

1 DONALD SPECTER – 083925
 RITA K. LOMIO – 254501
 2 MARGOT MENDELSON – 268583
 PRISON LAW OFFICE
 3 1917 Fifth Street
 Berkeley, California 94710-1916
 4 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704
 5
 MICHAEL W. BIEN – 096891
 6 GAY C. GRUNFELD – 121944
 PENNY GODBOLD – 226925
 7 MICHAEL FREEDMAN – 262850
 ROSEN BIEN
 8 GALVAN & GRUNFELD LLP
 101 Mission Street, Sixth Floor
 9 San Francisco, California 94105-1738
 Telephone: (415) 433-6830
 10 Facsimile: (415) 433-7104
 11 LINDA D. KILB – 136101
 DISABILITY RIGHTS
 12 EDUCATION & DEFENSE FUND,
 INC.
 13 3075 Adeline Street, Suite 201
 Berkeley, California 94703
 14 Telephone: (510) 644-2555
 Facsimile: (510) 841-8645

CALIFORNIA OFFICE OF THE
 ATTORNEY GENERAL
 XAVIER BECERRA
 Attorney General of the State of California
 MONICA ANDERSON
 Senior Assistant Attorney General
 DAMON G. MCCLAIN – 209508
 Supervising Deputy Attorney General
 JOANNA B. HOOD – 264078
 Supervising Deputy Attorney General
 TRACE O. MAIORINO – 179749
 Deputy Attorney General
 JEREMY M. DUGGAN – 229854
 Deputy Attorney General
 ANTHONY J. TARTAGLIO – 282286
 Deputy Attorney General
 SEAN LODHOLZ – 299096
 Deputy Attorney General
 1300 I Street, Suite 125
 P.O. Box 944255
 Sacramento, California 94244-2550
 Telephone: (916) 210-7343
 Facsimile: (916) 324-5205

15 Attorneys for Plaintiffs

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19

20 JOHN ARMSTRONG, et al.,
 21 Plaintiffs,
 22
 23 v.
 24 GAVIN NEWSOM, et al.,
 25 Defendants.

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 The COVID-19 pandemic has affected all aspects of prison and parole operations.
 8 As of today, 3,403 incarcerated people have tested positive for COVID-19, and 18 people
 9 have died while in CDCR custody.² The parties are meeting regularly to discuss the safety
 10 and well-being of *Armstrong* class members and are working together to conduct virtual
 11 tours of prisons in order to facilitate *Armstrong* monitoring and maintain transparency
 12 while adhering to protocols designed to safeguard the health of incarcerated people, staff,
 13 and visitors. Plaintiffs believe that such tours are necessary in order to continue to perform
 14 their monitoring and enforcement role during this critical time.

15 *Plaintiffs’ Statement*

16 The COVID-19 pandemic has had a devastating impact on people with disabilities,
 17 who are particularly at risk of getting very sick or dying from the disease.³ The numbers
 18 of people infected in CDCR custody are expected to continue to climb. *Armstrong* class
 19 members are overrepresented in the number of people who have died from the disease;
 20 class members account for less than ten percent of the prison population but account for
 21 over half of the current deaths attributed to COVID-19. Class members also have been
 22 particularly impacted by program changes and restrictions. For example, Defendants have
 23 stopped all transfers of *Armstrong* class members with impacting placement DPP codes,

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

26 ² See CDCR, Population COVID-19 Tracking,
<https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited June 19, 2020);

27 ³ See CDC, Coronavirus Disease 2019: People with Disabilities,
[https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html)
 28 [disabilities.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html) (last visited Apr. 14, 2020).

1 resulting in some class members currently living in housing that is not accessible.
2 Defendants also have closed libraries, leaving class members unable to access the auxiliary
3 aids that they need to accommodate their disabilities and that are available only in the law
4 libraries.

5 Over three months into the pandemic, Defendants have failed to take timely,
6 proactive, and comprehensive action to ensure that people with disabilities are properly
7 accommodated. Notwithstanding the parties' telephonic meetings, Defendants have failed
8 to take meaningful action to address significant areas of concern, several of which are
9 outlined below. Unless Defendants resolve these issues soon, Plaintiffs will seek the
10 court's assistance, either through regular status conferences, as are occurring in *Plata v.*
11 *Newsom*, No. 01-1351 JST (N.D. Cal.), and *Coleman v. Newsom*, No. 90-0520 KJM DB
12 (E.D. Cal.), or through more formal enforcement litigation.

13 Inaccessible Housing

14 *Armstrong* class members have been and continue to be housed in inaccessible cells
15 and units due to movement restrictions and isolation and quarantine practices. In a June 5,
16 2020, letter, attached hereto as **Exhibit A**, Plaintiffs' counsel raised numerous concerns
17 regarding the failure to appropriately house class members at California Institution for
18 Men ("CIM"), a prison that has experienced (and continues to experience) a significant
19 COVID-19 outbreak. See **Exhibit A**, Letter from Rita Lomio & Megan Lynch, Plaintiffs'
20 Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (June 5, 2020). Specifically,
21 bed planning decisions were made to house class members impacted by COVID-19 in
22 inaccessible locations while they were pending test results, during isolation and quarantine,
23 and following recovery from COVID-19.

24 Accessible housing, including wheelchair-accessible cells and lower bunk, lower
25 tier beds, have always been in short supply in California prisons. As Defendants' response
26 to the outbreak at CIM shows, Defendants simply are not able to meet their legal
27 obligations with such narrow margins during a pandemic. And Defendants cannot
28 unilaterally suspend their obligations under *Armstrong* and the Americans with Disabilities

1 Act during this time, as they appear to have done at CIM. People must be moved to
2 accessible locations, including for medical isolation and quarantine, and, if there are not
3 sufficient accessible locations available, more must be created or people must be released
4 from custody.

5 In Plaintiffs' June 5, 2020 letter, and during telephonic meetings on June 5 and 11,
6 2020, Plaintiffs requested Defendants' written plans for all designated prisons regarding
7 how they will accommodate *Armstrong* class members in the event of the outbreak,
8 including where class members with impacting placement disabilities will be housed
9 during quarantine and isolation, pending test results, and when released from any of those
10 placements. Defendants stated that no such plans existed but said they would provide
11 something to Plaintiffs. They have not yet done so. If Defendants do not provide written
12 plans soon and engage in discussion with Plaintiffs, Plaintiffs expect to seek assistance
13 from the court.

14 Regarding CIM specifically, Plaintiffs' counsel has requested, since March 2020,
15 information about the placement and accommodation of class members during the
16 pandemic. As of May 12, 2020, there were 661 class members housed at CIM, including
17 194 class members with impacting-placement mobility disabilities (of whom at least 83
18 use wheelchairs), 131 class members designated DLT, 17 class members designated DPV,
19 and ten people designated DPH (of whom eight use sign language as their primary form of
20 communication. As of the morning of June 18, 2020, there have been 824 confirmed cases
21 (both resolved and unresolved) of COVID-19 in incarcerated people at CIM, with over 150
22 *Armstrong* class members infected with the virus. (According to Defendants' monthly
23 population report, CIM housed 3,098 people as of May 31, 2020.) Fifteen people who
24 were housed at the institution have died as a result of COVID-19. Of those, nine were
25 *Armstrong* class members.

26 We have also not received timely, specific, or substantive responses to our requests
27 for information, including related to:

- 28
- where *Armstrong* class members are housed at CIM after they have been

1 exposed to COVID-19, when they are pending test results, when they receive
2 test results (either confirmed or not confirmed), and when they are recovered
3 from the disease;

- 4 • the policies, practices, and procedures for housing class members in an
5 inaccessible area;
- 6 • the accessibility features in areas not designated to accommodate people with
7 certain disabilities (such as CIM's Facility C), and newly opened living areas
8 (such as Oak Hall, the gyms, and tents on the yard);
- 9 • how people with wheelchairs and walkers are accommodated during
10 programs, services, and activities, including meal distribution and
11 temperature checks in the living areas since program changes;
- 12 • repair and maintenance of accessible showers and toilets in many of the
13 previously decrepit units at CIM; and
- 14 • implementation and modification of the ADA worker program during the
15 pandemic.

16 Plaintiffs raised these concerns on May 6, 2020, and Defendants did not respond
17 until over a month later, on June 11, 2020—emblematic of the delays Plaintiffs have
18 experienced in getting critical information from Defendants. Defendants have not yet
19 provided a response to Plaintiffs' June 5, 2020 letter, which reports serious and ongoing
20 failures to safely house and accommodate *Armstrong* class members. Plaintiffs spoke with
21 ADA staff at CIM on June 11, 2020, and soon will be sending a letter to Defendants
22 outlining continued concerns at that institution. That these issues persist three months into
23 the pandemic, and Defendants' failure to timely respond to Plaintiffs' many attempts to
24 share information and engage them in discussion, strongly suggests that Defendants do not
25 understand the gravity of the situation and are unable to address the problems on their own.

26 To get accurate and up-to-date information, and to adequately monitor and protect
27 the rights of the class, Plaintiffs have requested a monitoring tour of CIM.

28 Notwithstanding the court expert's involvement, Defendants have barred Plaintiffs'

1 counsel's access to the many class members held in isolation or quarantine, including those
2 in inaccessible placements, those who are Deaf and use sign language to communicate, and
3 those who are blind. If this access to counsel issue is not resolved soon, Plaintiffs will
4 seek formal resolution by the court expert and then, if necessary, judicial relief.

5 ADA Workers

6 Defendants depend heavily on ADA workers to meet the requirements of
7 *Armstrong* and the Americans with Disabilities Act. The workers are incarcerated people
8 who have been designated to help people with disabilities and who are responsible for
9 everything from pushing people in wheelchairs to and from appointments, to guiding blind
10 people to the dining hall and holding their meal trays, to reading and writing for people
11 who are unable to do so themselves.

12 Plaintiffs have several concerns related to the ADA worker program during the
13 COVID-19 pandemic. First, class members across the prison system have much more
14 limited access to ADA workers now that movement inside prisons has been restricted.
15 One class member at CIM, for example, who is a full-time wheelchair user and is infected
16 with the novel coronavirus, reported that he requires assistance with ambulation as a result
17 of his disability, including to and from the shower and toilet areas, and that because he is
18 in medical isolation housing, he is unable to get assistance from ADA workers. He also
19 reported that staff members, likely fearful for their own health and safety, are trying to
20 limit their direct contact with people like him, who have COVID-19.

21 Second, class members and ADA workers both risk exposure to the virus when they
22 come in close contact with one another. For that reason, Defendants must act to ensure not
23 only that people with disabilities have access to the help they need, but also that, to the
24 extent possible, the number of different ADA workers that help a particular person is
25 limited, to risk unnecessary exposure. This may be accomplished by, for example, pre-
26 assigning ADA workers to help certain people, and ensuring that those assignments remain
27 consistent. Plaintiffs also have requested that hospital-grade personal protective
28 equipment ("PPE") be provided to anyone, including ADA workers and staff members,

1 providing close-contact assistance to class members.

2 The risk of serious illness and death is not hypothetical; before Melford Henson, a
3 65-year-old class member, died from COVID-19 on May 6, 2020, he told his family that
4 he believed he contracted the disease from a hard-of-hearing friend also incarcerated at
5 CIM, whose wheelchair Mr. Henson would push and to whom Mr. Henson would repeat
6 conversations so his friend would not feel so isolated due to his hearing disability.⁴

7 Blind and Low Vision Class Members

8 Plaintiffs are deeply concerned by Defendants' apparent failure to effectively
9 communicate critical COVID-19-related information to blind and low vision class
10 members. For example, Defendants have stated without explanation that they have not
11 (and will not) provide educational COVID-19 material in braille. And, over three months
12 into the pandemic, Defendants still do not appear to have a clear plan regarding how
13 written information, including COVID-19 pamphlets and posters, will be communicated to
14 blind and low vision class members. Blind class members have reported to Plaintiffs'
15 counsel that they were unaware of the information about COVID-19 and how to protect
16 themselves that is posted on the walls. They also reported that they did not know hand
17 sanitizer dispensers had been installed in the prison until they inadvertently bumped into
18 them. *See, e.g., Exhibit B*, Letter from Rita Lomio & Megan Lynch, Plaintiffs' Counsel,
19 to Tamiya Davis, CDCR Office of Legal Affairs (Apr. 23, 2020).

20 Blind class members also have reported that they are isolated during this pandemic,
21 without access to accessible recreational materials or auxiliary aids in the law library, such
22 as text-to-speech and magnification equipment. *See, e.g., Exhibit C*, Letter from Rita
23 Lomio & Megan Lynch, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal
24 Affairs (May 8, 2020). As noted previously, blind class members statewide have higher

25 _____
26 ⁴ *See* Jason Fagone, In California's crowded prison system, COVID-19 takes the
27 vulnerable, S.F. Chron. (May 17, 2020), <https://www.sfchronicle.com/bayarea/article/In-California-s-crowded-prison-system-COVID-19-15273236.php>; Julia Carmel, Those
28 We've Lost: Melford Henson, Construction Foreman, Dies at 65, N.Y. Times (May 21,
2020), <https://www.nytimes.com/2020/05/19/obituaries/melford-henson-dead-coronavirus.html?>

1 rates of serious mental health concerns, including depression and anxiety. *See* Doc. 2936
2 at 5 n.5. At Defendants’ request, Plaintiffs made several recommendations related to
3 accessible recreational materials, but have not received a response for almost two months,
4 and it appears no action has been taken. *See Exhibit D*, Letter from Rita Lomio,
5 Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Recreational
6 Materials for Blind and Low Vision Class Members (Apr. 23, 2020). In the meantime,
7 Defendants refuse to have staff check in with blind class members to see if they need any
8 particular disability accommodations, including those located only in the law library.

9 Deaf and Hard of Hearing Class Members

10 Plaintiffs remain concerned with the lack of content—both related to COVID-19
11 and for recreational and religious purposes—in captioning and sign language. *See* Doc.
12 2936 at 2-3. Deaf class members have reported to Plaintiffs’ counsel that they feel
13 isolated, that they do not have sufficient access to information about COVID-19 in sign
14 language, and that opportunities to communicate with staff with a sign language interpreter
15 present have been severely curtailed during the pandemic. *See Exhibit E*, Letter from Rita
16 Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs,
17 Accommodations for Deaf Class Members During the COVID-19 Pandemic (May 6,
18 2020). Plaintiffs are disappointed by the lack of progress in addressing these important
19 issues over three months into the pandemic. Although Defendants had represented to
20 Plaintiffs that future CDCR-produced videos would be in ASL, the most recent video, a
21 “message from the population about proper mask usage,” which was disseminated on June
22 8, 2020, did not have ASL.

23 Intake from County Jails

24 Notwithstanding steps Defendants have taken to reduce population density, they
25 reopened to some intake from the county jail population during the week of May 26, 2020.
26 Defendants will be paying a per diem fee to county jails to retain the remainder of the
27 people identified for intake to CDCR’s prison. While Defendants maintain that the
28 number of people entering its prisons from county jails will be minimal, it will

1 nevertheless increase the population and thus make more difficult efforts to ensure
2 physical distance between people in prison. Plaintiffs remain extremely concerned about
3 the impact of opening intake on *Armstrong* class members who already have a limited
4 housing options as a result of their disabilities. Further, not all Reception Centers have
5 accessible placements and it remains unclear, if intake is open, how Defendants will ensure
6 that class members with impacting placement disabilities are safely and expeditiously
7 transferred to accessible Reception Centers during the pandemic. Interviews with class
8 members at both Reception Centers that Defendants plan to use, Wasco State Prison and
9 North Kern State Prison, have revealed wide-spread lapses in sanitation, social distancing
10 and use of protective equipment. *See Exhibit F*, Letter from Caroline Jackson, Plaintiffs’
11 counsel to Tamiya Davis, CDCR Office of Legal Affairs, COVID-19 Precautions at NKSP
12 (April 17, 2020); *Exhibit G*, Letter from Ben Bien-Kahn, Plaintiffs’ counsel, to Tamiya
13 Davis, CDCR Office of Legal Affairs, Request for Virtual Monitoring Tour of WSP
14 (May 22, 2020). As noted above, Plaintiffs have requested a virtual tour at CIM and also
15 at Wasco, where intake is about to start. The parties will continue to work together to
16 address these issues during weekly calls.

17 Parole Holds and Jail Crowding

18 The parties are also engaged in ongoing discussions concerning Plaintiffs’ questions
19 about DAPO’s handling of parole holds and the crowding of jails those holds create. *See*
20 *Ex. C to Doc. 2936*. Plaintiffs are also concerned about accommodations for the additional
21 parolees whom Defendants have agreed to parole early, as discussed in more detail below.
22 Plaintiffs’ counsel has requested that Defendants take steps to decrease the number of days
23 that class members are housed in county jails on parole holds, in an effort to decrease jail
24 crowding during the pandemic. Defendants disagree that issues regarding the effects of
25 COVID-19 on parolees are specific to *Armstrong* class members, and have referred
26 COVID-19 issues to be handled by DAPO’s general operations legal team. The parties
27 have agreed to meet every three weeks to discuss these issues.

28

1 *Defendants' Statement*

2 Defendants are sensitive to the needs of inmates and parolees at higher risk of
3 severe effects from COVID-19, but note that “[d]isability alone may not be related to
4 higher risk for getting COVID-19 or having severe illness. Most people with disabilities
5 are not inherently at higher risk for becoming infected with or having severe illness from
6 COVID-19.” See CDC, Coronavirus Disease 2019: People with Disabilities,
7 [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html)
8 [disabilities.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html) (last visited Jun. 3, 2020)

9 Defendants strongly object to Plaintiffs’ contention that Defendants “have failed to
10 take timely, proactive, and comprehensive action to ensure that people with disabilities are
11 properly accommodated.” To the contrary, Defendants have worked tirelessly to provide a
12 comprehensive and proactive response to the unprecedented challenges caused by the
13 pandemic to ensure that class members are accommodated, and to ensure the safety and
14 security of all incarcerated people, whether class members or not. Plaintiffs’ purported
15 “suggestion” that Defendants “do not understand the gravity of the situation and are unable
16 to address the problems on their own,” is misplaced, unfair, and fails to appropriately
17 recognize Defendants’ significant and comprehensive efforts to contain and minimize the
18 effects of an unprecedented, global pandemic on the people housed in its institutions, staff,
19 and visitors. To the extent possible, Defendants have provided weekly telephone
20 conferences to share up-to-the-minute information, address Plaintiffs’ concerns, and
21 maintain a robust means of communication to obviate the need for judicial intervention
22 and to conserve valuable resources that could be put to better use elsewhere. Specifically,
23 Defendants have taken steps to increase opportunities for social distancing by reducing
24 population density, including by pausing intake, advancing release to parole or community
25 supervision of some people who were scheduled to be released within 60 days, and moving
26 some people from dorms to celled housing. Defendants are working on a plan to further
27 reduce the inmate population, and those plans will be announced soon. Defendants are
28 considering additional steps, including converting other areas in the prisons, such as

1 gymnasiums, into living areas. The sufficiency of Defendants' efforts is the subject of
2 active litigation in *Plata v. Newsom*, No. 01-1351 JST (N.D. Cal.) and *Coleman v.*
3 *Newsom*, No. 90-0520 KJM DB (E.D. Cal.). The parties will continue to discuss how any
4 changes in housing and restrictions on movement will affect *Armstrong* class members.

5 Defendants have made efforts to educate the incarcerated population about
6 COVID-19, preventive measures, and program changes in a variety of ways, including
7 through Centers for Disease Control and Prevention (CDC) videos, regularly broadcasting
8 video messages from Secretary Diaz, CCHCS-produced videos, written flyers, and posters.
9 Defendants agree that such information should be provided in an accessible format to
10 *Armstrong* class members who have barriers to effective communication, such as those
11 with vision and hearing impairments. We have begun the weekly meetings with deaf class
12 members to communicate important COVID-19 information.

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

25 On June 11, 2020 Defendants responded to Plaintiffs' concerns specific to CIM,
26 CDCR's response addressed accessibility features and temporary housing for class
27 members. Defendants advised Plaintiffs on June 11, 2020, Department of Adult
28 Institutions Director Connie Gipson had already ordered each prison to develop, and

1 submit to headquarters, a plan to ensure that class members will be appropriately housed in
2 the event of a COVID-19 outbreak at the prison. Under this directive, each prison
3 submitted a plan that ensures class members will be appropriately housed if those class
4 members must be placed in quarantine or isolation due to the pandemic. These plans were
5 due on June 12, 2020. CDCR carefully reviewed each plan and worked with the prisons to
6 ensure that its respective plan adequately addresses the appropriate concerns in the event
7 of an outbreak. These plans were provided to Plaintiffs on June 19, 2020. Defendants
8 anticipate that these completed plans will address Plaintiffs' concerns and obviate any need
9 for judicial intervention.

10 Defendants disagree that the issues raised by Plaintiffs regarding the effects of
11 COVID-19 on parole processes are specific to *Armstrong* class members, and have
12 referred COVID-19 issues to be handled by DAPO's general operations legal team.

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

14 *Plaintiffs' Statement*

15 Plaintiffs' counsel has presented evidence of a hostile environment at some
16 institutions that discourages people from asking for disability accommodations and
17 discriminates against people with disabilities. Plaintiffs' counsel has also documented
18 allegations of widespread abuse and violations of the rights of people with disabilities.⁵
19 On February 28, 2020, Plaintiffs' counsel filed a Motion to Stop Defendants from
20 Assaulting, Abusing and Retaliating against People with Disabilities at R.J. Donovan
21 Correctional Facility ("Motion"). *See* Doc. 2922. Although that Motion originally
22 focused on misconduct at RJD, the issues are not limited to that prison. Plaintiffs' counsel
23 has sent Defendants in *Armstrong* and *Coleman* numerous allegations of excessive or
24 improper use of force and other staff misconduct at multiple other prisons. *See* Doc. 2910
25 at 1-2. On June 3, 2020, Plaintiffs' counsel filed a statewide Motion to Stop Defendants
26 from Assaulting, Abusing and Retaliating against People with Disabilities. *See* Doc. 2948.

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

1 In addition to the overwhelming evidence submitted in support of Plaintiffs' February 28,
2 2020, motion, Plaintiffs submitted an additional nineteen declarations from class members
3 at RJD and thirty-nine declarations from people with disabilities at LAC, CCI, COR,
4 KVSP, and SATF, that reveal conduct of the same horrible quantity and quality as at RJD
5 in their June 3, 2020, motion. *See* Doc. 2948-2. The evidence shows a clear connection
6 between the violence and abuse enacted by staff at multiple prisons and the inability of
7 class members to obtain disability accommodations from staff.

8 Defendants' continued insistence that the issues raised in Plaintiffs' Motion and
9 elsewhere do not "necessarily implicate the *Armstrong* class" are misplaced. As outlined
10 in detail in the Motion, the failure of CDCR to attempt to collect evidence regarding
11 allegations of misconduct through the installation of cameras, and the failure to control or
12 discipline officers' brutality towards people with disabilities has created an atmosphere of
13 fear and retaliation. Until CDCR installs cameras and improves its disciplinary process
14 and culture statewide, people with disabilities, including *Armstrong* class members, will be
15 discriminated against in California prisons. Unfortunately, the Governor's May Revise of
16 California's budget removed funding for even the narrow set of cameras CDCR agreed
17 were necessary. *See* [http://www.ebudget.ca.gov/2020-](http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/PublicSafety.pdf)
18 [21/pdf/Revised/BudgetSummary/PublicSafety.pdf](http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/PublicSafety.pdf) at 87.

19 Defendants assert that they are taking steps to address problems through the
20 adoption of a new process for handling staff misconduct grievances, the Appeal Inquiry
21 Management Section ("AIMS"). While Plaintiffs commend this effort, multiple
22 shortcomings have been identified in AIMS including that the process does not include all
23 allegations of use of force, nor allegations raised by third parties, and that the hiring
24 authority retains too much control in the process. These shortcomings have been raised
25 with Defendants numerous times, including during a March 2, 2020, legislative hearing
26 where legislators asked Defendants to submit revised proposed regulations addressing
27 these issues. Nevertheless, Defendants proceeded with the adoption of the regulations,
28 without addressing these issues. Plaintiffs' objections to AIMS process are set forth in a

1 May 5, 2020 letter, attached hereto (with Exhs. B & C only) as **Exhibit H**. AIMS alone
2 will not resolve the longstanding problem throughout CDCR of abuse of people with
3 disabilities and other vulnerable populations by staff members as outlined in detail in
4 Plaintiffs' Motion. Cameras are necessary. Investigations must be improved. The
5 disciplinary process must ensure that staff members are held accountable. Bias against
6 incarcerated people throughout the staff misconduct process must be eliminated and, until
7 it is eliminated, must be checked through additional oversight. *See* Doc. 2922.

8 The parties continue to have a dispute about which allegations of misconduct should
9 be placed on *Armstrong* accountability logs. For example, the majority of the staff
10 misconduct issues raised by class members at RJD that affirmatively allege a close nexus
11 between the misconduct and the disability were not included in the *Armstrong*
12 accountability process. This includes an allegation that staff misconduct arose as a direct
13 result of the class member's participation in the Joint Audit process. Defendants' ongoing
14 resistance to include such allegations as part of the *Armstrong* accountability process is
15 only further evidence that Court intervention is necessary and that Defendants are
16 unwilling to take steps to eliminate longstanding problems.

17 *Defendants' Statement*

18 Defendants take all allegations of staff misconduct seriously and are committed to
19 investigating and taking appropriate remedial action where warranted. Defendants
20 generally accept the Inspector General's findings regarding the staff-complaint process,
21 and believe that they have addressed them by developing a new framework for handling
22 administrative grievances concerning staff misconduct. This includes organizational
23 changes and staff training to improve upon and address issues identified by the Inspector
24 General. Defendants have formed a new Appeal Inquiry Management Section (AIMS)
25 unit, under the umbrella of the Office of Internal Affairs (OIA) and developed regulations
26 to change CDCR's appeals and grievance process. AIMS is primarily responsible for
27 completing allegation inquiries regarding allegations against staff submitted through the
28 grievance process, which, if true, would meet the definition of staff misconduct, but for

1 which the authority reviewing the inmate grievance does not believe that misconduct
2 occurred. This new section significantly changes staff-misconduct inquiries by taking the
3 local investigative services unit and supervisory staff out of the inquiry process for most
4 allegations of staff misconduct and places the responsibility with non-institution staff from
5 the OIA. The new appeals regulations were finalized and were implemented on an
6 emergency basis on June 1, 2020. After implementation of the regulations, CDCR will
7 promptly begin the process of turning the emergency regulations into permanent
8 regulations. Training has also been provided to necessary staff on implementation of the
9 new regulations.

10 Although not part of the emergency regulations, the new framework for handling
11 grievances concerning staff misconduct also includes an auditing process that will
12 eventually be incorporated into the Department Operations Manual (DOM) and related
13 policy memorandums. The Office of Appeals will be conducting field reviews of
14 Institutional Grievance Offices on a regular basis. In addition, CDCR plans for the Office
15 of Audits and Court Compliance to conduct audits of both the Office of Appeals and the
16 Institutional Grievance Offices. CDCR will also regularly review randomly selected
17 grievances from every institution. This review will include grievances that the Hiring
18 Authority sent to AIMS for an allegation inquiry as well as grievances that were not, to
19 ensure that the Hiring Authority is making proper screening decisions. CDCR will also
20 review actions taken by the Hiring Authority after the allegation-inquiry report is
21 generated by AIMS, to ensure that the Hiring Authority is taking appropriate disciplinary
22 action when warranted. Notwithstanding these changes, Defendants' position remains that
23 the decision about whether to refer a staff complaint for inquiry by AIMS or investigation
24 by the OIA Central Intake Panel shall be made by the Hiring Authority.

