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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE NO. 01-1351 JST

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

Judge: Hon. Jon S. Tigar
Date: January 24, 2022
Time: 2:00 p.m.
Crtrm.: 6, 2nd Floor

1 The parties submit the following joint statement in advance of the January 24, 2022
2 Case Management Conference.
3 Because of the particular challenges of gathering information for this statement, the
4 parties have had limited ability to respond to each other's positions below. Shortly after
5 the December 17, 2021, case management conference, Plaintiffs requested that CCHCS
6 and CDCR provide data and information regarding COVID vaccination, staff testing,
7 medical care backlogs, and other matters by January 7, 2022. Plaintiffs also requested a
8 video conference on that date to discuss these and other matters related to COVID in the
9 prisons. The requests to CCHCS and CDCR were substantial and their staff were focused
10 on responding to a significant increase in COVID cases among prison staff and residents.
11 Accordingly, CCHCS informed Plaintiffs that the requested data and information would be
12 ready by the afternoon of Friday, January 14, and a meeting was scheduled for that
13 date. At the meeting, CCHCS informed Plaintiffs that they hoped to provide certain
14 information, specifically regarding staff vaccinations and ventilation, early the week of
15 January 17. Because the information received on January 14 or to be provided after that
16 date was required to prepare most of this statement, the parties could not exchange their
17 position statements until the evening before filing, and thus had limited ability to respond
18 to each other's statements.

19
20
I. UPDATES REGARDING THE CURRENT OUTBREAK AND CDCR AND CCHCS'S COVID-19 RESPONSE

21 *Plaintiffs' Position*: Despite measures designed to slow its spread, the extremely
22 infectious Omicron variation has caused a rapid and steep increase of COVID-19 cases in
23 the last approximately 30 days among CDCR prison staff and incarcerated people,
24 impacting every prison. Thousands of people are isolated due to being infected or
25 quarantined due to exposure to COVID-positive staff or fellow residents, and thousands of
26 staff members have not been able to work, for the same reasons.[1]
27
28
[1] Current active CDCR resident and staff COVID cases are publicly reported. *See*

In response to these outbreaks, CDCR and CCHCS on January 6 announced a 15-day statewide modified program, from January 9 to 23, in which movement within prisons is greatly limited and medical services for all, not just those in isolation or quarantined, are mostly restricted to matters considered "essential." *See* **Exhibit A**.

After January 23, facilities with three or more related COVID cases (currently essentially all prisons) will continue in what CDCR and CCHCS refer to as "Phase 1" of Reopening, in which programs, including medical services, are limited, until no additional related outbreak cases are identified for two weeks. Even after "Phase 2" status is reached, a return to full "new normal" programming ("Phase 3") can occur only if no related cases are identified for an additional two weeks.[2] As such, and given the huge numbers of new cases identified daily, restrictions on programming and limitations on medical services will likely continue for weeks or longer.

As of January 14, the most recent date for which CCHCS has provided us data, there were three COVID-related patient hospitalizations.[3] Serious morbidity and mortality lags among those infected with COVID, and thousands in the prisons were infected relatively recently. As of the date this Statement is filed, it is not clear whether the current surge has peaked. We believe patients continue to be at serious risk from the virus, including from death, serious illness, and possibly long-lasting effects from long-haul COVID.

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https://www.cdcr.ca.gov/covid19/population-status-tracking/ (population; showing 4,975 active cases of January 19, 2022) and https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/ (staff; showing 4,676 active cases of January 19, 2022). Quarantined numbers are not publicly reported. However, our review of the CCHCS "COVID Monitoring Custody" registry shows that as of January 19, almost 20,000 incarcerated people were quarantined, in addition to the thousands in isolation. On January 10, 2022, we asked CCHCS and CDCR to provide data regarding the number of staff off work because they were identified as having active COVID or were quarantining due to exposure. We have not yet received a response.

[2] *See* Cal. Dep't of Corr. & Rehab., *Roadmap to Reopening*, at https://www.cdcr.ca.gov/covid19/reopening/roadmap (last accessed Jan. 17, 2022).

[3] We have asked CCHCS to publicly report both current and past COVID hospitalization data, as they do for active case numbers and COVID-related deaths.

We are also concerned about whether the prisons have the space and staff to adequately isolate and monitor the thousands of newly identified active COVID patients, and do the same (plus test) the thousands of others quarantined due to being exposed to the virus, while at the same time attending to all other serious medical needs. There are substantial shortages of nursing staff at many prisons, and while CCHCS reported on January 14 that it was hiring 200 temporary nurses, we remain concerned whether adequate COVID monitoring and other care can be provided. This concern may become even more acute if the current outbreak continues to grow at an explosive rate.

Most fundamentally, the massive current outbreak shows again the extreme vulnerability of CDCR-incarcerated people, and the prisons' medical delivery system, to the air-borne coronavirus. As the Receiver stated last year, "If the coronavirus were designing its ideal home, it would build a prison."[4]

As such, mandating staff vaccinations is necessary to reduce the risk of infections, and the frequency and breadth of outbreaks (and the consequent interruption of prison operations, including medical services). The State should also further reduce the prison population to reduce crowding, so as to protect the particularly vulnerable, limit the number infected, and protect the medical delivery system. These actions are especially necessary now, given the possibility of additional variants that may be as or more virulent than the Alpha and Delta variants and as or more infectious than Omicron.

Defendants below state:

> The CDC advises that because 'anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don't have symptoms . . . [t]he recent emergence of Omicron further emphasizes the importance of vaccination and boosters.' *Id.* In other words, the CDC's year-long guidance regarding vaccines and the public-health-based approach Defendants have promoted for months holds true: while vaccination cannot prevent the spread of COVID-19, *being* vaccinated is the best protection against dire effects from COVID-19.

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[4] *See* Assembly Budget Subcommittee No. 5 on Public Safety, Monday, Feb. 8, 2021, available at https://www.assembly.ca.gov/media/budget-subcommittee-5-public-safety-20210208/video [at 1:38:25 et seq.].

Defendants misconstrue the CDC's guidance.[5] While the CDC recognized that vaccinated individuals who suffer breakthrough Omicron infections can spread the virus to others, it also advised that "[v]accines remain the best public health measure to . . . slow transmission."[6]

The CDC's determination that vaccines slow transmission is consistent with the California Department of Public Health's (CDPH) findings. On December 22, 2021, the CDPH mandated COVID-19 boosters for health care workers because "current vaccine requirements of staff in health care settings are not proving sufficient to prevent transmission of the more transmissible Omicron variant."[7] This decision was plainly based upon the CDPH's determination that the boosters would reduce *transmission* of the

[5] Defendants also cite to the incorrect CDC website. The language quoted by Defendants is found here: CDC, *Omicron Variant: What You Need to Know* (Dec. 21, 2021), https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html.

