

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 v.  
 23 GAVIN NEWSOM, et al.,  
 24 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 (Doc. 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 ISSUES<sup>1</sup>

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

##### 7 *Plaintiffs’ Statement*

8 The COVID-19 pandemic continues to affect all aspects of prison and parole  
 9 operations. As of today, 9574 incarcerated people have tested positive for COVID-19, and  
 10 54 people have died while in CDCR custody.<sup>2</sup> The pandemic has had a devastating impact  
 11 on people with disabilities, who are particularly at risk of getting very sick or dying from  
 12 the disease. Doc. 2996 at 4-5. *Armstrong* class members are overrepresented in the  
 13 number of people who have died from the disease; class members account for less than ten  
 14 percent of the prison population but account for over half of the current deaths attributed to  
 15 COVID-19. Unfortunately, the pandemic is expected to continue for at least another year,  
 16 *see* Doc. 2996-8 ¶ 3; in the meantime, the number of people in state prison who are  
 17 infected with the novel coronavirus will continue to climb.

18 Plaintiffs are dismayed by the continued absence of timely, decisive, and  
 19 comprehensive action and direction from Defendants to address the housing and  
 20 programmatic needs of people with disabilities during the pandemic. The parties have  
 21 conducted a number of telephonic meetings during the pandemic but the agenda items  
 22 remain largely unchanged since March 2020, because they have not yet been resolved.  
 23 There are substantial delays in Defendants responding to Plaintiffs’ questions and reports  
 24 of significant disability-related problems, making it difficult to determine whether the

25 \_\_\_\_\_  
 26 <sup>1</sup> Statements are joint unless otherwise delineated as either *Plaintiffs’ Statement* or  
*Defendants’ Statement*.

27 <sup>2</sup> *See* CDCR, Population COVID-19 Tracking,  
 28 <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited August 17,  
 2020).

1 issues appropriately have been addressed at the institution and/or statewide level.

2 Safe, Accessible Housing

3 On July 14, 2020, after repeated attempts at informal resolution were unsuccessful,  
4 Plaintiffs filed a Motion to Protect *Armstrong* Class Members During the COVID-19  
5 Pandemic. Doc. 2996. Plaintiffs explained that Defendants placed *Armstrong* class  
6 members at serious risk of harm during the pandemic (a) by failing to house them in  
7 accessible placements; (b) by housing them alongside people with active, confirmed cases  
8 of COVID-19 because no other accessible placements were available; and (c) by failing to  
9 ensure that class members are able to safely access ADA workers or others for disability-  
10 related assistance. *Id.*

11 On July 20, 2020, the Court signed a Stipulation and Order Regarding Plaintiffs'  
12 Motion to Protect *Armstrong* Class Members During the COVID-19 Pandemic.  
13 Doc. 3015. Under the Order, Defendants are prohibited from housing *Armstrong* class  
14 members in inaccessible placements and from exposing *Armstrong* class members to  
15 people with active, confirmed cases of COVID-19 because of their disabilities or  
16 accommodation needs. *Id.* at 2. The Order directs the Court Expert to review Defendants'  
17 existing supply of accessible housing, including for purposes of medical isolation and  
18 quarantine, and to present his recommendations to the Court within thirty days. *Id.*  
19 Defendants are required to provide notice, within 24 hours, of anyone housed inaccessibly,  
20 to review and report on efforts to locate accessible housing every 24 hours that the class  
21 member is housed inaccessibly, and to provide notice to the court on the eighth day that  
22 they are inaccessibly housed. *Id.* at 2-3. Defendants also must ensure the ADA worker  
23 program can safely and effectively function without undue risk of transmission of COVID-  
24 19 at the institutions or provide a safe alternative method of providing disability-related  
25 assistance to class members. *Id.* at 2. Within 30 days of the Order, Defendants are  
26 required to report on the steps they have taken to comply with the order and attest to their  
27 compliance. *Id.* at 3.

28 Plaintiffs look forward to working with the Court Expert and Defendants to review

1 the sufficiency of existing accessible housing and to implement any recommendations by  
2 the Court Expert. Plaintiffs, however, continue to have a number of concerns.

3 First, Plaintiffs remain concerned about the number of class members currently  
4 inaccessibly housed, some of whom have been so housed for significant periods of time.  
5 One class member, for example, was designated DPW (full-time wheelchair user) on  
6 June 24, 2020, and referred for “expedited” transfer. The class member, who also has  
7 multiple sclerosis and weakness in his upper and lower extremities, told institution staff  
8 two days later that he was unable to shower because he could not get over the ledge in the  
9 shower. When Plaintiffs’ counsel spoke with him a month later, on July 24, 2020, the  
10 class member was housed in the same inaccessible location. He reported that he still had  
11 not been able to shower and that he had fallen in his cell while trying to clean himself in  
12 the sink of his cell. (The class member since has been transferred to another institution.)

13 Class members remain housed in placements that are not consistent with their DPP  
14 codes. As of August 12, 2020, this included 21 class members at Folsom State Prison,  
15 which currently is experiencing an outbreak of COVID-19, as well as class members at  
16 Calipatria State Prison; California Correctional Institution; California Institution for Men;  
17 California State Prison, Corcoran; California Rehabilitation Center; Chuckawalla Valley  
18 State Prison; Ironwood State Prison; California State Prison, Los Angeles County; Mule  
19 Creek State Prison; North Kern State Prison; Pelican Bay State Prison; Pleasant Valley  
20 State Prison; California State Prison, Sacramento; Sierra Conservation Center; California  
21 State Prison, Solano; and Valley State Prison.

22 In addition, on August 7, 2020, Defendants reported that seventeen class members  
23 who were not on isolation or quarantine status were housed in the unit reserved for  
24 COVID-19 medical isolation/quarantine at R.J. Donovan Correctional Facility due to a  
25 lack of accessible bed space elsewhere in the prison. Those class members remained in  
26 those placements at least until August 12, 2020. (Defendants state that they now have  
27 been moved.) Defendants put these class members at an increased risk of exposure to the  
28 lethal virus because of their disability.

1 The parties currently are working to ensure that a process is put in place that will  
2 comply with the stipulated order's 24-hour notice requirement. Defendants will continue  
3 to identify class members who are housed in placements that are not consistent with their  
4 DPP code, which is in accord with the parties' longstanding agreements, Defendants'  
5 policies and procedures, and prior orders of this Court. *See, e.g.*, Doc. 1045 at 2-3, 6  
6 (Jan. 18, 2007). The parties are working to develop a system that will ensure that  
7 Defendants notify Plaintiffs within 24 hours, as required by the stipulated order, of any  
8 class member housed inconsistent with their DPP code and also to ensure that that class  
9 member is interviewed and all necessary temporary accommodations, including grab bars,  
10 shower benches, toilet seat risers, guard rails, and ramps, are documented, procured, and  
11 provided as soon as possible.

12 Second, Plaintiffs were disappointed to learn on July 22, 2020, that ADA staff at the  
13 California Institution for Men ("CIM"), an institution that has been particularly hard-hit by  
14 COVID-19, still had no plans to talk with *Armstrong* class members who were moved to  
15 inaccessible locations after testing positive for COVID-19 about any accommodations they  
16 might need (and had no plans to direct other staff to do so). As explained in declarations  
17 from class members at CIM who were moved to inaccessible housing on July 8, 2020,  
18 accessible features may need to be installed or moved to allow class members immediate  
19 and safe access to toilets, showers, and other areas.<sup>3</sup> Defendants direct institutions to  
20 interview class members who are inaccessibly housed after a DPP code change regarding  
21 their disability accommodation needs, so it is difficult to understand why they cannot do  
22 the same for class members who are moved to inaccessible housing locations for purposes  
23 of medical isolation or quarantine.

24 Third, Defendants have used temporary and nontraditional housing areas during the  
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26 <sup>3</sup> *See* Doc. 2996-2 at 341-355 (class member declarations); **Exhibit A**, Email from Tamiya  
27 Davis, CDCR Office of Legal Affairs, to Tania Amarillas, Prison Law Office, Class  
28 Members Transferred to Joshua Hall to Mariposa Hall on 7/8/20 (July 21, 2020) (reporting  
changes made to the housing unit in response to concerns raised by Plaintiffs' counsel after  
legal calls with class members).

1 pandemic, including dayroom cots and tents on the yard. Defendants must ensure that  
 2 people’s disabilities are taken into account before and after placement in those areas. At  
 3 the California Health Care Facility, Stockton (“CHCF”), for example, class members with  
 4 disabilities impacting placement were assigned to cots in the dayrooms. *See* Doc. 2996-3  
 5 ¶¶ 4-5, 8. Class members reported that no one assessed their disability needs before they  
 6 were transferred to the cots and that they were in fact discouraged from reporting  
 7 problems. *Id.* ¶ 10, 12. People with mobility disabilities reported that it was very difficult  
 8 to get on and off the cots because they were so low to the ground. *Id.* ¶ 11. One class  
 9 member said that when he attempts to get off a cot, he feels like “a turtle struggling to get  
 10 off his back.” *Id.* Remarkably, when class members reported disability-related problems  
 11 with their living environment through the CDCR 1824, Reasonable Accommodation  
 12 Request Process, the Reasonable Accommodation Panel (“RAP”) denied the requests on  
 13 the grounds that “the RAP is not the subject matter expert for bed moves.” *Id.* ¶ 14.



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25 Photograph of CHCF Dayroom Cots

26 Blind and Low Vision Class Members

27 Plaintiffs remain concerned by Defendants’ continued failure to accommodate blind  
 28 and low vision class members during the pandemic. For example, Defendants have stated

1 without explanation that they have not (and will not) provide educational COVID-19  
2 material in braille. And, over four and a half months into the pandemic, Defendants still  
3 do not appear to have a clear plan regarding how written material, including COVID-19  
4 pamphlets, posters, and self-help and educational materials, will be communicated to blind  
5 and low vision class members. Blind class members have reported that they did not know  
6 hand sanitizer dispensers had been installed until they inadvertently bumped into them.  
7 *See, e.g.*, Doc. 2965 at 52-53. An email from CDCR Headquarters was sent to ADA  
8 Coordinators on June 23, 2020, with a completion date of June 26, stating: “If you are  
9 currently housing DPV inmates please ensure they are informed regarding any physical  
10 changes in housing units, clinics, yards etc...as it relates to physical barriers/changes, such  
11 as (Hand Sanitizer dispensing stations, social distancing markers, etc..) in relation with the  
12 COVID-19 pandemic.” Plaintiffs spoke with the ADA Coordinator at CIM on July 1, 2020.  
13 He could not explain how, if at all, blind class members were or would be informed about  
14 physical changes in housing units.

15 Defendants also have largely closed libraries during the pandemic, leaving class  
16 members unable to access the auxiliary aids that they need to accommodate their  
17 disabilities, including text-to-speech software and electronic magnification. During legal  
18 calls in June and July 2020, blind and low vision class members at CHCF, which houses  
19 62 class members with DPV codes, reported that the library’s closure left them with  
20 limited or no options to read and write, especially in light of restrictions on ADA worker  
21 movement. They also reported that they could not read legal materials provided through  
22 the library “paging” system without access to text-to-speech software.<sup>4</sup> Defendants,  
23 however, still have not addressed this situation, stating on July 24, 2020: “CDCR is  
24 working on providing access at DPV institutions who have auxiliary aids in the library for

25 \_\_\_\_\_  
26 <sup>4</sup> At the California Medical Facility (“CMF”), which houses 60 class members designated  
27 with DPV codes, staff reported to Plaintiffs’ counsel in June 2020 that people with vision  
28 disabilities would be allowed to access the library during its closure. We asked staff to  
ensure that class members with DPV codes understood they would access the library.  
However, we later interviewed blind class members who reported that the library was  
closed.

1 the visually impaired.” It is not clear why this has been so delayed.

