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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

vs.

GAVIN NEWSOM, et al.,

Defendants.

Case No. 4:01-cv-01351-JST

RECEIVER'S REPLY TO PARTIES' RESPONSE TO ORDER TO SHOW CAUSE REGARDING RECEIVER'S RECOMMENDATION ON MANDATORY VACCINATION (ECF NO. 3647)

I. INTRODUCTION AND SUMMARY OF ARGUMENT

On August 4, 2021, the Receiver submitted to this Court his Recommendation that the Court order mandatory vaccination for workers who visit institutions and for incarcerated persons with outside contacts. In the 37 days since then, the Delta variant has caused a surge in COVID-19 infections across the country, including at California Department of Corrections and Rehabilitation (CDCR) institutions, further demonstrating the necessity and urgency of the Receiver's recommendation. In August 2021, 1,607 CDCR employees have been diagnosed with COVID-19, an increase of 305% over the prior month. Bick Reply Decl. ¶ 2. The high numbers of infections among staff have driven even sharper increases in infections among those in CDCR custody. The number of incarcerated persons in CDCR custody contracting COVID-19 each day has surged 500% from approximately "20 per day in March, April, and May 2021 to more than 100 per day since July 2021." Bick Suppl. Decl. ¶ 2.

This surge has already caused very serious harm and, without the mandatory vaccinations recommended by the Receiver, that harm will get worse. Since June 1, 2021, many patients have shown severe and potentially long-lasting symptoms, twelve have been hospitalized, and two have died. Bick Reply Decl. ¶ 2. Yet, as Dr. Bick explained in his declaration: "Safe and effective vaccines are now widely available. COVID related outbreaks, the resulting lockdowns and quarantines, hospitalizations and deaths are largely avoidable through very high levels of vaccination, particularly amongst employees who have close contact with the incarcerated, and incarcerated persons who work outside institutions or accept in person visitation." Bick Suppl. Decl. ¶ 12.

The Receiver respectfully submits this Reply to update the Court on the factual developments since his August 4, 2021 Recommendation, and to address, from a factual and medical perspective, the arguments against his Recommendation presented by Defendants and amici.[1] Defendants acknowledge that "the COVID-19 pandemic presents a substantial risk of

[1] In keeping with the scope of his Recommendation, and because such arguments are being addressed by Plaintiffs' submissions, the Receiver does not respond to Defendants' and amici's legal arguments opposing his Recommendation.

serious harm," ECF No. 3660 at 4, and "agree with the public health findings regarding the COVID-19 vaccine cited in the Receiver's report," yet they nonetheless oppose a mandatory vaccination policy for all staff entering institutions. *See* ECF No. 3660 at 20.

Defendants plan instead to implement the August 19 California Department of Public Health (CDPH) order, a policy that is inadequate to address the substantial risk of harm posed by COVID-19 within CDCR institutions. Defendants' policy ignores the reality that COVID-19 is transmitted easily through inhalation of aerosolized particles when someone is in close contact with an infected person—as people continually are in a congregate environment like a prison—and so spreads rapidly throughout prisons. ECF No. 3638 at 12–15. COVID-19 precautions cannot be effective if applied only to a portion of an institution. Vaccination substantially reduces the risk that an individual will transmit COVID-19 to others, yet the August 19 order mandates vaccination for only a fraction of individuals who move daily between the community and institutions, even though any could introduce COVID-19 to an institution. Bick Reply Decl. ¶ 4. *See* ECF No. 3638 at 7–9. The order is simply not aimed at preventing the introduction of COVID-19 to CDCR institutions. The fraction of staff it does mandate vaccination for, healthcare staff, are already fully vaccinated at relatively high rates (74%), especially by comparison to those staff it largely does not mandate vaccination for, corrections officers (42%). Bick Reply Decl. ¶¶ 3, 5. Even worse, most incarcerated persons, including 15,246 who are at high risk for serious disease, do not live in or spend most of their time in areas covered by the order. *Id.* ¶ 8. And the order does nothing to prevent infections introduced to institutions by staff not covered by the order from spreading to the medical facilities integrated in those institutions. COVID-19 is easily transmitted by close contact with an infected individual and cannot be either limited to or kept from the medical treatment areas of an institution when unvaccinated people travel into and out of those areas without quarantining. *See* ECF No. 3683 at 7–8, 12–15. While vaccines greatly reduce the chance of hospitalization or death, incarcerated persons, whether vaccinated or not, face a substantial risk of serious harm from contracting COVID-19. Bick Suppl. Decl. ¶ 5.