25 Defendants received Plaintiffs' November 13, 2019 letter about allegations of staff
26 misconduct at Richard J. Donovan and their November 21, 2019 Federal Rule of Civil
27 Procedure 30(b)(6) deposition notice and corresponding document requests, and have
28 served their objections to the same. In late January and early February, Defendants

1 produced two persons most knowledgeable for deposition by Plaintiffs on a variety of
2 topics. In May, Defendants produced a person most knowledgeable about AIMS for a
3 deposition. Defendants have also served responses to Plaintiffs' special interrogatories.
4 Defendants are actively working to locate and review documents responsive to Plaintiffs'
5 expansive discovery requests, and are producing documents to Plaintiffs on a weekly basis.
6 On April 2, 2020, Plaintiffs served another request for production of documents related to
7 allegations of staff misconduct at RJD, but those requests are broadened to include
8 documents related to inmates who are not *Armstrong* class members, and allegations of
9 staff misconduct at California State Prison, Los Angeles County (LAC). Defendants have
10 served their timely responses and the parties have met and conferred concerning these
11 responses.

12 As previously mentioned, Defendants take all allegations of staff misconduct or
13 abuse against inmates seriously. To that end, Defendants have engaged in ongoing
14 discussions with Plaintiffs' counsel regarding allegations of staff misconduct, are working
15 diligently to provide requested information to Plaintiffs, and are continuing to discuss
16 additional changes that Plaintiffs believe are necessary to remedy confirmed incidents of
17 staff misconduct. Defendants have engaged in these discussions with Plaintiffs' counsel,
18 but do not believe that all of Plaintiffs' allegations of staff misconduct and the Inspector
19 General's Report implicate the *Armstrong* class or are appropriately before the *Armstrong*
20 Court. The Inspector General's report did not look at staff misconduct in conjunction with
21 the rights of disabled inmates, nor did the report examine or make findings related to
22 Defendants' compliance with the ADA, the Rehabilitation Act, or this Court's orders.
23 Allegations made by non-class members and allegations not related to violations of the
24 ADA or the Remedial Plan are processed and addressed through CDCR's staff disciplinary
25 process, as set forth in the Department Operations Manual. (*See* CDCR Department
26 Operations Manual, Chapter 3, Art. 22.) This process was developed as a result of the
27 *Madrid* litigation, and the Prison Law Office was significantly involved in its
28 development. Where there is simply is no nexus between allegations of staff misconduct

1 and an inmate's disability that allegation does not warrant inclusion of the alleged
 2 incidents in the *Armstrong* accountability logs. Some of the allegations presented by
 3 Plaintiffs' counsel attempt to draw a nexus between disability and staff misconduct based
 4 on pure speculation but without any supporting evidence.

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

10 **C. The Division of Rehabilitative Programs and Support for Students with**
 11 **Disabilities**

12 *Plaintiffs' Statement*

13 The Division of Rehabilitative Programs (DRP) must take immediate and
 14 comprehensive action to ensure that people with disabilities are no longer left out of its
 15 programs. This will require the allocation of sufficient resources and specialized staff to
 16 evaluate and provide long-needed accommodations to ensure equal access. Defendants'
 17 failure to provide such accommodations results in longer terms of incarceration for people
 18 with disabilities and impedes their successful reintegration into society. *See* Cal. Code
 19 Regs., tit. 15, § 3043(a) ("all inmates who participate in approved rehabilitative programs
 20 and activities ... shall be eligible to earn Milestone Completion Credit, Rehabilitative
 21 Achievement Credit, and Educational Merit Credit The award of these credits ... shall
 22 advance an inmate's release date if sentenced to a determinate term or advance an inmate's
 23 initial parole hearing date ... if sentenced to an indeterminate term with the possibility of
 24 parole").

25 First, Defendants do not provide real-time captioning to deaf class members who
 26 cannot hear what is being said in a classroom or self-help group setting. "Real-time
 27 captioning (also known as computer-assisted real-time transcription, or CART) is a
 28 service ... in which a transcriber types what is being said at a meeting or event into a

1 computer that projects the words onto a screen. This service, which can be provided on-
2 site or remotely, is particularly useful for people who are deaf or have hearing loss but do
3 not use sign language.” U.S. Dep’t of Justice, ADA Requirements: Effective
4 Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>. Late-deafened
5 people in California prisons who do not know sign language overwhelmingly report
6 feelings of isolation in prison due to their disability, an inability to fully participate in
7 programs, and an unawareness of accommodations that may be able to help them. *See*
8 Doc. 2910 at 18-27. Plaintiffs repeatedly have raised the need for real-time captioning.⁶
9 The parties were scheduled to discuss this issue in January 2020, but the meeting was
10 postponed at Defendants’ request and has not been rescheduled. If Defendants do not
11 develop a system to provide real-time captioning soon, Plaintiffs expect to bring the issue
12 to the court for resolution.

13 Second, blind class members do not have equal access to education and
14 rehabilitative programming. Defendants do not evaluate blind class members’ learning
15 media needs based on functional vision assessments. There are no teachers for the visually
16 impaired, low vision therapists, or alternative media specialists, including braille
17 transcribers. Defendants do not regularly provide materials in large print, braille, or audio
18 formats. *See* Doc. 2910 at 36-37. And Defendants’ new prison literacy initiative leaves
19 blind students behind—Defendants do not provide braille instruction, even though studies
20 show that people who are braille literate have higher employment rates, are better
21 educated, and are more financially self-sufficient. *Id.* at 35.

22 Blind students also do not receive skills training in the assistive technology that
23 Defendants do provide. For example, last year, Defendants installed JAWS for Windows
24

25 ⁶ *See* Doc. 2910 at 20-23; Doc. 2936 at 45-53, Letter from Caroline Jackson, Plaintiffs’
26 Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Communication Needs of DPH,
27 Non-SLI Class Members (Jan. 24, 2020); Doc. 2936 at 55-63, Letter from Caroline
28 Jackson, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Advocacy
Letter, RJD (Feb. 14, 2020); Doc. 2936 at 65-76, Letter from Rita Lomio, Plaintiffs’
Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Advocacy Letter, SATF (Feb. 25,
2020).

1 (“JAWS”) text-to-speech software on the LexisNexis computer in each law library. They
2 have not installed it, however, on the word processing, “ADA” computer. In any event,
3 Defendants have not provided instruction to blind class members on how to use that
4 technology and apparently have no plan to do so. Plaintiffs were particularly disappointed
5 when a DRP representative responded, when asked what training, if any, would be
6 provided to blind class members, that information about JAWS was on a poster in the
7 library. Blind people cannot read (because they cannot see) a poster on the wall. And
8 hands-on instruction is necessary to effectively learn JAWS. Similarly, accessibility
9 features, including screen reading and screen magnification features, were recently added
10 to touchscreen tablets available at certain institutions, but Defendants again appear to have
11 no plan to educate blind class members about these features, rendering them functionally
12 inaccessible.

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

16 Third, Plaintiffs have concerns about the types of accommodations and supports
17 available to class members with learning disabilities. For example, in January 2020,
18 Defendants discontinued the Voluntary Education Program (VEP) statewide, which
19 severely limited (and in some cases eliminated) access to tutoring services for students
20 with learning disabilities. Plaintiffs also are concerned with the low number of people that
21 Defendants designate as having a learning disability—157 (verified) and 127 (unverified)
22 at last count. That is substantially lower than the approximately 4,300 one would expect in
23 a prison system of 123,010 people, based on U.S. Census data. *See* Danielle M. Taylor,
24 *Americans with Disabilities: 2014* at 8 (Nov. 2018),
25 <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p70-152.pdf>.
26 Plaintiffs look forward to working with Defendants to further investigate and address these
27 issues.

28

1 *Defendants' Statement*

2 Defendants are committed to allocating sufficient resources and staff to evaluate
3 and provide accommodations to ensure equal access to rehabilitative programming,
4 services, and activities to people with disabilities. The parties were scheduled to meet on
5 January 21, 2020, to discuss these various issues, but Defendants requested that the
6 meeting be postponed so that they could gather more information to adequately address
7 these issues.

8 Defendants are also exploring different ways to provide training to inmates with
9 disabilities regarding the various accommodation tools, including JAWS, that are available
10 for their use. But staff training has been delayed due to COVID-19 and related travel
11 restrictions. A May 12, 2020 webinar provided training to staff and provided them an
12 opportunity to ask questions related to JAWS. Once COVID-19 restrictions are lifted,
13 library staff will develop a schedule to train all class members on all assistive devices and
14 all library resources.

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

19 CDCR is in the process of implementing their Peer Literacy Mentorship Program
20 (PLMP) to assist inmate-students with learning disabilities. One purpose of this program
21 is to provide more focused attention for students in educational programs. Per the
22 Governor's budget, all institutions will receive a PLMP teacher. This is part of a new
23 initiative to provide flexible mentoring for students who have barriers to attending
24 educational programs in a traditional classroom setting, and is available on nights and
25 weekends, in dayrooms, etc. Peer mentors work with up to twenty students, and receive
26 sentencing credits and pay. Mentees also earn credits. Hiring for PLMP teachers and
27 mentors began last year. Tutoring is first provided to those students with verified learning
28 disabilities, and then to students with unverified learning disabilities as space permits.

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

2 *Plaintiffs' Statement*

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

16 In addition, Plaintiffs are deeply concerned by Defendants' failure to ensure that
17 sign language interpretation is provided to D/deaf class members during off-site medical
18 appointments. D/deaf class members have been hospitalized, undergone surgery, and
19 received other medical treatment without interpretation services. Defendants currently do

20 _____
21 ⁷ 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
26 meetings, lifer groups, religious services, educational programming, and vocational
27 programming at SATF)); Doc. 2728 (Letter from Rita Lomio, Plaintiffs' Counsel, to
28 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)).

⁸ See 28 C.F.R. § 35.160(d); Doc. 2345 at 24; Doc. 2844 at 177-79 (Email from Rita
Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs (Feb. 2, 2019)
(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 not require that the off-site medical providers they contract with document whether and
2 how effective communication was achieved during the medical appointment (including
3 whether sign language interpretation was provided), and Defendants do not otherwise
4 review or track whether effective communication was in fact achieved during off-site
5 appointments. The parties met to discuss this issue in February 2020, and the Receiver
6 directed CCHCS to convene a workgroup and develop a complete solution. Plaintiffs look
7 forward to the recommendations of the workgroup and to continuing discussions with
8 Defendants on this issue.

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

17 Finally, Plaintiffs are concerned that there currently is no way to conduct a
18 confidential legal call through a videophone and/or Video Relay Service. *See Exhibit I*,
19 Letter from Caroline Jackson, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal
20 Affairs, and Jessica Blonien, Board of Parole Hearings, Access to Confidential Legal Calls
21 for Class Members Whose Primary Form of Communication is Sign Language (Sept. 20,
22 2019). This has been a longstanding issue in the case, but has taken on particular
23 importance during the pandemic, when in-person visitation has been suspended, and it is
24 critical for attorneys, including Plaintiffs' counsel, to be able to communicate with Deaf
25 class members confidentially and in sign language.

26 *Defendants' Statement*

27 Defendants are committed to ensuring that deaf and hard-of-hearing class members
28 who require sign language interpretation are provided equal access to programs, services,

1 activities, and assignments. Defendants are considering the information and requests
2 contained in Plaintiffs' November 27, 2019 letter and raised in the January meet and
3 confer, as well as possible solutions.

4 During the meet and confers on December 19, 2019 and February 26, 2020,
5 CCHCS reported that it has been developing potential alternatives to solely relying on
6 external providers to ensure interpreters are present for off-site encounters. Defendants
7 have put together a working group to address contract language for off-site encounters,
8 policies and regulations, and an escalation process for when an off-site provider fails to
9 provide SLI. The working group held its first meeting on March 12, 2020. CCHCS will
10 keep Plaintiffs informed on progress through the meet-and-confer process.

11 As reported during the meet and confer on February 26, 2020, Defendants are in the
12 process of finalizing ASL inserts on the state-run channels, including programming that
13 addresses PREA information. Defendants have also completed an orientation video, which
14 includes PREA information, for inmates who require ASL. In fact, the PREA video now
15 has ASL and will be distributed to the institutions, shortly. Defendants continue to work
16 toward adding more content with ASL interpretation and have added up to eleven such
17 videos; staff is working to add more.

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

19 With regard to the broader problem of equal access to job and program assignments
20 for people with disabilities, the parties convened a small work group to address Plaintiffs'
21 concerns, as documented in multiple tour reports and letters. *See* Doc. 2680, at 13-14.
22 The parties agreed to exchange program assignment data on a quarterly basis. The data
23 continues to show disparities in assignments for people with disabilities. Defendants assert
24 that the data is misleading and that the disparities result from individual, custody-related
25 case factors rather than from discrimination based on disability. Plaintiffs assert that, even
26 if Defendants could demonstrate that facially non-discriminatory case factors, such as
27 release date, account for the ongoing disparities, Defendants would still face liability due
28 to the disparate impact of their program assignment practices. *See, e.g.,* 28 C.F.R.

1 § 35.130(b)(3)(i), (ii); § 35.130(b)(8).

2 The fact that the parties still do not have agreement on the source of the disparities
3 is especially concerning given CDCR's roll out of the statewide integrated substance use
4 disorder treatment ("ISUDT") program in January 2020. Though Defendants previously
5 asserted that a significant number of incarcerated people would participate in the new
6 program, during the May 12, 2020, all parties meeting, Defendants reported smaller
7 numbers of expected participants and reported that programing was partially shut down
8 due to the pandemic. Nevertheless, the parties anticipate this new development will have
9 an impact on their analysis of the program assignment data.

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

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

13 Plaintiffs continue to identify problems with Defendants' provision of effective
14 communication to parolees who are deaf including: failures to provide sign language
15 interpretation during initial interviews and other due process encounters; inappropriate use
16 of written notes to communicate with DPH parolees who cannot communicate effectively
17 in writing; failures to use VRI properly, and technological issues with VRI; and confusion
18 regarding the distinction between VRI and VRS, causing likely violations of federal law.
19 *See Ex. G to Doc. 2936.* Plaintiffs are awaiting a response to their February 11, 2020,
20 letter outlining recent problems.

21 The parties continue to have a disagreement regarding the provision of SLI during
22 field encounters. Notwithstanding this disagreement, Defendants have agreed to provide
23 SLI through VRI software on tablets during field encounters. Plaintiffs' counsel is
24 continuing to monitor these issues, and most recently has proposed guidelines for the use
25 of VRI.

26 DAPO Headquarters staff works closely with staff supervising parolees whose
27 primary method of communication is sign language. This allows DAPO's Parole
28 Litigation Management Unit (PLMU) to resolve problems identified while utilizing the

1 VRI system. Although the current process has proven to be effective in identifying and
2 resolving VRI technical-communication problems, DAPO has implemented a formal
3 tracking process that allows staff to report connectivity issues through the use of a Service
4 Report. Defendants agreed to produce these Service Reports to Plaintiffs on a quarterly
5 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 of the inability to provide requested interpretation services. Additionally, DAPO
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 of the inability to provide requested or scheduled interpretation services. The
13 contract also shortened the timeframe in which an interpreter can cancel a scheduled
14 appointment.

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

22 **G. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
23 **Disability Tracking Information**

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

1 errors. Defendants are in the process of self-monitoring DME reconciliation discrepancies
2 and, at the May 12, 2020, all parties' meeting, reported minimal discrepancies at three out
3 of four prisons reviewed thus far.

4 Plaintiffs also remain concerned that based on discrepancies between DME and the
5 assigned disability codes of some class members, providers may not be identifying and
6 documenting disabilities. Defendants plan to develop a Learning Management System
7 (LMS) for providers, specifically targeted towards assessing patients for potential
8 inclusion in the Disability Placement Program. The parties are working collaboratively to
9 ensure proper identification of DPP codes.

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

11 *Plaintiffs' Statement*

12 Plaintiffs' counsel contends that CDCR and DAPO fail to ensure that parolees with
13 severe and impacting placement disabilities receive adequate planning for parole and
14 adequate transitional housing, transportation, and other transitional services. *See* Doc.
15 2680 at 11-12; Doc. 2655 at 11-13.

16 This issue is particularly important now that CDCR has released 3,500 or more
17 incarcerated people early to help address COVID-19. In addition, DRP has authorized
18 STOP programs to retain current residents in their transitional housing programs in light of
19 the shelter-in-place orders statewide. As a result, Plaintiffs have concerns about the
20 adequacy of transitional housing for individuals being released at this time. In addition,
21 there were already waiting lists for homeless parolees seeking transitional housing, even
22 before the pandemic. Plaintiffs are also concerned by the low percentage of paroling
23 prisoners who are given an identification card through the Cal-ID program. This problem
24 has been exacerbated by the closure of DMV offices throughout the state. Without an
25 identification card parolees cannot open a bank account, rent a hotel, or rent an apartment,
26 and the lack of identification can delay access to public benefits and medical care.

27 Plaintiffs believe the long standing problems with inadequate parole planning
28 services and the need for better linkage to transitional housing, transportation, and other

1 supportive services for paroling class members is even more crucial given the pandemic,
2 since being homeless now put class members' lives at risk, in addition to making it more
3 likely that they will fail on parole. Defendants have shared some data about rates of parole
4 for life prisoners with disabilities, and have developed and shared a draft proposal for a
5 plan that will provide for an expanded role for CDCR counselors in helping life prisoners
6 prepare for Board hearings and eventual parole. Plaintiffs have asked Defendants to
7 include more comprehensive assistance with parole planning for life prisoners with certain
8 disabilities as one of the expanded duties for Correctional Counselors in helping
9 individuals prepare for their hearings. Defendants are considering this request.

10 While Plaintiffs' counsel appreciates the general plans announced in Defendants'
11 February 20, 2020 letter to augment the BPH hearing preparation and release planning
12 work performed by correctional counselors, many details of the plan are as yet unknown,
13 and Plaintiffs have some concerns about the details of the plan we do know about. First,
14 the letter says that CDCR "will issue a policy memo detailing correctional counselors'
15 obligations" with respect to BPH hearing preparations. However, Plaintiffs have still not
16 seen a draft of the actual policy memo, nor have Defendants provided a date when the
17 policy memo will be ready to share with plaintiffs or a timeline for implementing the new
18 policy. Second, the letter does not commit to having correctional counselors actually help
19 incarcerated individuals with disabilities do concrete parole planning tasks for class
20 members—it merely calls for counselors to have a discussion about these issues and to
21 provide a template for letters. It is not clear that the counselors will be given enough time
22 to provide adequate assistance with these critical tasks. Plaintiffs believe individuals with
23 cognitive disabilities, mental health disabilities, and other disabilities that affect
24 communication are greatly disadvantaged, particularly in the critical Comprehensive Risk
25 Assessment process done by BPH psychologists, because they cannot undertake the key
26 steps required for parole planning on their own—such as writing to programs that offer job
27 training and employment, and programs that provide housing and substance abuse
28 treatment. We also have numerous other concerns that we shared at the meeting between

1 the parties about this plan for a future memorandum.

2 As described in the prior statement, Plaintiffs' counsel remains concerned that many
3 CDCR Division of Rehabilitative Programs (DRP) subcontractors do not accept or
4 appropriately accommodate paroling individuals (both life prisoners and non-lifer
5 prisoners) with certain disabilities. Plaintiffs and Defendants have cooperatively agreed to
6 make a number of changes in how these programs are surveyed for accessibility issues and
7 to collaborate on developing a training video and resource manual for subcontractors about
8 working with disabled individuals. However, these planned resources have been in the
9 works for more than a year at this point, and are still pending. Defendants have developed
10 a "bullpen" of DRP and DAPO employees who help manage waiting lists for transitional
11 housing programs and prioritize high risk cases, such as EOP individuals or *Armstrong*
12 class members with disabilities impacting placement.

13 Plaintiffs have ongoing concerns about the benefit application process for paroling
14 class members. The parties have agreed to meet in the near future with DRP and DAPO
15 staff members regarding these initiatives to improve parole planning services for
16 individuals with disabilities, and to discuss the California Identification program and
17 efforts to expand its reach by installing DMV-compatible cameras in prisons. This work
18 has taken on even greater urgency in light of the need to place incarcerated people who are
19 being released during the COVID-19 pandemic to succeed on parole.

20 *Defendants' Position*

21 As noted in previous statements, Plaintiffs' assertion that "CDCR and DAPO fail to
22 ensure that parolees with severe and placement-impacting disabilities receive adequate
23 planning for parole and adequate transitional housing, transportation, and other transitional
24 services" is wrong. *See* ECF No. 2786, at 19-21. Defendants' February 20, 2020, letter
25 detailed the additional assistance that correctional counselors will provide to prepare
26 inmates with disabilities for release on parole. Specifically, that letter informed Plaintiffs
27 that counselors will be directed to discuss different sources of support upon release,
28 including family, housing, employment, financial, or community-based programs, and

1 counselors will then help the inmate fill out a template letter to send to potential sources of
2 support. Defendants' responses to Plaintiffs' transition-to-parole advocacy letters
3 consistently demonstrate that pre-parole services are regularly and adequately provided to
4 class members and that class members are not always reporting information accurately to
5 Plaintiffs' counsel. Defendants believe that the additional assistance that will be provided
6 by correctional counselors based on their February 20, 2020 letter to Plaintiffs will assist
7 class members with understanding what pre-parole services are available to them.
8 Counselors will be provided with a memo detailing their additional responsibilities with
9 respect to class members in the release planning process.

10 Nonetheless, Plaintiffs' counsel continue to send advocacy letters that demonstrate
11 no nexus between their allegations and Defendants' compliance with the ADA,
12 Rehabilitation Act, the Remedial Plan, or this Court's orders. Rather, the letters imply that
13 CDCR has an obligation to provide housing for every inmate who is disabled and paroling.

14 The law requires that the programs and benefits Defendants offer, such as assistance
15 in direct placements for housing or community-based programs, be provided in a manner
16 that treats all parolees equally. The law does not require Defendants to fund and secure
17 housing for every disabled inmate who is paroling, nor does it require CDCR to create and
18 fund new programs. CDCR has programs in place to assist with transportation and
19 locating housing for release, but it does not guarantee or provide housing for everyone. To
20 create an obligation to secure housing for all class members would be discriminatory
21 towards non-class members and would create a new obligation for disabled persons that is
22 not provided to all parolees. The ADA does not require the creation of new programs
23 solely for disabled persons.

24 As part of the pre-release process, CDCR staff complete an assessment for each
25 inmate who is paroling, whether or not that inmate has a disability, that identifies their
26 individual needs. Once the needs are determined, the staff and inmate/parolee work
27 collaboratively to complete a case plan identifying community-based programs that receive
28 federal, state or other local funding to provide housing and other services to disabled

1 citizens.

2 CDCR and the Division of Rehabilitative Programs' processes are detailed in the
3 July 2019 joint case management conference statement. Defendants maintain that their
4 comprehensive system for providing services to paroling individuals is appropriate.
5 Notably, Defendants are committed to and are in the process of expanding the role of
6 correctional counselors in assisting with preparation for parole suitability hearings.
7 Defendants also provided data regarding the number of individuals who have paroled as
8 requested by Plaintiffs and continue to work collaboratively with Plaintiffs in response to
9 the matters raised in Plaintiffs' April 5, 2019 letter.

10 The parties developed disability definitions to educate community-based program
11 providers and to help them decide whether it is feasible for them to accommodate persons
12 with certain disabilities. The parties are also collaborating on the Division of
13 Rehabilitative Programs' education video for providers. The parties will continue to work
14 together on the development of this initiative.

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

16 The parties convened a work group to address issues facing blind and low-vision
17 class members. *See* Doc. 2786 at 20; Doc. 2910 at 29-41. The work group has met once,
18 in January 2020. Issues for discussion include orientation and mobility training, audio
19 descriptions, electronic submission of forms, text-to-speech software, accommodations
20 assessments and skills training, braille literacy, accessibility of mental health groups, and
21 access to magnifiers of different magnification levels.

22 Since that meeting, Plaintiffs have become aware of Defendants' failure to provide
23 orientation when a blind class member was first housed in a dorm environment, resulting
24 in the class member mistakenly entering the wrong pod and bed and being placed in
25 administrative segregation for his safety. Plaintiffs also are concerned by the apparent lack
26 of guidelines regarding the issuance of white canes and the denial of a white cane to a class
27 member designated DPV on the grounds that he could "sit on and get down from exam
28 table" and was "able to identify close objects." In Plaintiffs' view, the ability to perform

1 those activities is materially different from being able to visually recognize objects,
2 including stairs, curbs, fences, rails, tables, chairs, doors, ramps, and cracks in the path of
3 travel, quickly, while moving, and from a distance that allows the person time to safely
4 navigate around those objects or to otherwise react appropriately. Plaintiffs note the
5 particular importance of people with disabilities being able to navigate independently
6 during the COVID-19 pandemic, when close contact with other people, including people
7 serving as sighted guides or as a result of not being able to see people quickly enough to
8 walk around them at a six-foot distance, can result in serious illness and/or death.

9 Defendants have not yet proposed dates for a second meeting of the working group.
10 Plaintiffs are eager to resume discussions and, if progress is not made on these issues
11 without further delay, Plaintiffs likely will bring them to the court for resolution.
12 Defendants have been working internally on this issue before scheduling a meeting with
13 Plaintiffs. Defendants anticipate scheduling a meeting with Plaintiffs in the very near
14 future that should negate any need for judicial intervention on this issue.

15 **J. Joint Monitoring Tool**

16 The parties continued to meet through February 2020 on drafting a joint monitoring
17 tool for measuring compliance in this case. Through this process, the parties have
18 identified a number of substantive areas that will require further negotiation and the
19 development of new policies. The parties will be meeting to discuss these issues in July.
20 The parties' commitment to developing a strong joint monitoring tool will continue in
21 2020, notwithstanding the pandemic and the impossibility of jointly touring at this time.
22 The headquarters section has not yet been drafted, and some individual tool questions,
23 including how to monitor whether class members are receiving equal access to program
24 assignments, and questions regarding whether staff have received required training, have
25 not yet been fully drafted because the parties must first complete larger policy discussions.
26 The parties had planned to test the tool out at different types of prisons beginning in April
27 2020, and to meet after each audit to discuss if and how the tool should be updated or
28 revised based on issues identified during each audit. Those plans, unfortunately, have been

1 delayed by the COVID-19 pandemic. The parties will work together to begin on-site visits
2 as soon as it is appropriate and safe to do so.