[6] CDC, *Omicron Variant: What You Need to Know* (Dec. 21, 2021), https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html (emphasis added); *see also* CDC, *Potential Rapid Increase of Omicron Variant Infections in the United States* (Dec. 20, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/mathematical-modeling-outbreak.html (explaining that the "immunity conferred by . . . vaccination is likely to be reduced compared with Delta but not completely overcome").

[7] Cal. Dep't of Pub. Health, *State Public Health Officer Order of December 22, 2021*, https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx (emphasis added); *see also* Cal. Dep't of Pub. Health, *State Public Health Officer Order of December 22, 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 (mandating boosters for health care workers in correctional settings for the same reasons); Cal. Dep't of Pub. Health, *Public Health Order Questions & Answers: Adult Care Facilities and Direct Care Worker Vaccine Requirement* (Jan. 6, 2022), https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Adult-Care-Facilities-and-Direct-Care-Worker-Vaccine-Requirement-FAQ.aspx (COVID-19 boosters mandated for workers in Adult and Senior Care Facilities for the same reasons).

Omicron variant. The State's position here that "vaccination cannot prevent the spread of COVID-19" is contradictory and unsupported by its own public heath guidance.

Finally, Plaintiffs note that recent studies suggest that vaccination reduces the infectiousness of those infected with Omicron, meaning that even if vaccinated people suffer breakthrough infections, they are less likely to transmit the virus to others.[8]

Defendants' Position: Much of the nation and the world is in the harsh midst of a surge in cases driven by the Omicron variant. A current point-in-time snapshot[9] of CDCR's incarcerated population—approximately 81 percent of which is fully vaccinated, [10] and more than half of which has accepted a booster shot—shows, like the rest of the nation, significant increases in the number of COVID-19 cases and a very small number of hospitalizations. Consistent with COVID-19 public health trends, the Centers for Disease Control and Prevention (CDC) expects current vaccines to protect against severe illness, hospitalizations, and deaths due to infection with the Omicron variant, but also expects breakthrough infections among fully vaccinated people. Ctrs. Disease Control &

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[8] *See, e.g.*, Lyngse et al., *SARS-CoV-2 Omicron VOC Transmission in Danish Households* (Dec. 22, 2021), available at https://www.medrxiv.org/content/10.1101/2021.12.27.21268278v1 ("We found an increased transmission for unvaccinated individuals, and a reduced transmission for booster-vaccinated individuals, compared to fully vaccinated individuals.").

[9] As of January 19, 2022, there are 4,975 active COVID-19 cases (*see* Cal. Dep't Corr. & Rehabilitation, *Population COVID-19 Tracking*, https://www.cdcr.ca.gov/covid19/population-status-tracking/ (last visited Jan. 19, 2022)). As noted on the website, the active-cases counting rules changed so that cases will no longer be considered active 10 days after the positive test result unless an isolation order remains in place. (*Id.*) There are three hospitalizations among the incarcerated population. Two of the hospitalized patients are unvaccinated. One of the unvaccinated patients is intubated and in a long-term acute care hospital. Tragically, two COVID-19-related patient deaths were reported since the last case management conference. Both patients were unvaccinated.

[10] Compared to 72.2 percent of California's population, *see* COVID19.CA.GOV, *Statewide vaccination data*, https://covid19.ca.gov/vaccination-progress-data/#overview (last visited Jan. 18, 2022), and a 79.9 percent vaccination rate across the country, *see* Ctrs. Disease Control & Prevention, *COVID-19 Vaccinations in the United States*, https://covid.cdc.gov/covid-data-tracker/ - vaccinations_vacc-total-admin-rate-total (last visited Jan. 18, 2022).

1 Prevention, *Potential Rapid Increase of Omicron Variant Infections in the United States*
2 (Dec. 20, 2021), https://www.cdc.gov/coronavirus/2019-
3 ncov/science/forecasting/mathematical-modeling-outbreak.html. The CDC advises that
4 because "anyone with Omicron infection can spread the virus to others, even if they are
5 vaccinated or don't have symptoms . . . [t]he recent emergence of Omicron further
6 emphasizes the importance of vaccination and boosters." *Id.* In other words, the CDC's
7 year-long guidance regarding vaccines and the public-health-based approach Defendants
8 have promoted for months holds true: while vaccination cannot prevent the spread of
9 COVID-19, *being* vaccinated is the best protection against dire effects from COVID-19.
10 The CDC predicted a rapid increase in infections of the Omicron variant of
11 COVID-19 in December. Ctrs. Disease Control & Prevention, *Potential Rapid Increase of*
12 *Omicron Variant Infections in the United States* (Dec. 20, 2021),
13 https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/mathematical-modeling-
14 outbreak.html. That prediction became a reality in California,[11] across the country,[12] and
15 even in the courts,[13] just as it has in California's prisons. But although case numbers have
16 risen, Dr. Anthony Fauci, Chief Medical Advisor to the President of the United States and
17 Director of the National Institute of Allergy and Infectious Diseases, recently advised that
18 hospitalization figures are a more accurate measure of the severity of the Omicron variant
19
20 [11] California currently reports a daily average of 59,604 new cases per day (*see* Covid19.ca.gov, *Tracking COVID-19 in California*, https://covid19.ca.gov/state-dashboard/ (last visited Jan. 11, 2022)).
21
22 [12] The CDC reports 60,240,751 new COVID-19 cases across the United States in the last 30 days (*see* Ctrs. Disease Control & Prevention, *COVID Data Tracker*, https://covid.cdc.gov/covid-data-tracker/ - variant-proportions (last visited Jan. 11, 2022)).
23
24 [13] The United States District Courts for the Northern, Central, and Southern Districts of California temporarily suspended in-person criminal trials and proceedings because of the rise in cases and the high transmissibility of the Omicron variant. *See* U.S. Dist. Ct. N.D. Cal., *All Jury Trials Suspended Through January 26, 2022*, https://www.cand.uscourts.gov/ (last visited Jan. 11, 2022); U.S. Dist. Ct. C.D. Cal., *Order of the Chief Judge 22-001*, https://www.cacd.uscourts.gov/sites/default/files/general-orders/Order_22-001.pdf (last visited Jan. 11, 2022); and U.S. Dist. Ct. S.D. Cal., *Order of the Chief Judge No. 63-G*, https://www.casd.uscourts.gov/_assets/pdf/rules/Chief Judge Order_63-G.pdf (last visited Jan. 11, 2022).
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than traditional case counts of new infections. *See, e.g.* The Guardian, *Fauci: hospitalization figures a better guide to Omicron than case count* (Jan. 2, 2022), https://www.theguardian.com/us-news/2022/jan/02/fauci-covid-omicron-hospitalizations-case-count. By this measure, CDCR's consistently low hospitalization numbers are encouraging.

Defendants have implemented multilayered and evolving safety measures since the start of the pandemic, including by making COVID-19 vaccines and boosters widely and easily available to the entire incarcerated population. And in response to public health experts' predictions in December, Defendants recently implemented several additional, aggressive safety measures to mitigate the spread of COVID-19, consistent with public health guidance and public safety recommendations.

A. Reactivation of COVID-19 Department Operations Center (DOC)

The DOC is a central location where leadership and experts monitor information, prepare for known and unknown events, and exchange information to make decisions and quickly provide guidance to all institutions. In response to a drop in active COVID-19 cases in CDCR's prisons, CDCR and CCHCS demobilized the DOC on March 21, 2021 and transitioned to a COVID-19 Support Team. With the recent development of the rapidly spreading Omicron variant, CDCR and CCHCS reactivated the DOC on a smaller scale on January 6, 2022. The DOC currently operates from 8:00 a.m. to 5:00 p.m., Monday through Friday. The DOC conducts daily calls with institutions experiencing an outbreak to assess resource needs, assist with response planning, and share information.

B. Visiting

In-person and family visiting was suspended until further notice on January 8, 2022. Defendants understand this is a significant hardship for the incarcerated population and their loved ones, but determined this was a necessary public health measure to reduce the risk to the incarcerated population, staff, and thousands of visitors to CDCR's institutions while CDCR and CCHCS work to control the highly transmissible Omicron variant. In

lieu of in-person visiting, CDCR will continue to offer video visits at its institutions. CDCR's visitation webpage, https://www.cdcr.ca.gov/visitors/, provides the latest updates.

C. Movement and Programming

CDCR implemented a mandatory 15-day modified program statewide on January 9, 2022. This is a temporary measure intended to limit movement between and throughout institutions as a necessary step to curb COVID-19 transmission. County jail intake has been suspended at Wasco State Prison since December 29, 2021, and at North Kern State Prison since January 10, 2022. These institutions will remain closed to intake at least through the week of January 24, 2022, after which CDCR will assess the propriety of reopening intake based on COVID-19 cases at those institutions. The Central California Women's Facility currently remains open to intake.

During the temporary modified programming, all movement will be restricted to essential moves only and conducted in accordance with the Movement Matrix, a new version of which was released on December 27, 2021 and is available at https://cchcs.ca.gov/wp-content/uploads/sites/60/COVID19/Appendix13-PatientMovement.pdf. The Matrix includes quarantine, testing, and isolation mandates for transfers between and throughout institutions and facilities. A memorandum detailing CDCR and CCHCS's current quarantine and isolation practices for the incarcerated population is attached as **Exhibit B**. For example, isolation time for incarcerated people has been changed from 14 days to 10 days. As a matter of course, CDCR keeps the incarcerated population apprised of policy and procedure changes. An example of a recent communication regarding masking and movement policies, in which CDCR advises the incarcerated population of the plan to distribute two procedure masks and offer one N95 mask each week, and provides an explanation of quarantine and isolation procedures, which is attached as **Exhibit C**. Healthcare services will be limited to essential clinical services including urgent/emergent and priority needs.

Dayroom activity, canteen, and phone calls are still permitted so long as physical

distancing is maintained. Only one housing unit or dorm will participate in recreation at a time to avoid mixing units. Meals and education courses, vocation courses, Substance Use Disorder Treatment courses, and religious programs will be provided directly to the incarcerated population in their housing units. Incarcerated people can access law libraries through a paging system[14] or where physical distancing can be maintained. Urgent and emergency legal visits will be conducted via telephone or video conference.

CDCR is closely following the Roadmap to Reopening, available at https://www.cdcr.ca.gov/covid19/reopening/, which follows guidance from the Receiver and public health experts, and significantly restricts movement, programming, and visitation at institutions experiencing a current outbreak. The "Reopening tab" of the Population Tracker, available at https://www.cdcr.ca.gov/covid19/population-status-tracking/, shows each institution's current reopening phase. All institutions are considered to be in "Phase I" for the duration of the temporary modified program, but may revert back to their prior phase at the conclusion of the modified program, provided they did not experience an outbreak.[15]

D. Testing and Vaccination for Staff

CDCR and CCHCS are implementing the California Department of Public Health's December 22, 2021 order mandating those in health care settings to receive the vaccine booster when eligible, discussed in further detail below. Unvaccinated employees must continue to test twice a week.

E. Testing for the Incarcerated Population

The DOC has directed leadership at each institution to follow Movement Matrix guidance on testing strategies and to keep the Outbreak Management Tools updated as to those strategies for both staff and patients. CDCR has sufficient testing supplies to

[14] Incarcerated people use the "paging system" to request that library staff deliver legal material to them during times when physical access to the law library is not possible, for example during lockdowns or modified programs.

[15] Even institutions that are not presently experiencing an outbreak are subject to the modified program.

regularly test its incarcerated population and is in constant communication with current vendors and the Office of Emergency Services regarding projected testing needs, test inventories, and delivery status.

F. Entrance Screening

Each employee will complete a daily self-screening for COVID-19 symptoms and exposure before entering an institution. *See* **Exhibit D.** Employees shall not come to work nor enter any institutions, headquarters, regional or field offices, if they:

1. Are experiencing COVID-related symptoms not caused by a diagnosed underlying health care condition or caused by a recent COVID-19 vaccination;
2. Have been in close contact with anyone known to have a laboratory-confirmed COVID-19 test or symptoms consistent with COVID-19 while not wearing appropriate personal protective equipment in the last 14 days regardless of vaccination status; or
3. Tested positive for COVID-19 within the last 10 days.

CDCR and CCHCS issued an updated employee quarantine and isolation policy on January 7, 2022, attached as **Exhibit E**. The current conventional practice requires staff to take 7 days off work and present a negative COVID-19 test result to return to work. The current contingency practice is used for critical staffing needs, and permits asymptomatic employees to return to work and test every day for 7 days post exposure and wear an N95 while at work. These employees can continue to work as long as they test negative. Employees with active COVID-19 may not, under any circumstances, report to work. The contingency practice may only be implemented if sufficient testing resources are available.

G. Personal Protective Equipment

Starting on January 10, 2022, all employees, contractors, and visitors shall wear an N95 mask while on CDCR institution grounds and follow current testing directives, regardless of vaccination status or whether a religious or medical exemption has been granted. Exceptions to N95 masking requirements apply:

1. While actively and briefly eating or drinking, and only if a minimum of six feet

of physical distance is maintained from all other individuals;

2. When alone in an office with the door closed;

3. When alone in a tower or enclosed control booth with no other individuals present; and

4. When outdoors, if a minimum of six feet of physical distance is maintained from all other individuals. An appropriate mask shall be kept on person at all times and shall be worn walking or standing within six feet of others.