2 At Defendants’ request, Plaintiffs made several recommendations in April 2020  
3 related to accessible recreational materials, *see* Doc. 2965 at 63-67, but have not received a  
4 response for over four months, and it appears no action has been taken beyond a general  
5 statement by Defendants on July 24, 2020, that “the department is looking into other  
6 options for uploading or downloading audio books with stakeholders.” In addition,  
7 Defendants have encouraged increased provision of in cell activities, including therapeutic  
8 treatment packets and workbooks. It is not clear what efforts, if any, Defendants have  
9 made to ensure that such materials are accessible to blind and low vision class members.

10 Unsurprisingly, Blind class members have reported that they are isolated during this  
11 pandemic, without access to accessible recreational materials or auxiliary aids in the law  
12 library. *See, e.g.*, Doc. 2965 at 58-60. As noted previously, blind class members statewide  
13 have higher rates of serious mental health concerns, including depression and anxiety. *See*  
14 Doc. 2936 at 5 n.5. Blind and low vision class members at CMF and CHCF reported that  
15 without accommodations to help them read and write, they have even fewer options to pass  
16 the time during the extended lockdown related to COVID-19, which has increased their  
17 feelings of isolation and exacerbated symptoms of mental illness. Defendants must take  
18 comprehensive action to accommodate blind and low vision class members during the  
19 pandemic. If they do not do so, Plaintiffs will have little choice but to seek judicial relief.

#### 20 Deaf and Hard of Hearing Class Members

21 Plaintiffs remain concerned with the lack of content—both related to COVID-19  
22 and for recreational and religious purposes—in captioning and sign language. *See*  
23 Doc. 2936 at 2-3. Defendants are working to provide news in ASL through DRP TV and  
24 have begun to provide religious videos and video messages from Secretary Diaz and the  
25 Receiver in ASL. Those are important and laudable efforts. Plaintiffs remain concerned,  
26 however, that many D/deaf class members do not have reliable access to televisions—  
27 including class members at SATF and those in administrative segregation and without the  
28 ability to hear the hand-crank radios that are distributed. *See Exhibit B*, Letter from Rita



1 Lomio & Megan Lynch, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal  
2 Affairs, Deaf Class Members in Administrative Segregation at CIM (July 8, 2020).

3 Parole Holds and Jail Crowding

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

14 *Defendants' Statement*

15 Defendants are sensitive to the needs of inmates and parolees at higher risk of  
16 severe effects from COVID 19, but note that "[d]isability alone may not be related to  
17 higher risk for getting COVID 19 or having severe illness. Most people with disabilities  
18 are not inherently at higher risk for becoming infected with or having severe illness from  
19 COVID 19." *See* CDC, Coronavirus Disease 2019: People with Disabilities,  
20 [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)  
21 [disabilities.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html) (last visited Aug. 12, 2020).

22 Defendants have worked tirelessly to provide a comprehensive and proactive  
23 response to the unprecedented challenges caused by the pandemic to ensure that class  
24 members are accommodated, and to ensure the safety and security of all incarcerated  
25 people, whether class members or not. To the extent possible, Defendants have provided  
26 weekly telephone conferences to share up-to-the-minute information, address Plaintiffs'  
27 concerns, and maintain a robust means of communication to obviate the need for judicial  
28 intervention and to conserve valuable resources that could be put to better use elsewhere.

1 Defendants continue to make significant and comprehensive efforts to contain and  
2 minimize the effects of an unprecedented, global pandemic on the people housed in its  
3 institutions, staff, and visitors; some of which are detailed below.

4 For example, CDCR has initiated a proactive testing program.<sup>5</sup> CDCR is requiring  
5 testing of all adult-institutions' staff and health-care staff statewide, regardless of the  
6 number of COVID-19 cases at the individual institution. Baseline testing at all institutions  
7 was to be completed by mid-July. Serial testing of employees will occur at institutions  
8 who have positive test results every fourteen days until no new cases are identified in two  
9 sequential rounds of testing. Once that goal is met, the institution may then resume their  
10 regular surveillance testing schedule. Further, CCHCS is conducting surveillance testing  
11 of incarcerated people at all adult institutions. Surveillance testing is used to detect  
12 outbreaks in an early phase, even before the development of symptoms. This voluntary  
13 testing will be performed across multiple facilities at each institution every month. Priority  
14 will be given to asymptomatic individuals who have been identified as vulnerable or high-  
15 risk for complications of COVID-19.

16 Additionally, Defendants have taken steps to increase opportunities for social  
17 distancing to minimize the spread of COVID-19. Since March, CDCR has taken  
18 extraordinary measures to directly address the COVID-19 pandemic in its institutions,  
19 including one of the largest reductions in state prison population in recent history. In that  
20 timeframe, CDCR has reduced its total incarcerated population by more than 16,000  
21 prisoners by taking the following actions: (1) suspension of county jail intake for those  
22 prisoners having been found to have violated parole; (2) under a series of release actions  
23 announced July 10, expedited release of approximately 3,500 prisoners in April, and more  
24 than 6,700 prisoners; and release of prisoners having served their full term as defined by  
25 the law. These efforts are working because, as of July 30, 2020, and for the first time in  
26 three decades, the in-prison population fell below 100,000 prisoners. The last time the in-

27 \_\_\_\_\_  
28 <sup>5</sup> <https://www.cdcr.ca.gov/covid19/expedited-releases/> (last visited Jul. 29, 2020).

1 prison population fell below 100,000 prisoners was in 1990, when California's overall  
2 population was almost 10 million people less than it is today.<sup>6</sup>

3 During this ever-evolving situation, CDCR has taken other measures to increase  
4 social distancing that include reducing the number of people who use common spaces at  
5 the same time, transferring people from lower-level dorms to celled housing, and erecting  
6 tents to create alternate housing and care sites. Defendants continue to consider additional  
7 steps and have converted other areas in the prisons, such as gymnasiums, into living areas.  
8 The sufficiency of Defendants' efforts continue to be the subject of active litigation in  
9 *Plata v. Newsom*, No. 01-1351 JST (N.D. Cal.) and *Coleman v. Newsom*, No. 90-0520  
10 KJM DB (E.D. Cal.). The parties will continue to discuss how any changes in housing and  
11 restrictions on movement will affect *Armstrong* class members.

12 Defendants have made efforts to educate the incarcerated population about COVID-  
13 19, preventive measures, and program changes in a variety of ways, including through  
14 Centers for Disease Control and Prevention (CDC) videos, regularly broadcasting video  
15 messages from Secretary Diaz, CCHCS-produced videos, written flyers, and posters.  
16 Defendants agree that such information should be provided in an accessible format to  
17 *Armstrong* class members who have barriers to effective communication, such as those  
18 with vision and hearing impairments.

19 To this end, CAMU sent a June 23, 2020 directive, via email, to the field to all  
20 institutions reminding them that if they currently house DPV inmates to ensure they are  
21 informed regarding any physical changes to housing units, clinics, yards, or other facilities  
22 and that they are advised of any other pandemic-related changes or barriers such as  
23 placement of hand-sanitizing stations, placement of social-distancing markers, and other  
24 measure taken in response to the COVID-19 pandemic. By June 26, 2020, all institutions  
25 had responded to this directive. Further, a memo regarding access to auxiliary aids in the  
26 library during the pandemic will be issued to the field this week with a proof of practice to  
27

28 <sup>6</sup> <https://www.cdcr.ca.gov/covid19/> (last visited Jul. 31, 2020).

1 CAMU by August 21, 2020. The memo sets forth weekly access to DPV inmates who  
2 need access to the auxiliary aids in the library.

3 Staff conduct weekly meetings with deaf class members to communicate important  
4 COVID-19 information to ensure these class members are well-informed and can take  
5 proactive measures for their own safety during the pandemic. Defendants have also  
6 implemented significant changes to programming until further notice to prevent or slow  
7 the spread of COVID-19, including cancelling visitation, rehabilitative programs, group  
8 events, in-person educational classes, and group religious programs.<sup>7</sup> However,  
9 Defendants have taken steps to mitigate the effects of these changes. For example, “[i]n  
10 recognition of the need for incarcerated people to have contact with their loved ones,”  
11 Defendants have expanded phone access.<sup>8</sup> In addition, the Office of Correctional  
12 Education has been working to provide in-cell assignments. *Id.* And, in recognition of  
13 “the importance of religion in the daily life and spiritual growth of incarcerated people,”  
14 Defendants are providing in-cell services for holidays, have directed chaplains to “conduct  
15 individual religious counseling as appropriate,” and are “working to provide televised  
16 religious services to the population.”<sup>9</sup>

17 Defendants’ decision to enter into a stipulation in response to Plaintiffs’ motion  
18 concerning *Armstrong* class members during the COVID-19 pandemic—instead of  
19 litigating it—further demonstrates Defendants’ commitment to providing safe and  
20 accessible housing to class members. Defendants continue to collaborate with the Court’s  
21 expert, Ed Swanson, and Plaintiffs to facilitate Mr. Swanson’s review of Defendants’  
22 existing supply of accessible housing, including housing for medical isolation or  
23 quarantine, so that he may present his recommendations to the Court by August 19, 2020.

24  
25 <sup>7</sup> <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#RPE> (last visited Jul. 28,  
2020).

26 <sup>8</sup> <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#VCMP> (last visited Jul. 28,  
2020).

27 <sup>9</sup> <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#RPE> (last visited Jul. 28,  
28 2020).

1 Additionally, Defendants are diligently working to meet their obligations under the Court's  
2 order that includes an attestation of compliance, steps taken to meet compliance, and  
3 assurance that the ADA-worker program can function without undue risk of COVID-19  
4 transmission. Defendants have developed a means to conduct a statewide daily count to  
5 ensure that class members are provided safe, accessible housing, and to provide a daily  
6 snapshot of class members' housing status. For example, according to CDCR's daily  
7 count, on July 28, 2020, all class members were assigned accessible housing.

8 Hence, Plaintiffs' assertion that "class members remain housed in unsafe and/or  
9 inaccessible locations" is not true. Further, Plaintiffs' contention that as of "August 12,  
10 2020, a significant number of class members remain in housing not designated for their  
11 disabilities," at various prisons including Folsom State Prison, Calipatria State Prison, and  
12 fifteen others is incorrect, misleading and has already been explained to Plaintiffs.

13 Plaintiffs' contention that class members are housed in placements that are not  
14 consistent with the DPP codes, is well taken. Seemingly, Plaintiffs are referring to the  
15 expedited transfer report which lists people scheduled for an expedited transfer, but  
16 Defendants contend that it does not mean that these class members are not being accessibly  
17 housed. This report includes a combination of code changes, reception-center inmates, and  
18 inmates housed in medical settings. In addition to the daily reporting, Defendants have  
19 independently contacted each prison and have confirmed that each inmate included in the  
20 report is accessibly housed.

21 Moreover, Plaintiffs' contention that Defendants "already are not complying with  
22 the terms of the stipulated order, which requires" notice to Plaintiffs and the Court's expert  
23 within 24-hours hours of a class member's placement in inaccessible housing is, again,  
24 incorrect.

25 Defendants continue to work with Plaintiffs to ensure that timely notice is provided  
26 in accordance with the Court's order. Defendants contend that all the 128 chronos  
27 produced after code changes document that class members are currently accessibly housed.  
28 There has been one instance when a DPW inmate was inaccessibly housed for 24 hours,

1 but he was transferred to accessible housing. In accordance with the Court's order, CDCR  
2 Counsel provided Plaintiffs and the Court's expert with timely notice of his housing.  
3 Further, the DPW inmate referred to by Plaintiffs with "multiple sclerosis" has been  
4 moved to a designated institution where he is accessibly housed. And to the extent that  
5 Plaintiffs imply that class members are inaccessibly housed at CIM, they are mistaken.  
6 Further in its daily reporting, CIM has confirmed that all class members are assigned to  
7 accessible housing.

