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13  
14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16

17 MARCIANO PLATA, *et al.*,

18 Plaintiffs,

19 v.

20 GAVIN NEWSOM, *et al.*,

21 Defendants,

22 CALIFORNIA CORRECTIONAL PEACE  
23 OFFICERS' ASSOCIATION,

24 Intervenor.  
25

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

**COMPLAINT IN LIMITED  
INTERVENTION BY  
CALIFORNIA CORRECTIONAL PEACE  
OFFICERS' ASSOCIATION**

Judge: The Honorable Jon S. Tigar

26 Pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 24(c), Intervenor California  
27 Correctional Peace Officers' Association ("CCPOA" or the "Union") alleges as follows:  
28

**PARTIES**

1  
2 1. The Union is the exclusive recognized employee organization representing  
3 approximately 25,000 state employees in State Bargaining Unit 6 (“Unit 6”), including  
4 correctional officers, correctional counselors, fire captains, parole agents, and related  
5 classifications. As such, the Union has responsibility, pursuant to the Ralph C. Dills Act,  
6 California Government Code section 3512 *et seq.* (“the Dills Act”), to collectively bargain with  
7 Governor Gavin Newsom and his representatives over wages, hours and working conditions for  
8 employees in Unit 6.

9 2. Not all state employees enjoy collective bargaining rights. Supervisory employees’  
10 rights are governed by the Bill of Rights for State Excluded Employees, Government Code section  
11 3525 *et seq.* The Union serves as an “Excluded employee organization” for the approximately  
12 3,300 supervisory employees it represents, including correctional sergeants and lieutenants. *See*  
13 Government Code section 3527(d) (“Excluded employee organization’ means an organization  
14 that includes excluded employees of the state...and that...represent[s] its members in employer-  
15 employee relations...”). These employees have limited meet and confer rights with the State  
16 employer over their working conditions.

17 3. CCPOA brings this action on behalf of itself, its members, and the above  
18 supervisory employees. As the exclusive recognized employee organization for Unit 6, and as an  
19 Excluded Employee Organization for supervisors, the Union has standing to seek the relief sought  
20 in this Complaint.

21 4. The remaining parties have been previously identified for the Court by the prior  
22 pleadings filed in this litigation, which has been ongoing for almost twenty years.

**ALLEGATIONS**

23  
24 5. The Court appointed Receiver J. Clark Kelso (the “Receiver”) to oversee the  
25 California Department of Corrections and Rehabilitation (“CDCR”) and California Correctional  
26 Health Care Services’ (“CCHCS”) delivery of medical care to prisoners.

27 6. On August 4, 2021, the Receiver filed with the Court a report entitled, “Regarding  
28 a Mandatory COVID-19 Vaccination Policy for California Department of Corrections and

1 Rehabilitation Personnel Working within Institutions and for Incarcerated Persons with Outside  
2 Contacts” (“Receiver’s Report”). *See* Notice of Filing of Report of J. Clark Kelso, Receiver;  
3 Declarations of Dr. Joseph Bick, Dr. Tara Vijayan, and Ms. Tammatha Foss, ECF No. 3638. In it,  
4 the Receiver recommends that a mandatory vaccination policy be implemented state-wide  
5 throughout CDCR’s institutions requiring that “access by workers to CDCR institutions be limited  
6 to those workers who establish proof of vaccination (or who have established a religious or  
7 medical exemption to vaccination)” and that “incarcerated persons who desire to work outside of  
8 the institution (e.g., fire camps) or to have in person visitation must be vaccinated (or establish a  
9 religious or medical exemption).” (Receiver’s Report, p. 25.)

10 7. On September 27, 2021, the Court ordered CDCR and the Receiver to implement  
11 the recommendations in the Receiver’s Report as follows:

- 12 (1) [A]ccess by workers to CDCR institutions [shall] be limited to  
13 those workers who establish proof of full COVID-19 vaccination or  
14 have established a religious or medical exemption to vaccination and  
15 (2) incarcerated persons who desire to work outside of the institution  
16 or to have in-person visitation must be fully vaccinated against  
17 COVID-19 or establish a religious or medical exemption.

17 Order Re: Mandatory Vaccinations, ECF No. 3684 at 21:20 – 24. The Court further stated,

18 Defendants and the Receiver shall submit an implementation plan,  
19 including a deadline by which all covered persons must be  
20 vaccinated, within 14 days of the date of this order.”

21 Additionally, the Receiver shall consider efforts to increase the vaccination rate among the  
22 incarcerated population, including whether a mandatory vaccination policy should be  
23 implemented. *Id.* at 21:25 – 22:3.

24 8. On October 12, 2021, CDCR and the Receiver issued the Joint Implementation  
25 Plan for Mandatory Vaccination (“Implementation Plan”) pursuant to the Court’s Order Re:  
26 Mandatory Vaccinations. *See* Notice of CDCR and the Receiver’s Submission of a COVID-19  
27 Vaccination Plan for Certain CDCR Workers and Incarcerated People in Compliance with the  
28 September 27, 2021 Order, ECF No. 3694. The Implementation Plan provides preliminary

1 changes to CDCR and CCHCS's policies to carry out the Court's mandatory vaccination order, as  
2 it requires CDCR employees to be vaccinated within a certain time frame under the threat of  
3 progressive discipline.