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

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

11 The parties met on December 9, 2019, and the parties agreed to a flexible,
12 collaborative approach in which the parties will meet quarterly to discuss different
13 institutions, joined by local ADA staff with close knowledge of the institutions. The
14 parties also may discuss issues about a particular institution informally before or after the
15 scheduled quarterly meeting. The parties met on January 22, 2020 to discuss the first two
16 institutions using this approach, LAC and CIM, and have agreed to jointly tour these first
17 two institutions in the next few months to inspect and analyze existing physical
18 accessibility issues and to ensure that any remaining problems are addressed in Phase 2 of
19 the Master Planning process at those prisons. The Court Expert Ed Swanson has agreed to
20 accompany the parties on these tours. In light of serious public health issues presented by
21 the global COVID-19 pandemic, the scheduling of these tours will be impacted, and the
22 parties will work together to schedule the tours as soon as it is appropriate and safe to do
23 so. Tentatively, a tour of SATF has been scheduled for July, but may need to be
24 rescheduled in light of the current circumstances caused by the COVID-19 pandemic. In
25 addition, Defendants are in the process of auditing whether program modifications
26 referenced in the Master Plans have been memorialized in local operating procedures at
27 each institution. The parties agreed that there will be an ongoing process to consider
28 whether there are opportunities for people with disabilities to work in jobs that the parties

1 originally thought they might not be able to do, and Defendants will make all appropriate
2 additions to the Master Plan in response to things like program, population, and mission
3 changes. The parties are planning to meet to discuss the Master Plans for two additional
4 prisons, DVI and SVSP, in June.

5 **L. Investigation of County Jails**

6 Plaintiffs continue to assert that a pattern and practice of denying disability
7 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680
8 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA
9 accommodations at Kern County, San Bernardino, Orange and Fresno County jails. *See*
10 Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions but have agreed to
11 conduct periodic meetings with Sheriffs to improve information sharing. Defendants
12 conducted their first meeting with the Sheriffs in January to discuss information sharing,
13 and remain hopeful that participating in these ongoing meetings will lead to better
14 communication between the counties and Defendants. However, these meetings have been
15 put on hold due to the pandemic. CDCR does intend to reach out to county counsel,
16 starting with the largest, also to improve information sharing. This process has not yet
17 started. Nevertheless, CDCR has been successful in contacting county counsel when
18 issues arise that require county response under the County Jail Plan.

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 Plaintiffs believe that Defendants are unlikely to be able to meet their obligations
2 under the County Jail Plan if county jails continue to lose staff to COVID-19 and if
3 Defendants continue to place parolees into jails. Defendants will continue to keep
4 Plaintiffs informed regarding any effects COVID-19 may have on the county jails and
5 DAPO’s response to this unprecedented public health crisis.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

DATED: June 19, 2020

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Penny Godbold
Penny Godbold

Attorneys for Plaintiffs

DATED: June 19, 2020

XAVIER BECERRA
Attorney General of the State of California

By: /s/ Trace O. Maiorino
Trace O. Maiorino
Deputy Attorney General

Attorneys for Defendants

FILER’S ATTESTATION

As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence
in the filing of this document from Trace O. Maiorino, and that I have maintained records
to support this concurrence.

DATED: June 19, 2020

/s/ Penny Goldbold
Penny Goldbold

EXHIBIT A



PRISON LAW OFFICE
 General Delivery, San Quentin, CA 94964
 Telephone (510) 280-2621 • Fax (510) 280-2704
 www.prisonlaw.com

Director:
 Donald Specter

Managing Attorney:
 Sara Norman

Staff Attorneys:
 Rana Anabtawi
 Patrick Booth
 Steven Fama
 Alison Hardy
 Sophie Hart
 Corene Kendrick
 Rita Lomio
 Margot Mendelson

VIA EMAIL ONLY

June 5, 2020

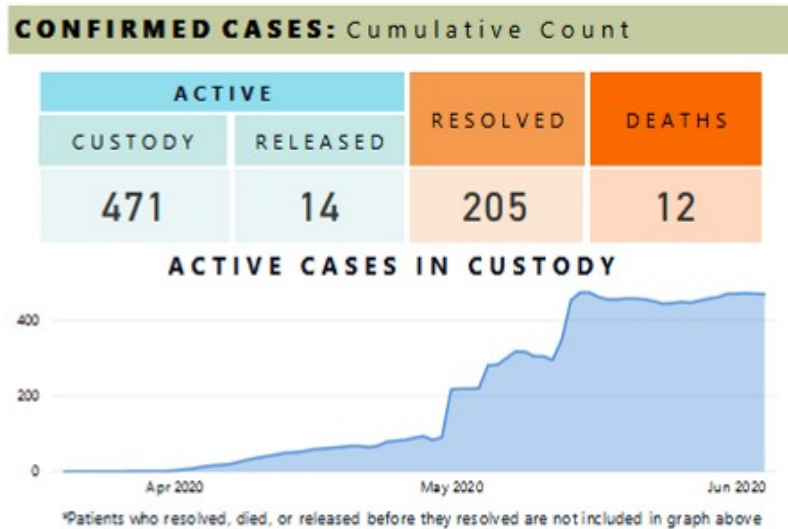
Ms. Tamiya Davis
 CDCR Office of Legal Affairs

RE: *Armstrong v. Newsom*: Defendants’ Response to the COVID-19 Outbreak at the California Institution for Men

Dear Ms. Davis:

We are deeply concerned about how *Armstrong* class members have been accommodated at the California Institution for Men (CIM) during the COVID-19 pandemic. That institution houses over 600 *Armstrong* class members, including a significant number of class members with impacting-placement mobility disabilities (of whom at least 86 use wheelchairs), blind class members, and Deaf class members who communicate through sign language.

The institution has been particularly affected by COVID-19. The first confirmed case in a person housed at the institution was reported on March 27, 2020. A month later, the number of confirmed cases had grown to 112, with one death. As of this morning, the number of confirmed cases has grown to 702, with twelve deaths (see graphic below).



The *Armstrong* population also has been particularly affected; over 150 class members at the institution have been infected with the virus, and seven have died.

Board of Directors

Penelope Cooper, President • Margaret Johns, Vice President • Marshall Krause, Treasurer
 Harlan Grossman • Christiane Hippi • Cesar Lagleva • Jean Lu • Laura Magnani • Michael Marcum
 Ruth Morgan • Seth Morris • Vishal Shah • Michele WalkinHawk

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 2

Plaintiffs' counsel have only an incomplete, limited, and delayed view of conditions at the institution. Requests for basic information regarding the housing and accommodation of class members at the institution during the pandemic largely have gone unanswered, as have requests for staff and class member interviews. Defendants have taken the position that Plaintiffs' counsel are not allowed to conduct legal calls with class members in buildings designated for quarantine or isolation and also are not allowed to conduct remote visits to those units. On May 29, 2020, Defendants stated that, as a result, Plaintiffs' counsel could access class members in only four housing units at the prison (Angeles, Del Norte, Magnolia, and Willow), which collectively house only 79 (or 13% of) class members, and stated that, as the disease spreads, those housing units might be closed off to Plaintiffs' counsel as well. Of those four housing units, at least as of June 3, it appears that only Angeles, with 30 class members, does not have confirmed and active cases.

In the meantime, there have been significant program and housing changes at the institution. People, including *Armstrong* class members, have been moved to gyms, tents on the yard, and a newly opened unit that Defendants previously had closed on the grounds that it could no longer safely house people (Oak Hall). Class members with impacting-placement disabilities have been moved to housing units known to be inaccessible. Notwithstanding repeated requests, Defendants have been unable to provide information about the process for moving class members or any accessible features that have been or will be installed in those areas.

Defendants face an enormous and, in many ways, unprecedented challenge and are evaluating how to protect people at the institution who have not yet been infected. We continue to have concerns, however, regarding our ability to access our clients, monitor changing conditions in the prison, and ensure that *Armstrong* class members are safe, informed, and able to access the same programs, services, and activities as their peers. On May 22, 2020, we observed a *Plata* site visit, through Skype, to several housing units at the institution. Although Defendants had represented that social cohorting had been implemented there, we quickly saw that that was not in fact true; cohorts were clearly not separated by six feet in all directions, as seen in the below photograph taken during the visit. Defendants have represented that they now are taking action to address this serious problem.



Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 3

Although we do not have a complete understanding of current conditions in the institution, we below describe some areas of concern based on class member correspondence, including the handful of legal calls we have been able to conduct. We ask that Defendants investigate and address these concerns at the institution level, to the extent the problems remain. We also ask that Defendants take timely and concrete steps to prepare other institutions that may face similar problems in the event of an outbreak so that these issues do not repeat themselves.

I. Inaccessible Housing

In the last few months, *Armstrong* class members repeatedly have been housed in inaccessible locations at the institution. As of this Monday, June 1, twelve class members were housed in locations inconsistent with their disability codes. And at least 24 class members, including several people who use walkers, were housed in newly designated housing areas, including tents, gyms, and Oak Hall. Defendants have not provided information about any accessible features in these areas.

Class members also reported frequent movements between housing units and yards. For example, one class member reported that he was moved from Alder (Facility D) to Colusa (Facility C) to Cedar (Facility D) to Oak (Facility D) to Juniper (Facility D) within a two- or three-week period. Another class member reported that he was moved from Elm to Cedar to the OHU to Cedar to Elm (Facility D). He reported that he was asked to then move to Oak but refused because he did not think it would be accessible to him as a full-time wheelchair user. In another example, a class member was moved from Elm to Facility C to Cedar to Oak and back to Elm all within a few weeks. We received a report that several people who use wheelchairs were moved from Cedar to Oak but, a few days later, were moved back to Cedar. It is not clear whether that was because they could not be properly accommodated in Oak. (One class member temporarily housed in Oak reported that he was transferred out a few days later because of mold.)

Given reports that multiple wheelchair users were transferred to Oak and then transferred back, we have serious concerns that there is no process in place to ensure that class members will be adequately accommodated *before* they are transferred to new areas. For example, it is not clear whether the institution is using the 128-B Accommodation Chrono process to evaluate and document accommodation needs prior to moving someone to an inaccessible location or what efforts, if any, Defendants have made to install accessible features in inaccessible housing areas.¹

¹ Defendants' memorandum regarding "Disability Placement Program Inmates During COVID-19 Pandemic," dated April 10, 2020, does not appear to apply to this situation. It states only: "For those inmates qualifying for expedited transfers, staff will complete an Accommodations Chrono, identifying specific accommodations an inmate will need while housed at a non-designated institution either on a CDCR Form 128-B or Strategic Offender

Ms. Tamiya Davis

Re: Defendants' Response to COVID-19 Outbreak at CIM

June 5, 2020

Page 4

Several class members reported that there was no discussion of their disability needs prior to being told to move to newly designated housing areas. Class members, including those moved to gyms and tents, also reported that Form 1824s were not available in their new housing locations and that there was no place to submit those forms even if they had been available.

During a call between the parties on May 8, 2020, Defendants stated that ADA staff at CIM had been instructed to walk through the housing units and ensure that accessibility was maintained. It is not clear what assessments of accessibility, if any, staff made, and what, if any, corrective actions were taken in response. Defendants subsequently produced an email from the Assistant Deputy Director, Program Operations, Division of Adult Institutions, dated May 4, 2020, that directed the ADA Coordinator and ADA CCII at CIM to “on a rotating basis, tour the newly activated gyms” and “[e]nsure 1824’s are available in each gym.” It is not clear whether similar direction has been given with respect to tents, Oak Hall, or other inaccessible housing areas, such as Facility C. Many of the issues listed below presumably should have been identified and corrected through this process, but apparently were not.

During a call between the parties on May 22, 2020, a CCHCS representative stated that he believed that inappropriate housing of *Armstrong* class members should not go on the *Armstrong* accountability logs because there are “medical reasons” for such placement and that the inappropriate housing will not last “for much longer” because “movements and transfers are occurring.” Plaintiffs’ counsel remain concerned. There appear to be very serious and preventable failures to ensure accessible housing and accommodations for class members at CIM, and it remains entirely unclear whether these failures have been identified and referred to the *Armstrong* accountability process and, if not, how any lessons Defendants have learned from this experience will be applied to other institutions. In any event, during a call between the parties in the *Plata* case on June 4, 2020, a different CCHCS representative stated that all further movement out of CIM, including the planned transfer of over 600 people that had been scheduled for this weekend, has been suspended due to two recent instances in which people transferred out of CIM to other institutions subsequently tested positive for COVID-19.

A. Pending Test Results

It appears that the institution placed people, regardless of DPP code, on Facility C pending test results. Facility C is not designated to house class members with impacting-placement DPP codes. People apparently stayed on Facility C for days or weeks. *Armstrong* class members, including those designated DPW and others who use walkers or wheelchairs, were housed on Facility C and reported significant access problems.

Management System (SOMS) case note (see attachment).” We have received only one such chrono from Defendants related to CIM.

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 5

For example, [REDACTED], DPM, who uses a wheelchair, reported that he was moved to Facility C pending test results. He reported that, while there, he did not have access to an ADA shower with a bench or grab bars, that he did not have access to a toilet with grab bars, and that he was unable to get his wheelchair through the width of the cell door. We previously reported this problem to Defendants by email dated May 7, 2020. We have not yet received a response.

Similarly, [REDACTED], DPM, who uses a walker, reported that while he was housed on Facility C, he did not have access to a toilet with grab bars, which he requires to safely use the toilet. He also reported that the shower he had access to did not have grab bars or a shower chair. He reported that there was a bench, but it is unclear from his correspondence with us whether it could be used while showering or only while dressing.

As we reported on May 6, 2020, six people on Facility C reported that meals are placed on the ground in front of the cell, not through the food slot, which could make it difficult for some people with mobility disabilities to pick it up. Defendants stated on May 8 that they would provide a written response soon, but have not yet done so.

Plaintiffs' counsel are concerned that Facility C, an inaccessible facility, was chosen as the location to house people pending test results without any apparent regard for the high number of DPP class members housed at CIM who inevitably would require placement there and without any apparent effort to install or procure accessible features on an expedited basis.

B. After Negative Test Results

It is not clear how the institution chose to house people with impacting-placement DPP codes after test results came back negative. [REDACTED], DPM, reported that after he tested negative, he was moved to West Dorm (Facility D), which is not designated for people with DPM codes. He reported that he had the same problems as he had while housed on Facility C, as discussed above. Again, it appears that housing decisions are being made without regard to disability needs, and accessible features are not being installed or procured in response to the new designation of inaccessible areas during the pandemic.

C. Medical Isolation

Armstrong class members with confirmed cases of COVID-19 were placed in inaccessible housing locations, including Mariposa Hall (Facility A), which is not designated for class members with impacting-placement mobility or vision disabilities. Class members reported that they struggled to access the toilets, showers, and sinks.

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 6

██████████, DPO, for example, uses a wheelchair to ambulate and can take only a few steps at a time without it. He reported that he was moved to Mariposa Hall when he was confirmed to have COVID-19. Mr. ██████████ reported that he struggled to use the toilets and shower because they lacked accessible features. The toilets, for example, had no grab bars and were lower than a typical accessible toilet. He reported that he found it “very difficult” to stand up from the toilet. Similarly, he reported that the sinks were too high for someone using a wheelchair to access. He further reported that Mariposa Hall did not have an accessible shower, that none of the showers had grab bars or fold-down benches, and that no shower chair was available. He also reported that he found it “very tricky” to navigate stairs that do not have railings and that he had to do so while living in Mariposa Hall, although we do not have information about where those stairs are located and when he had to navigate them.

Mr. ██████████ has since been moved to the OHU. Other class members, including ██████████ ██████████, DPM, and ██████████, DPO, however, remain in Mariposa Hall and have been there for at least 24 days.

Plaintiffs' counsel acknowledge the difficulty of the situation at CIM. Nonetheless, we have been asking, since March 2020, for Defendants to plan for the appropriate housing of class members during an outbreak, including through the identification of adequate isolation beds at prisons with high numbers of wheelchair users. This does not appear to have happened at CIM, and Defendants apparently have not identified accessible isolation beds at other prisons. Defendants also apparently have made no effort, at CIM or elsewhere, to install accessible features on an expedited basis in the event that they plan to continue to use inaccessible areas to house class members with impacting-placement DPP codes in response to COVID-19 outbreaks.

II. Deteriorating Physical Plant and Unsafe Living Conditions

CIM has long been plagued with an aging and deteriorating physical plant. During our last monitoring tour, the Correctional Plant Manager acknowledged that the “infrastructure is falling apart,” and stated that there is no way he and his current staff can respond to all the repair and maintenance needs at CIM. Toilets, showers, and sinks regularly are broken. Before the pandemic, *Armstrong* class members were allowed to use a shower in a neighboring building when the accessible shower in their unit was out of order. That, however, is no longer an option given restrictions on movement due to COVID-19. In addition, class members report that maintenance delays have only increased because the inmate work crew that previously assisted maintenance staff is no longer able to do so.

....
....
....

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 7

On May 6, 2020, we reported the following physical plant concerns, which had been raised by our clients:

1. In Magnolia Hall (Facility D), two of the showers and the ADA shower in the East bathroom are inoperable, as well as five sinks and two urinals. As a result, the West bathroom in Magnolia Hall is crowded such that social distancing is not possible. It also was reported that the ADA shower hose is broken and that the ADA toilet does not flush in the West bathroom. Two urinals and two additional showers also reportedly are inoperable in the West bathroom of Magnolia Hall.
2. In Elm Hall (Facility D), the hot water works for only a few hours a day and all the non-ADA showers are inoperable, resulting in the entire building sharing only the three ADA showers, making access limited.
3. In Oak Hall (Facility D), some showers and toilets are inoperable.
4. In Borrego Hall (Facility A), toilets and sinks in the bathroom are breaking weekly, one of the showers does not turn off, and some of the sinks leak.

To date, we have not received a response to these issues from Defendants, although they were removed from the parties' weekly agenda on Defendants' representation on May 8, 2020, that they would respond soon in writing.

We continue to receive reports of unsafe and inaccessible conditions at the institution. For example, one class member who was moved into the gym on Facility C reported that the sinks leak constantly, resulting in water on the floor at all times, posing a slip-and-fall hazard.

In addition, [REDACTED] DPW, reported that only one bathroom was in use at Cedar Hall while he was living there. The other was boarded up and could not be used. He stated that in the one bathroom that he and everyone else had access to, there were five toilets, only one of which was an accessible toilet, and all of the urinals were broken. He estimates that there were several dozen if not more than a hundred people living in Cedar Hall at the time, which caused the toilets, including the accessible toilet, to be in near constant use. Mr. [REDACTED] reported that, one time, he urinated on himself because the one accessible toilet was already in use and he was unable to use any of the other toilets due to his disability. He also reported that the accessible shower was broken when he was at Cedar Hall; the hose did not work and no water came out. He reported that he and at least one other person who used a wheelchair were forced to bird bath in their wheelchairs because there was no shower that they could use.

We also received reports that electrical cords obstructed the path of travel in Juniper and Magnolia Halls, making it dangerous for people with vision and/or mobility disabilities, including

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 8

people who use walkers. During the *Plata* site visit on May 22, 2020, we observed thick electrical cords across the floor in Magnolia Hall, where class members would walk. We were unable to evaluate this problem at Juniper Hall due to Skype connectivity issues in that building.

Although physical plant problems at CIM predate the pandemic, broken showers, toilets, and sinks are of even greater concern during the pandemic, when it is critical that people be able to safely clean themselves regularly. Please report on the specific physical plant problems identified above. Please also provide a plan for how CIM will meet the essential challenge of ensuring physical plant problems are timely addressed during the pandemic.

III. ADA Worker Program

Defendants have not provided information regarding changes to and the operation of the ADA worker program at CIM during the pandemic.² ADA workers perform a critical role in the California prison system. Among other things, they serve as sighted guides for blind class members; assist class members in wheelchairs to move throughout the housing unit and to and from appointments, including medical encounters; help class members carry trays and cups during mealtimes; clean cells and bed areas; and read and write for class members unable to do so themselves.

A. Limited Availability of ADA Workers

Armstrong class members and ADA workers alike have reported limited access to ADA workers at the institution during the pandemic. This may be due, at least in part, to movement restrictions. That is, prior to the pandemic, class members with impacting-placement DPP codes were housed primarily in Joshua Hall (Facility A), which is the only building on that yard designated for such class members, and Elm Hall (Facility D). According to the ADA worker rosters, however, as of May 15, 2020, most ADA workers are housed in other locations. And some housing units, including Borrego (Facility A), Cedar Hall (Facility D), and Oak Hall (Facility D), do not house any ADA workers. If most, if not all, of the housing units at the institution house people on quarantine or isolation status, ADA workers may not be able to leave one housing unit to help *Armstrong* class members in another unit. If that is the case, staff would be expected to assist class members. We have heard, however, that staff are fearful for their own health and safety (and those of their loved ones), and therefore are disinclined to provide help to class members that would involve close contact, as most ADA worker responsibilities do.

² Plaintiffs' counsel raised a number of concerns related to the ADA worker program at CIM on May 6, 2020. On May 8, Defendants represented that they would respond soon in writing. They have not yet done so.

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 9

Several ADA workers have reported that while their buildings were on quarantine or isolation status, they were not allowed to work outside their housing units. ADA workers on Facility C reported that they have not been let out of their cells to provide assistance, in one case for 25 days and in another for the duration of the modified program. Several ADA workers who live in buildings with fewer class members reported that they have not had any work to do because they cannot report to the buildings that have class members who need assistance. For example, an ADA worker who lives in Sequoia (Facility A) reported that he used to report to Joshua Hall to perform his duties, but during the modified program he has not been "permitted to work." And an ADA worker who lives in Juniper Hall (Facility D) reported that he has not been able to go to Elm Hall to provide assistance since the modified program began. Previously, he explained, he reported to Elm Hall daily to help class members. He wrote to us: "I was told there was no work, til further notice!" An ADA worker living in Elm Hall reported that "since COVID-19 the only ADA workers working are the few who live here in Elm." He further explained that there are five ADA workers who live in Elm Hall and that two of the five are not working during the pandemic (we do not have information as to why). As a result, he said, only three ADA workers are available to provide assistance to the many class members living in Elm Hall. He stated that this is not enough.

██████████, DPW, is a good example of the problem. We spoke with him on May 19, 2020, after he had recovered from COVID-19. He described conditions at the prison before and after he was confirmed to have COVID-19. In particular, he reported that before he received his test results, and when he was housed in Cedar Hall, he was unable to get the assistance he needed to access pill call and meals. He reported that there were no ADA workers housed in Cedar Hall at the time and, due to the quarantine and isolation measures throughout the facility, no ADA worker was allowed to help class members housed there. He reported that he was assigned to the North medical clinic, which is on the opposite side of the yard from the housing unit. In normal circumstances, he reported, he would have an ADA worker push his wheelchair to the pill line and then to the dining hall. (Mr. ██████████ reported that he must get his medications before going to eat because he receives insulin.) He reported that without ADA worker assistance, he had to try to get himself to the medical clinic and dining hall, which he could do only very slowly and with great effort, and that by the time he received his medications, the dining hall often was closed.

In addition, ██████████, DPW, reported that meals are being served in the building for people housed in Joshua Hall. He reported that although there are a few ADA workers in the building, there are not enough to provide assistance during meals or for other activities. In his words: "I do need help getting food, or someone to carry my trays. I don't have any help at all."

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 10

Plaintiffs' counsel are concerned that ADA workers are not available to all class members who need assistance. Please provide information regarding the availability of ADA workers to all units housing class members and what efforts, if any, the institution has made to ensure that class members are receiving the help they need.

B. Personal Protective Equipment, Training, and Assignments

Armstrong class members and ADA workers risk exposure to the virus when they come into close contact with one another and, due to the type of assistance provided, they regularly come within inches or feet of one another, if not direct contact with one another (or their wheelchair, walker, food tray, or other personal items). When asked to describe how close he comes to the people he is assisting, one ADA worker responded: "Close because I'm pushing them in a wheelchair. Or, I'm at their bunk changing their sheets." Another ADA worker explained: "I often touch them, help them stand/sit, push them in a wheelchair sometimes, always within 1-3 [feet]."³

We have asked Defendants to enact measures to ensure class members' and ADA workers' safety during such encounters, including by assigning ADA workers to help certain people, limiting exposure between cohorts of people, and providing adequate personal protective equipment. Defendants' memorandum dated April 10, 2020, states that ADA workers will be provided "a mask, face covering, gloves, etc. if available."

We have received inconsistent reports from ADA workers at CIM regarding access to personal protective equipment and training. ADA workers uniformly reported that they now have been provided cloth face coverings (as has the entire incarcerated population) and that they wear them during interactions. However, we received inconsistent reports regarding the availability of gloves. An ADA worker on Facility C reported that he is provided gloves only when he is assigned to the dining hall. One class member on Facility A reported that it "is not safe because [ADA workers] are in close contact with us with no gloves nor any kind of skills." An ADA worker on Facility A reported that he and other ADA workers have not been issued gloves. Two other ADA workers on Facility A, however, reported that they have been issued gloves and one also reported that he had been instructed to use hand sanitizer after assisting someone.

³ The risk of serious illness and death from these interactions is, unfortunately, not hypothetical. Seven of the twelve people who have died at CIM were *Armstrong* class members. ██████████ died on May 6, 2020. Before he died, Mr. ██████████ told his family that he believed he contracted the disease from a hard-of-hearing friend whose wheelchair Mr. ██████████ would push and to whom Mr. ██████████ would repeat conversations so the friend would not feel so isolated due to his hearing disability.

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 11

Most ADA workers reported that they have not received any special training about how to protect themselves and others during the performance of their duties during the pandemic. As one ADA worker explained in a letter we received on June 1, 2020:

I was simply told to wear gloves and mask if I go to work. This is not adequate training because I was not told where to get gloves and what kind of mask? How often should I change my PPE (gloves/mask)? I also wonder why our nurses come daily into our unit wearing PPE (gowns, mask, face shield, gloves, etc.) to take our temperatures with a laser gun, never touching us, but I am expected to physically help ADA inmates without the same level of protection? . . . [I would like] an ADA-Worker training handout specific to COVID-19, be clear of what we can and cannot do. Where do we get PPE? How much PPE do we need and how to properly use it and how often do we need to change it or clean it? Can I help someone with COVID-19? If I get COVID-19 do I lose my job? Can I still work if I am A-symptomatic [sic]? These are some basic things which have not been covered.

We note that a few ADA workers in Elm Hall reported that they were trained by both custody and medical staff and that they feel informed about when and how to do their job during this pandemic.

We also have received inconsistent reports about whether and when ADA workers can assist people who have been confirmed to have the disease or who are awaiting test results. In Butte (Facility C), for example, an ADA worker reported that mass testing was done on May 13, 2020, and that staff members provide assistance to people who were confirmed to have the disease. The ADA worker reported that he is allowed to help only people who do not have the disease. Reports out of Elm Hall (Facility D) are more concerning. Two ADA workers reported that they have tested negative for the disease and are living on the “negative” side of the building, but that they continue to assist people in the building who have confirmed cases. One reported that the only time he has been given gloves when performing his duties was when he pushed an “ill” person to the TTA (we do not know whether his reference to “ill” refers to someone who has COVID-19). He reported, however, that he has pushed several other “ill” people to the TTA during the pandemic without gloves.

Plaintiffs' counsel remain extremely concerned about the safety of ADA workers during the pandemic. We renew our request for ADA workers to be provided additional protective equipment, for them to receive specific training regarding how to protect themselves from the coronavirus during their work, and for them to be assigned in a way that limits their direct contact with different people to the extent possible.

