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CALIFORNIA CORRECTIONAL
6 SUPERVISORS ASSOCIATION,
and DR. JOHN ADAMO
7

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 CALIFORNIA CORRECTIONAL)
11 SUPERVISORS ORGANIZATION, and)
12 DR. JOHN ADAMO, an individual,)

13 Plaintiffs,)

14 v.)

15 MATTHEW CATE, Director, California)
Department of Corrections and Rehabilitation;)
16 DEBRA ENDSLEY, Director of California)
Department of Personnel Administration,)

17 Defendants.)
18

Case No.

NOTICE OF EX PARTE
MOTION AND EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER

19 I.

20 NOTICE OF MOTION

21 Plaintiffs' motion for an ex parte temporary restraining order will be heard on
22 _____, 2009, at _____ a.m./p.m. or as soon thereafter as the matter can be heard
23 in Courtroom _____ of this Court, located at 450 Golden Gate Avenue, 16th Floor, San
24 Francisco, California.

25 On _____, 2009, at _____ o'clock, Plaintiffs' counsel notified Defendants
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1 by telephone of the above based on the grounds that Defendants' threatened action of
2 eliminating the Chief Dentist position at all CDCR institutions will create irreparable injury to
3 Plaintiffs and inmates of the CDCR. Plaintiffs' ex parte motion for temporary restraining order
4 will be based on this notice, the points and authorities set forth below, and the complete files and
5 records of this action.

6 **II.**

7 **REQUESTED RELIEF**

8 Plaintiffs seek a temporary restraining order to preserve the status quo and prevent
9 Defendants from eliminating the position of Chief Dentist at all CDCR institutions effective
10 January 31, 2010, and reassigning part of the Chief Dentist's duties to non-licensed personnel.
11 Plaintiffs seek immediate relief on the grounds that Defendant CDCR is appearing on December
12 4, 2009 in a separate case (*Perez v. Cate*, Case No. 3:05-cv-05241-JSW) before Judge White of
13 this Court to address whether the elimination of the Chief Dentist position will impact
14 compliance with the Amended Stipulated Agreement in that case.

15 The parties in the *Perez* case have filed a joint status conference statement denying the
16 elimination of the Chief Dentist position will impact the ability of Defendant CDCR to provide
17 the minimum level of dental care necessary to fulfill its obligations under the Eighth
18 Amendment of the U.S. Constitution.

19 However, the Plaintiffs in this case contend the elimination of the Chief Dentist position
20 will irreparably harm Plaintiffs by eliminating their livelihood, employment opportunities,
21 retirement, health benefits and all the other tangible and intangible consequences of losing
22 employment. The reduction of licensed dentists able to provide direct dental care to inmates
23 will also prevent CDCR from providing the minimum level of dental care necessary for CDCR
24 to fulfill its obligations under the Eighth Amendment of the U.S. Constitution. Finally,
25 reassignment of Chief Dentist duties to non-licensed personnel creates an unreasonable danger
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1 of future harm to both Dentists and inmates.

2 Thus, this Court should issue a temporary restraining order to protect the status quo until
3 such time that a hearing on the merits can be scheduled.

4 **III.**

5 **POINTS AND AUTHORITIES**

6 **A. RELEVANT FACTS**

7 In 2006, Defendant CDCR entered into an Amended Stipulated Agreement in a separate
8 case entitled *Perez v. Cate*, Case Number 3:05-cv-05241-JSW currently pending before this
9 Court. In 2008, as part of the agreement, CDCR conducted a statewide study to determine
10 staffing needs related to the *Perez v. Cate* Amended Stipulation. The study concluded CDCR
11 needed to increase the number of licensed dentists to fulfill its obligations to provide the
12 minimum level of dental care necessary under the Eighth Amendment of the U.S. Constitution.
13 Since that date, CDCR has hired additional licensed dentists to attempt to provide the required
14 level of care to inmates.

15 However, in September, 2009, the Department of Personnel Administration (DPA)
16 informed CCSO and CDCR Chief Dentists that it was planning to eliminate the position of Chief
17 Dentist at each of CDCR's 33 institutions. DPA stated it would re-assign the Chief Dentist's
18 administrative functions to a Health Program Manager III, and re-assign all clinical oversight
19 and direction to the Supervising Dentist. DPA stated the elimination of the Chief Dentist
20 position would become effective January 31, 2010.

21 The minimum qualifications for the HPM III position do not require a license to practice
22 dentistry by the State of California. The HPM III duties include, among other things, the overall
23 management of the institution's dental program. An intimate understanding, experience and
24 knowledge of the practice of dentistry is required in order to be qualified to perform the
25 administrative duties of the Chief Dentist position. Only licensed dentists are qualified to
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1 manage the dental operations pursuant to the California Dental Practice Act. (Cal. Bus. & Prof.
2 Code §§ 1625(e), 1680(c).)

