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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 JOHN ARMSTRONG, et al.

19 Plaintiffs,

20 v.

21 GAVIN NEWSOM, et al.

22 Defendants.
23
24
25
26
27
28

Case No. C94 2307 CW

JOINT CASE STATUS STATEMENT

Judge: Hon. Claudia Wilken

1 The parties submit this Joint Case Status Statement pursuant to the Stipulation and
 2 Order entered March 28, 2011 (ECF No. 1868), which provides that “[t]he parties will file
 3 periodic joint statements describing the status of the litigation” every other month,
 4 beginning on May 16, 2011.

5 CURRENT ISSUES¹

6 A. Effect of COVID-19 Pandemic on *Armstrong* Class

7 This is an unprecedented time. The COVID-19 pandemic has affected all aspects of
 8 life. Unfortunately, the California prison system is not immune. As of today, 69
 9 incarcerated people and 78 CDCR and CCHCS employees have tested positive for
 10 COVID-19, and those numbers are expected to climb.² The pandemic affects all aspects of
 11 prison and parole operations. Plaintiffs hope that Defendants will meet this moment, let it
 12 be a driver of innovation, and ensure that people with disabilities are safe, informed, and
 13 able to access the same programs, services, and activities as their peers. Plaintiffs have
 14 provided a list of questions related to how Defendants’ response to the pandemic will
 15 affect *Armstrong* class members, attached as **Exhibit A**. The parties have begun
 16 discussion of these issues and have agreed that those discussions will continue on a regular
 17 basis. Plaintiffs expect that, as things change, new issues will be identified for discussion.

18 Defendants are sensitive to the needs of inmates at higher risk of severe effects from
 19 COVID-19, but note that “[d]isability alone may not be related to higher risk for getting
 20 COVID-19 or having severe illness. Most people with disabilities are not inherently at
 21 higher risk for becoming infected with or having severe illness from COVID-19.” *See*
 22 CDC, Coronavirus Disease 2019: People with Disabilities,
 23 <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with->
 24 _____

25 ¹ Statements are joint unless otherwise delineated as either *Plaintiffs’ Statement* or
Defendants’ Statement.

26 ² *See* CDCR, Population COVID-19 Tracking,
 27 <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited Apr. 15, 2020);
 CDCR, CDCR/CCHCS COVID-19 Employee Status,
 28 <https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/> (last visited Apr. 15, 2020).

1 disabilities.html (last visited Apr. 14, 2020). Plaintiffs note, however, that “[p]eople with
2 disabilities, who “are three time more likely than adults without disabilities to have heart
3 disease, stroke, diabetes, or cancer,” are particularly at risk of getting very sick or dying
4 from the disease. *See id.* Many are dependent on others to, for example, push their
5 wheelchairs, carry their food trays, or, if they are blind, serve as sighted guides. *See id.*
6 (noting that “[p]eople who have limited mobility or who cannot avoid coming into close
7 contact with others who may be infected” may be at increased risk of becoming
8 infected). *Armstrong* class members also are more limited in their housing placements, as
9 many require lower bunks, grab bars, accessible toilets and showers, and barrier- and stair-
10 free living areas. Many live in congregate dorm environments. Defendants have taken
11 steps to reduce population density, including by pausing intake, advancing release to
12 parole or community supervision some people who were scheduled be released in the next
13 60 days, and moving some people from dorms to celled housing. Defendants are
14 considering additional steps, including converting other areas in the prisons, including
15 gymnasiums, into living areas. The sufficiency of Defendants’ efforts is the subject of
16 active litigation in *Plata v. Newsom*, No. 01-1351 JST (N.D. Cal.) and *Coleman v.*
17 *Newsom*, No. 90-0520 KJM DB (E.D. Cal.). The parties will continue to discuss how any
18 changes in housing and restrictions on movement will affect *Armstrong* class members.

19 Defendants have made efforts to educate the incarcerated population about COVID-
20 19, preventive measures, and program changes in a variety of ways, including through
21 Centers for Disease Control and Prevention (CDC) videos, regular video messages from
22 Secretary Diaz, CCHCS-produced videos, written flyers, and posters. Plaintiffs believe it
23 is critical that such information be provided in accessible formats to *Armstrong* class
24 members, including, as appropriate, American Sign Language, captions, large print,
25 braille, and audio formats.³ *See CDC, Coronavirus Disease 2019: People with*

26 ³ Plaintiffs appreciate that Defendant Newsom’s video addresses to California residents are
27 aired simultaneously in American Sign Language. Video addresses by Secretary Diaz and
28 other CDCR and CCHCS officials directed toward the incarcerated population should be

1 Disabilities, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html)
2 [with-disabilities.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html) (last visited Apr. 10, 2020) (noting that “[p]eople who have trouble
3 understanding information or practicing preventive measures, such as hand washing and
4 social distancing,” may be at increased risk of becoming infected); U.S. Dep’t of Health
5 and Human Services, Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 at
6 2, <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf> (Mar. 28, 2020) (noting
7 that “government officials ... should not overlook their obligations under federal civil
8 rights law to help ensure all segments of the community are served by: Providing effective
9 communication with individuals who are deaf, hard of hearing, blind, have low vision, or
10 have speech disabilities through the use of qualified interpreters, picture boards, and other
11 means”). Defendants agree that such information should be provided in an accessible
12 format to *Armstrong* class members who have barriers to effective communication, such as
13 those with vision and hearing impairments.

14 Defendants also have implemented significant changes to programming “until
15 further notice” in response to the pandemic, including by cancelling visitation,
16 rehabilitative programs, group events, in-person educational classes, and group religious
17 programs. CDCR, COVID-19 Preparedness, <https://www.cdcr.ca.gov/covid19/> (last
18 visited Apr. 10, 2020). Defendants have taken steps to mitigate the effects of these
19 changes. For example, “[i]n recognition of the need for incarcerated people to have
20 contact with their loved ones,” Defendants have expanded phone access. *Id.* In addition,
21 the Office of Correctional Education has been working to provide in-cell
22 assignments. *Id.* And, in recognition of “the importance of religion in the daily life and
23 spiritual growth of incarcerated people,” Defendants are providing in-cell services for
24 holidays, have directed chaplains to “conduct individual religious counseling as
25 appropriate,” and are “working to provide televised religious services to the

26 no different. In addition, the CDC has videos related to COVID-19 available in American
27 Sign Language, which Plaintiffs believe should be aired without further delay. While
28 Defendants have not yet aired these CDC videos in the prisons, they are evaluating the
possibility of doing so.

1 population.” *Id.* Plaintiffs appreciate these efforts, but it is critical that staff developing
 2 and implementing such programs, services, and activities also ensure that they are
 3 accessible to people with disabilities, including blind, D/deaf, and hard-of-hearing class
 4 members.⁴ Defendants are mindful that changes in programming may impact *Armstrong*
 5 class members, and continue to take steps to mitigate the effects of those changes.

6 Plaintiffs understand, of course, that some initiatives may be suspended or delayed
 7 in response to the pandemic, including full implementation of audio description for blind
 8 class members and captioned telephones for deaf and hard-of-hearing class members.
 9 Defendants are evaluating the possibility of implementing stopgap measures, such as
 10 procuring some captioned phones to allow class members to talk to friends and family
 11 members as appropriate.⁵ Secretary Diaz has represented to the incarcerated population

12 _____
 13 ⁴ Plaintiffs note that the Court in *Coleman* recently held that “defendants are not relieved
 14 of their obligations to *Coleman* class members” even though “defendants must take
 15 account of steps the *Plata* Receiver is taking in managing his duties with respect to the
 16 provision of health care within CDCR during the coronavirus pandemic.” Doc. 6600,
 Order at 3, *Coleman v. Newsom*, No. 90-520 KJM DB (E.D. Cal. Apr. 10, 2020). The
 Court ordered Defendants to develop a plan that, among other things, “provide for
 continuity of mental health care, including access to clinically indicated levels of mental
 health care and attendant programming as outlined in the Program Guide.” *Id.* at 2.

17 ⁵ Defendants have stated that “Community Resource Managers and education staff will
 18 provide program materials, games, books, etc., to housing units.” CDCR, COVID-19
 Preparedness, <https://www.cdcr.ca.gov/covid19/> (last visited Apr. 10, 2020). When
 19 Plaintiffs asked how blind people who previously received audiobooks through the
 National Library of Congress’s Talking Books Program, which has been suspended in
 California in response to the shelter-in-place order, would be accommodated, Defendants
 20 responded: “The recommendation is to retain any books the inmate currently has. This
 will give them something to listen to, even if they have already heard it.” There is no
 21 indication that Defendants have explored other options so that blind class members can do
 more than listen to the same book on repeat through the duration of the indefinite and
 22 severe programming restrictions, including procuring and distributing other types of
 recreational audiobooks, collecting and redistributing audiobooks already in the system, or
 23 supplying movies with audio description. Defendants note that the suggestion for inmates
 to listen to the same book was made by the California Braille and Talking Book Library,
 24 which is currently closed and unable to mail out books and equipment since all of its staff
 are working from home. It is also against the agreement with the various talking book
 25 programs for inmates to swap books with each other or to send books to other institutions.
 The inmates sign an agreement that the book is their property, and they are responsible for
 26 its condition and its return. Some inmates have had their privileges suspended by vendors
 for returning books in unacceptable conditions. Plaintiffs note in response that clients of
 27 the Talking Books Library who are not incarcerated have access to a wide range of other
 free and low-cost accessible audiobooks and recreational material, including audio

1 that Defendants are “doing everything we can to increase the communication opportunities
2 and availability for you” and are “working on other ways to make phone calls through state
3 telephone if you have an emergency phone call and we’re not trying to go through the
4 normal way that you have to check a lot of boxes or talk to a lot of people. I need you in
5 contact with your family because your family needs to be aware how you’re doing.”
6 CCHCS, Population Message – Secretary Diaz, <https://vimeo.com/400758862/824c4cf567>
7 (Mar. 25, 2020); *see* Letter from Rita Lomio, Plaintiffs’ Counsel, to Alexander Powell,
8 CDCR Office of Legal Affairs, Accessible Phones for Deaf and Hard of Hearing Class
9 Members at 2 (Mar. 27, 2020), attached hereto as **Exhibit B** (class member reporting that
10 because Telecommunication Device for the Deaf was not available, he had to learn of his
11 mother’s death by letter). Plaintiffs believe that Defendants can and should be doing more
12 to accomplish Secretary Diaz’s goal of increasing communication opportunities.
13 Defendants are exploring additional ways to accomplish this goal, but at the very least, are
14 addressing ways to provide access to existing communication tools in light of restricted
15 movement and access.

16 Finally, the parties are engaged in ongoing discussions concerning Plaintiffs’
17 questions about DAPO’s handling of parole holds and the crowding of jails those holds
18 create. Correspondence from Plaintiffs’ counsel on this issue is attached to this Statement
19 as **Exhibit C**. Plaintiffs are concerned not only about unnecessarily crowding the jails, but
20 also about accommodating the additional parolees whom Defendants have agreed to parole
21 early. To date, Plaintiffs believe that DAPO’s rigid approach to transition to parole, as
22 discussed in greater detail later in this Statement, is harming parolees with disabilities.
23 Plaintiffs would like clear direction on whether to report to parole offices and how to

24 _____
25 description movies. Blind people in California prisons have access only to what
26 Defendants allow and provide. Therefore, Plaintiffs believe that Defendants must
27 promptly identify, evaluate, and implement accessible recreational material for blind class
28 members—something that is particularly important to mitigate the impact of increased
isolation. Plaintiffs note that Defendants previously have stated that DPV class members
statewide have higher rates of serious mental health concerns, including depression and
anxiety.

1 obtain benefits and housing. Plaintiffs are concerned that DAPO's failure to provide this
 2 information and support can only be expected to be more problematic as the pandemic
 3 continues. Defendants disagree that issues regarding the effects of COVID-19 on parolees
 4 are specific to *Armstrong* class members, and have referred COVID-19 issues to be
 5 handled by DAPO's general operations legal team. Plaintiffs correctly note that parole
 6 issues specific to class members are discussed in greater detail later in this Statement.

7 **B. Allegations of Abuse and Violence by CDCR Staff Against Class Members**

8 *Plaintiffs' Statement*

9 Plaintiffs' counsel has presented evidence of a hostile environment at some
 10 institutions that discourages people from asking for disability accommodations and
 11 discriminates against people with disabilities. Plaintiffs' counsel has also documented
 12 allegations of widespread abuse and violations of the rights of people with disabilities.⁶
 13 On February 28, 2020, Plaintiffs' counsel filed a Motion to Stop Defendants from
 14 Assaulting, Abusing and Retaliating against People with Disabilities at R.J. Donovan
 15 Correctional Facility ("Motion"). See Doc. 2922. Although the Motion is focused on
 16 misconduct at RJD, the issues are not limited to that prison. Plaintiffs' counsel has sent
 17 Defendants in *Armstrong* and *Coleman* numerous allegations of excessive or improper use
 18 of force and other staff misconduct at multiple other prisons. See Doc. 2910 at 1-2.

19 Defendants' continued insistence that the issues raised in Plaintiffs' Motion and
 20 elsewhere do not "necessarily implicate the *Armstrong* class" are misplaced. As outlined
 21 in detail in the Motion, the failure of RJD to control or discipline officers' brutality
 22 towards people with disabilities has created an atmosphere of fear and retaliation.
 23 Defendants' own investigators recognized that incarcerated people at RJD are afraid to file
 24 grievances or otherwise engage in the interactive process. Unfortunately, these issues are
 25 not limited to RJD. Until CDCR improves its disciplinary process and culture statewide,
 26 people with disabilities, including *Armstrong* class members, will be discriminated against

27 _____
 28 ⁶ For a detailed recitation of Plaintiffs' allegations, see Doc. 2680 at 5-9.

1 in California prisons.

2 The parties continue to have a dispute about which allegations of misconduct should
3 be placed on *Armstrong* accountability logs. For example, the majority of the staff
4 misconduct issues raised by class members at RJD that affirmatively allege a close nexus
5 between the misconduct and the disability were not included in the *Armstrong*
6 accountability process. This includes an allegation that staff misconduct arose as a direct
7 result of the class member's participation in the Joint Audit process.

8 The parties also are in negotiations about changes to Defendants' practices for
9 investigating staff complaints. The Inspector General issued a number of recommenda-
10 tions based on his findings after a review of the staff complaint process at Salinas Valley
11 State Prison (SVSP). *See* Joint Case Status Statement, March 15, 2019, Doc. 2844, Ex. A.
12 Plaintiffs strongly support the OIG's recommendations. Although Defendants rely on their
13 new AIMS unit and regulations, to date no such regulations have been finalized. From
14 what Plaintiffs can tell, the changes proposed by Defendants thus far are insufficient to end
15 the widespread and pernicious abuse of *Armstrong* class members, which is creating an
16 atmosphere in which they are afraid to seek disability accommodations. In particular, the
17 decision about whether to refer a staff complaint for investigation by the Office of Internal
18 Affairs (OIA) Central Intake Panel should be made by the independent investigators who
19 conduct the initial inquiries, not by wardens. Further, allegations of excessive force must
20 be subject to the new independent inquiry process. Cameras should be deployed,
21 activated, and monitored on all yards at high security prisons. Significant improvements
22 are needed to CDCR's discipline system as currently operated. These and other remedial
23 actions are long overdue. *See* Doc. 2922.

24 *Defendants' Statement*

25 Defendants take all allegations of staff misconduct or abuse very seriously and are
26 committed to investigating and taking appropriate remedial action where warranted.
27 Defendants generally accept the Inspector General's findings regarding the staff complaint
28

1 process, and believe that they have addressed them by developing a new framework for
2 handling administrative grievances concerning staff misconduct. This includes
3 organizational changes and staff training to improve upon and address issues identified by
4 the Inspector General. Defendants have formed a new Appeal Inquiry Management
5 System (AIMS) unit, under the umbrella of the Office of Internal Affairs (OIA) and
6 developed regulations to change CDCR's appeals and grievance process. In particular,
7 grievances alleging staff misconduct will be referred to OIA for completion of an
8 allegation inquiry by AIMS, or a formal investigation by the OIA Central Intake Panel.
9 The new appeals regulations were finalized on February 28, 2020, and will be
10 implemented on an emergency basis on June 1, 2020.⁷ After emergency implementation
11 of the regulations, CDCR will promptly begin the process of taking steps to turn the
12 emergency regulations into permanent regulations. Training has also been provided to
13 necessary staff on implementation of the new regulations.

14 Although not part of the emergency regulations, the new framework for handling
15 grievances concerning staff misconduct also includes an auditing process that will
16 eventually be incorporated into the DOM and related policy memorandums. The Office of
17 Appeals will be conducting field reviews of Institutional Grievance Offices on a regular
18 basis. In addition, CDCR plans for the Office of Audits and Court Compliance to conduct
19 audits of both the Office of Appeals and the Institutional Grievance Offices. And, CDCR
20 will regularly review random cases from every institution. Those cases will involve cases
21 where the Hiring Authority chose and chose not to send the grievance to AIMS for a staff
22 inquiry, in order to ensure that the Hiring Authority is making proper screening decisions.
23 CDCR will also review actions taken by the Hiring Authority after the allegation inquiry
24 report is generated by AIMS, in order to ensure that the Hiring Authority is taking

25 _____
26 ⁷ The emergency regulations were originally scheduled to be implemented on April 1,
27 2020, however the date was extended to allow CDCR to address the urgent public health
28 crisis presented by the COVID-19 virus and its impact on institutions state-wide.
However, the process is already being used at in prisons in Northern Region of California
and at RJD.

1 appropriate disciplinary action when warranted. Notwithstanding these changes,
2 Defendants' position remains that the decision about whether to refer a staff complaint for
3 inquiry by AIMS or investigation by the OIA Central Intake Panel shall be made by the
4 Hiring Authority.

5 Defendants received Plaintiffs' November 13, 2019 letter about allegations of staff
6 misconduct at Richard J. Donovan and their November 21, 2020 Federal Rule of Civil
7 Procedure 30(B)(6) deposition notice and corresponding document requests and have
8 served their objections to the same. In late January and early February, Defendants
9 produced two persons most knowledgeable for deposition by Plaintiffs on a variety of
10 topics. Defendants have also served responses to Plaintiffs' special interrogatories.
11 Defendants are actively working to locate and review documents responsive to Plaintiffs'
12 expansive discovery requests, and are producing documents to Plaintiffs on a weekly basis.
13 On April 2, 2020, Plaintiffs served another request for product of documents related to
14 allegations of staff misconduct at RJD, but those requests are broadened to include
15 documents related to inmates who are not *Armstrong* class members, and allegations of
16 staff misconduct at California State Prison, Los Angeles County (LAC).

17 As previously mentioned, Defendants take all allegations of staff misconduct or
18 abuse against inmates very seriously. To that end, Defendants have engaged in ongoing
19 discussions with Plaintiffs' counsel in efforts to address their concerns regarding
20 allegations of staff misconduct, are working diligently with Plaintiffs to provide requested
21 information, and are continuing to discuss additional changes that Plaintiffs believe are
22 necessary to remedy confirmed incidents of staff misconduct. Defendants have engaged in
23 these discussions with Plaintiffs' counsel, but do not believe that all of Plaintiffs'
24 allegations of staff misconduct and the Inspector General's Report necessarily implicate
25 the *Armstrong* class or are appropriately before the *Armstrong* Court. The Inspector
26 General's report did not specifically look at staff misconduct in conjunction with the rights
27 of disabled inmates, nor did the report examine or make findings related to Defendants'
28

1 compliance with the ADA, the Rehabilitation Act, or this Court's orders. Allegations
 2 made by non-class members and allegations not related to violations of the ADA or the
 3 Remedial Plan are processed and addressed through CDCR's staff disciplinary process, as
 4 set forth in the Department Operations Manual. (*See* CDCR Department Operations
 5 Manual, Chapter 3, Art. 22.) This process was developed as a result of the *Madrid*
 6 litigation, and the Prison Law Office was significantly involved in its development. There
 7 simply is no nexus between some of the allegations of staff misconduct and an inmate's
 8 disability that would warrant inclusion of the alleged incidents in the *Armstrong*
 9 accountability logs. And some of the allegations presented by Plaintiffs' counsel attempt
 10 to draw a nexus between disability and staff misconduct based on pure speculation but
 11 without any supporting evidence.