8 Defendants deny that there are seventeen class members "at an increased risk of  
9 exposure to the lethal virus" due to their disability because they were housed in the "the  
10 unit reserved for COVID-19 medical isolation/quarantine at" RJD. In fact, as of August  
11 17, 2020, there are only four class members that are currently housed in this space, and all  
12 four are on quarantine. All other class members previously housed in this space have been  
13 moved to accessible housing.

14 CDCR issued a directive to all institutions on Friday, August 14, 2020, to interview  
15 class members who are placed on the expedited transfer list and pending transfer due to the  
16 COVID-19 pandemic to ensure they are able to access programs, services, and activities.

17 Defendants do not believe that issues Plaintiffs raise regarding the effects of  
18 COVID-19 on parolees are specific to Armstrong class members, or that an ADA issue is  
19 raised here. Defendants have taken steps to limit placements in jails with regard to all  
20 parolees, including suspending placements in jail based on technical parole violations  
21 (except where mandated by law or where there is a threat to public safety). The parties  
22 have also met regularly and discussed parole holds affecting class members.

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

### 24 *Plaintiffs' Statement*

25 Plaintiffs' counsel has presented evidence of a hostile environment at many  
26 institutions that discourages people from asking for disability accommodations and  
27 discriminates against people with disabilities. Plaintiffs' counsel has also documented  
28 allegations of widespread abuse and violations of the rights of people with disabilities. On

1 February 28, 2020, Plaintiffs’ counsel filed a Motion to Stop Defendants from Assaulting,  
2 Abusing and Retaliating against People with Disabilities at R.J. Donovan Correctional  
3 Facility (“RJD Motion”), Doc. 2922, and on June 3, 2020, Plaintiffs’ counsel filed a  
4 statewide Motion to Stop Defendants from Assaulting, Abusing and Retaliating against  
5 People with Disabilities (collectively, Plaintiffs’ Motions”). *See* Doc. 2948. Plaintiffs’  
6 overwhelming evidence shows a clear connection between the violence and abuse enacted  
7 by staff at multiple prisons and the inability of class members to obtain disability  
8 accommodations from staff.

9 On July 2, 2020, this court granted Plaintiffs’ Motion for a temporary restraining  
10 order (“TRO”) finding Plaintiffs met their burden of demonstrating a likelihood of success  
11 on the merits in showing that two witnesses “have already faced violent retaliation for  
12 participating in the Motions and reporting officer misconduct” and that the balance of  
13 equities tipped heavily in favor of the witnesses. Doc. 2972 at 3. Defendants were ordered  
14 to transfer Plaintiffs’ witnesses. Doc. 2978-2979. The TRO remains in effect( Doc. 3012),  
15 as modified by subsequent orders including the Court’s July 30, 2020 Order Granting in  
16 Part Motion for Preliminary Injunction, Doc. 3025. On the eve of transfer, at least one of  
17 Plaintiffs’ witnesses continued to experience extreme retaliation, including a written death  
18 threat, for participation in these proceedings by reporting staff misconduct to effectuate the  
19 rights of people with disabilities. Doc. 3017.

20 Despite ongoing evidence of continued violence, threats, retaliation and harm to  
21 *Armstrong* class members at RJD and other CDCR prisons, Defendants claim their  
22 response has been adequate, that their existing systems for holding staff accountable are  
23 working, and that Plaintiffs’ request for relief is outside of the scope of this case. *See*  
24 Doc. 3006. Defendants continue to argue that reports of *Armstrong* class members about  
25 ongoing abuse at the hands of staff are not related to disability access and are thus not  
26 relevant to this case. *See* Doc 3006 at 15-16.

27 Defendants state that they take staff misconduct seriously. *Id.* at 16. Yet, they have  
28 no meaningful plan for implementing security cameras, a step they recognize as an

1 essential tool to investigate staff misconduct and curb incidents of violence. *Id.* at 20-21.  
2 Defendants hold very few staff members accountable. *Id.* at 15. Defendants find the vast  
3 majority of allegations raised by *Armstrong* class members not credible, claiming they are  
4 based on hearsay, without corroborating evidence. *Id.* at 16. By simultaneously failing to  
5 believe *Armstrong* class members and failing to install security cameras and body worn  
6 cameras that could provide irrefutable evidence either supporting or denying allegations,  
7 Defendants have created an impossible situation for incarcerated people with disabilities  
8 alleging staff misconduct. It is difficult to imagine how Defendants will ever come in to  
9 compliance with the ADA and Court Orders in this case if they do not take staff violence  
10 and retaliation seriously and they continue to deny any connection between violence  
11 against *Armstrong* class members and the rights enforced by the orders of this Court.

12         The problems caused by staff misconduct against incarcerated people with  
13 disabilities in CDCR, and responses to Defendants' assertions below, were discussed  
14 during the August 11 oral argument on Plaintiffs' RJD Motion and are set forth in briefing  
15 in support of Plaintiffs' Motions, which are currently pending before this Court. *See*  
16 Doc. 2922, 2948, 2972, 2999, and 3024.

17         Since the Court's TRO issued on July 1, 2020, CDCR continues its pattern of  
18 imposing retaliatory Rules Violation Reports ("RVRs") on class members who object to  
19 retaliation and abuse. Although the 30 day time limit to hear the RVRs imposed against  
20 Inmate 2 in response to the events of June 17, 2020 was long past, and although CDCR  
21 agreed to provide Plaintiffs with all documentation regarding the RVR process against  
22 Inmate 2 within one business day, CDCR proceeded with a hearing on August 13, 2020, in  
23 violation of the due process and ADA rights of Inmate 2 and without notice to Plaintiffs'  
24 counsel. Doc. 2991 at 2.

25         As set forth in a letter attached hereto as **Exhibit C**, Defendants did not have  
26 adequate justification for sustaining the RVRs or for delaying the RVR hearings. CDCR  
27 did not present any additional evidence against Inmate 2 justifying a finding of guilty  
28 notwithstanding the Court's July 30, 2020 Order Granting in Part Preliminary Injunction



1 finding CDCR's version of the events of June 17 not credible, and did not make "good  
2 faith" attempts to identify and interview witnesses to the incident. Following the  
3 August 11, 2020 hearing where this Court asked multiple questions about the status of the  
4 RVRs, CDCR appears to have taken quick action to convene a special panel and find  
5 Inmate 2 guilty of both RVRs, although the charge of assault was apparently reduced to  
6 "disrespecting staff." Inmate 2 now faces 90 additional days in prison as well as almost  
7 certain denial of applications for elderly parole or early release. Plaintiffs have again  
8 requested that CDCR drop the RVRs; if they do not do so by August 18, Plaintiffs will  
9 renew their motion for an order rescinding these unlawful and retaliatory RVRs. *See*  
10 **Exhibit C.**

11 *Defendants' Statement*

12 Defendants take all allegations of staff misconduct seriously and are committed to  
13 investigating and taking appropriate remedial action where warranted. Defendants have  
14 developed a new framework for handling administrative grievances concerning staff  
15 misconduct that includes organizational changes and staff training. Defendants have  
16 formed a new Appeal Inquiry Management Section (AIMS) unit, under the umbrella of the  
17 Office of Internal Affairs (OIA), and developed regulations to change CDCR's appeals and  
18 grievance process. AIMS is primarily responsible for completing allegation inquiries  
19 regarding allegations against staff submitted through the grievance process, which, if true,  
20 would meet the definition of staff misconduct, but for which the authority reviewing the  
21 inmate grievance does not believe that misconduct occurred. This new section  
22 significantly changes staff-misconduct inquiries by taking the local investigative services  
23 unit and supervisory staff out of the inquiry process for most allegations of staff  
24 misconduct and places the responsibility with non-institution staff from the OIA. The new  
25 appeals regulations were finalized and implemented on an emergency basis on June 1,  
26 2020. Now that the regulations have been implemented, CDCR has begun the process of  
27 turning the emergency regulations into permanent regulations. Training has also been  
28 provided to necessary staff on implementation of the new regulations.

1           Although not part of the emergency regulations, the new framework for handling  
2 grievances concerning staff misconduct also includes an auditing process that will  
3 eventually be incorporated into the Department Operations Manual (DOM) and related  
4 policy memorandums. The Office of Appeals will be conducting field reviews of  
5 Institutional Grievance Offices on a regular basis. In addition, CDCR plans for the Office  
6 of Audits and Court Compliance to conduct audits of both the Office of Appeals and the  
7 Institutional Grievance Offices. CDCR will also regularly review randomly selected  
8 grievances from every institution. This review will include grievances that the Hiring  
9 Authority sent to AIMS for an allegation inquiry as well as grievances that were not, to  
10 ensure that the Hiring Authority is making proper screening decisions. CDCR will also  
11 review actions taken by the Hiring Authority after the allegation-inquiry report is  
12 generated by AIMS, to ensure that the Hiring Authority is taking appropriate disciplinary  
13 action when warranted.

14           Defendants have produced significant discovery in this case since receiving  
15 Plaintiffs' November 13, 2019 letter alleging staff misconduct at Richard J. Donovan and  
16 in response to Plaintiffs' written discovery requests that included a Federal Rule of Civil  
17 Procedure 30(b)(6) deposition notice, requests for production of documents, and  
18 interrogatories. Defendants have produced three persons most knowledgeable for  
19 depositions, served responses to interrogatories, and continue to produce documents on a  
20 weekly basis in response to Plaintiffs' expansive document requests. On April 2, 2020,  
21 Plaintiffs served another request for production of documents related to allegations of staff  
22 misconduct at Richard J. Donovan, but those requests are broadened to include documents  
23 related to inmates who are not *Armstrong* class members, and allegations of staff  
24 misconduct at California State Prison, Los Angeles County (LAC). Defendants have  
25 served their timely responses and the parties have met and conferred concerning a rolling  
26 document production. To date, Defendants have produced approximately 10,258  
27 documents in response to these requests over the last 28 consecutive weeks. On July 27,  
28 2020, Defendants produced their expert witness, Ken McGinnis, for a deposition in Flint,

1 Michigan. Recently, on August 4, 2020, Plaintiffs served special interrogatories related to  
2 their allegations of staff misconduct at LAC, Kern Valley State Prison (KVSP), California  
3 State Prison – Corcoran (COR), and California Correctional Institution (CCI).  
4 Additionally, Plaintiffs served a Federal Rule of Civil Procedure 30(b)(6) deposition notice  
5 concerning their staff misconduct allegations at LAC, KVSP, COR, and CCI.

6 Defendants filed their opposition to Plaintiffs’ motion alleging staff misconduct on  
7 July 15, 2020, and the matter was heard on August 11, 2020. Defendants’ opposition to  
8 Plaintiffs’ second motion alleging staff misconduct at seven additional prisons, including  
9 LAC, KVSP, COR, CCI, Salinas Valley State Prison (SVSP), Substance Abuse Treatment  
10 Facility (SATF), and California Institute for Women (CIW), is due on September 8, 2020.  
11 The hearing date for the second motion is scheduled for October 6, 2020. The Court,  
12 however, has indicated that depending on the outcome of the first motion, the Court may  
13 not hold another hearing.

14 As previously mentioned, Defendants take all allegations of staff misconduct or  
15 abuse against inmates seriously. To that end, Defendants have engaged in ongoing  
16 discussions with Plaintiffs’ counsel regarding allegations of staff misconduct, are working  
17 diligently to provide requested information to Plaintiffs, and are continuing to discuss  
18 additional changes that Plaintiffs believe are necessary to remedy confirmed incidents of  
19 staff misconduct. Defendants have engaged in these discussions with Plaintiffs’ counsel,  
20 but do not believe that all of Plaintiffs’ allegations of staff misconduct implicate the  
21 *Armstrong* class or are appropriately before the *Armstrong* Court. Plaintiffs’ allegations  
22 fail to establish even a tenuous connection between the alleged staff misconduct with the  
23 rights of disabled inmates, Defendants’ compliance with the ADA or the Rehabilitation  
24 Act, or this Court’s orders. Allegations made by non-class members and allegations not  
25 related to violations of the ADA or the Remedial Plan are processed and addressed through  
26 CDCR’s staff disciplinary process, as set forth in the Department Operations Manual. (*See*  
27 *CDCR Department Operations Manual, Chapter 3, Art. 22.*) This process was developed  
28 as a result of the *Madrid* litigation, and the Prison Law Office was significantly involved in

1 its development. Where there is simply is no nexus between allegations of staff  
2 misconduct and an inmate's disability, that allegation does not warrant inclusion of the  
3 alleged incidents in the *Armstrong* accountability logs. Some of the allegations presented  
4 by Plaintiffs' counsel attempt to draw a nexus between disability and staff misconduct  
5 based on pure speculation, but without any supporting evidence.

6 Defendants will continue to work with Plaintiffs regarding their allegations of staff  
7 misconduct at Richard J. Donovan, as well as the seven institutions at issue in Plaintiffs'  
8 June 3, 2020 motion, and will work to provide them with non-objectionable documents  
9 related to their document requests. While Defendants take all allegations of misconduct  
10 seriously, Defendants do not concede the veracity of all of the allegations that have been  
11 raised by Plaintiffs.

12 Defendants deny Plaintiffs' allegation that CDCR "continues its pattern of imposing  
13 retaliatory [RVRs] on class members who object to retaliation and abuse." CDCR further  
14 denies Plaintiffs' allegations that it violated the ADA, the Court's order, the Due Process  
15 clause, or other provisions in processing the RVRs that arose on June 17, 2020 against  
16 Inmate 2, as stated above and in Plaintiffs' August 14, 2020 letter. Moreover, Defendants  
17 did not take "quick action to convene a special panel to find Inmate 2 guilty of" the RVRs  
18 following the July 11, 2020 hearing as Plaintiffs assert. Rather, CDCR processed the  
19 RVRs in accordance with Title 15, this includes suspending the thirty-day time period to  
20 hear the RVR for reasons provided for in Title 15. But as also stated in the Armenta  
21 Declaration, filed with the Court under seal at ECF No. 3016-3, notwithstanding the  
22 suspension of the time constraints, an RVR will still be heard by staff as permitted by Title  
23 15. Defendants contend that they have timely provided Plaintiffs with the documents  
24 related to the RVRs, that there were no documents created "noticing" the August 13, 2020  
25 RVR hearings to produce, and that no documents memorializing the August 13, 2020  
26 hearing have yet been created to produce to Plaintiffs. Following a hearing, there is a  
27 review process that takes place before the RVR, and the results of the hearing, become  
28 final. Once completed, responsive documents will be timely produced to Plaintiffs.

1 Defendants will not speculate as to what, if any, affect the RVRs will have on any  
 2 application for elderly parole or early release in light of Inmate 2's commitment offense  
 3 and other factors not related to these RVRs. Defendants anticipate filing a declaration with  
 4 the Court to provide an update as to the status of these RVRs once the necessary  
 5 documents have been created and finalized. Defendants are committed to working with  
 6 Plaintiffs to resolve this issue and to comply with the Court's orders while doing so.

7 **C. The Division of Rehabilitative Programs and Office of Correctional Education**  
 8 **Support for Students with Disabilities**

9 *Plaintiffs' Statement*

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

22 First, Defendants do not provide real-time captioning to deaf class members who  
 23 cannot hear what is being said in a classroom or self-help group setting. "Real-time  
 24 captioning (also known as computer-assisted real-time transcription, or CART) is a  
 25 service...in which a transcriber types what is being said at a meeting or event into a  
 26 computer that projects the words onto a screen. This service, which can be provided on-  
 27 site or remotely, is particularly useful for people who are deaf or have hearing loss but do  
 28 not use sign language." U.S. Dep't of Justice, ADA Requirements: Effective

1 Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>. Late-deafened  
2 people in California prisons who do not know sign language overwhelmingly report  
3 feelings of isolation in prison due to their disability, an inability to fully participate in  
4 programs, and an unawareness of accommodations that may be able to help them. *See*  
5 Doc. 2910 at 18-27. Plaintiffs repeatedly have raised the need for real-time captioning.<sup>10</sup>  
6 The parties were scheduled to discuss this issue in January 2020, but the meeting was  
7 postponed at Defendants’ request and has not been rescheduled. If Defendants do not  
8 develop a system to provide real-time captioning soon, Plaintiffs expect to bring the issue  
9 to the court for resolution.

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

19 Blind students also do not receive skills training in the assistive technology that  
20 Defendants do provide. For example, last year, Defendants installed JAWS for Windows  
21 (“JAWS”) text-to-speech software on the LexisNexis computer in each law library. They  
22 have not installed it, however, on the word processing, “ADA” computer. In any event,  
23 Defendants have not provided instruction to blind class members on how to use that  
24

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25 <sup>10</sup> *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 technology, rendering it functionally inaccessible.

2 The parties met once about issues related to blind/low-vision class members in  
3 January 2020 and did not reach any agreements. Plaintiffs remain willing to address these  
4 issues collaboratively and are waiting on Defendants to continue discussion over six  
5 months later.

6 Third, Plaintiffs have concerns about the types of accommodations and supports  
7 available to class members with learning disabilities. For example, in January 2020,  
8 Defendants discontinued the Voluntary Education Program (VEP) statewide, which  
9 severely limited (and in some cases eliminated) access to tutoring services for students  
10 with learning disabilities. Plaintiffs also are concerned with the low number of people that  
11 Defendants designate as having a learning disability—157 (verified) and 127 (unverified)  
12 at last count. That is substantially lower than the approximately 4,300 one would expect in  
13 a prison system of 123,010 people, based on U.S. Census data. *See* Danielle M. Taylor,  
14 *Americans with Disabilities: 2014* at 8 (Nov. 2018),  
15 <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p70-152.pdf>.  
16 Plaintiffs also have continuing concerns that as part of what was apparently an effort to  
17 ensure detailed accommodation chronos were written for class members with learning  
18 disabilities, as required by the March 7, 2018 memo the parties negotiated on  
19 accommodations for people with learning disabilities, SATF actually removed a number of  
20 people from the LD verified category because they could not locate the evidence originally  
21 used to verify these individuals as LD. Plaintiffs look forward to working with Defendants  
22 to further investigate and address these issues.

### 23 *Defendants' Statement*

24 Defendants are committed to allocating sufficient resources and staff to evaluate  
25 and provide accommodations to ensure equal access to rehabilitative programming,  
26 services, and activities to people with disabilities. The parties are scheduled to meet on  
27 September 11, 2020, to meet and discuss accommodations for DNH/DPH class members.

28 Defendants are also exploring different ways to provide training to inmates with

1 disabilities regarding the various accommodation tools, including JAWS<sup>11</sup>, that are  
2 available for their use. Although initially delayed by COVID-19, staff training for JAWS  
3 utilization is now complete. This training included a May 12, 2020 webinar that provided  
4 training to staff and provided them an opportunity to ask questions related to JAWS.  
5 CDCR is working on upgrading the ADA computers to support JAWS and other  
6 technologies. Once COVID 19 restrictions are lifted, library staff will develop a schedule  
7 to train all class members on all assistive devices and all library resources.

8 CDCR does not test for learning disabilities. However, if an inmate self-identifies  
9 as having a learning disability, CDCR will make efforts to obtain documentation to verify  
10 that disability. If the learning disability remains unverified, CDCR nonetheless provides  
11 assistance to those inmate-students with unverified disabilities. Additionally, CDCR is in  
12 the process of implementing its Peer Literacy Mentorship Program (PLMP) to assist  
13 inmate-students with learning disabilities. One purpose of this program is to provide more  
14 focused attention for students in educational programs. Per the Governor's budget, all  
15 institutions will receive a PLMP teacher. This is part of a new initiative to provide flexible  
16 mentoring for students who have barriers to attending educational programs in a traditional  
17 classroom setting, and is available on nights and weekends, in dayrooms, etc. Peer  
18 mentors work with up to twenty students, and receive sentencing credits and pay. Mentees  
19 also earn credits. Hiring for PLMP teachers and mentors began last year. Tutoring is first  
20 provided to those students with verified learning disabilities, and then to students with  
21 unverified learning disabilities as space permits.

#### 22 **D. Provision of Sign Language Interpretation**

##### 23 *Plaintiffs' Statement*

24 As Plaintiffs have reported for over a decade, D/deaf people in California prisons

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25 <sup>11</sup> Job Access With Speech (JAWS) is a screen reader, a software program for visually  
26 impaired users. Its purpose is to make personal computers using Microsoft Windows  
27 accessible to blind and visually impaired users. It accomplishes this by providing the user  
28 with access to the information displayed on the screen via text-to-speech or by means of  
Braille display and allows for more comprehensive keyboard interaction with the computer



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

13 In addition, Plaintiffs are deeply concerned by Defendants' failure to ensure that  
 14 sign language interpretation is provided to D/deaf class members during off-site medical  
 15 appointments. D/deaf class members have been hospitalized, undergone surgery, and  
 16 received other medical treatment without interpretation services. Defendants currently do  
 17 not require that the off-site medical providers they contract with document whether and  
 18 how effective communication was achieved during the medical appointment (including  
 19 whether sign language interpretation was provided), and Defendants do not otherwise

20  
 21 <sup>12</sup> See Doc. 2874 Exhibit A (Letter from Caroline Jackson, Plaintiffs' Counsel, to Kelly  
 22 Mitchell, Brantley Choate, and Russa Boyd (July 1, 2019) (describing concerns with deaf  
 23 education at CDCR); Doc. 2680 at 3-4; Doc. 2671 at 14; Doc. 2749 at 25-31 (Letter from  
 24 Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, Office of Legal Affairs (June 19, 2018)  
 25 (documenting allegations regarding CDCR's failure to provide SLIs for AA and NA  
 meetings, lifer groups, religious services, educational programming, and vocational  
 programming at SATF)); Doc. 2728 (Letter from Rita Lomio, Plaintiffs' Counsel, to  
 Russa Boyd, Office of Legal Affairs (Nov. 7, 2017)) (same)); Doc 2863 at 6-8  
 (summarizing concerns); Doc. 2863 at 24-33 (Letter from Don Specter, Plaintiffs'  
 Counsel, to Ralph Diaz, CDCR Secretary (May 3, 2019)).

26 <sup>13</sup> See 28 C.F.R. § 35.160(d); Doc. 2345 at 24; Doc. 2844 at 177-79 (Email from Rita  
 27 Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs (Feb. 2, 2019)  
 28 (outlining problems observed during monitoring tour with VRI)); Doc. 2863 at 27-29  
 (Letter from Don Specter, Plaintiffs' Counsel, to Ralph Diaz, CDCR Secretary (May 3,  
 2019) (same)).

1 review or track whether effective communication was in fact achieved during off-site  
2 appointments. The parties met to discuss this issue in February 2020, and the Receiver  
3 directed CCHCS to convene a workgroup and develop a complete solution. Plaintiffs look  
4 forward to the recommendations of the workgroup and to continuing discussions with  
5 Defendants on this issue.

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

14 Finally, Plaintiffs are concerned that there currently is no way to conduct a  
15 confidential legal call through a videophone and/or Video Relay Service. This has been a  
16 longstanding issue in the case, but has taken on particular importance during the pandemic,  
17 when in-person visitation has been suspended, and it is critical for attorneys, including  
18 Plaintiffs' counsel, to be able to communicate with Deaf class members confidentially and  
19 in sign language.

#### 20 *Defendants' Statement*

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

26 CCHCS has reported that it has been developing potential alternatives to solely  
27 relying on external providers to ensure interpreters are present for off-site encounters.  
28 Defendants have put together a working group to address contract language for off-site

1 encounters, policies and regulations, and an escalation process for when an off-site  
2 provider fails to provide SLI. The working group held its first meeting on March 12, 2020,  
3 but in light of the almost complete cessation of off-site appointments, this initiative is  
4 temporarily paused and CCHCS will keep Plaintiffs informed of any new developments  
5 through the meet-and-confer process.

