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

M.R.,

Plaintiff,

v.

FEDERAL CORRECTIONAL
 INSTITUTION (“FCI”) DUBLIN; ROSS
 KLINGER; RAY J. GARCIA; and
 UNITED STATES OF AMERICA, a
 governmental entity,

Defendants.

CASE NO. 4:22-cv-05137-YGR

Related To:

JA, 23-cv-02342-YGR
 LA, 23-cv-03475-YGR
 LC, 23-cv-03558-YGR
 CC, 23-cv-02206-YGR
 JC, 23-cv-04698-YGR
 AJ, 23-cv-02201-YGR
 SM, 23-cv-03562-YGR
 JO, 23-cv-03700-YGR
 NP, 23-cv-05356-YGR
 DS, 23-cv-02668-YGR
 YS, 23-cv-03538-YGR
 MS, 22-cv-08924-YGR
 DV, 23-cv-02135-YGR
 AR, 23-cv-02405-YGR
 Cal. Coalition, 23-cv-04155-YGR
 RC, 23-cv-03716-YGR
 JR, 23-cv-03994-YGR
 Andrea Reyes, 22-cv-07704-YGR
 KC, 23-cv-03997-YGR
 NE, 23-cv-03641-YGR
 SF, 23-cv-04437-YGR
 JF, 23-cv-04434-YGR
 DG, 23-cv-05339-YGR
 DG, 23-cv-03390-YGR
 SAH, 23-cv-04317-YGR
 JM, 23-cv-04283-YGR
 MP, 23-cv-04435-YGR

LR, 23-cv-04361-YGR
 RR, 23-cv-04436-YGR
 CV, 23-cv-04321-YGR
 AZ, 23-cv-03827-YGR
 AC, 23-cv-04691-YGR
 Chaney et al., 23-cv-02986-YGR
 RR, 23-cv-05392-YGR
 Gonzalez, 23-cv-04611-YGR
 RR, 23-cv-5294-YGR
 MJR, 23-cv-05821-YGR
 Genesis Preciado, 22-9096-YGR
 CM, 23-cv-6150
 Hill et al., 23-cv-05374-LB

Cases not yet related:

AT, 23-cv-05343-HSG
 AP, 23-cv-05623-AMO
 DC, 23-cv-6146-SK

**JOINT CASE MANAGEMENT STATEMENT
& [PROPOSED] ORDER**

Date: December 11, 2023
 Time: 3:00 p.m.
 Dept.: 1, Fourth Floor
 Judge: Hon. Yvonne Gonzalez Rogers

The above-entitled civil actions arise out of Federal Correctional Institute (“FCI”) Dublin.¹
 The Plaintiffs in the above-entitled actions; the United States, which has been named as a defendant
 in most of the above-entitled actions;² and Ray Garcia, through his attorney Kevin Little, jointly
 submit this Joint Case Management Statement & [Proposed] Order pursuant to the Standing Order
 for All Judges of the Northern District of California and Civil Local Rule 16-9 for purposes of the
 December 11, 2023 case management conference. The United States Attorney’s Office (USAO)
 for the Eastern District of California is serving as the liaison counsel for the United States in the
 above-entitled actions for purposes of the December 11, 2023 case management conference. To
 date, 28 individual defendants have been named in the civil cases, and based on court filings to-

¹ The Standing Order provides that joint case management statements should not, except in unusually complex cases, exceed 10 pages. The Parties respectfully submit this statement in excess of 10 pages given the complexity and number of cases at issue.

² The United States is a defendant in all the above-entitled actions except for: (1) *Genesis Preciado v. Bellhouse*, 22-cv-9096-YGR; and (2) *RR v. Garcia*, 23-cv-5294-YGR.

1 date, it appears that only Defendant Ray Garcia and Lawrence Gacad are represented by counsel;
 2 John Bellhouse and Patrick Pool are representing themselves *pro se*.

3 **A. Summary of Proposed Case Management and Structure**

4 As outlined in more detail below, Plaintiffs and the United States respectfully propose the
 5 following overall case management and structure of the FCI-Dublin civil cases: (1) Except as to
 6 the claims for injunctive relief, the parties in the currently-filed cases request a stay until July 2024
 7 to engage in pre-litigation mediation to explore resolving as many cases as possible [see Section
 8 B.12 below]; and (2) For any cases that do not resolve by mediation, the parties propose a case
 9 management structure based on three categories of cases that promote organization and efficiency
 10 for the court and the parties. The proposed structure is discussed in Section B.16 below. In
 11 addition, the United States maintains that all of these civil cases should continue to be stayed
 12 pending resolution of all criminal investigations and any related prosecution arising from the
 13 alleged conduct to avoid significant concerns relating to Fifth Amendment self-incrimination
 14 rights, as well as the overall integrity of the criminal investigations. The United States' proposal is
 15 outlined in Section C.16.

16 **B. Additional Case Management Sections Required by Local Rule 16-9**

17 **1. Jurisdiction & Service**

18 The United States is still assessing issues concerning subject matter jurisdiction. The parties
 19 agree that there are no issues concerning personal jurisdiction or venue. However, Plaintiffs assert
 20 that they have completed service in approximately half of the cases. Exhibit A identifies the cases
 21 where service has been completed.

22 On November 10 and November 22, 2023, Plaintiffs in *California Coalition for Women*
 23 *Prisoners et al. v. BOP* (4:23-cv-04155-YGR) (“CWWP”) filed an *Ex Parte* Application for
 24 Enlargement of Time Under Federal Rule of Civil Procedure 6(b) & 4(i)(4)(B) to extend the time
 25 to serve several individual Defendants. The CCWP Plaintiffs have served the USAO and AGs on
 26 behalf of all individual defendants, but they have been unable to personally serve several individual
 27 defendants. These motions were granted on November 17 and 28, 2023, respectively, and the
 28 deadlines extended to February 9, 2024

1 **2. Facts**

2 Plaintiffs are or were federal inmates at FCI-Dublin. They contend that they were
3 repeatedly subjected to sexual abuse in violation of federal and state law. Plaintiffs generally bring
4 these civil actions and assert various state, federal, and constitutional law claims including: the
5 Eighth Amendment's Cruel and Unusual Punishment Clause (Excessive Force and Deliberate
6 Indifference), California's gender violence and sexual assault statutes (Civil Code §§ 52.4 and
7 1708.5), California common law (Assault, Battery and Negligence), Eighth Amendment's Cruel
8 and Unusual Punishment Clause (Deliberate Indifference), the Federal Tort Claims Act (28 U.S.C.
9 §§ 1346(b), 1671-2680) ("FTCA") for various tort claims against all Defendants, as well as other
10 claims arising under California common law and statutory law. Additional claims include First
11 Amendment violations, violations of substantive due process under the Fifth Amendment, and
12 violations of the federal Trafficking Victims Protection Act. Not all claims are pleaded in all cases.

13 **3. Legal Issues**

14 Plaintiffs: Legal issues to be addressed by Plaintiffs include: whether Defendants are liable
15 for any cause of action asserted against them, whether Defendants owed a duty of care to Plaintiffs,
16 whether Defendants breached a duty owed to Plaintiffs, whether Plaintiffs constitutional right to be
17 free from cruel and unusual punishment was violated, whether Defendants' conduct was a
18 substantial factor in causing harm to Plaintiffs, and whether any Plaintiffs are entitled to damages,
19 costs, attorneys' fees, and / expenses.

20 United States: The United States anticipates that issues may arise as to whether some or all
21 of the alleged wrongful actions were committed by individuals whose conduct falls outside the
22 scope of their federal employment and are thus not actionable against the United States under the
23 FTCA. The United States maintains that FCI-Dublin and the Federal Bureau of Prisons are not
24 proper parties to damages claims under the FTCA, and that Plaintiffs cannot seek punitive damages
25 or attorney's fees against it per federal statute. The United States also may have full or partial
26 jurisdictional defenses in individual cases, including whether one or more of the exceptions to the
27 FTCA apply.

28 Individual Defendants: Defendant Garcia contends he is not a property party, either because

1 a Bivens claim is subject to dismissal, or because he is not a proper defendant under any state law
2 or FTCA claims.

3 **4. Motions**

4 Plaintiffs: Jaehyun Oh, Esq. anticipates filing for *Pro Hac Vice* with local counsel Rosen
5 Bien Galvan & Grunfeld LLP. She will be representing 36 claimants and will file suits for those
6 claims very shortly.

7 Plaintiffs have filed numerous administrative motions to relate cases, which have all been
8 granted. All related cases are identified in **Exhibit A**, which was prepared by Plaintiffs' counsel.

9 United States: Per the Court's guidance in the July 10, 2023 conference, the United States
10 has not submitted any motions to dismiss. The United States anticipates that it may need to file
11 motions at an appropriate time in individual cases addressing whether specific alleged tortfeasors
12 were acting within the scope of their federal employment and whether the claims fall outside of the
13 limited waiver of sovereign immunity under the FTCA.

14 Defendant Garcia: Defendant Garcia intends to file a motion to dismiss, because the
15 complaint fails to state a claim for relief against him.

