



Class Action Capital Outlay Annual Legislative Report

Fiscal Year 22/23

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) 2022/23, there were twenty-one putative and certified class actions pending against CDCR. Of those twenty-one 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 ten cases are not certified by the courts. These numbers represent an increase of four additional class action cases filed during the reporting period¹ and the resolution of one case that was included in the prior fiscal year’s report². All twenty-one cases have been included in this report because they were pending during at least a portion of the reporting period; however, as of the date of this report seven of those cases have settled or been dismissed by the court.³

In the seven settled class action cases⁴ (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; negotiation and attempts to resolve

¹ *Bath v. State of CA, Bush v. CA Health Care Facility, Milton v. CDCR (“Milton 2”), and Thomas v. CDCR.*

² *Bagube v. CDCR.* The court denied plaintiffs’ motion to certify this case as a class action. The case subsequently settled.

³ *Ashker* (however, the time for plaintiffs to seek review in the United States Supreme Court has not yet ended), *Bath, Blue* (now *Bojorquez*), *Bush, Carreon, Sanchez, and Stoetzel.*

⁴ *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.*

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 2022/23), CDCR has expended the following on its class action legal services: \$4,622,511 on OAG legal fees, \$2,295,156 on contract counsel legal fees, and \$3,644,833 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 teams of class action attorneys.

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.⁵ 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.⁶ In FY 2022/23, CDCR paid a total of \$21,115,099 in attorneys' fees in *Armstrong*, *Ashker*, *Clark*, *Coleman*, *Plata*, and *Prison Legal News*, 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 29 years, the Special Master's team has grown to include the court-ordered appointment of an additional 29 individuals. In FY 2022/23, CDCR deposited \$9,000,000 with the court for payment of the Special Master and his team, from which the court issued \$10,368,719 in payments from FY 2022/23 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.

⁵ See 42 U.S.C. § 1997e(d).

⁶ 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.

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 2022/23, CDCR deposited \$500,000 with the *Armstrong* court for payments for the services of its court-appointed expert from which the court issued \$755,765.27 in payments.

Activity, and therefore the costs incurred, in some class action cases decreased while it increased in other cases as the State returned to post-Covid operations and monitoring activities within the reporting period. A more detailed discussion of expenditures in these class action categories within each case is provided in the sections that follow.

Class Action Spending Summary

CDCR Staffing Expenditures

During FY 2022/23, CDCR's Class Action teams were comprised of 25 attorney positions and 10 administrative staff positions. Of those positions, at the time of this report, there are 6 attorney vacancies and 3 administrative staff vacancies. CDCR has been working diligently to fill vacancies on the team that were created by promotions of existing staff into vacant positions by way of competitive appointment, separation of staff from CDCR to other state agency vacancies, and the difficulties inherent in attracting high quality candidates to a complex area of law. Attorneys on the Class Action teams 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 \$3,644,833 for salaries, 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

	OAG Fees	Contract Counsel Fees	Special Master Fees	Court Expert Fees	Defense Expert Fees	Plaintiffs' Counsel Fees ^a	TOTALS
Adams	\$45,975						\$45,975
Armstrong	\$1,083,173			\$500,000 ^b		\$13,593,048	\$15,176,221
Ashker	\$1,031,712					\$1,167,183	\$2,198,895
Carreon	\$326,399						\$326,399
Chandler	\$22,880						\$22,880
Clark	\$128,070					\$559,288	\$687,358
Coleman	\$860,603	\$ 1,662,009	\$9,000,000 ^b		\$7,600,000	\$4,495,497	\$23,618,109
Fitzgerald	\$457,596						\$457,596
Malear	\$41,408						\$41,408
Milton 2	\$2,891						\$2,891
Plata	\$318,199	\$ 388,369				\$1,077,328	\$1,783,896
PLN	\$19,356					\$222,755	\$242,111
Taylor	\$57,530						\$57,530
Thomas	\$37,498						\$37,498
3 Judge	\$6,490						\$6,490
"Walk-time" cases ^c		\$244,778					\$244,778
Williams	\$144,950						\$144,950
TOTALS	\$4,584,730	\$2,295,156	\$9,000,000	\$500,000	\$7,600,000	\$21,115,099	\$45,094,985

^a 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 22/23 and charged against that year's budget even if payment did not occur until later.

^b These payments represent court-ordered deposits to the court's fund for the court's direct payment of court appointed experts or members of the Special Master's team. Information regarding individually invoiced payments can be found in the case detail, below.

^c Defense counsel in these five cases (*Bath, Blue, Bush, Sanchez, and Stoetzel*) are retained by CalHR, but the attorneys' fees and costs are billed back to CDCR.

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 25 years old with the *Coleman v. Newsom* case being the longest running at 32 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 additional corrective measures, further litigation occurs.

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 also 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 2022/23, CDCR expended a total of \$15,176,221 in direct costs related to the *Armstrong v. Newsom* class action. This represents \$1,083,173 in defense litigation costs, \$13,593,048 in fees and costs paid to plaintiffs' counsel, and \$500,000 in deposits to the court for payment of the court's appointed expert.

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. As of January 1, 2024, the *Armstrong* class consists of approximately 13,287 members or about 14.1 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, the scope of the *Armstrong* class action and its associated defense and monitoring costs have increased over time.

Cost Detail:

Defense Counsel: CDCR is represented in *Armstrong* by attorneys from the OAG. In FY 2022/23, CDCR paid \$1,083,173 in defense litigation costs.

Plaintiffs' Counsel: The *Armstrong* plaintiff class is represented in this action by the law firms of the Prison Law Office (PLO); Rosen, Bien, Galvan & Grunfeld (RBGG); and Disability Rights Education & Defense Fund, Inc. (DREDF). 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 Prison Litigation Reform Act (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: rates charged are as high as \$1,525/hr for a partner at RBGG; \$1,300/hr at PLO; and \$985 at DREDF. In FY 2022/23, CDCR paid \$13,593,048 in plaintiffs' counsels' fees and costs. This represents an increase of approximately \$3,000,000 compared to the amount paid in the preceding fiscal year.

Monitoring in *Armstrong* is conducted primarily by plaintiffs' counsel, although the court may also ask its court-appointed expert to submit reports on specific issues or specific institutions. The cost of monitoring is not segregable from the other activities performed by plaintiffs' counsel or the court-appointed expert and is therefore subsumed within the payments in this case section. During the reporting period, *Armstrong* institutional monitoring tours returned to their full pre-COVID schedule, and therefore is partially responsible for the increase in plaintiffs' counsel's fees and costs over the last reporting period.

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 2022/23, CDCR made \$500,000 in deposits to the court, from which the court paid the court-appointed expert \$755,765.27 for services rendered to the court and the parties.

Ashker v. Newsom

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

In FY 2022/23, CDCR expended a total of \$2,198,895 in direct costs related to the *Ashker v. Newsom* class action. However, at the time of this report, the parties continue to negotiate the settlement of the attorneys' fees incurred in the fourth quarter of FY 2022/23. The amounts paid thus far consist of \$1,031,712 in defense litigation costs, and \$1,167,183 in fees and costs paid to plaintiffs' counsel.

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. CDCR has since closed or re-purposed several of its SHUs and recently adopted emergency regulations further modifying and limiting its use of these types of restricted housing units. As of December 2023, only 45 individuals or 0.1% of CDCR's population were housed in a SHU based on disciplinary findings, and none solely due to gang affiliation. On November 1, 2023, CDCR adopted emergency regulations that eliminated SHUs and replaced them with less restrictive Restricted Housing Units that also modified the placement criteria and length of stay in those units.

Although this case was maintained as a class action for the entirety of the reporting period, Defendants had two consecutive appeals pending that challenged the court's decision to extend the case. On August 24, 2023, the Ninth Circuit Court of Appeals reversed the District Court's first extension order, held that there was no basis for the court's finding of unconstitutionality, and ruled that the case should have terminated in October 2017. Accordingly, the second appeal was dismissed as moot. Plaintiffs have until February 12, 2024, to petition the United States Supreme Court for a writ of certiorari.

Cost Detail:

Defense Counsel: CDCR is represented in *Ashker* by attorneys from the OAG. In FY 2022/23, CDCR paid \$1,031,712 in defense litigation costs. Despite the settlement, the *Ashker* lawsuit continued to be actively litigated, including Defendants' challenges to the court's decisions to not terminate the case. As a result, costs of litigation defense in the case have continued to remain relatively high despite the case's remedial phase status.

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 2022/23, CDCR paid \$1,167,183 in plaintiffs' counsels' fees and costs⁷.

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 2022/23, CDCR expended a total of \$687,358 in direct costs related to the *Clark v. California* class action. This consists of \$128,070 in defense litigation costs, and \$559,288 in fees and costs paid to plaintiffs' counsel.

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 and similar conditions that impair cognitive functioning. As of January 2024, there are 1,138 individuals included in the *Clark* class.

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 2022/23, CDCR paid \$128,070 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.

Plaintiffs' Counsel: The *Clark* plaintiff class is represented by the Prison Law Office (PLO). 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

⁷ This includes the amount negotiated for quarter 4 of FY 22/23, which the court recently approved and is currently in the payment process. It is included in this report because the attorneys' fees and costs were accrued during the reporting period although payment is being processed in the subsequent FY.

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: rates charged are as high as \$950/hr for an attorney at the PLO. In FY 2022/23, CDCR paid \$559,288 in plaintiffs' counsels' fees and costs.

Monitoring in *Clark* is conducted exclusively by plaintiffs' counsel. The cost of monitoring is not segregable from the other activities performed by plaintiffs' counsel and is therefore subsumed within the payments discussed above.

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 2022/23.

Coleman v. Newsom

USDC ED Cal, 2:90-cv-00520

In FY 2022/23, CDCR expended a total of \$23,618,109 in direct costs related to the *Coleman v. Newsom* class action. This consists of \$2,522,612 in defense litigation costs (fees and costs paid to the OAG and to additionally retained contract counsel), \$4,495,497 in fees and costs paid to plaintiffs' counsel, \$7,600,000 in fees and costs paid to defense experts, and \$9,000,000 paid to the court for disbursement to the court-appointed Special Master's team.

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 8, 2024, there are 33,936 individuals included in the *Coleman* class.

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.

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

Cost Detail:

Defense Counsel and Experts: CDCR is represented in *Coleman* by attorneys from the OAG and by the retained private law firm of Hanson Bridgett. In FY 2022/23, CDCR paid \$10,122,612 in

defense litigation costs. This consists of payments of \$860,603 to the OAG and \$1,662,009 to Hanson Bridgett for attorneys' fees and costs, and \$7,600,000 for defense expert services.

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 2022/23, CDCR paid \$4,495,497 in plaintiffs' counsels' fees, costs, and interest if applicable.

Court-Appointed Experts: More than twenty-eight years ago, in 1995, the *Coleman* court appointed a Special Master. In addition to assisting in the development of the remedial plan mentioned above, the court appointed the Special Master "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 30 individuals, including the Special Master. In FY 2022/23, there was a net increase of one additional team member in the reporting period.

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 2022/23, CDCR made \$9,000,000 in deposits to the court, from which the court paid the Special Master's team \$10,368,719 from FY 2022/23 and prior year deposits.

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 segregable 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 2022/23, CDCR expended a total of \$1,783,896 in direct costs related to the *Plata v. Newsom* class action. This consists of \$706,568 in defense litigation costs and, \$1,077,328 in fees and costs paid to plaintiffs' counsel.

Overall, this represents a decrease of approximately \$643,000 compared to the prior reporting period. 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. With CDCR's return to normal operations, the costs incurred in representing the Defendants in *Plata* have, accordingly, also decreased.

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 CDCR with serious medical needs." As of the first week of 2024, there were 94,149 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 January 31, 2023, the medical care at 24 institutions has been delegated back to the State. This reflects an increase of three institutions since the last report. The delegation of care at 9 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 2022/23, CDCR paid \$706,568 in defense litigation costs. This represents payments of \$318,199 to the OAG and \$388,369 to Hanson Bridgett.

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 2022/23, CDCR paid \$1,077,328 in plaintiffs' counsels' fees, costs, and interest if applicable.

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. However, the experts did not incur any fees or costs for their services in FY 2022/23.

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 2022/23, the allotted budget for medical services provided by CCHCS and its attendant support infrastructure was \$2,735,654,000 to support 13,798.

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 segregable 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 U.S. Supreme Court affirmed the panel’s order. The state met the benchmark in February 2015 and has been in compliance for nearly nine years. As of December 6, 2023, CDCR’s prison population was 121% 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 2022/23, CDCR paid \$6,490 to the OAG in defense costs.

Prison Legal News v. Schwarzenegger

USDC ND Cal, 4:07-cv-02058

In FY 2022/23, CDCR expended a total of \$242,111 in direct costs related to the *Prison Legal News* case. This consists of \$19,356 in defense litigation costs and \$222,755 in fees and costs paid to plaintiffs' 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 2022/23, CDCR paid \$19,356 in defense costs.

Plaintiffs' Counsel: The *Prison Legal News* organization is represented by the law firms of Rosen, Bien, Galvan, & Grunfeld and the Human Rights Defense Center. 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 and established a semi-annual fees process. In FY 2022/23, CDCR paid \$222,755 in plaintiffs' counsels' 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 (later renamed *Bojorquez v. State of CA*)^{*}

San Francisco County Superior Court, CGC-18-569670

** This case is included in this report because it was litigated as a class action during a portion of the reporting period. However, this case also settled during the reporting period in November 2022 along with other related cases. See the Stoetzl case, below, for additional information.*

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 law firm of Kronick, Moskovitz, Tiedemann & Girard retained by CalHR. For defense counsel fees and costs, refer to the *Stoetzl* case, below. Defense counsel in this case, as in all of the "walk-time" cases, is retained by CalHR, but the attorneys fees and costs are billed back to CDCR.

Carreon v. CDCR

LA County Superior Court, 19STCV09935

** This case was litigated as a class action during the reporting period. However, this case settled in December 2023 along with the companion case, *Bagube*⁸. The cost of settlement is not included as it occurred outside of the reporting period.*

⁸ The *Bagube* case was included in the FY 2021/22 report but is not included as a separate entry in the FY 2022/23 report as the court denied class certification in February 2022. As a result, *Bagube* was not a class action case during the reporting period.

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 2022/23, CDCR paid \$326,399 in defense counsel fees and costs.

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 2022/23, CDCR paid \$457,596 in defense counsel fees and costs.

Stoetzl v. State of CA

San Francisco County Superior Court, CGC-08-474096

** This case is included in this report because it was litigated as a class action during a portion of the reporting period. However, this case also settled during the reporting period in November 2022 along with other related cases.*

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* (renamed *Bojorquez*) case, above.

In November 2022, the *Stoetzl and Blue (Bojorquez)* cases as well as *Shaw v. State of CA and Kuhn v. State of CA* settled as part of a single-comprehensive agreement. This agreement settled wages owed to correctional sergeants, lieutenants, and for Senior Medical Technical Assistants over the course of 18 years from April 2005 through June 30, 2023 (but from December 2011 for the *Blue/Bojorquez* class). Although these cases settled during the reporting period, the amount of the settlement is not included as final approval by the court and disbursement to class members did not occur during the reporting period.

Cost Detail:

Defense Counsel: CDCR is represented in *Stoetzl* by the law firm of Kronick, Moskowitz, Tiedemann & Girard retained by CalHR. In FY 2022/23, CDCR paid \$244,778 in defense counsel fees and costs for representation in all five of the “walk-time” cases: *Bath*, *Blue* (renamed *Bojorquez*), *Bush*, *Sanchez*, and *Stoetzl*. Defense counsel in these five cases are retained by CalHR, but the attorneys fees and costs are billed back to CDCR

2. PUTATIVE CLASS ACTION CASES

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

Adams v. State of CA (formerly *Milton v. State of CA* (“*Milton 1*”))
USDC ND Cal, 4:21-cv-8545

Case Overview:

This case was originally filed as *Milton v. State of CA* 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* and *Milton 2* cases, below.

Cost Detail:

Defense Counsel: CDCR is represented in *Milton* by attorneys from the OAG. In FY 2022/23, CDCR has paid \$45,975 in defense counsel fees and costs.

Bath v. State of California (*new*)
Solano County Superior Court, FCS 058670.

** This case was filed and litigated as a class action during the reporting period. However, CDCR was successful in dismissing this case in May 2023. Plaintiffs have filed an appeal.*

Case Overview:

Bath v. State of California was filed on August 8, 2022 and, therefore, was newly added during the reporting period. The lawsuit is within the category of cases referred to as “walk time” cases. The complaint alleges that the class underwent mandated security checks at the start and end of their work shifts while under the control of the defendant, for which they were not compensated. The proposed class was described as “all current or former hourly non-exempt employees of the State of California at the CDCR who worked for CDCR and/or CCHCS during the [identified time period] and who were and/or are still denied wages for all hours worked, overtime wages and/or statutory/agreed upon wages for all time incurred waiting for and undergoing Checks, excluding those classifications who are members of the *Stoetzl* class.”

In May 2023, the Solano County Superior Court granted judgment in favor of CDCR and CalHR. In May 2023, Plaintiffs appealed this ruling. CDCR and CalHR's responding brief is due in January 2024.