Ms. Tamiya Davis
 Re: Defendants' Response to COVID-19 Outbreak at CIM
 June 5, 2020
 Page 12

IV. Other Issues

A. Lack of Accessible Dining Areas in Joshua Hall

Class members have reported that meals now are served in Joshua Hall (Facility A), and not in the dining hall. They reported that people are eating both inside the building and at the few tables located on the mini-yard directly outside the building. They reported, however, that there are no accessible tables on the mini-yard, and only one accessible table in the building (which can accommodate only one class member at a time), which has limited common area space.⁴ They reported that there is not enough space between the bunks for people with wheelchairs to pull up beside their bed and, presumably, use their bed as a table (the bed likely is too low in any event to serve as a table); that transferring between the wheelchair and bed, with the tray, is difficult if not impossible to do without direct help; and that there is not sufficient room in the aisle for people with wheelchairs to sit and eat even if they could find a way to safely balance the tray on their laps. (As of June 1, 2020, Joshua Hall housed at least 21 class members who use a wheelchair.) As one class member explained: "DPW inmates can only go where our wheelchair allows us." It is not clear why tables—including the wheelchair-accessible tables used in visitation, which now is closed—have not been brought for use during meals.

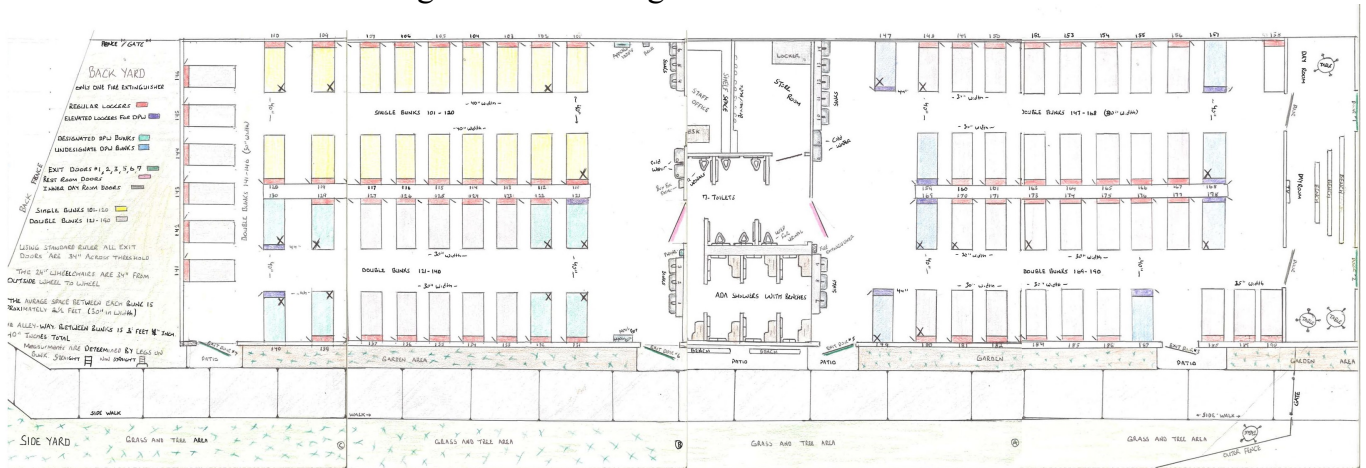


Diagram of Joshua Hall by Class Member

⁴ We previously have raised concerns with the inadequate number of accessible tables in Joshua Hall. See Letter from Shira Tevah & Megan Lynch, Plaintiffs' Counsel, to Russa Boyd & Nick Meyer, CDCR Office of Legal Affairs, Physical Plant Issues at CIM 3-4 (Jan. 8, 2020) (noting that the two accessible tables on the Joshua Hall mini-yard had been removed); *id.* at 5 (reporting that there is only one accessible place at the table in the dayroom and that it is difficult for people in the housing unit to navigate to the dayroom).

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 13



Joshua Hall (October 2019)



Joshua Hall Mini-Yard (October 2019)



Joshua Hall Dayroom (March 2019)

We request that accessible dining placements be identified for class members in Joshua Hall during the pandemic. If accessible tables cannot be brought to Joshua Hall while people are being fed in the housing unit, we request an explanation why.⁵

B. Limited Access to Clean Clothing and Linens

Several class members on quarantine or isolation status reported that they have had difficulty getting laundry exchanges for clothing and linens. Several class members reported that after they moved housing units because they were on quarantine or isolation status, they were not given sheets or blankets for several days. Other class members in Cedar and Oak Halls have

⁵ On May 6, 2020, we also reported that a class member notified us that people with “wheelchairs and walkers are unable to fit in the narrow halls where lines are made” in Elm Hall (Facility D). We have continued to receive reports indicating that some class members may not have the accommodations they need during mealtime in Elm Hall.

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 14

reported that for the duration of their isolation or quarantine, which may last several weeks, they were unable to get clean clothes and that people instead had to lend one another clothing items.

Please ensure that all class members have ready access to clean clothing and linens following transfer to a new housing placement.

* * * * *

We are deeply concerned about the health and safety of *Armstrong* class members at the California Institution for Men during the pandemic. Defendants have been unable to provide any information over the last few months regarding how, if at all, they are accommodating class members at the institution. The limited information we have received from class members and ADA workers, however, suggests that people have been, and continue to be, in unsafe situations.

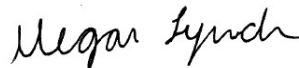
To help us better understand the situation and determine next steps, we requested a virtual tour by letter dated May 12, 2020. You said you believed that we did not need the court expert's involvement and, last week, said you would work on setting up the requested staff and limited class member interviews. We have not heard anything since then. We look forward to discussing the matter further with you and the court expert next Monday.

Finally, in addition to the requests made throughout this letter, we request written plans for all designated institutions regarding how they will accommodate impacting-placement class members in the event of an outbreak, including what areas will be designated for isolation and quarantine purposes, and what, if any, modifications to those areas, including installation of grab bars, shower benches, and shower hoses, have been or will be made. We request that those written plans be produced by next Friday, June 12.

Sincerely yours,



Rita Lomio
Staff Attorney



Megan Lynch
Investigator

cc: Co-Counsel
Ed Swanson, Court Expert

Ms. Tamiya Davis
Re: Defendants' Response to COVID-19 Outbreak at CIM
June 5, 2020
Page 15

Nicholas Meyer, Erin Anderson, Alexander Powell, Amber Lopez,
OLAArmstrongCAT@cdcr.ca.gov, Patricia Ferguson (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Teauna Miranda, Laurie Hoogland, Landon Bravo (DAI)
Vince Cullen, Don Meier, Laurene Payne, Ceasar Aguila, Samantha Lawrence-Chastain,
Olga Dobrynina, m_CCHCSAccountLog@cdcr.ca.gov, Alexandra Tonis, Barbara Pires,
Bruce Beland, Cathy Jefferson, Ceasar Aguila, Cindy Flores, Dawn Malone-Stevens,
Desiree Collum, Donald Meier, Gently Armedo, John Dovey, Laurene Payne, Lynda
Robinson, Ngoc Vo, Robin Hart, Steven Blum, Joseph Williams (CCHCS)
Adriano Hrvatin, Joanna Hood, Damon McClain, Sean Lodholz (DOJ)

EXHIBIT B



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Corene Kendrick
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

April 23, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

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

Dear Ms. Davis:

We write again regarding [REDACTED], who currently is housed on B3 at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF). Mr. [REDACTED] is blind and has a mobility impairment. We spoke with Mr. [REDACTED] by phone this morning. He relayed a number of concerns regarding disability accommodations, which we outline below.

1. Effective Communication of COVID-19 Information

Mr. [REDACTED] reported that he has not received effective communication from Defendants of information related to COVID-19, including preventive measures.¹ Notably, he reported that he discovered only last week that hand sanitizer is (and has been) available in the bathroom in his housing unit, and that was only because he accidentally hit the dispenser with his hand and asked another person what he hit. No one had previously or has since notified him that hand sanitizer is available in the building or elsewhere in the prison, or where or how to find it.²

¹ Mr. [REDACTED] nonetheless is generally knowledgeable about COVID-19 and the importance of frequent handwashing and physical distancing because his mother, who is a medical assistant, has kept him informed about the pandemic and the recommendations of health care professionals.

² See CDCR, COVID-19 Preparedness, <https://www.cdcr.ca.gov/covid19/> (last visited Apr. 23, 2020) (“On March 29, CDCR institutions began receiving extra hand sanitizer dispensing stations along with the new production of the type of alcohol-based hand sanitizer recommended by the Centers for Disease Control and Prevention (CDC) to help eliminate coronavirus produced by California Prison Industry Authority (CALPIA). The dispensers have been placed inside institution dining halls, work change areas, housing units, and where sinks/soap are not immediately available.”).

Ms. Tamiya Davis

Re: [REDACTED], DPV, DLT

April 23, 2020

Page 2

Mr. [REDACTED] has a personal television that he uses throughout the day. He reported that he has access to approximately 12 channels, but he was not aware that he could access institution-provided material on any of the channels and was not aware that CDCR and CCHCS are providing COVID-19 information and messages from Secretary Diaz and the Receiver through the television—either his personal television or the dayroom television. (We understand from staff interviews during the monitoring tour at SATF in February 2020 that the personal televisions in the dormitories do not have access to the state-run channels.)

In addition, Mr. [REDACTED] reported that he has not been notified about any written COVID-19 information, including posters in the housing unit. He only learned about the posters during a conversation with another resident in his building, when he asked how the other person knew what COVID stands for, and the person responded, “It’s written on the wall.”

2. Talking Books

Mr. [REDACTED] reported that staff told him that the Talking Book Library in Fresno was closed indefinitely, and that the library therefore could not fulfill additional requests for audio books—something that Defendants also have represented to the Court. *See* Doc. 2936, Joint Case Status Statement at 4 n.5 (Apr. 15, 2020) (stating that the Talking Book Library “is currently closed and unable to mail out books and equipment since all of its staff are working from home”). He reported that he has only two or three books or magazines currently and that, without access to additional reading material, he is “so bored.”

Defendants previously have stated that DPV class members statewide have higher rates of serious mental health concerns, including depression and anxiety. It is important that Defendants take all appropriate steps to mitigate the impact of increased isolation on people with disabilities during the COVID-19 pandemic. As we noted in a separate letter, we have been told that the Talking Book Library in Fresno is in fact “able to mail talking books [to people in prison] upon email request.” *See Attachment A*, Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Recreational Materials for Blind and Low Vision Class Members at 1 (April 23, 2020); *Attachment B*, Emails between Rita Lomio, Plaintiffs’ Counsel, and Penny Hill, Supervising Librarian (Apr. 21, 2020). We ask that SATF coordinate with the Talking Book Library to allow Mr. [REDACTED] to continue to receive talking books.

3. Tablet and Kiosk

Mr. [REDACTED] has a tablet, which he uses daily, primarily to listen to music. He utilizes the “talk back” feature, but indicated that there are some problems with the usefulness of that accessibility feature. For example, the “talk back” feature does not work when other audio content is playing; when streaming the radio through the tablet, he is unable to identify different

Ms. Tamiya Davis

Re: ██████████ ██████████ ██████████ DPV, DLT

April 23, 2020

Page 3

radio stations because the “talk back” feature does not work while the radio is on. In addition, the “talk back” feature is unable to identify the “back” button that lets the user return to a previous screen. And, although “talk back” allows him to independently read an email from a family member, he is unable to write a response because that still requires using the touchscreen keyboard (and, because he cannot see, he cannot distinguish the individual letter keys).³

Although Mr. ██████████ appreciates the opportunity to have a tablet, he estimates that he is able to independently utilize only about 30% of the tablet’s offerings. *See* Attachment A at 2-4 (stating that exercise videos and games on the tablets should be made accessible, and videos with audio description should be made available through tablets).

Finally, Mr. ██████████ reported that he is not able to independently utilize the touch screen kiosk in his housing unit. He reported that he relies on the assistance of another resident in his building because the ADA workers in his unit are not familiar with how to use the kiosk. The kiosk is used to update the tablets as well as to purchase and download music and emails. Mr. ██████████ explained that everyone in the housing unit is permitted to access the kiosk for 20 minutes twice a day, but because he relies on the generosity of another person for assistance, he accesses the kiosk only once a day, for a shorter period of time.



J-Pay Kiosk on A2, B-Section (February 2020 AMT)

³ Mr. ██████████ recently purchased a keyboard accessory to the tablet that hopefully will allow him to distinguish keys by touch and therefore allow him to write emails independently. At the time of our call, he had not yet been able to use the keyboard or received training on how to do so.

Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED] DPV, DLT

April 23, 2020

Page 4

4. Scribing and Writing Accommodations

When given the opportunity, Mr. [REDACTED] strives to be a writer—writing letters to loved ones, writing for pleasure, and producing poetry. Due to the lack of accommodations available to him, however, he is almost entirely dependent on ADA workers or other residents in his building to assist him with writing. At times, this has not been an obstacle; for example, while in Reception at DVI, Mr. [REDACTED] cellie was an ADA worker who enjoyed spending hours writing with Mr. [REDACTED]. But in his current living setting, the opportunity to spend that amount of time with ADA workers is not available. At times, ADA workers also have lacked the skills to write for him, and they sometimes have critiqued his writing, rather than simply scribing for him.

Mr. [REDACTED] is familiar with screen-reading software like JAWS and has used that software on personal computers prior to his incarceration. While JAWS is available on the legal research computer in the prison law library, he reported that it is not available on the ADA computer that is used to compose written documents. As a result, Mr. [REDACTED] reported, he is not able to use that technology to write independently, as he desires to do. He reported that he repeatedly has submitted requests for accommodations that would allow him to write more independently and regularly, but the responses simply instruct him to use an ADA worker for assistance. Due to the challenges that Mr. [REDACTED] faces, he reported that he currently writes only about 10% as much as he would like to: “I want to be writing. If I could write, so much time would pass so easily. I wish so badly I could do it.”

During the parties’ meet and confer on February 26, 2020, Defendants reported that the ADA Coordinator at SATF would take care of installing JAWS on the ADA computers in the law libraries. It is not clear whether this was done and, if it was, whether it was communicated to blind class members. It also is not clear whether blind class members currently are allowed access to auxiliary aids in the law library at SATF. During last Friday’s call between the parties, Defendants asked Plaintiffs’ counsel to identify class members who might require access to the auxiliary aids in the law library. We ask Defendants to evaluate whether Mr. [REDACTED] can be permitted access to the law library to use JAWS on the ADA computer.

5. Laundry

Mr. [REDACTED] reported that he is not able to equally access laundry services due to his disability. He explained that although the laundry program runs weekly on the same day of the week, the time to drop off the bag of laundry changes and is not announced. He explained that most people in the building know to drop off their laundry bags when someone brings the laundry bin into the unit, but because he is blind, he is unable to see when this occurs. As a result, he reported, he at times has missed the weekly opportunity to clean his clothes. This happened as

Ms. Tamiya Davis

Re: [REDACTED] DPV, DLT

April 23, 2020

Page 5

recently as within the last couple of weeks. Mr. [REDACTED] reported that he has attempted to resolve this problem independently by working with ADA workers in his area, but the ADA workers are not always around when the laundry bin is available. We ask that SATF staff ensure that Mr. [REDACTED] is notified when the laundry bin arrives at the unit.


* * * * *

We ask that Defendants review and address the above concerns. We note that most dovetail with the issues that the parties are discussing on the weekly COVID-19 telephone conferences, and we look forward to continuing that discussion and identifying solutions with you.

Sincerely yours,



Rita Lomio
Staff Attorney



Megan Lynch
Investigator

cc: Mr. [REDACTED]
Co-Counsel
Ed Swanson, Court Expert
Nicholas Meyer, Erin Anderson, Alexander Powell, Amber Lopez,
OLAArmstrongCAT@cdcr.ca.gov, Patricia Ferguson (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Teauna Miranda, Laurie Hoogland, Landon Bravo (DAI)
John Dovey, Vince Cullen, Don Meier, Laurene Payne, Ceasar Aguila, Samantha
Lawrence-Chastain, Olga Dobrynina, m_CCHCSAcctLog@cdcr.ca.gov, Alexandra
Tonis, Barbara Pires, Bruce Beland, Bryan McCloughan, Cathy Jefferson, Ceasar Aguila,
Cindy Flores, Dawn Malone-Stevens, Desiree Collum, Donald Meier, Gently Armedo,
John Dovey, Laurene Payne, Lynda Robinson, Ngoc Vo, Robin Hart, Steven Blum, Joseph
Williams (CCHCS)
Adriano Hrvatin, Joanna Hood, Damon McClain, Sean Lodholz (DOJ)
Annakarina De La Torre-Fennell (OAG)

EXHIBIT C



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Corene Kendrick
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

May 8, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

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

Dear Ms. Davis:

We write regarding [REDACTED], who currently is housed on G3 at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF). Mr. [REDACTED] is blind. We spoke with Mr. [REDACTED] by phone yesterday. He relayed several concerns regarding disability accommodations during the COVID-19 pandemic, which we outline below.

1. Access to the Courts

Mr. [REDACTED] reported that he is litigating at least two lawsuits for which he has upcoming deadlines, including on May 18, 2020, and in June 2020. He reported that he will not be able to meet either deadline without disability accommodations that are not currently available because the law library, which has the necessary auxiliary aids, is closed.

In response to the COVID-19 pandemic, some law library services are provided through paging (printed copies of requested cases). Mr. [REDACTED], however, is unable to read printed cases because he is blind. The text-to-speech equipment that would allow him to independently conduct legal research currently is available only in the law library.* (Plaintiffs' counsel has raised concerns with access to auxiliary aids for blind class members during the COVID-19 pandemic since March 2020.) As a result, Mr. [REDACTED] would require other people to read to him for hours as he prepared his cases. Due to his current living setting and social distancing guidelines, he reported that the opportunity to spend several hours with ADA workers is not available. At times, he reported, ADA workers also have lacked the skills to write for him.

* Mr. [REDACTED] reported that, for a short period of time, he had access LexisNexis on his J-Pay tablet, but that feature has since been removed. He was disappointed when LexisNexis was removed because having it available on the tablet allowed him to do some legal research and writing independently.

Ms. Tamiya Davis

Re: ██████████, DPV

May 8, 2020

Page 2

During the April 17, 2020 call between the parties, Defendants asked Plaintiffs' counsel to identify class members who might require access to the auxiliary aids in the law library. **Please evaluate whether Mr. ██████████ can be permitted access to the law library to use JAWS text-to-speech software in order meet the deadlines set in his active cases. If not, please explain how Defendants will accommodate Mr. ██████████.**

Finally, we note that Mr. ██████████ reported that JAWS is available only on the legal research computer in the law library, and not on the ADA computer that is used to compose written documents. During the parties' meet and confer on February 26, 2020, Defendants reported that the ADA Coordinator at SATF would take care of installing JAWS on the ADA computers in the law libraries. It is not clear whether this was done and, if it was, whether it was communicated to blind class members. **Please report on the status of installing JAWS on the ADA computers in the law libraries at SATF.**

2. Talking Books

Mr. ██████████ has a talking book player. He reported yesterday that he understood that the Talking Book Library in Fresno, which serves SATF, is closed indefinitely, and that the library therefore cannot fulfill additional requests for audio books.

In response to a previous inquiry from Plaintiffs' counsel regarding access to the talking book program during the pandemic, Defendants stated: "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." As you know, librarians at the Talking Book Library in Fresno later informed Plaintiffs' counsel that they are in fact accepting returns and fulfilling requests. *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Recreational Materials for Blind and Low Vision Class Members at 1 (Apr. 23, 2020). **Please report whether Defendants have confirmed that the Talking Book Library in Fresno is accepting returns and fulfilling requests; and whether, when, and how blind class members at SATF were informed that they now can return their talking books and receive new ones.**

3. Tablet Accessibility

Mr. ██████████ has a J-Pay tablet, which he uses daily, primarily to listen to music and write. He utilizes the text-to-speech feature, but indicated that there are some problems with the usefulness of that accessibility feature. For example, some of the education content on the tablets is primarily shown in images, which cannot be read by the text-to-speech software.

The tablets also are used for games. According to the CDCR website, as of May 4, 2020, people with tablets are eligible to access, free of charge, "[o]ne free video game per week for four weeks." CDCR, COVID-19 Response Efforts, <https://www.cdcr.ca.gov/covid19/covid-19->

Ms. Tamiya Davis
Re: [REDACTED], DPV
May 8, 2020
Page 3

response-efforts/ (last visited May 8, 2020). Mr. [REDACTED], however, reported that there are no audio games available, and that, as a result, he is unable to access the games due to his disability.

By separate letter dated April 23, 2020, we raised both concerns with Defendants. *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Recreational Materials for Blind and Low Vision Class Members at 2-4 (Apr. 23, 2020) (stating that accessible material, including videos and games, should be provided on the tablets). **We request a response to this letter.**

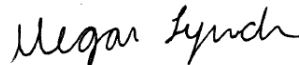
* * * * *

We note that the concerns outlined above are consistent with those Plaintiffs have raised since at least March 2020. They must be addressed promptly so that blind class members are adequately accommodated during current program restrictions.

Sincerely yours,



Rita Lomio
Staff Attorney



Megan Lynch
Investigator

cc: Mr. Daniels
Co-Counsel
Ed Swanson, Court Expert
Nicholas Meyer, Erin Anderson, Alexander Powell, Amber Lopez,
OLAArmstrongCAT@cdcr.ca.gov, Patricia Ferguson (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Teauna Miranda, Laurie Hoogland, Landon Bravo (DAI)
John Dovey, Vince Cullen, Don Meier, Laurene Payne, Ceasar Aguila, Samantha
Lawrence-Chastain, Olga Dobrynina, m_CCHCSAccountLog@cdcr.ca.gov, Alexandria
Tonis, Barbara Pires, Bruce Beland, Bryan McCloughan, Cathy Jefferson, Ceasar Aguila,
Cindy Flores, Dawn Malone-Stevens, Desiree Collum, Donald Meier, Gently Arredo,
John Dovey, Laurene Payne, Lynda Robinson, Ngoc Vo, Robin Hart, Steven Blum, Joseph
Williams (CCHCS)

Ms. Tamiya Davis
Re: Norman Daniels, T46088, DPV
May 8, 2020
Page 4

Adriano Hrvatin, Joanna Hood, Damon McClain, Sean Lodholz (DOJ)
Annakarina De La Torre-Fennell (OAG)

EXHIBIT D



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Corene Kendrick
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

April 23, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
Recreational Materials for Blind and Low Vision Class Members

Dear Ms. Davis:

As we discussed, this letter outlines recommendations for accessible recreational materials for blind and low vision class members during COVID-19-related modified programming. We look forward to discussing these recommendations with you.

1. Talking Books

Talking books, provided through the National Library Service of the Library of Congress, is the primary way that blind people in California prisons have access to recreational audio materials. Defendants have stated that “the California Braille and Talking Book Library . . . is currently closed and unable to mail out books and equipment since all of its staff are working from home.” Doc. 2936, Joint Case Status Statement at 4 n.5 (Apr. 15, 2020). It appears, however, that the Talking Book Library for the Blind in Fresno, California, which serves the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF), currently is able to mail talking books upon email request.

According to Ivy Bennett, Senior Library Assistant:

I’ve been mailing a great many prisoners materials if they have requests on file, and most of them do. . . . Simply providing me with a list of registered inmates and their requests via email would be the quickest way to reach those that aren’t already getting books through my current efforts and automation.

Email from Penny Hill, Supervising Librarian, to Rita Lomio, Plaintiffs’ Counsel (Apr. 21, 2020). The librarians recommended that prison administrators email requests to tblb@fresnolibrary.org, which they said they monitor closely. They also noted that “[r]eturns are welcome as we have our quarantine procedures in place.” *Id.*

Board of Directors

Penelope Cooper, President • Margaret Johns, Vice President • Marshall Krause, Treasurer
Harlan Grossman • Christiane Hipps • Cesar Lagleva • Jean Lu • Laura Magnani • Michael Marcum
Ruth Morgan • Seth Morris • Vishal Shah • Michele WalkinHawk

Ms. Tamiya Davis
Re: Recreational Materials for Blind and Low Vision Class Members
April 23, 2020
Page 2

The Braille and Talking Book Library of the California State Library also can “setup a BARD download account for individual prisons” that are not served by the Fresno Talking Book Library. *Id.*; see also Braille and Talking Books Library News, Special Edition (April 2020) (“While mailing operations are suspended, you can still download talking books to an iOS, Android, or Kindle Fire device for easy playback through the Braille & Audio Reading Download (BARD) service.”). For more information, you can contact btbl@library.ca.gov.

We note that when the Prison Law Office visited the Talking Book Library in Fresno last year, the librarians showed us how to overwrite existing cartridges with new books with a computer and adapter cable.



Talking Book Library for the Blind, Fresno, California (June 2019)

2. Tablets

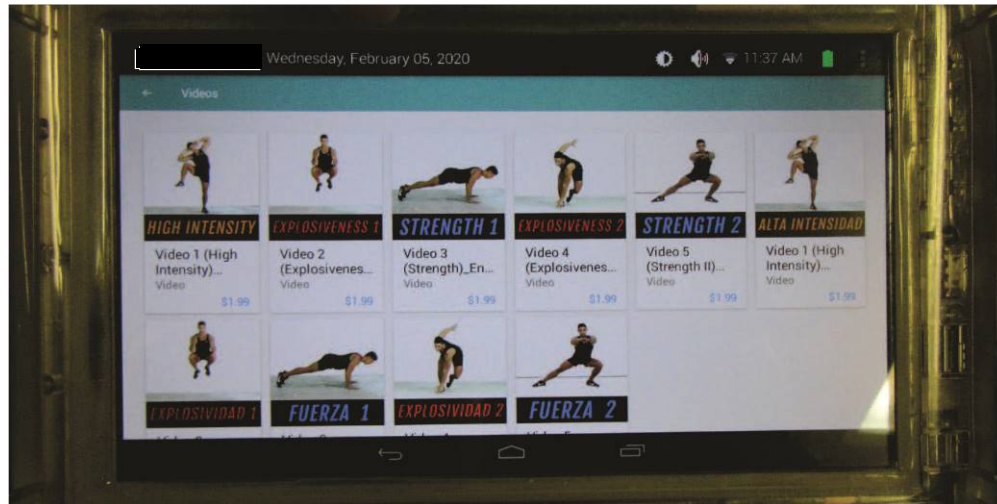
Defendants allow tablets at SATF, Central California Women’s Facility, California Institution for Women, High Desert State Prison (C yard), and Kern Valley State Prison (C yard). Defendants should distribute tablets to blind and low vision people who do not already have them and provide appropriate training, so they can use the accessible features on them—including text-to-speech and magnification beyond what available hand-held magnifiers allow. This is particularly important because auxiliary aids like JAWS, DaVinci, and Merlin are available only in the law libraries, which we understand class members currently do not have access to.



SATF AMT (February 2020)

Ms. Tamiya Davis
 Re: Recreational Materials for Blind and Low Vision Class Members
 April 23, 2020
 Page 4

Similarly, exercise videos currently are available through the J-Pay tablets at SATF. Different organizations, including the U.S. Association of Blind Athletes, produce free exercise-from-home videos that may be more (verbally) descriptive given the intended audience.



