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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Torres *et al.*,
Plaintiff-Petitioners,
v.
Milusnic *et al.*,
Defendant-Respondents.

Case No.: CV 20-4450-CBM-(PVCx)
**ORDER RE: ADMISSIBILITY OF
DR. VENTERS' REPORTS**

The matters before the Court are the parties' briefs re the admissibility/inadmissibility of the reports by the Court-appointed Rule 706 expert Dr. Venters in connection with Respondents' Motion for Summary Judgment. (Dkt. No. 336, 337.)

Respondents filed Objections to Petitioners' Evidence in Opposition to Motion for Summary Judgment (Dkt. No. 266-3), wherein they objected to Petitioners' citation to the two reports by the Court-appointed expert Dr. Venters as inadmissible hearsay. The Court overrules Respondents' hearsay objections to Dr. Venters reports because Dr. Venters' testimony may be provided in a manner admissible at trial. *See Est. of Najera v. City of Anaheim*, 2017 WL 10544043, at *2 (C.D. Cal. July 10, 2017) (finding in ruling on summary judgment motion that "the hearsay objection [to the expert report] is without merit because [the expert's]

1 testimony could be provided in a manner admissible at trial.”); *Competitive*
2 *Techs., Inc. v. Fujitsu Ltd.*, 333 F. Supp. 2d 858, 863 (N.D. Cal. 2004) (The court
3 has discretion to consider signed but unsworn expert reports submitted in
4 opposition to summary judgment); *Ferreira v. Arpaio*, 2017 WL 6554674, at *4
5 (D. Ariz. Dec. 22, 2017) (declining to exclude unsworn expert report for purposes
6 of ruling on the defendants’ summary judgment motion).

7 The Court further finds Dr. Venters’ reports are admissible under the
8 residual hearsay exception pursuant to Federal Rule of Evidence 807(a). As a
9 neutral, Court-appointed Rule 706 expert, Dr. Venters’ reports have sufficient
10 guarantees of trustworthiness, are more probative regarding the conditions at
11 Lompoc than other evidence because they are based on Dr. Venters’ observations
12 of Lompoc during his visits in September 2020 and April 2021, and the admission
13 of the reports serves the general purposes of the Rules of evidence and interests of
14 justice. *See* Fed. R. Evid. 807(a); *United States v. Sanchez-Lima*, 161 F.3d 545,
15 547 (9th Cir. 1998) (Statements admitted under Rule 807 “must (1) be evidence of
16 a material fact; (2) be more probative on the point for which it is offered than any
17 other evidence which the proponent can procure through reasonable efforts; and
18 (3) serve the general purposes of the Rules of evidence and the interests of justice
19 by its admission into evidence.”).

20 Having found Dr. Venters’ reports are admissible, the Court finds a more
21 recent report from Dr. Venters regarding the current conditions at Lompoc is
22 needed prior to ruling on Respondents’ Motion for Summary Judgment and
23 Motion to Dissolve Preliminary Injunction. Accordingly, the Court orders the
24 court-appointed neutral expert Dr. Venters to complete a third site visit of
25 Lompoc. The parties to shall meet and confer as to when a further visit to
26 Lompoc by Dr. Venters will take place and the date for the filing of a report by
27 Dr. Venters regarding his observations of the current conditions at Lompoc, which
28 includes but is not limited to the following:

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1. Protective measures at Lompoc to reduce transmission of COVID-19 (e.g., soap and cleaning supplies made available to inmates; type of masks provided to inmates, number/frequency of masks provided, wearing of masks; social distancing; testing; isolating and quarantining procedures; screening; tracking of inmates with COVID-19 symptoms);
2. COVID-19 vaccination efforts (e.g., type of vaccine offered; when vaccines offered; boosters; the percentage of inmates who have received one, two, or three doses of the vaccine, respectively; information and education provided to inmates regarding the vaccines);
3. The number of inmates at Lompoc (including FCI Lompoc, USP Lompoc, and Lompoc camps); and
4. The number of positive COVID-19 cases of Lompoc inmates.

The parties shall notify the Court in writing regarding when Dr. Venters' third visit will take place and when the report re: his third visit will be filed **no later than January 28, 2022.**

IT IS SO ORDERED.

DATED: January 18, 2022.



**CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE**