



Class Action Capital Outlay Annual Legislative Report

Fiscal Year 21/22

California Department of Corrections and Rehabilitation
Office of Legal Affairs

Executive Summary

On June 27, 2022, Governor Newsom approved Senate Bill 154: Budget Act of 2022. The Bill included the following reporting mandate for the California Department of Corrections and Rehabilitation (CDCR):

The Department of Corrections and Rehabilitation shall report spending on class action lawsuits against the department to the budget committees of both houses and the Legislative Analyst's Office by January 31 of each year for five years beginning in 2023. At a minimum, this report shall include spending for each lawsuit in the most recently completed fiscal year on all litigation activities (including, but not limited to, the costs of the department's legal staff time, payments to outside counsel for legal services, and payments to plaintiffs, monitors, and court experts).

In both federal and state courts, one or more named plaintiffs can bring a class action lawsuit by filing a proposed class action on behalf of themselves and a potential group of similarly situated but not yet identified individuals (the “class”) who allegedly suffered a common injury based on the same law and common facts. At that stage, the class action is considered to be “putative” – i.e., supposed or alleged. In order to maintain that lawsuit as a class action, however, the court must certify it as a class action. That certification is based on the court’s assessment of four criteria that must be met: commonality, typicality, numerosity, and adequacy of representation.

During Fiscal Year (FY) 2021/22, there were 18 putative and certified class actions pending against CDCR. Of those 18 cases: seven cases are in the remedial and monitoring phase having been settled previously; four cases have been certified by the courts and are still in the litigation phase; and the remaining seven cases are not yet certified by the courts.

In the seven settled class action cases¹ (all of which are in federal court), the parties have either agreed to a remedial plan that is court-approved and ordered, or the court has found against CDCR and ordered that the Department devise and implement a remedial plan. The remedial phase involves the monitoring of CDCR’s compliance with the remedial plans or settlement agreements, the continuing jurisdiction of the federal court, and negotiation and attempts to resolve the legal and operations issues that arise concerning CDCR’s compliance; and, where negotiation is not fruitful, renewed litigation can occur. Monitoring CDCR’s compliance with the remedial plans is primarily the responsibility of plaintiffs’ counsel in each of the settled cases.

The legal defense of CDCR’s class action cases is handled primarily by the Department’s teams of class action attorneys, attorneys from the Office of the Attorney General (OAG); and, in some cases, outside counsel contracted to provide additional defense litigation services. Over the course of the past fiscal year (FY 2021/22), CDCR has expended the following on its class action legal services: \$5,249,207 on OAG legal fees, \$2,250,902 on contract counsel legal fees, and

¹ *Armstrong v. Newsom, Ashker v. Newsom, Clark v. California, Coleman v. Newsom, Plata v. Newsom, Prison Legal News v. Schwarzenegger*, and the *Three-Judge Court Proceedings*.

\$3,525,113 for the salaries, wages and benefits of the CDCR class action attorneys and the CDCR administrative staff who provide clerical and analytical support to the class action team.

The Prison Litigation Reform Act (PLRA) entitles the plaintiffs' counsel to attorneys' fees in any action brought by an incarcerated individual regarding prison conditions, in which they are deemed to be the prevailing party. Attorneys' fees are limited to those that are directly and reasonably incurred in proving a violation of the plaintiffs' rights and in enforcing the relief ordered.² Similarly, the Americans with Disabilities Act states that a court may, in its discretion, allow the prevailing party a reasonable attorney's fee, including litigation expenses and costs. Therefore, CDCR pays plaintiffs' attorneys' fees in the seven class action cases that are currently in the remedial phase. This includes attorneys' fees for activities such as monitoring tours, client advocacy, negotiations (including those ordered by the court), drafting pleadings, reviewing documents, conferring with clients, as well as the fees of experts retained by plaintiffs' counsel.³ In FY 21/22, CDCR paid a total of \$16,741,645 in attorneys' fees in *Armstrong*, *Ashker*, *Clark*, *Coleman*, *Plata*, *Prison Legal News*, and the *Three Judge Proceeding*; collectively.

Coleman, which concerns CDCR's delivery of mental health care, is the only CDCR class action in which a court has appointed a Special Master, which occurred in 1995. During the ensuing 28 years, the Special Master's team has grown to include the court-ordered appointment of an additional 28 individuals. In FY 21/22, CDCR deposited \$9,000,000 with the court for payment of the Special Master and his team, from which the court issued \$9,616,430 in payments from FY 2021/22 and prior year deposits.

Plata, which concerns CDCR's delivery of medical care, is the only CDCR class action in which a court has appointed a federal Receiver charged with developing, implementing, and validating a new sustainable system. Further in-depth discussion regarding CDCR's costs for the provision of medical care follows below. However, it is difficult to parse out the costs spent on the receivership due to the class action from the overall operating budget for the provision of medical care.

And finally, the courts in some of the class action cases have also appointed their own experts, whose fees are borne by CDCR via court order. In FY 2021/22, CDCR paid \$906,044 in deposits and direct payments for the services of court-appointed experts in *Armstrong*, and *Plata*; from which the court issued \$797,003 in payments.

A more detailed discussion of expenditures in these class action categories in both the aggregate as well as individually by case is provided in the sections that follow. Activity in the class action cases continued to be impacted by the State's and CDCR's response to the COVID-19 pandemic during this initial reporting period (FY 2021/22). Therefore, to provide relevant context on

² See 42 U.S.C. § 1997e(d).

³ The PLRA limits the recoverable attorney fees by establishing a cap on the hourly rate that can be charged. It should be noted that the hourly attorney rate for purposes of fees and costs reimbursement in the *Armstrong* and *Clark* cases are not capped by the PLRA because those cases were brought under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

spending in these cases when not influenced by external events, this report also includes data on the direct costs in these cases over the course of the past five fiscal years. The cases discussed in this report are those that incurred expenditures that CDCR paid in FY 21/22, and therefore does not include pending cases that were filed with the court after July 1, 2022.

Class Action Spending Summary

CDCR Staffing Expenditures

During FY 21/22, CDCR's Class Action teams were comprised of 18 filled attorney positions, 2 vacant attorney positions, 2 filled administrative staff positions, and 0 vacant administrative staff positions. This staff provide the legal support for certified or putative complex class action cases and other sensitive and complex litigation. Daily class action attorney tasks include providing legal advice, defending the department against active litigation, coordinating with CDCR's program areas to achieve compliance with hundreds of individual court-ordered mandates, negotiating with opposing counsel to limit expansion of these cases while adhering to the fundamental goals of class action remedial plans, providing legal representation during auditing and monitoring tours by plaintiffs' counsel, reviewing hundreds of documents monthly before production to plaintiffs' counsel, and responding to multiple weekly advocacy letters from opposing counsel. The administrative staff assigned to the class actions provide the full range of legal support functions; including gathering, processing, and conducting trend analysis of document productions; scheduling meetings; and tracking audit reports and advocacy responses.

The associated budget allotment for the CDCR attorneys and staff assigned full time to support class action activities is \$3,525,113 for salaries and wages, and benefits. This allotment is presented in the aggregate and is not reflected in the cost analysis of individual cases because many of CDCR's attorneys and all of the administrative staff that handle the class action cases are assigned to more than one case; therefore, CDCR staffing costs cannot be accurately apportioned to each case.

CDCR Class Action Case Expenditures

FY 21/22 CASE-SPECIFIC SPENDING

	OAG Fees	Contract Counsel Fees	Special Master Fees	Court Expert Fees	Plaintiffs' Counsel Fees*	TOTALS
Armstrong	\$1,427,430			\$900,000**	\$10,343,736	\$12,671,166
Ashker	\$955,116				\$748,898	\$1,704,014
Bagube	\$69,170					\$69,170
Blue ***						\$0
Carreon	\$268,719					\$268,719
Chandler	\$110,291					\$110,291
Clark	\$49,668				\$517,929	\$567,597
Coleman	\$1,047,515	\$1,675,896	\$9,000,000**		\$3,867,201	\$15,590,612
Fitzgerald	\$241,121					\$241,121
Malear	\$26,915					\$26,915
Milton	\$108,521					\$108,521
Plata	\$808,841	\$575,006		\$6,044	\$1,037,262	\$2,427,153
PLN	\$20,955				\$226,619	\$247,574
Sanchez***						\$0
Stoetzel ***						\$0
Taylor	\$50,820					\$50,820
Three Judge	\$27,225					\$27,225
Williams	\$36,900					\$36,900
TOTALS	\$5,249,207	\$2,250,902	\$9,000,000	\$906,044	\$16,741,645	\$34,147,798

* Plaintiffs' counsel in the class action cases submit billing invoices for payment on a quarterly basis. However, the submissions are sometimes untimely or, by the time payments are ordered payments accrued within a fiscal year, may not be paid until the following fiscal year. The payments reported here were accrued by

plaintiffs' counsel in FY 20/21 and charged against that year's budget even if payment did not occur until later.

*** These payments represent court-ordered deposits to the court's fund for the court's direct payment of these individuals. Information regarding individually invoiced payments can be found in the case detail, below.*

**** Defense counsel costs are provided by CalHR, which is a co-defendant in these cases.*

CLASS ACTION CASES

A. CASES IN THE REMEDIAL PHASE

Some of CDCR's settled class action lawsuits are in the remedial phase and are more than 20 years old, yet they continue to be actively litigated on occasion. These class action cases persist for such lengthy durations due to the complexity of legal, policy, and operational issues raised by the lawsuits, especially in a correctional environment; the addition of new court-ordered requirements that expand the scope of the cases over time; the size and geographic diversity of CDCR; and the relative number of plaintiff class members in each of the cases.

While these cases are settled, that does not mean the litigation is over. When the parties are unable to resolve issues that arise from implementation of the remedial plans or disagreements regarding whether CDCR needs to adopt further corrective measures, further litigation is necessary.

In each of the settled cases in the remedial phase, plaintiffs' counsel serve as the principal external entities that monitor CDCR's compliance with class action orders, remedial plans, or negotiated agreements. In those cases where there are court-appointed experts or a Special Master, the court has granted its experts the authority to monitor defendants' compliance with remedial plans and the court's orders. Additionally, in the *Plata* case, the Office of the Inspector General (OIG) also performs monitoring and produces reports of their audit findings. CDCR does not reimburse the OIG for expenses incurred for monitoring healthcare compliance in *Plata*. Therefore, the cost of OIG monitoring is not separately addressed in this report. The cost of monitoring is included within the payments made to plaintiffs' counsel and the court-appointed experts.

As noted above, CDCR is ordered to pay plaintiffs' counsel's attorneys' fees and costs in the following seven cases.

