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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **MARCIANO PLATA, et al.,**) **CASE NO. 01-cv-01351-JST**
15 **Plaintiffs,**) **SEIU LOCAL 1000’s MOTION FOR**
16 **v.**) **LEAVE TO FILE AMICUS CURIAE**
17 **GAVIN NEWSOM, et al.,**) **BRIEF AND RESPONSE TO**
18 **Defendants.**) **CALIFORNIA CORRECTIONAL**
19) **PEACE OFFICERS’ ASSOCIATION’S**
20) **MOTION FOR STAY OF SEPTEMBER**
21) **27, 2021 ORDER RE: MANDATORY**
22) **VACCINATIONS & DEFENDANTS’**
23) **MOTION TO STAY**

24) **Hearing Date: November 17, 2021**
25) **Time: 2:00 p.m.**
26) **Judge: Hon. Jon S. Tigar**
27) **Courtroom: 6**

28 **MOTION FOR LEAVE TO FILE AMICUS BRIEF**

Movant, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 (“SEIU” or “amicus curiae”), respectfully requests leave to file the attached amicus brief in support of California Correctional Peace Officers’ Association’s (“CCPOA”) Motion For Stay of September 27, 2021 Order Re: Mandatory Vaccinations (ECF No. 3722) (“CCPOA’s Motion”) and Defendants’ Motion to Stay Order Re Mandatory Vaccinations (ECF No. 3715) (“Defendants’ Motion”). The Court previously granted SEIU’s request to file an Amicus Brief

1 in response to the underlying Order to Show Cause Re: Receiver’s Recommendation on
2 Mandatory Vaccination dated August 9, 2021, and in opposition to the Receiver’s
3 recommendation for a mandatory vaccination policy for all California Department of Corrections
4 and Rehabilitation (“CDCR”) institutional staff. (ECF No. 3678).

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6 **INTEREST OF AMICUS CURIAE**

7 SEIU is the exclusive representative for over 99,000 California state employees across
8 nine bargaining units. Over 12,000 of those SEIU-represented employees work at CDCR
9 institutions. The Ralph C. Dills Act (Cal. Govt. Code §§3512 - 3524) (hereinafter “the Dills
10 Act”) provides recognized employee organizations like SEIU with collective bargaining rights
11 on behalf of the employees they represent. SEIU’s mission is to protect the rights of the
12 employees that it represents, including those working at CDCR facilities, who would be subject
13 to the mandatory vaccination policy, and be forced to make important irrevocable decisions
14 about their health and their careers while the policy is under appeal if the Stay is not granted.
15 SEIU thus has an organizational interest in protecting the employees it represents from the
16 uncertainties created by not staying the Order while under appeal.

17 The proposed amicus curiae brief will assist the Court in deciding the matter by
18 highlighting the effects on the employees represented by SEIU of the uncertainty created if the
19 Stay is not granted with respect to state workers’ rights and conditions of employment.
20 WHEREFORE, SEIU respectfully requests leave to file the attached brief as amicus curiae.

21
22 **NO PAYMENT BY ANY PARTY TO PREPARE THIS APPLICATION**

23 This motion and amicus curiae brief was prepared exclusively by SEIU and its counsel.
24 SEIU did not receive any contribution or payment from any party, party’s counsel, or any other
25 person or entity, to fund the preparation or submission of this brief.

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1 Dated: November 8, 2021

Respectfully Submitted,

2 By: **/S/ Theresa C. Witherspoon**
3 Theresa C. Witherspoon, Asst. Chief Counsel for
4 SEIU LOCAL 1000
5 Amicus Curiae

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7 **AMICUS CURIAE BRIEF OF SEIU**

8 **I. INTRODUCTION**

9 Amicus Curiae, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000
10 (“SEIU” or “amicus curiae”), files this response in support of California Correctional Peace
11 Officers’ Association’s (“CCPOA”) Motion For Stay of September 27, 2021 Order Re:
12 Mandatory Vaccinations (ECF No. 3722) (“CCPOA’s Motion”) and Defendants’ Motion to Stay
13 Order Re Mandatory Vaccinations (ECF No. 3715) (“Defendants’ Motion”).

14 SEIU is the exclusive representative for over 12,000 employees working at California
15 Department of Corrections and Rehabilitation (“CDCR”) institutions, who will be subject to the
16 mandatory vaccination policy that results from the Court’s Order Re: Mandatory Vaccinations
17 dated September 27, 2021 (ECF No. 3684) (“the Order”). In CCPOA’s Motion and Defendants’
18 Motion, these parties showed they will likely succeed on the merits of the appeal for various
19 reasons, including the heightened standard applied to the Eighth Amendment question and the
20 existence of less intrusive means of protecting the prison population. If a stay is not granted, not
21 only will CCPOA-represented workers and their families be irreparably harmed, but thousands
22 of SEIU-represented workers and their families will be irreparably harmed as well.

23
24 **II. IRREPARABLE HARM TO SEIU-REPRESENTED WORKERS**

25 If CCPOA and Defendants are successful on appeal, the Court’s failure to stay the Order
26 will cause irreparable harm to thousands of SEIU-represented employees working in CDCR
27 institutions, as well as their families and other members of the public dependent upon them. In
28

1 light of the recent case law cited by CCPOA, the appeal has created reasonable apprehension that
2 the Order will be overturned. (*Fraihat v. U.S.I.C.E.*, No. 20-55634, ---F.4th---, 2021 WL
3 4890884 (9th Cir. Oct. 20, 2021).) Additionally, just two days ago, the Fifth Circuit Court of
4 Appeals stayed the wide-reaching Occupational Health and Safety Administration (“OSHA”)
5 mandate regarding COVID-19 vaccination and testing in the workplace, supporting the
6 likelihood of further inconsistencies. (*BST Holdings v. O.S.H.A.*, No. 21-60845, ---F.4th---, (5th
7 Cir. Nov. 6, 2021).) This appeal will certainly not be resolved prior to the deadline for
8 compliance with the Order — January 12, 2022. Thus, the deadline to comply remains
9 imminent, despite the uncertainty for workers regarding whether to comply with forced
10 vaccination against their wishes or take their chances with the consequences of not complying
11 with the Court’s Order, which are also uncertain at this point.

12 The debate over mandatory vaccination policies has placed a great amount of stress on
13 workers, who must do their best to keep abreast of the various orders, the constantly changing or
14 conflicting deadlines, and the open legal question of whether the orders will be appealed and/or
15 overturned. In light of the pending appeal, the Order should be stayed so that workers can be
16 sure, in deciding whether to get vaccinated, that the vaccination policy they are considering will
17 not be later rescinded, after it may be too late to reverse compliance. Should this be the case,
18 these workers will have either undergone an unwanted and irreversible medical procedure or
19 have been forced out of their jobs. State workers, who receive the vaccine pursuant to the policy
20 solely out of fear for their jobs, cannot be said to have voluntarily received the vaccine and
21 cannot be adequately compensated by damages should the Order be overturned on appeal or
22 result in an alternative that does not require obtaining the vaccine or losing their jobs.

23 “[M]ost courts have based a right to refuse treatment either solely on the common-law
24 right to informed consent or on both the common-law right and a constitutional privacy right”
25 under the 14th Amendment of the U.S. Constitution. (See *Cruzan v. Dir., Mo. Dep’t of Health*,
26 497 U.S. 261 (1990).) The doctrine of informed consent requires the decision regarding medical
27 treatment to “be made voluntarily and without coercion.” (*Thor v. Superior Court*, 5 Cal. 4th
28 725, 735 (1993).) “[T]he right to refuse medical treatment is equally ‘basic and fundamental’

1 and integral to the concept of informed consent.” (*Id.* at 735-36.) “It is well established that the
2 deprivation of constitutional rights unquestionably constitutes irreparable injury.” (*Hecox v.*
3 *Little*, 479 F. Supp. 3d 930, 987 (9th Cir. 2020).) The Order and resulting vaccination policy
4 effectively coerce state employees to comply or risk losing their livelihoods. This violation of
5 their fundamental right to refuse medical treatment is irreparable, as a coerced bodily intrusion or
6 medical treatment cannot be undone or adequately compensated, especially if employees suffer
7 any complications from the vaccine.

8 Moreover, CDCR employees who, in reliance on the Order, resign because they refuse to
9 be vaccinated will suffer irreparable harm to their careers as state civil servants if the Order is
10 overturned. The employees who make the difficult choice of resigning in lieu of complying with
11 the Order while it is under appeal will suffer the loss of wages and benefits, as will their families
12 and those who depend upon them, when it may turn out that their resignations were unnecessary
13 if the appeal is successful. State employees who have achieved permanent status after passing
14 probation, but who resign rather than be subject to discipline when faced with the Order under
15 appeal, would likely also lose their right to mandatory reinstatement in the state civil service
16 system. (Cal. Gov. Code § 19140.) Employees who do not resign and are terminated through a
17 disciplinary proceeding would be essentially barred from state employment with any state
18 agency in California while that dismissal is in place. (Cal. Gov. Code § 19583.1.) Resigning
19 and losing their mandatory reinstatement rights may be the only real choice for the public
20 servants represented by SEIU, who have chosen to dedicate their careers to serving California.

21 Even if a court order later reverses disciplinary actions taken against employees for non-
22 compliance with the vaccine policy, the employees and their families would suffer unnecessarily
23 while the case makes its way through the courts. Moreover, while wages may be replaced, many
24 employees working in CDCR institutions live in areas with few other employment opportunities.
25 The loss of their CDCR jobs will result in being forced to move or having to relocate away from
26 their families, creating significant personal upheaval and incurring costs that are unlikely to be
27 recoverable. Thus, whether employees get vaccinated against their wishes, resign, or suffer the
28 consequences of non-compliance in reliance on the Order and resulting vaccination policy,

1 SEIU-represented state workers will suffer irreparable harm if the Order is not stayed, even if it
2 is ultimately overturned on appeal.

3 Not only will SEIU-represented employees suffer these irreparable injuries, but failing to
4 issue a stay is likely to have a substantial negative impact on inmate healthcare. Significant
5 numbers of nurses are among the employees represented by SEIU facing the dilemma presented
6 by the Order; forcing this choice on nurses will likely lead to resignations and terminations,
7 decreasing the availability of healthcare staff in our prisons. This will start a domino effect
8 resulting in a substantial negative impact on Defendant's ability to ensure inmates are properly
9 cared for, and imposing dangerous conditions that the SEIU-represented nurses who remain on
10 the job must work under as they attempt to care for inmate/patients while being understaffed.

11 The harms of enforcing this Order while the appeal is pending are significant and wide-
12 reaching. It is imperative that the employees of CDCR are granted the reprieve from making the
13 irreversible decision to get vaccinated, resign, or face discipline, at least until the appeal is
14 resolved.

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16 **III. CONCLUSION**

17 For the foregoing reasons, SEIU respectfully asks the Court to grant CCPOA's Motion
18 and Defendants' Motion to Stay the Court's September 27, 2021 Order Re: Mandatory
19 Vaccinations, pending appeal.

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21 Dated: November 8, 2021

Respectfully Submitted,

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23 By: /S/ Theresa C. Witherspoon
24 Theresa C. Witherspoon, Asst. Chief Counsel for
25 SEIU LOCAL 1000
26 Amicus Curiae
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