

1 JAMIE L. DUPREE (SBN: 158105)  
 jdupree@fddcm.com  
 2 JAIME G. TOUCHSTONE (SBN: 233187)  
 jtouchstone@fddcm.com  
 3 FUTTERMAN DUPREE DODD CROLEY MAIER LLP  
 4 601 Montgomery Street, Suite 333  
 San Francisco, California 94111  
 5 Telephone: (415) 399-3840  
 Facsimile: (415) 399-3838  
 6

7 BRAD D. BRIAN (State Bar No. 79001)  
 brad.brian@mto.com  
 8 KATHERINE M. FORSTER (State Bar No. 217609)  
 katherine.forster@mto.com  
 9 JACOB S. KREILKAMP (State Bar No. 248210)  
 jacob.kreilkamp@mto.com  
 10 ROBERT E. BOWEN (State Bar. No. 335932)  
 robert.bowen@mto.com  
 11 MUNGER, TOLLES & OLSON LLP  
 12 350 South Grand Avenue  
 Fiftieth Floor  
 13 Los Angeles, California 90071-3426  
 Telephone: (213) 683-9100  
 14 Facsimile: (213) 687-3702  
 15 Attorneys for Receiver  
 16 J. Clark Kelso

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION  
 19

20 MARCIANO PLATA, et al.,  
 21 Plaintiffs,  
 22 vs.  
 23 GAVIN NEWSOM, et al.,  
 24 Defendants.  
 25

Case No. 4:01-cv-01351-JST  
**REPLY TO PARTIES' RESPONSE RE  
 REPORT OF MEET AND CONFER ON  
 IMPLEMENTATION PLAN (ECF 3710).**

1 Defendants' response confirms the essential facts showing a continued and unnecessary  
2 delay in implementing this Court's order.

3 Defendants acknowledge that, absent a Court order setting an implementation date, they  
4 will not implement this Court's order without first taking time to bargain with the unions. ECF  
5 No. 3710 at 3. Defendants concede that if the Court orders implementation by a certain date,  
6 bargaining obligations would not bar compliance: "a court order requiring the State to take action  
7 by a date certain would normally exempt the State from their contractual bargaining  
8 requirements." ECF No. 3710 at 3.

9 Defendants also make clear that they do not intend to invoke an emergency exception  
10 which would permit implementation prior to bargaining. ECF No. 3710 at 4; Wolff Decl. ¶ 3 ("I  
11 also explained that the current status of COVID-19 within the institutions likely does not  
12 constitute an emergency."). Defendants take this position despite implementing nearly every  
13 COVID-19 policy throughout the pandemic without providing formal notice and bargaining prior  
14 to implementation pursuant to the emergency exception, including as recently as August 2021.  
15 Siaca Decl. ¶ 5, Exhibit A. The position is not in accord with the facts; the continuation of a  
16 substantial risk of serious harm to every incarcerated person in CDCR custody is an emergency  
17 requiring prompt implementation of the Court's September 27 order. Without a further court  
18 order, Defendants will not implement the Court order in time to meet the Court's clear goals.

19 Unfortunately, Defendants did not raise these issues until October 18, nearly three weeks  
20 into discussions about how to implement this Court's September 27 order. *See* Forster Reply  
21 Decl. at ¶ 3. Nevertheless, the Defendants have now made clear that this Court's September 27  
22 order will not be timely implemented unless the Court orders implementation by a date certain.  
23 The Receiver requests that the Court set such a date in order to set this process in motion before it  
24 is too late.

25 **I. Implementation Will Not Begin Without Intervention from the Court.**

26 Defendants have made clear that implementation will not proceed in a timely fashion  
27 without the Court's intervention. After working together for two weeks and submitting a joint  
28

1 implementation plan to the Court on October 12, CDCR and CCHCS prepared a joint notice to the  
2 field directing implementation according to that plan. Forster Reply Decl. ¶ 2.

3 On October 13, Judge Bernard Barmann of the Kern County Superior Court issued a  
4 temporary restraining order enjoining enforcement of the California Department of Public  
5 Health’s (CDPH) August 19 order as to Bargaining Unit 6. On the morning of October 15,  
6 counsel for the Receiver obtained Judge Bernard’s written order that confirmed that no conflict  
7 was intended between his order and this Court’s September 27 order. *Id.* The Receiver  
8 communicated to Defendants his willingness to proceed with notice to the field with a final  
9 implementation date of December 13, 2021. *Id.* See ECF No. 3694 at 5 n.3 (noting that the  
10 Defendants’ preferred date for final implementation was December 20, 2021).

11 It was only then—after three weeks of work, after the parties had agreed on a plan for  
12 implementation and submitted it to the Court, and after the parties had agreed on detailed guidance  
13 to the field and set a date for issuing that guidance—that Defendants asserted that they would not  
14 proceed with the implementation plan submitted to the Court only days earlier, on October 12. *Id.*  
15 at ¶ 3. Defendants claimed that no court order obligated them to proceed by any particular date  
16 and that no emergency justified implementation prior to notice and bargaining with the unions.

17 In spite of the fact that the temporary restraining order was lifted, counsel for Defendants  
18 now refuse to commit to *any* date for implementation of the Court’s order. *Id.*; ECF No. 3707 at  
19 2. Defendants have made clear that they regard the implementation date as a matter of discretion  
20 for CDCR and CCHCS, and that they do not believe they have any obligation to proceed  
21 according to the October 12 joint submission. See ECF No. 3711 at 2, ¶ 3 (“the Receiver and  
22 Defendants have discretion to work out a timeline . . .”). The Receiver believes this view is in  
23 direct contradiction of this Court’s September 27 order, which instructed the parties that their  
24 jointly filed implementation plan would set the implementation deadline. See ECF No. 3684 at 21  
25 (“the Court does not set a compliance deadline *in this order* and instead orders the Receiver and  
26 Defendants to submit an implementation plan that includes *such a deadline.*”) (emphasis added).