Armstrong v. Newsom

USDC ND Cal, 4:94-cv-02307-CW

In FY 2021/22, CDCR expended a total of \$12,671,166 in direct costs related to the *Armstrong v. Newsom* class action. This represents \$1,427,430 in defense litigation costs, \$10,343,736 in fees and costs paid to plaintiffs' counsel, and \$900,000 in deposits to the court for payment of the court's appointed expert.

Over the past five years, CDCR has expended \$51,337,582 on direct costs related to the *Armstrong* litigation. Although regular touring and monitoring activities were suspended or greatly reduced due to the COVID-19 pandemic, activity in the *Armstrong* case during that period remained high due to ongoing litigation in the case. During the past two fiscal years (FY 2020/21 and 2021/22), payments averaged \$13,174,515 per year. In the three preceding fiscal years (FY 2017/18 through 2019/20), *Armstrong* costs averaged \$8,329,534 per year.

Case Overview:

Armstrong is a federal class action lawsuit filed in 1994 challenging, under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the adequacy of accommodations provided to incarcerated and formerly incarcerated individuals with physical disabilities and learning disabilities in prisons, on parole, and during parole board hearings. The *Armstrong* class currently consists of approximately 11,045 members or about ten percent of CDCR's incarcerated population. The state entered into a settlement agreement in 1996. Two remedial plans and multiple enforcement orders with extensive obligations govern the manner in which CDCR provides reasonable accommodations.

Two additional remedial plans have recently been ordered following renewed litigation in 2019 through 2022 on allegations of staff misconduct either committed against class members or that created an environment in which class members were afraid to ask for disability accommodations at six of CDCR's prisons. Therefore, *Armstrong* class action costs have increased for the past two fiscal years.

Cost Detail:

Defense Counsel: CDCR is represented in *Armstrong* by attorneys from the OAG. In FY 2021/22, CDCR paid \$1,427,430 in defense litigation costs. Over the course of the past two fiscal years, there has been increased litigation in *Armstrong* due to staff misconduct allegations mentioned above. Therefore, defense litigation expenditures have increased markedly during that time frame. In FYs 2019/20 and 2020/21, CDCR paid the OAG an average of \$1,636,108 per year for defense representation and litigation; by contrast, for the preceding two FYs 2017/18 and 2018/19, CDCR paid the OAG an average of \$510,252 per year for defense representation and litigation.

Plaintiffs' Counsel: The *Armstrong* plaintiff class is represented in this action by the law firms of the Prison Law Office and Rosen, Bien, Galvan & Grunfeld. On March 26, 1997, the court established the process by which CDCR would reimburse the *Armstrong* plaintiffs' counsel on a quarterly basis. As mentioned in the Executive Summary, the hourly attorney rate for purposes of fees and costs reimbursement in *Armstrong* is not capped by the PLRA because the case was brought under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, as opposed to the PLRA. Therefore, plaintiffs' counsel charges the prevailing market rate in this case. In FY 2021/22, CDCR paid \$10,304,037 in plaintiffs' counsels' fees and costs; and has paid \$43,250,352 over the course of the past five fiscal years (an average of \$6,529,124 per year for FYs 2017/18 and 2018/19; and \$9,944,0334 per year for FYs 2019/20 and 2020/21).

Court-Appointed Experts: In 2007, the *Armstrong* court appointed a court expert to “assist the Court and parties in facilitating coordination of enforcement.” By court order, CDCR is obligated to reimburse the expert and their appointed staff for their fees and costs by depositing interim payments with the court from which the court then issues payments based on submitted invoices. In FY 2021/22, CDCR made \$900,000 in deposits to the court, from which the court paid the court-appointed expert \$790,959 for services rendered to the court and the parties. Over the past five fiscal years, the court has paid an average of \$473,416 to the court expert from funds deposited by CDCR.

Ashker v. Newsom

USDC ND Cal, 4:09-cv-05796-CW

In FY 2021/22, CDCR expended a total of \$1,704,014 in direct costs related to the *Ashker v. Newsom* class action. This represents \$955,116 in defense litigation costs and \$748,898 in fees and costs paid to plaintiffs’ counsel.

Over the course of the past five years, CDCR has expended \$9,250,639 on direct costs related to the *Ashker* litigation. Monitoring activities have been suspended for much of the past two years pending the resolution of litigation regarding termination of the case. However, the continuation and scope of the case has been litigated during that time period.

Case Overview:

The *Ashker* case was originally filed in 2009 as an individual lawsuit, but was later amended in 2012 to allege class action claims. The lawsuit alleged that CDCR’s gang management policies and procedures, including the indefinite housing of gang members in Security Housing Units (SHUs) based on gang validation status alone, violated the Eighth and Fourteenth Amendments of the United States Constitution. The parties entered into a settlement agreement in 2015, which primarily required that CDCR review and house class members in appropriate General Population housing and change the criteria for placement in a SHU to a behavior-based model, as opposed to one based on gang status.

In 2015, there were 2,692 gang members or affiliates in CDCR of which 1,947 were housed in a SHU. As a result of the agreed upon reviews, as of January 2022 only 135 individuals are housed in a SHU based on disciplinary findings, and none solely due to gang affiliation. CDCR has since closed or re-purposed several of its SHUs.

