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 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **OAKLAND DIVISION**

13 MARCIANO PLATA, et al.,  
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 Plaintiffs,  
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 v.  
 16 GAVIN NEWSOM, et al.,  
 17  
 Defendants.  
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CASE NO. 01-1351 JST  
**DEFENDANTS' NOTICE OF RECENT  
 DECISION AND REQUEST FOR  
 CLARIFICATION**

19 This Court's order of September 27, 2021, directed Defendants and the Receiver to  
 20 implement the Receiver's recommendation related to mandatory vaccination for specified  
 21 individuals in CDCR facilities and to submit within 14 days an implementation plan, including a  
 22 deadline by which all covered persons must be vaccinated. (ECF No. 3684 at 21.) The order  
 23 expressly left all details of implementation, including a compliance deadline, to Defendants and  
 24 the Receiver. The order also did not specify whether or how the Court would adopt the  
 25 implementation plan, and any deadline included therein, as an order binding on Defendants or how  
 26 the Court would resolve any disagreements between Defendants and the Receiver that might arise  
 27 related to the implementation plan.

28 As the Court is aware, on Wednesday, October 13, 2021, a Kern County Superior Court

1 judge orally granted a temporary restraining order enjoining CDCR and the California Department  
2 of Public Health (CDPH) from enforcing the requirement that CDCR staff in Bargaining Unit 6  
3 subject to the August 19, 2021 CDPH Order are fully vaccinated against COVID-19. The CDPH  
4 Order required all covered correctional healthcare workers to have received their second dose of a  
5 two-dose regimen or first does of a one-dose regimen by October 14, 2021. As of this filing,  
6 Defendants have not received a copy of the signed order memorializing the temporary restraining  
7 order, though the court's docket currently indicates as follows:

8 10/14/2021 Order

9 Granting Temporary Restraining Order / Order to Show Cause  
10 Pending Preliminary Injunction: IT IS HEREBY ORDERED that  
11 pending the hearing and determination of the order to show cause, the  
12 above-named Defendants, and each of them, and their officers,  
13 agents, employees, representatives and all persons acting in concert  
14 or participating with them, are restrained and enjoined from engaging  
15 in or performing directly or indirectly, and all of the following acts:  
16 Enforcing the requirement that the CDCR staff who are Bargaining  
17 Unit 6 members and specified in the August 19, 2021 California  
18 Department of Public Health Order and delineated in the August 23,  
19 2021 California Department of Corrections and Rehabilitation  
20 Memorandum be fully vaccinated against COVID-19 by October 14,  
21 2021. \*\*\* The TRO is GRANTED and shall expire on October 22,  
22 2021 at 5:00 pm

23 Barmann, Bernard C., Jr.  
24 Judicial Officer

25 Defendants are concerned that implementation of this Court's September 27, 2021 order  
26 may conflict with the state court order because this Court's order compels CDCR to implement a  
27 vaccine mandate for all correctional staff (although without specifying any deadline) whereas  
28 CDCR is separately enjoined until at least October 22, 2021, from implementing a vaccine  
mandate in correctional settings for CDCR staff in Bargaining Unit 6 (which includes correctional  
officers). Counsel for the Receiver also appears unsure of the effect of the state court order,  
stating during the hearing held in this Court on October 14, 2021, that he would be filing a request  
for instructions from this Court.

Additionally, as noted in the implementation plan filed on October 12, 2021, Defendants

1 and the Receiver disagreed about the appropriate timeframe for implementation. (ECF No. 2694  
2 at 5, n.3.) It does not appear that any specific timeframe governs compliance with this Court's  
3 September 27 order, though Defendants' (and apparently the Receiver's) uncertainty as to the  
4 impact of the state court order is likely to delay implementation.

5 Defendants therefore request clarification from the Court regarding what deadline, if any,  
6 for implementing the Receiver's recommendation is applicable in light of the state court order  
7 partially prohibiting the State's implementation of the vaccine mandate; resolution of the  
8 disagreement between Defendants and the Receiver noted in the implementation plan related to  
9 timing for implementation; and direction on how Defendants should implement this Court's order  
10 without violating the temporary restraining order issued by the Kern County Superior Court. In  
11 light of the state court order that potentially bars Defendants from implementing the plan as to  
12 some correctional officers and the uncertainty created by the order, the deadlines set forth in the  
13 October 12, 2021 plan are no longer achievable and Defendants request clarification from this  
14 Court as to what deadlines, if any, now apply.

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DATED: October 15, 2021

HANSON BRIDGETT LLP

By:           /s/ Samantha D. Wolff            
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