SATF AMT (February 2020)

3. Braille and Large Print Materials

As we have recommended before, Defendants should inventory their braille and large print collections, and make that information available to blind and low vision class members, so they can request certain materials through the paging service.

Defendants also should provide braille materials to those who want it, including through BARD (discussed above) and Bookshare.org. Defendants should make use of existing braille printing equipment at its prisons to print braille materials.

4. Other Equipment

Defendants should make televisions, radios, CD players, electronic magnifiers, and text-to-speech equipment available for use by blind and low vision class members in the housing units.

5. Games

According to the CDCR website, prison staff have been directed to provide games to the housing units. CDCR, COVID-19 Preparedness, <https://www.cdcr.ca.gov/covid19/> (last visited Apr. 22, 2020). If they have not already, Defendants should provide accessible games, including tactile puzzles, tactile rubik's cubes, large print crosswords, low vision playing cards, and accessible bingo cards. These items can be purchased online, including from Independent Living Aids: <https://www.independentliving.com/category/games-and-education>

Ms. Tamiya Davis
Re: Recreational Materials for Blind and Low Vision Class Members
April 23, 2020
Page 5

I hope this information helps. Please let me know if you have any questions or concerns.

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, Patricia Ferguson (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Teauna Miranda, Laurie Hoogland, Landon Bravo (DAI)
John Dovey, Vince Cullen, Don Meier, Laurene Payne, Ceasar Aguila, Samantha
Lawrence-Chastain, Olga Dobrynina, m_CCHCSAccountLog@cdcr.ca.gov, Alexandria
Tonis, Barbara Pires, Bruce Beland, Bryan McCloughan, Cathy Jefferson, Ceasar Aguila,
Cindy Flores, Dawn Malone-Stevens, Desiree Collum, Donald Meier, Gently Arnedo,
John Dovey, Laurene Payne, Lynda Robinson, Ngoc Vo, Robin Hart, Steven Blum, Joseph
Williams (CCHCS)
Adriano Hrvatin, Joanna Hood, Damon McClain, Sean Lodholz (DOJ)
Annakarina De La Torre-Fennell (OAG)

EXHIBIT E



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Corene Kendrick
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

May 6, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

Armstrong Advocacy Letter
RE: Accommodations for Deaf Class Members During the COVID-19 Pandemic

Dear Ms. Davis:

Thank you for arranging the video interviews with ten Deaf class members at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF) last week. Class members reported that they had met with a sign language interpreter on Friday, April 24, and were appreciative of that opportunity to have information shared with them in American Sign Language (ASL).

In this letter, we share some of the information our clients told us, as well as some recommendations to address their concerns. We hope this will give the parties a common foundation for further discussions.

We do not expect a written response to this letter. We believe the parties can discuss and resolve these issues during the weekly COVID-19 calls and next week's meet and confer. We have added the issues to the relevant agendas for those meetings. If you would prefer to handle these issues differently, please let us know.

1. Effective Communication of Written Information.....	2
2. Access to Television Programming and News.....	4
3. Captain's Meetings.....	6
4. Religious Services.....	6
5. Accessible Tablet Content.....	7

Board of Directors

Penelope Cooper, President • Margaret Johns, Vice President • Marshall Krause, Treasurer
Harlan Grossman • Christiane Hippi • Cesar Lagleva • Jean Lu • Laura Magnani • Michael Marcum
Ruth Morgan • Seth Morris • Vishal Shah • Michele WalkinHawk

Ms. Tamiya Davis
 Re: Accommodations for Deaf Class Members During COVID-19 Pandemic
 May 6, 2020
 Page 2

1. Effective Communication of Written Information

Almost all Deaf class members reported that they and others have difficulty understanding the written COVID-19 information that is posted in the housing units and has been distributed. For example, one said: “I don’t read it because I don’t understand everything that they said. They need to have an interpreter for us.” Another explained: “No, [Deaf people] do not [understand]. . . [T]hey have to have someone expound on what they’re saying. Have to expand meaning. Even if they read with another inmate [who knows some ASL], it doesn’t work, because how does the other inmate explain it to match their language?” Another reported that pictures sometimes help him understand: “Most of it I don’t understand. There sometimes are pictures that help with the explanation.” Deaf class members explained that hearing people have more understanding of COVID-19 and program changes because they are able to read written English, hear audio, and spread information through word-of-mouth, which Deaf people cannot do: “We have problems more than hearing people. They can socialize and talk to each other. But there’s a communication barrier between deaf and hearing people. We don’t understand what each other’s saying. It’s frustrating. . . . [I]magine how the Deaf are feeling on the yard when inmates have written materials and [the Deaf people] don’t have anything.”

We showed Deaf class members English words and terms that have been used in Defendants’ written posters and video messages. Below are some of the words and terms that Deaf class members were unfamiliar with.

<i>Pandemic</i>	<i>Social Distancing</i>	<i>Hygiene</i>	<i>Respiratory</i>
<i>Droplets</i>	<i>Breathing</i>	<i>Incubation</i>	<i>Symptomatic</i>
<i>Potential</i>	<i>Communicable</i>	<i>Interactive</i>	<i>Administrative Areas</i>
<i>Attending</i>	<i>Asymptomatic</i>	<i>Stakeholders</i>	<i>Cohort</i>
<i>Isolation</i>	<i>Quarantine¹</i>		



Where did COVID-19 come from?
 The World Health Organization states that coronaviruses are zoonotic, which means they are transmitted from animals to people. A specific animal source of COVID-19 has not been identified, but the virus has been linked to a large seafood and live animal market.

What are the symptoms of COVID-19?
 According to the Center for Disease Control (CDC), individuals diagnosed with this coronavirus experience a mild to severe respiratory illness. Symptoms include fever, cough and shortness of breath. Individuals with severe complications from the virus often develop pneumonia in both lungs.

How does the virus spread?
 The virus is spread person-to-person. According to the CDC, spread is happening mainly between people who are in close contact (within 6 feet) of each other via respiratory droplets produced when an infected person coughs or sneezes. The droplets land on the noses and mouths of other people, who then inhale them. The CDC says it may be possible for the virus to spread by touching a surface or object with the virus and then a person touching their mouth, nose or eyes, but this is not thought to be the main method of spread. As the virus was discovered just a few months ago, more research is required to learn more about the spread pattern of the virus. The incubation period ranges from 2 to 14 days after exposure (most cases occurring at approximately 5 days.) People are thought to be most contagious when they are most symptomatic (the sickest.) Some spread might be possible before people show symptoms.

¹ Two Deaf class members reported, when shown this word: “No, absolutely not. I do not know [what it means],” and, “It’s like something with your eye?”

Ms. Tamiya Davis
Re: Accommodations for Deaf Class Members During COVID-19 Pandemic
May 6, 2020
Page 3

Deaf class members reported that they wanted to learn these English words: “We need that, please, because I don’t understand what those words are, and you don’t know when you may need to know it. I want to know what’s happening.”² This also would help them understand interpreted content. Particularly when technical language is used, interpreters often will use a sign for the English word, but leave out necessary linguistic supplementation. For example, interpreted content about a pandemic might use an ASL sign for “pandemic” and/or spell out the English word “pandemic,” and then move on. But this does not mean that the Deaf person knows a word for that concept in either language. Teaching Deaf people the words for these concepts in English and in ASL will help them understand written, captioned, and interpreted content.

And there did appear to be a knowledge deficit on some issues. For example, several Deaf people asked about visitation rules and did not know that visitation had been suspended, or that individual religious counseling sessions and in-cell services are available. We also received inconsistent reports regarding whether Deaf people were told how to safely put on and take off a cloth face covering. One Deaf class member (G yard) reported that he had been told to take the covering off from around the ear. Another Deaf class member (E yard) reported that no one told him how to properly put on and remove the face covering. He reported that he had difficulty breathing with the mask on, and asked whether he could punch holes into it so that he could breathe more easily. And two Deaf class members (A yard) thought the proper way to take the covering off was to pull it down by the fabric and tuck it under the chin (something most Deaf people did during the interviews).

We ask that the following requests be discussed during the parties’ weekly calls:

- a. Defendants should ensure that all relevant information is effectively communicated to Deaf people in ASL, including about visitation restrictions, religious services, and how to safely put on and remove cloth face coverings; and
- b. Defendants should teach Deaf people common COVID-19-related English words in ASL.

² The difficulty that Deaf class members have understanding written information such as posters applies equally to the captions that accompany spoken information, such as captions on videos and news programs. This means that Deaf class members often do not understand written content or video content—even captioned video content. They must receive the information in ASL.

Ms. Tamiya Davis
Re: Accommodations for Deaf Class Members During COVID-19 Pandemic
May 6, 2020
Page 4

2. Access to Television Programming and News

The Division of Rehabilitative Programs (DRP) institutional Wellness channel includes information related to COVID-19. *See* CDCR, Population Communications, <https://www.cdcr.ca.gov/covid19/population-communications/> (last visited May 4, 2020) (stating that the Wellness channel “includes content from the Centers for Disease Control and Prevention as well as CDCR-produced materials”). We understand from the parties’ weekly calls that Defendants are working to provide ASL versions of educational material from the CDC, as well as ASL insets for CDCR-produced material. Plaintiffs believe that staff interpreters, who currently are not providing much on-site interpretation due to significant programming restrictions, could be used to produce this material. A Deaf class member on E yard reported that, because there is no ASL provided for the television channel: “We have no idea what they’re talking about.” He also reported that college programming currently runs on the state television channel occasionally, but it is not in ASL and does not have captions.

Deaf class members reported that they would like televised content provided in ASL: “Because I want to know what’s going on here in the prison. We’re deaf. We only get limited information. The hearing people are getting everything. If we ask them for information, they give us surface, the basics. I want to know everything. They’ll act like they don’t want to communicate with the deaf. They’ll give us a little bit, little answers. They won’t give us full details. They don’t want to do that.”

We understand from our interview with the SATF Television Specialist in February 2020 that personal televisions on A and G yards, which house Deaf class members, are not able to receive the Wellness channel. Class members on G yard reported that because dayroom is closed, they are unable to watch the dayroom television. And, as Plaintiffs have noted previously, the dayroom television on A yard is small and mounted high, making it difficult to read any captions.



A2, C Section, February 2020 SATF AMT

Ms. Tamiya Davis
Re: Accommodations for Deaf Class Members During COVID-19 Pandemic
May 6, 2020
Page 5

On March 31, 2020, Plaintiffs asked whether Defendants had installed larger televisions in common areas, so captions are clearly visible. Defendants requested that the issue be discussed at next week's meet and confer. Plaintiffs have added it to the agenda.

Deaf class members reported that they mainly get information about COVID-19 through television news. They reported that the only time ASL is available is during Governor Newsom's press conferences. They reported that they had difficulty understanding captioning when it is available, because the English words are unfamiliar to them.

As they explained: "The big words. I'm done. I don't get it." And: "I know the words are serious and important to be understood," but ASL and English are "totally different languages." "There are a lot of vocabulary words that I may not know or may not know the sign to express it."

Deaf class members reported a strong interest in having access to news in ASL, including through the Daily Moth: <https://www.dailymoth.com/>. "Wow. That seems like a good deal." "Yes, yes, yes, yes." "Absolutely. That would help a lot. People could watch the signing. It wouldn't be live. It's recorded. But they could still learn. They could see what's going on." "Yes, I would like that. Please. I want to know what's going on day-to-day. I would take total advantage of that. I want to protect my health." Daily Moth news clips are free and have both captioning and a written English transcript. The news clips could be provided by bringing a television in on a rolling stand for Deaf people to watch in turns (or together, if they already are housed together in a cohort, as they appear to be on G yard), or the video clips could be uploaded to the J-Pay kiosk and tablets distributed to Deaf class members who do not already have a tablet.

On March 31, 2020, Plaintiffs asked whether Defendants would allow Deaf people access to news in ASL. Defendants requested that the issue be discussed at next week's meet and confer. Plaintiffs have added it to the agenda.

We request that the following be discussed during next week's meet and confer:

- a. Defendants' efforts to provide television programming in ASL and captions;
- b. Defendants' efforts to provide larger television screens; and
- c. Deaf class member access to Daily Moth news clips or other news in ASL.

Ms. Tamiya Davis
Re: Accommodations for Deaf Class Members During COVID-19 Pandemic
May 6, 2020
Page 6

3. Captain's Meetings

Deaf class members reported that they had been informed that the biweekly captain's meetings now would be occurring on a monthly basis, and that only one Deaf person is permitted to attend. They further reported that the staff interpreters are rotating their time on-site, with only one staff interpreter at the prison each day.

We request that the following information be provided during the parties' weekly call:

- a. How the Deaf representative will be able to talk with others before and after the meeting, if Deaf people are in different buildings; and
- b. What information is provided during the captain's meetings and what information will be provided in ASL directly to all Deaf class members at other times.

4. Religious Services

According to the CDCR website, "CDCR recognizes the importance of religion in the daily life and spiritual growth of incarcerated people. Religious services will be provided as in-cell services as an alternative. Chaplains will conduct individual religious counseling as appropriate while maintaining social distancing, and CDCR is working to provide televised religious services to the population." CDCR, COVID-19 Response Efforts, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/> (last visited May 4, 2020).

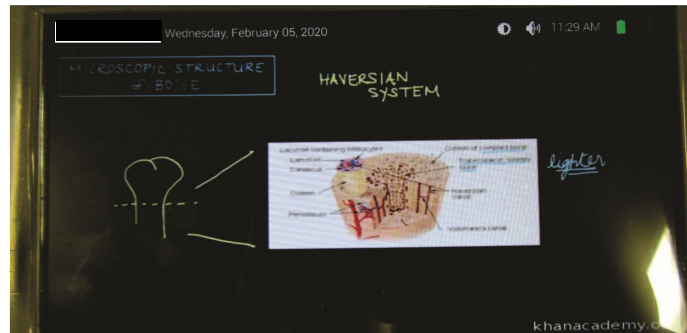
As noted above, Deaf class members at SATF were unaware that in-cell services and individual counseling was available, or how to request such services. Pastor Jeff Jackson previously conducted services in ASL at SATF. Deaf class members would like to have access to video services by Pastor Jackson. Pastor Jackson posts his Sunday services on YouTube, and they are available in ASL, captions, and voiceover: <https://www.youtube.com/playlist?list=PL8zOX8-jBjjEBZI9suyjAv2-qLxczCDTn>. Again, the services could be provided by bringing a television in on a rolling stand for Deaf people to watch, or the videos could be uploaded to the J-Pay kiosk and tablets distributed to Deaf class members who do not already have a tablet.

We would like to discuss during the parties' weekly calls how to make televised religious services in ASL available to Deaf class members.

Ms. Tamiya Davis
 Re: Accommodations for Deaf Class Members During COVID-19 Pandemic
 May 6, 2020
 Page 7

5. Accessible Tablet Content

People at SATF are able to purchase J-Pay tablets. People with tablets now are eligible to access, free of charge, the following as of May 4, 2020: “Up to 30 free videos focusing on teaching and improving life skills to help cope with challenges during and after incarceration,” “[s]ix free audio recordings by Andre Norman, creator of the ‘Academy of Hope’ series,” and “[o]ne free video game per week for four weeks.” CDCR, COVID-19 Response Efforts, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/> (last visited May 4, 2020). And, “[e]ffective May 12, inmates with tablets may also have unlimited free access to the News Stand application, which delivers daily updated news, for one month.” *Id.* It is not clear whether any of this information is or will be available in ASL. Notably, J-Pay currently includes video content, including educational videos from Khan Academy, that does not have captions or ASL insets.



Khan Academy Video, J-Pay Tablet, February 2020 SATF AMT

We request that the following information be provided during the parties’ weekly call:

- a. Whether announced tablet content will be provided in ASL or with captions; and
- b. Whether Defendants can use the tablets to provide state-produced video content to Deaf class members in ASL.

* * * * *

We look forward to discussing these issues with you.

Sincerely yours,

Rita Lomio
 Staff Attorney

Ms. Tamiya Davis
Re: Accommodations for Deaf Class Members During COVID-19 Pandemic
May 6, 2020
Page 8

cc: Co-Counsel
Ed Swanson, Court Expert
Nicholas Meyer, Erin Anderson, Alexander Powell, Amber Lopez, Nick Meyer,
OLAArmstrongCAT@cdcr.ca.gov, Patricia Ferguson (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Teauna Miranda, Laurie Hoogland, Landon Bravo (DAI)
John Dovey, Vince Cullen, Don Meier, Laurene Payne, Ceasar Aguila, Samantha
Lawrence-Chastain, Olga Dobrynina, m_CCHCSAccountLog@cdcr.ca.gov, Alexandria
Tonis, Barbara Pires, Bruce Beland, Bryan McCloughan, Cathy Jefferson, Ceasar Aguila,
Cindy Flores, Dawn Malone-Stevens, Desiree Collum, Donald Meier, Gently Arnedo,
John Dovey, Laurene Payne, Lynda Robinson, Ngoc Vo, Robin Hart, Steven Blum, Joseph
Williams (CCHCS)
Adriano Hrvatin, Joanna Hood, Damon McClain, Sean Lodholz (DOJ)
Annakarina De La Torre-Fennell (OAG)

EXHIBIT F



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Caroline E. Jackson
Email: cjackson@rbgg.com

April 17, 2020

VIA ELECTRONIC-MAIL ONLY

<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
--

Tamiya Davis
CDCR Office of Legal Affairs
tamiya.davis@cdcr.ca.gov

Re: *Armstrong v. Newsom*: Advocacy Letter re COVID-19 Precautions at North Kern State Prison (“NKSP”).
Our File No. 0581-03

Dear Tamiya:

We write to raise some alarming issues regarding COVID-19 precautions at North Kern State Prison Reception Center (“NKSP-RC”). Based on reports received during our most recent interview-only monitoring tour, April 14-16, class members face severe deficiencies in access to personal protective equipment and effective communication of basic COVID-19 education. We ask that you address these issues immediately, because failure to do so could have serious health consequences.

I. Lack Of Personal Protective Equipment For Medically Vulnerable Class Members And Their ADA Workers

All interviewees reported a complete lack of access to personal protective equipment among those incarcerated and at NKSP-RC, including medically vulnerable class members, their ADA Workers, and the porters who bring them meals. Class members also reported that few staff members wear protective equipment, and only medical staff consistently use masks and gloves.

Available information regarding COVID-19 establishes that individuals with certain health conditions are more susceptible to contracting COVID-19 and/or more likely to suffer severe, life-threatening symptoms. Six of the class members we

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
 April 17, 2020
 Page 2

interviewed reported having such conditions: [REDACTED], DPW, DNH, reported a severely suppressed immune system due to Valley Fever; [REDACTED], [REDACTED], DPH, DPO, reported a heart condition so severe he requires a wheelchair; [REDACTED], DNH, reported having a heart murmur; [REDACTED], reported that his immune system is suppressed due to rheumatoid arthritis; [REDACTED], DPW, reported that he has weak lungs that have collapsed twice in the past; [REDACTED], DPO, reported having asthma. In addition, class members housed in the CTC, [REDACTED], DPW, [REDACTED], [REDACTED], DPW, and [REDACTED], DPW, can be presumed to have underlying conditions that similarly exacerbate COVID-19 risks.

Four of these class members—[REDACTED]—are housed on B-Yard, the same yard as a quarantine unit, and where one individual has already tested positive for COVID-19. These class members each use ADA Workers, who also have not been issued masks or gloves to use, increasing these vulnerable class members' chances of exposure to the novel coronavirus. One class member in particular, [REDACTED], reported that he does not use the same ADA Worker each time. While he has an ADA Worker assigned to him, when that person is not available, another worker is chosen at random to fill in. Given the wide range of symptoms and severity that people with COVID-19 display, Mr. [REDACTED] stated he is terrified of using ADA Workers and reported that, as a result, he tries not to leave his cell.

Interviewees housed in Reception Center cells also consistently reported that, when they are cell-fed, the staff and porters who bring them their trays do not wear masks. Without masks, there is a significant risk of the virus spreading from the saliva droplets of a porter who coughs, sneezes, or even speaks while carrying the tray.

II. Lack Of Education Regarding COVID-19

The interviewees also uniformly reported that the NKSP-RC had done almost nothing to educate them regarding COVID-19 protections. The NKSP-RC had advised them that certain programs and transfers, had been shut down due to the virus. But interviewees reported that everything they learned about the virus—including safety precautions—they learned from the news or from family members.

Some class members did report seeing a poster in the dayroom. However, especially given that all class members reported spending an hour or less in the dayroom per day, putting up a single poster to inform incarcerated people about the health risks and how to stay safe is not enough. Further, incarcerated people who cannot read and

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
April 17, 2020
Page 3

understand the poster require that the essential health information be effectively communicated by other means.

As a result of the lack of education, some class members knew little or nothing about the virus. For example, [REDACTED], DPH, stated he had never heard of the virus until receiving a recent letter from our office mentioning it. He had not been told about necessary safety precautions in prison. His lack of education is particularly concerning because he reported having a severe heart condition, putting him at greater risk if he contracts COVID-19.

Mr. [REDACTED] was not the only class member with an underlying condition who did not know this condition heightened the risks associated with COVID-19. Two other class members, [REDACTED] and [REDACTED], also did not know they had medical conditions that put them at greater risk from the virus. It is imperative that CDCR educate all incarcerated people, especially those with underlying health conditions that increase the risks posed by COVID-19, regarding safety and precautionary measures they should be taking to protect their health in prison.

III. General Prevention Measures

We received additional reports that suggested NKSP should be taking more precautions in preventing the spread of COVID-19. Specifically, interviewees reported needing less crowded dormitories, more social distancing when standing in lines or traveling in lines, more masks and gloves for officers and prisoners, more soap, and more sanitizing telephones between uses.

Of the interviewees currently housed in Reception Center dormitories, class members reported crowded conditions. One class member stated that, in his housing unit B-1, some 200 people are packed into the dormitory. This made it impossible to practice social distancing, especially when waiting to use the few showerheads available. Another class member reported having very recently been transferred out of a Facility C dormitory into cells, likely to ease crowding in that dormitory.

Class members in the Reception Center reported that the institution does little to make sure they observe social distancing when they line up for any reason. For example, an individual in B-1 reported that his dormitory lines up to pick up their trays without taking any social distancing measures, and that they return the trays without social distancing. He also reported no social distancing when standing in line for pill call. He further reported that, when lined up for traveling between buildings, two lines of people traveling in opposite directions will pass within a few feet of each other, again without

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
April 17, 2020
Page 4

social distancing. One class member reported seeing marks on the ground for social distancing when lined up for canteen, but no similar efforts elsewhere. Mainline class members reported greater effort on the part of the prison to indicate where to stand for social distancing.

The interviewees consistently reported that they receive extra phone calls, as CDCR represented. However, the class members did not see any effort from custody staff to make sure that the telephones are cleaned between uses. People placing phone calls must decide themselves to sanitize and must use their own supplies. Interviewees reported they are receiving sufficient disinfecting supplies to clean their cells and other surfaces, but they are not receiving hand sanitizer or extra soap to wash their hands.

Interviewees reported that only medical staff uniformly seem to be taking precautions seriously. Only medical staff consistently used masks or gloves. A small percentage of officers had masks, but fewer wore them consistently. For example, one class member reported that officers deliver their trays for meals, and that only 2 or 3 out of the 10 or 12 officers delivering trays wear masks. Interviewees further reported that custody staff did not seem to be observing social distancing with one another.

Finally, Plaintiffs' counsel requested that specific precautions be taken in providing phone calls with class members, including that class members not be escorted or made to wait in groups. It is our understanding that the institution chose instead to escort interviewees in groups based on their housing, so that they were exposed only to other people from their housing units. We are concerned about this practice as a general matter, especially if social distancing is not enforced during the escort.

We also received one report that a group of four class members and their ADA Workers—a total of eight people—waited together in a small room for an extended period of time before their interviews. Regardless of the fact that they all came from the same housing unit, we find that particular practice concerning because all four of the interviewees reported having underlying health conditions that increase the risks inherent in COVID-19. They should not have also been placed in conditions that increased their likelihood of contracting the virus if exposed.

* * *

Plaintiffs' counsel requests that NKSP take the following steps immediately:

- Ensure the effective communication of education materials to the incarcerated population regarding COVID-19, including common symptoms, how it is spread,

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
April 17, 2020
Page 5

what precautions to take, and which underlying conditions increase the risks associated with the novel coronavirus;

- Ensure that those who use ADA Workers are provided with the same ADA Worker every time they need help, and to select an ADA Worker who already is in close contact with the disabled person—for example, a disabled person’s cellmate could be assigned as their ADA Worker, or at a minimum, a person who has dayroom in the same cohort as the disabled individual;
- Provide masks and gloves to all individuals with medical conditions that exacerbate the risks posed by COVID-19: those with uncontrolled high blood pressure, uncontrolled diabetes, lung problems including asthma, heart conditions, suppressed immune systems, and advanced age;
- Provide masks and gloves to all ADA Workers to use when performing their ADA Worker duties;
- Provide masks and gloves to all individuals who use ADA Workers, regardless of their underlying medical conditions, to use when they cannot socially distance from their ADA Worker;
- Provide comprehensive instructions for using masks and gloves, such as how to put on and remove this equipment safely;
- Ensure a replacement supply of masks and gloves as needed;
- Instruct custody staff to observe social distancing and to encourage incarcerated individuals to do the same, especially when waiting or traveling in lines.

///

///

///

///

///

///

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
April 17, 2020
Page 6

Please report immediately on any and all steps the facility will take in response to our letter. Thank you again for your patience and cooperation in this matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:CJ

cc: Ed Swanson

Alexander "Lex" Powell	Bruce Beland	Lynda Robinson
Nicholas Meyer	Robert Gaultney	Barb Pires
Patricia Ferguson	Kelly Allen	CCHCS Accountability
Amber Lopez	Sandra Alvarez	Ngoc Vo
Erin Anderson	Tabitha Bradford	Samantha Chastain
Sean Lodholz	John Dovey	Olga Dobrynina
Joanna B. Hood	Donald Meier	Dawn Stevens
Annakarina	Robin Hart	Bryan McCloughan
De La Torre-Fennell	Laurene Payne	Alexandrea Tonis
Damon McClain	Cesar Aguila	Gently Arredo
Adam Fouch	Cindy Flores	Joseph Edwards
Teauna Miranda	Joseph Williams	Lois Welch
Landon Bravo	Cathy Jefferson	Steven Faris
Laurie Hoogland	Vincent Cullen	Miguel Solis
	Co-Counsel	OLA <i>Armstrong</i>

EXHIBIT G



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Benjamin Bien-Kahn
Email: bbien-kahn@rbgg.com

May 22, 2020

VIA ELECTRONIC MAIL ONLY

<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
--

Tamiya Davis
CDCR Office of Legal Affairs
Tamiya.Davis@cdcr.ca.gov

Re: *Armstrong v. Newsom*: Request for Virtual Monitoring, Wasco State Prison
Our File No. 0581-03

Dear Tamiya:

We write to request a virtual monitoring tour of certain areas of Wasco State Prison (“WSP”)’s Reception Center, due to our serious concerns about inadequate COVID-19 precautions taken at the institution.