Cost Detail:

Defense Counsel: CDCR is represented in *Ashker* by attorneys from the OAG. In FY 2021/22, CDCR paid \$955,116 in defense litigation costs. Despite the settlement, the *Ashker* lawsuit continues to be actively litigated. As a result, costs of litigation defense in the case have continued to remain relatively high despite the case’s remedial phase status, with litigation costs over the course of the past two fiscal years pertaining to the termination of the case. In FYs 2019/20 and 2020/21, CDCR paid the OAG an average of \$700,126 per year for defense representation and

litigation. For the preceding two fiscal years (FYs 2017/18 and 2018/19), CDCR paid the OAG an average of \$413,655 per year for defense representation and litigation.

Plaintiffs' Counsel: The *Ashker* plaintiff class is represented in this action by several law firms, but primarily by the Center for Constitutional Rights and the Bremer Law Group. The *Ashker* settlement agreement establishes that defendants would pay plaintiffs' counsel's fees and costs for work reasonably performed on the case, including monitoring CDCR's compliance – in accordance with the PLRA. In FY 2021/22, CDCR paid \$928,323 in plaintiffs' counsels' fees and costs; and has paid \$6,067,962 over the course of the past five fiscal years (an average of \$1,213,592 per year).

Court-Appointed Experts: There are no court-appointed experts in the *Ashker* case.

Clark v. California

USDC ND Cal, 3:96-cv-01486

In FY 2021/22, CDCR expended a total of \$567,597 in direct costs related to the *Clark v. California* class action. This represents \$49,668 in defense litigation costs and \$517,929 in fees and costs paid to plaintiffs' counsel.

Over the course of the past two fiscal years, regular touring and monitoring activities were suspended or greatly reduced due to the COVID-19 pandemic, therefore, direct costs have been lower. The *Clark* case has not seen any litigation activity for several years as the parties tend to work more collaboratively in trying to reach mutually agreeable resolution of pending issues.

Case Overview:

The *Clark* class action is a federal lawsuit that was filed in 1996 on behalf of incarcerated individuals with developmental disabilities. The complaint alleged that CDCR was violating the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Eighth and Fourteenth Amendments of the U.S. Constitution in its failure to adequately accommodate those individuals. The *Clark* Remedial Plan was developed as a result of settlement negotiations between the parties and approved by the Court in 2001. The Remedial Plan outlines the Department's Developmental Disability Program, which is the Department's plans, policies, and procedures to ensure identification; appropriate classification, housing and protection; and nondiscrimination of incarcerated individuals with developmental disabilities, traumatic brain injuries, or dementia. In 2010, the defendants moved to terminate the *Clark* class action, but their motion was denied by the court.

Cost Detail:

Defense Counsel: CDCR is represented in *Clark* by attorneys from the OAG. In FY 2021/22, CDCR paid \$49,668 in defense costs. Although *Clark* is not as heavily litigated as some class actions, OAG attorneys provide representation during meet and confers, and negotiations with plaintiffs' counsel. For the past two fiscal years (FY 2020/21 and 2021/22) during which activities were impacted by COVID-19, defense counsel costs averaged \$53,460 per year. In the three

preceding fiscal years (FY 2017/18 through 2019/20), *Clark* defense costs averaged \$79,643 per year.

Plaintiffs' Counsel: The *Clark* plaintiff class is represented by the Prison Law Office. As mentioned in the Executive Summary, the hourly attorney rate for purposes of fees and costs reimbursement in *Clark* is not capped by the PLRA because the case was brought under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, as opposed to the PLRA. Therefore, plaintiffs' counsel charges the prevailing market rate in this case. In FY 2021/22, CDCR paid \$517,929 in plaintiffs' counsels' fees and costs.

Court-Appointed Experts: in 1998 the *Clark* court appointed two court experts to evaluate Defendants' compliance with remedial plans at the request of any party or the Court. By court order, CDCR is obligated to reimburse these experts for their fees and costs. However, the experts have had limited involvement in *Clark* over the years, and did not incur any costs for their services in FY 2021/22.

Coleman v. Newsom

USDC ED Cal, 2:90-cv-00520

In FY 2021/22, CDCR expended a total of \$15,590,612 in direct costs related to the *Coleman v. Newsom* class action. This represents \$2,723,410 in defense litigation costs (fees and costs paid to the OAG and to additionally retained contract counsel), \$3,867,201 in fees and costs paid to plaintiffs' counsel, and \$9,616,430 paid to the Special Master's team appointed by the federal court.

Over the course of the past five years, CDCR has expended \$69,895,706 on direct costs related to the *Coleman* litigation⁴. Although the *Coleman* class action is in the remedial phase it is nevertheless still actively litigated with regard to unresolved issues governing the standard of care, community best practices, data remediation, and staffing. During the past two fiscal years (FY 2020/21 and 2021/22), direct costs averaged \$16,460,520 per year. In the three preceding fiscal years (FY 2017/18 through 2019/20), *Coleman* costs averaged \$12,575,517 per year.

Case Overview:

Coleman is a federal class action lawsuit filed in 1990 challenging the constitutional adequacy of mental health care for incarcerated individuals with serious mental illnesses. In 1995, following trial, the court ruled against the defendants and appointed a special master to, among other things, "work with defendants and experts to be selected by the special master... to develop a remedial plan that effectively addresses the constitutional violations set forth in [the court's order]." In 1997, the court approved a remedial plan, which is set forth in the "Mental Health Services Delivery System Program Guide." As of January 11, 2023, there are 32,650 individuals included in the *Coleman* class.

⁴ This includes \$1,503,774 paid to the court's additional appointed expert for a limited purpose in 2019.

In 2013, the defendants moved to terminate the *Coleman* class action, but the motion was denied by the court.