12 Defendants will continue to work with Plaintiffs regarding their allegations of staff
 13 misconduct at Richard J. Donovan, and will work to provide them with non-objectionable
 14 documents related to their April 2, 2020 document request. While Defendants take all
 15 allegations of misconduct seriously, Defendants do not, however, concede the veracity of
 16 all of the allegations that have been raised by Plaintiffs.

17 **C. The Division of Rehabilitative Programs and Support for Students with**
 18 **Disabilities**

19 *Plaintiffs' Statement*

20 The Division of Rehabilitative Programs (DRP) must take immediate and
 21 comprehensive action to ensure that people with disabilities are no longer left out of its
 22 programs. This will require the allocation of sufficient resources and specialized staff to
 23 evaluate and provide long-needed accommodations to ensure equal access. Defendants'
 24 failure to provide such accommodations results in longer terms of incarceration for people
 25 with disabilities and impedes their successful reintegration into society. *See* Cal. Code
 26 Regs., tit. 15, § 3043(a) ("all inmates who participate in approved rehabilitative programs
 27 and activities ... shall be eligible to earn Milestone Completion Credit, Rehabilitative
 28

1 Achievement Credit, and Educational Merit Credit The award of these credits ... shall
 2 advance an inmate's release date if sentenced to a determinate term or advance an inmate's
 3 initial parole hearing date ... if sentenced to an indeterminate term with the possibility of
 4 parole”).

5 First, Defendants do not provide real-time captioning to deaf class members who
 6 cannot hear what is being said in a classroom or self-help group setting. “Real-time
 7 captioning (also known as computer-assisted real-time transcription, or CART) is a
 8 service ... in which a transcriber types what is being said at a meeting or event into a
 9 computer that projects the words onto a screen. This service, which can be provided on-
 10 site or remotely, is particularly useful for people who are deaf or have hearing loss but do
 11 not use sign language.” U.S. Dep’t of Justice, ADA Requirements: Effective
 12 Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>. Late-deafened
 13 people in California prisons who do not know sign language overwhelmingly report
 14 feelings of isolation in prison due to their disability, an inability to fully participate in
 15 programs, and an unawareness of accommodations that may be able to help them. *See*
 16 Doc. 2910 at 18-27. Plaintiffs repeatedly have raised the need for real-time captioning.⁸
 17 The parties were scheduled to discuss this issue in January 2020, but the meeting was
 18 postponed at Defendants’ request and has not been rescheduled. If Defendants do not
 19 develop a system to provide real-time captioning soon, Plaintiffs expect to bring the issue
 20 to the court for resolution.

21 Second, blind class members do not have equal access to education and
 22 rehabilitative programming. Defendants do not evaluate blind class members’ learning
 23 media needs based on functional vision assessments. There are no teachers for the visually

24 _____
 25 ⁸ *See* Doc. 2910 at 20-23; Letter from Caroline Jackson, Plaintiffs’ Counsel, to Russa
 26 Boyd, CDCR Office of Legal Affairs, Communication Needs of DPH, Non-SLI Class
 27 Members (Jan. 24, 2020), attached hereto as **Exhibit D**; Letter from Caroline Jackson,
 28 Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Advocacy Letter, RJD
 (Feb. 14, 2020), attached hereto as **Exhibit E**; Letter from Rita Lomio, Plaintiffs’ Counsel,
 to Russa Boyd, CDCR Office of Legal Affairs, Advocacy Letter, SATF (Feb. 25, 2020)
 (including Exhibits A and B), attached hereto as **Exhibit F**.

1 impaired, low vision therapists, or alternative media specialists, including braille
2 transcribers. Defendants do not regularly provide materials in large print, braille, or audio
3 formats. *See* Doc. 2910 at 36-37. And Defendants’ new prison literacy initiative leaves
4 blind students behind—Defendants do not provide braille instruction, even though studies
5 show that people who are braille literate have higher employment rates, are better
6 educated, and are more financially self-sufficient. *Id.* at 35.

7 Blind students also do not receive skills training in the assistive technology that
8 Defendants do provide. For example, Defendants recently installed JAWS for Windows
9 (“JAWS”) text-to-speech software on one computer in each law library. Defendants have
10 not provided instruction to blind class members on how to use that technology and
11 apparently have no plan to do so. Plaintiffs were particularly disappointed when a DRP
12 representative responded, when asked what training, if any, would be provided to blind
13 class members, that information about JAWS was on a poster in the library. Blind people
14 cannot read (because they cannot see) a poster on the wall. And hands-on instruction is
15 necessary to effectively learn JAWS. Similarly, accessibility features, including screen
16 reading and screen magnification features, were recently added to touchscreen tablets
17 available at certain institutions, but Defendants again appear to have no plan to educate
18 blind class members about these features, rendering them functionally inaccessible.

19 The parties met once about issues related to blind/low-vision class members in
20 January 2020 and did not reach any agreements. Plaintiffs remain willing to address these
21 issues collaboratively and are waiting on Defendants to continue discussion.

22 Third, Plaintiffs have concerns about the types of accommodations and supports
23 available to class members with learning disabilities. For example, in January 2020,
24 Defendants discontinued the Voluntary Education Program (VEP) statewide, which
25 severely limited (and in some cases eliminated) access to tutoring services for students
26 with learning disabilities. Plaintiffs also are concerned with the low number of people that
27 Defendants designate as having a learning disability—157 (verified) and 127 (unverified)
28

1 at last count. That is substantially lower than the approximately 4,300 one would expect in
2 a prison system of 123,010 people, based on U.S. Census data. *See* Danielle M. Taylor,
3 *Americans with Disabilities: 2014* at 8 (Nov. 2018),
4 <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p70-152.pdf>.
5 Plaintiffs look forward to working with Defendants to further investigate and address these
6 issues.

7 *Defendants' Statement*

8 Defendants are committed to allocating sufficient resources and staff to evaluate
9 and provide accommodations to ensure equal access to rehabilitative programming,
10 services, and activities to people with disabilities. The parties were scheduled to meet on
11 January 21, 2020, to discuss these various issues, but Defendants requested that the
12 meeting be postponed so that they could gather more information in order adequately
13 address these issues. Defendants continue to gather information and look forward to
14 rescheduling this meeting to discuss their progress. Defendants are also exploring
15 different ways to provide training to inmates with disabilities regarding the various
16 accommodation tools that are available for their use, including JAWS.

17 CDCR does not test for learning disabilities. However, if an inmate self-identifies
18 as having a learning disability, CDCR will make efforts to obtain documentation to verify
19 that disability. If the learning disability is unverified, CDCR nonetheless provides
20 assistance to those inmate-students with unverified disabilities.

21 CDCR is in the process of implementing their Peer Literacy Mentorship Program
22 (PLMP) to assist inmate-students with learning disabilities. One purpose of this program
23 is to provide more focused attention for students in educational programs. Per the
24 Governor's budget, all institutions will receive a PLMP teacher. This is part of a new
25 initiative to provide flexible mentoring for students who have barriers to attending
26 educational programs in a traditional classroom setting, and is available on nights,
27 weekend, in dayrooms, etc. Peer mentors work with up to twenty students, and receive
28

1 sentencing credits and pay. Mentees also earn credits. Hiring for PLMP teachers and
 2 mentors began last year. Tutoring is first provided to those students with verified learning
 3 disabilities, and then to students with unverified learning disabilities as space permits.

4 **D. Provision of Sign Language Interpretation**

5 *Plaintiffs' Statement*

6 As Plaintiffs have reported for over a decade, D/deaf people in California prisons
 7 have been denied access to many programs, services, and activities, including
 8 rehabilitative programming, because Defendants have failed to provide sign language
 9 interpretation (SLI).⁹ Plaintiffs are particularly concerned with Defendants' heavy reliance
 10 on video remote interpretation (VRI), which Plaintiffs' counsel have observed (and D/deaf
 11 class members have reported) to be faulty and inadequate in many group settings, in
 12 violation of the Americans with Disabilities Act and court orders.¹⁰ As has been
 13 documented in previous joint case status statements, Defendants, among other things, are
 14 in the process of hiring twelve additional staff sign language interpreters and have entered
 15 into a new VRI contract. In addition, eleven D/deaf class members were transferred to San
 16 Quentin State Prison in February 2020. Plaintiffs will continue to monitor provision of
 17 sign language interpretation and evaluate whether, and what, additional corrective actions
 18 are necessary.

19 In addition, Plaintiffs are deeply concerned by Defendants' failure to ensure that

20 _____
 21 ⁹ See Doc. 2874 Exhibit A (Letter from Caroline Jackson, Plaintiffs' Counsel, to Kelly
 22 Mitchell, Brantley Choate, and Russa Boyd (July 1, 2019) (describing concerns with deaf
 23 education at CDCR); Doc. 2680 at 3-4; Doc. 2671 at 14; Doc. 2749 at 25-31 (Letter from
 24 Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, Office of Legal Affairs (June 19, 2018)
 25 (documenting allegations regarding CDCR's failure to provide SLIs for AA and NA
 meetings, lifer groups, religious services, educational programming, and vocational
 programming at SATF)); Doc. 2728 (Letter from Rita Lomio, Plaintiffs' Counsel, to
 Russa Boyd, Office of Legal Affairs (Nov. 7, 2017)) (same)); Doc. 2863 at 6-8
 (summarizing concerns); Doc. 2863 at 24-33 (Letter from Don Specter, Plaintiffs'
 Counsel, to Ralph Diaz, CDCR Secretary (May 3, 2019)).

26 ¹⁰ See 28 C.F.R. § 35.160(d); Doc. 2345 at 24; Doc. 2844 at 177-79 (Email from Rita
 27 Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs (Feb. 2, 2019)
 28 (outlining problems observed during monitoring tour with VRI)); Doc. 2863 at 27-29
 (Letter from Don Specter, Plaintiffs' Counsel, to Ralph Diaz, CDCR Secretary (May 3,
 2019) (same)).

1 sign language interpretation is provided to D/deaf class members during off-site medical
2 appointments. D/deaf class members have been hospitalized, undergone surgery, and
3 received other medical treatment without interpretation services. Defendants currently do
4 not require that the off-site medical providers they contract with document whether and
5 how effective communication was achieved during the medical appointment (including
6 whether sign language interpretation was provided), and Defendants do not otherwise
7 review or track whether effective communication was in fact achieved during off-site
8 appointments. The parties met to discuss this issue in February 2020, and the Receiver
9 directed CCHCS to convene a workgroup and develop a complete solution. Plaintiffs look
10 forward to the recommendations of the workgroup and to continuing discussions with
11 Defendants on this issue.

12 Finally, D/deaf people in California prisons have reported that they have been
13 sexually abused, harassed, and bullied by other incarcerated people. They continue to
14 report that they do not know basic information about the Prison Rape Elimination Act
15 (PREA) or how to confidentially report abuse in American Sign Language (ASL). *See*
16 *Doc. 2862 at 32.* At a minimum, Defendants must provide open captions and sign
17 language interpretation for all critically mandated videos, including PREA information,
18 and must develop and implement a confidential way to report sexual abuse and harassment
19 in ASL.

20 *Defendants' Statement*

21 Defendants are committed to ensuring that Deaf and hard-of-hearing class members
22 who require sign language interpretation are provided equal access to programs, services,
23 activities, and assignments. Defendants are considering the information and requests
24 contained in Plaintiffs' November 27, 2019 letter and raised in the January meet and
25 confer, as well as possible solutions.

26 During the meet and confers on December 19, 2019 and February 26, 2020,
27 CCHCS reported that it has been developing potential alternatives to solely relying on
28

1 external providers to ensure interpreters are present for off-site encounters. Defendants
 2 have put together a working group to address contract language for off-site encounters,
 3 policies and regulations, and an escalation process for when an off-site provider fails to
 4 provide SLI. The working group held its first meeting on March 12, 2020.¹¹ CCHCS will
 5 keep Plaintiffs informed on progress through the meet-and-confer process.

6 As reported during the meet and confer on February 26, 2020, Defendants are in the
 7 process of finalizing ASL inserts on the state-run channels, including for programming
 8 addressing PREA information. Defendants have also completed an orientation video,
 9 which includes PREA information, for inmates who require ASL.

10 **E. Problems Regarding Access to Assignments for Class Members**

11 With regard to the broader problem of equal access to job and program assignments
 12 for people with disabilities, the parties convened a small work group to address Plaintiffs'
 13 concerns, as documented in multiple tour reports and letters. *See* Doc. 2680, at 13-14.
 14 The parties agreed to exchange data on a quarterly basis. The data continues to show
 15 significant disparities both statewide and at the institutional level—with class members
 16 receiving assignments at a lower rate than non-class members. Defendants assert that the
 17 data is misleading and that the disparities result from individual, custody-related case
 18 factors rather than from discrimination based on disability. Plaintiffs assert that, even if
 19 Defendants could demonstrate that facially non-discriminatory case factors, such as release
 20 date, account for the ongoing disparities, Defendants would still face liability due to the
 21 disparate impact of their program assignment practices. *See, e.g.*, 28 C.F.R.
 22 § 35.130(b)(3)(i), (ii); § 35.130(b)(8).

23 Ongoing disparities in assignments are a major problem for *Armstrong* class
 24 members. The fact that the parties still do not have agreement on the source of the

25 _____
 26 ¹¹ Unfortunately, the working group's ability to proceed with solutions for off-site
 27 encounters has been impeded as the movements of staff and inmates are being limited to
 28 reduce the likelihood of exposure to and the serious health and safety risks presented by
 COVID-19.

1 disparities is especially concerning given CDCR's roll out of the statewide integrated
 2 substance use disorder treatment ("ISUDT") program in January 2020, whereby a
 3 significant number of incarcerated people will participate in this part-time program.¹² The
 4 parties anticipate this new development will have a significant impact on their analysis of
 5 the program assignment data.

6 The parties continue to work cooperatively towards ensuring equal access in
 7 program assignments for people with disabilities.

8 **F. Effective Communication for Parolees Who Are Deaf**

9 *Plaintiffs' Statement*

10 Plaintiffs continue to identify problems with Defendants' provision of effective
 11 communication to parolees who are deaf. Plaintiffs also continue to identify issues
 12 regarding the provision of sign language interpreters. Plaintiffs' report dated February 11,
 13 2020, attached hereto as **Exhibit G**, revealed many issues found the in the record of
 14 supervision of DPH parolees including: failures to provide sign language interpretation
 15 during initial interviews and other due process encounters; inappropriate use of written
 16 notes to communicate with DPH parolees who cannot communicate effectively in writing;
 17 failures to use VRI properly, and technological issues with VRI; and confusion regarding
 18 the distinction between VRI and VRS, causing likely violations of federal law. Finally, the
 19 parties continue to have a disagreement regarding the provision of SLI during field
 20 encounters. Notwithstanding this disagreement, Defendants have agreed to provide SLI
 21 through VRI software on tablets during field encounters. Plaintiffs' counsel is continuing
 22 to monitor these issues, and most recently has proposed guidelines for the use of VRI.

23 *Defendants' Statement*

24 DAPO Headquarters staff works closely with staff supervising parolees whose
 25 primary method of communication is sign language. This allows DAPO's Parole

26 _____
 27 ¹² Although previous statements indicated that 80% of incarcerated people would be
 28 required to participate in ISUDT, the parties now understand that the exact percentage is
 not certain, but the number of participants will be significant.

1 Litigation Management Unit to resolve problems identified while utilizing the VRI system.
2 Although the current process has proven to be effective in resolving and troubleshooting
3 VRI technical-communication problems, DAPO has implemented a formal tracking
4 process that allows staff to report connectivity issues through the use of a Service Report.
5 Defendants agreed to produce these Service Reports to Plaintiffs on a quarterly basis.

6 Defendants are moving forward with a new on-demand VRI contract that includes
7 provisions for penalties associated with breach of contract and failure to timely notify
8 CDCR about the inability to provide requested interpretation services. DAPO also
9 implemented a new in-person sign-language-interpreter contract for DAPO Headquarters
10 and DAPO parole offices, which became effective July 1, 2019. The contract includes
11 provisions for penalties associated with breach of contract and failure to timely notify
12 CDCR about the inability to provide requested or scheduled interpretation services. The
13 contract also shortened the timeframe in which an interpreter can cancel.

14 DAPO remains concerned that using a civilian in-person sign-language interpreter
15 during parole field encounters presents safety and security issues. The U.S. Department of
16 Justice has recognized that agencies can use advanced technology, such as tablets, to
17 provide sign-language interpretation to individuals in areas where it is difficult or
18 impossible to provide an in-person interpreter.¹³ DAPO purchased and implemented the
19 use of VRI tablets, high-speed connectivity, and expanded SLI contract providers.

20 **G. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
21 **Disability Tracking Information**

22 Defendants completed a physical, statewide durable-medical-equipment (“DME”)
23 reconciliation encompassing all 35 institutions in early January 2019. The audit revealed:
24 (1) that 7,346 class members were missing one or more items of durable medical
25 equipment that their custody and medical records indicated they should have had in their
26 possession; and (2) that 2,349 class members’ durable-medical-equipment records had

27 _____
28 ¹³ For more information see, ECF No. 2874 Exhibit C.

1 errors. The audit results were distributed to the institutions, which have begun to resolve
2 individual patient discrepancies. Defendants are in the process of developing an
3 electronic, real-time system that will reconcile DME orders with DME receipts. The
4 system went live on January 21, 2020, and includes a webinar, conference call, policy
5 memo, and job aids. This is an important first step in the long-term resolution of identified
6 problems because it will enable Defendants to identify tracking discrepancies. CCHCS is
7 also reviewing the records at two institutions per month and sending reconciliation errors
8 to the Chief Executive Officer at each institution. Defendants are also evaluating how, as
9 part of this process, incarcerated people may be interviewed to determine whether the
10 documentation reflecting orders/receipt of DME is consistent with their possession of the
11 DME. CCHCS acknowledges Plaintiffs' concerns regarding patients who have prescribed
12 DME or restrictions that would typically comport to a specific DPP code. Defendants plan
13 to develop a Learning Management System (LMS) for providers, specifically targeted
14 towards assessing patients for potential inclusion in the Disability Placement Program.

15 Plaintiffs also remain concerned about the persistent presence of a significant
16 number of individuals who have vests, housing restrictions, or durable medical equipment
17 that would generally indicate permanent disabilities, but who do not have verified
18 permanent disability codes in the CDCR tracking system, or who have a code that does not
19 match their other factors. The parties are currently working collaboratively on this
20 problem. Defendants and CCHCS have agreed to produce data to allow the parties to
21 identify and evaluate potential systemic problems at specific institutions and by specific
22 health care providers, and Defendants have agreed to improve training of medical
23 providers in identifying and classifying disabilities properly, and assigning the appropriate
24 DPP codes.

25 **H. Parole Planning and Working with Class Members Preparing for Release**

26 *Plaintiffs' Statement*

27 Plaintiffs' counsel contends that CDCR and DAPO fail to ensure that parolees with
28

1 severe and impacting placement disabilities receive adequate planning for parole and
2 adequate transitional housing, transportation, and other transitional services. *See* Doc.
3 2680 at 11-12; Doc. 2655 at 11-13.

4 This issue is particularly important now that CDCR has agreed to release 3,500 or
5 more incarcerated people early to help address COVID-19.

6 Plaintiffs are still awaiting a response to all of the issues in their April 5, 2019, letter
7 to Defendants describing inadequate parole planning services and the need for better
8 linkage to transitional housing, transportation, and other supportive services for paroling
9 class members. Defendants have shared some data requested in that letter about rates of
10 parole for life prisoners with disabilities, and have developed and shared a plan for an
11 expanded role for CDCR counselors in helping life prisoners prepare for Board hearings.
12 Plaintiffs have asked Defendants to include assistance with parole planning for life
13 prisoners with certain disabilities as one of the expanded duties for Correctional
14 Counselors in helping individuals prepare for their hearings. Defendants are considering
15 this request.

