

1 Gregg McLean Adam, Bar No. 203436
gregg@majlabor.com

2 Matthew Taylor, Bar No. 264551
matthew@majlabor.com

3 **MESSING ADAM & JASMINE LLP**
235 Montgomery St., Suite 828
4 San Francisco, California 94104
Telephone: 415.266.1800
5 Facsimile: 415.266.1128

6 David A. Sanders, Bar No. 221393
david.sanders@ccpoa.org

7 Daniel M. Lindsay, Bar No. 142895
dan.lindsay@ccpoa.org

8 **CALIFORNIA CORRECTIONAL PEACE**
OFFICERS' ASSOCIATION
9 755 Riverpoint Drive, Suite 200
West Sacramento, CA 95605-1634
10 Telephone: 916.340.2959
Facsimile: 916.374.1824

11 Attorneys for Intervenor
12 CALIFORNIA CORRECTIONAL PEACE
OFFICERS' ASSOCIATION

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
OFFICERS' ASSOCIATION,

23 Intervenor.
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Case No. 01-cv-01351-JST

CALIFORNIA CORRECTIONAL PEACE
OFFICERS' ASSOCIATION'S MOTION
FOR STAY OF SEPTEMBER 27, 2021
ORDER RE: MANDATORY
VACCINATIONS

Date: December 9, 2021

Time: 2:00 p.m.

Crtrm.: 6 – 2nd Floor

The Hon. Jon S. Tigar

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1 **NOTICE OF MOTION FOR STAY OF SEPTEMBER 27, 2021 ORDER RE:**
2 **MANDATORY VACCINATIONS**

3 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE THAT, on Thursday, December 9, 2021, at 2:00 p.m., or as
5 soon thereafter as counsel may be heard, before the Honorable Jon S. Tigar, located in Courtroom
6 6 – 2nd Floor, United States Courthouse, 1301 Clay Street, Oakland, CA 94612, the California
7 Correctional Peace Officers’ Association (“CCPOA” or the “Union”) will move this Court for a
8 stay of its September 27, 2021 Order Re: Mandatory Vaccination (“Mandatory Vaccination
9 Order”) pursuant to Fed. R. Civ. P. 62(d).

10 CCPOA also respectfully requests that its motion be heard on the same shortened time
11 table proposed by the State (ECF No. 3719), and in any case, on the same day as the State's
12 Motion to Stay (ECF No. 3715).

13 The Motion for Stay of the Mandatory Vaccination Order is based on this Notice of
14 Motion, Motion, the Points and Authorities in support thereof, and such arguments and evidence
15 that may be presented at the hearing of this matter.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Within weeks, the Court’s September 27, 2021 Order re: Mandatory Vaccinations (the
5 “Mandatory Vaccination Order”), ECF No. 3684, will force unvaccinated CCPOA members to
6 choose between losing their jobs in California Department of Corrections and Rehabilitation
7 (CDCR) prisons or subjecting themselves to an unwanted medical procedure that cannot be
8 reversed. Many Union members will opt to retire, resign, or be terminated. The State predicts that
9 this reduced staffing could lead to “[v]iolent security breaches” and “physical injuries to
10 incarcerated people and staff.” Defendants’ Motion to Stay Order Re: Mandatory Vaccinations
11 Pending Appeal (“Defendants’ Motion”), ECF 3715-1 at 25. The resulting staff shortages will
12 also place additional hardship on the remaining staff who have been working tirelessly to ensure a
13 safe environment in prisons throughout the COVID-19 pandemic.

14 Meanwhile, since the Court issued the Mandatory Vaccination Order, the legal landscape
15 has changed. On October 20, 2021, the Ninth Circuit issued its decision in *Fraihat v. U.S.I.C.E.*,
16 No. 20-55634, --- F.4th ---, 2021 WL 4890884 (9th Cir. Oct. 20, 2021), which clarifies how
17 district courts should evaluate prisoner challenges to COVID-19 prevention policies. *Fraihat*
18 leads inevitably to the conclusion that the Court overreached in issuing the Mandatory Vaccination
19 Order and the Union will prevail in its appeal.