Defendants also ignore the serious risks to patients from months of continuous disruption of basic programming, including the provision of routine medical care, caused by COVID-19.

Throughout the pandemic, modified programming has been necessary to limit the spread of COVID-19 in institutions during outbreaks and in response to reduced staffing when many employees are quarantined for exposure or caring for patients sick with or quarantined for COVID-19. These necessary modifications have diverted CDCR healthcare resources away from providing routine medical care. Bick Suppl. Decl. ¶ 8. These disruptions cannot continue indefinitely without serious consequences. *Id*.

The August 19 CDPH order fails to reduce materially the risk of ongoing harm to the incarcerated persons. The Receiver respectfully requests that the Court order that "access by workers to CDCR institutions be limited to those workers who establish proof of vaccination (or who have established a religious or medical exemption to vaccination)" and "that incarcerated persons who desire to work outside of the institution (e.g., fire camps) or to have in-person visitation must be vaccinated (or establish a religious or medical exemption)." ECF No. 3638 at 27.

II. FACTUAL UPDATE

Since the filing of the Receiver's recommendation on August 4, 2021, the Delta variant has dramatically increased the number of infections in California and across the country. During August 2021, 1,607 CDCR employees were diagnosed with COVID-19, an increase of 305% over July 2021. Bick Reply Decl. ¶ 2. As of August 16, 2021, there were 536 staff members with an active COVID-19 infection, an increase of more than 330% over the 162 active infections just four weeks earlier. Bick Suppl. Decl. ¶ 2. Incarcerated persons have suffered an even greater increase in infections, from around "20 per day in March, April, and May 2021 to more than 100 per day since July 2021," a 500% increase. *Id*. Already, this surge has seriously harmed incarcerated persons in CDCR institutions.

We now know that the Delta variant causes breakthrough infections – infections of fully-vaccinated patients – "significantly more often than prior COVID-19 variants." Bick Suppl. Decl. ¶ 3. CDCR has not been an exception. As of September 1, 2021, 385 fully-vaccinated patients in CDCR custody have suffered from COVID-19 breakthrough infections. Bick Reply Decl. ¶ 9. Of the 385 fully-vaccinated patients who have nevertheless contracted COVID-19, 94 had a COVID

risk score of 3 or higher, indicating a high risk of severe disease, [s]ome patients with breakthrough infections have experienced serious symptoms," and "[t]here are early indications that some . . . might have long-term symptoms." *Id.*; Bick Suppl. Decl. ¶ 4. One patient who CDCR medical personnel believe was fully vaccinated has died of COVID-19. Bick Reply Decl. ¶ 9. The impact on patients in CDCR shows that "the Delta variant presents a substantial risk of serious harm even to fully vaccinated patients." Bick Suppl. Decl. ¶ 5.

Currently there are major outbreaks at five institutions, Sierra Conservation Center, Pelican Bay State Prison, North Kern State Prison, California Rehabilitation Center, and California Correctional Center, and at least three cases in six more institutions. Bick Reply Decl. ¶ 10. As a result, 38 facilities are currently under modified operations in the Roadmap to Reopening framework. *Id*. The number of people quarantined for exposure is far greater—for example, 2,345 people in CDCR custody were quarantined for exposure on August 18, 2021. Bick Suppl. Decl. ¶ 6.

These outbreaks have a serious and compounding impact on the provision of routine healthcare. "Caring for COVID-19 infected and exposed patients is time consuming and high COVID-19 caseloads have frequently diverted clinical staff from providing routine healthcare." Bick Suppl. Decl. ¶ 8. "Frequent program modifications resulting in changes to the availability of programs and services have also been necessary during the COVID-19 pandemic, either to slow the spread of the virus during an outbreak or in response to reduced staffing when high numbers of staff are quarantined for exposure. These program modifications often prevent or limit routine, specialty, and screening appointments." *Id.*