16 *CCWP v. BOP*: The following motions have been filed in Case No 4:23-cv-04155:

- 17 • Motion for Preliminary Injunction, filed August 17, 2023. Hearing set for 1:00 pm
18 on December 11, 2023.
- 19 • Motion to Certify Class, filed August 17, 2023. Briefing schedule to be discussed
20 at December 11, 2023 conference.

21 **5. Amendment of Pleadings**

22 Except for *CCWP v. BOP* (4:23-cv-04155-YGR), Plaintiffs do not intend to amend the
23 pleadings at this time. Plaintiffs in *CCWP v. BOP* (4:23-cv-04155-YGR) intend to file an amended
24 complaint to add FTCA claims for the named individual Plaintiffs. They anticipate filing the
25 amended complaint by the end of December 2023; however, the amendment will not impact the
26 preliminary injunction or Class Certification motions that are pending in that case.

27 **6. Evidence Preservation**

28 The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored

1 Information (“ESI Guidelines”).

2 United States: The Office of the Inspector General (OIG) and other law enforcement offices
3 have been investigating and continue to investigate matters at FCI-Dublin. The OIG may be able
4 to release certain information pertaining to an individual who is a subject of investigation, but only
5 after that individual has been sentenced, and after the OIG and any other interested law enforcement
6 agencies have determined that release is appropriate. Even then, information pertaining to an
7 individual may still need to be withheld or redacted to the extent that it is relevant to an ongoing
8 investigation.

9 From the outset of this litigation and continuing after the July 10, 2023 conference, the
10 United States has been working closely with the BOP to ensure that all relevant information in their
11 possession is being collected and preserved. The United States notes, however, that significant
12 information relevant to Plaintiffs’ claims is being used for investigative purposes, and the BOP will
13 not have access to those materials until they are released by the investigative agencies.

14 Defendant Garcia: Defendant Garcia does not believe he is in possession of any evidence
15 related to this case, but he will preserve anything related to his prior employment in his possession,
16 custody or control.

17 7. Disclosures

18 The United States will make any disclosures required by the Federal Rules of Civil
19 Procedure or the Court within the required timeframes. The United States notes, however, that the
20 ongoing criminal investigation, criminal proceedings against Darrell Smith, and pending
21 sentencing against Ross Klinger (set for 1/24/2024) and Nakie Nunley (set for 3/6/2024) could
22 make it prohibitively difficult to obtain information for initial disclosures in cases alleging acts by
23 individuals other than the prison officers and employees who have been sentenced in criminal
24 proceedings (James Highhouse, Enrique Chavez, Ray Garcia, Andrew Jones, and John
25 Bellhouse)—and even then, information pertaining to sentenced defendants could be limited if it is
26 relevant to another ongoing investigation. Postponing initial disclosures until after a stay pending
27 mediation (*see* Section B.16 below) would help to minimize these concerns.

28 Plaintiffs’ counsel also will make any disclosures required by the Federal Rules of Civil

1 Procedure or the Court within the required timeframes.

2 Defendant Garcia will make any disclosures required by the Federal Rules of Civil
3 Procedure or the Court within the required timeframes.

4 **8. Discovery**

5 No discovery has occurred.

6 a. Written Discovery

7 Plaintiffs and the United States believe that master discovery requests, supplemented by
8 individual plaintiff-specific requests, will be the most efficient means of obtaining information in
9 these cases. More specifically, Plaintiffs anticipate preparing master consolidated interrogatories
10 and requests for production that seek information applicable to all or nearly all cases, with the
11 ability to serve follow-up requests for production and up to 10 additional interrogatories that
12 cover plaintiff- or case-specific information.

13 The United States likewise intends to create master interrogatories and requests for
14 production to ensure that consistent information is produced by Plaintiffs across the cases. The
15 United States anticipates follow-up interrogatories and requests for production based on the needs
16 of individual cases.

17 If the Court accepts the parties' request for a stay pending mediation in these cases,
18 Plaintiffs and the United States will negotiate the master discovery requests and interrogatories
19 after mediation in or around June 2024.

20 Defendant Garcia will propound written discovery and participate in taking depositions.

21 b. Site Inspection

22 Plaintiffs anticipate seeking a site inspection.

23 c. Depositions

24 Plaintiffs anticipate taking numerous depositions of former FCI-Dublin officers and
25 employees, including Garcia and many of the individual defendants. Plaintiffs may also take
26 depositions of federal governmental designees. The parties note that information obtained in these
27 depositions may be limited by Fifth Amendment rights against self-incrimination.

28 At this time, the United States anticipates taking the depositions of the individual plaintiffs,

1 their treatment providers (if any), and potential witnesses that may have relevant information to
 2 their claims (such as fellow inmates, family members, or friends).