4 9. CCPOA has a significant interest in this litigation. The Union previously  
5 participated, as an intervenor, in the "Three Judge Court" proceedings, culminating in the United  
6 States Supreme Court's decision in *Plata v. Brown*. Since the onset of the COVID-19 pandemic,  
7 the Union has participated in the instant matter as *amicus curiae*, in case management conferences,  
8 and with occasional filings in the case. The Court's Order Re: Mandatory Vaccinations and the  
9 Implementation Plan significantly affect CCPOA's membership, particularly those who are  
10 unvaccinated and who may therefore face termination from State employment.

11 10. Potential employee terminations and resignations in protest resulting from  
12 compulsory vaccination policies will likely lead to a decrease in the experienced employee ranks.  
13 For those employees who seek and obtain an exemption from the mandate based on religious and  
14 medical grounds, by law CDCR must generally provide reasonable accommodation which likely  
15 means transferring them to positions either outside of CDCR institutions or to those with no  
16 inmate interaction. Due to resignations, terminations, and staff movement related to  
17 accommodations, there will inevitably be staff shortages requiring management to cover unfilled  
18 positions, possibly with less qualified personnel. These shortages, in turn, will force CDCR to  
19 order involuntary transfers or mandatory overtime, all governed under the Memorandum of  
20 Understanding ("MOU") between CCPOA and the State, in order to provide sufficient coverage  
21 for the safe operation of the affected institutions. This likely chain of events threatens to frustrate  
22 at best and upend at worse the negotiated-for seniority-based rights of employees both to choose  
23 their preferred assignments or avoid undesirable ones as provided in MOU sections 12.05  
24 (Voluntary Overtime by Seniority), 12.06 (Involuntary Overtime), 12.07 (Personnel Preferred  
25 Post-Assignment (PPA) for Correctional Officers and MTAs), 20.03 (Post and Bid By Seniority  
26 for Correctional Counselor), 22.04 (Post and Bid By Seniority for Institutional Parole Agents IS),  
27 24.05 (YCC Voluntary Demotion), and 24.07 (Post-Assignment (PPPA) For YCOS ).

28 11. Section 9.09 (Personnel Investigations) is another critical MOU provision

1 implicated by a mandatory vaccine order. It establishes the parameters for the conduct of  
2 personnel investigations, and contains hard-fought protections for personnel who are subject to  
3 discipline, including potential termination. This section is directly at issue as a result of the Order  
4 Re: Mandatory Vaccinations and the Implementation Plan, which compels that unvaccinated  
5 CDCR employees be vaccinated on threat of discipline. To ensure that discipline is imposed fairly  
6 and not as a result of mistake or bad faith, and so that employees do not improperly lose their jobs  
7 and that CDCR does not become subject to unnecessary litigation, it is vital to employees and  
8 management alike that the protections afforded by section 9.09 be applicable to a mandatory  
9 vaccination policy.

10       12. Staffing changes that are likely to result from a new vaccination policy will also  
11 impact CCPOA members' entitlement to scheduled time-off, including vacation, holidays and  
12 other leaves. Resignations, terminations, and transfers due to accommodations would result in the  
13 cancellation of pre-planned and approved vacations under these provisions. Prison staff are  
14 already facing high levels of stress due to understaffing, excessive workloads, and the dangers  
15 inherent in guarding residents; thus, their time off is an important time to rest and recuperate from  
16 a challenging and often dangerous job. The cancellation of vacations and other leaves due to  
17 transfers to cover essential positions will certainly exacerbate existing morale issues.

18       13. CCPOA employees are also guaranteed certain protections under the MOU  
19 addressing equitable division of workload. Unfilled positions caused by employee separations or  
20 accommodations will force management to increase certain employees' workload in violation of  
21 these provisions, resulting in even greater levels of job stress, and further affecting morale.

22       14. The Order Re: Mandatory Vaccinations and the Implementation Plan also infringes  
23 on or violates CCPOA members' rights under other MOU provisions and impacts the working  
24 conditions of supervisory employees. These various provisions of the MOU currently include, but  
25 are not limited to, sections 2.01, Distribution of Literature; 2.02, Worksite Access; 2.04, Use of  
26 State Facilities; 2.06, Chief Job Steward Assignment; 2.07, Stewards' Rights; 5.05, Quarterly  
27 Labor-Management Meetings; 6.05, Presentation; 6.08, Formal Appeal – Step 2; 6.10, Formal  
28 Appeal – Step 4; 6.13, Mini-Arb; 7.02, Emergency Care; 7.03, Report of Injury; 7.05, Safety

1 Equipment (Institutions and Camps); 7.06, Safety Equipment (Escapes and Escorts); 7.07, CDCR  
 2 and DJJ Infectious Disease Control Plans; 7.08, Workgroup on Safety Equipment; 8.03, Joint  
 3 Labor Management Apprenticeship Committee; 8.05, 7k Training Program; 9.03, Location of, and  
 4 Employee Access To, Files; 9.10, Requests for Reinstatement After AWOL Separation; 9.11,  
 5 Peace Officer Bill of Rights; 10.01, Vacation Leave; 10.02, Sick Leave; 10.09, Court  
 6 Appearances; 10.11, Subpoena; 10.13, Union Paid Leave; 10.16, Annual Leave – Enhanced NDI;  
 7 11.01, Shift and/or Assignment Changes; 11.02, Continuous Hours of Work/Dead Time; 11.03,  
 8 Exchange of Days Off – Shift Assignment (Mutual Swaps); 11.07, Overtime; 11.10, 7k  
 9 Exemption; 11.12, Callback Time; 12.03, Temporary Involuntary Reassignments and Transfers;  
 10 12.04, Employee Requested Transfers Between Appointing Authorities; 15.08, Night Shift  
 11 Differential/Weekend Differential; 16.05, Redirections; 17.02, Fire Captain Hours of Work and  
 12 Compensation; 17.06, Fire Captain Scheduling; 17.08, Fire Captain Vacation Leave; 17.09, Fire  
 13 Captain Sick Leave; 17.10, Fire Captain Holidays; 17.11, Fire Captain Annual Leave Accrual  
 14 Rate; 17.12, Fire Captain Overtime; 19.01, CDCR PA Safety Equipment and Procedures; 19.06,  
 15 Parole Agent Requested Transfers (Part); 19.08, Authorizing Overtime and/or Modifying Case  
 16 Supervision Specifications For California Parole Supervision and Reintegration Model Caseloads  
 17 (CPSRM); 19.12, Parole Agent Vacation Scheduling; 19.15, CDCR PSA Work Week; 19.16, PSA  
 18 Vacation Scheduling; 20.01, Correctional Counselor I Work Hours; 20.02, Correctional Counselor  
 19 I Workload; 20.05, Correctional Counselor Vacation Leave; 20.06, Correctional Counselor I  
 20 Requested Transfers Between Appointing Authorities; 20.07, Correctional Counselor – Overtime;  
 21 22.01, DJJ IPA, Parole Agent II and Casework Specialist Work Hours; 22.03, DJJ IPA and  
 22 Casework Specialist Workload; 23.01, CDCR Transportation Officer Hours; 24.08, Youth  
 23 Correctional Counselor/Youth Correctional Officer Use of Leave Credits; 25.02, CDCR  
 24 Continuous Hours of Work/Dead Time/Emergencies; 25.03, Camp Overtime; 26.01, Permanent  
 25 Intermittent Appointments; and 27.01, Entire Agreement. The MOU is available at  
 26 <https://www.calhr.ca.gov/labor-relations/Documents/mou-20200703-20220702-bu06.pdf>.

27 15. MOU Section 27.01, subparagraphs G and H (p. 228), require notice to CCPOA  
 28 and permit CCPOA, to negotiate on an expedited basis over any Court order “that may impact

1 terms and conditions of employment.” Subsection J gives CCPOA the right to seek an expedited  
2 arbitration procedure in the limited circumstances where “irreparable injury would result from a  
3 noticed implementation and for which there is no adequate remedy at law.” The Order Re:  
4 Mandatory Vaccinations, together with the Joint Implementation Plan for Mandatory Vaccination  
5 issued by CDCR and the Receiver which subjects unvaccinated CDCR employees to progressive  
6 discipline, triggers these rights. See Notice of CDCR and The Receivers’ Submission of a  
7 COVID-19 Plan for Certain CDCR Workers and Incarcerated People in Complaint with the  
8 September 27, 2021 Order, ECF No. 3694 at p. 6.

9 16. Implementation of the Court’s order is preliminary at this point. CCPOA will  
10 amend this Complaint, if necessary, to accurately reflect any MOU provisions that are impaired by  
11 CDCR and the Receiver’s mandatory vaccination policies.

12 17. On October 14, 2021, following briefing and a hearing on the Union’s Motion to  
13 Intervene, the Court granted it limited intervention rights to protect the rights of its members with  
14 regard to the Court’s September 27, 2021 Order Regarding Staff Vaccinations.

15 **PRAYER**

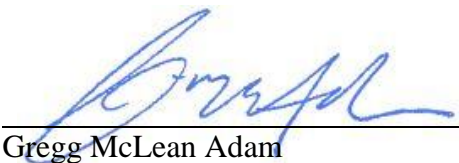
16 Wherefore, CCPOA prays for the following relief:

- 17 1. Such orders and relief as the Court deems just and proper to protect the rights
- 18 established under the MOU for CCPOA members and CCPOA;
- 19 2. Such orders and relief as the Court deems just and proper to protect the rights of
- 20 CCPOA members under the Bill of Rights for State Excluded Employees; and
- 21 3. For such other relief as the Court deems just and proper.

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Dated: October 26, 2021

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