Cost Detail:

Defense Counsel: CDCR is represented in *Coleman* by attorneys from the OAG and by the retained private law firm of Hanson Bridgett. In FY 2021/22, CDCR paid \$2,723,411 in defense litigation costs. This represents payments of \$1,047,515 to the OAG and \$1,675,896 to Hanson Bridgett. For context of the pre-COVID-19 versus post-COVID-19 activity in the case: for the past two fiscal years (FY 2020/21 and 2021/22), i.e., post-COVID-19, CDCR has paid the OAG a total of \$2,769,618 in defense counsel costs. Hanson Bridgett was retained for additional representation in *Coleman* in FY 2020/21, and CDCR has paid Hanson Bridgett \$3,615,305 thus far. Pre-COVID-19, CDCR paid the OAG a total of \$5,411,229 for the preceding three fiscal years (FY 2017/18 through 2019/20).

Plaintiffs' Counsel: The *Coleman* plaintiff class is represented by the Prison Law Office and the law firm of Rosen, Bien, Galvan, and Grunfeld. In 1996, the court ordered that CDCR reimburse the *Coleman* plaintiffs' counsel for "fees and costs incurred in obtaining and monitoring compliance with the Court's decision", and established the process by which they would continue to be reimbursed on a quarterly basis with interest to run "from the thirty-first (31) day following [defendants'] receipt of the billing in which the items in question appear." In FY 2021/22, CDCR paid \$3,853,656 in plaintiffs' counsels' fees and costs; and has paid \$17,643,164 over the course of the past five fiscal years (an average of \$3,528,633 per year).

Court-Appointed Experts: Twenty-seven years ago, in 1995 the *Coleman* court appointed a Special Master, in addition to assisting in the development of the remedial plan mentioned above, "to provide expert advice to defendants to ensure that their decisions regarding the provision of mental health care to class members conforms to the requirements of the U.S. Constitution and to advise the court regarding assessment of defendants' compliance." In order to fulfill these duties, the court empowered the Special Master "to retain or employ independent experts, specialists, assistants, administrative support staff or any other such person whose advice or assistance the special master deems necessary." The Special Master's team is now comprised of 29 individuals, including the Special Master, in FY 2021/22.

The court also ordered that "the special master's fees and expenses shall be borne by the defendants as part of the costs of this action," and established the procedure by which payments would be disbursed – CDCR is to make deposits to the court in an interest-bearing account from which the court would issue payments to the Special Master based on submitted invoices. In FY 2021/22, CDCR made \$9,000,000 in deposits to the court, from which the court paid the Special Master's team \$9,616,430, from FY 2021/22 and prior year deposits. Over the course of the past five fiscal years, the court has issued \$38,420,609 in payments to the Special Master's team from deposits made to the court by CDCR.

Monitoring: Monitoring in *Coleman* is conducted by plaintiffs' counsel and by the court-appointed Special Master. When appointing the Special Master, the court ordered that he shall "monitor

defendants' implementation of and compliance with any remedial plan that [the] court may order," "prepare and file with the court periodic reports assessing defendants' compliance" and "advise the court concerning any modification to the remedial plan that is requested by a party or that appears necessary to effectuate the purposes of the remedial plan." The cost of monitoring is not separable from the other activities performed by plaintiffs' counsel and the Special Master and is therefore subsumed within the payments discussed above.

Plata v. Newsom

USDC ND Cal, 4:01-cv-01351

In FY 2021/22, CDCR expended a total of \$2,427,153 in direct costs related to the *Plata v. Newsom* class action. This represents \$1,383,848 in defense litigation costs (fees and costs paid to the OAG and to additionally retained contract counsel), \$1,037,262 in fees and costs paid to plaintiffs' counsel, and \$6,043.75 paid to experts appointed by the federal court.

As a case governing the adequacy of medical care for incarcerated individuals, *Plata* was most impacted by the COVID-19 pandemic. There was a significant increase in discovery, litigation, meet and confers with plaintiffs' counsel, and status conferences before the court. As a result, the costs expended in *Plata* in the post-COVID-19 timeframe are markedly higher than they were in the immediately preceding pre-COVID-19 timeframe.

During the past two fiscal years (FY 2020/21 and 2021/22), CDCR paid a total of \$5,712,486 in direct costs, or an average of \$2,856,243 per year. This is juxtaposed against the total direct costs paid in the three preceding fiscal years (FY 2017/18 through 2019/20); which were \$6,585,520, or an average of \$2,195,173 per year.

Case Overview:

Plata is a federal class action lawsuit filed in 2001 challenging the constitutional adequacy of medical care for "all prisoners in the custody of the CDC with serious medical needs." As of December 14, 2022, there were 90,809 incarcerated individuals included within the *Plata* class whose medical care is governed by this class action. The state stipulated to a remedial injunction in 2002. In 2006, the Court determined that ongoing deficiencies warranted the appointment of a Receiver. In 2015, the Court issued an order that outlined the process for the transfer of medical care back to the State via the granting of a "revocable delegation of authority" to the Secretary of CDCR to assume management of an institution's medical care. If the Receiver determines that an institution has achieved an acceptable level of health care delivery, he will execute a "revocable delegation of authority" to the Secretary of CDCR to take over management of that institution's medical care. The Receiver's delegation creates a rebuttable presumption that medical care provided in the prison is constitutionally adequate. As of December 31, 2022, the medical care at 20 institutions has been delegated back to the State. The delegation of care at 14 institutions remains.