27 Nor was there any unilateral action ending the meet and confer process. At the conclusion  
28 of the second meet and confer on October 19, the Receiver’s counsel asked counsel for the

1 Defendants whether there was anything further to discuss. Forster Reply Decl. at ¶ 4. Counsel for  
2 the Defendants stated that there was not. *Id.* The meet and confer process has in fact continued,  
3 but to no avail. On Friday, October 22, CDCR appeared to be moving forward and proposed a  
4 draft implementation memorandum to go out on Monday, October 25, 2021. *Id.* at ¶ 5, Exhibit B.  
5 But the memorandum did not issue, and on October 26, counsel for Defendants notified the  
6 Receiver that their position had changed again. *Id.* at ¶ 6. They stated that they would not move  
7 forward because CCPOA “takes the position that CDCR and the Receiver/CCHCS must wait 60  
8 days before implementation, not just the imposition of discipline.” *Id.* If this Court orders  
9 implementation by a date certain, CCPOA’s contention that implementation should not proceed  
10 for 60 days would become legally irrelevant.

11 **II. Local Rules Do Not Require a Noticed Motion to Clarify Details of the**  
12 **Implementation of an Order Already Issued After Notice, Briefing, and a Hearing.**

13 The Local Rules do not prevent a court from enforcing an order already issued after notice,  
14 briefing, and a hearing; there is no need for further notice, briefing, and hearing before taking such  
15 action. Defendants themselves recognized this when they unilaterally sought and obtained  
16 clarification from the Court on implementation of the Court’s September 27 order just a week and  
17 a half ago. *See* ECF No. 3703; ECF No. 3705.

18 This Court has already ordered that the timeline for the joint implementation plan is the  
19 deadline for compliance with the Court’s September 27 order. “[T]he Court does not set a  
20 compliance deadline *in this order* and instead orders the Receiver and Defendants to submit an  
21 implementation plan that includes *such a deadline*.” ECF No. 3684 at 21 (emphasis added). The  
22 Receiver and Defendants submitted a joint implementation plan and are bound by that deadline of  
23 November 29, 2021. *See* ECF No. 3694 at 5. But Defendants refused to begin implementation on  
24 the ground that there was no order requiring compliance by a certain date. The Receiver proposed  
25 a new order with an express implementation date with which it and defendants can comply. And  
26 this Court has provided all parties appropriate opportunity to respond to the Receiver’s report of  
27 the meet and confer and the proposed order.  
28

1 **III. Defendants’ Explanations for Why They Cannot Promptly Proceed With**  
 2 **Implementation Are Inconsistent With Their Past Conduct and With Case Law on**  
 3 **the Emergency Exception**

4 Defendants now assert that “the current status of COVID-19 within the institutions likely  
 5 does not constitute an emergency.” Wolff Decl. ¶ 3. Yet throughout the pandemic, Defendants  
 6 have repeatedly implemented COVID-19 policies prior to notice and bargaining. Siaca Decl. ¶ 5.  
 7 Defendants make no effort to justify this contention, which flies in the face of this Court’s finding  
 8 of an ongoing violation of the Eighth Amendment rights of every incarcerated person in CDCR  
 9 custody and an ongoing pandemic and outbreaks. There is no serious dispute but that a delay of  
 10 weeks or months for bargaining will result in additional COVID-19 outbreaks in institutions  
 11 unable to control them.

12 On this issue, CCPOA points to *Sonoma County Organization etc. Employees v. County of*  
 13 *Sonoma*, 1 Cal. App. 4th 267 (1991). That case pertains to a different statute, the Meyers-Milias-  
 14 Brown Act, and to a different context, a municipal ordinance rather than compliance with a court  
 15 order. To the extent that the case is applicable here, it demonstrates that it is well within CDCR’s  
 16 power to declare that an emergency exists. The “sine qua non” of the inquiry is whether there is  
 17 “a substantial likelihood that serious harm will be experienced unless immediate action is taken.”<sup>1</sup>  
 18 *Id.* at 277 (internal citation omitted). The Court has already found as much in this case. *See* ECF  
 19 No. 3684 at 9, 11. The facts before the court in *County of Sonoma* are also instructive. There, the  
 20 court found that an emergency existed where a union attempted to gain leverage in a contractual  
 21 negotiation by organizing employees to call out sick “on a sporadic and erratic basis” because it  
 22 caused disruption to the provision of medical care, which demonstrated that the tactic was not  
 23 mere “irritation and inconvenience.” *County of Sonoma*, 1 Cal. App. 4th at 270, 278. Here, the  
 24 Court has found disruption to the provision of medical care that poses “a substantial risk of serious  
 25 harm.” ECF No. 3684 at 11.

26 \_\_\_\_\_  
 27 <sup>1</sup> While CCPOA points to the *County of Sonoma* Court’s statement that an emergency is “an  
 28 unforeseen situation calling for immediate action,” the Court closely followed that observation by  
 noting, “[i]t is a considerably harder task to specify identifying characteristics of an emergency,  
 given that the term depends greatly upon the special circumstances of each case.” *Id.* at 276 - 77.

1 Defendants also assert that they cannot proceed with implementation prior to bargaining  
 2 because they have received “at least one cease-and-desist letter, an unfair practice complaint, and a  
 3 lawsuit seeking to permanently restrain CDCR’s implementation of a vaccine mandate for failure  
 4 to properly notice and bargain.” ECF No. 3710 at 4. Let the challenges come. Expected  
 5 challenges to the implementation of a new policy are routine and neither require nor justify the  
 6 suspension of implementation, as Defendants have recognized in implementing the August 19  
 7 CDPH order. Siaca Decl. ¶ 8. The unfair practice complaint and the lawsuit referenced by  
 8 Defendants were aimed at the August 19 CDPH order, which Defendants are continuing to  
 9 implement prior to bargaining, in spite of the efforts to resist by affected unions. *Id.* See also  
 10 Wolff Decl. ¶ 4. Defendants’ only explanation of why they have proceeded with implementing  
 11 the August 19 CDPH order and yet cannot do so here is that the CDPH order provided a deadline  
 12 for implementation while, Defendants contend, there is no such deadline here. See Forster Reply  
 13 Decl. ¶ 3. That interpretation of this Court’s prior order is mistaken; in any event, it can be readily  
 14 addressed.

15 **IV. Conclusion**

16 The Court’s September 27 order is now a month old and implementation has not yet  
 17 begun. In the meantime, every incarcerated person in CDCR custody continues to be at a  
 18 substantial risk of serious harm from COVID-19. The parties agree that implementation can begin  
 19 immediately if the Court orders that implementation be completed by a certain date. The Receiver  
 20 therefore respectfully requests that the Court order implementation by a certain date.

22 DATED: October 27, 2021

MUNGER, TOLLES & OLSON LLP

24 By: /s/ Katherine M. Forster  
 25 KATHERINE M. FORSTER  
 Attorneys for Receiver J. Clark Kelso

**Reply Declaration of Katherine Forster**

I declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746, as follows:

1. I am Katherine M. Forster, counsel to the Receiver, J. Clark Kelso, in the above captioned matter. Since the Court's September 27 order, I have been involved in negotiations over implementation of the order. I write to supplement my previous declaration with developments in negotiations over implementation between CDCR and CCHCS over the past week.
2. After submitting a joint implementation plan to the Court on October 12, CDCR and CCHCS prepared a joint notice to the field directing implementation according to that plan. Issuance of that notice was delayed by a temporary restraining order enjoining CDCR from enforcing the California Department of Public Health's (CDPH) August 19 order as to Bargaining Unit 6 issued in Kern County Superior Court on October 13. CDCR and CCHCS determined to wait for the court's written order to determine whether there was any conflict with implementation of the Court's September 27 order. On October 15, I reviewed that written order and determined that no conflict existed. The Receiver then indicated that he was prepared to proceed with notice to the field with a final implementation date of December 13, 2021.
3. At meet and confer conferences on October 18 and 19, Defendants refused to commit to any date for implementation and raised, for the first time, concerns that they would need to meet and confer with bargaining units prior to implementation. Defendants gave two reasons: First, they contended that there was no specific date by which they were obligated to be in compliance with the Court's September 27 order. In the absence of such a date, they asserted they would have to bargain prior to implementation. Second, they suggested that COVID-19 may not currently constitute an emergency permitting implementation prior to bargaining under the Dills Act.
4. The meet and confer process ended by mutual agreement, not unilaterally. At the conclusion of the October 19 meet and confer, I asked counsel for Defendants whether there was anything further to discuss. Counsel for the Defendants said there was not.
5. Defendants and the Receiver have nevertheless continued to meet and confer without result. On Friday, October 22, CDCR proposed a draft implementation memorandum to be issued on Monday, October 25. But the memorandum was never issued. The correspondence regarding the October 25 draft memorandum was provided to me by Paul Mello on October 25, 2021 at 7:22 pm. Mr. Mello's transmittal email is attached as Exhibit A, and the correspondence regarding the memorandum to be issued on October 25 is attached as Exhibit B.
6. On October 26, Mr. Mello notified me that Defendants' position had changed yet again. At the October 18 and 19 meet and confers, Defendants had said that implementation of the Court's order could begin prior to the expiration of the 60 day notice period, but progressive discipline could not begin until the notice period expired. On October 26, at 12:12 pm, Mr. Mello said that "In light of CCPOA's filing yesterday in which they taken

the position that CDCR and the Receiver/CCHCS must wait 60 days before implementation, not just the imposition of discipline, our clients are concerned that if they do not follow the 60-day notice period before implementation CDCR and the Receiver will face additional labor related issues . . . .” This correspondence is attached as Exhibit C.

Executed on this 27th day of October, 2021, at Los Angeles, California.

/s/ Katherine M. Forster

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Katherine M. Forster



# EXHIBIT A

---

**From:** Paul B. Mello <Pmello@hansonbridgett.com>  
**Sent:** Monday, October 25, 2021 7:22 PM  
**To:** Forster, Katherine  
**Cc:** JDupree@fddcm.com; Bowen, Robert; Brian, Brad; Meltzer, Jonathan; Kreilkamp, Jacob; Roscoe Barrow; Samantha Wolff; v\_Damon.McClain@doj.ca.gov; Laurel E. O'Connor; 'Iram Hasan'; David C. Casarrubias; Ambra S. Jackson  
**Subject:** Plata -- Meet and Confer regarding implementation schedule  
**Attachments:** FW Vaccination Implementation Memo Plata Order

Katherine,

Per the attached email it appears that the Receiver, through CCHCS, has reengaged with CDCR on an implementation schedule. It also appears that CCHCS has set forth a new schedule that differs from the schedule set forth in the proposed order your office filed last week. For all the reasons set forth during our discussions last week, and in our filing of today, and without waiving any issues on appeal or in their now filed motion for stay, CDCR is amendable to an implementation schedule that provides for implementation at least 60 days after formal notice has been provided to the various unions. Will the Receiver agree to a schedule that provides 60 days-formal notice to the unions before implementation? Additionally, is the Receiver amenable to resuming meeting and conferring to work out a timeline? If he is, we will report that fact in the Court in our joint CMC statement that is due tomorrow.