Incarcerated workers must also wear an N95 at all times. Incarcerated workers with work assignments that include indoor contact with others will be provided an N95 replacement at the beginning of each work shift and as often as needed or requested. As soon as possible but no later than January 17, 2022, CDCR will make N95 masks available to all incarcerated people who wish to wear them for enhanced protection, and will offer incarcerated people at least one N95 mask per week.[16] Incarcerated people will also be offered at least two disposable procedure masks per week to replace cloth masks that were previously distributed. Currently, N95 or procedure masks are preferred to cloth face coverings.

II. COVID-19 VACCINE

A. Patients

Plaintiffs' Position: We appreciate CCHCS and other staff's efforts over the last 13 months to offer and administer the COVID-19 vaccine to patients. As of January 19, 2022, 81% of the approximately 99,000 incarcerated in CDCR were fully vaccinated against

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[16] On a case-by-case basis, if a patient's primary care clinician determines that the potential for self-harm from being given an N95 outweighs the benefit, the clinician may either exempt the patient from being offered an N95 or authorize provision of an N95 without a metal nose clip.

1 COVID. Also, 96% of the approximately 72,000 eligible for a booster shot had been
2 offered one (about 75% accepted).[17]
3 CCHCS and CDCR tell us that they will distribute a written survey regarding
4 vaccine incentives to approximately one-half of the 17,000 patients who have to date
5 declined vaccination. They intend to collect the surveys by the end of this month and
6 provide executive leadership with an analysis and presumably recommendations in
7 February. We appreciate these efforts, and urge that incentives identified as effective be
8 offered promptly.
9 *Defendants' Position:* CCHCS began offering the Pfizer booster to eligible patients
10 shortly after the United States Food and Drug Administration (FDA) amended its grant of
11 emergency use authorization. Similarly, CCHCS began offering Janssen and Moderna
12 boosters to patients the third week of October 2021, not long after the FDA released its
13 emergency use authorization for those vaccines. As of January 19, 2022, 81 percent of the
14 incarcerated population (amounting to 79,787 people) is fully vaccinated, and another two
15 percent, or 2,074 people are partially vaccinated. Additionally, 71,747 incarcerated people
16 are eligible for a booster shot, 54,971 have accepted a booster shot, and 13,576 have
17 declined. CCHCS continues efforts to offer booster shots to eligible incarcerated people,
18 and encourage unvaccinated incarcerated people to accept the vaccine. As discussed in
19 section I above, current statistics show the vaccine continues to protect incarcerated people
20 as expected based on public health guidance. This is particularly true in light of public
21 health guidance that vaccination protects against serious illness and death, and does not
22 prevent the spread of infection. Ctrs. Disease Control & Prevention, *Potential Rapid*
23 *Increase of Omicron Variant Infections in the United States* (Dec. 20, 2021),
24 https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/mathematical-modeling-
25
26 [17] Most of those eligible for but not offered a booster are either out-to-court or new
27 arrivals at Reception Centers; we have this week asked CCHCS about those patients eligible for a booster housed in main-line prisons who appear to not have not been offered
28 one.

outbreak.html. And current expert opinions that while case counts continue to be an important barometer, "'it is much more relevant to focus on the hospitalizations as opposed to the total number of cases'" and "hospitalization counts are a 'more objective measure.'" Newsweek, *COVID Hospitalization Data Should Be Focus Rather Than Daily Case Counts: Experts* (Jan. 4, 2022), https://www.newsweek.com/covid-hospitalization-data-should-focus-rather-daily-case-counts-experts-1665543. Consistent with current thinking, CDCR and CCHCS are closely monitoring case counts and, based on case counts, is modifying programming and movement in addition to implementing quarantine and isolation as needed. Hospitalization rates remain very low—three as of January 19, 2022—and Defendants continue to make every effort that they remain so.

CDCR and CCHCS continue to pursue the best and most effective treatments for CDCR's incarcerated population as they become available. For example, as of December 20, 2021 the California Department of Public Health (CDPH) allocated 960 doses of Evusheld to CDCR. Evusheld is a preventative, monoclonal treatment administered by injection to high-risk patients who have not been exposed to COVID-19 and who are not currently infected with COVID-19. The treatment is expected to provide patients with six months of protection against COVID-19. The FDA authorized emergency use of this treatment on December 8, 2021 for immunocompromised patients, or those for whom available COVID-19 vaccines are not recommended. *See* FDA News Release, *Coronavirus (COVID-19) Update: FDA Authorizes New Long-Acting Monoclonal Antibodies for Pre-exposure Prevention of COVID-19 in Certain Individuals* (Dec. 8, 2021), https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-new-long-acting-monoclonal-antibodies-pre-exposure. Additionally, CDPH allocated 40 doses of Paxlovid, an oral antiviral treatment, as of December 28, 2021; 80 doses of Molnupiravir, an oral antiviral treatment, as of December 28, 2021; 204 doses of Sotrovimab, a monoclonal antibody intravenous infusion, as of January 10, 2022. As of January 18, 2022, these treatments have been administered as

follows: 189 doses of Evusheld, 9 doses of Paxlovid, 5 doses of Molnupiravir, and 28 doses of Sotrovimab. CDCR and CCHCS continue to identify patients eligible for these treatments.

CDCR and CCHCS continue to consider Plaintiffs' counsel's November 29, 2021 request to "promptly design and implement a robust incentive program that includes special meals or food, money, canteen resources, tablet credits, video calls, and any other meaningful resource to encourage [incarcerated] people to get vaccinated." During the week of January 17, 2022, CDCR and CCHCS will send individually addressed surveys to over 9,000 incarcerated people, requesting their feedback regarding incentives that might persuade them to accept the vaccine. Wardens have been directed to inform their leadership teams, housing unit staff, and Inmate Advisory Councils that the surveys are coming; ensure surveys are delivered to appropriate incarcerated people by January 20; and support efforts to publicize the survey. Fire camps will work directly with institution leadership to determine the best method to deliver and retrieve surveys. Responses must be returned by January 30, and results of the survey are expected to be available in February. Healthcare staff continues to use each healthcare encounter as an opportunity to encourage unvaccinated patients to accept the vaccine.

B. Staff

Plaintiffs' Position: On December 21, 2021, we requested that CCHCS and CDCR provide us an update on the efforts to verify staff vaccination information, following the report in December (*see* ECF No. 3762 at 7:7 – 8:13) that there were discrepancies between the staff vaccine registry and the records of individual employees. We also on that date requested a meeting in early January to discuss this matter, and to be provided updated verified staff vaccination data on January 14, 2022, including information regarding progressive discipline of staff mandated to be fully vaccinated by the California Department of Public Health (CDPH).

