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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,
Plaintiffs,
v.
GAVIN NEWSOM, et al.,
Defendants.

Case No. 01-cv-01351-JST

**ORDER MODIFYING SCHEDULE ON
AUGUST 9, 2021 ORDER TO SHOW
CAUSE**

Re: ECF No. 3647

On August 9, 2021, the Court issued an order to show cause as to why it should not order that the Receiver’s recommendations regarding mandatory vaccinations be implemented. ECF No. 3647. In that order, the Court observed that, on August 5, 2021, the State Public Health Officer mandated full COVID-19 vaccination for workers in certain health care facilities “to reduce the chance of transmission to vulnerable populations” in “particularly high-risk settings where COVID-19 outbreaks can have severe consequences for vulnerable populations”; that the California Department of Public Health (“CDPH”) had so far taken the position that the mandate did not apply to correctional facilities; and that CDPH intended to issue further guidance “that considers the unique circumstances of health care integrated into a congregate setting.” *Id.* at 2-3.

On August 19, 2021, the State Public Health Officer issued a “Correctional Facilities and Detention Centers Health Care Worker Vaccination Order.” The order provides for mandatory vaccination of:

- a. All paid and unpaid individuals who are regularly assigned to provide health care or health care services to inmates, prisoners, or detainees. This may include nurses, nursing assistants, nurse practitioners, physicians, physician assistants, technicians, therapists, phlebotomists, pharmacists, mental health providers, students and trainees, dietary, and contractual staff not employed by the correctional facility.

United States District Court
Northern District of California

United States District Court
Northern District of California

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- b. All paid and unpaid individuals who are regularly assigned to work within hospitals, skilled nursing facilities, intermediate care facilities, or the equivalent that are integrated into the correctional facility or detention center in areas where health care is provided. This includes workers providing health care to inmates, prisoners, and detainees, as well as persons not directly involved in delivering health care, but who could be exposed to infectious agents that can be transmitted in the health care setting (e.g., clerical, dietary, environmental services, laundry, correctional officers, engineering and facilities management, administrative, and volunteer personnel).

CDPH, *Order of the State Public Health Officer Correctional Facilities and Detention Centers Health Care Worker Vaccination Order* (Aug. 19, 2021), <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-Order.aspx>.¹

In light of the August 19 CDPH order, the Court modifies the schedule on the order to show cause as follows:

1. By August 25, 2021, Defendants shall file a statement that describes how they will implement the August 19 CDPH order. In particular, they shall identify (a) any institutions at which they will require all staff to be vaccinated and (b) for any remaining institutions, the areas in each institution for which they will require all staff to be vaccinated and the areas in which vaccination for all staff will not be required.

2. The deadline to file written responses to the order to show cause is extended to August 30, 2021.

3. In addition to the information required by the August 9 order, the parties, as well as

¹ A version of the order previously available at this link applied to “[a]ll paid and unpaid individuals who are regularly assigned to work within hospitals, skilled nursing facilities, intermediate care facilities, or the equivalent that are integrated into the correctional facility or detention center in areas where health care is provided *or to which inmate patients have access for any purpose*” (emphasis added). It is not apparent why the italicized phrase was removed, particularly given that the August 5 CDPH order applies to “all paid and unpaid individuals who work in indoor settings where (1) care is provided to patients, or (2) *patients have access for any purpose*.” CDPH, *Order of the State Public Health Officer Health Care Worker Vaccine Requirement* (Aug. 5, 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).

United States District Court
Northern District of California

1 proposed intervenors and CCPOA, if it chooses to file a responsive brief, shall state their position,
2 supported by argument or admissible evidence as appropriate, on whether there is any public
3 health basis for limiting mandatory vaccines to the areas identified by Defendants pursuant to
4 paragraph 1 of this order. For example, the Court would like to learn how many incarcerated
5 persons at higher risk of severe illness or death from COVID-19 are housed outside of the
6 institutions or areas identified by Defendants, and whether there is any reason for concluding that
7 these individuals are at lower risk than the high-risk individuals housed in the covered institutions
8 or areas. Likewise, assuming that Defendants will require vaccines for staff in some but not all
9 areas of one or more institutions, the Court would like to learn whether there is any basis for
10 concluding that incarcerated persons housed in non-covered areas face lower risk in their housing
11 units than they do in the covered areas of those institutions. Similarly, if Defendants are not
12 requiring vaccines for staff in quarantine and isolation areas, the Court would like to know
13 whether there is any basis for concluding that persons housed in those areas are at lower risk than
14 those housed in covered areas or institutions. By providing these examples, the Court does not
15 foreclose discussion of other factors the filing party might deem relevant.

16 4. The Receiver may file an initial response to the order to show cause by the same
17 August 30 deadline.

18 5. The reply deadline is continued to September 10, 2021.

19 6. The hearing is continued to September 24, 2021, at 9:30 a.m. The Court will
20 decide at a later date whether it will require or invite live testimony, or whether the hearing will be
21 limited to oral argument.

22 **IT IS SO ORDERED.**

23 Dated: August 20, 2021

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25 JON S. TIGAR
26 United States District Judge
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