Please let us know.

Paul Mello

---

**Paul B. Mello**

**Partner**

Hanson Bridgett LLP  
(925) 746-8480 Direct  
(925) 746-8492 Fax  
pmello@hansonbridgett.com



425 Market Street, 26th Floor  
San Francisco, CA 94105

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# EXHIBIT B

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**From:** Paul B. Mello <Pmello@hansonbridgett.com>  
**Sent:** Monday, October 25, 2021 4:01 PM  
**To:** Paul B. Mello  
**Subject:** FW: Vaccination Implementation Memo Plata Order  
**Attachments:** DRAFT MEMO - Order Re Mandatory Vaccinations for Workers Cleancopy 10-25-21.docx; DRAFT MEMO - Order Re Mandatory Vaccinations for Workers (10.22 compared with 10.15 version w 10.24.21 edits.docx

---

**From:** Saich, Lara@CDCR <[Lara.Saich@cdcr.ca.gov](mailto:Lara.Saich@cdcr.ca.gov)>  
**Sent:** Monday, October 25, 2021 7:30 AM  
**To:** Barretto, Jennifer@CDCR <[Jennifer.Barretto@cdcr.ca.gov](mailto:Jennifer.Barretto@cdcr.ca.gov)>; Toche, Diana@CDCR <[Diana.Toche@cdcr.ca.gov](mailto:Diana.Toche@cdcr.ca.gov)>; Macomber, Jeff@CDCR <[Jeffrey.Macomber@cdcr.ca.gov](mailto:Jeffrey.Macomber@cdcr.ca.gov)>; Neill, Jennifer@CDCR <[Jennifer.Neill@cdcr.ca.gov](mailto:Jennifer.Neill@cdcr.ca.gov)>  
**Cc:** Ramirez, Robert@CDCR <[Robert.Ramirez@cdcr.ca.gov](mailto:Robert.Ramirez@cdcr.ca.gov)>; Heinitz, Whitney@CDCR <[Whitney.Heinitz2@cdcr.ca.gov](mailto:Whitney.Heinitz2@cdcr.ca.gov)>; Lopez, Stacy@CDCR <[Stacy.Lopez@cdcr.ca.gov](mailto:Stacy.Lopez@cdcr.ca.gov)>; Siaca, Migdalia@CDCR <[Migdalia.Siaca@cdcr.ca.gov](mailto:Migdalia.Siaca@cdcr.ca.gov)>; Barrow, Roscoe@CDCR <[Roscoe.Barrow@cdcr.ca.gov](mailto:Roscoe.Barrow@cdcr.ca.gov)>; Kirkland, Richard@CDCR <[Richard.Kirkland@cdcr.ca.gov](mailto:Richard.Kirkland@cdcr.ca.gov)>; Dovey, John@CDCR <[John.Dovey@cdcr.ca.gov](mailto:John.Dovey@cdcr.ca.gov)>; Delgado, Nathan@CDCR <[nathan.delgado@cdcr.ca.gov](mailto:nathan.delgado@cdcr.ca.gov)>; Alanzalon, Sarah@CDCR <[Sarah.Alanzalon@cdcr.ca.gov](mailto:Sarah.Alanzalon@cdcr.ca.gov)>  
**Subject:** RE: Vaccination Implementation Memo Plata Order

Good morning, Unders! We had some further discussion with the Receiver and counsel over the weekend, and it is suggested that we provide a range for non-compliance activities starting on December 7, 2021, and allowing through January 3, 2022, for progressive discipline to commence. This will provide additional time for necessary union activities and allows for hiring authorities to avoid the holidays.

Jenn B., I've attached (1) your Friday version of the memo with the adjustments made in tracked changes (comments are included and some necessary clean-up was done) and (2) a cleancopy version of the memo dated today.

We are hopeful that you all are agreeable to these changes. If so, we can get this loaded into Docusign for signature and get it out today. If you identify any necessary changes, please use the cleancopy version to suggest any edits. THANKS!!

**Lara Saich**  
Director  
Health Care Policy and Administration

916-691-3704 Office  
916-862-0700 iPhone  
[Lara.Saich@cdcr.ca.gov](mailto:Lara.Saich@cdcr.ca.gov)



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**From:** Barretto, Jennifer@CDCR <[Jennifer.Barretto@cdcr.ca.gov](mailto:Jennifer.Barretto@cdcr.ca.gov)>

**Sent:** Friday, October 22, 2021 2:09 PM

**To:** Heinitz, Whitney@CDCR <[Whitney.Heinitz2@cdcr.ca.gov](mailto:Whitney.Heinitz2@cdcr.ca.gov)>; Saich, Lara@CDCR <[Lara.Saich@cdcr.ca.gov](mailto:Lara.Saich@cdcr.ca.gov)>; Lopez, Stacy@CDCR <[Stacy.Lopez@cdcr.ca.gov](mailto:Stacy.Lopez@cdcr.ca.gov)>

**Cc:** Toche, Diana@CDCR <[Diana.Toche@cdcr.ca.gov](mailto:Diana.Toche@cdcr.ca.gov)>; Macomber, Jeff@CDCR <[Jeffrey.Macomber@cdcr.ca.gov](mailto:Jeffrey.Macomber@cdcr.ca.gov)>; Neill, Jennifer@CDCR <[Jennifer.Neill@cdcr.ca.gov](mailto:Jennifer.Neill@cdcr.ca.gov)>; Ramirez, Robert@CDCR <[Robert.Ramirez@cdcr.ca.gov](mailto:Robert.Ramirez@cdcr.ca.gov)>

**Subject:** Vaccination Implementation Memo Plata Order

Good afternoon, attached is a tracked changes version and final version of the implementation memo for the Plata Order re staff vaccinations. CDCR is ready to move forward with this memo for issuance on Monday, October 25, 2021.

Whitney, please do a final proof of the final memo attached and route in docusign to the Secretary for signature. Please also work with CCHCS for their signature routing.

Thanks! Jenn

**Jennifer Barretto**

Undersecretary, Administration

California Department of Corrections and Rehabilitation

(916) 639-2718 mobile

[jennifer.barretto@cdcr.ca.gov](mailto:jennifer.barretto@cdcr.ca.gov)

Pronouns: she/her/hers

# EXHIBIT C

---

**From:** Forster, Katherine  
**Sent:** Wednesday, October 27, 2021 7:32 AM  
**To:** Paul B. Mello  
**Cc:** jdupree@fdcdm.com; Bowen, Robert; Brian, Brad; Meltzer, Jonathan; Kreilkamp, Jacob; Roscoe Barrow; Samantha Wolff; damon.mcclain@doj.ca.gov; Laurel E. O'Connor; Iram Hasan; David C. Casarrubias; Ambra S. Jackson  
**Subject:** Re: Plata -- Meet and Confer regarding implementation schedule

Paul,

The Receiver is aware of CCPOA's position but does not agree with it or that it is a reason to delay. More generally, the Receiver believes that there is an emergency here allowing implementation to begin prior to bargaining. The court's findings support the Receiver's position, and so the implementation process here should mirror that used for many other measures throughout the pandemic, including the August 19 CDPH order. The Receiver also believes that CDCR and CCHCS are obliged to follow the joint implementation plan they submitted to the Court on October 12 in accordance with the Court's September 27 order.

We would like to confirm a process point: When you say "wait 60 days before implementation," what does "implementation" mean? It is our understanding that formal notice to the unions inviting bargaining is given after the joint implementation memo goes out. We invite CDCR to send us a draft implementation memo with dates that would be acceptable to CDCR.

Best,  
Katherine

On Oct 26, 2021, at 12:12 PM, Paul B. Mello <Pmello@hansonbridgett.com> wrote:

Katherine,

Thank you for the quick response. In light of CCPOA's filing yesterday in which they take the position that CDCR and the Receiver/CCHCS must wait 60 days before implementation, not just the imposition of discipline, our clients are concerned that if they do not follow the 60-day notice period before implementation CDCR and the Receiver will face additional labor related issues including cease and desist letters, unfair practice charges, litigation and further delay. Given this change in circumstance, our clients are very concerned about issuing a memo that requires implementation prior to day 60. Does CCPOA's statement yesterday, and this change in circumstance, cause the Receiver similar concern?

Thanks.

Paul

---

**Paul B. Mello**  
Partner  
Hanson Bridgett LLP  
(925) 746-8480 Direct



(925) 746-8492 Fax  
pmello@hansonbridgett.com

425 Market Street, 26th Floor  
San Francisco, CA 94105

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**From:** Forster, Katherine <Katherine.Forster@mto.com>  
**Sent:** Tuesday, October 26, 2021 7:32 AM  
**To:** Paul B. Mello <Pmello@hansonbridgett.com>  
**Cc:** JDupree@fddcm.com; Bowen, Robert <Robert.Bowen@mto.com>; Brian, Brad <Brad.Brian@mto.com>; Meltzer, Jonathan <Jonathan.Meltzer@mto.com>; Kreilkamp, Jacob <Jacob.Kreilkamp@mto.com>; Roscoe Barrow <Roscoe.Barrow@cdcr.ca.gov>; Samantha Wolff <SWolff@hansonbridgett.com>; v\_Damon.McClain@doj.ca.gov <Damon.McClain@doj.ca.gov>; Laurel E. O'Connor <LOConnor@hansonbridgett.com>; 'Iram Hasan' <Iram.Hasan@doj.ca.gov>; David C. Casarrubias <DCasarrubias@hansonbridgett.com>; Ambra S. Jackson <AJackson@hansonbridgett.com>  
**Subject:** [EXTERNAL] FW: Plata -- Meet and Confer regarding implementation schedule  
**Importance:** High

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Good morning, Paul.

As set forth in the email string you've attached, CDCR reached out last Friday to reengage on the implementation memo and indicated that CDCR was prepared to issue the memo on Monday (i.e., yesterday). The draft memo that CDCR sent to CCHCS last Friday is attached here for reference. While the implementation schedule differed slightly from what the Receiver submitted to the court in the proposed order, the schedule tracked with the 14-day period for new hires to get vaccinated, which we understood to be an important implementation goal. And as CCHCS's responsive email confirms, CCHCS suggested only a few changes to CDCR's draft, including an outside date for progressive discipline to begin.

As you may recall, during our meet and confer on October 19, CDCR indicated that it believed it could not begin progressive discipline until the notice period to the unions had elapsed, 60 days being the longest such period that applies. We specifically asked CDCR to confirm that it was not issuance of the implementation memo, but rather the commencement of progressive discipline, that would need to wait until the notice period elapsed. CDCR confirmed that position.



The January 3, 2022 outside date for discipline to commence that appears in the draft implementation memo circulated by CCHCS yesterday morning was designed to accommodate this 60-day notice period, plus a few days to avoid commencing discipline over the holidays.

The Receiver remains willing to proceed on this schedule (adjusting the compliance timeline by one day, since the memo did not go out yesterday as planned) but is not willing to wait until 60 days after notice to the unions before implementation even begins.

Best,  
Katherine

**Katherine M. Forster** ([she/her](#)) | **Munger, Tolles & Olson LLP**  
350 South Grand Ave., 50th Floor | Los Angeles, CA 90071  
Tel: 213.683.9538 | Fax: 213.593.2838 | [katherine.forster@mto.com](mailto:katherine.forster@mto.com) | [www.mto.com](http://www.mto.com)

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**From:** Paul B. Mello <[Pmello@hansonbridgett.com](mailto:Pmello@hansonbridgett.com)>  
**Sent:** Monday, October 25, 2021 7:22 PM  
**To:** Forster, Katherine <[Katherine.Forster@mto.com](mailto:Katherine.Forster@mto.com)>  
**Cc:** [JDupree@fddcm.com](mailto:JDupree@fddcm.com); Bowen, Robert <[Robert.Bowen@mto.com](mailto:Robert.Bowen@mto.com)>; Brian, Brad <[Brad.Brian@mto.com](mailto:Brad.Brian@mto.com)>; Meltzer, Jonathan <[Jonathan.Meltzer@mto.com](mailto:Jonathan.Meltzer@mto.com)>; Kreilkamp, Jacob <[Jacob.Kreilkamp@mto.com](mailto:Jacob.Kreilkamp@mto.com)>; Roscoe Barrow <[Roscoe.Barrow@cdcr.ca.gov](mailto:Roscoe.Barrow@cdcr.ca.gov)>; Samantha Wolff <[SWolff@hansonbridgett.com](mailto:SWolff@hansonbridgett.com)>; [v.Damon.McClain@doj.ca.gov](mailto:v.Damon.McClain@doj.ca.gov) <[Damon.McClain@doj.ca.gov](mailto:Damon.McClain@doj.ca.gov)>; Laurel E. O'Connor <[LOConnor@hansonbridgett.com](mailto:LOConnor@hansonbridgett.com)>; 'Iram Hasan' <[Iram.Hasan@doj.ca.gov](mailto:Iram.Hasan@doj.ca.gov)>; David C. Casarrubias <[DCasarrubias@hansonbridgett.com](mailto:DCasarrubias@hansonbridgett.com)>; Ambra S. Jackson <[AJackson@hansonbridgett.com](mailto:AJackson@hansonbridgett.com)>  
**Subject:** Plata -- Meet and Confer regarding implementation schedule

Katherine,

Per the attached email it appears that the Receiver, through CCHCS, has reengaged with CDCR on an implementation schedule. It also appears that CCHCS has set forth a new schedule that differs from the schedule set forth in the proposed order your office filed last week. For all the reasons set forth during our discussions last week, and in our filing of today, and without waiving any issues on appeal or in their now filed motion for stay, CDCR is amendable to an implementation schedule that provides for implementation at least 60 days after formal notice has been provided to the various unions. Will the Receiver agree to a schedule that provides 60 days-formal notice to the unions before implementation? Additionally, is the Receiver amenable to resuming meeting and conferring to work out a timeline? If he is, we will report that fact in the Court in our joint CMC statement that is due tomorrow.

Please let us know.

Paul Mello

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**Paul B. Mello**

**Partner**

Hanson Bridgett LLP

(925) 746-8480 Direct

(925) 746-8492 Fax

pmello@hansonbridgett.com



425 Market Street, 26th Floor

San Francisco, CA 94105

San Francisco | Sacramento | North Bay | East Bay | Los Angeles



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**Declaration of Migdalia Siaca**

I declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746, as follows:

1. I am Migdalia Siaca, Deputy Director, Labor Relations, Performance Management, and Staff Development for California Correctional Health Care Services (“CCHCS”). I have overseen labor relations for CCHCS for twelve years, for the last six years as Deputy Director. In this capacity I manage labor relations with the fifteen bargaining units representing CCHCS employees. I have frequently led negotiations with those units, including many negotiations subject to the Dills Act’s requirement to provide notice and meet and confer with bargaining units prior to implementation.
2. There are 21 bargaining units representing CDCR and CCHCS employees. CDCR and CCHCS each maintain their own labor relations office to coordinate with bargaining units covering their respective employees. Fifteen bargaining units include CCHCS employees including units represented by the Service Employees International Union (SEIU), the Union of American Physicians and Dentists (UAPD), and the American Federation of State, County and Municipal Employees (AFSCME), and the California Association of Psychiatric Technicians (CAPT).
3. While the California Department of Human Resources (CalHR) has authority to negotiate with bargaining units on behalf of the Governor, CalHR routinely delegates responsibility for negotiating local issues to the employing agency. In practice, this has meant that CCHCS and CDCR have negotiated agreements with the 21 bargaining units representing CDCR and CCHCS employees. However, certain ultimate decisions, such as the decision to declare an impasse, have historically required approval of CalHR.
4. Limiting entry to CDCR institutions to workers who are fully vaccinated for COVID-19 would be a change to a term or condition of employment. Such a policy would typically be instituted by a joint memorandum between the CDCR Secretary and the Receiver. Unless CDCR and CCHCS declare that an emergency exception exists, the Dills Act requires that CDCR and CCHCS provide notice and an opportunity to meet and confer prior to implementation of such a policy.
5. Since the beginning of the pandemic, CDCR and CCHCS have implemented all COVID-19 related changes in policy prior to meeting and conferring recognizing the emergency exception to the Dills Act. They have implemented the vast majority of those policies without providing official notice to labor unions prior to implementation. A list of these policy changes is attached as Exhibit A. For example, CDCR and CCHCS jointly instituted mandatory weekly testing for COVID-19 before providing official notice or an opportunity to meet and confer. CDCR and CCHCS have also implemented California Department of Public Health’s (CDPH) August 19 order before the 30 day notice period expired and before offering an opportunity to meet and confer.
6. A process of meeting and conferring prior to implementation gives the labor organizations an opportunity to identify the impact of the change and how it affects their members. The process could delay some areas of implementation. In that situation,