Cost Detail:

Defense Counsel: CDCR is represented in *Plata* by attorneys from the OAG and by the retained private law firm of Hanson Bridgett. In FY 2021/22, CDCR paid \$1,383,848 in defense litigation costs. This represents payments of \$808,841 to the OAG and \$575,006 to Hanson Bridgett.

During the past two fiscal years post-COVID-19 (FY 2020/21 and 2021/22), CDCR paid a total of \$3,237,399 in defense counsel costs, or an average of \$1,618,700 per year. During the preceding three pre-COVID-19 fiscal years (FYs 2017/18 through 2019/20), CDCR paid a total of \$2,233,480 in costs for defense counsel, or an average of \$744,493 per year.

Plaintiffs' Counsel: The *Plata* plaintiff class is represented in this action by the law firms of the Prison Law Office and Rosen, Bien, Galvan & Grunfeld. In December 2002, the parties stipulated to and the court ordered the process by which plaintiffs' attorneys' fees would be reimbursed on a quarterly basis, with interest to accrue from the thirty-first day following the entry of the order to pay the undisputed fees. In FY 2021/22, CDCR paid \$1,037,262 in plaintiffs' counsels' fees and costs. Over the course of the past five fiscal years, CDCR has been ordered to pay \$5,942,311 in plaintiffs' counsels' fees and costs (with an approximate 40% increase during the height of the COVID-19 pandemic).

Court-Appointed Experts: During the course of this case, the *Plata* court has appointed a number of experts to assist it (as well as the court-appointed Receiver) in understanding and managing the oversight of the medical care of the plaintiff class. By court order, CDCR is obligated to reimburse these experts for their fees and costs. In FY 2021/22, three court-appointed experts actively assisted the court and CDCR paid \$6,044 to reimburse them for their fees and costs. Despite the increased activity in the case due to the COVID-19 pandemic, the court's reliance on these court-appointed experts waned while the court and the parties grappled with the issues surrounding COVID-19 and the incarcerated population. However, over the past five fiscal years, CDCR has paid \$884,816 for their services to the court, with payments in some years exceeding \$350,000.

In addition to the court-appointed experts discussed above, in 2006, the court appointed a Receiver with the following mandate and authority:

The Receiver shall provide leadership and executive management of the California prison medical health care delivery system with the goals of restructuring day-to-day operations and developing, implementing, and validating a new, sustainable system that provides constitutionally adequate medical care to all class members as soon as practicable. To this end, the Receiver shall have the duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, legal, and other operational functions of the medical delivery component of the CDCR.

In its order, the *Plata* court also ordered that the Receiver "determine the annual CDCR medical health care budgets," "be paid a reasonable compensation for his services," and ordered that CDCR deposit an initial operating fund for the Receivership in the amount of \$750,000, but thereafter, the budget was to be established annually by the Receiver. With "all costs incurred in

the implementation of the policies, plans, and decisions of the Receiver relating to the fulfillment of his duties ... [to] be borne by Defendants.” In the years following that 2006 order, the Receiver established the California Correctional Health Care Services Division (CCHCS). The annual CCHCS budget is now subsumed within the annual CDCR budget and includes all payments and reimbursements to the Receiver, Deputy Receiver, as well as all reasonable reimbursements to the court-appointed Advisory Board established “to provide advice and consultation to the Court regarding the Court’s role in overseeing the Receivership and all other aspects of the remedial processes in this case.” In FY 2021/22, the allotted budget for medical services provided by CCHCS and its attendant support infrastructure was \$2,926,648,000 to support 13,464 positions.

Monitoring: Monitoring in *Plata* is conducted by plaintiffs’ counsel, the Receiver’s reports to the court, and via the Office of the Inspector General’s inspections into the quality of medical care at CDCR’s institutions. The cost of monitoring is not separable from the other activities performed by plaintiffs’ counsel and the Receiver; and CDCR does not bear the costs of the OIG’s evaluations. Therefore, there is not a separate summary of costs for monitoring in *Plata*.

Three-Judge Court Proceedings

USDC ED Cal, (same case numbers as *Coleman* and *Plata*)

Case Overview:

In 2007, in response to motions in *Plata* and *Coleman* alleging the State’s inability to provide care in overcrowded prison conditions, the federal court created a panel of three judges (the judges from the *Plata* and *Coleman* cases, and a Ninth Circuit judge) to consider the court-ordered release of incarcerated individuals. In 2010, the three-judge panel ordered the state to reduce the prison population to 137.5% of design capacity (a reduction of approximately 40,000 individuals). The US Supreme Court affirmed the panel’s order. The state met the benchmark in February 2015 and has been in compliance for nearly eight years. Due to further population reduction measures since that time, CDCR’s prison population is currently 110.8% of design capacity.

Cost Detail:

Although a three-judge panel was convened in order to address the impact that the high prison population was having on CDCR’s ability to effectively provide adequate medical and mental health care, this action is a derivative of the *Coleman* and *Plata* class actions. As such, it does not have its own case number, but instead utilizes the *Coleman* and *Plata* case numbers; and all court docket entries in this matter appear within each of the *Coleman* and *Plata* dockets. As a result, the costs incurred in this matter are billed to and paid by CDCR in *Plata*. For example, in accordance with the *Plata* Court’s September 2009 order, plaintiffs’ counsel’s fees and costs in the Three-Judge Court Proceeding are to be governed by the *Plata* periodic fees order and so are subsumed within that billing. All litigation costs incurred in the Three-Judge proceeding are subsumed within *Plata*’s costs - this includes payments to outside counsel and plaintiffs’ counsel.