Such modifications were common throughout the pandemic until March 2021, and their impact is illustrated by the backlogs in medical appointments they caused. Bick Suppl. Decl. ¶¶ 7, 10, 11. The backlog of overdue specialty care appointments had grown 540% since the beginning of the pandemic to 17,868 overdue appointments by January 2021. *Id.* ¶¶ 11. Through the dedication of CDCR medical staff during the months from March 2021 through June 2021, when case counts were lower, this backlog was reduced to 8,052 overdue appointments by July 2021. *Id*. Because of the Delta variant, program modifications are common again, as are the disruptions

to routine healthcare. Bick Suppl. Decl. ¶ 7. Pelican Bay State Prison, for example, has modified programming due to COVID-19 for two of its yards for 31 days and at a third yard for 17 days in August 2021 alone. Foss Reply Decl. ¶ 6. "While these restrictions and delays have been necessary to protect patients from COVID-19 and to address patients' most urgent needs, these delays cannot continue indefinitely without negatively affecting patient care. Additional program modifications and the renewed diversion of healthcare resources to address COVID-19 cases from Delta variant outbreaks put patients at a substantial risk of serious harm." Bick Suppl. Decl. ¶ 8.

III. ARGUMENT

A. The Receiver's Recommendation Is Even More Urgently Necessary Now than It Was on August 4, 2021.

Mandatory vaccinations of all workers entering CDCR institutions and of incarcerated persons who desire to work outside of CDCR institutions or receive in-person visitation are necessary to prevent a substantial risk of serious harm to people in CDCR custody. The Receiver made that point clearly in his Report of August 4, 2021. *See* ECF No. 3638. The growing public health crisis which has unfolded since the Report underscores the necessity that the recommendation be implemented. Even as Defendants oppose the Receiver's recommendation, they concede the essential public health basis for it: that "the COVID-19 pandemic presents a substantial risk of serious harm," ECF No. 3660 at 4, and the truth of "the public health findings regarding the COVID-19 vaccine cited in the Receiver's report," ECF No. 3660 at 19.

The Defendants rely heavily on the CDPH August 19 order. But that order stops far short of the Receiver's recommendation, as it cannot be fairly read to require vaccination of all staff at all CDCR institutions. The order is limited to (1) "[a]ll paid and unpaid individuals who are regularly assigned to provide health care or health care services to inmates . . . ." and (2) "[a]ll paid and unpaid individuals who are *regularly assigned* to work within hospitals, skilled nursing facilities, intermediate care facilities, or the equivalent that are integrated into the correctional facility or detention center *in areas where health care is provided*." CDPH, State Public Health Officer Order of August 19, 2021, https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Correctional-Facilities-and-Detention-Centers-

Health-Care-Worker-Vaccination-Order.aspx (Aug. 19, 2021) (emphasis added). Corrections officers and other staff not regularly assigned to work in healthcare facilities are not covered by the order's plain text.

Contrary to CCPOA's unsupported suggestion in its response (*see* ECF No. 3664 at 2), the Receiver's joint memorandum with Secretary Allison of August 23, 2021 implementing the August 19 order did not reflect any unannounced change in position by the Receiver regarding the necessity of vaccination of staff entering CDCR institutions. Instead, the Receiver was merely fulfilling his responsibility to work with the Secretary to implement the Department's order. To avoid any confusion from CCPOA (or anyone else) as to the Receiver's position, the Receiver wants to make clear that he believes the August 19 CDPH order is a partial measure—a small step in the right direction—covering only a fraction of staff who could introduce COVID-19 into CDCR institutions and among incarcerated persons, and covering none of those incarcerated persons who have outside contacts and could bring COVID-19 into CDCR institutions.

B. The CDPH August 19 Order Falls Far Short of Reducing the Risk to the Point Where It Is Insubstantial.

Defendants "agree with the public health findings regarding the COVID-19 vaccine cited in the Receiver's report" and do not dispute that vaccination substantially reduces the risk that an individual will transmit COVID-19 to others. *See* ECF No. 3660 at 14, 20. Defendants devote substantial effort to questioning the Court's power to implement the Receiver's recommendation, but they never explain the public health basis for declining to implement such a policy themselves, which they certainly have the power to do. Instead, Defendants implement a far narrower policy, the August 19 CDPH order, which, with the exception of three institutions fully-covered by the order, applies to only a fraction of staff and none of the incarcerated persons at each institution who could introduce COVID-19 into the institution. This policy ignores undisputed public health information about COVID-19: that it is a respiratory infection easily transmitted through close contact with an infected person as is unavoidable in congregate environments like prisons; that, without quarantining, unvaccinated individuals will spread the disease from outside an institution to an institution and throughout an institution once inside; and, thus, that a policy that attempts to

prevent COVID-19 outbreaks while applying to only a fraction of an institution while preserving the connections within that institution will be ineffective. *See* ECF No. 3683 at 7–8, 12–15.

Institutional staff and incarcerated persons with outside contacts are the primary means by which COVID-19 may be introduced to institutions. Preventing the introduction of COVID-19 into CDCR institutions is critical because, once introduced to an institution, COVID-19 spreads rapidly. ECF No. 3683 at 12–15. The CDPH's August 19 order does not—and does not purport to—address this problem. *See* ECF No. 3661 ¶ 8. It therefore does not materially address the risk of COVID-19 to people incarcerated in CDCR institutions. Defendants do not justify their failure to implement the only policy that would raise staff vaccination rates to an acceptable level and lower the risk of COVID-19 outbreaks in all institutions.

The CDPH order applies to only a fraction of institutional staff who routinely go between the community and CDCR institutions, and it covers only the portion of staff already vaccinated at a relatively high rate. Bick Reply Decl. ¶ 5. While 74% of institutional healthcare employees statewide are fully vaccinated, only 42% of corrections officers are, yet the CDPH order applies to almost all healthcare employees but to very few corrections officers. Bick *Id.* ¶ 3. The order by its terms will fall far short of substantially increasing staff vaccination rates.

Nor will it do nearly enough to prevent COVID-19 outbreaks at CDCR institutions. CCHCS has determined that at least 48 outbreaks in CDCR institutions since July 31, 2021, began with institutional staff. Bick Reply Decl. ¶ 6. Of those 48 outbreaks CCHCS has determined began with staff, in only 14 cases (29%) was the outbreak traced back to a person that the August 19 CDPH order requires to be vaccinated. *Id*. The Receiver's recommendation would require all 48 workers to whom an outbreak was traced to be vaccinated. *Id*.

Defendants and CCPOA offer two justifications for the CDPH order, but those arguments are unavailing. The order neither protects the most vulnerable patients, as Defendants claim, ECF No. 3660 at 16, nor protects patients where they are most vulnerable, as CCPOA claims, ECF No. 3664 at 9.

On the first point, 15,246 medically vulnerable patients, those with a COVID risk score of 3 or higher,[2] live outside designated healthcare settings covered by the order. Bick Reply Decl. ¶ 8. A patient with a COVID risk score of 3 or higher likely has multiple significant risk factors. "For example, a patient under 65 years old with high-risk cancer *and* poorly-controlled HIV/AIDS would have a risk score of 3." *Id*. at ¶ 7. By limiting the definition of high-risk to those with a COVID risk score of 6 or higher, Defendants use an overly restrictive definition that ignores most of those who are medically vulnerable. Yet, Defendants concede that *4,250 patients* meeting their heightened definition of medically vulnerable are housed outside areas covered by the order. ECF No. 3660 at 21.

Nor does the order protect incarcerated persons "where residents are most exposed, *i.e.*, when submitting to healthcare." ECF No. 3664 at 9. Patients spend the vast majority of their time in non-healthcare settings and are frequently in close contact in those settings with staff and other incarcerated persons. Foss Decl. ¶¶ 3, 5, 7, 10. Staff in these settings are a more significant vector for COVID-19 outbreaks than medical staff. Bick Reply Decl. ¶ 5. Incarcerated persons are, therefore, not more "exposed" to COVID-19 when receiving healthcare.

Even if all patients at a heightened risk of serious disease were housed in areas covered by the CDPH order, or even if patients were more at risk in healthcare settings than in other congregate settings, the CDPH order would not effectively protect them. Clinics and medical yards are not hermetically sealed from the rest of the institution. People, including prison staff and incarcerated persons in frequent close contact with corrections officers, continually come and go between clinics and the non-medical portions of institutions where staff are not required to be vaccinated and are vaccinated at very low rates. Foss Reply Decl. ¶¶ 4, 5. *See also* Bick Reply Decl. ¶ 8. The CDPH order does not apply to staff who are temporarily assigned to medical areas, yet it is very common for staff to be temporarily assigned from other posts. Foss Reply Decl. ¶ 3.

[2] A COVID Risk Score of 3 represents an individual at high risk of severe disease. A score is calculated by adding points for each COVID risk factor. For example, high risk cancer raises a score by two points and chronic kidney disease, high risk diabetes, and poorly controlled HIV/AIDS each increase a risk score by only one point. Bick Reply Decl. ¶ 7.