20 Thus, the Union respectfully requests that the Court stay the Mandatory Vaccination Order
21 pursuant to Federal Rule of Civil Procedure 62(d) pending its appeal.

22 **II.**

23 **ARGUMENT**

24 “While an appeal is pending from an interlocutory order or final judgment that grants,
25 continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction,” Federal
26 Rule of Civil Procedure 62(d) authorizes courts to “suspend, modify, restore, or grant an
27 injunction on terms . . . that secure the opposing party’s rights.” Courts assess whether to grant a
28 stay based on the following factors: “(1) whether the stay applicant has made a strong showing

1 that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured
 2 absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested
 3 in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434
 4 (2009). With respect to the first factor, the Ninth Circuit has commented:

5 [S]ome uncertainty as to the exact degree of likely success that
 6 stay petitioners must show, due principally to the fact that courts
 7 routinely use different formulations to describe this element of the
 8 stay test. What is clear, however, is that to justify a stay,
 petitioners need not demonstrate that it is more likely than not that
 they will win on the merits.

9 *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (internal citation omitted) “[A]t a
 10 minimum,” the applicant must establish a “substantial case for relief on the merits.” *Id.* at 968.

11 These factors support staying the Court’s Mandatory Vaccination Order.

12 **A. The Union Is Likely to Succeed on the Merits of Its Appeal**

13 Under the Prison Litigation Reform Act (“PLRA”), the Court must find each of the
 14 following before it implements the Receiver’s recommendation: (a) the State’s failure to
 15 implement the Receiver’s recommendation violates the Eighth Amendment rights of inmates, and
 16 (b) an order implementing the Receiver’s recommendation “is narrowly drawn, extends no further
 17 than necessary to correct the [Eighth Amendment violation], and is the least intrusive means
 18 necessary to correct the violation of the [Eighth Amendment].” 18 USC § 3626(a). In this case,
 19 the federal right implicated by the Receiver’s recommendation is the Eighth Amendment right to
 20 adequate medical care in prisons. ECF No. 3684 at 7-8. The Court erred in making these
 21 findings.

22 **1. The State Has Not Acted with Deliberate Indifference Because, as in *Fraihat*,
 23 It Has Taken Reasonable Measures to Combat the Spread of COVID-19 in
 Prisons**

24 The Ninth Circuit recently clarified the proper deliberate indifference inquiry applicable to
 25 a challenge to COVID-19 remedial measures in prisons. In *Fraihat*, plaintiffs argued that “U.S.
 26 Immigration and Customs Enforcement’s (ICE) directives in response to the COVID-19 pandemic
 27 reflected ‘deliberate indifference’ to medical needs and ‘reckless disregard’ of known health risks,
 28 in violation of the Fifth Amendment.” 2021 WL 4890884, at *1. Noting that “deliberate

1 indifference requires a substantial showing,” the Ninth Circuit identified four factors that plaintiffs
2 “must establish”:

3 (i) the defendant made an intentional decision with respect to the
4 conditions under which the plaintiff was confined; (ii) those
5 conditions put the plaintiff at substantial risk of suffering serious
6 harm; (iii) *the defendant did not take reasonable available measures*
7 *to abate that risk*, even though a reasonable official in the
8 circumstances would have appreciated the high degree of risk
9 involved—making the consequences of the defendant’s conduct
10 obvious; and (iv) by not taking such measures, the defendant caused
11 the plaintiff’s injuries.

12 *Id.* at *19 (emphasis added) (quoting *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir.
13 2018)).