3 Parties will coordinate depositions to avoid the same individual being subjected to multiple
 4 depositions, and to avoid duplicative questioning during their depositions. For liability witnesses,
 5 each witness will be deposed only once in any of the related matters. However, each liability
 6 witness will be deposed for up to 16 hours, with the parties reserving the right to seek more time if
 7 good cause exists. Plaintiffs will allocate each of their respective times for deposition in advance
 8 of the deposition to ensure compliance with the presumptive limits, provided that if a Plaintiff uses
 9 less time than originally allocated, she may defer that time to other questioners.

10 For each incarcerated defendant, the parties will coordinate a location for the witness and
 11 all attorneys who wish to be present, and they have considered the Ronald V. Dellums Federal
 12 Building & United States Courthouse at 1301 Clay Street Oakland, CA 94612 as a possibility (with
 13 the Court's consent). The United States has confirmed that the BOP and the United States Marshals
 14 Service can assist in transporting the incarcerated deponents to and from the selected deposition
 15 sites, so long as they have sufficient notice in advance (which the parties will coordinate).

16 For damages witnesses, the parties will depose whomever they choose for the benefit of
 17 their case. The time limit will be pursuant to Rule 30(d)(2).

18 d. Pre-Mediation Psychological Evaluations of Plaintiffs

19 In anticipation of an early mediation of this case (*see* Section C.12 below), plaintiffs wish
 20 to retain medical experts to conduct pre-mediation psychological and/or psychiatric evaluations to
 21 assess their individual damages and help value their cases for the mediation. Generally, medical
 22 experts prefer to conduct psychological testing in person. As many Plaintiffs remain in the custody
 23 of the BOP, Plaintiffs would respectfully request that the Court issue a blanket order requiring all
 24 BOP facilities to permit these evaluations, subject to limitations described below and in the
 25 proposed order. In Plaintiffs' counsels' experience, BOP facilities generally require a court order
 26 to permit medical experts entrance into their facilities. In the interest of judicial economy, a blanket
 27 order would be preferable to requiring each Plaintiff to file an individual motion seeking an order.

28 Thus, Plaintiffs request that the Court order the BOP to permit any retained medical expert

1 to enter the BOP facility (along with any of their required technological equipment, including
2 computers, provided that the equipment complies with BOP and facility rules and regulations) and
3 conduct evaluations with requested incarcerated Plaintiffs. These evaluations must be permitted to
4 occur in private, contact visitation rooms. The experts would be permitted up to four hours in the
5 aggregate to conduct the evaluations, with no one day exceeding three hours. Evaluations may
6 exceed four hours in the aggregate for specific plaintiffs if the parties agree or if the Court orders
7 it. It shall be the responsibility of each individual Plaintiff's counsel and/or expert to contact both
8 the Assistant U.S. Attorney(s) assigned to the case and the BOP facility to coordinate these
9 evaluations (including providing names of the retained experts in advance for BOP vetting), and
10 all experts must follow all BOP rules, regulations, and protocols. For those medical experts who
11 are unable to visit the facility in person due to travel or other issues, the Court's order should also
12 require that the BOP confer with counsel for the incarcerated Plaintiff to provide alternative means
13 of conducting the evaluation, based on the capabilities of the facility, BOP rules and regulations,
14 and the needs of prison administration. These means could include videoconference technology
15 or, if that is not available, other forms of telecommunications.

16 CCWP Plaintiffs do not agree to a 4 hour limit on mental health assessments, which may
17 take 6-8 hours or as long as the expert deems necessary based on their expertise. CCWP Plaintiffs
18 also do not understand what is meant by the reference to "in the aggregate" but to the extent that
19 requires multiple potential experts to conduct one combined assessments CCWP Plaintiffs object
20 to that limitation unless it is deemed clinically appropriate to combine the assessments in that way
21 by the experts at issue. Additionally, CCWP Plaintiffs object to any separate mental health
22 evaluation by the United States at this time of some or all incarcerated CCWP Plaintiffs and propose
23 that any requests for such evaluations be handled individually, only where warranted, and with a
24 process for ensuring the evaluation are performed in a manner that does not re-traumatize CCWP
25 Plaintiffs or is done for a harassing purpose.

26 The United States will cooperate in facilitating the evaluations. However, it emphasizes,
27 consistent with the proposed order, that any evaluation must be coordinated with BOP to ensure
28 the least interference possible with prison administration, and that the evaluating professionals and

1 any assistants strictly comply with all BOP and facility rules, regulations, and protocols. The
2 United States notes that while BOP will endeavor to provide videoconferencing for any remote
3 examinations, certain facilities may not be able to support videoconference capability, and thus
4 alternative means of evaluation will have to occur. The United States also cautions that BOP staff
5 will not be able to proctor an assessment or assist an incarcerated Plaintiff with any assessments
6 conducted through videoconference or other electronic or telephonic means.

