1 2 3 4 5 6 7 8 9 10 11	Matthew J. Gauger, Bar No. 139785 Caren P. Sencer, Bar No. 233488 WEINBERG, ROGER & ROSENFELD A Professional Corporation 428 J Street, Suite 520 Sacramento, CA 95814 Telephone (916) 443-6600 Facsimile: (916) 442-0244 Attorneys for Plaintiffs Robert L. Ford, Bar No. 86920 F. Curt Kirschner, Jr., Bar No. 122502 Christopher T. Scanlan, Bar No. 211724 JONES DAY 555 California Street, 26th Floor San Francisco, CA 94104 Telephone: (415) 626-3939 Facsimile: (415) 875-5700		**E-Filed 8/16/2010**	
12	Attorneys for Defendants			
13	UNITED STATES DISTRICT COURT			
14	NORTHERN DISTRICT OF CALIFORNIA			
15	SAN JOSE DIVISION			
16				
17 18 19	SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 121 RN and SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS - WEST,	[PROPOS	C-09-05065 JF CATUS REPORT <sup>1</sup> AND E <del>ED]</del> ORDER SETTING CONFERENCE	
20	Plaintiffs,	Judge:	Hon. Jeremy Fogel	
21	v.			
22 23	LOS ROBLES REGIONAL MEDICAL			
23 24	CENTER et al.,			
24 25	Defendants.			
25 26				
27	$\frac{1}{1}$ Due to a clerical error, a separate state	ment by Plainti	iffs only was filed as Docket #79.	
28	<sup>1</sup> Due to a clerical error, a separate statement by Plaintiffs only was filed as Docket #79. This document is intended as the correct joint statement and the prior separate statement should be disregarded.			
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1	THE PARTIES HERETO, BY AND THROUGH THEIR AUTHORIZED			
2	COUNSEL OF RECORD, REPORT TO THE COURT AS FOLLOWS, PURSUANT TO THE			
3	COURT'S ORDER OF MAY 26, 2010:			
4	1. Consistent with this Court's orders of November 17, 2009 and December			
5	11, 2009, the parties' dispute was submitted to arbitration. The parties completed two days of			
6	hearing with mutually agreed Arbitrator Matthew Goldberg. Both parties rested their cases on			
7	February 3, 2010.			
8	2. After receipt and review of post-hearing briefs by the parties, Arbitrator			
9	Goldberg issued his Opinion and Award dated July 5, 2010. A true and complete copy of the			
10	same is annexed as Exhibit A.			
11	3. The "Award" section of the Opinion and Award states, in full:			
12				
13	"The grievances are sustained in part and denied in part. The Employer's implementation and enforcement of its H1N1 and			
14	seasonal flu infection control policies at or near the beginning of December, 2009 was contrary to Articles 14.2, 42 and 102 of the			
15	Agreement. The Employer is ordered to meet and bargain with the Union in good faith to determine a mutually agreeable means of			
16	enforcing its policy without violating the provisions cited, and reducing the potential that the policy might have for discrimination			
17	and/or violation of the just cause provisions of the Contract. The Arbitrator retains jurisdiction for the purposes of			
18	implementation and/or interpretation."			
19	(Exhibit A, page 33.)			
20	4. <i>Position of Plaintiffs:</i> Plaintiffs allege that the Defendants have not			
21	complied with the Arbitrator's award. Although Plaintiffs have made demands to bargain as			
22	required by the Arbitrator's award, Defendants have failed to respond to the demands in any			
23	meaningful way. For that reason, Plaintiffs have advised Defendants that they intend to seek			
24	leave to file additional pleadings in this action, which would include a Petition to Confirm the			
25	Arbitrator's award.			
26	5. <i>Position of Defendants:</i> Without expressing any opinion on the validity of			
27	enforceability of the Arbitrator's award, Defendants deny Plaintiffs' allegations of			
28	noncompliance. (In any event, Defendants are prepared to comply as requested by the Union			
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1	when they have proposals ready for the Union.) Defendants also submit that all relief sought in		
2	Plaintiff's complaint – an injunction pending arbitration – is now moot and that this action should		
3	therefore be dismissed. Defendants also note that Plaintiffs previously represented to this Court		
4	on two separate occasions that they expected to dismiss this action voluntarily after issuance of		
5	the Arbitrator's award. Defendants also note that any alleged noncompliance with the		
6	Arbitrator's award should in the first instance be addressed to the Arbitrator, who retained		
7	jurisdiction over disputes of interpretation and implementation; they note further that the parties		
8	had stipulated to the Arbitrator's jurisdiction at the beginning of the arbitration hearing.		
9	Defendants intend to file a motion to dismiss this action as moot if Plaintiffs will not reconsider		
10	their decision not to dismiss this case voluntarily.		
11	6. In light of the foregoing, the parties jointly request that the Court set and		
12	conduct a telephonic (or in the alternative, in-person) conference with counsel to address the		
13	issues addressed above and to set a schedule for any motions to amend the pleadings and/or to		
14	dismiss.		
15	Respectfully submitted,		
16	WEINBERG, ROGER & ROSENFELD A Professional Corporation		
17			
18 19	By: <u>/S/ Caren P. Sencer</u> Caren P. Sencer Attorneys for Plaintiffs		
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20 21	JONES DAY		
21 22	By: <u>/S/ Christopher T. Scanlan</u> Christopher T. Scanlan Attorneys for Defendants		
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28	<sup>2</sup> Counsel e-filing this joint status report represents that he has obtained Ms. Sencer's express permission to file this document on behalf of all parties.		
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1	PROPOSED ORDER
2	Based on the foregoing stipulations and representations, the Court makes the following
3	order:
4	1. The court will conduct a status conference in this matter at <u>10:30 am<sub>on</sub></u>
5	September 10, 2010 Counsel-may-appear-by telephone ]-
6	2. The parties may file written statements not to exceed three (3) pages each no later
7	than three (3) days before the status conference.
8	IT IS SO ORDERED.
9	Dated: August <u>16</u> , 2010.
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11	The Aphorable Jeren y Legel
12	Unked States Dist ict Judge
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