3 Further, to date, no compliance audits have been performed to determine whether
4 CDCR's policies and procedures provide the minimum level of dental care necessary to fulfill
5 its obligations under the Eighth Amendment of the U.S. Constitution. No work load studies
6 have been performed to determine whether the current dental personnel are providing the
7 minimum level of dental care necessary to fulfill its obligations under the Eighth Amendment of
8 the U.S. Constitution.

9 On December 4, 2009, Defendant CDCR will be appearing with the parties in the *Perez*
10 case at a Court ordered status conference to address whether eliminating the Chief Dentist
11 position will impact CDCR's ability to provide the minimum level of dental care necessary to
12 fulfill its obligations under the Eighth Amendment of the U.S. Constitution. The parties in the
13 *Perez* case assert the elimination of the Chief Dentist position will not impact CDCR's ability to
14 provide the required dental care to inmates.

15 Plaintiffs seek to preserve the status quo with a temporary restraining order preventing
16 Defendants from eliminating the Chief Dentist position until such time as a hearing on the
17 merits can be maintained.

18 **B. ARGUMENT**

19 A temporary restraining order is issued to preserve the status quo pending a hearing on
20 the preliminary injunction. (*Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S.
21 423, 439 (1974). An injunction is an equitable remedy, the basis for which in federal court is
22 irreparable injury and the inadequacy of legal remedies. (*Weinberger v. Romero-Barcelo* (1982)
23 456 U.S. 305, 312; *Stanley v. Univ. of So. Cal* (9th Cir. 1994) 13 F.3d 1313, 1320.)

24 Plaintiffs seeking injunctive relief must establish 1) a likelihood of success on the merits,
25 2) a likelihood of irreparable harm to the Plaintiffs in the absence of preliminary relief; 3) the
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1 balance of equities tips in Plaintiff's favor, and 4) and injunction is in the public interest.
2 (*Winter v. Natural Resources Defense Council, Inc.* (2008) 129 S.Ct. 365, 374; *Amoco Prod.*
3 *Co. v. Village of Gambell, Alaska* (1987) 480 U.S. 531, 542, 107 S.Ct. 1396, 1402.)

4 In this case, a temporary restraining order is necessary to prohibit Defendants from
5 implementing its plan to eliminate the Chief Dentist position so that CDCR Chief Dentists can
6 continue to provide the level of dental care necessary to fulfill CDCR's obligations under the
7 Eighth Amendment of the U.S. Constitution. A temporary restraining order is necessary because
8 Defendants' plan to eliminate the Chief Dentist position was devised without first auditing or
9 conducting any work load studies to determine whether current licensed dentist staffing levels
10 provide the Constitutionally mandated level of dental care.

11 Further, decreasing the number of licensed dentists qualified to provide direct care to
12 inmates will increase the already overwhelmed work load of the remaining dentists, creating a
13 host of safety concerns and an unreasonable risk of harm to staff and patients alike.

14 The re-assignment of Chief Dentist administrative management duties to non-licensed
15 personnel violates California law prohibiting non-licensed individuals from managing dental
16 operations. (Cal. Bus. & Prof. Code § 1625(e).) Requiring dentists to work with non-licensed
17 personnel performing dental operations management duties will expose dentists to discipline by
18 the California Dental Board for aiding an unlicensed person to practice dentistry. (Cal. Bus. &
19 Prof. Code § 1680(c).)

20 On the other hand, issuance of an injunction will not harm Defendants. Defendant
21 CDCR must already provide the minimum level of dental care necessary to fulfill its obligations
22 under the Eighth Amendment of the U.S. Constitution. The minimum level of dental care
23 necessary requires the increase of licensed dental staff according to the Amended Stipulation
24 Agreement in the *Perez* case, and a 2008 staffing needs study conducted by CDCR. Thus, an
25 injunction prohibiting Defendants from eliminating the Chief Dentist position will serve to
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1 reinforce Defendants existing obligations. It will not harm Defendants.

2 Finally, the provisions of the U.S. Constitution and California laws governing the
3 practice of dentistry were designed to serve the public's interest. Therefore, it is in the public's
4 interest to grant Plaintiffs' request for injunctive relief preventing Defendants from violating
5 these important laws.

6 Accordingly, Plaintiffs respectfully request this Court grant its motion for a temporary
7 restraining order made herein.

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9 Dated: November 25, 2009

MARTINEZ LAW FIRM

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11 By: _____
12 KELLEY STIMPEL MARTINEZ
13 Attorney for Plaintiffs
14 CALIFORNIA CORRECTIONAL SUPERVISORS
15 ORGANIZATION, and DR. JOHN ADAMO
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