We propose that the virtual tour take place the week of June 1. More details about the requested tour, which we anticipate would take only one day, are outlined below. We would like to discuss the logistics with you early next week.

As you know, due to visitation restrictions due to COVID-19, Plaintiffs’ counsel converted the full monitoring tour of WSP, scheduled for May 5-6, 2020, into two days of telephonic class member interviews, during which we interviewed 23 class members, but did not tour the prison or interview staff, as we would ordinarily have done.

Our interviews with nearly 20% of the class members at WSP revealed strikingly consistent and frightening reports about the inadequate COVID-19 precautions taken by WSP. *See* May 15, 2020 B. Bien-Kahn Letter to T. Davis re Inadequate COVID-19 Precautions at WSP, attached as **Exhibit A**. Our concerns are intensified by CDCR’s decision to “pilot” the resumption of intake from county jails at WSP’s and North Kern State Prison’s Reception Centers. Given the alarming reports, WSP’s Reception Center seems particularly ill-suited to be one of CDCR’s test cases for restarting intake.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis

May 22, 2020

Page 2

We are particularly concerned about the conditions for people with disabilities at WSP, who are disproportionately affected by COVID-19. *See Exhibit A* at 2. The institution houses over 120 *Armstrong* class members, including 32 people with impacting-placement mobility disabilities (which includes 18 people who use wheelchairs), and 11 class members designated DKD who are undergoing dialysis for chronic kidney disease, putting them at a higher risk of more severe and life-threatening symptoms from COVID-19 should they become infected. Even before the COVID-19 pandemic, Plaintiffs' counsel have reported on problems that DPW and DPO class members experience in the overcrowded and unsanitary dormitories on Facility H, WSP's only Reception Center dorms designated to house people who use wheelchairs.

For the foregoing reasons, we would like to conduct a virtual facility walk-through of certain areas in WSP's Reception Center where class members consistently reported particularly dangerous conditions that put people with disabilities at disproportionate risk of harm because of their disabilities.

We request to conduct a walking tour of WSP's H yard and D Yard, including the H1, H2 and H3 dormitories that are designated to house people who use wheelchairs, and the D7 dormitory on Facility D. On each yard, we would like to speak with the captain about policies, procedures and practices that affect class members.¹

Plaintiffs' counsel will participate in the walking tour remotely. We therefore request that prison staff facilitate the tour through a phone, laptop, or tablet to stream video to Plaintiffs' counsel through, for example, Zoom, Skype, or FaceTime. We also request that the prison staff carry measuring tape and a camera to take measurements and photographs during the tour, and that photographs be produced to Plaintiffs' counsel shortly after the tour.

Plaintiffs' counsel in *Armstrong* is observing the *Plata* virtual tour pilot at California Institution for Men ("CIM") today, and the parties have agreed to discuss the format of *Armstrong* virtual tours after that pilot. We may adjust the format of the requested WSP tour based on the pilot and the parties' subsequent discussions. We did

¹ Plaintiffs' counsel has reviewed the report documenting CCHCS Correctional Services' onsite COVID-19 of WSP on May 12, 2020, which involved staff interviews and the review of two housing units, a medical clinic, and Central Medical Services. The Receiver's review was not focused on the issues raised by WSP class members, which Plaintiffs' counsel had not yet reported to Defendants, and does not address or provide answers to the concerns we seek to investigate through the requested virtual tour.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
May 22, 2020
Page 3

not want to delay providing advance notice to Defendants, however, of the requested WSP virtual tour.

We believe that this proposal will mitigate, to the extent possible, interruption to prison operations and staff assignments and is the best way for Plaintiffs' counsel to conduct a limited and minimally intrusive investigation into the concerning information reported by class members at WSP.

Please let us know when you are available to discuss the dates and logistics of this proposed tour.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Ben Bien-Kahn

Ben Bien-Kahn
By: Senior Counsel

BBK

Encl.: Ex. A

cc:

Ed Swanson	Landon Bravo	Ngoc Vo
Alexander "Lex" Powell	Laurie Hoogland	Miguel Solis
Nicholas Meyer	Bruce Beland	Olga Dobrynina
Patricia Ferguson	Robert Gaultney	Dawn Stevens
Amber Lopez	John Dovey	Alexandrea Tonis
Erin Anderson	Donald Meier	Gently Armedo
Robin Stringer	Robin Hart	Lois Welch
OLA Armstrong	CCHCS Accountability	Steven Faris
Jeremy Duggan	Cindy Flores	Lynda Robinson
Damon McClain	Joseph (Jason) Williams	Barb Pires
Joanna Hood	Kelly Allen	Co-Counsel
Sean Lodholz	Cathy Jefferson	
Trace Maiorino	Vincent Cullen	
Anthony Tartaglio	Joseph Edwards	
Adam Fouch		
Teauna Miranda		

**PRIVILEGED AND
CONFIDENTIAL**

**SUBJECT TO
PROTECTIVE ORDERS**

EXHIBIT A



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Benjamin Bien-Kahn
Email: bbien-kahn@rbgg.com

May 15, 2020

VIA ELECTRONIC MAIL ONLY

<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
--

Tamiya Davis
CDCR Office of Legal Affairs
Tamiya.Davis@cdcr.ca.gov

Re: *Armstrong v. Newsom*: Advocacy Letter re Inadequate COVID-19
Precautions at Wasco State Prison
Our File No. 0581-03

Dear Tamiya:

We write to raise our concerns regarding inadequate COVID-19 precautions at Wasco State Prison (“WSP”). Based on reports from the 23 class members interviewed during our May 5-6, 2020 telephonic monitoring tour, WSP appears to be failing to adequately follow public health guidelines and CDCR and CCHCS policies adopted to protect the health and well-being of CDCR staff and incarcerated persons, as well as the surrounding communities, from the spread of COVID-19.

While there has not yet been an incarcerated person at WSP who has tested positive, we fear that if necessary precautions are not undertaken immediately, the institution could become the site of the next outbreak of COVID-19 at CDCR, particularly once WSP’s Reception Center resumes intake from county jails.

Class members consistently reported that—notwithstanding CDCR’s assertions to the contrary—“dorm cohorts” have **not** been established in WSP’s dormitories. They also reported that almost no correctional officers (“COs”) are wearing masks and that COs are not practicing social distancing; that social distancing is impossible in WSP’s overcrowded and unsanitary dormitories; that the institution is doing little to allow for social distancing when incarcerated people must stand in lines, wait for medical appointments, or be transported to their dialysis appointments; that there is not enough

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
May 15, 2020
Page 2

soap, disinfectant, or other cleaning supplies available for incarcerated people; and that telephones and showers are not being cleaned between uses. These and other concerns relating to WSP’s response to COVID-19 are detailed below.

We consider this a core *Armstrong* issue, given that people with disabilities are disproportionately affected by COVID-19, both because class members are more susceptible to contracting the virus, and are more likely to have underlying medical conditions that put them at a higher risk of more severe and life-threatening symptoms from COVID-19 should they become infected. Indeed, more than two-thirds of the class members interviewed by Plaintiffs’ counsel are known by Defendants to be at high risk for severe illness should they contract COVID-19, based on the risk factors identified by the Centers for Disease Control (“CDC”).¹

I. Dorm Cohorts Have Not Been Implemented at WSP and Social Distancing is Impossible in WSP’s Overcrowded and Unsanitary Dormitories.

Class members universally reported that social distancing is impossible in WSP’s overcrowded and unsanitary dormitories, and that the Receiver’s directive that social distancing be achieved in dormitories by establishing 8-person housing cohorts separated from others by a distance of at least six feet in all directions has **not** been implemented. While Defendants have claimed that “dorm cohorts” are already in place in all of WSP’s dorms, class members reported that this is untrue on Facility H and Facility D.²

¹ [REDACTED] and [REDACTED] are undergoing dialysis for chronic kidney disease (as are eight other DKD class members at WSP who were not interviewed). [REDACTED], [REDACTED], and [REDACTED] all have chronic obstructive pulmonary disease, a chronic lung condition, and [REDACTED], Mr. [REDACTED] and [REDACTED] also have asthma. Mr. [REDACTED], [REDACTED], and [REDACTED] each has a serious chronic heart condition and/or was hospitalized within the last several months with heart problems. Mr. [REDACTED] and [REDACTED] have diabetes, and [REDACTED] has liver disease. Mr. [REDACTED], [REDACTED], and [REDACTED] are all over 65 years old.

² Due to a combination of bed moves and refusals by class members on our interview list, we were unable to interview any class members who are currently housed on Facility C. The class members interviewed who had been previously housed in C dorms all reported that no dorm cohorts had been established before they were moved.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis

May 15, 2020

Page 3

The H1, H2 and H3 dorms—WSP’s reception center dorms that are designated to house class members who use wheelchairs—have historically been very overcrowded, and each was still housing at least 140 incarcerated people around the time of these interviews, in dorms designed with a maximum capacity of 100.

Class members consistently reported that no effort at implementing “dorm cohorts” had occurred in the H1 or H2 dorms. For example, ██████████, DPW, reported that the H1 dorm’s population has increased since the start of COVID-19, and there is barely enough space to maneuver his wheelchair between the bunks, which are bolted into the floor. ██████████, DPO, reported that while there is an empty “rack” (or bunk bed) next to his bunk, he does not see any other empty racks throughout the rest of the H1 dorm. ██████████, DPO, similarly reported that everyone’s bunks are right next to each other in the H2 dorm, with only about two feet between each rack, and explained that there is simply not enough room in the dorm to create cohorts given how many people are housed there. ██████████, DPO, reported that when he is lying on his bunk in the H2 dorm, his head is right up against another person’s head in the next row of bunks, and that he is only about a foot away from the neighboring bunk.

In the H3 dorm, class members reported that there has been an effort to implement dorm cohorts, albeit one that utterly failed to create separation of at least six feet between each cohort in every direction. ██████████, DPO, explained that the COs tried to put cohorts in place by leaving one rack empty for every three to four bunks (creating 6 to 8 person cohorts), although he estimated that even with the empty rack, there was only about four feet of space between cohorts. Further, as explained by both Mr. ██████████ and ██████████, DPO, because there is so little space between the rows of bunks in the H dorms, even with an empty rack, their heads were still less than two feet away from the heads of incarcerated people in the cohorts in the next row of bunks.

██████████, DLT, reported that in the D7 dorm, COs tried to implement dorm cohorts by “diamonding” the incarcerated people in a formation, leaving an empty rack between cohorts in the same manner as in the H3 dorm, with the same limitations described by Mr. ██████████ and Mr. ██████████. Mr. ██████████ reported that D7 quickly shifted back to normal with no empty racks once the COs realized that it was not feasible to implement dorm cohorts there. He reported that the racks are so close together that he can reach out from his bed and touch the person in the next bunk. Mr. ██████████ also reports that everyone eats together in the dayroom at four-person tables that are about a foot apart from each other, making social distancing impossible in the D7 dorm.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis

May 15, 2020

Page 4

Class members housed in the H dorms also consistently reported that social distancing is not possible in their buildings. For meals, the porters bring trays of food for the A-Side and B-Side separately, but this still results in 60 or more people lining up for their meals at a time, with no space to be able to feasibly leave six feet between each person. To make matters worse, we received multiple reports that the trays are filthy and the food is often moldy. In all the H dorms, people sit at the tables next to each other during dayroom, with no ability or space to socially distance.

The problems are particularly acute with respect to the bathrooms and showers. There are only two ADA toilets and two ADA showers in each H dorm, and the class members interviewed universally report that they have to wait in line to use the bathroom and to shower, with no ability or space to socially distance. Often there are three or four people showering at the same time in the ADA showers. While porters are cleaning the bathrooms and showers about three times a day, it would be impossible to do so between each use without significantly reducing the population of these dorms, causing class members to fear for their safety given the COVID-19 pandemic.

These problems caused by overcrowding are exacerbated due to the terrible conditions of these dorms. Class members housed in the H1 dorm reported that one of the two ADA urinals has been broken for more than a month, and that one of the two ADA toilets is never working for more than a week straight, as it keeps clogging due to overuse. There are only four drinking fountains for the entire dorm, and at least one has been broken at any given time. Many bathroom sinks are broken or do not work well. As a result, it is difficult for class members to wash their hands; the problem is exacerbated because many people are washing their clothes in the bathroom sinks due to delays in getting their laundry back. Every class member interviewed in the H1 dorm reported that there are black widows and recluse spiders running rampant in the dorm due to the filth. [REDACTED], DPO, reported that he received penicillin after he was bitten by a recluse spider, and that his leg is still swollen and painful.

Class members housed in the H2 dorm also reported that many incarcerated people are washing their clothing in the bathroom sinks due to the laundry delays. [REDACTED], DPO, reported that the H2 dorm lacks adequate ventilation, and that there is standing water that smells of mildew in the dorm. [REDACTED], DPO, similarly reported that there is standing water due to leaking in the dorm, and black mold on the ceiling and walls. The shower bench in the ADA shower is also covered in black mold, making class members fear for their health if they were to use it. The smell of feces and urine permeates the dorm. Horrifyingly, Mr. [REDACTED] reported that there are maggots or water worms coming out of some of the bathroom sinks.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis

May 15, 2020

Page 5

Class members housed in the H3 dorm also reported that many incarcerated people are washing their clothing in the bathroom sinks due to laundry delays, and that many of the bathroom sinks are clogged or broken, making it more difficult for incarcerated people to wash their hands. [REDACTED], DPO, DNH, DNV, reported that he is often splashed with dirty sink water when he is using the ADA toilet because other people are washing their clothes next to the toilet. Class members in the H3 dorm who use wheelchairs also uniformly reported that there is no hot water in the ADA showers, so they are forced to choose between trying to adequately clean themselves with ice-cold showers, or trying to bathe in the regular showers by sitting on flimsy plastic shower chairs that are not disinfected or even cleaned between uses.

II. Failures to Wear Personal Protective Equipment

Class members interviewed nearly uniformly reported that almost no COs are wearing masks at WSP. Without masks, there is a significant risk of COVID-19 spreading from the saliva droplets of officers who cough, sneeze, or speak to incarcerated people. This is particularly concerning given that the most likely way for COVID-19 to be introduced into WSP is via the staff who work at the institution.

All the class members interviewed on Facility H reported that COs never or almost never wear masks. For example, both [REDACTED], DPO, housed in the H1 dorm, and [REDACTED], DPO, housed in the H3 dorm, reported that the first time they saw COs wearing masks was on the day they were interviewed by Plaintiffs' counsel. [REDACTED], DPO, housed in the H2 dorm, reported that COs used to wear masks but that since incarcerated people were provided masks in mid-April, the COs have now all stopped wearing them. He reported that the COs who escorted him for his interview with Plaintiffs' counsel were not wearing masks. [REDACTED], DPO, housed in the H3 dorm, explained that the COs seem to only wear their masks when they anticipate that they may be seen by a supervisor.

Class members housed on WSP's mainline facility and on Facilities B and D also reported that COs rarely wear masks.³ For example, class members on Facility B estimated that no more than 20% of the COs wear masks. [REDACTED], DPW, reported that only about one in ten COs who work in Building B6 do so. The only areas where class members reported that COs consistently wear masks are the Correctional Treatment Center and the Administrative Segregation Unit ("ASU").

³ As explained in footnote 2, *supra*, Plaintiffs' counsel were not able to interview any class members who are currently housed on Facility C.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
May 15, 2020
Page 6

Yet we were concerned to learn from [REDACTED], **DNH, D6**, that while COs ordinarily wear masks in the ASU, the COs who distribute and collect the trays to incarcerated people for cell feeding inexplicably do not wear masks or gloves.

While it appears that medical staff at WSP are using masks and gloves with more frequency than COs, there were several troubling reports about the inconsistent use of personal protective equipment by medical staff on Facilities D and H. [REDACTED] [REDACTED], **DLT**, housed in the D7 dorm, reported that medical staff are only wearing masks about half the time. [REDACTED], **DPO**, reported that when he saw the doctor on Facility H about two weeks before his interview with Plaintiffs' counsel, the doctor was sitting less than two feet away from him without wearing a mask or gloves. [REDACTED], **DPO**, similarly reported that during his most recent medical appointment on Facility H, the nurse was not wearing a mask.

Although most class members reported that the ADA Workers and porters now have masks and gloves, a number of class members noted that these incarcerated workers had only begun wearing gloves several days before Plaintiffs' counsel's interviews. [REDACTED] [REDACTED] [REDACTED], **DLT**, reported that the ADA workers in the D7 dorm do not have gloves, and porters only wear gloves when passing out food. [REDACTED], [REDACTED], **DPW**, troublingly reported that the porters who bring the trays into the H1 dorm wear gloves, but do not wear masks.

III. Insufficient Soap, Disinfectant, and Other Cleaning Supplies

Class members uniformly reported that they do not receive enough soap to be able to comply with the public health guidance regarding hand washing. They continue to receive only one bar of soap per week—the same amount as they were provided prior to the COVID-19 pandemic—and they are routinely refused when they ask for more soap. For example, [REDACTED], **DPO**, reported that there is no soap in the H2 dorm bathroom, and that when he has asked for more soap from the porters, he is told that they do not have any.

Class members housed in dorms also uniformly reported that no disinfectant is available to them. While class members housed in cells—in the mainline facility, Facility B and the ASU—did report that they are provided disinfectant, they are not provided cleaning supplies such as towels or scrub pads to be able to clean their cells. [REDACTED], **mobility**, who is housed in Building B6, reported that because he is not allowed access to a broom or dustpan, and the porters are allowed to sweep his cell, he has to clean the cell using his own shirt as a rag.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
May 15, 2020
Page 7

Class members in WSP's Reception Center also uniformly reported that no steps have been taken so that telephones can be cleaned between uses. Specifically, each class member reported that porters are not cleaning the phones, and there is no disinfectant provided near the phones so that people can wipe down the phone before or after making their phone call.

IV. Failures to Permit, Encourage or Model Social Distancing

Class members consistently reported that social distancing was not possible and/or that no steps were taken to encourage or model social distancing by WSP staff. Class members reported that the institution does little to encourage or allow them to observe social distancing when they line up for any reason, and no class member had ever seen any marks on the ground anywhere at WSP to show how far apart to stand.

The class members housed on Facility H uniformly reported that there is no social distancing when standing in line for pill call, and that COs do not encourage incarcerated people to leave more space. In fact, [REDACTED], DPO, reported that when incarcerated people do try to leave six feet of space when in line for pill call, the COs sometimes direct them to get closer to each other. Mr. [REDACTED] even saw a CO threaten an incarcerated person with a 115 for trying to leave six feet of space in the pill call line.

[REDACTED], mobility, reported that in Building B6, incarcerated people shower during dayroom—which is only offered one hour twice a week—resulting in at least 20 people lining up to shower at a time, with no space for social distancing.

Class members also uniformly reported that COs do not model social distancing during yard. The COs who supervise yard congregate together, rather than ensuring that they are six feet apart. For example, [REDACTED], DKD, DNM, reported that during mainline yard, the COs always congregate together in a group in the shade.

We also received concerning reports from class members about the inability to socially distance while waiting for medical appointments. [REDACTED], DPO, reported that when waiting to see the doctor on Facility H, he was forced to sit very close to 8 or 9 other incarcerated people. [REDACTED], DPO, reported that when waiting for medical appointments on Facility H, he must sit in a cage next to several other people, and that there was not enough space for social distancing. [REDACTED], DPW, reported that he must sit in a holding cell with 3 to 5 other people when waiting for medical appointments on Facility B, making social distancing impossible.

We also received troubling reports from both DKD class members interviewed that they are transported to their dialysis appointments in an unsafe manner. [REDACTED]

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis

May 15, 2020

Page 8

██████████, DKD, DNM, and ██████████, DKD, DLT, both reported that they are taken to their dialysis treatments three times a week in a van with up to three other dialysis patients from different housing units. While the class members and driver are wearing masks during the transport, it is impossible to stay six feet apart from each other in the van. Mr. ██████████ reported that he sits with four other people in the van for his six transports per week. Given that people who are receiving dialysis treatment for chronic kidney disease are recognized by the CDC as a high-risk group for experiencing severe symptoms should they contract COVID-19, it is particularly dangerous to transport DKD class members for dialysis in a manner that prevents social distancing.

V. Other Concerns Raised by Class Members Relating to COVID-19

██████████, mobility, reported that there have been no Form 22s available in Building B6 since he was moved there from Facility C in mid-April 2020. He reported that Building B6 also ran out of 7362s and 602s for about a week, until these forms were restocked the day before his interview with Plaintiffs' counsel. It is very concerning that any CDCR forms were unavailable during the COVID-19 pandemic. Given the restrictions on movement, it is critical that people have access to Form 22s to be able to raise any problems or request information from institution staff, and that medical slips are available to report symptoms of COVID-19 and other health concerns.

We also received a troubling report from ██████████, DPO, that pens are not available to incarcerated people in Building B5 unless they purchase them at the canteen. Given that CDCR may (and does) reject appeals that are written in pencil, it pens must be made readily available to incarcerated people.

Class members also uniformly reported to Plaintiffs' counsel that all programs had been halted since COVID-19 precautions were put into place, including volunteer groups such as Alcoholics Anonymous/Narcotics Anonymous and GOGI, and that no class members were aware of any alternatives offered (such as in-cell assignments). Nor were any class members told about any way to participate in religious services. ██████████, DPW, reported that his hopes were dashed when WSP did nothing to allow him and others to observe Easter Sunday.

Class members also uniformly reported that they had no access to the law library and no way to request books from either the law library or the recreational library. While CDCR has asserted that incarcerated people may use Form 22s to request books, this has not been adequately communicated to class members at WSP.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
May 15, 2020
Page 9

Please report on any and all steps that WSP will take in response to this letter.
Thank you for your prompt attention to this matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Ben Bien-Kahn

Ben Bien-Kahn
By: Senior Counsel

BBK

cc:

Ed Swanson
Alexander "Lex" Powell
Nicholas Meyer
Patricia Ferguson
Amber Lopez
Erin Anderson
Robin Stringer
OLA Armstrong
Jeremy Duggan
Damon McClain
Joanna Hood
Sean Lodholz
Trace Maiorino
Anthony Tartaglio
Adam Fouch
Teauna Miranda

Landon Bravo
Laurie Hoogland
Bruce Beland
Robert Gaultney
John Dovey
Donald Meier
Robin Hart
CCHCS Accountability
Cindy Flores
Joseph (Jason) Williams
Kelly Allen
Cathy Jefferson
Vincent Cullen
Joseph Edwards

Ngoc Vo
Miguel Solis
Olga Dobrynina
Dawn Stevens
Alexandrea Tonis
Gently Armedo
Lois Welch
Steven Faris
Lynda Robinson
Barb Pires
Co-Counsel

EXHIBIT H



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Penny Godbold
Email: pgodbold@rbgg.com

May 5, 2020

VIA ELECTRONIC MAIL ONLY

Tamiya Davis
CDCR Office of Legal Affairs
P.O. Box 942883
Sacramento, CA 94283
Tamiya.Davis@cdcr.ca.gov

Joanna B. Hood
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550
Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom*: Plaintiffs' Comments on Appeal Inquiry
Management System ("AIMS") Regulations
Our File No. 0581-03

Dear Tamiya and Joanna:

We write regarding Defendants' recently adopted Appeal Inquiry Management System ("AIMS") regulations. The emergency regulations were filed with the Secretary of State on March 25, 2020 and will take effect on June 1, 2020.

For years, Plaintiffs' counsel has raised the problem of staff misconduct in CDCR prisons and the effect this misconduct has on *Armstrong* class members. They and all incarcerated people with disabilities are fearful of abuse and retaliation if they invoke grievance procedures. The California Department of Corrections and Rehabilitation ("CDCR") has now made changes to the process of investigating grievances filed by incarcerated people to improve the staff misconduct complaint process in hopes of reducing this serious and far too widespread issue. As we demonstrated in the Motion to Stop Defendants from Assaulting, Abusing, and Retaliating against People with Disabilities at RJD, filed February 28, 2020 ("Plaintiffs' Motion"), staff misconduct against incarcerated people with disabilities is undermining *Armstrong* remedial orders by creating an atmosphere in which class members are afraid to seek help from correctional officers. Our understanding is that AIMS is an effort to eliminate deficiencies—including bias of investigators and poor quality investigations—that were identified by the Office of the Inspector General ("OIG") during a review of the staff complaint process at Salinas Valley State Prison ("SVSP"). (See Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct attached hereto as **Exhibit A**; see also Fact Sheet regarding Special Review of Salinas

Tamiya Davis
Joanna B. Hood
May 5, 2020
Page 2

Valley State Prison’s “SVSP” Processing of Inmate Allegations of Staff Misconduct attached hereto as **Exhibit B.**)

We applaud CDCR’s effort to reform the staff misconduct process. That said, Plaintiffs’ counsel began raising significant concerns about the shortcomings of AIMS over a year ago. (*See* Joint Case Management Statement, Dkt. 2844 at 5-6). The draft AIMS regulations were the subject of a March 2, 2020, Budget Subcommittee hearing on Public Safety, in which legislators specifically directed CDCR to address Plaintiffs’ counsel’s concerns regarding deficiencies in the draft regulations. Despite this admonition, CDCR nonetheless moved the regulations forward on an “emergency” basis without addressing Plaintiffs’ concerns. After years of negotiations, CDCR did not even notify us that it was filing the emergency regulations. Instead, in the midst of the COVID-19 pandemic, the five-day window for public comment on emergency regulations passed before we discovered CDCR had filed the regulations. An excerpted copy of the approved regulations is attached hereto as **Exhibit C.**

Plaintiffs nevertheless offer the following preliminary, big-picture, comments regarding deficits in the AIMS process as described in the emergency regulations. Plaintiffs reserve the right to make additional comments in their reply brief in support of Plaintiffs’ Motion and again later if the regulations are revised.

I. Many Staff Misconduct Cases Will Be Excluded From AIMS

The new AIMS regulations do not cover all allegations of staff misconduct. Shockingly, some of the most serious and prevalent allegations of staff misconduct—those related to reported Use of Force (“UOF”) incidents—are excluded from the new AIMS grievance process. Confusingly, allegations of UOF causing serious bodily injury are included in AIMS, while all other UOF incidents are excluded. (**Exhibit C**, § 3484(d).) Thus, a significant number of the allegations of staff misconduct described in Plaintiffs’ Motion would be excluded from the new AIMS process. Similarly, the UOF allegations included in nearly a quarter of the complaints reviewed in the SVSP report would also be excluded. (*See Exhibit B*, page 2, showing 46 allegations of UOF raised.) It is essential to any staff misconduct investigation and disciplinary system that all UOF allegations are properly investigated and staff are held accountable when violations are found. Excluding these allegations from AIMS means they remain in the prison-level inquiry process—a process the OIG has found is subject to biased and inadequately trained investigators who demonstrate poor evidence collection, interviewing and report writing skills. (*See Exhibit B.*)

Tamiya Davis
Joanna B. Hood
May 5, 2020
Page 3

Complaints originating from third parties, such as letters from Plaintiffs' counsel, telephone calls from family members, or even reports from prison staff members, are also excluded from the new AIMS process. AIMS only applies to inmate grievances, defined as a written request from a claimant, inmate or parolee. (**Exhibit C**, § 3481.) This restriction excludes important allegations from the process and deters the filing of misconduct complaints. Many incarcerated people are afraid to initiate grievances due to fear of retaliation. Allowing incarcerated people to report staff misconduct through sources outside of the prison reduces the risk and fear of retaliation and encourages the reporting of staff misconduct. Similarly, reports of misconduct made by other staff members should be considered especially serious and, given the risk of retaliation faced by reporting staff, should be addressed by OIA under AIMS, and not by local prison staff.