16 While Plaintiffs' counsel appreciates the general plans announced in Defendants'
17 February 20, 2020 letter to augment the BPH hearing preparation and release planning
18 work performed by correctional counselors, many details of the plan are as yet unknown,
19 and Plaintiffs have some concerns about the details of the plan we do know about. First,
20 the letter says that CDCR "will issue a policy memo detailing correctional counselors'
21 obligations" with respect to BPH hearing preparations. However, Plaintiffs have still not
22 seen a draft the actual policy memo, nor have defendants provided a date when the policy
23 memo will be ready to share with plaintiffs or a timeline for implementing the new policy.
24 Second, the letter does not commit to having correctional counselors actually help
25 incarcerated individuals with disabilities do concrete parole planning tasks for class
26 members—it merely calls for counselors to have a discussion about these issues and to
27 provide a template for letters. It is not clear that the counselors will be given enough time
28

1 to provide adequate assistance with these critical tasks. Plaintiffs believe individuals with
2 cognitive disabilities, mental health disabilities, and other disabilities that affect
3 communication are greatly disadvantaged, particularly in the critical Comprehensive Risk
4 Assessment process done by BPH psychologists, because they cannot undertake the key
5 steps required for parole planning on their own—such as writing to programs that offer job
6 training and employment, and programs that provide housing and substance abuse
7 treatment. We also have numerous other concerns that we shared at the meeting between
8 the parties about this plan for a future memorandum.

9 As described in the prior statement, Plaintiffs’ counsel remains concerned that many
10 CDCR Division of Rehabilitative Programs (DRP) subcontractors do not accept or
11 appropriately accommodate paroling individuals (both life prisoners and non-lifer
12 prisoners) with certain disabilities. Plaintiffs and Defendants have cooperatively agreed to
13 make a number of changes in how these programs are surveyed for accessibility issues and
14 to collaborate on developing a training video and resource manual for subcontractors about
15 working with disabled individuals. Defendants have also developed a “bullpen” of DRP
16 and DAPO employees who help manage waiting lists for transitional housing programs
17 and prioritize high risk cases, such as EOP individuals or Armstrong class members with
18 disabilities impacting placement. Plaintiffs also have ongoing concerns about the benefit
19 application process for paroling class members. The parties have agreed to meet in the
20 near future with DRP and DAPO staff members regarding these initiatives to improve
21 parole planning services for individuals with disabilities, and to discuss the California
22 Identification program and efforts to expand its reach by installing DMV-compatible
23 cameras in prisons. This work has taken on even greater urgency in light of the need to
24 place incarcerated people who are being released early in light of the COVID-19
25 pandemic.

26 *Defendants’ Position*

27 Plaintiffs’ assertion that “CDCR and DAPO fail to ensure that parolees with severe
28

1 and placement-impacting disabilities receive adequate planning for parole and adequate
2 transitional housing, transportation, and other transitional services” is wrong. *See* ECF
3 No. 2786, at 19-21. In fact, on February 20, 2020, Defendants sent Plaintiffs a letter
4 detailing the additional assistance that correctional counselors will provide to prepare
5 inmates with disabilities for release on parole. Specifically, that letter informed Plaintiffs
6 that counselors will be directed to discuss different sources of support upon release,
7 including family, housing, employment, financial, or community based programs, and
8 counselors will then help the inmate fill out a template letter to send to potential sources of
9 support. And, Defendants’ responses to Plaintiffs’ transition-to-parole advocacy letters
10 consistently demonstrate that pre-parole services are regularly and adequately provided to
11 class members and that class members are not reporting information accurately to
12 Plaintiffs’ counsel. Defendants believe that the additional assistance that will be provided
13 by correctional counselors based on their February 20, 2020 letter to Plaintiffs will assist
14 class members with understanding what pre-parole services are available to them.
15 Counselors will be provided with a memo detailing their additional responsibilities with
16 respect to class members in the release planning process. Defendants have committed to
17 providing Plaintiffs with a draft of the memo by June 2, 2020. Nonetheless, Plaintiffs’
18 counsel continue to send advocacy letters that demonstrate no nexus between their
19 allegations and Defendants’ compliance with the ADA, Rehabilitation Act, the Remedial
20 Plan, or this Court’s orders. Rather, the letters imply that CDCR has an obligation to
21 provide housing for every inmate who is disabled and paroling.

22 The law requires that the programs and benefits Defendants offer, such as assistance
23 in direct placements for housing or community-based programs, be provided in a manner
24 that treats all parolees equally. However, the law does not require Defendants to fund and
25 secure housing for every disabled inmate who is paroling, nor does it require CDCR to
26 create and fund new programs. CDCR has programs in place to assist with transportation
27 and locating housing for release, but it does not guarantee or provide housing for everyone.

28

1 To create an obligation to secure housing for all class members would be discriminatory
2 towards non-class members and would create a new obligation for disabled persons that is
3 not already provided to all parolees. The ADA does not require the creation of new
4 programs solely for disabled persons.

5 As part of the pre-release process, CDCR staff complete an assessment for each
6 inmate who is paroling that identifies their individual needs. Once the needs are
7 determined, the staff and inmate/parolee work collaboratively to complete a case plan
8 identifying community-based programs that receive federal, state or other local funding to
9 provide housing and other services to disabled citizens. The CDCR-funded programs that
10 do provide housing are consistently full and have waiting lists.

11 CDCR and the Division of Rehabilitative Programs' processes are detailed in the
12 July 2019 joint case management conference statement.¹⁴ Defendants maintain that their
13 comprehensive system for providing services to paroling individuals is appropriate.
14 Notably, Defendants have expanded the role of correctional counselors in assisting with
15 preparation for parole suitability hearings. Defendants also provided data regarding the
16 number of individuals who have paroled as requested by Plaintiffs and continue to work
17 collaboratively with Plaintiffs in response to the matters raised in Plaintiffs' April 5, 2019
18 letter.

19 The parties developed disability definitions to educate providers and to help them
20 decide whether they can accept persons with certain disabilities. The parties are also
21 collaborating on the Division of Rehabilitative Programs' education video for providers.
22 The parties will continue to work together on the development of this initiative.

23 **I. Accommodations for Blind and Low Vision Class Members**

24 The parties convened a work group to address issues facing blind and low-vision
25 class members. *See* Doc. 2786 at 20; Doc. 2910 at 29-41. The work group has met once,
26 in January 2020. Issues for discussion include orientation and mobility training, audio

27 _____
28 ¹⁴ See ECF No. 2874 at 17-18.

1 descriptions, electronic submission of forms, text-to-speech software, accommodations
2 assessments and skills training, braille literacy, accessibility of mental health groups, and
3 access to magnifiers of different magnification levels. The parties will continue discussion
4 of these issues.

5 **J. Joint Monitoring Tool**

6 The parties continued to meet through February 2020 on drafting a joint monitoring
7 tool for measuring compliance in this case. Through this process, the parties have
8 identified a number of substantive areas that will require further negotiation and the
9 development of new policies. The parties are scheduled to have the first meeting on these
10 issues on May 20, 2020. The parties' commitment to developing a strong joint monitoring
11 tool will continue in 2020. The headquarters section has not yet been drafted, and some
12 individual tool questions, including how to monitor whether class members are receiving
13 equal access to program assignments, and questions regarding whether staff have received
14 required training, have not yet been fully drafted because the parties must first complete
15 larger policy discussions. The parties had planned to test the tool out at different types of
16 prisons beginning in April 2020, and to meet after each audit to discuss if and how the tool
17 should be updated or revised based on issues identified during each audit. Those plans,
18 unfortunately, have been delayed by the COVID-19 pandemic. The parties will work
19 together to begin on-site visits as soon as it is appropriate and safe to do so.

20 **K. ADA Structural Barriers and Master Planning Process**

21 Construction has continued at several of the designated institutions with former
22 Class Action Management Unit Manager Mike Knowles overseeing the process and
23 reporting on construction progress and anticipated timeframes in monthly reports produced
24 to Plaintiffs. However, construction is currently suspended due to COVID-19, with the
25 exception of two projects at California Institution for Women and California State Prison,
26 Sacramento. Defendants will keep Plaintiffs promptly informed of the status of
27 outstanding construction projects and when they may resume.

28

1 The parties met on December 9, 2019, and the parties agreed to a flexible,
2 collaborative approach in which the parties will meet quarterly to discuss different
3 institutions, joined by local ADA staff with close knowledge of the institutions. The
4 parties also may discuss issues about a particular institution informally before or after the
5 scheduled quarterly meeting. The parties met on January 22, 2020 to discuss the first two
6 institutions using this approach, LAC and CIM, and have agreed to jointly tour these first
7 two institutions in the next few months to inspect and analyze existing physical
8 accessibility issues and to ensure that any remaining problems are addressed in Phase 2 of
9 the Master Planning process at those prisons. The Court Expert Ed Swanson has agreed to
10 accompany the parties on these tours. In light of serious public health issues presented by
11 the global COVID-19 pandemic, the scheduling of these tours will be impacted, and the
12 parties will work together to schedule the tours as soon as it is appropriate and safe to do
13 so. In addition, Defendants are in the process of auditing whether program modifications
14 referenced in the Master Plans have been memorialized in local operating procedures at
15 each institution. The parties agreed that there will be an ongoing process to consider
16 whether there are opportunities for people with disabilities to work in jobs that the parties
17 originally thought they might not be able to do, and Defendants will make all appropriate
18 additions to the Master Plan in response to things like program, population, and mission
19 changes.

20 **L. Investigation of County Jails**

21 Plaintiffs continue to assert that a pattern and practice of denying disability
22 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680
23 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA
24 accommodations at Kern County, San Bernardino, Orange and Fresno County jails. *See*
25 Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions. Nevertheless,
26 Defendants have agreed to conduct periodic meetings with Sheriffs from multiple counties
27 in an effort to establish relationships and foster information sharing that Defendants
28

1 believe will lead to better compliance. Defendants conducted their first meeting with the
2 Sheriffs in January to discuss information sharing, and are hopeful that participating in
3 these ongoing meetings will lead to better communication between the counties and
4 Defendants.

5 Plaintiffs' counsel will continue to monitor compliance with the County Jail Plan
6 and orders. However, Plaintiffs believe that Defendants are unlikely to be able to meet
7 their obligations if county jails continue to lose staff to COVID-19 and if Defendants
8 continue to place parolees into jails. Defendants will continue to keep Plaintiffs informed
9 regarding any effects COVID-19 may have on the county jails and DAPO's response to
10 this unprecedented public health crisis.

11 DATED: April 15, 2020

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD

By: /s/ Penny Godbold
Penny Godbold

Attorneys for Plaintiffs

17 DATED: April 15, 2020

XAVIER BECERRA
Attorney General of the State of California

By: /s/ Joanna B. Hood
Joanna B. Hood
Acting Supervising Deputy Attorney General

Attorneys for Defendants

FILER'S ATTESTATION

23 As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence
24 in the filing of this document from Joanna B. Hood, and that I have maintained records to
25 support this concurrence.

26 DATED: April 15, 2020

/s/ Penny Godbold
Penny Godbold

EXHIBIT A

From: [Penny Godbold](#)
To: [Vincent Cullen](#); [Davis, Tamiya@CDCR](#); [Russa Boyd](#); [Beland, Bruce@CDCR](#); [Powell, Alexander@CDCR](#); [Meyer, Nicholas@CDCR](#)
Cc: [joanna.hood@doj.ca.gov](#); [Sean Lodholz](#); [Armstrong Team - RBG only](#); [Armstrong Team](#); [ed@smlp.law](#); [Miranda, Teauna@CDCR](#); [Fouch, Adam@CDCR](#); [Bravo, Landon@CDCR](#); [Annakarina De La Torre-Fennell](#); [Michael Nunez](#)
Subject: Plaintiffs' Questions re: COVID-19 and Armstrong Impacts [IWOV-DMS.FID3579]
Date: Tuesday, March 31, 2020 7:23:44 AM

Vince,

Thank you for the phone call updates regarding the developing situation with COVID-19 and the impact on *Armstrong* class members in CDCR. As of our call on Friday afternoon, our understanding is:

All Non-Essential Transfers of incarcerated people have been limited. This includes transfers of *Armstrong* class member with codes impacting placements.

Non-Essential Transfers at this time include transfers out of the RC and transfers due to 1845 code changes

-
Essential Transfers include, among other emergent concerns, those who are kicked out of Ad Seg as well as LOC changes. To the extent possible those class members will be housed at the prison where released from Ad Seg or the LOC. However, if they need to be transferred to a different prison, they will be.

Defendants have stated that for class members with a new or changed 1845 showing a DPP code that impacts placement, ADA Coordinators have been directed to interview those class members to determine what accommodations are needed and to document that interview and needed accommodations on a 128. You confirmed that you will notify us of who these class members are.

Thank you for providing this information. **For any class member who is housed inconsistent with their DPP code, we request that you please identify those class members and provide the 128 forms confirming that they were interviewed and what accommodations they will be provided, weekly. Please also identify any class members who are being held in more restrictive placements – RC, Ad Seg, etc. – due to a lack of available bed space and inability to transfer.**

In addition to the information about transfers, and the plan for provision of basic accommodations, we have many additional questions regarding the provision of accommodations during this time. I am also including CDCR, as many of the questions we have relate to custody functions. We would like to have a call this week to discuss these issues. I propose keeping the **Friday at 2 pm call**, but scheduling it for two-hours. Also, to the extent that some of these issues may be handled differently at different prisons, we may need to have additional calls with ADA staff from the institutions to determine what is happening on the ground:

General

- **General Movement:** Has the movement of incarcerated people within the prison been limited statewide? What about at individual prisons? For example, are people still attending chow, yard, etc.?
- **Bed distance:** What efforts have been made to allow social distancing for people in dormitories? We are especially concerned, given the high number of people with lower-lower restrictions, that it will be difficult to sufficiently spread out. (CDCR website says: "The incarcerated population has received information about social distancing, and staff and inmates are practicing social distancing strategies where possible, including . . . assigning bunks to provide more space between individuals.")
- **Dining procedures:** Are people still eating in the chow hall? If so, are ADA workers carrying trays for certain class members? If so, what safety precautions (e.g., PPE, increased sanitization) have been adopted to prevent the spread of the virus?
- **Shower program:** Has access to showers been limited for incarcerated people, including after toileting accidents?
- **Isolation beds:** Which beds in which prisons have been identified for use for isolation purposes? Which of those are able to house DPW class members? Which have accessible features, including grab bars? Are there accessible showers and toilets?
- **1824 process:** Is the 1824 process running as normal? Is the RAP meeting weekly? Where appropriate, are people being interviewed to gather more information regarding their 1824? How are those interviews being conducted?
- **ADA workers:** Have there been any changes to the ADA worker program? What steps are taken to ensure social distancing during the provision of accommodations, including scribing assistance, wheelchair pushing, cleaning bed areas, and sighted guide work? Have the workers received any PPE or extra soap or sanitizer? If ADA workers are not providing services, how are the accommodations being provided to class members now?
- **Housing officers:** Has custody staffing been reduced? If so, has that affected officers' ability to provide accommodations, including assistance with reading and writing?
- **ADA staff:** Are ADA Coordinators onsite? Are staff still performing all usual functions?
- **DME:** Any changes to the issuance, repair, and replacement of DME?
- **Fitness:** Have people with disabilities been instructed on safe exercise activities they can complete in their bed areas?

Blind and Low Vision Class Members

- **Written COVID-19 information:** What effective communication of COVID-19 information, including written information, posters, and information about free GTL and J-Pay services, was provided? (See March 23, 2020 letter from Plaintiffs regarding CMF) Was any material provided in braille, audio, or large print? (From CDCR website: "To keep members of our population informed, we have created and distributed fact sheets and posters in both English and Spanish that provide education on COVID-19 and precautions recommended by CDC, which expand upon those advised during cold and flu season.")
- **Audio description:** Is audio description being provided for any videos updating incarcerated people about the situation?
- **Sighted guide:** Have sighted guide procedures changed in light of COVID-19? If so, how?
- **COMS training:** Is COMS training being provided? If not, will existing contracts be

extended? (We understand SATF's contract is through June 2020.)

- **Talking books:** Are talking books still being mailed into the institution? It appears they might not be, at least for SATF (<http://www.fresnolibrary.org/tblb/> ("All Branches Closed. Thank you for your understanding.")). If that is the case, what are Defendants doing to ensure that blind people have access to audio materials?
- **Law library and auxiliary aids:** Do class members still have regular access to the law library, where auxiliary aids, including the Merlin, DaVinci, JAWS, and Braille typewriter, as well as the MaxiAids catalog, are located? If not, how are they able to access those devices? How are those devices being cleaned and sanitized? (From CDCR website: "Recreation and Law Library Services will continue to be available to the incarcerated population even if physical access is restricted due to safety and security measures.")
- **J-Pay accessibility features:** Has any training on the new text-to-speech or magnification features on the J-Pay tablets been provided to blind or low vision class members? (From CDCR website: "CDCR's electronic messaging provider for the incarcerated population, JPay, is providing reduced-priced emails to those incarcerated at the pilot institutions and free emails for those inmates who cannot afford it.")
- **In-cell OCE assignments:** What in-cell assignments are provided by OCE, and are they accessible to blind and low vision class members? (From CDCR website: "The Office of Correctional Education is working with institution principals, library staff, and teachers to provide in-cell assignments where possible in order for students to continue their studies, legal library access and educational credit-earning opportunities. For those in our incarcerated population who need supplementary academic support, CDCR has encouraged Disability Placement Program, Developmental Disability Program, and Every Student Succeeds Act staff to coordinate with the institution instructor to provide additional assistance to enrolled students where possible.")

Deaf, Hard of Hearing, and Low TABE Class Members

- **Sign language interpretation:** Have there been any changes to staff or contract interpreter availability? Are they on the same schedules? Are they still providing in-person services? What about the use of contractor interpreters?
- **Videophones and TDD:** How are these high-touch items being cleaned and sanitized? Have TDDs been tested to ensure they are functioning properly?
- **Captioned phones:** Have Defendants installed captioned telephones? (See November 27, 2019 and March 27, 2020 letters from Plaintiffs) (From CDCR website: "Institutions have been instructed to find opportunities to allow increased phone access for the incarcerated population so they may keep in touch with their support system")
- **Staff communication:** How is verbal information from wardens, associate wardens, captains, supervisors, and counselors being communicated to deaf people (whose primary form of communication is sign language or written notes)? Do Defendants now provide real-time captioning? (Secretary Diaz said in an address to the incarcerated population on March 25, 2020: "I've given direction to the wardens of your particular institution to be over communicating with you either from the warden themselves associate wardens captains, supervisors, counselors to be communicating with you.")
- **Biweekly captain/ADA meetings:** Have these meetings continued for D/deaf class members whose primary form of communication is sign language? At which institutions? Is

social distancing being maintained?

