

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 JOHN ARMSTRONG, et al.,

No. C 94-2307 CW

5 Plaintiffs,

ORDER GRANTING  
MOTION FOR FURTHER  
ENFORCEMENT

6 v.

(Docket No. 2436)

7 EDMUND G. BROWN, JR., et al.,

8 Defendants.

9 \_\_\_\_\_/

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11 Plaintiffs Armstrong, et al., move for an order for further  
12 enforcement of the 2007 injunction, applicable to all California  
13 Department of Corrections and Rehabilitation (CDCR) prisons. They  
14 allege that Defendants Brown, et al., continue to place Class  
15 Members in administrative segregation due to a lack of accessible  
16 housing. Having considered the parties' briefs and their  
17 arguments at the January 29, 2015 hearing, the Court finds that  
18 Defendants are regularly housing Armstrong class members in  
19 administrative segregation due to lack of accessible housing, in  
20 violation of this Court's previous orders and the Americans with  
21 Disabilities Act (ADA). Accordingly, the Court GRANTS Plaintiffs'  
22 motion.

23 BACKGROUND

24 In a series of orders between 1996 and 2002, the Court found  
25 that Defendants' treatment of prisoners with disabilities violated  
26 the American with Disabilities Act (ADA) and § 504 of the  
27 Rehabilitation Act. On January 3, 2001, Defendants issued the  
28

1 amended Armstrong Remedial Plan (ARP) setting forth their own  
2 policies and plans to come into compliance with their obligations  
3 under these federal laws. Among other things, the ARP addressed  
4 the housing of class members in administrative segregation.

5 In 2012, the parties developed jointly a system by which  
6 Armstrong class members are moved out of administrative  
7 segregation as CDCR looks for an accessible bed. See Docket No.  
8 2209 at 6-7. In relevant part, the parties' agreement stated:

9 (b) Defendants agreed to provide internal documents showing  
10 all Armstrong class members housed in administrative  
11 segregation and housed two levels above their designated  
12 security level due to lack of bed space, (c) Defendants  
13 agreed to make their best effort to classify and transfer  
14 prisoners housed two levels out of their security level  
15 within 30 days, (d) Defendants agreed to draft model Local  
16 Operating Procedures (LOPs) that state that it is  
17 departmental policy not to house prisoners in administrative  
18 segregation due to lack of bed space and requiring  
19 institutions to take immediate action to transfer such  
20 prisoners, including contacting CDCR headquarters to expedite  
21 the transfer if not resolved within 72 hours.

22 Id. Despite this agreement, according to CDCR's logs from July  
23 2013 through July 2014, 211 Class Members were held in  
24 administrative segregation for some period of time, thirty-five of  
25 them in July 2014 alone. These time periods ranged from less than  
26 twenty-four hours to a month or more. See Docket No. 2436 at 11.

#### 27 DISCUSSION

28 The Court finds that housing disabled class members in  
administrative segregation solely because of their disabilities  
violates this Court's prior orders, including the 2001 Injunction,  
which declares that the "CDCR has a duty to maintain in operable  
working condition structural features and equipment necessary to  
make the prison system's services, programs, and activities  
accessible to disabled inmates." Mar. 21, 2001 Permanent

1 Injunction, Docket No. 694, at ¶ 4. The practice also violates  
2 the 2007 Injunction, which prohibits CDCR from "hous[ing] [class  
3 members] at any placements without adequate accessible housing  
4 . . ." and orders adherence to the Armstrong Remedial Plan  
5 requirement that no prisoner with a disability "shall, because of  
6 that disability, be excluded from participation in or denied the  
7 benefits of services, programs, or activities of the Department or  
8 be subjected to discrimination." 2007 Injunction at 6, 9,  
9 Armstrong Remedial Plan, Sec. I, p. 1.

10 Defendants' practice also violates the ADA and its  
11 implementing regulations, which prohibit prison officials from  
12 placing prisoners "with disabilities in inappropriate security  
13 classifications because no accessible cells or beds are available"  
14 and from placing prisoners with disabilities "in facilities that  
15 do not offer the same programs as the facilities where they would  
16 otherwise be housed." 28 CFR § 35.152(b)(2).

17 Accordingly, the Court finds that in order to ensure  
18 compliance with this Court's orders and with the ADA and its  
19 implementing regulations, it is necessary to prohibit Defendants  
20 from housing Armstrong class members in administrative segregation  
21 due to a lack of accessible bed space. The Court finds that the  
22 Order set forth below complies with the PLRA; it is narrowly  
23 drawn, extends no further than necessary to correct the violation  
24 of the federal rights of Armstrong class members, and is the least  
25 intrusive means necessary to correct that violation. While it is  
26 true that the majority of instances of this practice took place at  
27 one institution, the practice occurred at other institutions as  
28 well. Further, transfers into non-complying institutions come

1 from other institutions, with the involvement of CDCR officials  
2 with state-wide jurisdiction. Thus, it would not be efficacious  
3 to limit the within order only to the least compliant receiving  
4 institution. The Court's prior orders have applied state-wide.

5 Accordingly, Defendants are prohibited from housing Armstrong  
6 class members in administrative segregation because no accessible  
7 cells or beds are available. The Court orders that if Defendants  
8 place an Armstrong class member in administrative segregation due  
9 to the lack of an accessible bed, they must fully document their  
10 reasons for doing so. The documentation shall explain why the  
11 prisoner was sent to a prison that could not accommodate his or  
12 her disability, the status of all the accessible beds in the  
13 facility, such that compaction is not an option, and all of the  
14 steps taken to find an accessible bed before placing the class  
15 member in administrative segregation. The reports shall continue  
16 to document how many class members were placed in administrative  
17 segregation due to their disabilities and for how long, expressed  
18 in actual hours, not "business" hours. This report must be  
19 provided to Plaintiffs' counsel.

20 While the Court does not, at this time, impose any particular  
21 method by which Defendants must comply with this Order, it notes  
22 that Defendants already have at their disposal several means by  
23 which to comply. For example, Defendants may make use of their  
24 current bed management system to ensure that a class member is not  
25 transferred to a facility without first confirming that an  
26 accessible bed is available. They may also continue to use their  
27 RJD corrective action plan, with enhanced monitoring procedures  
28 and specialized training, and expand it to other facilities.

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1 Defendants may use beds designated for other purposes, such as  
2 medical beds, to house an Armstrong class member while an  
3 accessible bed is found. Defendants may also use another form of  
4 overflow housing that does not house Armstrong class members in a  
5 manner prohibited by this Order. Finally, Defendants could  
6 implement some of Plaintiffs' suggestions, including having the  
7 ADA coordinators at both the receiving and sending institutions  
8 communicate to ensure that, prior to a class member's transfer, an  
9 accessible bed is available and that the receiving institution can  
10 hold that bed until the class member arrives.

11 Within thirty days of the date of this Order, Defendants  
12 shall submit a report to this Court and Plaintiffs' counsel  
13 describing the steps they have taken to comply with the Order, and  
14 attesting to their compliance with the Order.

15 IT IS SO ORDERED.

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17 Dated: February 3, 2015

  
18 CLAUDIA WILKEN  
19 United States District Judge  
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