14 To meet the critical third element, plaintiffs must establish that “defendants’ conduct was
15 ‘objectively unreasonable.’” *Id.* (quoting *Gordon*, 888 F.3d at 1125). Objective unreasonableness
16 is “more than negligence but less than subjective intent—something akin to reckless disregard.”
17 *Id.* (quoting *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc)).
18 Reckless disregard is a “formidable” standard, requiring more than “mere lack of due care,” “an
19 inadvertent failure to provide adequate medical care,” or even “medical malpractice.” *Id.*
20 (quoting various authorities). Rather, “a plaintiff must show that the defendant ‘disregard[ed] an
21 excessive risk’ to the plaintiff’s health and safety by failing to take ‘reasonable and available
22 measures’ that could have eliminated that risk.” *Id.* (quoting *Castro*, 833 F.3d at 1070-71).

23 Applying these principles to the challenged COVID-19 policies at ICE detention centers,
24 the Ninth Circuit found that the plaintiffs did not “ma[k]e ‘a clear showing’ that in responding to
25 the evolving and unprecedented COVID-19 pandemic, ICE acted with ‘deliberate indifference’ to
26 medical needs or in ‘reckless disregard’ of health risks.” *Id.* at *20. Having chronicled ICE’s
27 evolving policy to address COVID-19, the Ninth Circuit acknowledged that ICE’s policies may
28 not be “impervious to criticism,” *id.* at *23, yet the court held that ICE’s policy “simply cannot be
described in the way that matters here: as a reckless disregard of the very health risks it
forthrightly identified and directly sought to mitigate,” *id.* at *21.

Fraihat clarifies several errors in the Mandatory Vaccination Order:

First, the Court lacked the benefit of the Ninth Circuit’s guidance regarding the

1 importance of a prison administrator’s existing COVID-19 policies when it rejected Defendants’
2 argument that “the Court cannot find them deliberately indifferent in light of their multi-faceted
3 response to the COVID-19 pandemic and the Court’s April 2020 determination that Defendants
4 were not deliberately indifferent at that time.” ECF No. 3684 at 11. Here, as in *Fraihat*, the State
5 has taken reasonable steps to combat the spread of COVID-19. In *Fraihat*, the Ninth Circuit
6 found the following COVID-19 measures reasonable and precluded a finding of deliberate
7 indifference:

8 screening of detainees and staff for COVID-19 symptoms and
9 exposure risk; monitoring, tracking, and reporting of detainees who
10 had possible viral exposure; housing, cohorting, quarantining, and
11 testing of detainees who may have developed COVID-19; hygiene
12 practices, such as mask-wearing and sanitization; social distancing
13 policies for sleeping, mealtimes, recreation periods, and otherwise;
14 health education of detainees and staff; adherence to additional
15 CDC Interim Guidance; release of detainees, with priority for those
16 who had greater susceptibility to COVID- 19 infection; limits on
17 outside visits to detention facilities; development of facility-
18 specific mitigation plans; and so on.

15 2021 WL 4890884, at *20. Similarly, the State’s COVID-19 remedial measures here, which the
16 parties have amply briefed, include a suspension of visits and intake from county jails, symptom
17 screening, physical distancing, hygiene practices, health education, enhanced cleaning, reduction
18 in inmates living in dorms, release of prisoners, quarantines for exposed prisoners, movement
19 restrictions, surveillance testing, mask mandates, ventilation upgrades, and voluntary vaccination
20 programs. *See, e.g.*, Defendants’ Response to Order to Show Cause Regarding Receivers’
21 Mandatory COVID-19 Vaccine Policy, ECF No. 3660 at 7-11.

22 **Second**, the State’s response to COVID-19 is not rendered objectively unreasonable
23 merely because additional measures might be advisable or the Receiver has proposed additional
24 measures. In *Fraihat*, the Ninth Circuit reversed the district court’s injunction that had ordered
25 various additional remedial measures, 2021 WL 4890884, at *14-18, finding that ICE’s response
26 to COVID-19 was reasonable, regardless of whether it could be characterized “as strong, fair,
27 needing improvement, or something else,” *id.* at *21. Here, too, the State’s response was
28 reasonable, despite the additional remedial measures proposed by the Receiver, particularly when

1 the Court has already “conclude[d] without difficulty that Defendants’ response [to COVID-19]
2 has been reasonable,” Order Denying Plaintiffs’ Emergency Motion Regarding Prevention and
3 Management of COVID-19, ECF No. 3291 at 14:3-4, and that “[t]he vaccination of the
4 incarcerated population has been one of the success stories of this case,” April 29, 2021 CMC
5 Transcript at 6:8-9, 19-22.

6 **Third**, the Court erred in distinguishing its rejection of Plaintiffs’ earlier challenge to the
7 State’s COVID-19 remedial measures as occurring at a time when “no vaccine was available.”
8 ECF No. 3684 at 11. In *Fraihat*, the Ninth Circuit found that ICE was not objectively
9 unreasonable when it implemented various COVID-19 remedial measures, even though it did not
10 take the additional proposed measures ordered by the district court (*e.g.*, “sufficiently
11 ‘meaningful’ custody determinations” that would lead to an increase in the release of detainees).
12 *Fraihat*, 2021 WL 4890884, at *16. Here, not only has the State adopted policies to combat
13 COVID-19, but it has also made vaccinations available for inmates and staff in prisons. Thus, its
14 failure to take the additional step of mandating vaccinations for staff cannot be found to be
15 deliberately indifferent.

16 **Fourth**, the Court erred to the extent it applied a more lenient standard for evaluating
17 requests for systemic relief than that which would apply for relief at individual institutions and
18 relied on evidence of conditions at individual prisons when issuing the requested systemic relief.
19 *See* ECF No. 3684 at 8. The Ninth Circuit premised its rejection of the preliminary injunction in
20 *Fraihat* partially on the “sweeping relief” requested by the plaintiffs that would apply to all
21 immigration detention facilities in the country, 2021 WL 4890884, at *3, and distinguished cases
22 cited by the plaintiffs that had granted “comparatively focused, facility-specific relief,” *id.* at *28.
23 “Plaintiffs’ request [for systemic relief] demanded proof that would meet it. And given the nature
24 of their challenge, that proof was not to be found in the form of particular conditions at individual
25 detention facilities.” *Id.* at *28.

26 **Fifth**, the Court misconstrued the Supreme Court’s command to determine deliberate
27 indifference “in light of the prison authorities’ *current* attitudes and conduct.” ECF No. 3684 at
28 11 (quoting *Helling v. McKinney*, 509 U.S. 25, 36 (1993)) (emphasis in original). In *Helling*, a

1 prisoner alleged that prison officials violated his Eighth Amendment rights by exposing him to
 2 cigarette smoke. 509 U.S. at 19. The Supreme Court remanded to the district court to consider
 3 whether current conditions, including the prisoner’s removal from a cell with a five-pack-a-day
 4 smoker and the prison’s introduction of a formal smoking policy, justified a finding of deliberate
 5 indifference. *Id.* at 35-36. But *Helling* does not support ascribing heightened importance to
 6 certain current conditions over others. The State’s ongoing COVID-19 prevention policies,
 7 including its voluntary vaccination program and other efforts to reduce the spread of COVID-19 in
 8 prisons, are also “current attitudes and conduct” that weigh heavily in the deliberate indifference
 9 analysis.