7 The United States may retain its own mental health experts to separately conduct a pre-
8 mediation evaluation of some or all incarcerated Plaintiffs. If it does so, it will notify the Plaintiff's
9 counsel and will coordinate the visit with the BOP, strictly complying with all BOP and facility
10 rules, regulations, and protocols.

11 The parties note that the foregoing and the proposed order applies only to pre-mediation
12 evaluations. For cases that do not settle, the parties may seek further evaluation of incarcerated
13 Plaintiffs, by the same or different professionals. The parties will endeavor to submit a joint
14 proposed court order for those further evaluations or, if they cannot agree on a protocol, present the
15 dispute to the Court in accordance with the Local Rules so that the Court can adjudicate the dispute.

16 The plaintiffs represented by Todd Burns from BURNS & COHAN, ATTORNEYS AT
17 LAW do not agree to have Defendants perform any type of examination.

18 Expert Depositions:

19 For expert depositions (including any evaluations occurring after mediation, as discussed
20 above), Parties will confer and set reasonable limits.

21 **9. Class Actions**

22 *CCWP v. BOP* (4:23-cv-04155-YGR) is a class action for injunctive relief. No class-wide
23 damages are sought in *CCWP v. BOP*. Individual damages are sought by the named plaintiffs in
24 *CCWP v. BOP*. Other than *CCWP v. BOP*, the other related actions are not class actions.

25 **10. Related Cases**

26 The Court found that the cases listed in Exhibit A are related.

27
28

1 **11. Relief**

2 Plaintiffs' Statement

3 Plaintiffs seek nominal, compensatory and punitive damages, attorneys' fees and costs, and
4 any other relief that the Court deems appropriate.

5 In addition to seeking damages for the named Plaintiffs, Plaintiffs in *CCWP v. BOP* (4:23-
6 cv-04155-YGR) also seek permanent injunctive relief on behalf of the class of all persons
7 incarcerated at FCI Dublin currently or in the future. No class-wide damages are sought in *CCWP*
8 *v. BOP*.

9 United States' Statement

10 The FTCA precludes recovery of punitive damages or attorney's fees against the United
11 States, and it presumptively limits a Plaintiff's recovery to the amount of her administrative claim.
12 The United States may seek dismissal of any claims against it to the extent that those claims arise
13 out of actions falling outside the individual defendants' scope of employment, or fall outside of the
14 limited waiver of sovereign immunity under the FTCA.

15 Defendant Garcia seeks dismissal and an award of attorney's fees and expenses if he is the
16 prevailing party.

17 **12. Settlement and ADR**

18 Plaintiffs and the United States would like the opportunity to mediate their cases before
19 substantial discovery and motion practice occurs in this case. Plaintiffs and the United States
20 anticipate that this will involve mutual limited disclosure of information necessary for each side to
21 properly value the cases, the specifics of which they will coordinate if the Court grants their request.
22 Plaintiffs and the United States believe that they will have gathered and exchanged the necessary
23 information and will be fully prepared to mediate the cases by July 2024. The parties anticipate
24 that mediation could take multiple days for larger plaintiff groups. The parties are agreeable to
25 potentially using a private mediator, so long as they can reach agreement on the individual and
26 cost-splitting.

27 Plaintiffs and the United States further request that the Court stay the cases pending
28 mediation to ensure that their respective focus can be devoted entirely to settlement efforts, rather

1 than preparing potential motions to dismiss or scheduling depositions (which, for the reasons noted
2 above, could have substantial logistical difficulties). Plaintiffs and the United States believe that
3 this approach could substantially narrow the cases before the Court.

4 However, due to the distinct nature of the injunctive relief claims asserted in *CCWP v. BOP*
5 (4:23-cv-04155-YGR), Plaintiffs believe there should be no stay of the injunctive relief portion of
6 that case, although they do not object to the damages portion of the case being subject to the same
7 case management schedule as all other cases. Plaintiffs further believe that class certification
8 briefing should move forward in *CCWP* following the upcoming conference. The class certification
9 motion is relevant only to the injunctive relief claims against the Federal Defendants, all of whom
10 have been served. Although the United States agrees with Plaintiffs that class certification briefing
11 may move forward after all defendants have been served, it disagrees that the injunctive portion of
12 *CCWP* should be exempt from any stay because discovery relating to injunctive relief would
13 implicate many of the same Fifth Amendment and investigative concerns as discovery relating to
14 damages. Staying *CCWP* with the other cases also preserves the efficiencies involved in
15 participating in global discovery, as further discussed below.