For example, at Ironwood State Prison there were 193 shifts in medical facilities covered by temporarily assigned corrections officers in August 2021; in California State Prison, Solano, there were 116. *Id.* In spite of the CDPH order, there is a virtual certainty, based on the staffing needs of CDCR institutions and how the institutions are operated, that unvaccinated staff and patients who have had close contact with unvaccinated staff will spend substantial time in healthcare facilities within the institutions. Foss Reply Decl. ¶¶ 2–4. Because COVID-19 is easily transmitted in the prison environment, *see* ECF 3638 at 12–16, mandatory vaccination of staff in clinics will not prevent those who go between clinics and non-clinical areas of a prison from inadvertently spreading an outbreak to the clinic or from transmitting an infection from the clinic to the wider institution.

The August 19 CDPH order does not meaningfully decrease the risk of COVID-19 to incarcerated persons in CDCR custody because it does not apply to the vast majority of staff and incarcerated persons who could introduce COVID-19 infection into institutions. It is so limited that it fails to provide significant protection even in the healthcare settings that it sets out to protect. Defendants fail to provide an adequate public health basis for limiting their policy in this manner.

C. COVID-19 Presents a Substantial Risk of Serious Harm to Both Vaccinated and Unvaccinated Incarcerated Persons.

Defendants argue that unvaccinated incarcerated persons, having refused the vaccine, cannot claim an Eighth Amendment violation. This argument ignores entirely the claims of *vaccinated* incarcerated persons. *See* ECF 3660 at 5–6. Not only unvaccinated persons face a substantial risk of serious harm. "[T]he Delta variant presents a substantial risk of serious harm even to fully vaccinated patients." Bick Suppl. Decl. ¶ 5. Neither of Defendants' two declarants contradict this essential fact. *See* Watt Decl.; Toche Decl. Nor could they. One fully-vaccinated patient in CDCR custody has already died of a breakthrough infection of COVID-19, and others have been hospitalized. Bick Reply Decl., ¶ 9 & Ex. B. The vast majority of incarcerated persons are vaccinated, *see id*. ¶ 3, but they remain at substantial risk because of unacceptably low staff vaccination rates.

Nor do Defendants address the risk to all incarcerated persons, vaccinated or not, from the disruptions in the provision of ordinary medical care and other programming caused by COVID-19 outbreaks in CDCR institutions. "Frequent program modifications resulting in changes to the availability of programs and services have also been necessary during the COVID-19 pandemic, either to slow the spread of the virus during an outbreak or in response to reduced staffing when high numbers of staff are quarantined for exposure." Bick Suppl. Decl. ¶ 8. This is compounded by a corresponding increase in the need for healthcare. "Caring for COVID-19 infected and exposed patients is time consuming and high COVID-19 caseloads have frequently diverted clinical staff from providing routine healthcare." *Id.* Continuous, disruptive program modifications have been the result. For example, at Pelican Bay State Prison, there has been modified programming due to COVID-19 for all 31 days in August in two yards, and for 17 days in August in a third yard. Foss Reply Decl. ¶ 6.

"These program modifications often prevent or limit routine, specialty, and screening appointments." Bick Suppl. Decl. ¶ 8. The impact has been felt in dramatically increased backlogs of primary care and specialty care appointments, including a 540% increase in the number of overdue specialty care appointments by January 2021. *Id.* ¶¶ 10, 11, Exs. E, F. "While these restrictions and delays have been necessary to protect patients from COVID-19 and to address patients' most urgent needs, these delays cannot continue indefinitely without negatively affecting patient care. *Additional program modifications* and the renewed diversion of healthcare resources to address COVID-19 cases from Delta variant outbreaks *put patients at a substantial risk of serious harm*." *Id.* ¶ 8 (emphasis added). Already "the Delta variant is causing significant disruption to essential programming and services, including . . . clinical care, as was previously seen throughout the earlier days of the COVID-19 pandemic from March 2020 through March 2021." *Id.* ¶ 6.

All incarcerated persons in CDCR custody, vaccinated or not, face a substantial risk of serious harm from COVID-19 both directly from the virus and indirectly from the disruptions it causes to basic services. An incarcerated person's decision whether or not to take the vaccine makes no meaningful difference in the risk they face from the disruption of basic services.