6 As previously reported, Defendants are in the process of finalizing ASL inserts on  
7 the state-run channels, including programming that addresses PREA information.  
8 Defendants have also completed an orientation video, which includes PREA information,  
9 for inmates who require ASL. In fact, the PREA video now has ASL and was distributed  
10 to the institutions on July 15, 2020. Defendants continue to work toward adding more  
11 content with ASL interpretation and have added up to eleven such videos; staff is working  
12 to add more. Finally, Defendants anticipate creating a unique state-run television channel  
13 dedicated to ASL, which will include Daily Moth content and, potentially, an on-demand  
14 video library.

#### 15 **E. Problems Regarding Access to Assignments for Class Members**

16 With regard to the broader problem of equal access to job and program assignments  
17 for people with disabilities, the parties convened a small work group to address Plaintiffs'  
18 concerns, as documented in multiple tour reports and letters. *See* Doc. 2680, at 13-14.  
19 The parties agreed to exchange program assignment data on a quarterly basis. The data  
20 continues to show disparities in assignments for people with disabilities. Defendants assert  
21 that the data is misleading and that the disparities result from individual, custody-related  
22 case factors rather than from discrimination based on disability. Plaintiffs assert that, even  
23 if Defendants could demonstrate that facially non-discriminatory case factors, such as  
24 release date, account for the ongoing disparities, Defendants would still face liability due  
25 to the disparate impact of their program assignment practices. *See, e.g.*, 28 C.F.R.  
26 § 35.130(b)(3)(i), (ii); § 35.130(b)(8).

27 The fact that the parties still do not have agreement on the source of the disparities  
28 is especially concerning given CDCR's roll out of the statewide integrated substance use

1 disorder treatment (“ISUDT”) program in January 2020. Though Defendants previously  
2 asserted that a significant number of incarcerated people would participate in the new  
3 program, as clarified during the July 14, 2020, meeting, only about 38,000 spots are  
4 available in these programs.

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

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

8 Plaintiffs continue to identify problems with Defendants’ provision of effective  
9 communication to parolees who are deaf including: failures to provide sign language  
10 interpretation during initial interviews and other due process encounters; inappropriate use  
11 of written notes to communicate with DPH parolees who cannot communicate effectively  
12 in writing; failures to use VRI properly, and technological issues with VRI; and confusion  
13 regarding the distinction between VRI and VRS, causing likely violations of federal law.  
14 *See Ex. G to Doc. 2936.* Plaintiffs are still awaiting a response to their February 11, 2020,  
15 letter outlining recent problems. Defendants indicated at the recent July 14, 2020 meet and  
16 confer that a response would be forthcoming. Plaintiffs are concerned that the delay  
17 makes it more difficult to have a meaningful discussion about remedies for these problems.

18 Defendants maintain that DAPO Headquarters staff works closely with staff  
19 supervising parolees whose primary method of communication is sign language.  
20 Defendants believe that this allows DAPO’s Parole Litigation Management Unit to resolve  
21 problems identified while utilizing SLI or the VRI system. Although the current process  
22 has proven to be effective in resolving and troubleshooting VRI technical-communication  
23 problems, DAPO has implemented a formal tracking process that allows staff to report  
24 connectivity issues through the use of a Service Report. Defendants have agreed to  
25 produce these Service Reports to Plaintiffs on a quarterly basis. Additionally, PLMU  
26 attempts to schedule SLI for parole procedures and supervision processes. It has been  
27 extremely difficult to find in-person interpreters. On the other hand, VRI has proven to be  
28 a useful accommodation for SLI services.

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

10 The parties remain in disagreement about the use of civilian in-person sign-  
11 language interpreter during non-due process parole field encounters presents safety and  
12 security issues. With this concern in mind, Defendants note that U.S. Department of  
13 Justice has recognized that agencies can use advanced technology, such as tablets, to  
14 provide sign-language interpretation to individuals in areas where it is difficult or  
15 impossible to provide an in-person interpreter. (*See* ECF No. 2874 Ex. C.) DAPO  
16 purchased and implemented the use of VRI tablets, high-speed connectivity, and an  
17 expanded SLI contract provider to increase VRI capabilities. Plaintiffs remain concerned  
18 but will continue to monitor field use of VRI.

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

21 Defendants completed a physical, statewide durable-medical-equipment (“DME”)  
22 reconciliation encompassing all 35 institutions in early January 2019. The audit revealed:  
23 (1) that 7,346 class members were missing one or more items of durable medical  
24 equipment that their custody and medical records indicated they should have had in their  
25 possession; and (2) that 2,349 class members’ durable-medical-equipment records had  
26 errors. During the July 14, 2020, all parties’ meeting, Defendants reported that the process  
27 of self-monitoring DME reconciliation discrepancies was put on hold due to COVID-19.

28 The parties will work collaboratively to ensure proper identification of DPP codes

1 and to reach a sustainable resolution for DME reconciliation in the future. Defendants  
2 have reported they are also working on a training program for clinicians to as a long term  
3 sustainable solution for problems with missing and incorrect DPP codes.

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

##### 5 *Plaintiffs' Statement*

6 Plaintiffs' counsel contends that CDCR and DAPO fail to ensure that parolees with  
7 severe and impacting placement disabilities receive adequate planning for parole and  
8 adequate transitional housing, transportation, benefits application assistance, assistance  
9 obtaining identification cards, and other transitional services. *See* Doc. 2680 at 11-12;  
10 Doc. 2655 at 11-13. Plaintiffs' position is that these individuals are more likely to fail on  
11 parole and be re-incarcerated without these supportive services, than otherwise similarly  
12 situated people without disabilities, and that therefore the lack of better parole planning  
13 and transition to parole services violates the integration mandate of the ADA. *See*  
14 *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999); *see also* 28 C.F.R. § 35.152(b)(2)  
15 (“Public entities shall ensure that inmates or detainees with disabilities are housed in the  
16 most integrated setting appropriate to the needs of the individuals.”).

17 Plaintiffs' counsel is also concerned about the many transitional housing programs  
18 listed in DAPO's directory of transitional housing programs that explicitly exclude people  
19 with hearing, mobility, vision, and mental health disabilities from their programs.

20 This issue is particularly important now that CDCR has released thousands of  
21 incarcerated people early, and is in the process of releasing thousands more, in order to  
22 help address COVID-19. In addition, DRP has authorized STOP programs to retain  
23 current residents in their transitional housing programs in light of the shelter-in-place  
24 orders statewide. As a result, Plaintiffs have concerns about the adequacy of transitional  
25 housing for individuals being released at this time. In addition, there were already waiting  
26 lists for homeless parolees seeking transitional housing, even before the pandemic. For  
27 example, in early April, 2020 the San Diego area had 60 parolees in the community on its  
28 waiting list for transitional housing programs, many or most of them homeless. Plaintiffs

1 are also concerned by the low percentage of paroling prisoners who are given an  
2 identification card through the Cal-ID program. This problem has been exacerbated by the  
3 closure of DMV offices throughout the state. Without an identification card parolees  
4 cannot open a bank account, rent a hotel, or rent an apartment, and the lack of  
5 identification can delay access to public benefits and medical care. In recent monitoring  
6 tour interviews with the regional managers for the STOP Region 5 program, which  
7 manages DRP transitional housing programs in the Los Angeles area, a case manager  
8 reported the parolees are currently frequently being released without a Cal-ID and without  
9 completed benefit applications. Plaintiffs do not agree with Defendants' statement below  
10 that we misunderstood what this individual reported.

11 Plaintiffs believe the long standing problems with inadequate parole planning  
12 services and the need for better linkage to transitional housing, transportation, and other  
13 supportive services for paroling class members is even more crucial given the pandemic,  
14 since being homeless now put class members' lives at risk, in addition to making it more  
15 likely that they will fail on parole. Defendants have shared some data about rates of parole  
16 for life prisoners with disabilities, and have developed and shared a draft proposal for a  
17 plan that will provide for an expanded role for CDCR counselors in helping life prisoners  
18 prepare for Board hearings and eventual parole. Plaintiffs have asked Defendants to  
19 expedite their plan in light of the Pandemic and to include more comprehensive assistance  
20 with parole planning for life prisoners with certain disabilities as one of the expanded  
21 duties for Correctional Counselors in helping individuals prepare for their hearings.  
22 Defendants are considering this request.

23 While Plaintiffs' counsel appreciates the general plans announced in Defendants'  
24 February 20, 2020 letter to augment the BPH hearing preparation and release planning  
25 work performed by correctional counselors, many details of the plan are as yet unknown.  
26 Plaintiffs have concerns about the lengthy delay in devising the plan and some details of  
27 the plan we do know about. First, the letter says that CDCR "will issue a policy memo  
28 detailing correctional counselors' obligations" with respect to BPH hearing preparations.

1 However, Plaintiffs have only recently been given a draft of the actual policy memo, which  
2 is still not finalized in the key area of what assistance with release planning the counselors  
3 will actually provide, and Defendants have not provided a date when the policy memo will  
4 be finalized in this central area and fully ready for plaintiffs review. Second, is not clear  
5 that the counselors will be given enough time to provide adequate assistance with these  
6 critical parole planning tasks. Individuals with cognitive disabilities, mental health  
7 disabilities, and other disabilities that affect communication are greatly disadvantaged in  
8 seeking parole, particularly in the critical Comprehensive Risk Assessment process done  
9 by BPH psychologists, because they cannot undertake the key steps required for parole  
10 planning on their own—such as writing to programs that offer job training and  
11 employment, and programs that provide housing and substance abuse treatment. It is also  
12 important to note that, contrary to what Defendants represent below, the parole planning  
13 assistance in the memo will only be provided to life prisoners who go before the Board of  
14 Parole Hearings, and not to the majority of CDCR prisoners released on parole, who are  
15 not life prisoners.

16 Although Defendants acknowledge below that the law requires CDCR and DAPO  
17 to treat parolees with disabilities equally with other parolees, Defendants cannot dispute  
18 that many DRP subcontractors currently report that they do not accept paroling individuals  
19 (both life prisoners and non-lifer prisoners) with hearing, mobility, vision and mental  
20 health disabilities. Plaintiffs and Defendants have cooperatively agreed to make a number  
21 of changes in how these programs are surveyed for accessibility issues and to collaborate  
22 on developing a training video and resource manual for subcontractors about working with  
23 disabled individuals. However, these planned resources have been in the works for more  
24 than a 15 months at this point, and are still pending. Plaintiffs have not yet been given a  
25 draft script for the video or for the resource manual.

26 Plaintiffs have ongoing concerns about the benefit application process for paroling  
27 class members. For example, submission of benefits applications for class members at  
28 CIM was significantly delayed as a result of the months-long and continuing COVID-19



1 outbreak at that institution. *See Exhibit D*, Letter from Rita Lomio & Megan Lynch,  
2 Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Pre-Release Planning  
3 at the California Institution for Men (June 23, 2020). The benefits application for a 66-  
4 year-old class member who uses a wheelchair and reported having memory problems was  
5 submitted at most **seven days** before his release from prison (SSI applications typically  
6 take around four months to be approved). *Id.* The class member worried how he would  
7 survive outside prison without access to such funds. *Id.*

8       The parties met on July 23, 2020, with DRP and DAPO staff members regarding  
9 these initiatives to improve parole planning services for individuals with disabilities, and to  
10 discuss the California Identification program and efforts to expand its reach by installing  
11 DMV-compatible cameras in prisons. The parties also discussed the status of the TCMP  
12 benefits application process, which has been impacted by the pandemic and by the large  
13 number of early releases. This work has taken on even greater urgency in light of the need  
14 to place incarcerated people who are being released during the COVID-19 pandemic to  
15 succeed on parole. TCMP representatives reported that when a housing unit is on medical  
16 isolation or quarantine (such as at CIM), they do not meet with class members in person  
17 for purposes of competing benefits applications, and the need to work with counselors to  
18 set up calls with these individuals often delays completion of the benefit application's  
19 completion. Plaintiffs asked that Defendants make every effort to submit such applications  
20 earlier, including by conducting meetings by phone or through counselors, to increase the  
21 likelihood that they will be approved shortly after a person is released and to increase the  
22 likelihood of success on parole/probation. Plaintiff also request that Defendants make  
23 every effort to speed up the proposed remedy to the major obstacle to issuing California  
24 Identifications to many more paroling prisoners – the need for new DMV-compatible  
25 photographs to be taken by CDCR for individuals who have not had a California  
26 identification card for more than 10 years. The plan to fix this problem was discussed  
27 nearly a year ago in the September 2019 C-ROB report, but still has not been  
28 accomplished.

