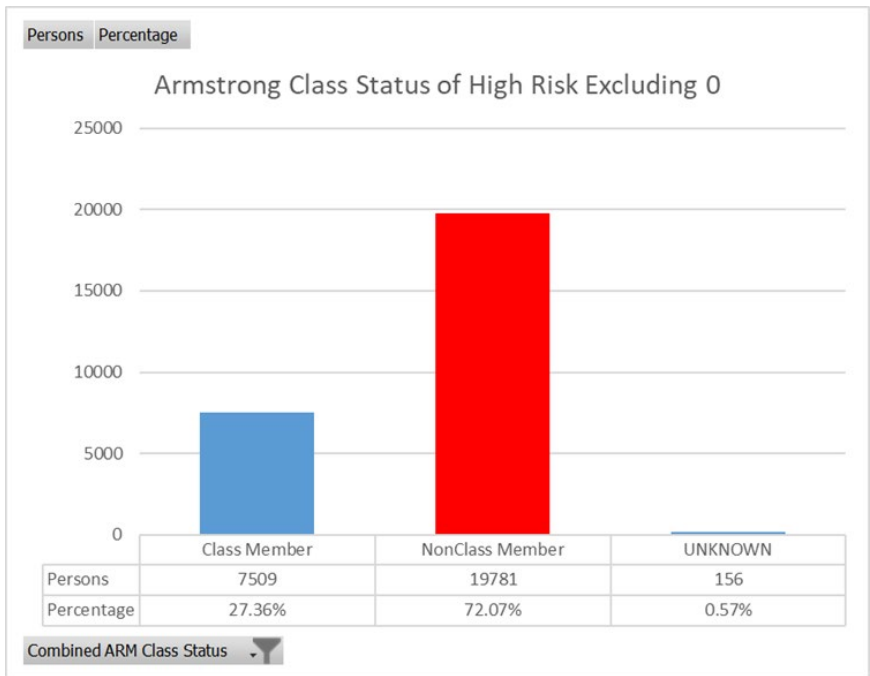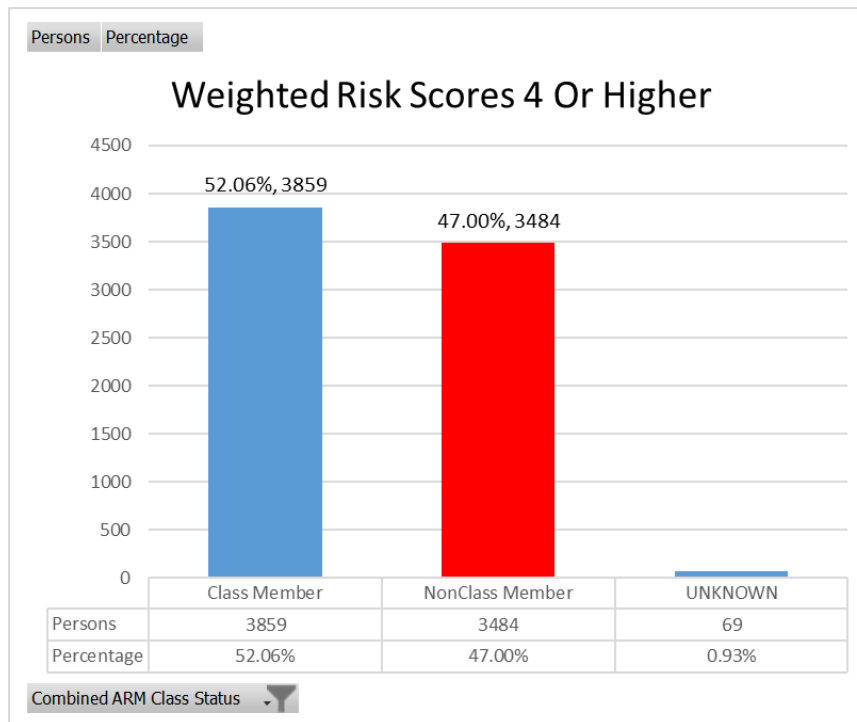
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[3575577.3]