Defendants' Brief is strikingly silent as to the negative consequences of COVID-19 restrictions on non-COVID-related medical care. And Defendants' framing of this case as primarily about the personal decisions of incarcerated persons—the vast majority of whom have accepted the vaccine—ignores their responsibility effectively to control COVID-19 in CDCR institutions both to prevent the spread of COVID-19 and to ensure the non-COVID-19 related health of patients within the system.

D. Mandatory Vaccination of Incarcerated Persons is Legally Uncertain, Practically Daunting, and a Far Greater Intrusion into Prison Operations than Requiring Staff Vaccination as a Condition of Employment.

Defendants assert that the Receiver's recommendation cannot be implemented because a more narrowly tailored alternative exists: "the mandatory vaccination of incarcerated people themselves." ECF No. 3660 at 15. Defendants give no indication they support such a policy, and their own arguments to this Court cannot be reconciled with it; nor have they adopted, or even suggested, such a policy previously (including in the August 19 CDPH order).

Even if they were serious about this purported alternative, it is no alternative at all. It fails to address, as discussed above, that fully vaccinated incarcerated persons would continue to face a substantial risk of serious harm unless prison staff were mandated to be vaccinated as well. If 100% of incarcerated persons were vaccinated, they would still be at substantial risk from unvaccinated staff.

There are good, practical reasons for Defendants' failure to implement, recommend or support mandatory vaccination for incarcerated persons. Enforcement would require corrections officers to extract unwilling incarcerated persons from their cells, presenting a significant security risk to both corrections officers and incarcerated persons. Foss Reply Decl. ¶ 7. There is no modern precedent for such a policy. Bick Reply Decl. ¶ 12. No vaccine is currently mandatory for incarcerated persons at CDCR. *Id*.

Mandatory vaccination of all incarcerated persons would also intrude more deeply than the Receiver's recommendation into prison operations. A constructive relationship between incarcerated persons and prison administrators and staff is critical to maintaining a safe prison environment, which relies on the compliance and cooperation of incarcerated persons. Foss Reply

Decl. ¶ 8. A mandatory vaccination order applying to all incarcerated persons would risk profoundly disrupting this relationship, increasing tension and risking violence. *Id*.

Moreover, trust between patients and their doctors is necessary to provide constitutionally adequate healthcare. Bick Reply Decl. ¶ 12. Requiring CDCR and CCHCS medical personnel to carry out a mandatory vaccination program for all incarcerated persons, vaccinating some individuals against their will, would irreparably damage this doctor-patient relationship. *Id*.

Unlike staff, incarcerated persons have no ability to opt out of a mandatory program; that difference has profound practical consequences. That is no doubt why, despite recognizing that "the best form of protection against serious illness and death is for an individual to be vaccinated," the State did not include incarcerated persons in its August 19 CDPH order and why it does not suggest in its brief that it would support such an order now. *See* ECF No. 3660 at 14–15.

E. Six Months of Voluntary Vaccination Efforts Demonstrate that Only a Mandatory Vaccination Policy Will Raise Staff Vaccination to a Very High Level and Significantly Reduce the Risk of the Introduction of COVID-19 to CDCR Institutions.

The CCPOA catalogues Defendants' considerable efforts to raise staff vaccination levels. *See* ECF No. 3664 at 9–11. Despite these efforts, only 42% of custodial officers are fully vaccinated. Bick Reply Decl. ¶ 3. In July and August, the percent of fully-vaccinated staff members increased by just 1% and 2% respectively. *Id.* ¶ 11. After months of glacial progress, Defendants and CCPOA ask the Court for more time to see if this time voluntary programs will be more effective. *See* ECF No. 3660 at 17–19; ECF No. 3664 at 12. There is neither the time to spare nor the need to do so; lives are at stake right now. After more than a month of one-on-one counseling, 5,135 staff members have attended a counseling appointment. Bick Reply Decl. ¶ 11. Of those, a mere 262 staff members have agreed to become vaccinated—just 5%. *Id*. 4,385 staff members who have had one-on-one counseling—85%—have signed formal declinations, refusing to become vaccinated. *Id*. The program has now been suspended in order to redirect resources to complying with the August 19 CDPH order. *Id*. There is only one policy with any prospect of raising staff vaccination rates to a very high level: a mandatory vaccination policy for all staff who visit institutions.

IV. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court order implementation of the Receiver's recommended mandatory vaccination policy. *See* ECF No. 3638 at 27.

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