At a January 14 meeting, CDCR's Deputy Director, Facility Operations briefly

explained, as we understood it, that while a lot of work has been done to verify staff vaccination status, it was not yet complete, even after accounting for the complication of staff transferring between or being newly hired in the prison. A second "drill" is being run, we are told, because the first attempt showed discrepancies. Accurate information is essential, and should be available a month after verification was identified as necessary. Whether a staff person is vaccinated or not is critical. Unless an exemption is obtained, vaccination is CDPH-mandated for essentially all staff at two prisons (California Medical Facility (CMF) and California Health Care Facility (CHCF)) and some staff at all others. Who is and is not vaccinated (and not exempted) must be known in order to properly impose progressive discipline on those not in compliance with those mandates. Further, accurate knowledge of who is unvaccinated is necessary to properly COVID test such staff twice-weekly, as CDCR and CCHCS require. CCHCS indicated on January 14 that they hoped to provide updated staff vaccination data early in the week of January 17.

Defendants provided data regarding vaccination compliance by Division of Adult Institution (DAI) staff approximately 90 minutes before the deadline for this Statement to be filed (*see* Exhibit F). We have not yet received data for CCHCS and contractor staff.

Most fundamentally, the DAI data shows that vaccine mandates are effective and result in higher vaccination rates for staff. The data shows that 6,090 DAI are subject to the CDPH order statewide, with 1,033 not vaccinated. Of those who are not vaccinated, 49 have a granted or pending medical exemption request, according to Defendants. Another 213 have a request for a religious exemption pending, and 664 have a granted religious exemption, including more than 150 at California Health Care Facility.[18]

Defendants say there are 107 DAI staff who are required to be but are not vaccinated and do not have an exemption request granted or pending. For these, Exhibit F includes prison-specific charts with information as to whether or why not corrective or

[18] The number of requests for or granted religious exemptions seems unexpectedly high. We are concerned about potential misuse of this exemption, and plan to ask Defendants for further information.

1 adverse action has been taken, and if such action has been taken, what had been done.
2 Defendants did not provide a summary of that information, thus the charts need to be
3 examined individually to determine the status of the 107 staff members.

4 Some matters seem clear. First, there are approximately two dozen unvaccinated
5 non-exempt DAI staff who are newly assigned to their position. Such staff should not be
6 permitted to work in those positions unless they are fully vaccinated. Defendants should
7 clarify that this is the rule.

8 Second, Defendants' data shows that there are approximately 14 unvaccinated non-
9 exempt DAI staff who have had no action taken against them and another 17 who are
10 "pending" issuance of a Letter of Instruction (LOI). A LOI is a corrective action,
11 generally a first step before formal adverse action. It is astonishing that approximately two
12 months after the CDPH mandate deadline, so many non-compliant staff have not been
13 subject to any progressive discipline.

14 Third, Defendants' data shows that the many other unvaccinated non-exempt DAI
15 staff have had an LOI issued, but of those, only a half-dozen have pending requests for
16 adverse action. In other words, Defendants have not diligently pursued formal discipline.
17 There's no explanation for this.

18 *Defendants' Position:* CDCR's rate of compliance with the August CDPH order
19 has been challenging to determine, but is much higher than past data suggested. Based on
20 CDCR's analysis of data current through November 28, 2021, CDCR's Division of Adult
21 Institutions (DAI) staff, which includes custody staff, were about 98% compliant with the
22 CDPH order. This means that 98% of DAI staff are either fully vaccinated or have
23 requested an accommodation. CDCR and CCHCS should be able to report compliance
24 rates for all remaining staff soon.

25 On January 14, 2021, CDCR and CCHCS gave Plaintiffs' counsel a comprehensive
26 update regarding their efforts to validate staff vaccination data. Over the past month,
27 CDCR and CCHCS have been working together to resolve the staff vaccination data
28

discrepancy discussed in the parties' previous Case Management Conference statement. CCHCS and CDCR have gone to great efforts through two manual exercises to drill down on the vaccination data to determine its accuracy and reliability, particularly with respect to staff compliance with the August CDPH order. Each manual review took two weeks, and this process was completed twice. It is anticipated that one additional review will be necessary to ensure that contractor data is accurate and current.

The current systems were not designed to track this type of information, and it is therefore challenging to track what is accurate and current at each institution. For instance, the current system could indicate a certain number of staff who are not compliant with the vaccine requirement, but it would not show that those individuals are on extended leave, using up vacation time pending retirement, or on worker's compensation and thus are not entering institutions. It is also unclear in the current system which contractors are presently working in CDCR institutions, and which worked at some point in time for CDCR but are not presently entering institutions.

CCHCS/CDCR still needs additional time to complete their manual review of contractors, however, the data that has been cleared to date is showing significant levels of compliance with the CDPH vaccine mandate by CDCR staff. The first manual review looked into the number of staff who were noncompliant with the CDPH mandate as of November 28, 2021. At Avenal State Prison, for instance, CDCR and CCHCS found that out of a total of 1,076 correctional staff, 94 were subject to the CDPH order. The database showed that 13 of the 94 staff were not vaccinated, but 5 had pending religious accommodation requests, 4 had approved accommodation requests, and 4 were in the interactive process (with each of the 4 having received letters of instruction). In other words, Avenal staff were 96% compliant with the CDPH mandate as of the point-in-time inquiry. Similarly, at California Medical Facility, of the 1,085 DAI staff, 976 were subject to the CDPH order as of November 28, 2021. Of those, 108 were not fully vaccinated. However, 2 were pending accommodation requests and 106 had approved accommodation

requests, thus 100% of all staff were accounted for and either compliant with the CDPH order or in the process of getting clarity as to their request for accommodation. At other institutions, they found that a number of vaccinated staff were showing as unvaccinated in the system, or there were duplicate entries (with some staff entered twice). Thus, the manual review also entailed fixing a number of errors. But the end result demonstrated that custody staff were largely—98% statewide—compliant with the CDPH mandate. *See* **Exhibit F**. Manual verifications require significant time and reallocation of labor. CDCR and CCHCS do not anticipate future manual verifications, and will continue to focus their efforts on enhancing automated systems for tracking staff vaccinations.

Separately, the CDPH issued a public order on December 22, 2021 requiring workers subject to the August 19, 2021 public health order to either receive a COVID-19 vaccine booster dose by February 1, 2022, or test twice a week until they receive a booster shot. *See* Cal. Dep't Pub. Health, *Health Care Worker Vaccine Requirement* (Dec. 22, 2021), https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx. CDCR implemented this order in a December 30, 2021 memorandum, attached as **Exhibit G** to this statement.