The one exception is the OAG’s billing for defense counsel fees and costs, which are separately itemized. In FY 2021/22, CDCR paid \$27,225 to the OAG in defense costs, and paid \$158,908 over the course of the past five fiscal years, or an average of \$31,782 per year.

Prison Legal News v. Schwarzenegger

USDC ND Cal, 4:07-cv-02058

In FY 2021/22, CDCR expended a total of \$247,574 in direct costs related to the *Prison Legal News* case. This represents \$20,955 in defense costs and \$226,619 in fees and costs paid to plaintiff's counsel.

Case Overview:

Prison Legal News was filed in 2007 by the media publishing organization of the same name in which it claimed that CDCR was violating its rights under the First and Fourteenth Amendments by barring "CDCR inmate subscribers" from receiving their publications based on the Department's censorship policies. The State entered into a settlement agreement for injunctive and monetary relief wherein the parties requested that the court dismiss the complaint, but retain jurisdiction to enforce the Settlement Agreement. Since that time, activity in the case has been primarily focused on monitoring, advocacy, and the amendment to CDCR's policies, procedures, and regulations.

It should be noted that this case is not a class action, but is included here due to its statewide injunctive relief and the continuing enforcement jurisdiction of the court; which are typical of a class action.

Cost Detail:

Defense Counsel: CDCR is represented in *Prison Legal News* by attorneys from the OAG. In FY 2021/22, CDCR paid \$20,955 in defense costs. Over the course of the past five fiscal years (FY 2017/18 through 2021/22) CDCR paid the OAG a total of \$73,963 in defense counsel costs, or an average of \$14,793 per year.

Plaintiffs' Counsel: The *Prison Legal News* organization is represented by the law firm of Rosen, Bien, Galvan, & Grunfeld. The payment of attorneys' fees and costs is governed by a 2008 court order in which the court ruled that plaintiff's counsel is entitled to attorneys' fees for work performed after the settlement agreement was signed and granted plaintiff's counsel's request to establish a semi-annual fees process. In FY 2021/22, CDCR paid \$226,619 in plaintiffs' counsel's fees and costs.

Court-Appointed Experts: There are no court-appointed experts in this case.

B. CASES IN THE LITIGATION PHASE

The cases discussed in this section are either newly filed or have not yet been resolved by settlement or court order.

Because these cases are still being litigated there is not yet a prevailing party and CDCR does not pay the attorneys' fees of the plaintiffs' counsel. However, should the plaintiffs in those cases prevail, CDCR will be obligated to retroactively pay their attorneys' fees incurred in successfully bringing the lawsuit.

1. CERTIFIED CLASS ACTION CASES

The following cases have been certified by their presiding judges to be maintained as class actions.

Blue v. State of CA

San Francisco County Superior Court, CGC-18-569670

Case Overview:

Blue v. State of CA was filed in 2018 on behalf of current and former correctional supervisors. The Complaint alleges that by not counting the time it takes from entering the institution to arriving at post as time on the job, and thus compensable time, CDCR is systematically depriving Plaintiffs of earned wages. The court has related this class action to the *Stoetzl* case, below. See also the *Sanchez* case, below.

Cost Detail:

Defense Counsel: CDCR is represented in *Blue* by the retained law firm of Kronick, Moskovitz, Tiedemann & Girard. However, the costs of defense counsel is borne by CalHR, which is a co-defendant in the case.

Carreon v. CDCR

LA County Superior Court, 19STCV09935

Case Overview:

Carreon v. CDCR was filed in 2019 on behalf of female correctional officers. The complaint alleges that CDCR's reasonable accommodation policy and Limited Term Light Duty Assignment policy is discriminatory and violates the rights of pregnant correctional officers in violation of the Fair Employment and Housing Act and Pregnancy Disability Leave Law.

Cost Detail:

Defense Counsel: CDCR is represented in *Carreon* by attorneys from the OAG. In FY 2021/22, CDCR paid \$268,719 in defense counsel fees and costs. Since the filing of this case in 2019, CDCR has paid a total of \$645,279 in defense counsel fees and costs over the life of the case as of the close of FY 2021/22.

Fitzgerald v. Pollard

USDC SD Cal, 3:20-cv-00848

Case Overview:

Fitzgerald v. Pollard was filed in 2020 on behalf of visitors to the Richard J. Donovan Correctional Facility over the course of a two-year period who were required to submit to an unclothed body search with no stated supporting reasonable suspicion in violation of the Fourth Amendment.

Cost Detail:

Defense Counsel: CDCR is represented in *Fitzgerald* by attorneys from the OAG. In FY 2021/22, CDCR paid \$241,121 in defense counsel fees and costs. Since the filing of this case in 2020, CDCR has paid a total of \$398,146 in defense counsel fees and costs over the life of the case as of the close of FY 2021/22.

Stoetzl v. State of CA

San Francisco County Superior Court, CGC-08-474096

Case Overview:

Stoetzl v. State of CA was filed in 2008 on behalf of all persons who are or who have been employed in defined correctional peace officer classifications to work in CDCR's adult or youth correctional institutions beginning in April 2005. The Complaint alleges that by not counting the time it takes from entering the institution to arriving at post as time on the job, and thus compensable time, CDCR is systematically depriving Plaintiffs of earned wages. The court has related this class action to the *Blue* case, above. See also the *Sanchez* case, below.