Cost Detail:

Defense Counsel: CDCR is represented in *Bath* by the law firm of Kronick, Moskovitz, Tiedemann & Girard retained by CalHR. For defense counsel fees and costs, refer to the *Stoetzl* case, above. Defense counsel in this case, as in all of the "walk-time" cases, is retained by CalHR, but the attorneys fees and costs are billed back to CDCR.

***Bush v. CA Health Care Facility* (new)**

San Joaquin County Superior Court, STK-DV-UOE-2022-11255

** This case was filed and litigated as a class action during the reporting period. However, CDCR was successful in dismissing this case. In September 2023, the court granted Defendants' demurrer without leave to amend.*

Case Overview:

Bush v. CA Health Care Facility was filed on January 9, 2023, on behalf of "all non-exempt employees employed by Defendants in the State of CA at any time since the four years preceding the filing of [the] complaint." The lawsuit is within the category of cases referred to as "walk time" cases. The complaint alleged that CDCR failed to pay wages for all hours worked and for failing to compensate the class during mandatory security screenings before entering the prison while under the direction and control of the defendant employer. In September 2023, the court granted CDCR's demurrer without leave to amend, which ended the case.

Cost Detail:

Defense Counsel: CDCR is represented in *Bush* by the law firm of Kronick, Moskovitz, Tiedemann & Girard retained by CalHR. For defense counsel fees and costs, refer to the *Stoetzl* case, above. Defense counsel in this case, as in all of the "walk-time" cases, is retained by CalHR, but the attorneys fees and costs are billed back to CDCR.

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." The complaint alleges that there is no application of SB 132 that avoids violating the constitutional rights of the individual plaintiffs and the other incarcerated women on whose behalf the plaintiff advocacy organization advocates.

Cost Detail:

Defense Counsel: CDCR is represented in *Chandler* by attorneys from the OAG. In FY 2022/23, CDCR has paid \$22,880 in defense counsel fees and costs.

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 2022/23, CDCR paid \$41,408 in defense counsel fees and costs.

Milton v. CDCR (“Milton 2”) (new)

USDC ND Cal, 4:23-cv-00582-JST

Case Overview:

Milton v. State of CA was filed during the reporting period on February 9, 2023, on behalf of all CTF inmates who ultimately contracted COVID-19 from July 20, 2020 through March 15, 2021. The complaint alleges that via the performance of a coordinated security search in which CDCR is accused of not adhering to COVID-19 safety protocols, that CDCR committed an act of terrorism and racketeering by “deliberately weaponized an agent of biological warfare” in the form of COVID-19. See also the *Adams* case, above, and the *Williams* case, below.

Cost Detail:

Defense Counsel: CDCR is represented in *Milton* by attorneys from the OAG. In FY 2022/23, CDCR paid \$2,891 in defense counsel fees and costs.

Sanchez v. State of CA

Los Angeles County Superior Court, BC707676

** This case is included in this report because it was litigated as a class action during a portion of the reporting period. However, CDCR was successful in having this case dismissed during the reporting period in March 2023.*

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. This lawsuit is within the category of cases referred to as “walk time” cases.

On March 2, 2023, the court sustained Defendants' demurrer without leave to amend, which ended the case.

Cost Detail:

Defense Counsel: CDCR is represented in *Sanchez* by the law firm of Kronick, Moskovitz, Tiedemann & Girard retained by CalHR. For defense counsel fees and costs, refer to the *Stoetzl* case, above. Defense counsel in this case, as in all of the "walk-time" cases, is retained by CalHR, but the attorneys fees and costs are billed back to CDCR.

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 2022/23, CDCR paid \$57,530 in defense counsel fees and costs.

Thomas v. CDCR

Sacramento County Superior Court, 34-2022-00328693

Case Overview:

Thomas v. CDCR was filed on October 20, 2022, on behalf of "all individuals within the State of California whose PHI/PII was stored by Defendant and/or was exposed to unauthorized third parties as a result of the data breach discovered in or around January 2022."

The class consists of individuals who allege that their sensitive Protected Health Information and/or Personally Identifiable Information was improperly maintained in violation of HIPAA and that CDCR's system failures allowed for the data breach that occurred.

Cost Detail:

Defense Counsel: CDCR is represented in *Thomas* by attorneys from the OAG. In FY 2022/23, CDCR has paid \$37,498 in defense counsel fees and costs.

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 a 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 *Adams* (formerly "Milton 1") and *Milton 2* cases, above.

Cost Detail:

Defense Counsel: CDCR is represented in *Williams* by attorneys from the OAG. In FY 2022/23, CDCR has paid \$144,950 in defense counsel fees and costs.