The December 22 public health order, like the August 19 order, applies to every worker at the California Health Care Facility, the California Medical Facility, and the skilled nursing facility at the Central California Women's Facility. *See* **Exhibit G**. Additionally, at every institution, this order applies to all Correctional Treatment Centers and similar locations; all Outpatient Housing Units; medical, specialty, mental health, and dental clinic treatment areas; hospice beds; dialysis units; treatment and triage areas; and staff identified as assigned to transportation or medical guarding in the community. *Id.* Additionally, all paid and unpaid regularly assigned workers subject to both CDPH orders include, but are not limited to clinicians, nurses, nursing assistants, technicians, therapists, phlebotomists, pharmacists, dietary staff, janitorial and laundry staff, administrative staff,

registry staff, contract staff, volunteers, custody, custody staff, health facility maintenance workers, incarcerated workers, all five-day-a-week posts, and all regular-day-off posts. The CDPH orders do not apply to non-regularly assigned staff (e.g. relief staff, voluntary overtime, mandatory overtime, swaps), staff who do not work in the area regularly (e.g. staff making pick-ups or deliveries, conducting maintenance repairs, conducting tours), or staff responding to emergencies. *Id*. Noncompliant staff are subject to corrective or disciplinary action, and noncompliance for registry providers and contract workers will be reported to the vendor or contractor. Starting on February 2, 2022, assignments will be ended for registry providers, contractors, and applicable retired annuitants who have not received a booster dose, and who have neither requested nor received a religious or reasonable medical accommodation. *Id*.

III. STAFF TESTING AND MASKING REQUIREMENTS

Plaintiffs' Position: As previously reported, CDCR policy states that unvaccinated workers must submit to twice-weekly testing. However, after receiving data from CDCR and CCHCS documenting that large percentages of unvaccinated custody and nursing staff were not in compliance with this testing requirement, and were apparently not facing progressive discipline for violating policy, we wrote to CDCR and CCHCS on December 3, 2021 with our concerns.

On January 13, 2022, CDCR and CCHCS provided a written response, explaining that "[i]n reviewing the non-compliant cases, almost all staff were either on leave, not scheduled to work, or were included in the disciplinary process for non-compliance." During a meeting on January 14, CDCR and CCHCS staff reported they were unable to determine how many staff were incorrectly identified as noncompliant because they were sick or on leave, as opposed to truly noncompliant—that is, how many had worked without complying with testing requirements.

We were also told that noncompliant staff are not prohibited from coming into the prisons. As we understand it, this is because CDCR and CCHCS cannot currently enforce

testing requirements in real time. Noncompliance is identified only after an employee has failed to test and reported to work for a number of days. Previously, CDCR and CCHCS stationed staff at the entrances to all prisons to screen staff, including for compliance with testing requirements. *See* ECF No. 3566 at 16. Staff who stated they had not recently been tested were given a rapid test. *Id.* That entrance screening was stopped in July 2021 (staff are now directed to self-screen for symptoms and exposure), at a time when active case counts had been very low for several weeks.[19] We believe this real-time check of compliance with testing requirements should restart, and should have restarted when the current wave began.

Finally, current staff testing compliance reports include only unvaccinated custody and nursing staff. CCHCS and CDCR stated this is so because there is no centralized tracking system that shows which other staff (including, for example, other medical and mental health care staff, as well as food service and maintenance staff who have regular contact with residents) are physically arriving to the prisons each day. On January 14, 2022, CCHCS reported that compliance with testing requirements for other unvaccinated staff members is monitored by hand by each prison's CEO and/or Warden. CCHCS also reported they are working on a way to automatically monitor testing compliance for these employees.

In sum, CDCR and CCHCS continue to face significant challenges in monitoring and enforcing the twice-weekly testing requirement for unvaccinated staff. Even if the issues with the data are resolved, real time enforcement will not be possible unless pre-July 2021 practices are immediately reinstated. These challenges underscore the limitations of testing and the need for the State to adopt additional measures—including mandatory

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[19] *See* Cal. Dep't of Corr. & Rehab., *Novel Coronavirus Disease 2019 (COVID-19) New Self-Screening Process*, https://www.cdcr.ca.gov/covid19/novel-coronavirus-disease-2019-covid-19-new-self-screening-process-and-elearning-course/ (July 12, 2021); Cal. Dep't of Corr. & Rehab., *Novel Coronavirus Disease 2019 (COVID-19) self-screening entrance process – updated*, https://www.cdcr.ca.gov/covid19/novel-coronavirus-disease-2019-covid-19-self-screening-entrance-process-updated/ (updated Jan. 3, 2022).

1 vaccination policies—to mitigate the risk that staff will introduce and spread the virus in
2 the prisons.

3 *Defendants' Position:* Adherence to masking and testing policies is an important
4 part of a multilayered response to the COVID-19 pandemic. As discussed above,
5 Defendants require unvaccinated workers and workers required to take a booster shot but
6 who have not yet received one to continue testing twice a week. And in light of recent
7 spread of the COVID-19 Omicron variant and increase in cases, CDCR now requires every
8 worker to wear an N95 mask, regardless of vaccination or exemption status and CDCR and
9 CCHCS enforce the mask mandate for all staff, and require unvaccinated workers to
10 submit to twice-weekly testing[20]. Noncompliant staff will be subject to discipline. The
11 same requirements apply to contractors. However, contractors are not subject to discipline
12 by CDCR or CCHCS because they are not civil servants. Rather, if a contractor is
13 noncompliant, their assignment will be ended. *See* **Exhibit G**. Defendants continue to
14 encourage staff and the incarcerated population to accept the vaccine in the largest possible
15 numbers.

16 Further, staff are closely tracked to ensure they are compliant with testing
17 requirements. The majority of custody and healthcare staff who have contact with the
18 incarcerated population are tracked very closely with an automated system, Telestaff. A
19 smaller number of contracted and other staff who are not in the Telestaff system are
20 tracked manually by the Wardens and CEOs.

21 Finally, if an institution's Warden and CEO determine (in consultation with their
22 Associate Director and Regional Health Care Executive) that their staffing levels are
23 critical, employees who have had significant exposure to COVID-19 may be permitted to
24 return to work. However, these employees must test daily for seven days and must also
25 leave work immediately if a test is positive. These employees must also wear an N95
26 mask while at work.

27

28 [20] CDCR and CCHCS must certify their vaccination status with their supervisors so that the supervisors will know what type of mask each person should be wearing.

IV. VENTILATION

Plaintiffs' Position: As previously discussed, CDCR reports installing MERV-13 filters in housing unit Air Handling Units (AHUs) that can accommodate them. It is not known to what degree this will serve to reduce the spread of the airborne virus during cold weather months, when recirculated air is used for heating. CDCR reports it is continuing to repair some of its AHUs, while others are scheduled for maintenance. CDCR further reports it is working to verify that previously-identified AHU repair projects have been done, and says that such information will be available in February. We will follow up with Defendants regarding these matters, observing again that CDCR should also engage experts to evaluate whether and to what degree these AHU filter upgrades and housing unit ventilation repairs help reduce the spread of the air-borne coronavirus.

In early December 2021, CDCR and CCHCS issued a joint memorandum regarding air filtration requirements for indoor group activity areas, such as classrooms, group counseling rooms, and dining halls. It requires the placement of portable HEPA or Do-It-Yourself MERV-13 filters in all indoor spaces used by groups, with the number needed determined by mathematical formula.