- **Written materials:** What efforts are being made to effectively communicate written information to D/deaf people who use sign language or people with low TABEs? A Deaf person at San Quentin told us that he could not fully understand a written handout he had been given regarding COVID-19: “Some words I’ve never heard of or seen before.”
- **J-Pay tablets:** Do educational videos, including Khan Academy distance learning videos, have captions? (We did not see captions during our February 2020 visit at SATF.)
- **Religious services:** How will chaplains be able to conduct individual religious counseling with D/deaf class members (both who rely on written notes and sign language)? Will televised religious services be provided in ASL and captions? (From CDCR website: “Chaplains will conduct individual religious counseling as appropriate while maintaining social distancing, and CDCR is working to provide televised religious services to the population.”)
- **In-cell OCE assignments:** What in-cell assignments are provided by OCE, and are they accessible to D/deaf and low-TABE class members? (From CDCR website: “The Office of Correctional Education is working with institution principals, library staff, and teachers to provide in-cell assignments where possible in order for students to continue their studies, legal library access and educational credit-earning opportunities. For those in our incarcerated population who need supplementary academic support, CDCR has encouraged Disability Placement Program, Developmental Disability Program, and Every Student Succeeds Act staff to coordinate with the institution instructor to provide additional assistance to enrolled students where possible.”)
- **Secretary video messages:** Will Secretary Diaz’s video messages to the incarcerated population be provided in ASL? In simpler language? (From CDCR website: “CDCR Secretary Ralph Diaz will be releasing regular video message updates directly to the incarcerated population.”)
- **Educational videos:** Will educational videos be provided in ASL? In simpler language? (From CDCR website: “We have also begun streaming CDC educational videos on the CDCR Division of Rehabilitative Programs inmate television network and the CCHCS inmate health care television network.”)
- **Televisions in common areas:** Have Defendants installed larger televisions in common areas, so captions are clearly visible? (In SATF’s dorms, for example, individual televisions do not receive the state-run television channels with important educational information.)
- **Daily Moth news:** Have Defendants considered making Daily Moth news clips available to D/deaf people in prison? (<https://www.dailymoth.com/>)
- **Headphones:** We understand that the Allowable Personal Property Schedule does not yet allow for headphones in some places, including the PSU. Have hard of hearing class members been informed that they can request headphones on an individual basis?

We look forward to speaking with you this week.

(Please forward to anyone I may have missed.)

Thanks,
-Penny

Penny Godbold



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EXHIBIT B



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VIA EMAIL ONLY

March 27, 2020

Mr. Alexander Powell
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
Accessible Phones for Deaf and Hard of Hearing Class Members

Dear Mr. Powell:

Thank you for your letter dated March 18, 2020, responding to my letter dated December 30, 2019, regarding the Telecommunications Device for the Deaf (TDD) at California State Prison, Sacramento (CSP-SAC). As you know, people with disabilities must have equal access to telephones. This is of particular importance during the COVID-19 pandemic. In fact, Secretary Diaz told the incarcerated population in a video address earlier this week that CDCR is “doing everything we can to increase the communication opportunities and availability for you. . . . I need you in contact with your family because your family needs to be aware how you’re doing.”¹ *See Philip M. Genty, Damage to Family Relationships as a Collateral Consequence of Parental Incarceration, Fordham Urban L.J.* 1671-84, 1673-74 (2003) (“The adverse effects of parental incarceration upon families are only exacerbated when incarcerated parents and their children lack regular contact with each other.”). Unfortunately, we continue to have concerns regarding accessible phones in the California prison system.

First, you confirmed that a TDD was inoperable at CSP-SAC for an undefined period of time:

[T]he dedicated phone line used for the TDD Phone was inadvertently turned off during a software upgrade of the phone system in the PBX maintenance room. The exact date as to when the phone line became inoperable cannot be determined. The software to the phone system was upgraded sometime during the summer of 2019. The phone line was reactivated and is now working.

Exhibit B at 2. We are deeply concerned that a hard of hearing class member reported his inability to use the TDD repeatedly during this time, including at least in September 2019, November 2019, and December 2019, verbally and through the 1824 and 602 processes, and the problem was not resolved. In fact, it appears that the problem was resolved only in response to an advocacy letter from Plaintiffs’ counsel, and only after the class member had transferred to another institution. *See* 28 C.F.R. §35.107(b) (requiring “prompt and equitable resolution of” disability-related complaints).

¹ CCHCS, Population Message – Secretary Diaz, <https://vimeo.com/400758862/824c4cf567> (Mar. 25, 2020).

Mr. Alexander Powell
Accessible Phones for Deaf and Hard of Hearing Class Members
March 27, 2020
Page 2

The Addendum to CSP-SAC Operational Procedure 105, Disability Placement Program, states: “TDD Telephones are required to be tested at least quarterly.”² We request the following information:

- (1) when the phone line was reactivated;
- (2) the title(s) of the person(s) responsible for testing the TDD phones at CSP-SAC pursuant to OP 105;
- (3) whether and when the TDDs were checked between January 2019 and March 2020;
- (4) what the outcome of the tests were and what corrective action, if any, was taken, including whether class members were informed that the TDD was or was not operational; and
- (5) if the TDDs were not tested at least quarterly, why not and what corrective action, if any, was or will be taken.

Second, you state that “[n]o other hearing impaired inmates have requested use of the TDD phone since December.” Exhibit B at 3. That is not surprising. People who lose their hearing later in life may not know what accommodations are available to them; “it often takes late-deafened adults years to learn about coping strategies, assistive technology, and their basic rights to communication access.” Marylyn Howe, *Meeting the Needs of Late-Deafened Adults*, 19 *Am. Rehabilitation* 25, *3 (Winter 1993). [REDACTED] DNH, formerly housed at CSP-SAC (now at Kern Valley State Prison), for example, said of TDD: “I don’t know what these are.” [REDACTED], DNH, formerly housed at CSP-SAC (now at California State Prison, Solano), reported: “never heard of anything like TDD-TTY phones as fare [sic] as I know.” The CSP-SAC Orientation Handbook (rev. March 2019) has very little information about the TDD, and does not explain what it is.

Availability of Telecommunication Device for the Hearing Impaired and Volume Control Telephones (TDD) – Inmates having a verified hearing disability or desires to call an outside party who requires the use of a TDD, may sign up for a 40 minute phone call through the inmate phone sign up procedure consistent with the inmate’s privilege group. Each facility is equipped with a TDD as well as staff trained in its use. Inmates requiring the use of a TDD may contact housing unit staff or their counselor.

The information also appears at the end of the handbook and is not included with information about telephone calls generally. *See* August 2019 CSP-SAC Tour Report at 16 (“We recommend that the Handbook include the information about TTY/TDD in the ‘TELEPHONE CALLS’ section.”).

In any event, [REDACTED], DNH, B6, informed us that he has, in fact, tried to use the TDD at CSP-SAC **“but it did not work—its broken—I have written (2) two 1824 form with no one talking or writing back to me—I found out my mother passed away through a letter—Still, the phone is still broken.”** He wrote that he tried to use the regular phones but was not able to hear well enough: **“I stop trying to call anyone.”** That is unacceptable.

² The Addendum is dated January 2019, and was produced to Plaintiffs’ counsel in advance of the February 2019 monitoring tour.

Mr. Alexander Powell
Accessible Phones for Deaf and Hard of Hearing Class Members
March 27, 2020
Page 3

Third, you state that CSP-SAC has five TDDs, located on Facility A, Facility B, Facility C, STRH, and the Minimum Support Facility. You state that a TDD may be used only in the Program Office. We request the following information:

- (1) when the TDD is available for use by class members, and whether those times have been or will be limited due to COVID-19, including if there are fewer available security escorts;
- (2) when the regular phones are available for use by hearing individuals, and whether those times have been or will be limited due to COVID-19; and
- (3) whether free GTL phone calls available through the regular phones were and will be available through the TDD.³

Fourth, we note that “TDD devices are antiquated, outmoded, and becoming obsolete,” and TDD relay services are “time-consuming due to the need to type back and forth between the relay operator and the [caller].” Irene W. Leigh & Jean F. Andrews, *Deaf People and Society* 210 (2016). We frequently have reported problems with TDD access at a number of prisons. Our request for a phone call with Defendants to discuss TDD issues, sent on November 6, 2019, so far has gone unanswered.

Defendants should make captioned telephones available in all prisons. “For deaf and hard of hearing people with intelligible speech, captioned telephones provide far superior telephone access than a TDD. Captioned telephones such as CapTel are a more modern technology, are easier to use, have a faster connection, have a larger font size, and allow multiple lines of text to be viewed at one time.” Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Accommodations for Deaf and Hard of Hearing Class Members Who Do Not Know Sign Language at 8 (Nov. 27, 2019); *see also Cal. Council of the Blind v. County of Alameda*, 985 F. Supp. 2d 1229, 1240 (N.D. Cal. 2013) (“The legislative history of the ADA reveals that Congress intended for accommodations provided to individuals with disabilities to ‘keep pace with the rapidly changing technology of the times.’” (quoting H.R. Rep. 101-485(II), at 108 (1990), reprinted in 1990 U.S.C.C.A.N.303, 391)).

We appreciate Secretary Diaz’s statement that “[w]e’re doing everything we can to increase the communication opportunities” for people in prison in light of the COVID-19 pandemic. We request:

- (1) ADA staff at CSP-SAC inform all hard of hearing class members about what a TDD is and how to access it; and
- (2) Defendants immediately make captioned telephones available in all prisons and educate all deaf and hard of hearing class members about them.

³ CDCR, COVID-19 Preparedness, <https://www.cdcr.ca.gov/covid19/> (last visited Mar. 27, 2020) (“CDCR’s inmate telephone network provider Global Tel Link (GTL) has offered the adult incarcerated population two days of free phone calls.”).

Mr. Alexander Powell
Accessible Phones for Deaf and Hard of Hearing Class Members
March 27, 2020
Page 4

Thank you for your prompt attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney

cc: Co-Counsel
Ed Swanson, Court Expert
Nicholas Meyer, Erin Anderson, Alexander Powell, Amber Lopez,
OLAArmstrongCAT@cdcr.ca.gov, Tamiya Davis, Patricia Ferguson (OLA)
Lois Welch, Steven Faris (OACC)
Kelly Mitchell, Teauna Miranda, Laurie Hoogland, Landon Bravo (DAI)
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April 6, 2020

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**SUBJECT TO
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Re: *Armstrong v Newsom*: DAPO's COVID-19 Policies and Procedures
Our File No. 0581-09

Dear Russa, Tamiya, and Nick:

Thank you for an informative call with DAPO and Ed Swanson on April 3, 2020. To ensure that we are all communicating regularly, we request that you schedule another call with Mr. Speed, Ms. Underwood, and a DRP representative for Friday, April 10.

Based on the representations made on April 3, it is our understanding that in response to the COVID-19 pandemic, DAPO has temporarily stopped arresting parolees and imposing parole holds for technical violations of parole. DAPO has also stopped filing revocation petitions regarding technical violations of parole. Instead, DAPO has agreed to file such petitions **only** when required to do so by Penal Code § 3010.10 or in cases in which DAPO determines there is a serious threat to public safety. We and our clients appreciate these important changes, which will help save lives by keeping many parolees out of county jails, where they would have faced dangerous public health conditions due to the spread of Covid-19.

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Russa Boyd
Tamiya Davis
Nicholas Meyer
April 6, 2020
Page 2

DAPO initiated holds, however, account for only a tenth of the holds ordinarily placed. The remaining nine tenths of all holds are placed at the request of local law enforcement agencies. From the way the current operations were described, it appears that parolees arrested by local authorities may be kept in county jails subject to your no-bail hold for up to 10 days, while DAPO considers whether to pursue parole revocation charges or drop the hold. This amounts to an *ultra vires* flash incarceration, and needlessly cycles people through the 110 county jails DAPO uses across the State of California. For example, on April 4, 2020, we received notice via CDCR emails that four *Armstrong* class members had been placed in county jails; another was placed on April 5.

Jails, even more so than cruise ships or prisons, are particularly susceptible to the spread of disease, because of high population turnover and close quarters. In jails, incarcerated people are put into crowded intake pens, where they have no choice but to interact closely with other people. They are then moved to cells or dormitories. When they are released, they will have unnecessarily interacted with dozens of other incarcerated people and staff, when common sense and government directives command us to limit interaction to fight this deadly pandemic.

The dangerousness of correctional facilities is evidenced by a chart the New York Times is keeping of the largest clusters of Coronavirus cases in the United states, which can be viewed by scrolling down the page at the following web address: <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>. The chart shows that the largest cluster of cases in the United States is at the Cook County Jail in Chicago, which on Sunday April 5, 2020 had 295 cases. The tenth largest cluster of cases is at the Parnall Correctional Facility in Jackson, Michigan, which had 90 cases. The New York Times list includes 12 Correctional Facilities with clusters of more than 12 cases, including CDCR's California Institution for Men.

DAPO has not done enough to protect public health at this critical time. In ordinary times, local law enforcement has the luxury of using parole holds to make arrests in situations where they do not have evidence to initiate local charges, or otherwise seek to avoid the workload of local charges. We are not in ordinary times. We are in a public health emergency. If local law enforcement believes a crime has been committed, they must weigh the need for an arrest against their own pandemic emergency policies. Parole holds must not serve as a freely available shortcut to undermine the pandemic safety measures necessary in jails. **Please instruct the DAPO Warrants Office to cease imposing parole holds at the request of local law enforcement agencies.**

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Russa Boyd
Tamiya Davis
Nicholas Meyer
April 6, 2020
Page 3

Even where the local authorities initiate charges, the parole hold is used to prolong custody by bypassing the 48-hour first appearance, and by blocking any possibility of Own Recognizance release or bail. While this may be acceptable in ordinary times, it is not consistent with the public health emergency, and must cease immediately.

We have reviewed the chart you sent regarding local courts and jails. The chart shows that parolees are still languishing in county jails without the opportunity for any due process or hearings, particularly given that notice agents are not even allowed into some jails, as you acknowledged. **Please send us the number of people who are currently in county jails subject to a parole hold and who are awaiting the filing of a revocation petition.** Please also let us know how you intend to provide a notice of rights and charges at jails that will not allow notice agents to enter.

We also request that you issue a memorandum to all agents of record, unit supervisors, and other parole unit staff explaining the COVID-19 policy with regard to technical violations and parole holds. This will ensure uniformity and help reduce the jail population, a critical goal at this challenging time.

We further request that you update the DAPO website homepage to include a link taking people directly to the page describing the steps you are already taking in response to COVID-19, including the cancellation of initial interviews and on site supervision. Your COVID-19 site should also make explicit that during the Governor's Shelter in Place Order, people newly paroling are **not** required to report to their parole office on the first business day after release, and you should attempt to communicate this information to all newly-released parolees before they appear in person. This is especially true since one portion of your website erroneously states that you are still requiring initial interviews. See <https://www.cdcr.ca.gov/covid19/>. It is important that parolees not make any unnecessary trips on public transit, only to be told that their scheduled initial interview will be postponed. Information about groups, PACT meetings, BHR, and effective communication, including through video remote VRI, should also be added to your website.

We look forward to receiving further information, especially about ways in which incarcerated people will receive benefits and otherwise be prepared to transition to parole. Please forward this letter to Patrick Jones and Marvin Speed as we do not have their email addresses.

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Russa Boyd
Tamiya Davis
Nicholas Meyer
April 6, 2020
Page 4

Please let me know as soon as possible if I misunderstood any aspect of Friday's call and when we can schedule our next call.

Thank you as always for your courtesy and cooperation, especially at this very challenging time.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:aa

cc: Ed Swanson
Alexander Powell
Patricia Ferguson
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January 24, 2020

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Russa Boyd
CDCR Office of Legal Affairs
Russa.Boyd@cdcr.ca.gov

Re: *Armstrong v. Newsom*:
Communication Needs of DPH, non-SLI Class Members
Our File No. 0581-03

Dear Russa:

I write in advance of our meeting, previously scheduled for January 21, 2020, to share new information gathered during our December 9-11, 2019, tour of Richard J. Donovan Correctional Facility (“RJD”). This new information highlights the need for more effective accommodations for DPH class members who do not use sign language for communication. In particular, to participate in programs and services in prison, many of these class members require real-time captioning, also known as “CART.” Rita Lomio explained CART in recent correspondence with CDCR. *See* Ltr from R. Lomio to T. Davis, Accommodations for Deaf and Hard of Hearing Class Members Who Do Not Know Sign Language, Nov. 27, 2019.¹ This letter addresses solely our class members’ need for this accommodation.

I. Written Notes Often Are Not An Effective Accommodation

The ADA requires that public entities, such as CDCR, “take appropriate steps to ensure that communications with [people] with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a)(1). Further, “[i]n order to be

¹ Some DPH class members do not read well enough to understand written notes. To avoid confusion, this letter focuses solely on those DPH class members who do not use sign language and who read well enough to understand written communication.

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Russa Boyd
January 24, 2020
Page 2

effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” *Id.* § 35.160(b)(2).

The observations underlying this letter took place during seven of the Deaf Culture Town Hall events at RJD on December 9 and 10, 2019. Of the events observed, four were directed toward an audience of incarcerated individuals, with thirty or more in attendance at each presentation. The remaining three were directed toward an audience of employees. Each event included prepared speeches by headquarters staff, captioned video clips, an interactive “myth or fact” section, a role-play of certain prison scenarios, and a question-and-answer period. Although each event followed the same basic structure, the content varied across events in response to audience input, the changing number of presenters, and the presenters’ growing comfort with the presentation itself. During each event, DPH and DNH class members offered commentary, often at the request of the presenters, which provided important additional information. Interviews with DPH class members supplemented these observations.

These observations and interviews made clear that the auxiliary aids and services that CDCR currently provides for deaf and hard of hearing class members who do not use sign language are insufficient to provide effective communication as required by the ADA and the *Armstrong* Remedial Plan (“ARP”). CDCR appears to rely heavily on written notes to accommodate this population. Written notes do not ensure effective communication during anything other than a brief, one-on-one interaction, however, because they often omit significant portions of planned remarks, they omit entirely all unplanned remarks, the deaf participant cannot use written notes to follow along in real time, and written notes do not allow a deaf person to participate in a group interaction. Rather, most deaf individuals who do not use sign language require real-time captioning to fully participate in group interactions and long or complex one-on-one interactions.

A. Written Notes Typically Omit Significant Portions of Planned Remarks

Any time that written notes are prepared in advance, they are unlikely to be sufficiently comprehensive to ensure effective communication, especially in group settings. Indeed, unless the speaker writes out their remarks verbatim and simply reads to the audience, written notes likely omit material information and do not achieve equal access. My observation of the Deaf Culture Town Hall held for the benefit of the residents of B-Yard illustrated this reality.

██████████, DPH, DPS, ██████████, attended the Deaf Culture Town Hall on B-Yard. He reported that he identified himself in advance and requested real-time

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Russa Boyd
January 24, 2020
Page 3

captioning. CDCR provided written notes, in the form of an outline, and an ADA Worker tasked with sitting next to him and supplementing these notes. These accommodations were not effective, in part because the notes provided omitted a significant portion of the planned remarks. For example:

- The written notes omitted the names and/or ranks and roles of several presenters (e.g., Captain Teauna Miranda from the Division of Adult Institutions, Class Action Management Unit, was listed as “Miranda”), and gave no indication of which name corresponded with which presenter. The presenters introduced themselves to the audience at the outset, meaning that Mr. [REDACTED] alone was excluded from this information.
- The written notes omitted the introduction given. CC II Christy Levan told a story about her deaf great-grandmother, to show a personal connection with a deaf person. The written notes omitted not only the story, but any indication that such a story would be told. The ADA Worker wrote to Mr. [REDACTED] only that a story was being told about a deaf grandmother and nothing else.
- The presentation included a discussion of body language and deaf individuals’ heightened attention to this information. The written notes omitted this information completely.
- The presentation had a role-play demonstration instructing the audience to get a deaf person’s attention by waving and not by tapping them. The written notes omitted this information completely, but included information about other attention-getting methods not covered in the presentation.
- The presentation included a discussion of how it is inappropriate to shine a flashlight directly in a deaf person’s face. The written notes omitted this information entirely.

Significantly, these omissions were planned remarks—portions of the presentation that occurred during each of the seven events that I observed. The incompleteness of the written notes shows that a presenter giving their own outline to a DPH class member does not necessarily provide that class member with full, meaningful access to the planned portion of the presentation.

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Russa Boyd
January 24, 2020
Page 4

B. Written Notes Omit Entirely All Unplanned Remarks And Audience Participation

Beyond omitting significant portions of the planned remarks, the written notes omitted entirely all unplanned remarks, including remarks both from the presenters and the audience. The presentation that Mr. ██████ attended had a significant number of interjections from presenters and audience members, none of which were conveyed to Mr. ██████. For example:

- At the beginning of the presentation, a DNH class member attempted to advocate for Mr. ██████'s communication needs as well as his own. He made several strong points, ultimately resulting in the sign language interpreter interpreting the presentation for this class member. Mr. ██████ knew nothing of this exchange. When interviewed, he stated he thought the interpreter was being provided for his benefit, but that he could not understand her because he does not know sign language.
- Later, other audience members commented specifically about Mr. ██████ and his communication needs. When interviewed, Mr. ██████ said he had no idea these remarks had been made, and lamented that he had had no opportunity to contribute himself.
- During the presentation, CC II Levan provided supplemental remarks, such as adding information to the "Myth or Fact" portion. Mr. ██████ reported that he received none of this information.
- During the presentation, the audience members had questions about different types of sign language, which the sign language interpreter answered. Mr. ██████ reported that he received none of this information.
- During the presentation, the audience members discussed at length the need for some kind of voice to text device that would enable Mr. ██████ to participate in informal discussions. An ADA Worker sitting next to Mr. ██████ signed to him something akin to "talking text typing," but nothing else. Mr. ██████ reported that he gleaned nothing from this discussion.

These questions and comments were extensive and occurred throughout the presentation. The untrained ADA Worker (colloquially known as a "wheelchair pusher"), equipped with nothing but a pencil and paper, could not begin to convey enough of this information in a timely fashion to give Mr. ██████ the equal access he is

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Russa Boyd
January 24, 2020
Page 5

entitled to by law. Indeed, according to Mr. [REDACTED]'s statements and my own observation of the ADA Worker during the Town Hall, the ADA Worker provided next to nothing. An ADA Worker's assistance simply is not sufficient to provide the level of access the ADA and ARP require.

C. Written Notes Do Not Allow The Deaf Person To Follow The Presentation Or To Participate

Regardless of how comprehensive, a static set of written notes does not allow a deaf participant to follow a presentation in real time, preventing the deaf individual from participating. Even if the notes reflect everything the speaker plans to say, they do not indicate what the speaker currently is saying. A person who is deaf cannot use written notes to "follow along," because, by virtue of being deaf, they cannot possibly understand the speaker without looking away from the page to look at the speaker, defeating the purpose of the notes. Further, without knowing what the speaker currently is saying, a deaf participant cannot ensure their question or comment is on-topic, preventing their participation.

Examples of how written notes fall short come not only from the Deaf Culture Town Hall, but also from the reported experience of [REDACTED], DPH, at his own classification hearing.

1. Mr. [REDACTED] Could Not Follow The Deaf Culture Town Hall Event Nor Contribute To It, Despite Receiving Written Notes

Mr. [REDACTED] stated in his interview that, during the Deaf Culture Town Hall, at best he had a general idea of the topic being discussed. He never knew what the presenters actually were saying. Although two ADA Workers sat next to Mr. [REDACTED] during the presentation, ostensibly to indicate for Mr. [REDACTED] which part of the outline the presenters currently were using, this did not happen. According to Mr. [REDACTED], the only portions of the event he understood were the captioned videos.

Mr. [REDACTED] reported that wanted to participate in the Deaf Culture Town Hall. But because Mr. [REDACTED] could not follow the presentation, he could not participate. Moreover, in all events that DNH and/or DPH class members other than Mr. [REDACTED] attended, they participated in the presentations by making comments. Often, the presenters solicited this information. Mr. [REDACTED] alone was given no opportunity to participate in the presentation he attended.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
January 24, 2020
Page 6

2. Mr. ██████ Could Not Follow Or Participate In His Own Classification Hearing, Despite Receiving Written Notes

In his interview, Mr. ██████ described an experience at his classification committee hearing when he could not participate despite receiving a lengthy set of written notes. According to Mr. ██████, he was handed the written notes at the time he entered the hearing room. After handing him the notes, a committee member began speaking. Mr. ██████ reported that he told the committee members he could not understand what they were saying, but they kept talking. The lengthy written document the committee provided to Mr. ██████ did not help because he could not read from it while the committee members were talking. He had to look up at the committee members, and thus had no idea what was written on the stack of papers they had handed to him.

Further, because Mr. ██████ could not use the written notes to understand what the committee members were saying, he could not ask questions or make comments. According to Mr. ██████, he did not have the opportunity to read the written notes until he had returned to his bunk, at which point the opportunity to ask questions or respond to the committee's remarks had passed.

3. Even If They Had Been Able To Ask Questions, Mr. ██████ And Mr. ██████ Would Not Have Access To The Response

Finally, even if Mr. ██████ or Mr. ██████ had asked a question or made a comment despite not knowing what was going on, they would not have had access to the response. For Mr. ██████, his only real-time access to the presentation came through an untrained ADA Worker, who at best could have given him a cryptic summary of the response to his question or comment.

By contrast, Mr. ██████ did try to comment during his hearing, if only to tell the committee members he could not understand them. However, Mr. ██████ was not able to recount what the committee members had said in response, because *he could not understand what they were saying*. Mr. ██████ requires written notes to understand what other people say. Whatever the classification committee members said in response to Mr. ██████, they did not write it down; therefore, he could not understand it.²

² The Effective Communication Preview Interview form indicates that Mr. ██████ uses hearing aids as his primary communication method. This may be incorrect. Two different attorneys met with Mr. ██████ while at RJD and observed that he did not appear to understand speech even while wearing a hearing aid.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
January 24, 2020
Page 7

II. Written Notes Are Sufficient Only For Brief, One-On-One Interactions

It is likely that any individual will share less information when communicating through written notes than when communicating more naturally through speech. As researchers have noted:

A busy health professional is also likely to write in a briefer manner in a written note, given the time it takes to write one, than they would be if they were explaining in speech. This means that a deaf person, particularly a sign language user, is receiving their medical information not only in a language they do not routinely use, but also in a shorter form than their hearing counterpart would receive. It is not difficult to see that this means a substandard service is being provided.³

This is consistent with the experience of the attorneys who interviewed Mr. [REDACTED] and Mr. [REDACTED]. In each interview, the attorney used a computer to type the notes, as this allowed the attorney to communicate more efficiently. The attorney also had the flexibility and patience to devote extra time to these interviews. Nevertheless, the interviews took longer and the attorneys each felt they could convey less information to Mr. [REDACTED] or Mr. [REDACTED] due to the need to type out questions as opposed to speaking.

Thus, in any circumstance where information should be comprehensive—including healthcare encounters for anything other than a brief, routine interaction, such as pill call—written notes alone are unlikely to ensure effective communication. Unless the class member can understand the speaker directly, captioning is necessary to ensure meaningful access.

III. Real-Time Captioning Is Necessary For Most Interactions In Which Non-Signing DPH Class Members Participate

Real-time captioning is necessary for most interactions in which a non-signing DPH class member participates. Unlike written notes, real-time captioning provides information in real-time. The captionist uses court-reporting software and techniques to type out 100% of what speakers say, ensuring no omissions. This means that planned and unplanned remarks alike are accessible to the deaf participant. Further, the captions appear as words are spoken, much like when watching live television. This allows the

³ Anna Middleton, ed., *Working with Deaf People: A Handbook for Healthcare Professionals* 59 (2010).

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
January 24, 2020
Page 8

deaf participant to receive information along the same timeline as all other participants, ensuring that questions and comments will be timely.

As with any other auxiliary aid or service, real-time captioning is not appropriate for all class members or in all settings. The ADA establishes that “[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.” 28 C.F.R. § 35.160(b)(2). Nevertheless, it is imperative that CDCR offer this important accommodation where necessary to ensure effective communication.

IV. Conclusion

The lack of real-time captioning as an accommodation has a significant effect on class members’ ability to avail themselves of the programs, services, and activities available to others in prison. Beyond the difficulty hearing in the groups they attend, several class members reported having opted out of programs or events due to their inability to participate. For example, [REDACTED], DPH, report that he chose not to attend the DPH Town Hall because he believed he would not be able to understand it. [REDACTED], DPH, reported that he previously dropped out of college classes because he could not understand the instructor.

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PRIVILEGED AND CONFIDENTIAL

Russa Boyd
January 24, 2020
Page 9

Real-time captioning is as important for non-signing DPH class members to participate in CDCR programs, activities, and services as sign language interpreters are for DPH class members who use sign language. Plaintiffs' counsel urge CDCR to take immediate steps to provide these necessary auxiliary aids and services to deaf and hard of hearing class members who need them for effective communication.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:cg

| | | |
|----------------------|----------------------|----------------------|
| cc: Ed Swanson | Teauna Miranda | Dawn Malone-Stevens |
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EXHIBIT E



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February 14, 2020

VIA ELECTRONIC MAIL ONLY

**SUBJECT TO
PROTECTIVE ORDERS**

Russa Boyd
CDCR Office of Legal Affairs
Russa.Boyd@cdcr.ca.gov

Re: Armstrong v. Newsom: Advocacy on behalf of [REDACTED],
DPH
Our File No. 0581-03

Dear Russa:

I write on behalf of [REDACTED], DPH, a class member incarcerated at R.J. Donovan Correctional Facility, to request the following:

- that Mr. [REDACTED] receive a new effective communication evaluation, as we believe the current SOMS entries for his effective communication needs are incorrect;
- that Mr. [REDACTED]'s RVR No. [REDACTED] be removed, as Mr. [REDACTED] likely did not understand the verbal communication that gave rise to the RVR;
- that Mr. [REDACTED] receive a new hearing for each of his RVRs Nos. [REDACTED], [REDACTED], and [REDACTED] due to lack of effective communication during these proceedings; and,
- that Mr. [REDACTED] receive a new classification hearing, due to a lack of effective communication during this proceeding;
- that Mr. [REDACTED] be transferred back to E Yard so that he can continue to learn sign language.

SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 2

I. The Need for a New Effective Communication Evaluation

Currently, SOMS indicates that Mr. ██████'s primary form of communication is hearing aids and that his secondary form is reading lips. We have reason to believe that this information is out of date or inaccurate. Mr. ██████'s primary form of communication should be written notes, as he does not understand speech with his hearing aids or through reading lips.

As a DPH class member, Mr. ██████ has already undergone an audiology evaluation establishing that he has "a permanent hearing impairment so severe that [he] must rely on written communication, lip reading, or signing because [his] residual hearing, with aids, does not enable [him] . . . to communicate effectively." *See* ARP § II.C.2. Put differently, *hearing aids alone by definition do not provide effective communication for Mr. ██████*. He requires additional support. Further, Mr. ██████ has stated that hearing aids do little to improve his hearing.

While reading lips is listed as Mr. ██████'s secondary method of communication, it is also highly unlikely that this method is effective for him, especially due to how little he can hear. Studies have found that "the best lipreaders (or speechreaders) could fully comprehend only twenty-six percent of what was said to them." *See* Anna Middleton, ed., *Working with Deaf People: A Handbook for Healthcare Professionals* 53 (2010). Without more access to sound, which Mr. ██████ does not have due to his disability, it is not plausible that Mr. ██████ can understand what people say through reading lips alone.

Indeed, Plaintiffs' counsel has observed the same to be true about Mr. ██████. Two different attorneys met with Mr. ██████ during our tour of R.J. Donovan Correctional Facility in December, 2019. Each interview took place in a quiet, controlled environment, where Mr. ██████ had a clear and unobstructed view of our faces. Nevertheless, during each interview, it was clear that Mr. ██████ understood little or none of what we said. He understood only when we used sign language or written notes for communication.

Importantly, individuals such as Mr. ██████ can give the appearance of fully understanding even when they do not. It is highly likely that Mr. ██████ guesses what other people say to him. Because he is intelligent and because many of his interactions are routine, he often guesses correctly. But that does not mean he understand what another person has said, even when he responds appropriately. *Until Mr. ██████ receives a new, formal evaluation of his ability to understand speech, officers should not assume that Mr. ██████ has understood what another person said, even when he responds appropriately in some instances.*

SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 3

We have reason to believe that Mr. [REDACTED] requires written notes for effective communication, and that wearing hearing aids and reading lips are not effective for him. **We request that Mr. [REDACTED] receive a new effective communication evaluation to establish his primary and secondary means of communication.**

II. Request to Remove RVR or to Reduce the Penalty

Mr. [REDACTED] reported to us that he received several RVRs in 2019. At least one of these RVRs, No. [REDACTED], appears to have been a direct result of a lack of effective communication. This RVR should be removed and the penalty reduced.

Mr. [REDACTED] was issued an RVR for failing to present for count on September 14, 2019. The officer's statement in the RVR reflects that Mr. [REDACTED] failed to comply with an initial verbal order to sit up on his bunk, but complied when the officer repeated the order with an accompanying hand signal. The officer contended that Mr. [REDACTED] had understood both orders because he was wearing his hearing aids. However, for the reasons explained above, Mr. [REDACTED] cannot understand verbal commands without additional visual cues, typically in the form of widely understood gestures or written notes.

Here, Mr. [REDACTED] complied with the officer's command when the officer used a widely understood gesture for him to sit up. However, he likely did not hear or understand the initial order, given through speech alone. This is clear from the officer's account on the RVR itself. Mr. [REDACTED] should not be punished for his failure to understand the guard's first command, in which the guard failed to effectively communicate with him.

Records indicate that Mr. [REDACTED] received 30 days of credit loss due to this incident. This sanction is excessive due to the likelihood that Mr. [REDACTED] did not hear or understand the officers initial command. We request that the RVR be removed.

III. Request for New RVR Hearings

We further request that Mr. [REDACTED] receive new hearings for RVR's Nos. [REDACTED], [REDACTED], and [REDACTED]. Mr. [REDACTED] did not receive effective communication during any of these hearings and he was wrongfully denied a staff assistant. Mr. [REDACTED] has appealed two of these RVRs to the second level and his appeal for each was denied.

Based on our experience with Mr. [REDACTED], he requires written notes for effective communication. To meet the standards of the *Armstrong* Remedial Plan and the ADA, any written notes must be comprehensive and provide a contemporaneous account of what others are saying. See ARP § II.E.1 ("Reasonable accommodations shall be

SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 4

afforded inmates/parolees with disabilities, e.g., . . . hearing impaired . . . inmates, to ensure equally effective communication with staff. . . . Because the critical importance of communication involving due process . . . the standard for equally effective communication is higher when these interests are involved.”); 28 C.F.R. § 35.160(a) (“A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”); *id.* § 35.160(b)(2) (“In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.”).

Plaintiffs’ counsel has previously explained at length that the type of written notes that CDCR provides—both notes that are hand-written or type-written during the encounter and more extensive notes that are drafted in advance—do not meet this standard. *See* Ltr. from R. Lomio to T. Davis, re Accommodations for Deaf and Hard of Hearing Class members Who Do Not Know Sign Language (November 27, 2019); Ltr. from C. Jackson to R. Boyd, re Communication Needs of DPH, non-SLI Class Members (January 24, 2020). Especially for due process encounters, such as disciplinary hearings, written notes result in effective communication only if they take the form of a real-time transcript, for example through Computer-Aided Real-Time Transcription (CART). *See id.*

However, based on Plaintiffs’ investigation, CDCR currently does not provide CART. For the reasons set forth below, we request that CDCR provide new RVR hearings to Mr. [REDACTED] with CART to allow him to participate.¹

A. RVR Hearing Held August 5, 2019

On August 5, 2019, Mr. [REDACTED] appeared for a hearing for his RVR, log number [REDACTED]. Mr. [REDACTED] reported to us that when he appeared for the hearing, he requested a sign language interpreter, as at the time he was enrolled in the sign language program on E Yard. The hearing officer told Mr. [REDACTED] he is not deaf and refused to provide what he requested, so he left.

The hearing report corroborates Mr. [REDACTED]’s account. It reflects that Mr. [REDACTED] “stated he is totally def [sic]” and stated “demands related to his disability (DPH)

¹ Mr. [REDACTED] currently is learning sign language. Eventually, he may be able to rely solely on a sign language interpreter to participate in due process encounters and other events. At present, however, he likely will benefit more from CART, due to his high TABE score of 12.9.

SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 5

Hearing” including “a sign language interpreter.” The report states that the hearing officer attempted to ask Mr. [REDACTED] a question by speaking, but contains no indication that the officer wrote down the question, as would be necessary for Mr. [REDACTED] to understand it. Thereafter, Mr. [REDACTED] left.

Records from this RVR clearly indicate that the hearing was conducted in Mr. [REDACTED]’s absence. However, CDCR did not provide the accommodations necessary for Mr. [REDACTED] to participate in the hearing. Therefore, he should not be penalized for failing to sit through a hearing that he would not have understood.

B. RVR Hearing Held October 2, 2019

On October 2, 2019, Mr. [REDACTED] attended a hearing for his RVR, log number [REDACTED]. Mr. [REDACTED] stated that he did not receive effective communication at this hearing, because he did not receive written notes. He reported that he did not understand much of what the officers said during the hearing and could not participate for that reason.

The hearing report states that the hearing officer spoke loudly and clearly, and provided written notes. However, based on Plaintiffs’ counsel’s experience with Mr. [REDACTED], speaking loudly and clearly is not enough to establish effective communication with Mr. [REDACTED]. Mr. [REDACTED] further reported that he is required to sign a paper acknowledging that he received written notes, and he never received such a paper for his signature. There is also no indication that the written notes gave a complete and contemporaneous account of the officer’s statements, as would be necessary to establish effective communication with Mr. [REDACTED]. Because Mr. [REDACTED] could not understand what the officer said during the hearing, he was unable to participate by asking questions or by responding to the allegations against him.

C. RVR Hearing Held in Late January, 2020

Mr. [REDACTED] has also reported that he underwent an RVR hearing regarding RVR No. [REDACTED]. This hearing was conducted in late January 2020. As of the date of this letter, we have not been able to get a full account of this hearing from Mr. [REDACTED]. But based on his description of the course of past RVR hearings, and the fact that CDCR has not yet taken the position that they provide real-time transcription, it is highly unlikely that Mr. [REDACTED] received effective communication for this hearing either.

SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 6

D. New Hearings Are Necessary

Mr. [REDACTED] has appealed the results of the hearings for RVRs Nos. [REDACTED] and [REDACTED], based in part on the fact that he did not receive necessary accommodations during the hearings and did not receive a staff assistant. To our knowledge, he has not appealed RVR No. [REDACTED]. Each appeal was denied on the basis that he received effective communication and did not meet the criteria for a staff assistant. We disagree.

For the reasons stated in Part I, Mr. [REDACTED] could not have understood what was said during his RVR hearings through reliance on hearing aids and lip-reading alone. Further, based on Plaintiffs' counsel's investigation regarding CDCR's use of written notes, it is extremely unlikely that any written notes provided to Mr. [REDACTED] enabled him to participate in the hearing. *See* Ltr. from C. Jackson to R. Boyd, re Communication Needs of DPH, non-SLI Class Members (January 24, 2020).

The Appeal responses also stated that Mr. [REDACTED] did not meet the criteria for a staff assistant. This is also incorrect. Per 15 C.C.R. § 3315(d)(2)(A)(3), an individual "shall be assigned a staff assistant" to assist in preparing and defending charges during a disciplinary hearing when "[t]he inmate's disability is such that staff assistance would be necessary for the inmate to participate in the disciplinary process." Mr. [REDACTED] meets this criterion because he cannot understand speech without written notes. However, CDCR currently does not provide written notes in the comprehensive and contemporaneous fashion necessary for a class member who requires written notes for communication to participate in a disciplinary hearing using that method. As a result, Mr. [REDACTED] cannot participate in the disciplinary process without a staff assistant.

For these reasons, Mr. [REDACTED] should receive a new hearing for each RVR.² At the new hearings, Mr. [REDACTED] should be provided with comprehensive and contemporaneous written notes of the officers' statements throughout the hearings, as well as a staff assistant, per 15 C.C.R. § 3315(d)(2)(A)(3).

IV. Request For New Classification Hearing Due To Lack of Effective Communication

We further request that Mr. [REDACTED] receive a new classification hearing due to the lack of effective communication during his original classification hearing on October 22, 2019.

² Please note that Plaintiffs' counsel has requested that RVR No. [REDACTED] be removed entirely. If that RVR is removed, it is not necessary to conduct a new hearing.

SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 7

On October 22, 2019, Mr. [REDACTED] attended his classification hearing. Mr. [REDACTED] reported to us that, at the beginning of the hearing, he was handed a lengthy set of written notes. However, he contends was not given the opportunity to read through the notes before the hearing began.³ Instead, according to Mr. [REDACTED], the officers running the meeting began speaking. When he objected that he could not understand them, a different officer began speaking. He understood nothing of what was said. Consequently, he could not ask questions or respond to what was said. It was not until he returned to his bunk after the meeting that he was able to read the notes they had provided. There, he learned for the first time that he was being transferred to a Level III yard and placed on C-status for 120 days.

Mr. [REDACTED]'s report to us is also consistent with our understanding that CDCR does not have the capacity to provide written notes in a comprehensive and contemporaneous fashion, such as through CART. Without it, Mr. [REDACTED] did not have effective communication during his classification hearing. *See* Ltr. from R. Lomio to T. Davis, re Accommodations for Deaf and Hard of Hearing Class members Who Do Not Know Sign Language (November 27, 2019); Ltr. from C. Jackson to R. Boyd, re Communication Needs of DPH, non-SLI Class Members (January 24, 2020).

For this reason, Mr. [REDACTED] should receive a new classification hearing and be provided with comprehensive, contemporaneous written notes of the officers' statements throughout the hearing, as can be achieved through CART.

V. Request For Transfer to E Yard

Finally, we request that Mr. [REDACTED] be transferred back to E Yard so that he can continue to participate in the sign language program offered exclusively on E Yard at RJD. This program is crucial to his needs as a deaf person who is only beginning to learn sign language.

According to Mr. [REDACTED], he was transferred out of E Yard after being reclassified from Level II to Level III, due in large part to receiving two RVRs in a short period of time. Plaintiffs' counsel has already advocated that at least one of these RVRs be removed, as it appears to have been issued as a direct result of his disability. *See* Part II,

³ Importantly: it is not possible for Mr. [REDACTED] to read through the notes during the hearing, as other people may be able to do. Because he is deaf, his only hope of understanding what people are saying is to look at them. When he looks down to read, he cannot possibly understand what is being said. Therefore, it was not possible for him to skim through the notes while the officers were talking. He had to look at the officers.

SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 8

supra. Further, Mr. [REDACTED] has been denied the opportunity to participate in any of his RVR hearings or in his classification hearing, due to the failure to provide comprehensive, contemporaneous written notes he requires for effective communication and the failure to provide a staff assistant pursuant to 14 C.C.R. § 3315(d)(2)(A)(3). *See* Parts III & IV, *supra*. Repeating the hearings may result in the removal of other or both of the other RVRs, or in a decision for him to remain on a Level II yard.

An override of one classification level would also be appropriate, under 15 C.C.R. § 3372.5(a)(1). This provision permits an individual to be housed “in a facility with a security level which is not consistent with the inmate's placement score” where the “inmate requires an outpatient or higher degree of medical or psychiatric care at a facility specifically staffed for the type of treatment necessary.” *See* 15 C.C.R. § 3372.5(a)(1). On E Yard, Mr. [REDACTED] was participating in the sign language program. As a DPH class member who currently is not fluent in sign language, this program provides him with vital tools for communication and rehabilitation. *See* Ltr. from R. Lomio to T. Davis, re Accommodations for Deaf and Hard of Hearing Class members Who Do Not Know Sign Language (November 27, 2019). An override of one classification level would be important to allow him to participate in this program that is so important for his disability.

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SUBJECT TO PROTECTIVE ORDERS

Russa Boyd
February 14, 2020
Page 9

Thank you for your attention to this important matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:CJ

CC: Alexander Powell
Nicholas Meyer
Patricia Ferguson
Tamiya Davis
Amber Lopez
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EXHIBIT F



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VIA EMAIL ONLY

February 25, 2020

Ms. Russa Boyd
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
[REDACTED], SATF

Dear Ms. Boyd:

I write regarding [REDACTED], a deaf class member housed at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF). I previously wrote to you about Mr. [REDACTED] in a letter dated July 26, 2019. *See* Exhibit A. In that letter, I noted that Mr. [REDACTED] is designated DPH and that his primary form of communication is written notes. Although his secondary form of communication is listed as “Assistive Listening Device,” I explained that, in 2017, an audiologist wrote that Mr. [REDACTED] has profound sensorineural hearing loss and, “[e]ven with hearing aids, [he] will not understand most words [he] hear[s].” *Id.* at 1. That same year, a provider wrote that Mr. [REDACTED]’s brain will recognize, at best, “14% of what is said.” *Id.* I requested that real-time captioning be offered to Mr. [REDACTED] so that he has equal access to rehabilitative programming. “Real-time captioning (also known as computer-assisted real-time transcription, or CART) is a service . . . in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language.” U.S. Dep’t of Justice, ADA Requirements: Effective Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>.

The ADA Coordinator at SATF denied the request in a memorandum dated August 13, 2019. *See* Exhibit B at 2. The ADA Coordinator wrote, among other things: “The information you provided regarding real-time captioning and ‘CART’ is appreciated. SATF does not currently have this type of technology available for use” *Id.* at 2. The memorandum stated that Mr. [REDACTED] was successfully participating in Vocational Computer & Related Technology (Office Services).

That response is inadequate. **First**, even assuming that Mr. [REDACTED] was successfully participating in one primarily computer-based assignment, he was (and is) still entitled to access the full range of programming offered at SATF. *See Serventi v. Bucks Tech. High Sch.*, 225 F.R.D. 159, 167-68 (E.D. Pa. 2004) (approving settlement agreement that required support for “the full range of vocational programs,” not just “two of the 31 vocations programs”). Put differently, Defendants cannot limit the number and type of programs available to deaf people. To do so would result in them being incarcerated longer than their hearing peers and would impede their successful reintegration into society. *See* Cal. Code Regs., tit. 15, § 3043(a) (“all inmates who participate in approved rehabilitative programs and activities . . . shall be eligible to earn Milestone Completion Credit,

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Ms. Russa Boyd

Re: [REDACTED]

February 25, 2020

Page 2

Rehabilitative Achievement Credit, and Educational Merit Credit The award of these credits . . . shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date . . . if sentenced to an indeterminate term with the possibility of parole"). And, according to the March 2019 assignments data, of the 154 people assigned to Vocational Computer & Related Technology (Office Services) at SATF, 90 had additional assignments, including substance abuse recovery support groups, criminal and addictive thinking recovery groups, lifer and long-term programs, and veteran's support groups.

In addition, most if not all of the self-help groups at SATF are discussion-based and, as I explained in my previous letter, Mr. [REDACTED] has been unable to participate in those programs "because he cannot hear the facilitator or participants." Exhibit A at 1; *see* Matthew S. Moore & Linda Levitan, eds., *For Hearing People Only* 457 (2016) ("Support groups are characterized by free, uninhibited emotional interchanges between members. . . . The point is to be able to express feelings openly, to share pain and hurt, in a supportive environment."); Alternatives to Violence Project (AVP), *Creative Conflict Resolution Workshops to Transform Lives* (Pamphlet) ("AVP workshops use experiential learning. We draw on the shared experiences of participants and facilitators to explore how anger, frustration, prejudice and injustice cause violence in our lives."). Indeed, during the February 2020 *Armstrong* monitoring tour at SATF, we observed a Narcotics Anonymous group on G yard. The hour-long group consisted entirely of unscripted discussion by the participants prompted by five written questions. There simply is no way Mr. [REDACTED] could have followed or participated in that discussion without real-time captioning. In fact, Mr. [REDACTED] reported that he has tried to participate in other groups before. Mr. [REDACTED] reported that he very much wants to be part of the veteran's community and to attend religious services. He reported that he had been assigned to the Veteran's Support Group twice, but ultimately had to leave the group both times because he could not follow the conversation or participate in the discussion. Similarly, Mr. [REDACTED] reported that he no longer attends religious services because he cannot hear what is being said.

Mr. [REDACTED]'s inability to participate in support groups and religious services has only compounded his largely isolated existence in prison. In his words:

It's frustrating when you're not part of anything. You're alone. The only thing you have is what you read, or a game. You can't really participate in TV if you don't have one. Dayroom is what they happen to have on. . . . I have a lot of bad days when I just turn everything off; especially when you're alone. When you're not part of what's going on around you, it's difficult.

Second, the ADA Coordinator's memorandum quotes a note from the instructor for Vocational Computer & Related Technology (Office Services) as stating, among other things, that Mr. [REDACTED] "positively participates, to the best of his ability, in class lecture and discussions and he positively participates in class typing exercises"; that the instructor "tr[ies] to provide handouts, etc. to the class so that [Mr.] [REDACTED] can follow along"; and that the instructor's inmate clerks "will also sit next to him during class lectures and write out questions I may pose to him during a class lecture or discussion." Although Mr. [REDACTED] has completed that vocational course, we flag some concerns with effective

Ms. Russa Boyd

Re: [REDACTED]

February 25, 2020

Page 3

communication during the course. Mr. [REDACTED] explained that he was successful in the course because he largely could follow on-screen instructions. He reported that, in some ways, the instructor did take steps to try to communicate with him, including by writing down pre-test questions that she had given verbally to the rest of the class. He also reported that the instructor once sat with him to explain something in writing.

Mr. [REDACTED], reported, however, that sometimes when he had difficulty understanding what to do, the instructor would come over and, instead of explaining what he should do on the computer through written or typed notes, she would complete the steps he was struggling with directly on the computer without providing any guidance or instruction about what she was doing. As a result, Mr. [REDACTED] did not learn the same skills about how to accomplish those tasks independently in the future. And he reported that he was never able to understand or participate in the discussion the instructor had with his classmates because even with an inmate clerk sitting next to him, he could not follow the conversation:

There was a time [the clerk] would sit down, but he wasn't really writing out anything more than what I was reading. [The clerk wrote], "Just read it because she's going over what we're reading," but that's all the information that I'm getting. I'm not getting any questions the others are asking and she's answering. The only time is if I asked the question, but I don't know what to ask other than what I'm reading. . . .

When I go to school, what's being said—I want to know. When things are going on that everyone else knows about, I need to know about it somehow, some way. . . .

There were times that I couldn't understand because all I had was the information packet. I was sitting there twiddling my thumbs. I had to wait to find out what I'm supposed to do with it. Then I had to play catch up. She needed to take the time to stop and explain to me. Now if I had a microphone that connected to my tablet or if they had the screen up on the wall, I could have followed along.

Moreover, Mr. [REDACTED] reported that one assignment in the class was to draft a resume. He reported that he was given a handout explaining how to do that. He reported that he followed the instructions on the handout but kept having his resume returned to him for revision. He reported that no one explained what he had done wrong or what he needed to do to fix the resume until the instructor finally gave him a copy of another student's resume, which he copied: "We're trying to write out a resume and I was getting frustrated because I didn't understand. . . . I'm not understanding what I'm not doing right. I'm thinking about it and look back through the other papers. . . . It took a little longer to get the resume squared away because I was not understanding her meaning. I was going by what the book was doing, then there was something wrong. She had to give me another print out based on what other people were doing. I was getting frustrated not getting her point. It took a long time to get the resume done."

Ms. Russa Boyd

Re: [REDACTED]

February 25, 2020

Page 4

Third, the ADA Coordinator states that Mr. [REDACTED] did not submit a Form 1824 requesting any accommodations, including real-time captioning. This is unsurprising. As I explained in my previous letter, “people who become deaf later in life may not know what accommodations are available to them; ‘it often takes late-deafened adults years to learn about coping strategies, assistive technology, and their basic rights to communication access.’ Class members at SATF whose primary form of communication is written notes, for example, did not know about CART.” Exhibit A at 2 (quoting Marylyn Howe, *Meeting the Needs of Late-Deafened Adults*, 19 *Am. Rehabilitation* 25, *3 (Winter 1993)). In any event, “prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison’s programs and services, *without regard to whether or not the disabled individual has made a specific request for accommodation* and without relying solely on the assumptions of prison officials regarding that individual’s needs.” *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 272 (D.D.C. 2015) (emphasis added). For that reason, we “ask[ed] that ADA staff inform people who are deaf or hard of hearing about what accommodations, including CART . . . , may be available to them. This is particularly important as the prison population ages and in light of the significant and well-documented isolation that often accompanies adventitious hearing loss.” Exhibit A at 2. The ADA Coordinator’s response—that “[t]he Inmate Orientation Handbook provides all inmates information regarding available accommodations for disabled persons,” Exhibit B at 2—is inadequate. The handbook contains no reference to CART.

* * * * *

We again request that CART be offered to Mr. [REDACTED] and that ADA staff inform people who are deaf or hard of hearing about what accommodations, including CART, may be available to them.

As you know, after receiving Defendants’ response to our request that Mr. [REDACTED] be offered CART, we surveyed all deaf class members in California prisons who do not know sign language. We shared some of the survey responses with Defendants. *See* Exhibit C, Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, *Accommodations for Deaf and Hard of Hearing Class Members Who Do Not Know Sign Language* (Nov. 27, 2019). Overwhelmingly, deaf class members expressed feelings of isolation in prison due to their disabilities, an inability to fully participate in rehabilitative services, and an unawareness of accommodations that may be able to help them. Deaf class members at SATF; High Desert State Prison; California Medical Facility; California Health Care Facility, Stockton; and Richard J. Donovan Correctional Facility all thought CART may be able to help them participate in prison programs, services, and activities.

The parties originally were scheduled to discuss accommodations for deaf class members, including CART, on January 21, 2020. That meeting was postponed at Defendants’ request. Since then, Plaintiffs continue to identify class members who require CART. *See, e.g.*, Letter from Caroline Jackson, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, *Communication Needs of DPH, non-SLI Class Members* (Jan. 24, 2020); Letter from Caroline Jackson, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, *Advocacy on Behalf of [REDACTED]*, DPH

Ms. Russa Boyd

Re: [REDACTED]

February 25, 2020

Page 5

(Feb. 14, 2020). Plaintiffs remain willing to discuss the issue with Defendants but, if this issue is not resolved on a statewide basis soon, Plaintiffs likely will seek judicial relief.

Thank you for your prompt attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney

cc: Mr. [REDACTED] (redacted)
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EXHIBIT A



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Camille Woods

VIA EMAIL ONLY

July 26, 2019

Ms. Russa Boyd
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
[REDACTED], SATF

Dear Ms. Boyd:

I write regarding [REDACTED], a 61-year-old *Armstrong* class member. Mr. [REDACTED] is designated DPH and has a TABE score of 9.8. According to the electronic medical record, his primary form of communication is written notes, and his secondary form of communication is an assistive listening device. In 2017, an audiologist wrote that Mr. [REDACTED] has “profound SNHL” and “[e]ven with hearing aids, [he] will not understand most words [he] hear[s].”¹ That same year, a provider wrote that Mr. [REDACTED]’s brain will recognize, at best, “14% of what is said.”

Mr. [REDACTED], who has been incarcerated since 2010, reports that he struggles to communicate in prison. Among other things, he reports that he is unable to participate in rehabilitative programming because he cannot hear the facilitator or participants. In light of his disability, and because he does not know sign language, it appears that real-time captioning is the appropriate accommodation to provide him equal access to the full range of programming offered at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF).

“**Real-time captioning** (also known as computer-assisted real-time transcription, or CART) is a service . . . in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language.”² U.S. Dep’t of Justice, ADA Requirements: Effective Communication (Jan. 2014), <https://www.ada.gov/effective-comm.htm> (emphasis in original); *see also Duvall v. County of Kitsap*, 260 F.3d 1124, 1136 (9th Cir. 2001) (discussing ADA regulations regarding transcription services and videotext displays);

¹ Sensorineural hearing loss, or SNHL, “often results in speech itself being heard, while particular words containing high-frequency consonants lack sufficient clarity to be understood; the result is the oft-heard complaint, ‘I hear but I can’t understand.’” James M. Grover, *Bonding With Your Hard of Hearing or Late-Deafened VR Client*, 47 J. of Voc’l Rehab. 47-64, 55 (2017).

² Remote real-time captioning typically does not have the same limitations as remote sign language interpretation because it does not require a video feed and it involves transcription (and not interpretation). Remote captioning uses microphones to transmit sound to an off-site captionist and a computer to display the written transcript to the on-site deaf person.

Ms. Russa Boyd

Re: [REDACTED]

July 26, 2019

Page 2

Argenyi v. Creighton University, 703 F.3d 441, 443-44, 451 (8th Cir. 2013) (concluding that “the record supports [plaintiff]’s claim that he was unable to follow lectures and classroom dialogue” absent CART, where plaintiff had “a serious hearing impairment” and “does not know sign language”); Michael S. Hood *et al.*, Classroom Captioning for Deaf and Hard of Hearing Students, *J. of Eng’g Educ.* 273-78, 273 (July 1997) (“This technology enables a stenographer to transcribe spoken language into written text instantaneously, and can position deaf and hard of hearing students on a near-equal playing field with other students in the classroom.”). CART is (or very soon will be) provided in other state prisons, including in Maryland, Illinois, and Massachusetts.³

During the April 2019 *Armstrong* monitoring tour at SATF, I asked the Principal and Community Resource Manager (CRM) whether CART services could be provided to Mr. [REDACTED] or someone with a similar disability. The Principal informed us that the Office of Correctional Education does not offer CART services at SATF; for deaf students who do not know sign language, he said, “written notes is all we can offer.”⁴ When asked how someone like Mr. [REDACTED] would be accommodated in self-help groups, the CRM responded: “I don’t have the material, equipment, or staff” to provide accommodations.

We request that CART be offered to Mr. [REDACTED] so that he has equal access to rehabilitative programming. In addition, we note that people who become deaf later in life may not know what accommodations are available to them; “it often takes late-deafened adults years to learn about coping strategies, assistive technology, and their basic rights to communication access.” Marylyn Howe, *Meeting the Needs of Late-Deafened Adults*, 19 *Am. Rehabilitation* 25, *3 (Winter 1993). Class members at SATF whose primary form of communication is written notes, for example, did not know about CART. As a result, we ask that ADA staff inform people who are deaf or hard of hearing about what accommodations, including CART, FM systems, and CapTel devices, may be available to them. This is particularly important as the prison population ages and in light of the significant and well-documented isolation that often accompanies adventitious hearing loss.⁵

³ See, e.g., Email from Michele C. Gardner, ADA Coordinator, Maryland Dep’t of Public Safety and Corr. Svcs., to Chelsea Rinnig, Prison Law Office (July 17, 2019) (on file with PLO) (“The Maryland Department of Public Safety and Correctional Services (DPSCS) provides Communication Access Real-time Translation (CART) as an accommodation for individuals who do not know sign language. . . . The service is very beneficial for the inmates who do not use American Sign Language (ASL).”); Settlement Agreement, *Briggs v. Massachusetts Dep’t of Corr.*, No. 15-CV-40162, at 31 (D. Mass. May 28, 2019); Settlement Agreement, *Holmes v. Godinez*, No. 11-2961 at 5 (N.D. Ill. Apr. 23, 2018).

⁴ For why written notes are not an adequate alternative, see Michael S. Hood *et al.*, Classroom Captioning for Deaf and Hard of Hearing Students, *J. of Eng’g Educ.* 273-78, 274 (July 1997).

⁵ See, e.g., Miguel O. Aguayo & Nick F. Coady, *The Experience of Deafened Adults*, 26 *Health & Social Work* 269-276, 270 (Nov. 2001) (“The psychological and social effect of adventitious hearing loss can be devastating. . . . [P]eople who experience profound hearing loss after being socialized as a hearing person must face the task of learning a new way to cope with the world

Ms. Russa Boyd

Re: [REDACTED]

July 26, 2019

Page 3

Thank you for your prompt attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney

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without dependence on the auditory sense. . . . They no longer can function effectively among hearing people as they were accustomed to doing.”); Julie H. Barlow *et al.*, *Living with Late Deafness*, 46 *Int’l J. of Audiology* 442-448 (2007) (“The inability to interact in social situations often causes social isolation resulting in problems such as anxiety and depression.”); Marylyn Howe, *Meeting the Needs of Late-Deafened Adults*, 19 *Am. Rehabilitation* 25, *2 (Winter 1993) (“No longer able to communicate with their families and peers, most late-deafened adults become confined to a limited world in which they are viewed as aloof, withdrawn, depressed, passive, and/or over-reactive.” (citations omitted)).

EXHIBIT B

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : August 13, 2019

To : Rita Lomio
Prison Law Office

Subject: **ADVOCACY LETTER, [REDACTED] - CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY AND STATE PRISON AT COROCORAN (SATF)**

This letter is in response to the advocacy letter dated July 26, 2019, written on behalf of Mr. [REDACTED]. [REDACTED] is designated DPH with a primary method of communication of written notes. His TABE score is 9.8. The advocacy letter indicated [REDACTED] reportedly struggles to communicate in prison and is unable to participate in rehabilitative programming because he cannot hear the facilitator or participants. It is contended, because [REDACTED] does not know sign language, real-time captioning is the appropriate accommodation to provide him equal access to the full range of programming offered at SATF.

Mr. [REDACTED] is currently assigned to Vocational Computer & Related Technology (Office Services). He is not enrolled in any self-help programs at this time. A review of the Strategic Offender Management System (SOMS) revealed the following note from the instructor/teacher, dated June 21, 2019, which states in part; *I/M [REDACTED] was assigned to Computer and Related Technology on 12/21/18. Inmate [REDACTED] is Hearing impaired and his primary form of communication is written notes. I/M [REDACTED] is polite, punctual and hardworking. I/M [REDACTED] is a quick study and any initial reservations I had have been laid to rest as I/M [REDACTED] excelling in class. To date, I/M [REDACTED] has earned a 100% on the Computer Basics quiz on 2/25/19; a 100% on the Computer Security and Privacy quiz on 3/15/19; a 96% on the Digital Lifestyles quiz on 4/18/19, and a 99% on the Productivity Programs quiz on 6/19/19. Typically, I verbally quiz my students prior to them taking any tests in order to gauge their understanding of the material. In order to accommodate I/M [REDACTED] I have created written pre-tests for each module and we review the results together utilizing written notes, which are kept in a Composition book. Anytime I lecture, I try to provide handouts, etc. to the class so that I/M [REDACTED] can follow along. My inmate clerks will also sit next to him during class lectures and write out questions I may pose to him during a class lecture or discussion. I/M [REDACTED] positively participates, to the best of his ability, in class lectures and discussions and he positively participates in class typing exercises.*

Based upon the comments documented by the instructor/teacher, [REDACTED] is receiving equal access to the program and is doing so while utilizing his primary method of communication.

██████ has been successful and continues to advance during his assignment to Vocational Computer & Related Technology (Office Services).

A review of the Inmate Appeals Tracking System revealed ██████ has submitted two (2) 1824, *Reasonable Accommodation Request*, in the past two years. The aforementioned 1824's he submitted did not convey a request for any accommodations pertaining to his Education assignment or Effective Communication needs.

The information you provided regarding real-time captioning and "CART" is appreciated. SATF does not currently have this type of technology available for use; however, inmates with hearing impairments receive effective communication while accessing programs, services, and activities in accordance with their identified primary or secondary methods of communication. The Inmate Orientation Handbook provides all inmates information regarding available accommodations for disabled persons.

I hope that the preceding information addresses your concerns.



STEPHEN SMITH

Associate Warden/ADA Coordinator

California Substance Abuse Treatment Facility and State Prison at Corcoran

EXHIBIT G



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February 11, 2020

VIA ELECTRONIC MAIL ONLY

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CONFIDENTIAL**
**SUBJECT TO
PROTECTIVE ORDERS**

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Re: *Armstrong v. Newsom*
Our File No. 0581-09

Dear Russa and Nick:

In October 2019, Defendants produced the Record of Supervision (“ROS”) logs of ten DPH parolees requiring sign language for effective communication. Plaintiffs’ past letters have identified serious problems in the field files of parolees requiring sign language. *See* May 30, 2017 letter from Jenny Yelin and Benjamin Bien-Kahn to Russa Boyd and Nicholas Meyer (“May 30, 2017 Letter”); July 1, 2016 letter from Tom Nolan to Russa Boyd and Andrea Moon (“July 1, 2016 Letter”); October 23, 2015 letter from Blake Thompson to Trina Hirsig and Andrea Moon (“October 23, 2015 Letter”).

DAPO has made improvements in ensuring that certified sign language interpreters are present during both initial interviews and containment team meetings. However, our review of the logs revealed that many of the issues identified in the October 23, 2015, July 1, 2016, and May 30, 2017 letters persist, including:

- Failure to provide a sign language interpreter to allow parolees to access needed services;
- Examples of DAPO staff being unable to locate sign language interpreters due to inadequate sign language interpretation contracts, *see* December 2,

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 2

2019 letter from Gay Grunfeld to Defendants re Problems with New SLI Contracts;

- Failure to provide sign language interpretation services for critical communications regarding potential parole violations;
- Failure to provide certified sign language interpreters for home and office visits regarding conditions of parole; and,
- Use of written notes instead of a sign language interpreter, particularly for parolees with no alternative communication methods or low TABE scores.

Plaintiffs' review of this subset of field files for DPH parolees focused specifically on DAPO's use of Video Remote Interpreting ("VRI") services. In our prior letters, we recommended that DAPO increase its use of VRI and relay services in order to improve its agents' effective communication with DPH-SLI parolees. Although parole agents seemingly have increased their usage of VRI, Plaintiffs note the following deficiencies:

- Multiple examples of staff encountering technological and/or connectivity issues when using VRI;
- Failure to train staff on how and under what conditions to use VRI; and,
- Partial, inconsistent, or infrequent use of VRI services during home and office visits.

As detailed below, DAPO's current practices violate the Parole Field Operations Section of the *Armstrong* Remedial Plan, the *Armstrong* Remedial Plan II, this Court's previous Orders, including the September 11, 2007 Order, and the ADA Title II regulations, and inflict serious harm on *Armstrong* class members.

The issues outlined below indicate that DAPO continues to fall short in meeting the effective communication needs for parolees requiring sign language interpretation. By failing to address and make improvements on these issues, DAPO ultimately puts those DPH parolees at risk of violating their conditions of parole because those conditions were never communicated to them clearly in the first place.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 3

1. No SLI for Initial Interview and Conditions of Parole

The *Armstrong* Remedial Plan (“ARP”) requires that “for parolees who use sign language as their primary method of communication, a sign language interpreter must be provided for communication of the conditions of parole [and] initial interview.” ARP Parole Field Operations Section, p. 3. **The ROS logs we reviewed revealed two instances in which DAPO agents conducted initial interviews and communications regarding new conditions of parole without a sign language interpreter**, including the following, attached as **Appendix A**:

- [REDACTED]: On May 22, 2019, Mr. [REDACTED] had his initial parole interview, lasting 183 minutes, without a sign language interpreter present. The ROS notes that Mr. [REDACTED] “is profoundly deaf and requires ASL to communicate,” but that “he can read lips and voices some.” DAPO agents filled out a Form 2289 noting his effective communication needs and scheduled a second appointment to complete Mr. [REDACTED]’s initial interview. However, it appears that the agent of record still provided Mr. [REDACTED] with his conditions of parole, of which he was subject to for an entire week, before his initial interview with a SLI on May 29, 2019. This is concerning considering that staff were aware of Mr. [REDACTED]’s preferred method of communication, but proceeded to ignore it by giving him his conditions of parole. Mr. [REDACTED] was a court walkover from San Bernardino County, so his appearance at the parole office may have been unexpected. It is not clear from the ROS whether Mr. [REDACTED]’s parole agent, with whom he had the interview on May 22, 2019, is fluent in sign language. Regardless, there is no documentation of any ADA accommodation provided during the May 22, 2019 interview. **In an urgent situation, when an in-person SLI cannot be obtained on short notice, DAPO should utilize VRI.**
- [REDACTED]: On May 17, 2019, the agent of record picked Mr. [REDACTED] up from jail and proceeded to have a 45-minute conversation with the parolee without a sign language interpreter present. During this conversation, the parole agent “placed ... a GPS device on his ankle ... and instructed [Mr. [REDACTED]] to charge his GPS device two times per day every 12 hours for one hour.” The agent then transported Mr. [REDACTED] to the parole office, administered a urinalysis, and reminded him to register as a sex offender. These instructions were crucial to Mr. [REDACTED] remaining in compliance with his conditions of parole, but DAPO did not

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
 Nicholas Meyer
 February 11, 2020
 Page 4

provide a certified SLI to establish effective communication. Rather, the parole agent utilized written notes to communicate with Mr. [REDACTED]. He also spoke slowly so that Mr. [REDACTED] could read his lips. This is highly problematic given that Mr. [REDACTED] has an unknown TABE score; it would not have been possible for staff to ascertain his reading comprehension level. Further, the ROS notes indicate that Mr. [REDACTED] acknowledged his understanding of these instructions by simply replying “okay” when prompted.

2. Access to Services on Parole

Parolees who require sign language interpretation services must not be denied access to programs based on the lack of sign language interpretation services. *See* 28 C.F.R § 35.160(b)(1) (“A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.”). DAPO’s August 6, 2018 memo regarding “Effective Communication and/or Reasonable Accommodations during Parole Proceedings and/or Supervision Processes” also highlights parole agents’ roles in helping secure interpreters for programs (“Staff shall collaborate with sex offender treatment program providers and other CDCR contracted providers to ensure they are providing reasonable accommodations and EC to parolees with disabilities.”)

We identified a number of instances, copies of which are attached in **Appendix B**, where deaf parolees were not able to access services. These failures violate the ADA and the *Armstrong* Remedial Plan. *See Paulone v. City of Frederick*, 787 F. Supp. 2d 360, 405 (D. Md. 2011) (granting summary judgment to Plaintiff on ADA claim when denied access to Victim Impact program because no sign language interpreter was provided).

- [REDACTED]: A review of Mr. [REDACTED]’s record of supervision logs revealed that his initial intake interview for Open Door counseling session was cancelled three times due to the unavailability of sign language interpreters. Notes from a field visit conducted July 18, 2019, stated Mr. [REDACTED] was “not being seen by open door counseling [because] their contracted SLI person had cancelled again. This has been the third cancellation.” *See* ROS entry on July 18, 2019. Mr. [REDACTED] explained that he required an SLI for group sessions, because he found groups “too

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 5

difficult since many people are talking at the same time and often don't look at him so he can't read lips."

- [REDACTED]: Notes from a September 4, 2019 contact indicated that Mr. [REDACTED]'s "POC clinician" was attempting to obtain a "video phone for Community Sober Living to allow [Mr. [REDACTED]] to communicate better with staff." There was no explanation as to how staff at Mr. [REDACTED]'s residence had previously communicated with him. It is also concerning that staff planned to use a video phone to communicate with Mr. [REDACTED], rather than VRI equipment. A video phone is not appropriate for use in in-person situations; this comment displays a lack of understanding of the difference between VRS and VRI technology. *See* Section 7.c, below.
- [REDACTED] (DPH, DPS): Mr. [REDACTED] recently reported to Plaintiffs' counsel that he is not receiving sign language interpreters for the domestic violence group he is required to take as a condition of parole. Instead of providing on-site interpreters or even VRI, the program chose first to rely on another program participant with basic sign language skills to "interpret." When that failed, the program relied on a voice-to-text app with many limitations, among them being that the app has no means of conveying to the group what Mr. [REDACTED] has to say. These issues are set forth more fully in Plaintiffs' Report regarding the Tour of Fontana, Foothill GPS, Rialto, San Bernardino 1, 2, & GPS Parole Units (December 12, 2019), dated February 5, 2020.

3. SLI Contractor Problems

Our review continues to raise concerns with DAPO's ability to obtain sign language interpreters when necessary through the available contracts.

We identified the following incidents, attached in **Appendix C**, in which DAPO staff attempted to arrange for a sign language interpreter but was unable due to lack of interpreter availability:

- [REDACTED]: On May 21, 2019, the supervision notes indicate that Mr. [REDACTED] initial interview was delayed because "Parole Litigation

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 6

Management Unit (“PLMU”) certified sign language interpreters were not present” at his first session.

- [REDACTED]: For Ms. [REDACTED]’s office visit on February 8, 2019, the sign language interpreter cancelled and the VRI lost signal. The parole agent then proceeded to complete “a comprehensive interview using written notes.” This is extremely concerning given that Ms. [REDACTED] is deaf and does not speak. Her CDCR records list sign language as her primary means of communication and do not list a secondary method. This is strong evidence that Ms. [REDACTED] cannot read or write well enough to participate in “a comprehensive interview” through written notes. Further, during this office visit, the agent administered an anti-narcotics test (“ANT”) for the first time. Although her test results were negative, the parole agent should have waited until a SLI was present to administer a drug test, to ensure that Ms. [REDACTED] understood the due process implications of an ANT before undergoing the test for the first time.

4. Effective Communication Regarding Compliance with Conditions of Parole and Potential Violations

The ARP provides that “[b]ecause of the critical importance of communications involving due process, the standard for equally effective communication is higher when a due process interest is involved. Communications involving such issues as conditions of parole and requirements to report or register come under this category as well as any subsequent instruction(s) from a parole agent for which the parolee’s non-compliance may result in a parole hold.” ARP Parole Field Operations Section, p. 3.

In a number of examples we identified, parole agents communicate with deaf parolees about potential violations of parole without sign language interpreters present. These conversations can and often do lead to the imposition of parole holds and are therefore communications involving due process. *See* September 11, 2007 Order, Docket No. 1199 at 15 (discussing heightened standard for effective communication for “events related to the hearings that occur prior to . . . the [life prisoner or revocation] hearings,” including the “[c]onsideration of remedial sanctions in lieu of returns to custody for parolees with pending parole violation charges.”)

Unlike parolees who are able to hear and speak, when denied an SLI, these parolees do not have any opportunity to communicate clearly with the parole agent to

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
 Nicholas Meyer
 February 11, 2020
 Page 7

explain their actions. *Bahl v. Cnty. of Ramsey*, 695 F.3d 778, 787-89 (8th Cir. 2012) (post-arrest interview is a covered service or activity where interview provided opportunity “to ask questions and tell his side of the story, which arguably could have affected the charging decision.”). These examples include the following, which are attached in **Appendix D**:

- [REDACTED]: Mr. [REDACTED] has a developmental disability (DD2) and an unknown TABE score. He has no alternative communication methods and his written communication skills are poor. Mr. [REDACTED] had multiple supervision contacts where his agent of record utilized written notes instead of sign language to communicate his conditions of parole. For example, on February 22, 2019, the parole agent conducted a home visit and instructed Mr. [REDACTED] to register his new address with the Anaheim PD and to take his GPS charger with him for an upcoming surgery. Similarly, on June 21, 2019 and June 25, 2019, Mr. [REDACTED] exchanged written text messages with his parole agent that included reminders to register with the Orange County Police Department. On July 1, 2019, the parole agent reminded Mr. [REDACTED] that his curfew, per his parole conditions, had been extended to 10:00pm.
- [REDACTED]: On May 17, 2019, Mr. [REDACTED]’s parole agent conducted a field visit at the parolee’s temporary residency. The ROS notes state that the parole agent had Mr. [REDACTED] sign the “first page of the special conditions of parole which had not been signed during the initial interview.” Mr. [REDACTED] was also reminded of his upcoming sex offender registration appointment. It is concerning that Mr. [REDACTED] signed a segment of his special conditions of parole without an SLI present. Given the serious due process implications of this parole proceeding, the parole agent should have used Mr. [REDACTED]’s primary method of communication: ASL.
- [REDACTED]: Mr. [REDACTED] had several contacts with his agent of record regarding his conditions of parole without a sign language interpreter being present to establish effective communication. Mr. [REDACTED] took two drug tests on January 8, 2019, and March 25, 2019, without an SLI present to explain the results to him. He had a 120-minute office visit on March 28, 2019 without a SLI, and on August 12, 2019, Mr. [REDACTED]’s parole agent admonished him for not charging his GPS correctly: [the agent] “wrote

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
 Nicholas Meyer
 February 11, 2020
 Page 8

clearly that he must charge 1 hour in the morning and 1 hour at night.” Although Mr. [REDACTED] has a TABE score of 1.5 and no alternative method of communication, written notes were utilized to communicate with him during **all** of these encounters. Of serious concern are the notes from Mr. [REDACTED]’s office visit on March 25, 2019, which clearly demonstrate that he did not understand his parole agent’s instructions about his drug test: **“I told [Mr. [REDACTED]] when I get the results back and if he is clean I will give him an incentive card for groceries. He said he went to the junkyard this weekend looking for a muffler. States he was dirty from the junkyard but is clean today. I told him I meant that his urine needed to be clean meaning no drugs and he laughed.”**

- [REDACTED]: On February 9, 2019, Mr. [REDACTED]’s parole agent met with him after he was released from custody at San Luis Obispo County Jail. The ROS indicates that the agent provided Mr. [REDACTED] with explicit instructions regarding his conditions of parole without a sign language interpreter: “I strapped subject with a GPS device on his left ankle. I gave subject written instructions to come into office on Tuesday at 9:30am and instructions on how to charge his monitor correctly, twice a day for an hour, 12 [hours] apart. Subject signed the written instructions sheet that he understood all instructions.” Because Mr. [REDACTED] has an unknown TABE score, it is not clear whether exchanging written notes is an effective method of communication for him. On February 17, 2019, Mr. [REDACTED] was arrested and booked into San Luis Obispo County Jail due to a dead GPS battery. **This entire 240-minute contact was conducted without a sign language interpreter present.** Notes from the ROS state that the parole agent “gave [Mr. [REDACTED]] a written list of questions asking him why he failed to charge his GPS device.” The agent then attempted to have Mr. [REDACTED] submit a written reply, but he refused.

5. Home/Office Visits

Our review of the ROS logs revealed a number of home and office visits during which a sign language interpreter, including through VRI, was not provided for communications that were critical to the parolee’s ability to comply with his conditions of parole. Specifically, there were a number of interactions in which a parole agent communicated instructions to a parolee or required the parolee to sign forms regarding conditions of parole without a sign language interpreter present and without use of VRI

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
 Nicholas Meyer
 February 11, 2020
 Page 9

technology. These interactions clearly involve “subsequent instructions for a parole agent for which the parolee’s non-compliance may result in a parole hold” for which a sign language interpreter should have been provided. ARP Parole Field Operations Section, p. 3. These examples are attached in **Appendix E**.

- [REDACTED]: On March 15, 2019, Mr. [REDACTED] reported to the parole office, took a urinary analysis test, and signed a “Statement of Admission” form after testing positive for using methamphetamine. Plaintiffs have repeatedly objected to DAPO’s use of the Form 1527. It is especially problematic here. Given that drug testing is an important part of Mr. [REDACTED]’s parole compliance, it is highly concerning that he took a drug test and signed an admission form without a sign language interpreter present to explain it to him first. On March 22, 2019, Mr. [REDACTED] was instructed, via written notes in both English and Spanish, “not to beg for money outside any store anywhere at any time.” **Mr. [REDACTED] has a TABE score of 1.5, so written notes are not an effective method of communication for him.** Similarly, on April 9, 2019 and May 21, 2019, Mr. [REDACTED]’s parole agent used written notes to inform him of his upcoming Containment Team Meeting and Sacramento Community Based Coalition (“SCBC”) Meeting, respectively. Finally, during an office visit on August 23, 2019, DAPO staff failed to use a SLI or VRI services when telling Mr. [REDACTED] “to not be late [to SCBC] for he will go to jail as he must complete his substance abuse class as it was a sanction.” His agent admonished him for ignoring his curfew “since he left the house for 20 minutes last week at 1:00am.”
- [REDACTED]: On April 17, 2019, Mr. [REDACTED] was instructed to report to the parole office for his conduct case conference review. The parole agent documented that apparently Mr. [REDACTED] read the parole agent’s lips when receiving these instructions.
- [REDACTED]: On May 23, 2019, Mr. [REDACTED]’s parole agent conducted a home visit and gave instructions for him to register next Tuesday with the Oxnard police department. Despite written notes being Mr. [REDACTED]’s secondary method of communication, the AOR only read and spoke loudly and slowly when giving him these instructions.
- [REDACTED]: On September 11, 2019, during a visit to the parole office, Mr. [REDACTED] alleged that “the AOR did not provide him an

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 10

interpreter.” Although the parole agent appears to speak sign language and could communicate with Mr. [REDACTED] during other interactions, at that visit, Mr. [REDACTED]’s mother and sister were present, so Mr. [REDACTED] would not have been able to understand the spoken communications between his family members and his agent. The agent should have arranged for an interpreter if he was going to involve the family members in a substantive discussion regarding Mr. [REDACTED]’s compliance with his parole conditions.

6. Use of Written Notes as an Alternate Method of Communication

The ROS logs we reviewed demonstrate that parole agents frequently use written notes as an alternative to sign language interpreters. Although written notes function as a secondary method of communication for *some*, they do not serve as an appropriate method to establish effective communication for *all* DPH parolees. Plaintiffs are particularly concerned about the use of written notes for DPH-SLI parolees with:

- a. No alternative methods of communication other than American Sign Language;
- b. Developmental disabilities and other cognitive or psychiatric disabilities that effect their reading comprehension skills; and
- c. Low or Unknown TABE scores.

The ADA establishes that state entities such as DAPO “must honor the person’s *choice*” of communication method “unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden” *See* U.S. Dep’t of Justice, ADA Requirements: Effective Communication at 6, available at <https://www.ada.gov/effective-comm.pdf> (Jan. 2014) (emphasis added). DAPO should consider—on a case-by-case basis—the parolees’ individual circumstances and needs, before utilizing written notes as an alternative to sign language.

The follow examples set forth below are illustrative of this issue:

- [REDACTED]’ counsel reviewed a total number of thirty-five supervision contacts for Mr. [REDACTED]. **Of these thirty-five contacts, only one encounter included the use of a sign language interpreter to communicate with Mr. [REDACTED]** *See* ROS entry on April 25, 2019. The

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
 Nicholas Meyer
 February 11, 2020
 Page 11

parole agent utilized written notes to communicate with Mr. [REDACTED] in every other instance. **This is extremely concerning because Mr. [REDACTED] has a TABE score of 1.5. He has no alternative communication method listed other than sign language.** Writing notes with Mr. [REDACTED] does not constitute effective communication.

- [REDACTED]: Mr. [REDACTED]'s TABE score is unknown, but his parole agent primarily relied on written notes to communicate with him. The ROS logs note two concerning instances which indicate Mr. [REDACTED] did not understand what his agent conveyed to him via written notes. On July 17, 2019, Mr. [REDACTED] attended an office visit for twenty minutes, during which his parole agent provided him with a copy of his 290 registration and instructed him to report to his HOPE program appointment the following day. On July 30, 2019, during a contact visit, the parole agent asked Mr. [REDACTED] why "he missed his HOPE program appointment, [to] which he replied he did not know about the appointment." **Because attendance for these programs is part of many parolees' conditions of parole, it is crucial that DAPO secure a sign language interpreter or utilize VRI services when informing them of upcoming appointments.**
- [REDACTED]: Mr. [REDACTED] is DD2 and has an unknown TABE score; his written communication skills are poor, as previously noted in Plaintiffs' May 30, 2017 Letter to Defendants. Despite these parameters, Mr. [REDACTED]'s parole agent utilized written notes as a primary method to communicate with him on numerous occasions. *See* ROS entries on January 9, 2019, January 15, 2019, February 14, 2019, February 22, 2019, March 4, 2019, April 11, 2019, May 9, 2019, May 15, 2019, June 10, 2019, June 21, 2019, June 25, 2019, June 27, 2019, July 1, 2019, August 21, 2019, and September 19, 2019.
- [REDACTED]: Plaintiffs' counsel reviewed six of Mr. [REDACTED]'s supervision contacts between the months of June 2019 through August 2019. Despite Mr. [REDACTED] having a TABE score of 2.0, the parole agent relied on written notes in four of the six visits. This is particularly concerning given that these interactions often included instructions to Mr. [REDACTED] regarding his conditions of parole and reminders about his

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 12

upcoming program appointments. *See, e.g.*, ROS entries on June 17, 2019¹, July 19, 2019², and August 22, 2019.³

- [REDACTED]: The ROS from Mr. [REDACTED]' initial interview indicates that "he needs a sign language interpreter and hearing aids to communicate." *See* ROS entry on January 28, 2019. CDCR records likewise state that Mr. [REDACTED]' primary method of communication is sign language, his alternate method is written notes, and his TABE score is 2.6. Nevertheless, the parole agent failed to provide a sign language interpreter for subsequent visits with Mr. [REDACTED], seemingly because Mr. [REDACTED] had said he had some ability to read lips and to speak. *See* ROS entry on January 28, 2019. **Three months later, the agent "clarified" Mr. J. [REDACTED]'s "preferred method of communication," to be that "he prefers to use an SLI."** *See* ROS entry on April 10, 2019. This "[r]equest was noted"; however, **the agent continued to conduct home visits without once providing a sign language interpreter**, either on-site or through VRI, and without any explanation why. *See* ROS entries on April 17, 2019, May 8, 2019, May 16, 2019, June 12, 2019, July 29, 2019, and August 20, 2019. The only ROS entries indicating an interpreter was present arose during Mr. [REDACTED]'s initial interview on January 28, 2019, and a Case Conference Review on May 13, 2019. Importantly, **"reads lips" was neither Mr. [REDACTED]' primary nor secondary means of communication according to CDCR, yet his agent relied on lip-reading for almost every parole interaction recorded**, except those that occurred via telephone.

¹ June 17 2019: 5-minute home visit where agent completed residence/employment verification form (CDCR 1658); administered random urinalysis test; reminded Mr. [REDACTED] to report to the PACT meeting on 6/21/2019; and, gave him information regarding POC appointments.

² July 19, 2019: 18-minute home visit where Mr. [REDACTED]'s agent "reminded parolee that he has a POC appointment at the parole office on 7/13/2019 at 9am."

³ August 22, 2019: 5-minute home visit where parole agent reminded Mr. [REDACTED] of upcoming POC appointment and took random urinalysis sample test.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 13

Plaintiffs request that DAPO produce, if available, any underlying written documents or notes in the aforementioned DPH parolees' field files.

7. Video Remote Interpreting Services

Plaintiffs' review of the ROS logs revealed several problems with DAPO's use of VRI services. Considering DAPO's intention to use VRI for effective communication with DPH class members, Plaintiffs' counsel finds it concerning that these problems consistently occurred.

a. Technological and Connectivity Issues

There were several examples of staff experiencing technological issues when using VRI:

- [REDACTED]: On February 8, 2019, during an office visit, the agent began to use the VRI tablet, "but lost VRI signal." The agent continued the visit by using written notes to communicate with Ms. [REDACTED]. Similarly, on February 25, 2019, during a home visit, the parole agent "attempted to use VRI, [but] tablet shut down and began automatic update." On June 6, 2019, Ms. [REDACTED]'s parole agent once again communicated with her using written notes, "as the VRI tablet [was] not functional," because there was "no connection." Plaintiffs' finds it concerning that staff are encountering issues with connectivity during office visits; the parole office should be a more reliable environment for connecting to the internet and subsequently resolving tech issues that may arise.
- [REDACTED]: During a home visit on September 10, 2019, the agent was not able to use the VRI tablet "due to poor signal."

Plaintiffs' counsel request that DAPO log and track these technological problems on the VRI service reports, a sample of which Defendants produced for us on September 12, 2019. Because the dates on the VRI report only cover ten entries from July 19, 2019 to September 4, 2019, Plaintiffs cannot determine whether DAPO has tracked, in an accurate and timely manner, VRI problems that staff experience during contacts with DPH parolees. We also request that DAPO produce, when available, any updated VRI service reports from the past 12 months.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 14

b. Failure to Train Staff on How and When to Use VRI

There were multiple examples of staff not being able to use VRI because they were either untrained or unfamiliar with the service:

- [REDACTED]: On January 15, 2019, Mr. [REDACTED] agent conducted a home visit lasting twenty minutes. The notes indicate that the VRI tablet was not used because the agent “has not been trained on how to use the tablet.” On May 9, 2019, the agent did not use VRI during a field visit “due to [the tablet] not [being] charged properly.” Written notes were used as an alternate method for effective communication during both contacts, despite the fact that Mr. [REDACTED] has a developmental disability and an unknown TABE score, suggesting communicating through written notes is not effective.
- [REDACTED]: On July 9, 2019, during a home visit, Mr. [REDACTED]’s parole agent “was unable to login to the state-issued laptop for sign language interpreter ... services.” The parole agent proceeded to communicate with Mr. [REDACTED] by speaking slowly and allowing the parolee to read his lips. Per DECS, however, his primary means of communication is ASL.
- [REDACTED]: On February 8, 2019, Ms. [REDACTED]’s parole agent lost signal, preventing her from using the VRI Tablet. Notes indicate that he was unable to use VRI on the laptop because he was not trained on the program: “unable to use CISCO/Desktop; AOR not familiar with program/trained.” The “comprehensive interview” continued using written notes.

DAPO must ensure that staff have sufficient VRI training **before** they attempt to use VRI to communicate with DPH-SLI parolees. This prevents staff from having to rely on written notes, or alternate communication methods, when relaying important information, reminders, and instructions regarding DPH class members’ conditions of parole. Staff should also be trained on how to troubleshoot technological problems that may arise when operating VRI.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 15

c. Use of Wrong Service for Remote Interpreters, Potentially Violating Federal Law

The field files indicated some confusion with respect to the type of remote interpreter to use. In the United States, interpreters can be accessed remotely in two different ways: Video Remote Interpreting (VRI); and Video Relay Services (VRS). Although the names and equipment involved are similar, using VRS incorrectly carries legal consequences. It is imperative that DAPO recognize the difference and train its agents to use VRI through state-provided equipment *only*.

VRI is a service designed to be used as DAPO's policy states it will be used: to ensure effective communication between a hearing person and a deaf person located in the same room, typically when it is impractical or impossible to provide an interpreter on site. DAPO has a contract directly with a VRI provider to pay by the minute for interpreting services. Private individuals such as parolees are extremely unlikely to have their own contract for such services. Plaintiffs' counsel are not aware of any agency that provides free VRI services for deaf individuals to use with parties of their own choosing.

VRS is a service designed for different use: to ensure that deaf and hard of hearing individuals can use telephone services in a manner functionally equivalent to individuals without disabilities. The federal government has a contract with private providers, who are reimbursed by the minute for their services. Deaf individuals routinely gain free access to VRS equipment and the federal government alone pays for these interpreting services. Deaf and hearing individuals alike may use VRS to place and receive telephone calls. There is no concern about using VRS in this manner.

VRS must *not* be used as a substitute for sign language interpreters. To do so violates federal law. *See* Sorenson VRS, Sorenson at Work Frequently Asked Questions ("It is a violation of federal law to use VRS for calls between individuals in the same room."), available at https://www.sorensonvrs.com/work_faqs, last accessed February 7, 2020. VRS interpreters are trained to pay attention to whether the deaf and hearing person are in the same room, and to refuse to interpret if they are. However, interpreters do not always notice that this is happening. The onus remains with the individuals who called into VRS to ensure their own use complies with federal law.

The field files indicated some attempts on the part of parole agents to use VRS instead of VRI:

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 16

- [REDACTED]: During a parole office visit on March 21, 2019, the ROS notes “subject was approved to have tablet that was issued to him through agency for deaf clients to assist him with ASL video” and that “video ASL relay interpreter used.” *See* ROS entry on March 21, 2019. Most likely, this describes using VRS for communication between two individuals in the same room, in violation of federal law. Plaintiffs’ counsel are not aware of any Deaf services agency that provides free VRI services, and are aware of many that provide free access to VRS.
- [REDACTED]: During a home visit on February 25, 2019, Mr. [REDACTED] apparently called “the SLI number” from his personal “phone/video device,” but “they refused to interpret because AOR was in the same room.” *See* ROS entry on February 25, 2019. Most likely, this “personal SLI number” was VRS, and the interpreter refused to interpret to avoid supporting a violation of federal law.

To avoid violating federal law, the DAPO agent must be trained to say that it is illegal to use the deaf person’s personal device and they must use DAPO’s VRI tablet, an on-site interpreter, or some other means of communicating that provides effective communication to the parolee. Not all deaf people are aware of the difference between VRS and VRI. In particular, many deaf people do not know that it is illegal to use VRS to interpret a conversation with a person who is in the same room. This is likely particularly true of deaf individuals who have recently completed a long prison term and may not be up to date on the technologies that are currently available. Parolees should not be punished for trying to use VRS in this manner. And DAPO should train agents to freely accept and place telephone calls via VRS; this restriction applies only when the agent and the deaf person are in the same room.

d. “Safety” Concerns as Reason Not to Use VRI

The ROS logs revealed that even when there was an opportunity to use VRI during home visits, DAPO staff often did not do so, citing “safety” concerns. Plaintiffs’ counsel found the explanations for these concerns either unsatisfactory or nonexistent—for example, declining to use VRI because there were other people around. Such “safety” concerns can be addressed by moving the interview to a private location, away from the people or the environment causing the concern. Abandoning VRI in favor of written notes should be a method of last resort, used only when all other ways of modifying the encounter to improve safety have failed.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
 Nicholas Meyer
 February 11, 2020
 Page 17

Of particular concern, for both Mr. [REDACTED] and Mr. [REDACTED], their parole agents *never once successfully used VRI*. Mr. [REDACTED]'s parole agent conducted three visits to his home, which he shared with his mother and brother, deeming the environment "unsafe" each time. Mr. [REDACTED]'s agent visited him at his home or transient location a total of ten (10) times, each time finding the surroundings unsafe for VRI. The only time the agent appeared to use VRI with Mr. [REDACTED] arose during an office visit on March 21, 2019. However, the agent's description suggests she inadvertently used VRS instead of VRI, violating federal law in the process. *See Section 7.c, supra*. This pattern suggests the agent chose not to use VRI because she was not comfortable with the equipment, not because the environment posted legitimate safety concerns. DAPO must ensure that agents receive adequate training to ensure they are comfortable with VRI and do not deny parolees effective communication due to a lack of training.

Examples of these instances are as follows, and are collected in **Appendix F**:

- [REDACTED]: On June 7, 2019, during Mr. [REDACTED]'s initial parole interview, the "AOR explained with assistance from [SLI] that an in-person SLI will be scheduled for all scheduled office visits, and an SLI via VRI will be utilized for all home visits when safe to do so." However, the parole agent *never used an in-person SLI or VRI services during home visits*, noting safety concerns each time. *See* ROS entries on June 17, 2019 ("Tablet was not used due to safe [sic] concerns"); July 19, 2019 ("AOR did not use tablet due to not being safe to do so"); August 22, 2019 ("AOR did not use the tablet to conduct home visit due to surroundings not being safe"). Importantly, these visits took place inside Mr. [REDACTED]'s family home, where he lived with his mother and brother. The agent never specified why Mr. [REDACTED]'s mother and brother posed any kind of safety concern, nor why she could not find a private room to safely have a conversation with Mr. [REDACTED] using VRI.
- [REDACTED]: The field file for Mr. [REDACTED] repeatedly indicated that the Agent did not use VRI because the environment in which Mr. [REDACTED] lived was not "safe." *See* ROS entries on January 15, 2019 (VRI not used at Mr. [REDACTED]'s home due to roommates' potential for unpredictable behavior), February 14, 2019 (VRI not used at same location), February 22, 2019 (VRI not used at the same location), March 4, 2019 (VRI not used at the same location), April 11, 2019 (VRI not used at the same location). Once Mr. [REDACTED] left that location, he became transient, and the parole

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
 Nicholas Meyer
 February 11, 2020
 Page 18

agent continued not to use VRI due to alleged safety concerns. *See* ROS entry on May 15, 2019 (“Tablet was not used as location was not considered safe. Agent needed to be aware of surroundings.”). When Mr. ██████ ultimately found a new place to live, his residence again was considered unsafe for VRI. *See* ROS entry on August 21, 2019 (“Tablet not used as subject lives in housing with several men on parole and Probation, including sex offenders, unsecured environment.”), September 18, 2019 (VRI not used at same location), June 27, 2019 (VRI not used at same location), July 1, 2019 (VRI not used at same location). In fact, Mr. ██████’s agent *never once successfully used VRI with him*. The only ROS entry appearing to reflect successful VRI use describes Mr. ██████ showing the agent how to access an interpreter through his personal device—likely meaning the two ended up using VRS, in violation of federal law. *See* ROS entry on March 21, 2019.

- ██████: The ROS for Mr. ██████ indicated that on July 15, 2019, the parole agent chose not to use VRI because there “were several other individuals standing outside.” *See* ROS entry on July 15, 2019. It was unclear why the agent could not simply move the conversation inside Mr. ██████’s residence.
- ██████: The field file for Ms. ██████ indicated that on February 27, 2019, the parole agent chose not to use VRI first because the encounter took place in a CVS, and thereafter, “due to unknown people around the apartment complex.” *See* ROS entries on February 27, 2019. It was unclear why the agent could not conduct the interview inside the car he had used to drive Ms. ██████ home from CVS, avoiding these safety concerns. In all subsequent visits, however, the agent used VRI for communication.

In the event that the agent believes there is no way to modify the setting to make it safe to use VRI, Plaintiffs’ counsel recommend that staff limit the content of their conversations with DPH parolees to avoid discussing any substantive information about their conditions of parole. Any such conversation that takes place through written notes should later be repeated with an SLI present (either on-site or through VRI), to ensure that communication is effective.

Plaintiffs note that DAPO staff also often use VRI appropriately. For example, parole agents typically attempted to use VRI during home or office visits, as opposed to

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Meyer
February 11, 2020
Page 19

during due process encounters. **These restrictions on VRI use are important to follow, due to the unreliability of VRI, and the risk that the agent and parolee will have to resort to communicating through written notes.** However, there were at least two occasions on which a parole agent used VRI for due process encounters:

- [REDACTED] On February 21, 2019, the ROS indicates that Mr. [REDACTED] verbally admitted to drinking alcohol, refused to sign an admission, and refused to take an anti-narcotics test. *See* ROS entry on February 21, 2019. The agent issued consequences for this refusal. On March 5, 2019, the ROS indicates a similar interaction with Mr. [REDACTED] in which he again verbally admitted to drinking alcohol, refused to sign an admission, and refused an anti-narcotics test. *See* ROS entry on March 5, 2019. The agent issued consequences again.

Due to the due process implications of the encounter, the agent should have scheduled a meeting with Mr. [REDACTED] and an on-site sign language interpreter to make sure he fully understood the implications of his refusals before issuing sanctions.

Plaintiffs' counsel remain concerned that DAPO's current procedures regarding VRI make it too unreliable to establish effective communication with DPH parolees when an on-site interpreter is not available. Plaintiffs have raised similar concerns in previous tour reports. *See* Caroline Jackson's January 30, 2020 Report re Fresno 2, 5, 7 and Central GPS Parole Units. We will continue to monitor DAPO's use of VRI closely for the issues identified in the above sections.

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Russa Boyd
Nicholas Meyer
February 11, 2020
Page 20

Overall, DAPO has made improvements in providing on-site sign language interpreters for due process encounters with deaf parolees (*i.e.* during initial parole interviews and Containment Team Meetings). However, Plaintiffs' counsel continues to observe significant deficiencies in DAPO's efforts to establish effective communication with DPH parolees requiring sign language. **Please include the allegations mentioned herein on DAPO's employee non-compliance logs.**

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Jenny S. Yelin

Jenny S. Yelin
By: Senior Counsel

/s/ Caroline E. Jackson

By: Caroline E. Jackson

JSY:CEJ:eh

Encl: Appendices A-F

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