II. AIMS Fails to Address Issues Faced by *Armstrong* Class Members

Requiring incarcerated people to submit staff misconduct grievances in writing, and on specific grievance forms, discourages the filing of such complaints by anyone with a disability that affects reading, writing, or comprehension. (*See Exhibit C*, § 3482.) CDCR forms are still not available in all accessible formats, such as electronic, which could allow people who are blind or low vision to complete forms independently with screen reader technology. Electronic formats could also allow class members who have upper hand or arm disabilities, among others, to complete these forms independently. As it stands, having staff or ADA workers assist these class members in completing staff misconduct grievance forms places them at greater risk of retaliation and denies people with disabilities equal access to the staff misconduct grievance process in violation of the Americans with Disabilities Act ("ADA"). (28 CFR § 35.130(b).)

AIMS should apply broadly to other ways of communicating staff misconduct reports, including oral reports of misconduct made by incarcerated people and reports from third parties. Defendants should also take steps to implement disability accommodations so that class members will have equal access to participate in writing. The new AIMS 602 forms do not even advise incarcerated people that they have a right to receive assistance in completing the forms. The regulations themselves are also mostly silent on ADA accommodations.

III. CDCR's Multiple, Different Investigation Systems Create Confusion and Lead to Inconsistent Results

In order to avoid confusing, duplicative, and inconsistent results, **all** allegations of staff misconduct should be subject to a simplified process. Instead, the AIMS regulations create an additional avenue for the investigation of staff misconduct complaints—a

Tamiya Davis
Joanna B. Hood
May 5, 2020
Page 4

system that already contains multiple and sometimes duplicative processes for inquiry, including appeal inquiries. It is confusing and defies logic to have multiple systems all with the same purpose—investigating staff misconduct.

Many incidents that give rise to staff misconduct complaints include multiple allegations of misconduct all derived from the same set of facts. At SVSP, 188 inmate complaints contained 268 different allegations of staff misconduct. Under the AIMS regulations, Defendants parse these incidents, diverting some of allegations to OIA for investigation while leaving others to be addressed at the local prison. For example, a complaint alleging an officer assault and a verbal retaliation threat by the same officer if the person reports the assault—a common scenario reported in Plaintiffs’ Motion—would be split, with the threat allegation going to OIA and the assault allegation remaining at the prison for investigation. This incident, and all potential allegations surrounding this incident, should instead be investigated together, in the same process, by the same independent investigators. Any disciplinary action resulting from the incident in question should consider the totality of the circumstances, which is impossible under AIMS as it is now conceived.

IV. The Hiring Authority Has Too Much Control Over the Staff Misconduct Process

Currently, the Hiring Authority (the Warden) is the ultimate decision maker in the staff misconduct investigation and discipline process. The Warden is responsible for deciding whether misconduct occurred and what type of discipline should result. (DOM § 33030.5.2.) CDCR has made clear that role will not change under AIMS. (*See Case Management Statement, Dkt. 2936 at 8-9.*)

The Hiring Authority retains too much power in the process, without having specialized training or clear guidance. The power to decide whether OIA’s findings amount to misconduct and, if so, what discipline should result, should not hinge on one person, especially one who works at the prison where the alleged misconduct arose. The Hiring Authority has every incentive to look the other way at alleged misconduct and they run the risk of looking bad if too much misconduct is occurring under their watch.

Further, leaving the ultimate decision to the Hiring Authority leaves the most crucial decisions underlying any allegation of staff misconduct in CDCR to be decided any of several different ways depending on the prison and the Warden responsible. This is especially problematic because the guidelines for Hiring Authorities to use in deciding what discipline to impose, the Employee Disciplinary Matrix, are discretionary. (*See DOM § 33030.17.*) It is impossible to envision how CDCR could implement any early

Tamiya Davis
Joanna B. Hood
May 5, 2020
Page 5

warning system relying on the outcome of staff misconduct disciplinary action when the results can vary widely prison to prison, Warden to Warden, and potentially, given bias, case by case with the same Warden. AIMS does not resolve these longstanding problems, despite ongoing negotiations with Plaintiffs' counsel.

In addition, under AIMS, allegations of staff misconduct can be referred to OIA for an *inquiry* when there is no reasonable belief that the misconduct occurred or for an *investigation* when there is a reasonable belief that the misconduct occurred. (Exhibit A § 3484(a)(1)-(2).) CDCR has made clear that it is the Hiring Authority that should retain the discretion to make this decision. (Dkt. 2936 at 9.) The distinction between informal *inquiry* and formal *investigation* are no longer necessary because OIA is conducting the review at both stages under AIMS. Thus, it is inefficient and defies logic to retain the Hiring Authority as a stop-gap decision maker in this process. Allegations of staff misconduct that are referred to OIA should stay with OIA through the entire fact-finding process, regardless of whether or not there is a reasonable belief staff misconduct occurred and regardless of whether that belief changes over the course of the investigation. The inefficiency of this step is especially concerning because the OIG has identified that delays in Hiring Authorities referring cases to OIA is an ongoing problem. (See Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation, OIG Report, November 2019, at 4.).

V. Training Requirements for AIMS Investigators Remains Unclear

The OIG found that inadequate training of investigators led to numerous weaknesses in their technical proficiencies, including problems with interviewing skills, evidence collection, and report writing. (See Special Review of SVSP, Exhibit C, at 35-52.) While Plaintiffs' counsel are optimistic that staff at OIA conducting inquiries under the new AIMS process are better trained, we remain unclear as to whether they have received any specific training regarding staff misconduct inquiries and whether they will be receiving certification of investigators, as recommended by the OIG. (Exhibit C at 89.)

///

///

///

///

Tamiya Davis
Joanna B. Hood
May 5, 2020
Page 6

We look forward to hearing from you regarding how CDCR will address the deficiencies in the AIMS regulations and process.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/Penny Godbold

By: Penny Godbold
Of Counsel

PG:cg

Encls. Exhibits A-C

cc:

Anthony Carter,

CDCR Regulation and Policy Management Branch, RPMB@cdcr.ca.gov

Jennifer Kim

Assembly Budget Subcommittee on Public Safety, Jennifer.Kim@asm.ca.gov

Roy Wesley, Office of the Inspector General

Ed Swanson

Alexander "Lex" Powell

Nicholas Meyer

Patricia Ferguson

OLA Armstrong

Annakarina De La Torre-Fennell

Sean Lodholz

Trace Maoirino

Anthony Tartaglio

Adam Fouch

Prison Law Office

EXHIBIT B

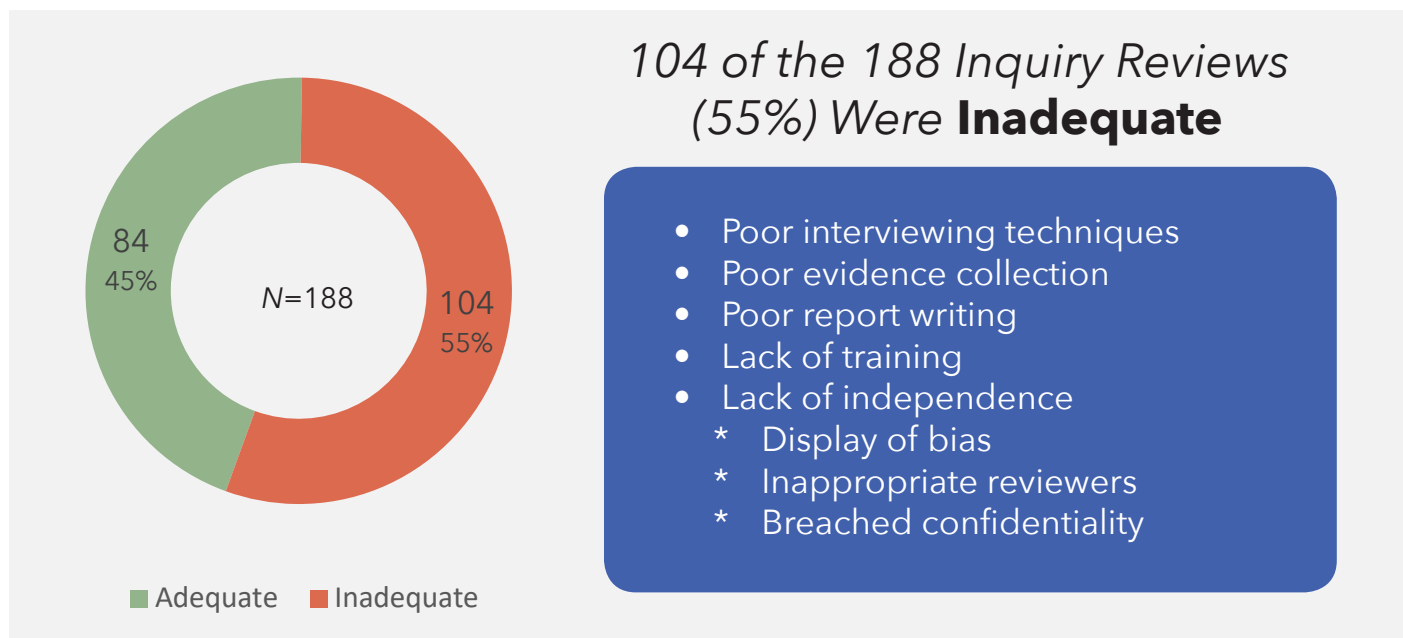


OIG | OFFICE of the INSPECTOR GENERAL

Independent Prison Oversight

Special Review of Salinas Valley State Prison’s Processing of Inmate Allegations of Staff Misconduct

In January 2018, the secretary of CDCR and attorneys from the Prison Law Office requested that the OIG assess the prison’s process of handling inmate allegations of staff misconduct, “staff complaints.” The department allows local prison supervisors to conduct “staff complaint inquiries,” which are a preliminary collection of evidence pertaining to an allegation. Our review included a retrospective paper review of 61 staff complaint inquiries the prison completed between December 1, 2017, and February 28, 2018, and an onsite monitoring review of 127 staff complaint inquiries the prison initiated between March 1, 2018, and May 31, 2018. **This totaled 188 staff complaint inquiries, which included 268 allegations.** Our review also included our assessment of nine additional complaints submitted to the department by the Prison Law Office.

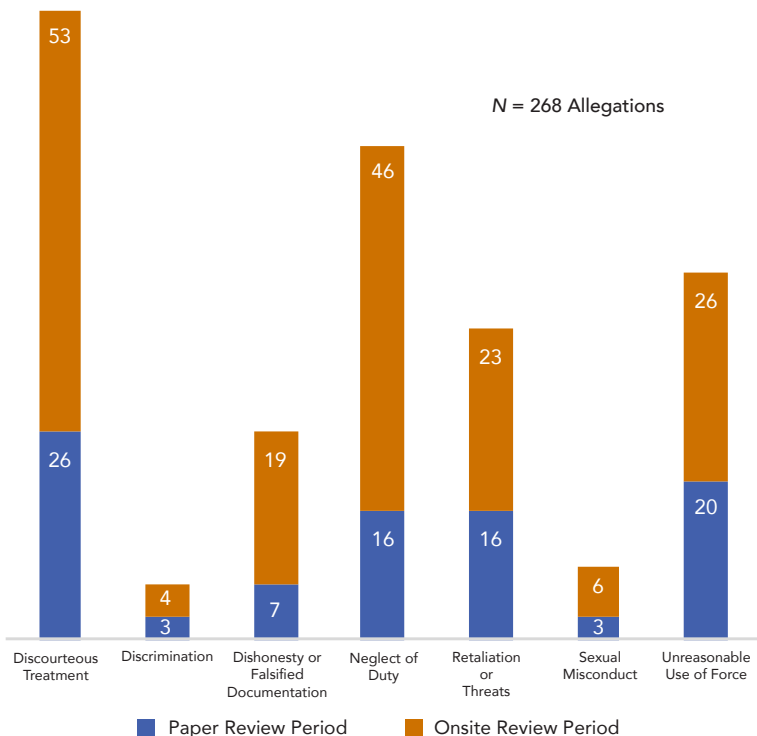


Other Notable Results

- » The work across all ranks of reviewers was **lacking in quality**
- » There was **at least one significant deficiency** in 173 of the 188 inquiries (92%)
- » Reviewers frequently **failed to ask relevant questions** in interviews
- » Reviewers **failed to collect relevant evidence** in 60% of relevant inquiries
- » 108 of the 188 inquiry reports were **incomplete, inaccurate, or both** (57%)
- » Of the 61 reviewers, **zero received meaningful training** in inquiry-related techniques of interviewing, collecting evidence, or writing reports
- » In 113 of the 188 inquiries (60%), **the reviewer worked on the same yard and shift** as the subject employee
- » In five instances, the **reviewer was involved in the incident** related to the allegation
- » Reviewers frequently **compromised the confidentiality** of the process

Office of the Inspector General

Number and Type of Allegations Included in the 188 Staff Complaint Inquiries We Reviewed



Sample Allegations

- An officer made several derogatory comments about the appellant’s sexual identity.
- The officer discriminated against black inmates with disciplinary actions.
- An officer planted a weapon in the appellant’s cell during a cell search.
- The investigative services unit improperly housed the appellant in the administrative segregation unit because he would not agree to be an informant.
- An officer told other inmates that the appellant was reporting their actions to authorities in an attempt to have the appellant “assaulted, stabbed up, or killed.”
- A female officer told the appellant to strip naked or else he would not be released from his cell to attend morning yard.
- An officer shut the food port on the appellant’s hand after he attempted to pick up a medication cup he dropped during medication pass. He was left stuck in the food port for 15 to 30 minutes.

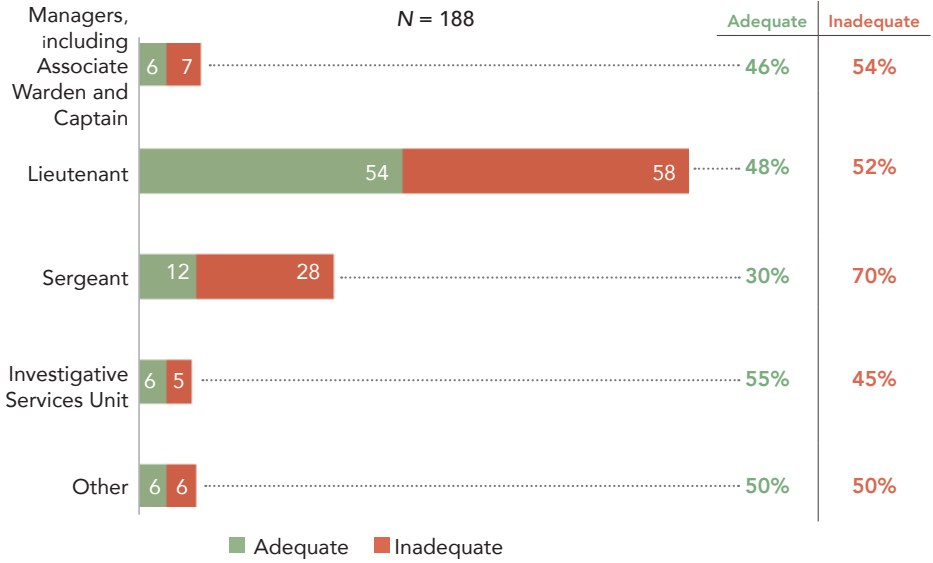
Salinas Valley rarely found misconduct from its staff complaint inquiries, and in the few cases where it determined that staff violated policy, it did not always provide corrective action—**until we asked about it.** The hiring authority determined that subject staff **did not** violate policy in 183 of the 188 complaint inquiries we reviewed (97%).

Corrective Actions for the Five Incidents in Which Staff Were Found to Have Violated Policy

Employee	Allegation Type	Description of Corrective Action	Number of Days It Took to Complete the Corrective Action
Officers 1 and 2	Unreasonable Force	Training	411
Officers 3 and 4	Neglect of Duty	Training	240
Officer 5	Unreasonable Force	Training	239
Unidentified Employee(s)	Neglect of Duty	None	–
Officer 6	Discourteous Treatment	Letter of Instruction	22

Office of the Inspector General

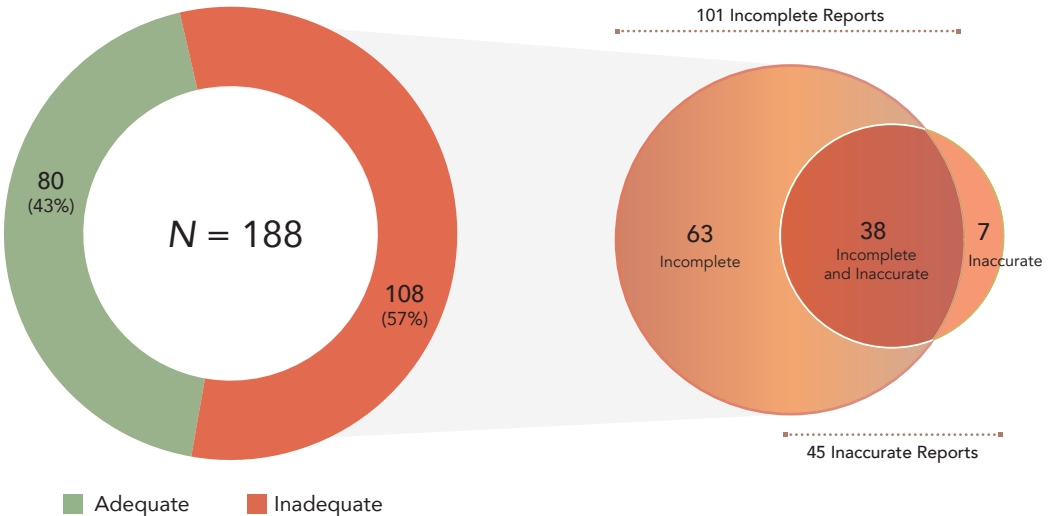
A reviewer's rank of service had little effect on the quality of the staff complaint inquiry; **we found the work across all ranks to be lacking in quality.** Sergeants performed the poorest at 70% inadequate. Lieutenants, the most common reviewers, produced inadequate inquiries 52% of the time.



Assessment Question	Relevant Period	
	Paper	Onsite
Question 1 Was the staff complaint inquiry assigned to an appropriate reviewer?	✓	✓
Question 2 Did the reviewer properly conduct an interview of the appellant?	(partial) ✓	✓
Question 3 Did the reviewer properly conduct an interview of the witnesses?	✗	✓
Question 4 Did the reviewer properly conduct an interview of the subjects?	✗	✓
Question 5 Did the reviewer collect all relevant documentary evidence?	✓	✓
Question 6 Did the reviewer prepare an adequate inquiry report?	✓	✓

For cases we found inadequate, we did not conclude that staff members alleged to have committed misconduct actually violated policy or were found responsible for the alleged misconduct. Rather, we found that the prison's handling of these cases was inadequate because it did not rely on an adequate process to fully support its conclusions.

Staff complaint inquiry **reports** we reviewed were often incomplete, inaccurate, or both



Office of the Inspector General

Deficient Interviewing Skills

According to an appellant, staff at Salinas Valley had subjected him to cruel and unusual punishment as part of a use-of-force incident. The inmate's appeal stated, in its entirety, "I would like to do a video interview for staff misconduct and for cruel and unusual punishment on 3-18-18. I thank you for your time." After contacting the appellant by telephone and advising him that the call concerned his staff complaint at Salinas Valley, the reviewer asked the appellant only one question: "Do you have anything else?" The appellant responded by giving a lengthy statement about the incident, including the comment, "All the officers knew." Instead of inquiring about this statement, the reviewer simply repeated, "Do you have anything else?" The appellant made a few additional comments, after which the reviewer concluded the interview. The appellant had not identified any of the officers by name, and the reviewer failed to ask him obvious questions, such as whether the appellant could identify any of the officers by name. The reviewer also failed to ask follow-up questions, such as whether the inmate could clarify his statement or provide a general description of the officers involved in the incident.

Report, page 40

Discounting Corroborating Evidence

An inmate alleged that an officer made several derogatory remarks about the inmate's sexual identity. The reviewer did not collect the employee sign-in sheet to determine whether any staff witnesses were present. The reviewer interviewed an inmate witness who corroborated the appellant's allegation, but the reviewer concluded there was no additional evidence beyond the statements of these two inmates to support the allegation. The hiring authority assigned the case to the prison's Investigative Services Unit, but specified that the appellant's witness undergo a computerized voice stress analysis test (i.e., a lie detector). The witness, however, declined to participate once he learned of the lie detector test. With this approach to collecting evidence, an inmate's statements held no value as evidence unless it was validated by a machine.

Report, page 59

Compromised Confidentiality

A reviewer told our monitor that the subject of the appellant's complaint was actually working in the control booth in the inmate's housing unit. Nevertheless, the reviewer conducted the interview in an office located immediately beneath the control booth, with the gun port window open (the window in the ceiling), and within visual and hearing range of the subject officer. In fact, the OIG monitor believed that the subject officer in the control booth was actively listening to the conversation. The reviewer apparently thought he appropriately addressed the matter when he told the appellant that the subject officer was working in the control booth immediately over their room and would be able to overhear the interview. The reviewer then asked the appellant if the subject officer's listening to the interview bothered him; the appellant replied, "No." Notwithstanding the appellant's response, the interview should have taken place in a private setting, the subject officer should not have known the conversation was about the appeal, and the appellant should not have been asked to make that decision.

Report, pages 61-63

Display of Bias

An appellant claimed during his interview that a female officer harassed him, calling him a "bitch" and a "coward"; falsely accused him of misbehavior; and issued him an undeserved counseling memorandum. And yet, the male reviewer stated: "She is always professional with me." The appellant replied, in effect, that the subject officer would naturally be professional with the reviewer because the reviewer held a higher rank and was a supervisor. The reviewer then responded: "Are you calling me a liar?" This reviewer's interviewing technique resulted in the inmate disengaging from the interview.

Report, pages 40-41

.....

A reviewer commented on the subject's professionalism, demeanor, and pride while concluding that no policy violation occurred. The reviewer wrote, "Through my observations [the subject] is very professional with staff and inmates. She has a no[-]nonsense demeanor about herself and takes a lot of pride in her job. Staff did not violate any policy." The reviewer's personal opinion in favor of his fellow coworker appeared to have been the primary basis for the conclusion.

Report, page 55

Failure to Interview Appropriate Persons

An inmate alleged that upon returning to his bunk, he found that staff had discarded his dental prosthetics during a search of his living area in the dormitory. The inmate alleged that when he spoke to the sergeant about his dental prosthetics, the sergeant responded, "Tough shit[.] 602 it." We were onsite for the reviewer's interview with this appellant, who commented to the reviewer that his dental prosthetics had been accidentally discarded and that he did not want his appeal to be a staff complaint; he was merely unhappy with the sergeant's response because the inmate wanted to get his missing prosthetics replaced as soon as possible. The inmate said he was "not looking to get anyone in trouble" and that too many officers had been present for him to be able to identify any one individual. The reviewer did not obtain the sign-in sheet for staff or the logbook to identify potential staff witnesses, nor did the reviewer interview any witnesses. The reviewer did obtain the search receipt provided to the inmate, but it included only the inmate's name, number, and assigned bunk, and no staff member had signed the receipt. We were not permitted to observe the reviewer's interview of the named sergeant, but the completed staff complaint inquiry report packet noted that the reviewer asked the sergeant whether he recalled making the statement, "Tough shit[.] 602 it," and that the sergeant replied, "I spoke to several inmates that night and informed them that I was not involved with the searches, [and] that they would have to 602 the Supervisor who oversaw the searches and those conducting the searches." The reviewer concluded that because the subject sergeant was not the sergeant in charge of the searches, the inmate had "misidentified the sergeant." In fact, the reviewer noted the name of the sergeant who was actually in charge of the searches—the one who should have been included as a subject—but did not interview him.

Report, pages 33-34

Office of the Inspector General**Recommendations****The OIG recommends the department do the following:**

1. Reassign the responsibility to conduct staff complaint inquiries **outside the prison's command structure**;
2. Adopt a **regionalized model** for staffing purposes as is done with the Office of Internal Affairs;
3. Provide **comprehensive and ongoing training** for all staff who perform inquiries. Consider certification from the California Commission on Peace Officer Standards and Training for those conducting inquiries. Assign inquiries only to those staff who have been trained;
4. Require **audio recording** of all subjects and witnesses;
5. Consider **redefining an inquiry** so that it is not considered a less-laborious than or an inferior process to an investigation;
6. Require all reviewers to report all evidence they uncover and prohibit them from including in reports their personal opinions or from drawing conclusions or making recommendations in the report. In other words, they should **just report the facts**.
7. Evaluate its notification procedures so that it **promptly notifies appellants** when reviewers need additional time to complete the staff complaint process beyond the regulatory time frame; and
8. Ensure that **staff receive the corrective or adverse actions** that are ordered by the hiring authority when policy violations occur. **Routine audits** should be completed and the results reported publicly.



Office of the Inspector General

10111 Old Placerville Road, Suite 110

Sacramento, California 95827

Telephone: (916) 255-1102

www.oig.ca.gov

For questions concerning this report, please contact
Shaun Spillane, Public Information Officer,
at (916) 255-1131, or via email at: SpillaneS@oig.ca.gov

EXHIBIT C

~~The remainder of my net wages after taxes shall be deposited in a mandatory savings account and will be available to me upon my release.~~

348677. Compliance.

If a JVE is found to be in non-compliance with PC section 2717.8 or the provisions of sections ~~34823473~~(a)(4) and ~~34823473~~(a)(12)(K), the JVP administrator shall issue a written notice requiring the JVE, within 30 days, to comply with the JVP contract. After 30 days, if the JVE remains non-compliant with the contract, the administrator shall issue to the JVE a written 30-day cancellation notice indicating that the JVE is in material breach of contract. Any bonds held pursuant to ~~34833474~~(a)(12)(J) shall be forfeited if the JVE is found to be non-compliant. At the close of the 30-day cancellation notice, if the JVE has not come into compliance with the contract, the JVE shall be terminated from the JVP.

Note: Authority cited: 2717.3 and 5058, Penal Code. Reference: Sections 2717.8 and 5054, Penal Code; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

Subchapter 5.1. Inmate and Parolee Programs

Article 1. Administrative Remedies for Inmates and Parolees

3480. Implementation Date and Definitions.

(a) The provisions of this Article shall apply to all inmate and parolee grievances received by the Department of Corrections and Rehabilitation on or after June 1, 2020.

(b) For purposes of this article, the following definitions shall apply:

(1) "Administrative remedy" means the non-judicial process provided by the Department to address inmate and parolee complaints.

(2) "Allegation inquiry" refers to the process of gathering preliminary information concerning a claim that involves an allegation of staff misconduct.

(3) "Appeal" means a written request from a claimant for review by the Office of Appeals of a decision issued by the Institutional or Regional Office of Grievances.

(4) "Appeal package" means a CDCR Form 602-2 (03/20) and all of its supporting documents.

(5) "Claim" means a single complaint arising from a unique set of facts or circumstances.

(6) "Claimant" refers to an inmate or parolee under the custody or control of the Department who files a grievance or appeal with the Department.

(7) "Coordinator" means the official responsible for the administrative functions of the Office of Grievances or Office of Appeals, depending on their assignment.

(8) "Department" and "departmental staff" refers exclusively to the Department of Corrections and Rehabilitation and to all employees, contractors, and volunteers associated with the Department, respectively.

(9) "Formal investigation" refers to a criminal or administrative investigation by the Office of Internal Affairs concerning a claim that involves an allegation of staff misconduct.

(10) "Grievance" means a written request from a claimant for review by the Institutional or Regional Office of Grievances of one or more claims.

(11) "Grievance package" means a CDCR Form 602-1 (03/20) and all of its supporting documents.

(12) "Reviewing Authority" means the official at the Office of Grievances or Office of Appeals who is responsible for reaching a decision on each claim raised in a grievance or appeal, respectively.

(13) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(14) "Staff misconduct" means an allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action.

(15) "Supervisory review" refers to the process of gathering preliminary information concerning a claim that does not involve an allegation of staff misconduct.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3481. Claimant's Ability to Grieve and to Appeal.

(a) A claimant has the ability to submit a written grievance containing one or more claims, subject to the requirements in section 3482, to dispute a policy, decision, action, condition, or omission by the Department or departmental staff that causes some measurable harm to their health, safety, or welfare. In response, a claimant shall receive a written decision as described in section 3483 from the Institutional or Regional Office of Grievances, hereby established in the Division of Adult Institutions and Division of Adult Parole Operations, respectively, clearly explaining the reasoning for the Reviewing Authority's decision as to each claim. A claimant also has the ability to submit a written appeal concerning one or more claims, subject to the requirements in section 3485, to dispute the decision by the Institutional or Regional Office of Grievances. In response, a claimant shall receive a written decision as described in section 3486 from the Office of Appeals clearly explaining the reasoning for the Reviewing Authority's decision as to each claim.

(b) The Director of the Division of Adult Institutions shall appoint Institutional Reviewing Authorities authorized to approve or disapprove each claim in a grievance received by an inmate, but in no case shall that official be of a rank lower than a Chief Deputy Warden. The Director of the Division of Adult Parole Operations shall appoint Regional Reviewing Authorities authorized to approve or disapprove each claim in a grievance submitted by a parolee, but in no case shall that official be of a rank lower than a Chief Deputy Parole Administrator. The Secretary shall appoint the Reviewing Authority authorized to grant or deny each claim in an appeal submitted by an inmate or a parolee, but in no case shall that official be of a rank lower than the Associate Director of the Office of Appeals.

(c) A claimant may choose to informally resolve a claim; however, any attempt to informally resolve a claim does not extend the time for submitting a grievance or an appeal.

(d) Staff shall not retaliate against a claimant for seeking to informally resolve a claim or for submitting a grievance or appeal.

(e) A claimant does not have the ability to submit a grievance or appeal to dispute a policy, decision, action, condition, or omission that was not made by the Department or

departmental staff but instead was made by an entity or official outside of the Department, including, but not limited to, a county jail, a private hospital, or the Interstate Commission for Adult Offender Supervision; nor by an entity or official that is quasi-independent of the Department, including, but not limited to, the Board of Parole Hearings, the Prison Industry Authority, or the Commission on Correctional Peace Officer Standards and Training. This article does not preclude a claimant from filing a complaint with the outside entity or official.

(f) CDCR Form 602-1 (03/20), "Grievance," hereby incorporated by reference, shall be made available to inmates in all housing units and in all prison law libraries and to parolees at all parole offices statewide.

(g) When submitting a grievance or appeal, or for purposes of a related interview, if a claimant requests assistance based on a disability, lack of literacy, or need for translation services, or departmental staff detect the need for such assistance, then staff shall provide reasonable accommodations and utilize effective communication techniques as required by the Americans with Disabilities Act.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3482. Preparation and Submittal of a Grievance.

(a) Where to Submit a Grievance.

(1) An inmate who wishes to submit a grievance shall do so in writing to the Institutional Office of Grievances at the prison, re-entry facility, or fire camp where they are housed. Every Warden, in consultation with the Director of the Division of Adult Institutions, shall issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code which shall be made available in all the law libraries at that institution, identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, the physical location in each housing unit of all lock-boxes where grievances may be submitted, and the specific departmental staff permitted to collect grievances from those lock-boxes. Grievances shall be collected from lock-boxes at least once per business day by departmental staff not regularly assigned to that housing unit. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Institutions so long as they are consistent with this Article.

(2) A parolee who wishes to submit a grievance shall do so in writing to the Regional Office of Grievances in the parole region where they are supervised. Every Regional Parole Administrator, in consultation with the Director of the Division of Adult Parole Operations, shall issue a written advisement to a parolee within 15 calendar days of the parolee's release from prison identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, and the physical location where grievances may be submitted. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Parole Operations so long as they are consistent with this Article.

(b) A claimant shall submit a claim within 30 calendar days of discovering an adverse policy, decision, action, condition, or omission by the Department. Discovery occurs when a claimant knew or should have reasonably known of the adverse policy, decision, action, condition, or omission. The time limit for a parolee to submit a grievance shall not be extended while the parolee is on suspended status, meaning the parolee has absconded. The deadline to submit a claim shall be extended for the period of time that a claimant is:

- (1) in the custody of another authority for court proceedings;
- (2) in the care of an outside hospital; or
- (3) temporarily housed in a medical or mental health crisis bed.
- (c) To submit a grievance, a claimant shall:
 - (1) type or print legibly on an official CDCR Form 602-1 (03/20) or complete the form electronically, if available;
 - (2) describe all information known and available to the claimant regarding the claim, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and names and titles of all witnesses, to the best of the claimant's knowledge;
 - (3) describe any attempt to resolve the claim informally and, if there was such an attempt, provide the details of that attempt, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and the results of that attempt, to the best of the claimant's knowledge;
 - (4) include all supporting documents available to the claimant related to the claim or identify to the best of the claimant's ability all relevant records with sufficient specificity for those records to be located; and
 - (5) sign and date the CDCR Form 602-1 (03/20).
- (d) When completing a CDCR Form 602-1 (03/20), a claimant shall not:
 - (1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;
 - (2) include information or accusations known to the claimant to be false; or
 - (3) contaminate the grievance package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the grievance shall be safely discarded and the entire grievance disallowed.
- (e) The grievance package submitted by the claimant shall be stored electronically by the Department. The CDCR Form 602-1 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3483. Grievance Review.

- (a) The Reviewing Authority for each Office of Grievances shall designate at least one official to assess each written grievance within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall immediately commence an appropriate response as required by all applicable laws and regulations. The claimant shall be notified of the Department's course of action within five business days. Regardless of such notification, the Reviewing Authority shall issue a written response to the claimant as required in subsection 3483(i).
- (b) The Grievance Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.
 - (1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests from the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Grievance Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) The Grievance Coordinator shall ensure that a claim is reassigned to another Institutional or Regional Office of Grievances if a majority of the facts and circumstances that gave rise to the claim occurred there. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the sending Office of Grievances received it.

(2) The Grievance Coordinator shall ensure that a request to implement a remedy is reassigned to the Remedies Compliance Coordinator referred to in subsection 3483(k)(2).

(d) The Reviewing Authority shall refer claims alleging staff misconduct to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation pursuant to section 3484.

(e) A claim may be rejected as described in section 3487.

(f) The Grievance Coordinator shall ensure that an acknowledgment of receipt of a grievance is completed within 14 calendar days of its receipt indicating the date the grievance was received, whether it was disallowed pursuant to subsection 3482(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) A claimant or witness shall be interviewed if departmental staff responsible for reviewing a claim determine it would assist in resolving the claim. The interview shall be conducted in a manner that provides as much privacy for the claimant as operationally feasible. If a claimant is unavailable to be interviewed or refuses to be interviewed, then those facts shall be documented in the written response prepared by the Reviewing Authority.

(h) The Reviewing Authority shall ensure that any individual whose personal interaction with a claimant forms part of the claim is excluded from participating in the grievance process as to that claim, including any interview of a claimant conducted as part of the grievance process.

(1) If the individual in question is a Warden, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the individual in question is a Regional Parole Administrator, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(3) Participating in a committee meeting to discuss a claimant or that includes a claimant in attendance does not, by itself, constitute personal interaction.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the grievance, unless other statutory or regulatory

authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the grievance:

(1) "Disapproved," meaning that the Reviewing Authority found by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both);

(2) "Approved," meaning that the Reviewing Authority did not find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both), in which case the Reviewing Authority shall order an appropriate remedy;

(3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity or official which requires that the claimant file a complaint with that entity or official, as described in subsection 3481(e);

(4) "Redirected," as described in subsection 3483(b);

(5) "Reassigned," as described in subsection 3483(c);

(6) "Rejected," as described in subsection 3487(a);

(7) "Disallowed," as described in subsection 3482(d)(3);

(8) "Under Inquiry or Investigation," meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) "Pending Legal Matter," meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) "Time Expired," meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3483(i).

(j) The Reviewing Authority's written decision shall be mailed to the claimant and a copy placed in the claimant's central file.

(k) Implementation of Remedy.

(1) If the Reviewing Authority approves a claim, then the corresponding remedy shall be implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget authorization outside the Department's existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then a claimant may submit a CDCR Form 602-3 (03/20), "Request to Implement Remedies," hereby incorporated by reference, directly to the Remedies Compliance Coordinator by regular mail sent to the "Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811." Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Division of Adult Institutions and the Division of Adult Parole Operations so long as they are consistent with this Article.

(m) Exhaustion.

(1) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(1) through 3483(i)(7) does not constitute exhaustion of all administrative remedies available to a claimant within the Department. Nor does completion of the review process resulting in a decision to reject a

claim pursuant to section 3487. Exhaustion requires a claimant to appeal such decisions as provided in section 3485.

(2) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(8) through (i)(10) does constitute exhaustion of all administrative remedies available to a claimant within the Department. No appeal is available because the claim was exhausted at the conclusion of the review by the Institutional or Regional Office of Grievances.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

3484. Allegations of Staff Misconduct.

(a) All claims alleging staff misconduct shall be presented by the grievance coordinator to the Reviewing Authority who shall review the claim and determine if:

(1) The claim warrants a request for an allegation inquiry in which case the claim shall be referred to the Office of Internal Affairs, Allegation Inquiry Management Section. An allegation inquiry shall be conducted whenever the claim meets the definition of staff misconduct but the Reviewing Authority does not have a reasonable belief that the misconduct occurred.

(2) The claim warrants a request for a formal investigation in which case the claim shall be referred to the Office of Internal Affairs, Central Intake Unit. A formal investigation shall be conducted whenever the claim meets the definition of staff misconduct and the Reviewing Authority has a reasonable belief that the misconduct occurred.

(b) A confidential report shall be prepared by the Office of Internal Affairs after the completion of an allegation inquiry or formal investigation summarizing all of the evidence that was gathered, including all significant factual findings. This document shall not be provided to the claimant and no other copies shall be kept or maintained except as needed by a Reviewing Authority or the staff working in an Office of Grievances or Office of Appeals in order to respond to a claim, after which the report shall be returned to the Office of Internal Affairs.

(c) Staff with the Office of Internal Affairs may interview the claimant and as many witnesses as necessary to help determine if the allegation is true. The subject of the allegation of staff misconduct may also be interviewed by staff with the Office of Internal Affairs trained to conduct administrative interviews and shall be given notice of the interview at least 24 hours in advance. If the subject chooses to waive the 24-hour notice requirement then the subject may be interviewed immediately.

(d) When the allegation of staff misconduct concerns a use of force incident, then the Reviewing Authority shall refer the claim to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation if the alleged use of force by staff resulted in serious bodily injury or the alleged use of force was not reported in accordance with sections 3268.1 or 3268.3.

(e) If the staff misconduct in question involves a person who is employed by a different hiring authority than the Reviewing Authority, then it shall be the responsibility of the Reviewing Authority to confer with that hiring authority before the referral to the Office of Internal Affairs in order to avoid duplicative referrals.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3485. Preparation and Submittal of an Appeal.

(a) A claimant who wishes to appeal a decision made by an Institutional or Regional Office of Grievances concerning one or more claims they previously submitted in a grievance shall do so in writing by regular mail sent to the "Office of Appeals, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811" or by electronic kiosk or tablet, if available. Correspondence directed to this address shall not be opened by any departmental staff other than those in the Office of Appeals.

(b) A claimant who wishes to appeal a decision found in subsections 3483(i)(1) through 3483(i)(6) shall submit an appeal within 30 calendar days of discovering the decision by the Institutional or Regional Office of Grievances. Discovery occurs when a claimant knew or should have reasonably known of the decision. The time limit for a parolee to submit an appeal shall not be extended while on suspended status, meaning the parolee has absconded. The deadline to submit an appeal of a claim shall be extended for the period of time that a claimant is:

(1) in the custody of another authority for court proceedings;

(2) in the care of an outside hospital; or

(3) temporarily housed in a medical or mental health crisis bed.

(c) To submit an appeal, a claimant shall:

(1) type or print legibly on an official CDCR Form 602-2 (03/20), "Appeal of Grievance," hereby incorporated by reference, or complete the form electronically, if available;

(2) describe in detail why the decision provided by the Institutional or Regional Office of Grievances is inadequate; and

(3) sign and date the CDCR Form 602-2 (03/20).

(d) When completing a CDCR Form 602-2 (03/20), a claimant shall not:

(1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;

(2) include information or accusations known to the claimant to be false; or

(3) contaminate the appeal package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the appeal shall be safely discarded and the entire appeal disallowed; or

(4) include new claims that were not included in the original grievance, in which case the claim shall be reassigned pursuant to subsection 3486(c)(1).

(e) The appeal package submitted by the claimant shall be stored electronically by the department. The CDCR Form 602-2 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3486. Appeal Review.

(a) The Reviewing Authority for the Office of Appeals shall designate at least one official to assess each written appeal within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall refer the matter to the Institutional or Regional Office of Grievances where the majority of the facts and circumstances that gave rise to the claim occurred to be handled pursuant to subsection 3483(a).

(b) The Appeal Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.

(1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or a service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests for the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Appeal Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) A claim which was not first submitted in a grievance to an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date the Office of Appeals received it.

(2) A claim which was first submitted in a grievance but not answered by an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the claim was first received but not answered by an Institutional or Regional Office of Grievances.

(3) A request to implement a remedy shall be reassigned to the Remedies Compliance Coordinator referred to in subsection 3486(k)(2).

(d) If the Office of Appeals determines that a claim involves staff misconduct and that claim was not referred to the Office of Internal Affairs for an allegation inquiry or formal investigation by the Office of Grievances, then the Office of Appeals shall refer that claim to the individuals below who shall consider whether completion of an allegation inquiry or formal investigation is required pursuant to section 3484.

(1) If the claim was made by an inmate, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the claim was made by a parolee, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(e) A claim may be rejected as described in section 3487.

(f) The Appeal Coordinator shall ensure that an acknowledgment of receipt of the appeal is completed within 14 calendar days of its receipt indicating the date the appeal was received, whether it was disallowed pursuant to subsection 3485(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) The full record of each claim shall be made available to the Office of Appeals for purposes of conducting its reviews. The record shall include the claimant's grievance, the claimant's appeal, both acknowledgment letters, all related interviews conducted for the Institutional or Regional Office of Grievances, any relevant documentation prepared for the Office of Grievances, any allegation inquiry reports prepared for the Office of Grievances, any records contained in the Department's information technology system, and all Department rules and memoranda. The record shall not include any new information provided by the claimant to the Office of Appeals that was not made available to the Office of Grievances for their review.

(h) The Reviewing Authority shall exclude any individual whose personal interaction with the claimant forms part of the claim from participating in the appeal process as to that claim. If the individual in question is the Associate Director of the Office of Appeals, then the Director from the Division of Correctional Policy Research and Internal Oversight shall serve as the Reviewing Authority for that claim.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the appeal, unless other statutory or regulatory authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the appeal:

(1) "Denied," meaning that the Reviewing Authority found by a preponderance of the evidence available that the decision of the Institutional or Regional Office of Grievances was proper;

(2) "Granted," meaning that the Reviewing Authority did not find by a preponderance of the evidence available that the decision by the Institutional or Regional Office of Grievances was proper, in which case the Reviewing Authority shall set aside the decision of the Institutional or Regional Office of Grievances and order an appropriate remedy;

(3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity which requires that the claimant file a grievance with that entity, as described in subsection 3481(e);

(4) "Redirected," as described in subsection 3486(b);

(5) "Reassigned," as described in subsection 3486(c);

(6) "Rejected," as described in subsection 3487(a);

(7) "Disallowed," as described in subsection 3485(d)(3);

(8) "Under Inquiry or Investigation," meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) "Pending Legal Matter," meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) "Time Expired," meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3486(i).

(j) The Reviewing Authority's written decision shall be mailed to the claimant and a copy placed in the claimant's central file. If the Reviewing Authority grants a claim, then a copy of the decision shall be simultaneously sent to the appropriate Institutional or Regional Grievance Coordinator.

(k) Implementation of Remedy.

(1) If the Office of Appeals grants a claim, then the Institutional or Regional Reviewing Authority shall ensure that the corresponding remedy is implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget

authorization outside the Department's existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then the claimant may submit a CDCR Form 602-3 (03/20) directly to the Remedies Compliance Coordinator by regular mail sent to the "Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811." Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Office of Appeals so long as they are consistent with this Article.

(m) Completion of the review process by the Office of Appeals constitutes exhaustion of all administrative remedies available to a claimant within the Department. A claim is not exhausted if it was disallowed pursuant to subsections 3482(d)(3) or 3485(d)(3) or rejected pursuant to subsection 3487(a).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

3487. Rejection of a Claim.

(a) A claim shall only be rejected by an Institutional or Regional Office of Grievances or Office of Appeals for one or more of the following reasons:

(1) the claimant did not submit the claim within the timeframe required by subsection 3482(b) for grievances or subsection 3485(b) for appeals;

(2) the claim concerns an anticipated policy, decision, action, condition, or omission by the Department or departmental staff;

(3) the claim is substantially duplicative of a prior claim by the same claimant, except when the prior claim was rejected pursuant to subsection 3487(a)(2);

(4) the claim concerns harm to a person other than the person who signed the grievance or appeal; or

(5) the claim concerns the regulatory framework for the grievance and appeal process itself.

(b) If a claim is rejected as untimely under subsection (a)(1), then the claimant shall be notified of the following dates as determined by the Reviewing Authority: the date the claim was discovered, the date the claim was received, and the deadline for receipt of the claim pursuant to either subsection 3482(b) or 3485(b), whichever is applicable.

(c) A claim that is rejected may be appealed for review by the Office of Appeals pursuant to the procedures in section 3485. If the Office of Appeals grants the appeal, then the claim shall be reassigned to the Office of Grievances at the institution or region where the majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances shall treat the claim as received on the date that the Office of Appeals issued its decision and shall issue its own decision in compliance with subsection 3483(i).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Article 2. Research Involving Inmates or Parolees

EXHIBIT I



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Caroline E. Jackson
Email: cjackson@rbgg.com

September 20, 2019

VIA ELECTRONIC MAIL ONLY

**PRIVILEGED AND
CONFIDENTIAL**
**SUBJECT TO
PROTECTIVE ORDERS**

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

Jessica Blonien
Board of Parole Hearings
Jessica.Blonien@cdcr.ca.gov

Re: *Armstrong v. Newsom*: Access to Confidential Legal Calls for
Class Members Whose Primary Form of Communication is Sign Language
Our File No. 0581-03

Dear Ms. Boyd and Ms. Blonien:

We write regarding the availability of confidential legal calls for *Armstrong* class members whose primary form of communication is sign language. We first raised this issue almost two years ago. *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Legal Calls for Deaf Class Members at SATF (Dec. 27, 2017) (citing *Armstrong* Remedial Plan § II.G ("Accommodations shall be made to afford equal access to the court, [and] to legal representation, ... for inmates/parolees with disabilities, e.g., ... [the] hearing ... disabled.")).

CDCR's regulations currently provide that an institution head may, "upon written request from an attorney on the attorney's office letterhead stationery," approve confidential legal calls. 15 Cal. Code Regs. § 3282(g)(1). The institution head may deny the calls where she "determines that normal legal mail or attorney visits were appropriate means of communication and were not reasonably utilized by the inmate or attorney." *Id.* § 3282(g)(6). In the experience of *Armstrong* Plaintiffs' counsel, when a confidential legal call is approved, it is usually conducted as follows: a custody officer brings the incarcerated person to a private room with a telephone such as an office in the administration building, establishes a phone connection with the attorney, and then leaves the room and waits outside. The call is not recorded, and it is provided with privacy from officers and other incarcerated people. Deaf and hard of hearing *Armstrong* class

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Jessica Blonien
September 20, 2019
Page 2

members who use sign language, however, cannot communicate using a standard telephone and therefore cannot use this same procedure for confidential legal calls.

The regulations provide for Telecommunication Device for the Deaf (TDD) telephones to be made available for confidential calls for people who are deaf or hard of hearing. 15 Cal. Code Regs. § 3282(h). However, using a TDD “requires proficiency in written English.” *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 207 (4th Cir. 2017). For this reason, a TDD is not an effective alternative to a videophone for many deaf people. *See generally* Michele LaVigne, McCay Vernon, *An Interpreter Isn’t Enough: Deafness, Language, and Due Process*, 2003 WIS. L. REV. 843, 854, 936 (2003) (“Thirty percent of deaf students leave school functionally illiterate The median reading level among deaf high-school seniors continues to hover around fourth grade....”). Moreover, TDD “is old technology that is fast becoming obsolete.” *Heyer*, 849 F.3d at 207.

Accordingly, CDCR now provides videophones for deaf and hard of hearing class members who use sign language to make phone calls. However, these calls are monitored and recorded, and the location of the videophones does not ensure privacy from officers or other incarcerated people. We know that at least one class member, Mr. [REDACTED], (DPH, DPS), has outside counsel and cannot engage in confidential legal calls.

When *Armstrong* Plaintiffs’ counsel previously requested a means of placing confidential legal calls to our deaf and hard of hearing class members who use sign language, we were told that attorneys should utilize the Board of Parole Hearings (BPH) software, BlueJeans. *See* Letter from Russa Boyd, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs’ Counsel, Comprehensive Response to Plaintiffs’ Letters Regarding the Provision of Sign Language Interpreters to Deaf Inmates at SATF at 3 (Oct. 15, 2018). Both the Prison Law Office and I have attempted to utilize this method to confer with our deaf clients over the past year.

Using this method requires the attorney to obtain a premium subscription to BlueJeans, obtain the appropriate hardware for video-based communication, and provide a qualified sign language interpreter at the attorney’s office and at the attorney’s expense. In addition, using the BPH software requires the attorney to work around the BPH schedule in order to set up a time to speak with her client when the system is not already in use by BPH. While attorneys may initially gain access to BlueJeans through a free 14-day trial, after the free trial has expired, attorneys must pay \$1200 per year for this service. (This is because attorneys must subscribe to the “My Company Plan” in order to connect with the H.323/SIP room systems that CDCR uses.) There is no way for the

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Jessica Blonien
September 20, 2019
Page 3

attorney to avoid the cost of the additional equipment or of the sign language interpreter. The attorney's only alternative to this expenditure of time and resources is to visit the client in person at the CDCR facility, likely accompanied by an ASL interpreter, which also involves considerable time and resources.

These circumstances contrast sharply with non-deaf class members, who may, when approved by the institution head, place confidential legal calls without the attorney subscribing to a service, purchasing special equipment, or contracting outside personnel. For scheduling purposes, the hearing class members need only to find a time when a custody officer can escort them to the private location. These differences demonstrate that deaf and hard of hearing people are not receiving the "equal access" to "legal representation" required by the *Armstrong* Remedial Plan and the ADA.

Furthermore, the regulations indicate that the institution head, in determining whether to approve a confidential call, should consider the "appropriate[ness]" of the alternatives—mail and in-person visits—and shall "prioritize" when demand for confidential calls is burdensome. 15 Cal. Code Regs. § 3282(g)(6). Because many deaf and hard of hearing people are not able to use the mail to effectively communicate, and because the institutions that house these class members may be far from where their attorneys (class counsel and otherwise) are located, deaf and hard of hearing people should actually be receiving prioritized access to confidential calls. CDCR is falling short of its own regulations, the *Armstrong* Remedial Plan, and the ADA by failing to provide any means, other than the BPH BlueJeans software, for deaf and hard of hearing people to make or receive confidential calls.

We propose that each CDCR institution with *Armstrong* class members who are classified as DPH-SLI install videophone software on the laptops they already have and use for providing Video Remote Interpreting (VRI). The DPH-SLI class members who need to participate in confidential legal calls could be placed in a private room with one of these laptops for the duration of the call. As with hearing individuals, the custody officer could initiate the call and then leave the room.¹ This would enable deaf and hard of hearing people to rely on the video relay service to communicate with any attorneys

¹ We understand that CDCR may have some reservations about allowing incarcerated people unsupervised access to a computer. We welcome the opportunity to brainstorm solutions that would address CDCR's concerns while still allowing access to confidential legal calls for DPH-SLI class members. For example, the institution can restrict access to the laptop's keyboard during the call, or can install additional videophones in program office areas.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Jessica Blonien
September 20, 2019
Page 4

who do not know sign language, and would not require the attorney to obtain a premium BlueJeans subscription or additional equipment to engage in a client call. Attorneys also would not be required to hire an interpreter at their own expense, as any calls placed between a videophone and standard telephone connect automatically to the federally funded video relay service wherein a qualified sign language interpreter facilitates the call at no additional charge to the attorney or to CDCR.

We trust that this is a simple, straightforward process that CDCR can implement on a pilot basis within the next month and roll out system-wide shortly thereafter. We look forward to your attention to this important matter, which we will include on the October 8 meet and confer agenda and the “cross-over” meeting currently being scheduled with CDCR and BPH.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson, Esq.
Not admitted in California

CEJ:cg

cc: Nicholas Meyer	Teauna Miranda	Barb Pires
Ed Swanson	Landon Bravo	Ngoc Vo
Alexander Powell	Laurie Hoogland	Samantha Chastain
Patricia Ferguson	Bruce Beland	Olga Dobrynina
Tamiya Davis	Robert Gaultney	Dawn Malone-Stevens
Amber Lopez	Saundra Alvarez	Bryan McCloughan
Erin Anderson	Tabitha Bradford	Alexandrea Tonis
OLA <i>Armstrong</i>	John Dovey	Gently Arredo
Sharon Garske	Donald Meier	Matt Espenshade
Joanna B. Hood	Robin Hart	Lois Welch
Annakarina	Laurene Payne	Steven Faris
De La Torre-Fennell	Cesar Aguila	Rita Lomio
Damon McClain	CCHCS Accountability	Margot Mendelson
Norma Loza	Cindy Flores	Tommy Nosewicz
Jim Logsdon	Joseph Williams	Camille Woods
Heather McCray	Cathy Jefferson	Juliette Mueller
Marcus Bole	Vincent Cullen	Shira Tevah
Sara Puricelli	Desiree Collum	Prison Law Office
Kelly Mitchell	Lynda Robinson	