On December 17, 2021, we asked about these requirements, including (1) whether they would result in placement of filters in housing unit dayrooms, (2) for hypothetical examples showing the number of filters would be required in certain spaces given the formula, and (3) whether CDCR or CCHCS would check that the prisons appropriately determined the number of filters needed and had actually placed them in all group areas.

On January 13, 2022, a response was received, including a chart showing the number of filters required in three types of spaces used for indoor group activities. The response and chart were then discussed at a January 14, 2022 meeting. There, CDCR reported that the data provided in the chart regarding the number of filters needed—showing more than a dozen in classroom sized area and hundreds in a typical housing unit dayroom—were incorrect and needed to be redone (revised results were provided on

January 19). It also said that the indoor group area filter requirements would be embodied in the Department Operations Manual. In the written response and at the meeting, it was stated that there was no process in place to check on whether prisons had properly determined the number of filters needed or whether the filters—it said 3,500 had been purchased statewide—were properly placed, even if only to have the prisons themselves verify what had been done. A CDCR representative stated that such validation processes "might" be considered in the future.

Having determined that portable filters for indoor group activity areas are necessary, and adopted a formula for determining the number needed for each space, CDCR must make sure that the prisons properly determined the number of filters needed for each group activity area, and placed the number needed in those areas. We have renewed our request for a concrete plan to verify that prisons accurately determined how many filters are needed for each group activity area (particularly given that Headquarters staff's initial miscalculations suggest the process is complicated), and have placed the needed number of filters in those areas.

Finally with regard to ventilation, CCHCS on January 19 provided a draft report from CALProtect, regarding its visits to multiple prisons in 2021. We are currently reviewing the report. It is approximately 250 pages of text and 140 pages of supplemental material.

Defendants' Position: As Defendants reported in the last Case Management Conference Statements, the air-filter-upgrade project is now complete and MERV-13 filters have been installed in about 630 housing units across the prison system.[21] Most air-handling-unit repairs and maintenance are also complete. As of late August 2021, CDCR had identified 490 air-handling units that were performing below 90% of design

[21] According to the Centers for Disease Control, the "risk of spreading SARS-CoV-2, the virus that causes COVID-19, through ventilation systems is not clear at this time." *See* CDC's Ventilation FAQs at www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html.

1 specifications.[22] As specified in the last Case Management Conference Statement, that
2 number was reduced to about 150 underperforming air-handling units. Continuing efforts
3 by plant-operations staff and the Facility Planning, Construction, and Management
4 Division have now further reduced the number of underperforming air-handling units to
5 about 140, and a schedule is in place for the completion of repairs and maintenance for the
6 remaining air-handling units.

7 Since December 2020, CDCR has directed correctional plant managers at all
8 prisons to maximize outside air circulation and to minimize recirculated air in housing
9 units. That directive was reiterated most recently in a January 5, 2022 memorandum to the
10 prisons, which included instructions to open windows when feasible to increase the
11 introduction of outside air. *See* **Exhibit H**.

12 **V. IMPACT OF COVID-19 ON MEDICAL CARE SERVICES**

13 *Plaintiffs' Position:* As stated above, the current massive outbreaks have resulted in
14 all prisons being placed on a 15-day modified program. Medical appointments are
15 restricted to essential clinical services, meaning many medical appointments will be
16 postponed or canceled, and even after the modified program ends, limited medical services
17 will continue for weeks as outbreaks continue, with services especially limited for the
18 thousands in isolation or quarantined.

19 With regard to COVID-related interruptions in primary care, on January 10 we
20 asked CCHCS to develop and implement written policies or directives regarding, among
21 other things, how to manage chronic care patients whose appointments are delayed or
22 cancelled because of the pandemic. Such was recommended by the Office of the Inspector
23 General (OIG) in a recent draft medical inspection report. The report determined that
24 while many Primary Care Provider (PCP) appointments were appropriately postponed
25 because of the pandemic, others were not because the patient's medical conditions required
26

27 [22] The design specification of an air-handling unit is primarily sized for providing
28 optimal heating and cooling ability, and typically far exceeds the capacity necessary to satisfy code requirements for introducing outside air into a building.

prompt assessment and care. The OIG said in one case a PCP rescheduled appointments even though nurses repeatedly requested that the patient be seen, with nurses eventually consulting with a different provider and the patient admitted to a hospital. We look forward to CCHCS's response regarding this matter.

With regard to specialty services, CCHCS in response to our request recently provided data showing that as of January 3, 2022 there were approximately 8,500 specialty service orders overdue out of approximately 53,000 pending; the overdue total has not appreciably changed since at least May 2021. A report regarding this matter is being or has been prepared for the Receiver, but as of January 18, 2022 had not been provided to us. Unfortunately, the current massive outbreaks are likely to make substantial reduction of this backlog difficult or impossible in the near future.

CCHCS further reported that as of January 3, 2022 there were 846 overdue ultrasound exams for end stage liver patients statewide. This number also has not substantially changed since at least May 2021, and has been of special concern given that the exams are key to the early identification of cancer, and the lack of such timely exams was identified in recent years as a leading cause of possibly preventable deaths.

On January 14, 2022, CCHCS informed us of a plan to reduce these overdue cancer-screening ultrasound exams. The plan is said to include obtaining additional ultrasound technicians and contracting with an outside provider which will hold additional ultrasound clinics through February at the prisons with the largest backlogs. According to CCHCS, these clinics will be held even if a prison is on modified program due to a COVID outbreak. We appreciate these efforts, although we believe they should have been undertaken months ago. We will continue to monitor these backlog totals.

Defendants' Position: Defendants will continue to work with the Receiver and CCHCS to ensure the delivery of medical care services to patients to the full extent possible during the COVID pandemic and the recent spread of the Omicron variant.

VI. INTEGRATED SUBSTANCE USE DISORDER TREATMENT (ISUDT)

Plaintiffs' Position: The number of patients receiving medication assisted treatment (MAT) for substance use disorder continues to slowly increase; just over 13,900 patients now receive such care.[23] However, nearly three thousand patients whom social workers have determined should be evaluated for MAT remain pending an initial addiction medicine Primary Care Provider appointment, most of which are overdue, and approximately 2,500 patients are overdue for a follow-up addiction medicine PCP appointment. Also, tens of thousands of patients are yet to be screened to determine if they have a substance use disorder. Further, only about 40% of MAT patients are receiving cognitive behavioral intervention (CBI), an important element of the ISUDT program, and, as the Receiver indicated last month, the program has presented a medication administration challenge at many prisons that is exhausting and thus not sustainable.

On January 10, 2022, CCHCS, CDCR, and the Governor proposed a very significant increase in ISUDT funding and staffing for the next two fiscal years (commencing July 1). The proposal carefully documents the significant reductions in deaths and sickness related to substance abuse in the prisons since ISDUT was implemented. In addition to those benefits, ISUDT changes many lives for the better. We appreciate and strongly support this budget change proposal which, if enacted by the legislature then fully implemented, should reduce treatment backlogs, provide access to CBI to all receiving MAT, resolve medication administration problems, and expand the availability of ISUDT care to all who require it.