1 *Defendants' Position*

2 As noted in previous statements, Plaintiffs' assertion that "CDCR and DAPO fail to  
3 ensure that parolees with severe and placement-impacting disabilities receive adequate  
4 planning for parole and adequate transitional housing, transportation, and other transitional  
5 services" is wrong. *See* ECF No. 2786, at 19-21. Defendants' February 20, 2020, letter  
6 detailed the additional assistance that correctional counselors will provide to prepare  
7 inmates with disabilities for release on parole. Specifically, that letter informed Plaintiffs  
8 that counselors will be directed to discuss different sources of support upon release,  
9 including family, housing, employment, financial, or community-based programs, and  
10 counselors will then help the inmate fill out a template letter to send to potential sources of  
11 support. Defendants' responses to Plaintiffs' transition-to-parole advocacy letters  
12 consistently demonstrate that pre-parole services are regularly and adequately provided to  
13 class members and that class members are not always reporting information accurately to  
14 Plaintiffs' counsel. Defendants believe that the additional assistance that will be provided  
15 by correctional counselors based on their February 20, 2020 letter to Plaintiffs will assist  
16 class members with understanding what pre-parole services are available to them.  
17 Counselors will be provided with a memo detailing their additional responsibilities with  
18 respect to class members in the release planning process.

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

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

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

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

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

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

24 Plaintiffs also complain about transition to parole services. Again Plaintiffs show  
25 no nexus between their allegations and Defendants' compliance with the ADA,  
26 Rehabilitation Act, the Remedial Plan, or this Court's orders. Moreover, Defendants have  
27 been successful in providing transition to parole services to parolees in spite of the  
28 challenges posed by COVID-19. As Plaintiffs acknowledge, CDCR released thousands of

1 inmates early in March-April 2020 due to the COVID-19 pandemic, and thousands more in  
2 July. Defendants have provided transition to parole services to those thousands of people  
3 in a short period of time. Indeed, Plaintiffs were informed on a July 23, 2020 phone call  
4 that the vast majority of paroling inmates have submitted applications for Medi-Cal or  
5 Supplemental Security Income benefits before paroling, and that those who have not  
6 submitted applications have generally not done so because they are not eligible due to  
7 availability of other insurance.

8 Plaintiffs assert above that “a case manager reported the parolees are currently  
9 frequently being released without a Cal-ID and without completed benefit applications.”  
10 As the parties discussed on the July 23, 2020 phone call, Plaintiffs’ counsel misunderstood  
11 what that case manager said. Parolees may not be receiving benefits immediately upon  
12 being paroled, and additional follow-up may be necessary to receive benefits, but the  
13 applications have been completed. With respect to Cal ID, as has been explained to  
14 Plaintiffs, only individuals who have renewed a California ID in the preceding ten years  
15 are eligible to renew a Cal ID. If a parolee is eligible to renew, Defendants assist with that  
16 process before parole. If a parolee is not eligible to renew, that individual is required to  
17 visit the DMV in person, which cannot be done before release.

18 Plaintiffs also assert above that one class member’s SSI application was submitted  
19 only seven days before his parole. As Plaintiff’s counsel was told on the July 23, 2020 call  
20 that this was because that individual’s release date (which had previously been years away)  
21 was moved up to much closer date on short notice to Defendants. Defendants will not  
22 over-detain inmates to allow their benefits applications time to develop.

23 Plaintiffs also assert that on the July 23, 2020 call “TCMP representatives reported  
24 that when a housing unit is on medical isolation or quarantine (such as at CIM), they do  
25 not meet with class members for purposes of completing benefits applications.” In fact, on  
26 the same call, Plaintiffs were informed that where an individual is quarantined and that  
27 individual’s release date is approaching, TCMP works with that individual’s counselor to  
28 make a meeting happen and get the benefits applications done.

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

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

8 Since that meeting, Plaintiffs have become aware of Defendants' failure to provide  
9 orientation when a blind class member was first housed in a dorm environment, resulting  
10 in the class member mistakenly entering the wrong pod and bed and being placed in  
11 administrative segregation for his safety. Plaintiffs also are concerned by the apparent lack  
12 of guidelines regarding the issuance of white canes. Plaintiffs note the particular  
13 importance of people with disabilities being able to navigate independently during the  
14 COVID-19 pandemic, when close contact with other people, including people serving as  
15 sighted guides or as a result of not being able to see people quickly enough to walk around  
16 them at a six-foot distance, can result in serious illness and/or death.

17 Defendants have not yet proposed dates for a second meeting of the working group  
18 over six months later. Plaintiffs are eager to resume discussions and, if progress is not  
19 made on these issues without further delay, Plaintiffs likely will bring them to the court for  
20 resolution. Defendants are working internally on this issue before scheduling a meeting  
21 with Plaintiffs. Defendants anticipate scheduling a meeting with Plaintiffs in the very near  
22 future that should negate any need for judicial intervention on this issue.

23 **J. Joint Monitoring Tool**

24 The parties remain committed to developing a strong joint monitoring tool. The  
25 parties had planned to test the tool out at different types of prisons beginning in April  
26 2020, and to meet after each audit to discuss if and how the tool should be updated or  
27 revised based on issues identified during each audit. Those plans, unfortunately, have been  
28 delayed by the COVID-19 pandemic. The parties conducted an off-site review of CMF in

1 July 2020, and are planning off-site reviews of PVSP and Wasco State Prison in August  
2 2020. On-site audits will resume as soon as it is appropriate and safe to do so.

3 The parties continued to meet through February 2020 on drafting a joint monitoring  
4 tool for measuring compliance in this case. Through this process, the parties identified a  
5 number of substantive areas that will require further negotiation and the development of  
6 new policies. The parties will continue discussion of these issues as soon as possible while  
7 also ensuring that the parties are able to respond to and fully address the many COVID-19-  
8 specific issues that have arisen during this time. In addition, the headquarters section of  
9 the joint monitoring tool has not yet been drafted, and some individual tool questions,  
10 including how to monitor whether class members are receiving equal access to program  
11 assignments, and questions regarding whether staff have received required training, have  
12 not yet been fully drafted because the parties must first complete larger policy discussions.

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

14 Prior to the pandemic, construction continued at several of the designated  
15 institutions with former Class Action Management Unit Manager Mike Knowles  
16 overseeing the process and reporting on construction progress and anticipated timeframes  
17 in monthly reports produced to Plaintiffs. However, construction is currently suspended  
18 due to COVID-19, with the exception of two projects at California Institution for Women  
19 and California State Prison, Sacramento. Defendants will keep Plaintiffs promptly  
20 informed of the status of outstanding construction projects and when they may resume.

21 The parties met on December 9, 2019, and the parties agreed to a flexible,  
22 collaborative approach in which the parties would meet quarterly to discuss different  
23 institutions, joined by local ADA staff with close knowledge of the institutions. The  
24 parties also would be able to discuss issues about a particular institution informally before  
25 or after the scheduled quarterly meeting. The parties met on January 22, 2020, to discuss  
26 the first two institutions using this approach, LAC and CIM, and agreed to jointly tour  
27 these first two institutions to inspect and analyze existing physical accessibility issues and  
28 to ensure that any remaining problems are addressed in Phase 2 of the Master Planning

1 process at those prisons. The Court Expert agreed to accompany the parties on these tours.  
2 In light of serious public health issues presented by the global COVID-19 pandemic, these  
3 tours have been suspended, and the parties will work together to schedule the tours as soon  
4 as it is appropriate and safe to do so.

5 In addition, Defendants are in the process of auditing whether program  
6 modifications referenced in the Master Plans have been memorialized in local operating  
7 procedures at each institution. The parties agreed that there will be an ongoing process to  
8 consider whether there are opportunities for people with disabilities to work in jobs that the  
9 parties originally thought they might not be able to do, and Defendants will make all  
10 appropriate additions to the Master Plan in response to things like program, population,  
11 and mission changes.

12 The parties met to discuss the Master Plan for one additional prison, and SVSP, on  
13 June 30, 2020. There was a plan to also discuss Master Plans for DVI, but that is on hold  
14 as Defendants are planning to close DVI as a reception center and after the closure would  
15 no longer house class members with impacting-placement codes at the prison.

#### 16 **L. Investigation of County Jails**

17 Plaintiffs continue to assert that a pattern and practice of denying disability  
18 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680  
19 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA  
20 accommodations at Kern County, San Bernardino, Orange and Fresno County jails. *See*  
21 Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions and have been  
22 meeting with county counsel for a number of counties in an effort to improve relations and  
23 information sharing and ADA compliance at the jails. The hope is that when issues arise  
24 that require county response under the County Jail Plan, county counsel will respond to  
25 CDCR.

26 Plaintiffs believe that Defendants are unlikely to be able to meet their obligations  
27 under the County Jail Plan if county jails continue to lose staff to COVID-19 and if  
28 Defendants continue to place parolees into jails. But as stated above, during the pandemic,

1 Defendants are not placing parolees in county jails for technical parole violations except  
2 where mandated by law or where there is a threat to public safety. Defendants will  
3 continue to keep Plaintiffs informed regarding any effects COVID-19 may have on the  
4 county jails and DAPO's response to this unprecedented public health crisis.

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Respectfully submitted,

DATED: August 17, 2020

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Penny Godbold  
Penny Godbold

Attorneys for Plaintiffs

DATED: August 17, 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 Deputy Attorney General Trace O. Maiorino, and that I have maintained records to support this concurrence.

DATED: August 17, 2020

/s/ Penny Godbold  
Penny Godbold



# **EXHIBIT A**

---

**From:** arm-plo@prisonlaw.com on behalf of Davis, Tamiya@CDCR  
**Sent:** Tuesday, July 21, 2020 11:41 PM  
**To:** Tania Amarillas; Fouch, Adam@CDCR  
**Cc:** Armstrong Team; Armstrong Team - RBG only; Powell, Alexander@CDCR; Meyer, Nicholas@CDCR; Joanna Hood; Ferguson, Patricia@CDCR; Ed Swanson; Bravo, Landon@CDCR  
**Subject:** RE: ARM | Class members transferred from Joshua Hall to Mariposa Hall on 7/8/20  
**Attachments:** A-5 door # 1.jpg; A-5 door #2.jpg; A-5 door #3.jpg; A-5 door #4.jpg; A-5 door#7.jpg; A-5 showers with Grab bars.JPG; A-5 sink with grab bar.JPG; A-5 toilets with 2nd grab bar.jpg; A-5 toilets with grab bar.jpg

Hi Tania,

Please see response to your concerns below and requested photographs are attached. Additional photos will be sent in a separate email because of size restrictions.