Cost Detail:

Defense Counsel: CDCR is represented in *Stoetzl* by the retained law firm of Kronick, Moskovitz, Tiedemann & Girard. However, the costs of defense counsel is borne by CalHR, which is a co-defendant in the case.

2. PUTATIVE CLASS ACTION CASES

The following cases include class allegations, but have not been certified by the presiding judges to be maintained as class actions.

Bagube v. CDCR*

Los Angeles Superior Court, 20STCV10154

** This case is included in this report because it was filed as a class action in 2020 and was therefore a putative class action during part of the reporting period. However, CDCR successfully defeated the plaintiffs' motion for class certification, which was denied by the court on February 22, 2022.*

Case Overview:

Bagube v. CDCR was filed in 2020 on behalf of all current or former CDCR employees who either sought or were deterred from seeking reasonable accommodation due to a pregnancy during the three year period prior to the filing of the complaint.

Cost Detail:

Defense Counsel: CDCR is represented in *Bagube* by attorneys from the OAG. In FY 2021/22, CDCR paid \$69,170 in defense counsel fees and costs while this case was a putative class action.

Chandler v. CDCR

USDC ED Cal, 1:21-cv-01657

Case Overview:

Chandler v. CDCR was filed in 2021 on behalf of cisgender women housed at the Central California Women’s Facility. The complaint challenges California Penal Code sections 2605 and 2606, which were added to the Penal Code by Senate Bill (SB) 132, “The Transgender Respect, Agency, and Dignity Act.” It is alleged that there is no application of SB 132 that avoids violating the constitutional rights of cisgender women to be free from the unnecessarily increased risk of physical and sexual violence.

Cost Detail:

Defense Counsel: CDCR is represented in *Chandler* by attorneys from the OAG. Since the filing of this case in FY 2021/22, CDCR has paid \$110,291 in defense counsel fees and costs over the life of the case as of the close of FY 2021/22.

Malear v. State of CA

Marin County Superior Court, CIV 2002017

Case Overview:

Malear v. State of CA was filed in 2020 on behalf of all current and former incarcerated individuals at San Quentin State Prison who have been diagnosed with COVID-19 at any time from May 28, 2020, based on the transfer to the prison of COVID-positive incarcerated individuals from the California Institution for Men.

Cost Detail:

Defense Counsel: CDCR is represented in *Malear* by attorneys from the OAG. In FY 2021/22, CDCR paid \$26,915 in defense counsel fees and costs. Since the filing of this case in 2020, CDCR has paid a total of \$284,788 in defense counsel fees and costs over the life of the case as of the close of FY 2021/22.

Milton v. State of CA

USDC ED Cal, 5:21-cv-8545

Case Overview:

Milton v. State of CA was filed in 2021 on behalf of all incarcerated individuals housed at the Correctional Training Facility that contracted COVID-19 from July 20, 2020 to March 15, 2021. The complaint alleges that CDCR performed a racially motivated coordinated search of black incarcerated individuals under the pretext of a prison gang investigation during which officers did not adhere to COVID-19 safety protocols, which resulted in a COVID-19 outbreak at the prison. See also the *Williams* case, below.

Cost Detail:

Defense Counsel: CDCR is represented in *Milton* by attorneys from the OAG. Since the filing of this case in FY 2021/22, CDCR has paid \$108,521 in defense counsel fees and costs over the life of the case as of the close of FY 2021/22.

Sanchez v. State of CA

Los Angeles County Superior Court, BC707676

Case Overview:

Sanchez v. State of CA was filed in 2018 on behalf of all current and former Bargaining Unit 6 employees who were or are denied statutory minimum wages and contractual overtime wages for time spent complying with enhanced screening, including waiting and being searched at various security checkpoints within CDCR institutions, and traveling within the worksite to and from assigned posts; from April 9, 2014 to 2018. See also the *Blue* and *Stoetzel* cases, above.

Cost Detail:

Defense Counsel: CDCR is represented in *Sanchez* by the retained law firm of Kronick, Moskovitz, Tiedemann & Girard. However, the costs of defense counsel is borne by CalHR, which is a co-defendant in the case.

Taylor v. Borders

USDC, CD Cal, 5:18-cv-02488

Case Overview:

In 2021, a third-amended complaint was filed in *Taylor v. Borders* on behalf of incarcerated individuals housed at the California Institution for Men who have high-risk medical conditions. The complaint alleges that men at CIM receive unsafe drinking water that, along with the high ambient temperatures in the institution, exacerbated the pre-existing medical conditions of a subset of high risk medical patients in violation of the Eighth and Fourteenth Amendments.

Cost Detail:

Defense Counsel: CDCR is represented in *Taylor* by attorneys from the OAG. In FY 2021/22, CDCR paid \$50,820 in defense counsel fees and costs. Since the filing of this case in 2018,

CDCR has paid a total of \$162,943 in defense counsel fees and costs over the life of the case as of the close of FY 2021/22.

Williams v. CDCR

USDC ND Cal, 4:21-cv-09586

Case Overview:

Williams v. CDCR was filed in 2021 on behalf of black incarcerated individuals who were subjected to the coordinated search on July 20, 2020; and a subclass of those individuals who were validated as a gang member or affiliate as a result of or after the coordinated search. See also the *Milton* case, above.

Cost Detail:

Defense Counsel: CDCR is represented in *Williams* by attorneys from the OAG. Since the filing of this case in FY 2021/22, CDCR has paid \$36,900 in defense counsel fees and costs over the life of the case as of the close of FY 2021/22.