CCHCS, CDCR, and the Governor also on January 10 proposed funding to design and build three classrooms and staff offices at California State Prison, Sacramento for CBI programs, including for ISUDT patients. We appreciate and strongly support this initiative as well. We plan to ask CCHCS and CDCR to describe plans to provide ISUDT-related CBI programs at the other prisons.

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[23] *See* Cal. Corr. Health Care Servs., *ISUDT Program Overview*, https://cchcs.ca.gov/isudt/dashboard/ (last accessed Jan. 16, 2022).

Defendants' Position: Defendants look forward to continued collaboration with their CCHCS partners to expand the ISUDT program's reach and effectiveness within the incarcerated population. As Plaintiffs describe above, budget change proposals for fiscal year 2022-2023 include a line item for expansion and enhancements to CDCR's ISUDT program.

VII. INDIVIDUAL PRISON CONCERNS

A. California State Prison, Los Angeles County (LAC)

Plaintiffs' Position: Data provided by CCHCS shows that as of the end of December 2021 the Primary Care Provider (PCP) appointment backlog at LAC was approximately 1,100, still the highest among the state prisons, but reduced by almost one-half since mid-October 2021, both in absolute numbers and the rate per 100 patients. We appreciate the efforts undertaken to accomplish this.

On January 13, CCHCS informed us that three registry PCP positions had been authorized for LAC, which the prison was attempting to fill, and that in January and February a PCP in one of the prison's four main clinics would see patients on Saturdays.

We will continue to monitor this matter. We have also asked ask CCHCS what can be done such that large PCP appointment backlogs that may arise at LAC or other prisons in the future will be redressed before repeated requests by us.

Defendants' Position: Defendants will continue to collaborate with the Receiver and CCHCS as they work to address the backlogs of PCP appointments and responses to healthcare grievances at LAC. Defendants understand that current efforts are underway by CCHCS to reduce and resolve the backlog at LAC by April 2022. LAC has received approval for three registry positions to hire additional physicians and LAC will also hold Saturday clinics for the months of January and February 2022.

B. Substance Abuse Treatment Facility and State Prison, Corcoran (SATF)

Plaintiffs' Position: Over the past year, our office has repeatedly raised concerns about staff misconduct at SATF, including misconduct by medical staff. *See* ECF No. 3717 at 17-18. Among other issues, we have identified the concerning practice of nurses

1 writing inappropriate and unwarranted Rule Violation Reports (RVRs). Between January
2 1, 2021 and August 17, 2021, nurses at SATF wrote at least 61 RVRs; the majority were
3 written by four nurses. As Defendants described in the last Case Management Conference
4 Statement, on November 8, 2021, the *Armstrong* court issued an order directing the Court
5 Expert to investigate this issue, among others. *See Armstrong v. Newsom*, Case No. 94-cv-
6 2307 CW, ECF No. 3338 (N.D. Cal. Nov. 8, 2021).

7 We received copies of the 61 RVRs on November 23, 2021. Along with our
8 *Armstrong* colleagues, we reviewed the 61 RVRs written by medical staff at SATF and
9 provided our concerns to the *Armstrong* Defendants and Court Expert on December 8,
10 2021 and January 7, 2022. We also shared our concerns and recommendations with the
11 *Plata* Receiver and Defendants on January 18, 2022. As we explained in those
12 submission, we found that the vast majority of these RVRs were issued for conduct that
13 was not serious and did not pose any risk of harm to others—for example, being late to the
14 pill line or forgetting to bring a water cup to the pill line. Many of the RVRs were issued
15 to punish patients for conduct that should simply have been reported to their medical or
16 mental health care teams—for example, not taking medications correctly, or not showing
17 up to take medications at all. These RVRs appeared designed to punish patients for their
18 failure to comply with medication and treatment protocols, rather than to assist patients to
19 get the help and treatment they need. And, again, four nurses were responsible for the
20 majority of these RVRs.

21 On December 7, 2021, we were informed that twenty of these RVRs had been re-
22 reviewed and voided. We are concerned that voiding of these RVRs happened only after
23 inquiries made by Plaintiffs' counsel in both *Armstrong* and *Plata*, and only after the
24 involvement of the Court Expert in *Armstrong*. We believe CDCR and CCHCS need to
25 take further action to ensure this practice is stopped and the culture is improved at SATF.
26 We recently (on January 18) provided our concerns to the Receiver and Defendants; we
27 intend to continue discussions.
28

Defendants' Position: On the afternoon of January 18, 2022, Plaintiffs' counsel sent Defendants an eight-page single-spaced letter regarding the RVRs issued by nursing staff at SATF. Defendants did not have sufficient time to review Plaintiffs' letter in advance of the preparation of this statement. Defendants note however, that Plaintiffs' allegations pertaining to this issue are currently being actively investigated by the *Armstrong* Court Expert.

VIII. DELEGATIONS

The Receiver has previously delegated authority for medical care back to Defendants at 19 prisons. On October 29, the Court issued an Amended Receivership Transition Order, and in an accompanying order stated that the Receiver is developing a new model for evaluating when it is appropriate to delegate medical care at an individual prison, and had strengthened the internal expertise of CCHCS to assist with the evaluation process. The Court also stated the Receiver's evaluations need not be tied to the release of an Office of Inspector General report on a particular prison. *See* ECF Nos. 3278 and 3279.

On November 29, the Receiver informed the parties he was scheduling a meet-and-confer in late January regarding the delegation of medical care at the California Rehabilitation Center (CRC), and provided his draft assessment of medical care at that prison. Since the previous statement was filed, the Receiver rescheduled these meet-and-confers. They will now take place as follows: CRC, February 24, 2022; Richard J. Donovan Correctional Facility (RJD), April 26, 2022; Wasco State Prison (WSP), to be determined; and California State Prison – Solano (SOL), to be determined.

Plaintiffs' Position: In advance of the meet-and-confer regarding CRC scheduled for February 24, we have requested medical-care related documents, information related to the Receiver's expert's assessment of care at the prison, and an early February site visit. However, this meet-and-confer may need to be deferred, as the prison's current large COVID outbreak may mean that a site visit is not prudent, both for patient safety reasons and because the medical delivery system cannot be adequately assessed while CRC has

been and remains in Phase 1.[24]

Defendants' Position: The receivership last delegated authority over medical care services to CDCR at California State Prison – Corcoran in October 2018. Defendants look forward to resuming the delegation meet-and-confer process.

DATED: January 19, 2022

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[24] On January 14, the Special Master in the *Coleman* case, at CDCR's request, deferred a site visit scheduled for January 18 through 20 at Mule Creek State Prison due to a large COVID outbreak at the prison.

DATED: January 19, 2022

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