10 **2. The Mandatory Vaccination Order Is Not Narrowly Drawn, Does Not Extend**
 11 **No Further Than Necessary, and Is Not the Least Intrusive Means Because**
 12 **Multiple Less Intrusive Means Exist**

12 The Court erred in finding that mandatory staff vaccinations satisfy the least intrusive
 13 means test for the same reasons as it erred in finding that the State was deliberately indifferent.
 14 This is because a remedy cannot be the least intrusive means to correct a non-existent
 15 constitutional violation. But the Court also erred for at least the following additional reasons:

16 **First**, the Court erred in dismissing the lesser intrusive means of mandatory inmate
 17 vaccination as “not before the Court” because “neither the Receiver nor any party has
 18 recommended that vaccination be required for all incarcerated persons.” ECF No. 3684 at 19.
 19 Defendants and the Union argued that mandatory vaccination of prisoners would be a less
 20 intrusive, and more effective, means of protecting prisoners from COVID-19 than mandatory
 21 vaccination of staff. ECF No. 3669 at 4; ECF No. 3673 at 16. Whether the Court was asked to
 22 order the mandatory vaccination of prisoners does not bear on whether mandatory vaccination of
 23 prisoners is a less intrusive remedy to the alleged constitutional violation.

24 **Second**, the State’s success in increasing vaccination rates in prisons since the Court
 25 issued its Order to Show Cause also belies the necessity of mandating staff vaccinations. The
 26 State details this success in its Motion to Stay. See ECF 3715-1 at 7.

27 **B. The Union and Its Members Will Suffer Irreparable Injury Absent a Stay**

28 The Mandatory Vaccination Order forces unvaccinated CDCR employees either to risk

1 termination by continuing to remain free from an injection or to subject themselves to an
2 unwanted, invasive medical procedure that cannot be reversed. Employees who choose either
3 option, in the face of the Court’s unprecedented order, will suffer irreparable injury.

4 For many Union members who live in rural areas where job opportunities are scarce,
5 termination will likely result in long periods of unemployment or cause members to separate from
6 their families and friends to relocate to other areas where jobs are available. A terminated
7 employee will likely face not only financial harm, but also social upheaval, from being out of
8 work or uprooting their life to settle elsewhere. *Levia-Perez*, 640 F.3d at 969-70 (“Other
9 important [irreparable harm] factors include separation from family members, medical needs, and
10 potential economic hardship.” (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001)).
11 For a public sector employee who is used to a stable job with a steady income, these types of
12 changes are likely to cause emotional distress for them and their loved ones. Those Union
13 members who alternatively choose vaccination in the wake of the Mandatory Vaccination Order to
14 avoid the dire consequences of termination will also be irreparably injured. Once injected, they
15 cannot reverse their exposure to the vaccine and any negative side effects they experience.

16 As stated in Union’s Motion to Intervene, the Mandatory Vaccination Order will lead to a
17 significant decrease in CDCR staffing due to terminations and resignations resulting from forced
18 vaccination. *See* CCPOA’s Motion to Intervene, ECF No. 3665 at 15:13-16. Defendants take the
19 same position, noting that employees have “vigorously pushed back” on vaccination mandates by
20 refusing to comply and litigating the issue in state court and at PERB. *See* ECF No. 3715-1 at
21 24:6-8. Based on these facts, CDCR anticipates that mandatory vaccinations will cause a
22 substantial increase in staff vacancy rates, which will be “crippling” to its operations. Declaration
23 of Connie Gipson in Support of Defendants’ Motion, ECF No. 3715-3 at ¶¶ 10, 12. This is likely
24 to include early retirements in addition to terminations and resignations in protest. *Id.* at ¶ 13.

25 Staffing will also be affected by employees seeking exemptions based on religious and
26 medical grounds. CDCR is legally obligated to provide reasonable accommodations, which likely
27 means transferring them to positions either outside of CDCR institutions or to those with no
28 inmate interaction. *See* ECF No. 3665 at 15:16-19. Defendants have already received a

1 “staggering” number of religious accommodation requests. As of October 15, 2021, CDCR has
2 received 1,738 requests in response to the California Department of Public Health’s order
3 mandating vaccination for certain employees working in prisons. *See* ECF No. 3715-3 at ¶ 11. Of
4 these, 1,160 are from essential custody staff. *Id.*