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Persons   Percentage

Armstrong Class Status of High Risk Including 0

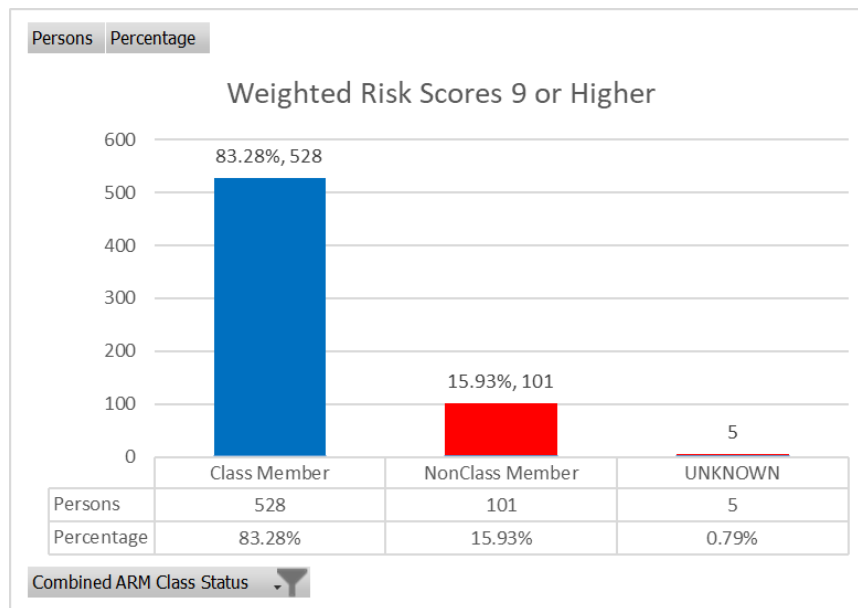|	Class Member	NonClass Member	UNKNOWN
Persons	9300	31970	185
Percentage	22.43%	77.12%	0.45%

Combined ARM Class Status

12   14.   I copied the tab labelled "Class Share Including 0" to a new tab, renamed it

13 "Class Share Excluding 0." To eliminate the persons that were included in the PLO High

14 Risk table because they were aged 50 or older, I used an Excel data slicer. The breakdown

15 is 7,509 Class Members (27.36%), 19,781 Non Class Members (72.07%) and 156

16 unknown (0.57%), as shown in the table and chart below.

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Persons   Percentage

Armstrong Class Status of High Risk Excluding 0

	Class Member	NonClass Member	UNKNOWN
Persons	7509	19781	156
Percentage	27.36%	72.07%	0.57%

Combined ARM Class Status

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CLASS MEMBERS DURING COVID-19 PANDEMIC

[3575577.3]

15.   I copied the tab again and renamed it "Weighted Covid Score 4 or More." I reset the data slicer to exclude all Covid weighted risk scores of less than 4. The breakdown of persons with Covid weighted risk scores of 4 or higher is 3,859 Class Members (52.06%), 3.484 Non Class Members (47%) and 69 unknown (0.93%), as shown in the table and chart below.

Persons	Percentage		
Weighted Risk Scores 4 Or Higher			
	Class Member	NonClass Member	UNKNOWN
Persons	3859	3484	69
Percentage	52.06%	47.00%	0.93%

Combined ARM Class Status

16.   I copied the tab again and renamed it "Weighted Covid Score 9 or More." I reset the data slicer to exclude all Covid weighted risk scores of less than 9. The breakdown of persons with Covid weighted risk scores of 9 or higher is 528 Class Members (83.28%), 101 Non-Class Members (15.93%), and 5 Unknown (0.79%), as shown in the table and chart below, showing that the persons CDCR recognizes as part of the *Armstrong* class represent over 83% of the institutions population with Covid weighted risk scores of 9 or above.

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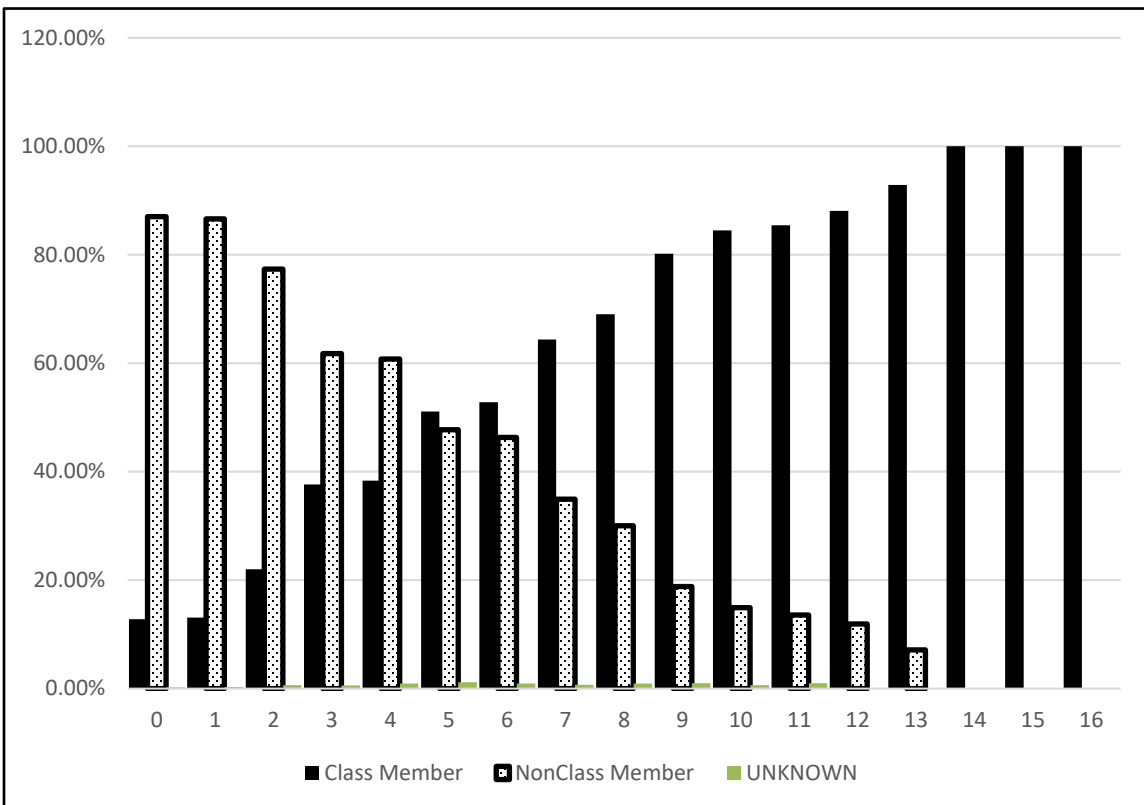
17. I also used the data to break down the *Armstrong* and non-*Armstrong* groups according to each level of Covid-weighted risk. I used another copy of the pivot table described above to count the persons in each Covid weighted risk level for the *Armstrong* and non-*Armstrong* groups. The resulting table are reproduced below, with a chart showing that after risk level 4, the *Armstrong* class becomes the majority at each risk level.

Count of PID	Column Labels			
Row Labels	Class Member	NonClass Member	UNKNOWN	Grand Total
0	1791	12189	29	14009
1	1586	10485	36	12107
2	1295	4550	39	5884
3	769	1262	12	2043
4	1047	1659	25	2731
5	750	700	17	1467
6	692	607	12	1311
7	472	256	5	733
8	370	161	5	536
9	243	57	3	303
10	136	24	1	161
11	88	14	1	103
12	37	5		42
13	13	1		14
14	7			7
15	3			3
16	1			1
Grand Total	9300	31970	185	41455

Count of PID	Column Labels

DECLARATION OF ERNEST GALVAN IN SUPPORT OF PLAINTIFFS' MOTION TO PROTECT *ARMSTRONG* CLASS MEMBERS DURING COVID-19 PANDEMIC

[3575577.3]

Row Labels	Class Member	NonClass Member	UNKNOWN	Grand Total
0	12.78%	87.01%	0.21%	100.00%
1	13.10%	86.60%	0.30%	100.00%
2	22.01%	77.33%	0.66%	100.00%
3	37.64%	61.77%	0.59%	100.00%
4	38.34%	60.75%	0.92%	100.00%
5	51.12%	47.72%	1.16%	100.00%
6	52.78%	46.30%	0.92%	100.00%
7	64.39%	34.92%	0.68%	100.00%
8	69.03%	30.04%	0.93%	100.00%
9	80.20%	18.81%	0.99%	100.00%
10	84.47%	14.91%	0.62%	100.00%
11	85.44%	13.59%	0.97%	100.00%
12	88.10%	11.90%	0.00%	100.00%
13	92.86%	7.14%	0.00%	100.00%
14	100.00%	0.00%	0.00%	100.00%
15	100.00%	0.00%	0.00%	100.00%
16	100.00%	0.00%	0.00%	100.00%
Grand Total	**22.43%**	**77.12%**	**0.45%**	**100.00%**

11

DECLARATION OF ERNEST GALVAN IN SUPPORT OF PLAINTIFFS' MOTION TO PROTECT *ARMSTRONG* CLASS MEMBERS DURING COVID-19 PANDEMIC
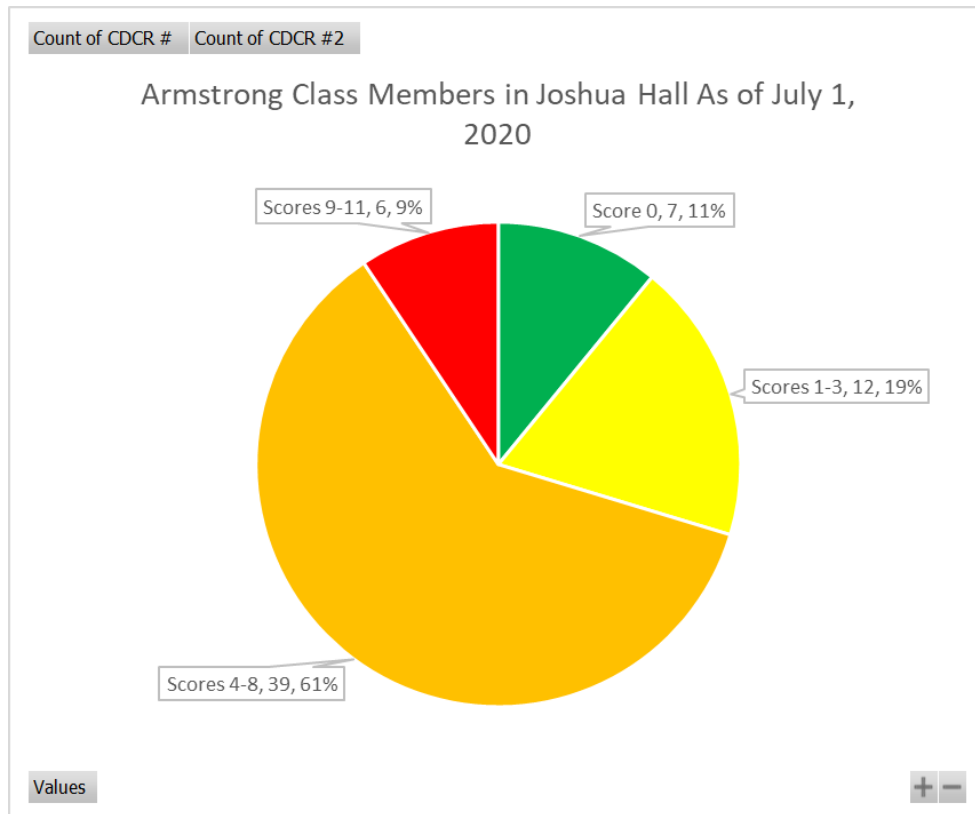
[3575577.3]

18.   I also grouped the scores in the following ranges: No Score or 0, Scores 1-3, Scores 4-8 and Scores 9-16, and used the pie charts below to show how the Class Member group and the Non Class Member group break down in ranges. The *Armstrong* Class Member group has a minority (32.68%) of people with No Score or a Covid Weighted Risk Score of zero, then 32.72% with Scores 1-3, 29.86% with Scores 4-8, and 4.73% with Scores 9-16. The Non-Class Member group, by contrast, has an overwhelming majority of people with No Score or 0 (80.02%), then 16.46% with Scores 1-3, 3.42% with Scores 4-8, and only one-tenth of percent with Scores 9-16.
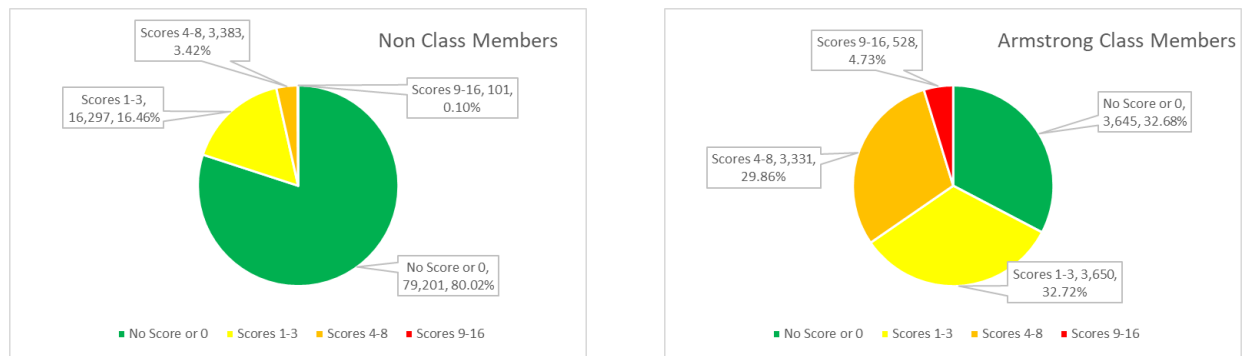
19.   The breakdowns above are based on information received in June 2020, particularly the PLO High Risk data received on June 22, 2020. To address the rapidly changing situation at Joshua Hall in CIM, Plaintiffs' counsel received more up-to-date information, dated July 1, 2020 regarding the persons held there. The vast majority of the 64 class members at Joshua Hall as of July 1 had elevated Covid weighted risk scores. The pie chart below represents the numerical and percentage breakdown, with 7 (11%) class members at Score 0, 12 (19%) class members at Scores 1-3, 39 (61%) class members at Scores 4-8, and 6 (9%) class members at Scores 9-11.

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[3575577.3]

Armstrong Class Members in Joshua Hall As of July 1, 2020

Count of CDCR #   Count of CDCR #2

Scores 9-11, 6, 9%
Score 0, 7, 11%
Scores 1-3, 12, 19%
Scores 4-8, 39, 61%

Values

20.   Plaintiffs' counsel in *Armstrong* and *Coleman* receive information from CDCR regarding incarcerated persons who have died from Covid-19 or its complications. As of July 13, 2020, we have received reports of thirty-three (34) deaths of incarcerated persons from Covid-19 or its complications. Of these 34 individuals, 18, or 53%, were *Armstrong* class members. California Institution for Men (CIM) accounts for 17 deaths. Of the persons from CIM who died, 10 were *Armstrong* class members.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at El Cerrito, California this 14th day of July, 2020.

Ernest Galvan

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[3575577.3]