CDCR and CCHCS would decide whether to move forward while the negotiating process is going through the steps of declaring impasse. However, authority to declare an impasse remains with CalHR. Over the last several years, CalHR has not approved an impasse when negotiations stalemate. Without either agreement or a declared stalemate, negotiations can continue indefinitely.

7. Some bargaining units have strongly opposed a policy requiring vaccination for workers who enter CDCR institutions. Negotiations over such a policy would likely take many months.
8. CDCR and CCHCS have received cease and desist letters regarding both the August 19 CDPH order and the Court's September 27 order. CDCR and CCHCS have also received an unfair practice complaint and a lawsuit complaining of the August 19 CDPH order. Cease and desist letters and unfair practice complaints are routine and are not ordinarily cause to suspend implementation of an order. CDCR and CCHCS have continued to implement the August 19 CDPH order despite these letters and complaints.

Executed on this 27th day of October, 2021, at Sacramento, California.

DocuSigned by:  
*Migdalia Siaca*  
A02F0F4627584C6...  
Migdalia Siaca

# EXHIBIT A

Date	Subject Line	Description
8/23/2021	Mandatory COVID-19 Vaccines and Testing for Institution Staff	(Provided Official Notice - but did not provide 30 days) The August 19, 2021, CDPH Public Health Order requires workers in specified correctional health care facilities to show evidence of full vaccination for COVID-19 by October 14, 2021, or to obtain approval for a reasonable medical or religious accommodation precluding them from the mandatory full vaccination. Staff for whom this requirement applies cannot opt out of vaccination or routinely test in lieu of vaccination.
8/19/2021	COVID-19 Weekly Testing Requirement for Staff Working in Headquarters, Regional, and Field Office Locations	Requires weekly testing for HQ, Regional, and Field Offices.
7/30/2021	COVID-19 Vaccination Status Verification Requirements	Provide information regarding CalHR requirement for all state workers to adhere to current screening, testing, and PPE protocols. Verification of COVID-19 vaccination status by effective 8/2/2021 or will be subject to testing. Self-attestation of full-vaccination status is no longer sufficient to be exempt from COVID-19 testing protocols.
7/28/2021	Employee Case Management of COVID-19 Vaccinations for Unvaccinated and Partially Vaccinated Staff within CDCR Institutions	Announces the Employee Case Management procedures for institutional staff who have not received the COVID-19 vaccine, or have been partially vaccinated, according to the employee health record.
7/28/2021	Extension of Routine Surveillance COVID Testing Exemption for Those Employees and Patients who are Fully Vaccinated	Continues to exempt fully vaccinated staff and inmates from routine surveillance testing for COVID.
6/25/2021	New and Existing COVID-19 Protocols at HQ, Regional, and Field Office Locations	Clarifies employee, visitor, and supervisory expectations regarding new and existing COVID-19 protocols at headquarters (HQ), regional, and field office locations. Employees, Visitors, and Supervisors shall wear either a procedure, N95, or KN95 mask at all times, with limited exceptions.
6/23/2021	Testing Reprieve Extended for July Memo	Continues to exempt fully vaccinated staff and inmates from routine surveillance testing for COVID-19.
6/8/2021	Update to the COVID-19 Hotels for Health Care Workers Program	Updates program eligibility criteria reflected in the Update to the COVID-19 Hotels for Healthcare Workers Program memorandum issued by CDCR/CCHCS February 11, 2021.
5/26/2021	Extension of Routine Surveillance COVID-19 Testing Exemption in June for Those Employees and Patients who are Fully Vaccinated	Continues to exempt fully vaccinated staff and inmates from routine surveillance testing for COVID.

Date	Subject Line	Description
5/19/2021	Submission of COVID-19 Vaccination Record Card Memorandum	Announces procedure for staff who have been vaccinated from an outside provider to securely submit COVID-19 Vaccination Record Cards directly to the Environmental Health and Safety (EHS) Data Team.
5/10/2021	Recommended COVID-19 Personal Protective Equipment And Physical Distancing Requirements For Staff And Inmate-Patients	Provides update on PPE and Physical Distancing requirements. Supersedes previous memos. This memorandum supersedes expectations and guidance provided.
5/7/2021	Reintroduction of Inmate Activity Group Programs and Religious Services	Provides clarification and direction regarding the reintroduction of Inmate Activity Group programs and religious services and in providing access to IAG, etc. Provides guidance to staff for those inmates that do not wish to attend in-person voluntary activities to not use for removal from program.
5/6/2021	COVID-19 Entrance Screening, Testing Procedures and eLearning Course	This memo supersedes and replaces all previous memorandums titled, (COVID-19) Institution and Youth Facility Entrance Screening, Testing Procedures and eLearning Course, Changes were necessary to improve the consistency and effectiveness of the entrance screening process including the removal of temperature checks and updates to the Symptom and Exposure Risk Screening decision tree.
12/31/2020	Healthcare Worker Hotel Program Memo	Update to 4/11/2020. Now requires a Point of Contact to assist and oversee reservation process for qualifying workers due to fraud.
12/28/2020	COVID-19 Vaccinations for Institutional Staff and High Risk Population	Starting to offer voluntary vaccines to staff in institutions.
12/21/2020	Mandatory Employee Covid-19 Testing and Non-Compliance Accountability	Clarifies expectations and requirements outlines in the 7/31/2020 regarding testing requirements.
12/4/2020	California Regional Stay at Home Order and Departmental Directive	Provides direction on stay at home order for staff. Those staff necessary to perform critical functions shall remain in the office, institution, or facility, while adhering to all physical distancing and mask directives and staff that can telework are doing so to the maximum extent possible.
11/19/2020	Authorized Facial Coverings for All Employees, Contractors and Visitors Entering CDCR Institutions and DJJ Youth Facilities - Procedure Mask Distribution and Use	Effective November 23, 2020, all employees, contractors, and visitors working, visiting or performing duties at a CDCR institution or DJJ facility, indoors and outdoors, are required to wear a procedure mask at all time with few exceptions.

Date	Subject Line	Description
10/28/2020	Novel Coronavirus Screening Procedures Revised	Updates expectations on screening procedures and location of screenings.
10/27/2020	Staff Wearing Facial Coverings and Physical Distancing Requirements	Updated expectations from 6/11/2020 and 7/1/2020 memo. Must wear face coverings correctly.
10/22/2020	Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Acts and Requests - Amended	Now included previously excluded staff.
10/8/2020	Novel Coronavirus Disease 2019 Institution Entrance Screening Procedures Revises - Revised October 2020	Updates expectations on screening procedures and location of screenings.
10/8/2020	COVID - 19 Dental Program Update #5	Provides updated guidance as move through new phases of reopening.
8/31/2020	Respiratory Protection Program (Fit Testing) Memorandum	Resumes Annual fit testing to include new employees, those who have not been previously fit tested, including dental staff.
8/28/2020	COVID 19 Nursing Staff Cohorts	Sets expectation that staff should be grouped together in the same work areas to reduce the number of staff who are required to work in multiple buildings or work areas while adhering to the MOU.
7/31/2020	Staff COVID-19 Testing Non-Compliance Accountability	Clarifies expectations in the 7/13/2020 memo regarding staff COVID-19 testing at all institutions and LMS training requirement.
7/13/2020	Staff COVID-19 Testing	To provide direction and expectation regarding COVID-19 testing requirements for all institutional staff. References Court Order.
7/1/2020	COVID-19 Staff Testing Memo	Begins baseline testing for all staff in adult institutions per court order must be completed by 7/16/2020.
7/1/2020	Staff Wearing Facial Coverings in Institutions Memo	Clarifies expectations from 6/11/2020 memo. Outlines discipline if do not adhere to directive.
6/26/2020	Dental Program Covid-19 Update #4 Memorandum	Continues Dental Program Update #3.
6/19/2020	Guidance for Safely Reopening Headquarters and Regional Offices	Staff required to wear masks at HQ and Regional Offices.
6/11/2020	Court Order Regarding Staff Testing For COVID-19	Court order requiring any one who had contact with inmate during transfer process from CIM to SQ or COR must be tested by 6/11/2020. All other staff at SQ and COR must be tested by 6/15/2020 and a plan in place by 6/16/2020.
5/1/2021	May 2021 - No Routine COVID Testing in May for Those who are Fully Vaccinated	All fully vaccinated staff and inmates are excused from routine surveillance COVID-19 testing during the month of May. That means weekly or bi-weekly nasal swabs will not be required the whole month of May.



Date	Subject Line	Description
4/15/2020	Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Acts and Requests	Provides information to staff regarding an expansion of benefits under the Families First Coronavirus Response Act (FFCRA), which enacted both the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (E-FMLA), effective April 1, 2020 through December 31, 2020. CDCR and CCHCS are deemed essential State agencies, meaning that they provide critical/essential services which the public will expect them to continue to provide, and as a result they operate under the exemptions for health care providers and emergency responders under the EPSLA and the E-FMLA.
4/11/2020	COVID-19 Healthcare Worker Hotel Program	Governor Newsom implemented program to assist healthcare workers with accommodations in order to allow for self-isolation or quarantine to help keep workers' families safe. Some CCHCS/CDCR workers may also be eligible for this program. This program is being administered by the California Department of General Services (DGS) and the CalTravelStore for all healthcare workers in California. These accommodations are not part of normal business travel and will not be paid for by CDCR nor do they require management approval. This program does not include any reimbursement for additional expenses such as meals, parking or incidentals.
4/7/2020	COVID - 19 Dental Program Update #3	Effective 4/8/2020 14 day modified program impacting Health Care & Dental Operations - Limits to Immediate intervention to prevent death, severe or permanent disability, or to alleviate or lessen disabling pain only.
3/26/2020	COVID-19 & Flu Like Illness Facility Entrance Screening	Directs all staff and visitors to be screened for Coronavirus and flu like illness including temperature checks.
3/24/2020	Dental Program COVID-19 Update #2	Ceases Reception Center screenings.
3/17/2020	Coronavirus (COVID-19) Update Building Screenings	Starting March 18, 2020 mandatory screenings at all CDCR and CCHCS buildings. If cannot answer No to questions will not be allowed to enter building.
3/13/2020	Dental Program COVID-19 Update #1	Dental staff treatment treating patients shall begin to use Level 1 mask for non-aerosol generating procedures such as exams, prosthetics, appointments, etc. and use appropriate PPE.
2/7/2020	Administrative Time Off for Coronavirus Quarantine	Provides for ATO for employees impacted by Coronavirus quarantine.