5 Any attrition in CDCR employee ranks is unlikely to bounce back quickly. For example,
6 CDCR’s Correctional Officer Academy has been graduating fewer cadets with each passing year.
7 In fiscal year 2018-19, the number of graduates was 1,608 cadets. *See id.* at ¶ 14. In fiscal year
8 2019-20, there were 1,316 cadets, and in this fiscal year, there were only 892 cadets with only 461
9 cadets graduating. *See id.* This number will shrink even further with the implementation of the
10 vaccination order since only twenty-four percent of cadets are currently vaccinated. *See id.*

11 In its Motion to Intervene, the Union described how staffing shortages, resulting from the
12 above effects of the mandate, will upend Union members’ rights protected in the Memorandum of
13 Understanding (“MOU”) between the State and the Union. *See* ECF No. 3665 at 15:13-16:27. If
14 a significant number of employees separate from employment at a given CDCR institution or
15 request an accommodation, the number of employees who volunteer for overtime will necessarily
16 decrease. *See* Declaration of Suzanne L. Jimenez in Support of CCPOA’s Motion to Intervene,
17 ECF No. 3665-2, at ¶¶ 10, 11. CDCR will therefore be compelled to order mandatory overtime,
18 *see id.* at ¶ 10, which will lead to the following results: employees working excessive workloads;
19 losing vacation, holidays, and other leaves, *see id.* at ¶ 18; losing the ability to choose when and
20 how they will work overtime, *see id.*; and losing the benefits of the seniority system, as veteran
21 employees will be forced to work overtime to cover for more junior employees, who are exempt
22 from the vaccination mandate and thus unable to work in certain areas of the prisons, *see id.* at
23 ¶¶ 12-14.

24 Defendants also describe a nightmare scenario where staffing shortages from the vaccine
25 mandate may result in serious risks to security and order within the prisons. *See* ECF No. 3715-3
26 at ¶¶ 3, 5, 7, 11, 12. Union members who are working longer hours will be forced to respond to
27 violent incidents in smaller teams. This will likely lead to not only a higher number of injuries
28 among staff, but also injures that are more serious. *See id.*

1 It is self-evident that MOU provisions guaranteeing seniority, time off, and protection
2 against excessive workloads do not relate to financial matters; rather, they aim to improve
3 employees' working conditions, *i.e.* increasing safety, reducing job stress, and bolstering morale.
4 As such, any violations of these protections will cause irreparable injury to Union members that
5 cannot be addressed through compensation. A stay pending the Union's appeal will avoid such
6 injury and provide the parties more time to bargain regarding these pressing issues.

7 **C. The Issuance of a Stay Will Not Substantially Injure the Incarcerated Population**

8 Defendants, with the Union's support, have implemented multiple measures that have
9 successfully lowered the risks of COVID-19 infection among the resident population, even
10 without a mandatory vaccination order. These have been summarized in CCPOA's Preliminary
11 Submission Regarding Mandatory Vaccinations, *see* ECF No. 3591, 2:3-15; 5:11-7:15, and in
12 Defendant's Motion, *see* ECF No. 3715-1 at 12:11-22; 13:1-3; 14:10-20; 15:5-20, 15:22-16:7.
13 The positive results are worth repeating here.

14 Defendants' efforts to inoculate the incarcerated population have led to the vaccination of
15 upwards of seventy-nine percent of the incarcerated population with at least one dose of vaccine,
16 *see* CDCR Population COVID-19 Tracking (CDCR Vaccination Tracker),
17 <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited October 27, 2021),
18 resulting in the number of COVID-19 cases among CDCR's incarcerated population decreasing
19 from a peak of 10,617 on December 22, 2020 to 101 positive cases by September 9, 2021, *see*
20 Declaration of Connie Gipson in Support of Defendants' Reply to Responses to Order to Show
21 Cause Re: Receiver's Recommendation on Mandatory Vaccination, ECF No. 3673-1 at ¶ 3;
22 Declaration of Diana Toche in Support of Defendants' Motion to Stay Order Re: Mandatory
23 COVID-19 Vaccinations, ECF No. 3715-2 at ¶ 6. Additionally, as of October 24, 2021, three out
24 of approximately 99,300 incarcerated people were hospitalized due to serious COVID-19 related
25 reasons, compared to 143 hospitalizations on January 5, 2021. ECF No. 3715-2 at ¶ 6.