16 Defendant Garcia does not oppose the stay requested by the plaintiffs and the United States,
17 so long as he retains his right to move to dismiss the various claims/actions in which he is named
18 once any stay imposed is lifted.

19 **13. Other References**

20 The parties agree that this case is not suitable for reference to binding arbitration or a special
21 master, or reference to the Judicial Panel on Multidistrict Litigation.

22 **14. Narrowing of Issues**

23 Defendant Garcia believes the issues will be narrowed by considering his forthcoming
24 dismissal motion at the earliest possible time.

25 **15. Expedited Trial Procedure**

26 Plaintiffs and the United States are opposed to an expedited trial.

27 Defendant Garcia is also opposed to an expedited trial since this case is likely to be stayed
28 and his motion to dismiss has been dismissed without prejudice and will have to be refiled.

1 **16. Scheduling**

2 United States' Statement:

3 The United States believes that in light of the active criminal prosecutions and ongoing
4 criminal investigations related to FCI-Dublin, a stay of all cases until the criminal investigations
5 are closed is warranted and best serves the interest of justice. Disclosure of information during
6 ongoing criminal investigations could compromise the investigation. In addition, the time for
7 potential victims to file civil suits is still running and a stay pending completion of the criminal
8 investigations would promote efficiency for the court and the parties as additional civil suits are
9 still being filed. And finally, staying the cases will make it more likely that the complete universe
10 of cases can be identified before the parties begin litigating.

11 Having related civil cases proceed during active criminal prosecutions and during ongoing
12 criminal investigations could cause substantial Fifth Amendment self-incrimination concerns for
13 named defendants and other witnesses. Further, even if information relating to specific alleged
14 wrongdoers could be released once the criminal investigations of those individuals close,
15 information relevant to ongoing criminal investigations must be withheld. The responsibility and
16 obligations of the government in criminal cases differ from the discovery rules that govern civil
17 cases.

18 If the Court rejects the United States' request for a stay of all cases pending conclusion of
19 the criminal investigations into FCI-Dublin, the United States and Plaintiffs have developed an
20 agreed proposal, forged through months of discussions between working groups.

21 Plaintiffs' and United States' Joint Statement:

22 The following joint statement describes the agreed proposal between Plaintiffs and the
23 United States (aside from Plaintiffs represented by Slater Slater Schulman, LLP, who offer a
24 separate proposal below). Except where explicitly stated, this statement represents the mutual
25 agreement of Plaintiffs and the United States.

26 Plaintiffs agree with the United States that early mediation in this case should be pursued.
27 Thus, the parties respectfully request that the Court stay all cases pending mediation, which the
28 parties intend to hold in or around July 2024. The parties expect to mediate all cases, and believe

that the mediation will take multiple days. Parties will enter into a protective order and determine informal discovery to exchange before the mediation to allow proper valuation of each.

Plaintiffs state that due to the distinct nature of the injunctive relief claims asserted in *CCWP v. BOP* (4:23-cv-04155-YGR), there should be no stay of the injunctive relief portion of that case. The United States disagrees that the injunctive portion of *CCWP* should be exempt from the stay because discovery relating to injunctive relief would implicate many of the same Fifth Amendment and investigative concerns as discovery relating to damages.

Should the matters not settle at mediation, Plaintiffs and the United States propose that the cases be organized in the following categories.

Category 1 – Cases where all individual defendants have been convicted and sentenced or found not guilty. Discovery in these cases could proceed immediately, subject to understanding that information relevant to other ongoing investigations may not be immediately available.

Plaintiffs and Defendants differ on the proposed schedule for Category 1 cases. Plaintiffs' proposed schedule:

Deadline to file response to Complaint/Amended Complaint	September 9, 2024
Motion to join parties/amend pleadings	September 9, 2024
Completion of Fact Discovery:	February 10, 2025
Initial Expert Designation:	March 22, 2025
Rebuttal Expert Designation:	April 18, 2025
Expert Reports:	April 18, 2025
Supplemental/Rebuttal Expert Reports:	May 23, 2025
Completion of Expert Discovery:	June 20, 2025
Pretrial motion filing cutoff:	July 3, 2025
Mandatory Settlement Conference (MSC):	July 18, 2025
Pretrial Conference date:	August 15, 2025
Trial date:	November 3, 2025

Defendants' proposed schedule:

Deadline to file response to Complaint/Amended Complaint	September 1, 2024
Motion to join parties/amend pleadings	September 9, 2024
Completion of Fact Discovery:	February 10, 2025
Initial Expert Report:	April 18, 2025
Rebuttal Expert Report:	June 18, 2025
Completion of Expert Discovery:	August 20, 2025
Dispositive motions	September 26, 2025
Response to dispositive motions	October 20, 2025
Replies to dispositive motions	November 3, 2025
Pretrial motion filing cutoff:	January 30, 2026
Mandatory Settlement Conference (MSC):	December 2025
Pretrial Conference date:	March 2026
Trial date:	June 2026

RR vs USA 23-cv-05392-YGR requested for an opt out option after the mediation or have another status conference with the court after an initial mediation.