Thank you,

*Tamiya Davis*

Attorney III, Class Action Team  
Office of Legal Affairs  
California Department of Corrections and Rehabilitation  
Phone: 916.341.6960  
Cell: 916.247.5094

---

**From:** Tania Amarillas <tania@prisonlaw.com>  
**Sent:** Friday, July 10, 2020 4:40 PM  
**To:** Fouch, Adam@CDCR <Adam.Fouch@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>  
**Cc:** Armstrong Team <arm-plo@prisonlaw.com>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Powell, Alexander@CDCR <Alexander.Powell@cdcr.ca.gov>; Meyer, Nicholas@CDCR <Nicholas.Meyer@cdcr.ca.gov>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Ed Swanson <ed@smllp.law>  
**Subject:** ARM | Class members transferred from Joshua Hall to Mariposa Hall on 7/8/20

**CAUTION:** This email originated from outside of CDCR/CCHCS. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Adam,

Today, I spoke with the four impacting-placement class members at the California Institution for Men who were transferred from Joshua Hall to Mariposa Hall on July 8 after testing positive for COVID-19. All four informed me that they are having issues with accommodations at Mariposa Hall. Below is a summary of the issues:

- All four class members reported that a grab bar has been installed in the shower area, but there is only one grab bar along the wall, and because the showers are not stalls, there is little to grab onto when getting into and out of the shower area. Class members reported feeling unsafe using the showers and having to use extreme caution to get into the showers to avoid falling.

**RESPONSE:** The ADAC at CIM toured and observed the showers in Mariposa Hall and then met with Plant Operations. As a result, CIM installed two additional grab bars to increase access to the shower heads with wands.

- It is unclear if grab bars for the toilets have been installed, and if so, where. One class member told me there was a grab bar by one toilet. The other three class members told me that there are no grab bars for the toilets. Regardless, each class member reported difficulty using the toilets because the toilets apparently are very low to the ground. The class members have to try and support themselves with the back wall when getting up and down from the toilet. Additionally, class members reported the toilets are situated very close to one another, making it impossible to get a wheelchair close to the toilet. One class member, who uses a wheelchair part-time, said he has to get out of his wheelchair whenever he enters the restroom and walk over to the toilets, which is difficult for him to do.

**RESPONSE:** The ADAC at CIM toured and observed the toilets and in Mariposa Hall and then met with Plant Operations. There are currently two grab bars for the toilets. CIM installed two additional grab bars, the length of the wall to increase access to all the toilets. Plastic lifters for toilet seats will also be ordered for A-5.

- Two ramps were installed for the two entrance doors (Door 5 and Door 6) yesterday. However, class members reported there are four additional doors that have a large step and do not have ramps. These doors are for dayroom and to get to the entrance.

**RESPONSE:** The ADAC at CIM toured and observed the entrance to Mariposa Hall and then met with Plant Operations. As a result, CIM will be installing additional ramps at doors 2 and 7. There are path of travel concerns at the other locations (doors 1, 3 and 4). Installing a ramp at door 1, which leads to the dayroom from the outside, would obstruct the outside path. Doors 3 and 4 do not have sufficient concrete to sustain a ramp and pathway to safely enter and exit the building; however, the additional ramps at doors 2 and 7 will provide additional accessible entrances into the housing unit.

Would you please look into and address these issues as soon as possible? We encourage ADA staff to meet with each class member to discuss needed accommodations; all four reported that no one has spoken with them about their disability needs since they tested positive. Please also provide us with an update as soon as possible, including photographs of the toilet, shower, and entrance areas.

Tania

--

Tania Amarillas

Investigator

Prison Law Office

[tania@prisonlaw.com](mailto:tania@prisonlaw.com)

(510) 280-2621

Preferred pronouns: she/her

ATTENTION: The State of California has ordered all residents to shelter in place until further notice, in response to COVID-19. PLO staff are working remotely. There may be a delay in processing and responding to U.S. mail, phone calls, and emails. We apologize for any inconvenience, and we appreciate your patience.

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MAR

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QUARANTINE  
HOUSING  
UNIT (EAST  
SIDE)  
UNIT 2

PERSONAL PROTECTION EQUIPMENT (PPE)

WASH YOUR HANDS

WEAR A MASK

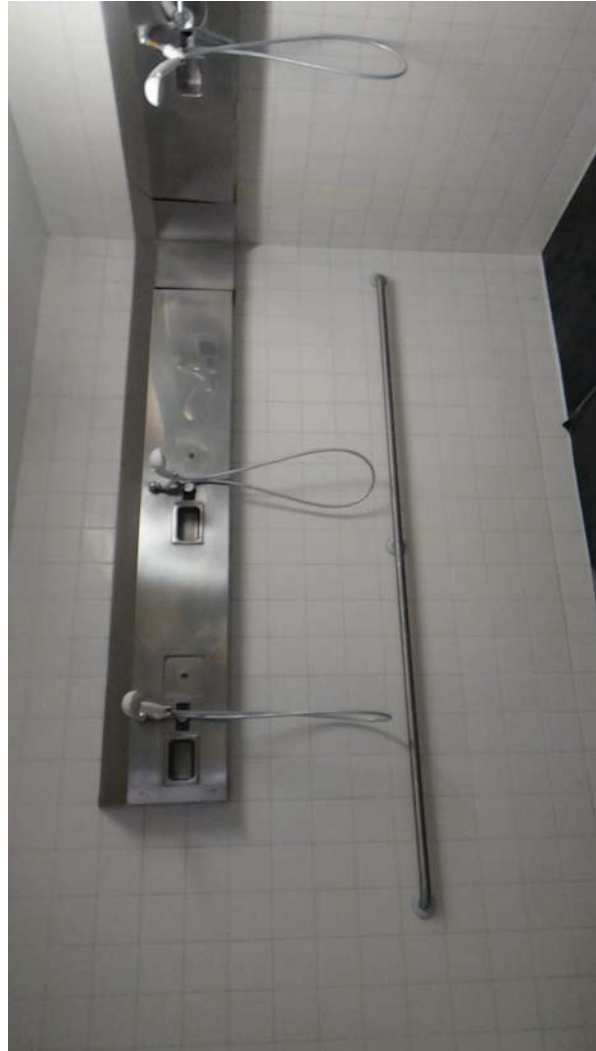


















# **EXHIBIT B**



**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

July 8, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter: Accommodations for Deaf Class Members  
in Administrative Segregation at the California Institution for Men

Dear Ms. Davis:

On May 20, 2020, Plaintiffs asked Defendants what accommodations are provided to D/deaf class members in administrative segregation who cannot, due to their disability, use the hand crank radio that Defendants currently are providing, and whether Defendants would provide a television as an accommodation. During the parties' telephonic meeting on May 22, Defendants reported that there were four class members designated DPH in administrative segregation and that they were housed at the California Substance Abuse Treatment Facility and State Prison, Corcoran; Salinas Valley State Prison; and California State Prison, Los Angeles County. Defendants stated that they would "find out what sort of appliance and power source those four class members have." Defendants stated that if they have power but do not have a television, Defendants would provide them a loaner television or pull their television out of their property.

Later that day, Plaintiffs advised Defendants by email that there also was at least one Deaf class member in administrative segregation at the California Institution for Men. On June 5, 2020, Defendants confirmed that there were in fact two Deaf class members in administrative segregation at the California Institution for Men: [REDACTED], DPH, and [REDACTED], DPH. Defendants stated that there was no electricity in either of their cells; "otherwise we'd ensure they have a TV." On June 11, 2020, Defendants reported that those two class members would be moved to a cell with electricity the following day and provided a television. Defendants reported that they would inform Plaintiffs when that had been completed.

That does not appear to have happened almost a month later. We spoke with both Mr. [REDACTED] and Mr. [REDACTED] yesterday, with the assistance of a sign language interpreter. Both reported that although they have been moved to cells with electricity, they have not been provided televisions to use in their cells. Instead, they reported, the institution moves them to a multi-purpose room and shows them a movie for approximately two hours on Mondays, Wednesday, and Fridays. Although both appreciated this limited access to a television, neither has any

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opportunity to access news, including current events and information about what is happening in the world outside the small confines of their segregation cells, and they also do not have access to television content at any other time. In addition, they reported that they do not have access to newspapers.

We request the following:

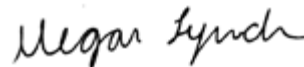
1. Please provide Mr. [REDACTED] with his personal television, which he reported is in his property.
2. Please provide Mr. [REDACTED] with a loaner television while he is in administrative segregation.
3. Please explain the reason for the delay in issuing both Mr. [REDACTED] and Mr. [REDACTED] a television.
4. Please report whether all other D/deaf class members in administrative segregation now have electricity and a television in their cells.

Thank you for your prompt to this important matter.

Sincerely yours,



Rita Lomio  
Staff Attorney



Megan Lynch  
Investigator

cc: Mr. [REDACTED] and Mr. [REDACTED] (redacted)  
Ed Swanson, Court Expert  
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,  
Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)  
Lois Welch, Steven Faris (OACC)  
Adam Fouch, Chance Andes, Landon Bravo, Laurie Hoogland (DAI)



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Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Donald Meier, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Vincent Cullen, Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandria Tonis, Gently Armedo (CCHCS)  
Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio, Trace Maiorino (OAG)

# **EXHIBIT C**



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

Gay Crosthwait Grunfeld  
Email: [ggrunfeld@rbgg.com](mailto:ggrunfeld@rbgg.com)

August 14, 2020

VIA ELECTRONIC MAIL ONLY

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

Joanna B. Hood  
Supervising Deputy Attorney General  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814  
[Joanna.Hood@doj.ca.gov](mailto:Joanna.Hood@doj.ca.gov)

Re: *Armstrong v. Newsom*: Objection to Imposition of False and Retaliatory  
RVRs on [REDACTED]  
Our File No. 0581-03

Dear Joanna:

In an email sent at 11:35 p.m. last night, we were informed that, on August 13, 2020, CDCR held a hearing regarding the two RVRs pending against Mr. [REDACTED] ([REDACTED]). Today, in a confidential call with Mr. [REDACTED] we learned that CDCR found him guilty of both RVRs. If this report is accurate, CDCR's conduct with regard to these RVRs violates the Court's prior orders, the Americans with Disabilities Act, constitutional due process guarantees, and professional courtesy.

We attacked the RVRs in our Motion for Temporary Restraining Order and our Response in Support of Preliminary Injunction. *See* Docket Nos. 2970 & 2999. In addition, my colleagues and I have written you about these RVRs on July 17, August 4, and August 12, 2020, as well as in additional emails between the parties.

In the Stipulated Modified Order regarding the transfers of Mr. [REDACTED] and Ms. [REDACTED] you agreed to provide us with all documentation regarding the RVR process against Mr. [REDACTED] within one business day: "[I]f CDCR pursues any Rule Violation Reports (RVRs) against Mr. [REDACTED] concerning the June 17, 2020 incident, CDCR shall provide all RVR-related documents to Plaintiffs' counsel, via electronic mail, within one

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business day of such documents being issued by R.J. Donovan Correctional Facility.” Docket No. 2991, at 2. We received no advance documentation of the RVR hearing or your preparation for it. We still have not received any written notice of the RVR decisions.

At the hearing on the RJD Motion on August 11, 2020, the Court inquired about the status of the RVRs and indicated that she would review them once CDCR acted. In our prior communications, you had indicated that the RVRs would not be adjudicated until CDCR confirmed whether video evidence of the incident existed. *See, e.g.*, Trace Maiorino’s email of July 22, 2020. At the hearing, you stated that the video evidence was not ready and that you lacked information about when the RVR hearing would occur.

Notwithstanding all these facts, just two days after the RJD hearing, CDCR conducted an RVR hearing on August 13, 2020 at California Health Care Facility (“CHCF”). Contrary to what we understand to be the usual practice, the RVR hearing was conducted by three Lieutenants instead of the usual one and was conducted at CHCF rather than at RJD via telephone.

CDCR provided no advance notice of the hearing to Plaintiffs’ counsel and in fact suggested that it had not been yet scheduled. Conducting the hearing without our participation violated the Court’s Anti-retaliation Order, which provides: “Defendants further agree not to communicate with any of the Declarants regarding matters covered by their declarations or any alleged retaliation related to their participation in the Motion without first providing notice to Plaintiffs’ counsel and an opportunity for Plaintiffs’ counsel to participate in any interview or communications.” *See* Docket No. 2931, at 2.

Mr. █████ RVR hearing also violated CDCR’s own policies and procedures. First, the hearing was conducted well beyond the Title 15 time limits. *See, e.g.*, 15 Cal. Code Regs. § 3320(b). We have seen no documentation justifying this delay. In fact, Mr. Freedman asked you yesterday for such documentation and you have not provided it.

You have previously suggested that the delays in Mr. █████ RVRs were justified by his mental health status. Plaintiffs’ review of Mr. █████ recent mental health evaluations turned up no evidence that Mr. █████ was undergoing any mental health crisis or decompensation that may have warranted the postponement of the RVR hearing. The only documentation that might justify CDCR’s delay is a July 1, 2020 memorandum signed by Clinical Psychologist Kellaz noting that Mr. █████ was unable to participate in his hearing from June 27, 2020 to June 30, 2020 due to his mental health status. Those four days of unavailability are no justification for Mr. █████ RVRs not being heard or disposed of for 44 days from the date of that memorandum.

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Second, it appears that Mr. [REDACTED] was denied an investigative assistant. Where, as here, the subject of the RVRs is complex, CDCR is required to provide an investigative employee to assist Mr. [REDACTED] in fighting the RVRs. *See* 15 Cal. Code Regs. § 3315(d). This is especially true where “[t]he housing status makes it unlikely the charged inmate can collect and present the evidence necessary for an adequate presentation of a defense.” *Id.* Mr. [REDACTED] has been on maximum custody status in a Mental Health Crisis bed since June 17, 2020. That alone would justify an investigative assistant.

Most importantly, Mr. [REDACTED] did not have a copy of the Court’s Preliminary Injunction Order at the hearing nor did the hearing officers know anything about it. Mr. [REDACTED] also did not have a copy of the declarations from Ms. [REDACTED] and Mr. [REDACTED] which the Court found credible and which establish that Mr. [REDACTED] did not engage in behavior warranting the RVRs.

Despite Mr. [REDACTED] request to present witnesses at his RVR hearing, Defendants also did not make appropriate attempts to identify and interview witnesses to the incident in violation of his due process rights and 15 Cal. Code Regs. § 3315(e). In the paperwork provided last night regarding the RVR for assault on a peace officer, it appears that Defendants attempted to interview Mr. [REDACTED] who refused to make a statement without Plaintiffs’ counsel present. Because Defendants did not inform Mr. [REDACTED] of the purpose of the interview in advance, it is very likely that Mr. [REDACTED] believed that he was being interviewed by Defendants for their investigation of the allegations in his declaration, which is why he declined to participate without us present (as we have instructed all the declarants). In order to avoid this type of confusion in future interviews, I asked Defendants in an August 5, 2020 email to notify the declarants in advance of the purpose for their being interviewed. Defendants have not responded to this request.

Defendants’ attempt to interview Mr. [REDACTED] about events covered by his declaration, which are the subject of Mr. [REDACTED] RVRs, also violated the Court’s Anti-retaliation Order. *See* Docket No. 2931, at 2. On August 12, 2020, I sent an email to Defendants objecting to Mr. [REDACTED] being interviewed without us present to represent him; it is very likely that this interview was the one referenced in Mr. [REDACTED] RVR documents. In Tamiya Davis’ August 13, 2020 response, Ms. Davis said that she was looking into the issue and has not provided a substantive response since that email. Pursuant to the Court’s Anti-retaliation Order, I should have been informed in advance that the purpose was to inquire about the RVR and allowed to participate in the interview.

As you know, the Court found Mr. [REDACTED] version of what happened on June 17, 2020 more credible than CDCR’s. *See* Docket No. 3025, at 14, 16 (“The Court finds the description of the June 17 incident in the declarations of Inmates 2, 1, and 3 to be

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credible,” and “Defendants’ description of the June 17 incident lacks credibility.”). Yet, in the hastily convened RVR hearing, CDCR denied Mr. [REDACTED] the opportunity to present witnesses or other evidence, including the Court’s findings in the Preliminary Injunction hearing. CDCR also apparently relied on the hearsay statements by the officers, rather than having them appear by telephone in support of the RVR. *See* 15 Cal. Code Regs. § 3315(e)(3), (4).

In a fifteen minute kangaroo court, the three-Lieutenant panel found Mr. [REDACTED] guilty of “disrespecting staff” and possessing “pruno.” As the Court held on July 30, 2020, there is no proof of Mr. [REDACTED] possessing pruno; instead, “Defendants’ description of the June 17 incident based on Associate Warden Armenta’s declaration and the incident reports attached thereto lack credibility,” including Defendants’ story about Mr. [REDACTED] possessing pruno. *See* Docket No. 3025, at 19. Whatever “disrespect” might have been shown by Mr. [REDACTED] pales in comparison to being thrown out of one’s wheelchair onto the ground and knocked unconscious, which the Court described as punishment in the July 16, 2020 Hearing on the Order to Show Cause. *See* 27:15-16.

Defendants’ pursuit of false RVRs in an untimely fashion without the opportunity to present evidence or witnesses violates the Court’s Anti-Retaliation Order, the Americans with Disabilities Act, and due process. *See Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974) (requiring adequate notice of and opportunity to present a meaningful defense in disciplinary proceedings); *Morrison v. LeFevre*, 592 F. Supp. 1052, 1073 (S.D.N.Y. 1984).

Defendants have also violated the requirements of the *Coleman* court as described in 15 Cal. Code Regs. §§ 3317 & 3317.1. Rather than conducting a fair and clinical mental health assessment, the mental health evaluator failed to interview Mr. [REDACTED] and instead relied on a note written by a psychologist from a year earlier, as well as Mr. [REDACTED] commitment offense and the content of the RVRs, to make the conclusory assertion that his mental illness did not affect his behavior and that any punishment from the RVRs would not affect his stability. These conclusions are absurd. Mr. [REDACTED] was unsafe in RJD’s mental crisis bed, as the Court found, in noting that nail clippers were slipped under his door with a note saying “Kill yourself.” The night before leaving RJD, another note was slipped under his MHCB door, this one stating: “You don’t fuck with C/O’s. We will be your worst nightmare. Rat, rat, rat. Wherever you go you can’t hide motherfucker. I will find your old ass and cut your heart out. Rat.” Signed [REDACTED].

Mr. [REDACTED] has now had 90 days added to his sentence. Even more fundamentally, his ability to obtain parole or early release has been harmed. We ask once again that you rescind these RVRs immediately. Failure to do so will result in us seeking further relief

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from the *Armstrong* Court. Please let us know your position as soon as possible and no later than August 18, 2020.

Very truly yours,

ROSEN BIEN  
GALVAN & GRUNFELD LLP

*/s/ Gay Crosthwait Grunfeld*

By: Gay Crosthwait Grunfeld

GCG:JRG:cg

cc: Ed Swanson  
Tamiya Davis  
Alexander Powell  
Damon McClain  
Sean Lodholz  
Trace Maiorino  
Jeremy Duggan  
Anthony Tartaglio  
Alicia Bower  
Patricia Ferguson  
Bruce Beland  
Nicholas Meyer  
OLA *Armstrong*  
[Armstrongteam@rbgg.com](mailto:Armstrongteam@rbgg.com)  
[arm-plo@prisonlaw.com](mailto:arm-plo@prisonlaw.com)

# **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

June 23, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

RE: *Armstrong v. Newsom*: Pre-Release Planning at the California Institution for Men

Dear Ms. Davis:

Thank you for facilitating legal calls with class members at the California Institution for Men. Yesterday, we spoke with three class members in Elm Hall who are scheduled to be released in the next month and who reported delays in pre-release planning. All three previously have tested positive for COVID-19.

████████████████████, DPO (Elm Hall)

Mr. ██████████ reported that he is scheduled to be released on June 26, 2020. He reported that he submitted over seven Form 22s and talked to counselors a month and a half ago about benefits and ID card paperwork, but received no response. He reported that about four days ago, a counselor called the names of people to complete benefits paperwork, but his name was not on it. He reported that the counselor photocopied benefits applications for him, and he completed the applications. He reported that he thinks he needs to go to the DMV to get an ID card once he is released from prison, as he needs identification to open up bank accounts and apply for food stamps.

Mr. ██████████ also reported that no one has talked to him about his conditions of parole or his transportation plan. He reported that he is planning to live with a friend who is 62 years old, has cancer, and uses an oxygen machine. His friend is willing to pick him up from the prison if he is authorized for gate pickup, but he has not heard anything. He also had not learned the results of the COVID-19 test administered seven days before his scheduled release date; he reported that if he is positive, he will not want his friend to drive him and will not want to live with his friend, because he is worried about getting his friend, who is medically vulnerable, sick.

He reported that he is under “a lot of stress not knowing” what will happen when he is released and when he will get access to SSI benefits and Medi-Cal: “I don’t know what’s going to happen. As soon as I get out, I have to do all these things,” including figure out how to get SSI benefits, food stamps, and survive in the meantime on the limited gate money. He reported that he is forgetful and sometimes when he goes out, he does not remember where he is going or what he is doing.

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Re: Pre-Release Planning at the California Institution for Men  
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██████████, DPV, DNM (Elm Hall)

Mr. ██████ reported that he is scheduled to be released on July 6, 2020. He reported that, last Friday, a counselor came into his housing unit and called from a list of names of people who needed to complete SSI and Medi-Cal paperwork. Mr. ██████ name was not on the list. He told the counselor that he was going home soon, and she brought him some paperwork to complete. He said the counselor did not know if the TCMP worker was coming to the prison due to the outbreak, but that she (the counselor) was trying to get things started. Mr. ██████ is particularly concerned about getting his Medi-Cal paperwork submitted and approved, as he is on a number of medications. He also reported that no one has helped him apply for an ID card from the DMV.

In addition, Mr. ██████ reported that his mother, ██████ has been trying to reach a counselor at the institution to figure out whether she can pick Mr. ██████ up from the prison, what time she should arrive, and where she should park. Mr. ██████ is concerned about being dropped off at a bus station because he is blind. He raised these concerns with his counselor, who said that he should be able to get a gate pickup because he is blind, but he has not heard anything official. His mother's phone number is: ██████.

██████████, DPV (Elm Hall)

Mr. ██████ reported that he is scheduled to be released on July 22, 2020. He reported that he has been trying for at least a month and a half, through submitting Form 1824s, 602s, and medical forms, to begin the release process and benefits paperwork. He reported that last Thursday or Friday, a counselor called 8-10 people who are scheduled to be released in the next month or two, including himself, to have them sign a release of information for medical records. He reported that when he asked about SSI paperwork, the counselor responded that it was not her job. He reported that other than that interaction with the counselor, no one has met with him about SSI or Medi-Cal benefits, which he believes are critical to his success on release. He does not believe that TCMP workers currently are not coming into the institution due to COVID-19 restrictions.

\* \* \* \* \*

We request:

- (1) Please review pre-release planning for the class members listed above and ensure that their benefits and ID card applications are submitted and that they are informed of their transportation and housing plans (and please provide those plans to us);
- (2) Please provide the dates on which the benefits applications for the class members listed above were submitted, and explain the reason for any delays;

Ms. Tamiya Davis  
Re: Pre-Release Planning at the California Institution for Men  
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- (3) Please explain whether, and to what extent, pre-release planning has been modified at CIM during the COVID-19 pandemic;
- (4) Please explain the current status of the Cal-ID program and, if identification cards cannot be completed, please explain whether institutions are providing some proof of identity to paroling individuals; and
- (5) Please explain whether the TCMP program currently is operating statewide. If TCMP workers are not coming into their institutions (or if they are doing so less frequently), please explain whether counselors can forward benefits paperwork to them for remote processing.

Thank you for your attention to this matter.

Sincerely yours,



Rita Lomio  
Staff Attorney



Megan Lynch  
Investigator

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)  
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)