26 Staff vaccination rates have also increased as a result of Defendants' voluntary programs.
27 "Defendants submitted evidence that staff vaccine acceptance rates increased by five percent
28 during months when incentives were offered." ECF No. 3715-1 at 20:3-5. Since then, staff

1 vaccination rates have continued to rise. “Well over 10,000 doses of vaccine were administered to
2 prison staff from August 9 through October 21, 2021.” ECF No. 3715-2 at ¶ 3. The number of
3 staff who have received at least one dose of vaccine increased from about fifty-three percent on
4 August 6, 2021, to about sixty-three percent by October 14, 2021, and the vaccination rates among
5 custody staff have increased from about forty-one percent to fifty-one percent in the same period.
6 *See id.* Furthermore, positive COVID-19 cases across CDCR’s institutions have remained
7 relatively low in recent months. As of October 24, 2021, CCHCS reported approximately 187
8 active cases among CDCR’s population of approximately 99,300, and cases have recently hovered
9 around 200. *See* ECF No. 3715-2 at ¶ 6. These figures show that even without a mandate, the
10 risks of infection from COVID-19 in the prisons continues to abate. Thus, the incarcerated
11 population is being protected from the most serious risks of COVID-19. And, as Defendants have
12 appropriately noted, there is no way to achieve complete protection from the disease. “Across the
13 country, people continue to contract COVID-19, and the science has confirmed that even
14 vaccinated individuals can contract and spread the virus. Thus, no one is completely safe.” ECF
15 No. 3715-1 at 28:21-25.

16 The severe negative impacts from implementing the vaccination mandate outweigh the
17 advantages of increasing vaccination rates above the already significant levels of vaccinated
18 prisoners and staff members. As noted above, losing substantial numbers of experienced
19 employees and cadets in the academy will disrupt CDCR operations throughout the State and will
20 likely causes prisons to become even more dangerous places in which to live and work. The threat
21 to prisoners’ physical safety that will come with staff shortages may even rival or surpass that
22 associated with COVID-19. Lastly, the fact that the minority of prisoners who are unvaccinated
23 remain so by their own option—and can choose at any time to be inoculated by the State—also
24 tips the balancing test in the Union’s favor to be free from irreparable harm.

25 **D. Staying the Mandatory Vaccination Order Is in the Public’s Interest**

26 The safe and orderly operation of the prison system benefits the public. Defendants’
27 diligent efforts to combat the spread of COVID-19 have been successful in keeping the rate of
28 infections relatively low. As such, a mandatory vaccination order causing staff shortages, which

1 may threaten the prison system’s efficient operation and security, may present a greater threat than
2 the disease itself. Furthermore, the public’s interest lies in the reasonable application of its laws.
3 Because Defendants have been proactive in combatting the spread of COVID-19 in the
4 correctional system, they have not been “deliberately indifferent” as required under the PLRA for
5 prospective relief to be warranted. Therefore, there is no legal basis for the Mandatory
6 Vaccination Order and its enforcement should be stayed pending the appeal.

7 **III.**

8 **CONCLUSION**

9 The Union respectfully requests that the Court stay its Mandatory Vaccination Order
10 pursuant to Fed. R. Civ. P. 62(d) pending the Union’s appeal.

11
12 Dated: October 27, 2021

MESSING ADAM & JASMINE LLP

13
14 By 

15 _____
Gregg McLean Adam

16 Matthew Taylor

17 Attorneys for Intervenor

CALIFORNIA CORRECTIONAL PEACE

18 OFFICERS’ ASSOCIATION
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