Category 2 – Cases that contain at least one Defendant with pending criminal charges or who has been convicted but not yet been sentenced, and all other defendants (if any) have been sentenced. Category 2 cases would be stayed until sentencing is complete, with discovery proceeding after all Defendants have been sentenced. The “stays” in Category 2 cases (and Category 3 cases discussed below) would halt discovery of information specifically pertaining to a case’s plaintiff, the alleged wrongdoers in the case’s complaint, and the complaint allegations, but the stays would not preclude discovery relating to general matters. For example, disclosure of Prison Rape Elimination Act (PREA) instruction manuals or training materials would proceed because those materials are generally applicable across all cases. Similarly, Category 2 and 3 plaintiffs will still participate in depositions (including by asking questions if desired) of individuals

1 testifying as to generally-applicable information (for example, government designees to testify
2 regarding PREA enforcement, or a warden's testimony of reporting procedures at FCI-Dublin).

3 **Category 3** – All other cases. These are cases that involve at least one defendant who does
4 not have pending criminal charges. If the United States can definitively confirm that a complaint
5 does not include any individuals who are potential investigation targets, then the case can move to
6 Category 1 or Category 2 as appropriate (though the United States does not anticipate this will often
7 be the case). Plaintiffs and the United States disagree on how Category 3 cases should be handled,
8 however.

9 Plaintiffs' proposal:

10 For those cases where criminal charges are not brought by September 9, 2024, these cases
11 will be reassigned to Category 1 and use the same case schedule as outlined above for Category 1,
12 unless the United States makes a showing of ongoing criminal investigation and the resulting need
13 for discovery stay. To make this showing, within 30 days after the conclusion of aforementioned
14 mediation, the United States, through the Assistant United States Attorney investigating the
15 relevant defendants, will submit a status report regarding the status of investigation. This status
16 report will be submitted ex parte and remain under seal with this Court for in camera review only.
17 Only in cases where this Court determines based upon such submission that the Plaintiff's case
18 must remain in Category 3, will the case remain in Category 3; otherwise, it shall be promptly
19 reassigned to Category 1. For the cases that remain in Category 3, discovery will be stayed, subject
20 to this Court's scheduling order based upon the initial status report. In order for the cases to remain
21 in Category 3, the United States, through the Assistant United States Attorney investigating the
22 relevant defendants, will submit a status report at least every six months.

23 United States' proposal:

24 Category 2 and 3 cases that move into Category 1 by September 9, 2024, will use the same
25 case schedule as above. For Category 2 and 3 cases that move into Category 1 after September 9,
26 2024, the cases will remain stayed until there are several such cases. Those cases will then be
27 grouped, the parties will propose a case schedule to the Court governing them, and the Court will
28 enter a case schedule for that group of cases.

1 The United States maintains that Plaintiffs’ proposal that Category 3 cases should become
 2 Category 1 in September 2024 unless the United States “makes a showing of ongoing criminal
 3 investigation and the resulting need for discovery stay” is not workable and would improperly
 4 interfere with the confidentiality of the criminal investigation process. Even if the criminal
 5 Assistant U.S. Attorney is able to make an ex parte report to the Court, the result of that report—
 6 i.e., the case remains stayed or is moved into Category 1—would publicly disclose information
 7 relating to the investigation that otherwise would not be publicly disclosed: if the case remains in
 8 Category 3, then the defendant is a target of an investigation; if the case moves to Category 1, then
 9 the defendant is not a target of an investigation. The premature public disclosures resulting from
 10 Plaintiffs’ proposal could compromise ongoing investigations and violate confidentiality
 11 requirements and privileges of the Executive branch’s deliberations.

12 The United States also contends that Slater Slater Schulman’s proposal (described below)
 13 to dispense with the categorization system altogether is unworkable. In granting two previous stays
 14 of some of the earlier-filed cases, the Court has recognized that a civil case proceeding against a
 15 defendant under criminal investigation, under indictment, or awaiting sentencing not only poses
 16 significant Fifth Amendment concerns, but it could potentially compromise the investigation and
 17 the safety of witnesses. Those same concerns still apply. And as a practical matter, cases that
 18 would otherwise be Category 3 will still require numerous discovery extensions because substantial
 19 discoverable information will simply not be available to the BOP or the civil Assistant U.S.
 20 Attorneys representing the United States while the investigation is ongoing—which essentially will
 21 result in the same multi-level case scheduling structure that is contemplated by the Category
 22 system.

23 Separate proposal by Slater Slater Schulman LLP Plaintiffs:

24 All the plaintiffs represented by Slater Slater Schulman LLP (“SSS Plaintiffs”) and the
 25 CCWP Plaintiffs do not agree to proceed with the categories listed above, which separate the
 26 matters on an arbitrary basis. SSS Plaintiffs and the CCWP Plaintiffs believe that there is no need
 27 to categorize the cases at this time as the cases will be stayed for at least six months either way.
 28 Additionally, the categories as constructed restrict SSS Plaintiffs and the CCWP Plaintiffs from

1 proceeding with their cases as needed/desired. If a plaintiff needs additional time from the court to
2 obtain discovery related to a criminal investigation, that plaintiff can bring that issue to the court's
3 attention without forcing other plaintiffs to be held in a holding pattern for an indefinite period.
4 SSS Plaintiffs and the CCWP Plaintiffs propose that a hearing after the stay should be the
5 appropriate time to determine specifics for litigation given the length of the proposed stay to
6 facilitate mediation.

7 **17. Trial**

8 As to the individual defendants, these cases are expected to be a jury trial. As to claims
9 against the United States, the claims “shall” be tried by the Court without a jury. *See* 28 U.S.C. §
10 2402. Parties anticipate that plaintiffs will select a bellwether case for trial, which could last up to
11 14 days. If parties are unable to resolve the remaining cases after the bellwether trial, the other
12 cases will be set for trial.

13 Plaintiffs in *CCWP v. BOP* (4:23-cv-04155-YGR) anticipate that trial could last up to 10
14 days, with 5 days for the presentation of Plaintiffs’ case and 5 days for the presentation of
15 Defendants’ case.

16 **18. Disclosure of Non-Party Interested Entities or Persons**

17 Unknown at this time.

18 **19. Professional Conduct**

19 The attorneys of record for the parties have reviewed the Guidelines for Professional
20 Conduct for the Northern District of California.

21 **20. Other**

22 The parties are not presently aware of other matters that should be brought to the attention
23 of the Court.

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Respectfully Submitted,
THE PRIDE LAW FIRM

/s/ Jessica K. Pride
Jessica K. Pride
Counsel for Plaintiffs
Authorized Plaintiffs' liaison counsel for Plaintiffs
for purposes of case management conference

Dated: December 4, 2023
PHILLIP A. TALBERT
United States Attorney

/s/ Brodie Butland
BRODIE BUTLAND
Assistant United States Attorney
Counsel for the United States of America
Liaison counsel for U.S. Attorney's Offices
representing the United States
of America for purposes of case management
conference

Acting under authority conferred by 28 U.S.C. §515

Dated: December 4, 2023
LAW OFFICE OF ALANA MCMAINS

/s/ Alana L. McMains
Alana L. McMains
Attorney for Plaintiff

Dated: December 4, 2023
**WALKUP, MELODIA, KELLY &
SCHOENBERGER**

/s/ Matthew D. Davis
MATTHEW D. DAVIS
ASHCON MINOIEFAR
Attorneys for PLAINTIFF
ANDREA REYES

1 Dated: December 4, 2023

THE JACOB D. FUCHSBERG LAW FIRM, LLP

2
3 /s/ Jaehyun Oh

JAEHYUN OH*

4 NY Bar No. 5668512

5 * *Pro hac vice* application to be submitted in
6 connection with prospective lawsuits for 36 related
7 claimants

8 Dated: December 4, 2023

Rosen Bien Galvan & Grunfeld LLP

9 /s/ Kara Janssen

Kara Janssen

10 Counsel for Plaintiffs in *CCWP v. BOP*

11 Dated: December 4, 2023

THE WAGNER LAW GROUP

12 /s/ Butch Wagner

Nicholas J.P. Wagner

13 Attorney for Plaintiffs Linda Chaney, Marie
14 Washington, Pearl Garcia; and Geraldine Hill,
15 Nichole Robinson and Charollette Alarcon

16 Dated: December 4, 2023

Iredale and Yoo, APC

17 /s/ Eugene Iredale

Eugene Iredale

18
19
20 Dated: December 4, 2023

Personal Injury Attorneys of Alaska

21 /s/ Charles Coe

22 Charles Coe
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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE