

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
THOMAS NOLAN – 169692
7 PENNY GODBOLD – 226925
MICHAEL FREEDMAN – 262850
8 ROSEN BIEN
GALVAN & GRUNFELD LLP
9 101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
10 Telephone: (415) 433-6830
Facsimile: (415) 433-7104

11 LINDA D. KILB – 136101
12 DISABILITY RIGHTS EDUCATION &
DEFENSE FUND, INC.
13 3075 Adeline Street, Suite 201
Berkeley, California 94703
14 Telephone: (510) 644-2555
Facsimile: (510) 841-8645

15 Attorneys for Plaintiffs

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 JOHN ARMSTRONG, et al.,

20 Plaintiffs,

21 v.

22 GAVIN NEWSOM, et al.,

23 Defendants.

Case No. C94 2307 CW

**DECLARATION OF PATRICK BOOTH
IN SUPPORT OF PLAINTIFFS’
RESPONSE AND OBJECTIONS TO
COURT EXPERT’S REPORT AND
RECOMMENDATIONS REGARDING
HOUSING OF *ARMSTRONG* CLASS
MEMBERS DURING THE COVID-19
PANDEMIC**

Judge: Claudia Wilken

1 I, Patrick Booth, declare:

2 1. I am an attorney licensed to practice before the courts of the State of
3 California. I am also an attorney at the Prison Law Office, counsel of record in *Armstrong*
4 *v. Newsom*. I have personal knowledge of the facts set forth herein, and if called as a
5 witness, I could competently so testify.

6 COVID-19 in the California Prison System

7 2. At 5:00 p.m. on September 1, 2020, I visited the California Department of
8 Corrections and Rehabilitation’s “Population COVID-19 Tracking” webpage at:
9 <https://www.cdcr.ca.gov/covid19/population-status-tracking/>. The webpage listed the total
10 number of confirmed COVID-19 cases in the prison system as 10,656, and the total
11 number of deaths as 58.

12 3. Defendants provide the Prison Law Office notifications of deaths of people
13 in CDCR custody, including people that have died as a result of COVID-19. To date, 29 of
14 the COVID-19-related deaths reported by Defendants have been *Armstrong* class
15 members.

16 Plaintiffs’ Review of CDCR’s Planned Isolation/Quarantine Space

17 4. On August 13, 2020, my colleague, Corene Kendrick, sent a letter to the
18 Court Expert and Defendants that set forth Plaintiffs’ comments and concerns about the
19 designated isolation and quarantine space at each CDCR prison. A true and correct copy of
20 that letter, entitled “(REISSUED) Plaintiffs’ Review of CDCR’s Planned Isolation /
21 Quarantine Space,” dated August 13, 2020, is attached hereto as **Exhibit A**. With the
22 letter, Plaintiffs attached 125 pages of institution-specific worksheets for each prison,
23 which raised individualized concerns with a particular prison’s isolation and/or quarantine
24 designation plans. Those worksheets have been omitted from the attached exhibit.

25 5. On August 27, 2020, my colleague, Margot Mendelson, sent an email to
26 Tamiya Davis and Sean Lodholz, attorneys for Defendants, asking for the latest designated
27 isolation and quarantine space for the California Medical Facility (“CMF”). In response,
28 Mr. Lodholz sent an email to Plaintiffs on August 31, 2020, with an attachment that listed

1 updated isolation and quarantine plans for each CDCR prison, including CMF. A true and
2 correct copy of Mr. Lodholz’s email, as well as the attached document, entitled “Isolation-
3 Quarantine Space – 8-26-20.pdf,” is attached hereto as **Exhibit B**. Based on the attached
4 document, it appears that Defendants have listed in red font newly designated areas for
5 isolation or quarantine, which were not part of the designations reviewed by the Court
6 Expert. In total, fourteen prisons apparently have additional space that has been newly
7 designated for isolation or quarantine.

8 Movement During the Pandemic

9 6. On August 21, 2020, Judge Tigar conducted a case management conference
10 in *Plata v. Newsom*, No. 01-1351 (N.D. Cal.). During the case management conference,
11 Judge Tigar stated, among other things, that “absent a population reduction order, the only
12 way we’re going to get [adequate quarantine and isolation] space is by moving
13 incarcerated persons from one institution to another.” Tr. at page 18, lines 2-8. A true and
14 correct copy of the transcript of the case management conference proceedings is attached
15 hereto as **Exhibit C**.

16 Expedited Transfer Report

17 7. On August 13, 2020, Sean Lodholz, attorney for Defendants, sent an email to
18 Plaintiffs and the Court Expert stating that “there is not a reliable way of gathering”
19 information on where *Armstrong* class members who had been displaced from designated
20 isolation and quarantine spaces were moved to. Mr. Lodholz instead produced “a current
21 Expedited Transfer Report,” in both Excel and PDF versions. A true and correct copy of
22 Mr. Lodholz’s email dated August 13, 2020, is attached hereto as **Exhibit D**. A true and
23 correct copy of the PDF version of the Expedited Transfer Report, dated August 13, 2020,
24 is attached hereto as **Exhibit E**.

25 8. I reviewed the Expedited Transfer Report that Mr. Lodholz attached to his
26 August 13, 2020 email. At the top of the Report, the following is written: “This report
27 identifies active and temporarily absent inmates who have an impacting Disability
28 Placement Program (DPP) code that does not match the attributes of the bed they are

1 assigned to.” The Report further states: “Inmate Count: 242.”

2 9. The Excel spreadsheet version of the Report lists *Armstrong* class members
3 and has the following columns: Current Institution, Current Facility, Current Housing
4 Area, Current Bed, CDC Number, Inmate Last Name, Inmate First Name, Inmate Middle
5 Name, Institution Arrival Date, Classification Action Date, CSR Review Date,
6 Endorsement Date, Endorsement, Bus Seat Request First, Bus Seat Request Last, HQ
7 Notice First, HQ Notice Last, DPP Codes, Mobility, Hearing, Vision, Speech, and
8 Comment.

9 10. I counted those class members who had information listed in the
10 “Endorsement” column. Based on my review of the Report, 160 class members were
11 endorsed to a particular prison and yard. For the rest of the class members, the
12 “Endorsement” column was blank.

13 11. Of those 160 class members, nineteen are designated DPW. I determined that
14 by filtering the “DPP Codes” column to include only people with DPW codes.

15 12. Of those 160 class members, twenty two are endorsed to buildings at the
16 California Institution for Men (“CIM”). I determined that by filtering the “Endorsement”
17 column to include only people endorsed to CIM. Those class members have different
18 impacting-placement codes, including DPM, DPO, DPM, DPV, and DLT. Five of those
19 twenty-two class members already are housed at CIM, but in buildings not designated for
20 their disability codes. Four class members are housed in celled housing on Facility C, and
21 one class member is housed in a dorm on A yard. *See* Doc. 2996-2 at 148-49 (Defendants’
22 Bed Audit) (listing whether buildings have dorms or cells); *id.* at 126-27 (Defendants’ DPP
23 Designated Bed Attributes Report) (listing which disability codes a particular building at
24 CIM is designated for).

25 Defendants’ CDCR 128-B Production

26 13. Throughout the pandemic, Defendants have produced CDCR 128-Bs for
27 some (but not all) class members who are housed in areas not designated for their DPP
28 code.

1 14. On August 25, 2020, Defendants produced a CDCR 128-B for an *Armstrong*
2 class member housed at California State Prison, Corcoran. The CDCR 128-B states that
3 the class member “was designated with a DPP code of DPO on 07/25/2002.” That appears
4 to be a typo and should instead read: 7/25/2020. (I reviewed the DPP SOMS roster from
5 July 14, 2020, and the class member is listed then as having a DLT code.) According to the
6 CDCR 128-B, the class member was interviewed 26 days later, on August 20, 2020.

7 15. A true and correct copy of Defendants’ email dated August 25, 2020, and a
8 copy of the CDCR 128-B, is attached as **Exhibit F**.

9 16. Also on August 25, 2020, Defendants produced a CDCR 128-B for an
10 *Armstrong* class member housed at North Kern State Prison. The CDCR 128-B states that
11 the class member “was designated with a DPP code of DPO on 8/6/2020.” According to
12 the CDCR 128-B, the class member was interviewed eleven days later, on August 17,
13 2020.

14 17. A true and correct copy of Defendants’ email dated August 25, 2020, and a
15 copy of the CDCR 128-B, is attached as **Exhibit G**.

16 18. On July 20, 2020, Defendants produced a CDCR 128-B for an *Armstrong*
17 class member housed at Mule Creek State Prison. The CDCR 128-B states that the class
18 member “was designated with a DPP code of DPW on 6/24/2020.” The CDCR 128-B was
19 completed two days later. It states, among other things, that the class member “stated that
20 the only issue he is facing is that he can’t access showers in the building as he can’t get
21 over the ledge in the showers in the building. I asked [him] when was the last time he had
22 showered and he stated ‘*It was sometime last month. I just bird bath now in my cell*’ It is to
23 be noted that there is a shower chair available in the housing unit for use.” The CDCR 128-
24 B does not explain how, if at all, the class member will be accommodated.

25 19. A true and correct copy of Defendants’ email dated July 20, 2020, and a
26 copy of the CDCR 128-B, is attached as **Exhibit H**.

27
28

1 Mule Creek State Prison

2 20. On August 25, 2020, I sent an email to attorneys for Defendants. I wrote that
3 ten *Armstrong* class members at Mule Creek State Prison (“MCSP”) with impacting-
4 placement disability codes currently or had recently been inaccessibly housed. I stated that,
5 to date, Defendants had produced a CDCR 128-B for only one of the ten class members,
6 and that we had not received a CDCR 128-B for any of the other class members. I further
7 reported that Defendants failed to notify Plaintiffs within 24 hours of the class members’
8 inaccessible placements. I requested that Defendants explain why they had not so notified
9 Plaintiffs and that Defendants produce CDCR 128-Bs for the remaining nine class
10 members. A true and correct copy of my email dated August 25, 2020, is attached hereto
11 as **Exhibit I**.

12 21. Three days later, on August 28, 2020, I conducted telephonic interviews with
13 six of those class members. Attached to this declaration as **Exhibits J** and **K** are
14 declarations from two class members authored and signed during those interviews,
15 reporting that they were unable to safely access showers and toilets while in quarantine
16 housing not designated for their disability codes.

17 22. As of 8:00 p.m. on September 1, 2020, I have not received a response to my
18 email dated August 25, 2020.

19 California Substance Abuse Treatment Facility and State Prison, Corcoran

20 23. On August 26, 2020, my colleague, Rita Lomio, sent an email to attorneys
21 for Defendants, and I was copied on the email. Ms. Lomio wrote that she had been
22 informed earlier that day by the ADA Coordinator at the Substance Abuse Treatment
23 Facility and State Prison, Corcoran (“SATF”) that the gym on Facility A was now being
24 used as quarantine housing for *Armstrong* class members, including six people with DPW
25 codes. Ms. Lomio requested further information about their housing in the gyms and
26 photographs taken of the gym. Ms. Lomio also noted that “the gym does not appear to be a
27 suitable quarantine space. It is a large, open area with communal sinks, toilets, and
28 showers, with minimal ventilation and only a couple fans mounted high on the wall.”

1 24. On August 28, 2020, Tamiya Davis, an attorney for Defendants, sent an
2 email providing some of the information requested. Ms. Davis wrote that the class
3 members “were housed in the A gym as a result from direct exposure with a staff member”
4 and had been moved into the gym on Friday, August 21, 2020. Ms. Davis attached a
5 printout entitled, “Disability Inmate Roster,” dated August 28, 2020, at 1:34 p.m., which
6 lists ten *Armstrong* class members as being housed in the gym. Of those, seven class
7 members had a DPW code, one class member had a DPM code, and two class members
8 had a DLT code.

9 25. Ms. Davis attached CDCR 128-Bs for nine of those ten class members. Six
10 of the CDCR 128-Bs are dated August 26, 2020, and three are dated August 27, 2020.
11 Ms. Davis also attached four CDCR 128-Bs dated August 26, 2020, for class members not
12 listed on the roster.

13 26. On August 28, 2020, Ms. Lomio sent another email to Ms. Davis. Ms. Lomio
14 asked whether there was “a process in place for ADA staff to be notified immediately
15 when the institution plans to house *Armstrong* class members in nontraditional settings,
16 such as gyms, so they can make sure everything is set up properly[.]” Ms. Lomio also
17 asked whether “the institution [is] looking into alternate quarantine space that can
18 accommodate DPW class members,” noting that “[t]he large, open gym, with little
19 ventilation and with communal toilets, showers, and sinks, is not an appropriate place to
20 quarantine class members.”

21 27. On August 30, 2020, Ms. Lomio sent another email to Ms. Davis, requesting
22 the missing CDCR 128-B and inquiring as to when class members who apparently were
23 not currently housed in the gym but had CDCR 128-Bs completed were housed in the gym.

24 28. A true and correct copy of the emails between Ms. Lomio and Ms. Davis on
25 August 26, 28, and 30, 2020, including the CDCR 128-Bs and the Disability Inmate Roster
26 attached to Ms. Davis’s August 28, 2020 email, is attached hereto as **Exhibit L**.

27 29. On September 1, 2020, my colleagues Gabriela Pelsinger, Tania Amarillas-
28 Diaz, and Skye Lovett conducted confidential legal calls with *Armstrong* class members

1 housed in the gym at SATF. Attached to this declaration as **Exhibits M, N, O, and P** are
2 declarations from class members housed at SATF that were authored and signed during
3 those interviews.

4 Deuel Vocational Institution

5 30. On August 28, 2020, co-counsel Thomas Nolan conducted telephonic
6 interviews with class members at Deuel Vocational Institution (“DVI”). Attached to this
7 declaration as **Exhibits Q and R** are declarations from two class members authored and
8 signed during those interviews, reporting that they were transferred out of their housing
9 unit so that the unit could be used for quarantine/isolation. Their new housing unit has a
10 broken hand-held shower hose and the shower bench is too low.

11 31. Also on August 28, 2020, Mr. Nolan sent an email to attorneys for
12 Defendants. He shared the information that the class members had relayed during the
13 interviews about conditions in their housing unit and noted that they were housed in a
14 building not designated for their DPP codes. Mr. Nolan asked why Defendants had not
15 notified Plaintiffs within 24 hours, as required by the Court’s order, and also why no
16 CDCR 128-B had been provided for the class members. A true and correct copy of Mr.
17 Nolan’s email is attached hereto as **Exhibit S**.

18 32. As of 8:00 p.m. on September 1, 2020, Defendants have not sent a written
19 response to Mr. Nolan’s email.

20 California State Prison, Corcoran

21 33. On August 20, 2020, I conducted a confidential legal call with an *Armstrong*
22 class member housed at California State Prison, Corcoran (“CSP-Corcoran”). The class
23 member uses a wheelchair or a seated walker to ambulate. On the call, the class member
24 reported having disability-related issues in his cell. Specifically, he reported that he was
25 not able to position his wheelchair under the desk in his cell because the desk was too low.
26 He also did not have a trapeze bar above his bed, but he needed one in order to sit up and
27 transfer to his wheelchair or seated walker. Lastly, the cubby holes in his cell were too low
28 and too deep, and he was not able to access the cubbies while in his wheelchair.

1 34. The class member submitted a CDCR Form 1824 on July 18, 2020 to request
2 that modifications be made to his cell so that he can access the desk and cubby holes, and
3 that a trapeze bar be installed above his bed. The class member also wrote in his request
4 that he had fallen on multiple occasions because he did not have a grab bar over his bed.
5 The Reasonable Accommodation Panel (“RAP”) responded on July 23, 2020, stating that a
6 work order had been submitted to modify the desk and cubby holes in his cell and to install
7 a grab bar above his bed. A true and correct copy of the RAP’s response, as well as the
8 class member’s request, is attached hereto as **Exhibit T**.

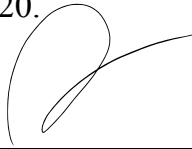
9 35. When I spoke to the class member on August 20, 2020, almost a month after
10 the RAP issued its response to him, he reported that there had been no modifications made
11 to his cell. He reported that he still was not able to access the desk or cubby holes in his
12 cell, and that he still struggled to transfer from his bed to his wheelchair or walker without
13 a trapeze bar.

14 36. On August 26, 2020, I sent an advocacy letter on behalf of the class member
15 to Defendants, requesting that the modifications be made to the class member’s cell. A true
16 and correct copy of the advocacy letter is attached hereto as **Exhibit U**.

17 37. As of 8:00 p.m. on September 1, 2020, Defendants have not responded to the
18 advocacy letter.

19 I declare under penalty of perjury under the laws of the United States of America
20 that the foregoing is true and correct, and that this declaration is executed at Berkeley,
21 California, this 2nd day of September, 2020.

22
23 DATED: September 2, 2020



Patrick Booth

INDEX OF EXHIBITS TO DECLARATION OF PATRICK BOOTH
IN SUPPORT OF PLAINTIFFS' RESPONSE AND OBJECTIONS
TO COURT EXPERT'S REPORT AND RECOMMENDATIONS
REGARDING HOUSING OF *ARMSTRONG* CLASS MEMBERS
DURING THE COVID-19 PANDEMIC

Exhibit	Description	
A	Letter from Corene Kendrick, attorney for Plaintiffs, to Ed Swanson, Court Expert, and attorneys for Defendants, entitled, "(REISSUED) Plaintiffs' Review of CDCR's Planned Isolation / Quarantine Space" (Aug. 13, 2020)	
B	Email from Sean Lodholz, attorney for Defendants, to Margot Mendelson, attorney for Plaintiffs, about the newly designated isolation and quarantine plans at each CDCR prison, sent on August 31, 2020, as well as the document attached to Mr. Lodholz's email, entitled, "Isolation-Quarantine Space – 8-26-20.pdf"	
C	Transcript of Case Management Conference in <i>Plata v. Newsom</i> , No. 01-1351-JST (N.D. Cal. Aug. 21, 2020)	
D	Email from Sean Lodholz, attorney for Defendants, regarding Expedited Transfer Report (Aug. 13, 2020)	
E	Expedited Transfer Report (Aug. 13, 2020)	UNDER SEAL
F	Email from Tamiya Davis, attorney for Defendants (Aug. 25, 2020), and CDCR 128-B for <i>Armstrong</i> class member at California State Prison, Corcoran, attached to Ms. Davis's email and dated August 20, 2020	REDACTED & UNDER SEAL
G	Email from Tamiya Davis, attorney for Defendants (Aug. 25, 2020), and CDCR 128-B for <i>Armstrong</i> class member at North Kern State Prison, attached to Ms. Davis's email and dated August 17, 2020	REDACTED & UNDER SEAL
H	Email from Tamiya Davis, attorney for Defendants (July 20, 2020), and CDCR 128-B for <i>Armstrong</i> class member at Mule Creek State Prison, attached to Ms. Davis's email and dated June 26, 2020	REDACTED & UNDER SEAL
I	Email from Patrick Booth, attorney for Plaintiffs, regarding inaccessible housing of <i>Armstrong</i> class members at Mule Creek State Prison (Aug. 25, 2020)	REDACTED & UNDER SEAL
J	Declaration of <i>Armstrong</i> Class Member at Mule Creek State Prison (Aug. 28, 2020)	REDACTED & UNDER SEAL
K	Declaration of <i>Armstrong</i> Class Member at Mule Creek State Prison (Aug. 28, 2020)	REDACTED & UNDER SEAL

L	Emails between Rita Lomio, attorney for Plaintiffs, and Tamiya Davis, attorney for Defendants, regarding housing of <i>Armstrong</i> class members in the gym at the California Substance Abuse Treatment Facility and State Prison, Corcoran (Aug. 26, 28, 30, 2020), as well as CDCR 128-Bs and “Disability Inmate Roster” attached to Ms. Davis’s August 28, 2020 email	REDACTED & UNDER SEAL
M	Declaration of <i>Armstrong</i> Class Member at California Substance Abuse Treatment Facility and State Prison, Corcoran (Sept. 1, 2020)	REDACTED & UNDER SEAL
N	Declaration of <i>Armstrong</i> Class Member at California Substance Abuse Treatment Facility and State Prison, Corcoran (Sept. 1, 2020)	REDACTED & UNDER SEAL
O	Declaration of <i>Armstrong</i> Class Member at California Substance Abuse Treatment Facility and State Prison, Corcoran (Sept. 1, 2020)	REDACTED & UNDER SEAL
P	Declaration of <i>Armstrong</i> Class Member at California Substance Abuse Treatment Facility and State Prison, Corcoran (Sept. 1, 2020)	REDACTED & UNDER SEAL
Q	Declaration of <i>Armstrong</i> Class Member at Deuel Vocational Institution (Aug. 28, 2020)	REDACTED & UNDER SEAL
R	Declaration of <i>Armstrong</i> Class Member at Deuel Vocational Institution (Aug. 28, 2020)	REDACTED & UNDER SEAL
S	Email from Thomas Nolan, attorney for Defendants, regarding Defendants’ failure to notify Plaintiffs about, and properly accommodate, class members at Deuel Vocational Institution who were housed in an area not designated for their DPP codes (Aug. 28, 2020)	REDACTED & UNDER SEAL
T	Reasonable Accommodation Panel (“RAP”) response to class member’s CDCR Form 1824 request to install accessible features in his cell (July 23, 2020)	REDACTED & UNDER SEAL
U	Letter sent by Patrick Booth, attorney for Plaintiffs, to Tamiya Davis, attorney for Defendants, regarding accommodation needs of class member housed at California State Prison, Corcoran (Aug. 26, 2020)	REDACTED & UNDER SEAL

EXHIBIT A



PRISON LAW OFFICE

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

Director:
Donald Specter

Managing Attorney:
Sara Norman

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

VIA EMAIL ONLY

August 13, 2020

Mr. Ed Swanson
ed@smlp.com

RE: *Armstrong v. Newsom*,
(REISSUED)
Plaintiffs' Review of CDCR's Planned Isolation / Quarantine Space

Dear Ed:

We appreciate your efforts to ensure that the *Armstrong* class is properly accommodated during the COVID-19 pandemic. We all are working under challenging time frames, and we are doing our best to support your efforts to comply with the Court's direction "to conduct a review of the sufficiency of Defendants' existing supply of accessible housing, including for purposes of medical isolation and quarantine in the event of COVID-19 outbreaks." You have asked us to answer the following questions:

1. Whether plaintiffs have concerns about where class members who were housed in the buildings that have been vacated for iso/quarantine purposes have been relocated to.
2. Whether plaintiffs have concerns about the sufficiency of the accessibility features in the ADA-accessible tents.
3. Whether plaintiffs believe there are sufficient L/L beds in the iso/quarantine buildings, using the methodology of ensuring that the two largest congregate living spaces housing inmates needing L/L beds can be housed in the buildings.
4. Whether plaintiffs have outstanding concerns about the accessibility of the iso/quarantine buildings for the DP codes present at each institution (other than at those institutions that have failed to provide any DPW beds and have DPW class members).

In this letter, we address those questions and have added a fifth question:

Mr. Ed Swanson
RE: REISSUED: Plaintiffs' Review
of CDCR's Planned Isolation / Quarantine Space
August 13, 2020
Page 2

5. Whether there are sufficient DPW beds in the iso/quarantine buildings, using the methodology of ensuring that the two largest congregate living spaces housing inmates needing DPW beds can be housed in the buildings.

1. Relocation of Class Members Previously Housed in the Now-Designated Isolation / Quarantine Space

Defendants, in an email at 4:31 pm today, said that they could not compile this information. Instead, they produced a copy of the expedited transfer report, which states that **242** *Armstrong* class members currently are inaccessibly housed. That of course does not capture instances where a class member was relocated to an accessible but otherwise inappropriate housing location due solely to their disability, such as people who are Level II who may have been moved to a Level IV yard simply because no accessible housing was available at their current level, or someone who is EOP being moved to a location not designated for that population.

In addition, we are extremely concerned about the 17 class members who **have not been moved** out of the designated isolation/quarantine unit at RJD (D20), due to a lack of accessible bed space elsewhere in the prison. These class members are at an increased risk of exposure to the lethal virus in this space for no other reason than their disability. RJD and CDCR headquarters must take whatever steps are necessary to move them out of D20 without further delay.¹ We request a separate urgent call with you and Defendants to discuss the situation at RJD.

2. ADA-Accessible Tents

With regard to your second question, we received the photographs and specs for these ADA-accessible tents yesterday evening. We forwarded this information to our consulting expert architect Paul Bishop to review and began preliminary discussion with him, but due to previous commitments he was not able to review the plans and photos today. We will provide you updated comments informed by his analysis, hopefully by next Monday or Tuesday, but we have some global comments based upon our initial review of the documents provided:

¹ Based upon our review of the DPP roster, it appears that two DPW and four DPO class members have been moved to D20 for medical isolation and/or quarantine. As noted, and in the detailed RJD worksheet, D20 only has two cells that formerly were designated as DPW but were removed from the matrix due to the building's path of travel problems.

Mr. Ed Swanson
RE: REISSUED: Plaintiffs' Review
of CDCR's Planned Isolation / Quarantine Space
August 13, 2020
Page 3

- It is not clear how many people would be housed in each tent, where or how they would store their belongings.
- While the flyer says there is portable power and lighting, it is unclear whether there would be electrical outlets.
- The flyer says that the interior frame of the tents allows access to horizontal support bars capable of holding up to 50 pounds, but it is unclear where those bars would be located, or if that weight capacity would be sufficient if the horizontal bars were to serve as trapeze bars to assist in transferring in and out of the cots.
- Given the high costs of the rental equipment, we worry that there will be disincentives to send out sufficient numbers of ADA restrooms and cots. We request the opportunity to consult on the amount of equipment deployed to ensure it meets our clients' needs.
- With regard to the cots, we previously raised our concerns with the cots that were used in the dayrooms at CHCF (see Doc. 2994-8), and we have questions about their indefinite long-term use. The flyer says the size is appropriate for wheelchair transfer but we cannot currently assess whether that is accurate.

SUFFICIENCY OF DESIGNATED ISOLATION / QUARANTINE UNITS

Before turning to our analysis of the sufficiency of the designated isolation / quarantine units for various subsets of *Armstrong* class members, we want to raise several global concerns:

First, we have concerns about application of the proposed iso/quarantine methodology and are unable to evaluate whether it is appropriate given the limited and at times contradictory information we have received to date about Defendants' quarantine policies and practice. In responding to Questions 3-5, we have attempted to apply what we understand is the methodology you currently are considering:

- (a) Where there are large open housing units at an institution, the number of DPW (or lower/lower) iso/quarantine beds must be no less than the sum of the largest number of DPW (or lower/lower) class members in two open housing units.
- (b) Where there are no large open housing units but DPWs (or people with lower/lower housing restrictions) are housed at the institution, the number of DPW (or lower/lower) beds should be no less than proportionate to the DPW (or lower/lower) population at that institution, and never fewer than one.

Mr. Ed Swanson
RE: REISSUED: Plaintiffs' Review
of CDCR's Planned Isolation / Quarantine Space
August 13, 2020
Page 4

- (c) Where there are no DPWs (or people with lower/lower housing restrictions) at the institution, the institution does not need to have a DPW (or lower/lower) bed.

In most if not all cases, Defendants designated one or more buildings but did not explain whether the building or buildings would be for isolation, quarantine, or both. (As the parties agreed, Plaintiffs reviewed the designations produced in the *Plata* litigation in PDFs dated July 30, 2020, and August 5, 2020, and did not consider the information that was conveyed verbally during the calls, but that has not yet been memorialized in writing in *Plata*.) Therefore, although we applied the above methodology to the buildings, we could not apply it specifically to isolation or quarantine space (if those are to be considered separately). It may be, depending on quarantine policy and practices, that the above methodology should be applied separately to designated isolation space and designated quarantine space.

On Monday, you asked the following: “Is there a system-wide policy for how the new quarantine space will be used, or is it institution- or situation-specific? What are the policies and planned uses for the new quarantine spaces? (Until I understand this better, I cannot confirm that the quarantine spaces will be adequate from an Armstrong perspective.)” Defendants responded the next day: “CDCR: Medical experts must answer.” Plaintiffs have not had any further discussion or information from medical experts, so we remain unable to address this issue and assess whether the methodology is correct. Therefore, our answers to Questions 3-5 reflect only what we understand to be the proper application of your current proposed methodology, and not necessary whether the beds that have been set-aside are sufficient.

Second, the process of ensuring that isolation / quarantine units are accessible is not a one-off or static event; Defendants have been ordered to “establish and maintain adequate safe, accessible housing.” Doc. 3015 at 2 (emphasis added). People regularly are re-designated as having an impacting placement disability or other housing restrictions. And when Defendants reopen intake, a number of new *Armstrong* class members will be introduced into the prison system and require accessible housing. There needs to be an evolving process in place to adjust the isolation / quarantine units based on clear guidelines **before** people who need accommodations are moved in to these units.

Third, as noted above, and as you have observed on the calls with the institutions, CDCR has failed to delineate which space is for medical isolation versus quarantine, and in some cases the institution staff indicated that they would be mixing the populations. As noted by the public health experts, these serve two different purposes, and within the

Mr. Ed Swanson
RE: REISSUED: Plaintiffs' Review
of CDCR's Planned Isolation / Quarantine Space
August 13, 2020
Page 5

quarantine practice, the facts behind why someone is on quarantine often differ greatly and may require further separation. We think it is inappropriate to use the same space for both populations.

Fourth, our analysis of the appropriateness of the isolation / quarantine space does not address issues such as people being housed outside their normal classification levels, or the mixing of populations in these units, i.e. Level Is with Level IVs, GP with SNY, and/or EOP with non-EOP. We are raising these concerns in *Plata* and *Coleman*, but also reserve the right to raise these concerns here.

Fifth, we excluded class members in the CTC, MHCB, or PIPs from our calculations because we were told that these patients would be quarantined and isolated in their hospital rooms. This had two impacts upon our analysis. First, at some prisons, the largest concentration of DPW class members were in these units, so the calculation of how many beds were needed isolation / quarantine is lower. Second, when calculating the percentage of the prison population that need accessible housing, we excluded them from the total count of people requiring accessible housing in the institutions (the numerator), but were not able to accordingly reduce them from the total prison population (the denominator), because we didn't know the total number of people in the CTC, MHCB, or PIP. This may result in a slightly lower percentage, but we do not think it is significant.

Sixth, when doing our analysis today, we did not have complete information regarding which prisons/buildings/units have open-front cell doors (either bars like San Quentin, or the perforated metal doors referred to as "Arizona doors"). This is relevant in identifying the two largest congregate units within a prison. Unless we knew that a specific prison/unit has barred or perforated cell doors, we assumed that all celled housing had solid doors. We had requested a list of every prison / unit / building that had open-air flow cell doors but did not receive it until essentially at the close of business, and did not have time to go back and re-analyze this information at the relevant institutions.

Seventh, our worksheets (enclosed with this letter) will note the specific details for each institution, but we identified some significant discrepancies among the reports that we received from CDCR that raise concerns. For example, at SCC, Defendants' spreadsheet said that the highest Low/Low population in an open unit was three people, but our review of the DPP roster showed that there are 17 people housed in dorm B1E1 who have Low/Low chronos.

//

Mr. Ed Swanson
RE: REISSUED: Plaintiffs' Review
of CDCR's Planned Isolation / Quarantine Space
August 13, 2020
Page 6

//

Eighth, we have not analyzed the quarantine and isolation designations for San Quentin or Folsom. Mr. Cullen informed Plaintiffs that Headquarters would be going back to the drawing board for those two institutions.² (As a result, no phone call was held between those institutions and the Receiver, the court expert, and Plaintiffs' counsel.) Although we do not have current designations for Folsom, we want to note our objection to the use of tents for class members there. We also note that there are currently 21 class members inaccessibly housed at Folsom, including 3 DPMs, 1 DPV, and 17 DLTs.

3. Accessibility of the Isolation / Quarantine Units for Lower/Lower Class Members

We have concerns about whether there are sufficient lower/lower beds in the designated isolation / quarantine units. As noted above, our analysis is our best effort to answer your questions, using your proposed methodology of looking at the two largest congregate units, but there are significant limitations to our analysis, including having incomplete information to work with and a very short turnaround timeframe to do the analysis for all institutions. **There are 14 prisons where we identified an insufficient number of Low/Low beds:** CCC, CCWF, CHCF, CIM, CIW, CMF, CVSP, LAC, MCSP, RJD, SAC, SATF, SVSP, SOL. Please see the detailed worksheet for each institution in the enclosure for the details for each prison. (Problematic areas are in red font so they are easier to spot).

4. Accessibility of the Isolation / Quarantine Units for DPO, DPM, DLT, and DPV Class Members

We have concerns about whether there are sufficient DPO, DPM, DLT, and DPV beds in the designated isolation / quarantine units. (Although your question only addressed DPO, DPM, and DLT class members, we have added in consideration of DPV class members were it is material.) Again, and as noted above, our analysis is our best effort to answer your questions, using your proposed methodology of looking at the two largest congregate units, but there are significant limitations to our analysis, including having incomplete information to work with and a very short turnaround timeframe to do the

² Likewise, we learned in an email sent by Tamiya Davis yesterday evening that CHCF had not designated isolation / quarantine space at CHCF. However, on August 5, 2020, Defendants provided their proposed space regarding CHCF in *Plata*, and so we reviewed that space.

Mr. Ed Swanson
RE: REISSUED: Plaintiffs' Review
of CDCR's Planned Isolation / Quarantine Space
August 13, 2020
Page 7

analysis for all institutions. **There are 18 prisons where we determined that isolation / quarantine units are not accessible or the number of beds are insufficient for DPO, DPM, DLT, or DPV class members:** CAL, CCI, CHCF, CIM, COR, CRC, CTF, CVSP, LAC, MCSP, NKSP, PBSP, RJD, SAC, SCC, SOL, SVSP, WSP. Again, see the detailed worksheet for each facility.

5. Accessibility of the Isolation / Quarantine Units for DPW Class Members

We have concerns about whether there are sufficient DPW beds in the identified isolation / quarantine units. Again, and as noted above, our analysis is our best effort to answer your questions, using your proposed methodology of looking at the two largest congregate units, but there are significant limitations to our analysis, including having incomplete information to work with and a very short turnaround timeframe to do the analysis for all institutions. **There are 12 prisons where we determined that isolation / quarantine units do not have sufficient DPW bed space:** CCWF, CHCF, CIM, CMF, COR, LAC, MCSP, NKSP, RJD, SATF, VSP, WSP. Again, see the detailed worksheets for each institution for the precise details.

Thank you for giving us the opportunity to comment upon these plans. We are happy to discuss this further with you and Defendants.

Sincerely yours,



Corene Kendrick
Staff Attorney

cc: Counsel of Record
AG's Office: Sean Lodholz, Trace Maiorino, Joanna Hood
CDCR: Tamiya Davis, Lex Powell, Patricia Ferguson, Adam Fouch, Robert Gaultney, Landon Bravo, Mike Knowles
CCHCS: Martin Dodd, Vince Cullen, Dr. Joseph Bick, Roscoe Barrow
Swanson McNamara: Britt Evangelist

Encl: Plaintiffs' institutional analysis worksheets

Mr. Ed Swanson
RE: REISSUED: Plaintiffs' Review
of CDCR's Planned Isolation / Quarantine Space
August 13, 2020
Page 8

EXHIBIT B

From: arm-plo@prisonlaw.com on behalf of Sean Lodholz
Sent: Monday, August 31, 2020 1:58 PM
To: Margot Mendelson; Davis, Tamiya@CDCR
Cc: PLO Arm team; Armstrong Team - RBG only; Ed Swanson (ed@smlp.law); Trace Maiorino
Subject: RE: Quarantine and isolation housing plan for CMF
Attachments: Isolation-Quarantine Space - 8-26-20.pdf

Hi Margot,

I received this today in response to my query. It includes all current plans, including CMF.

Thank you,

Sean W. Lodholz | Deputy Attorney General | California Department of Justice
Correctional Law Section | 1300 I Street | Sacramento, CA 95814
t (916) 210-7369 | f (916) 324-5205 | e sean.lodholz@doj.ca.gov

From: Margot Mendelson <mmendelson@prisonlaw.com>
Sent: Thursday, August 27, 2020 3:59 PM
To: Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>
Cc: PLO Arm team <arm-plo@prisonlaw.com>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Ed Swanson (ed@smlp.law) <ed@smlp.law>
Subject: Quarantine and isolation housing plan for CMF

Hi Sean and Tamiya,

Can you please provide the latest quarantine and isolation housing plan for CMF? As noted in the Court Expert's report, CMF determined earlier this month that its plan needed to be "completely redone." Has a new plan been produced? If not, when does CDCR intend to have a new quarantine and isolation housing plan for the institution?

Thanks,
Margot

--

Margot Mendelson
Staff Attorney
Prison Law Office
1917 5th Street
Berkeley, CA 94710
(510) 280-2621
mmendelson@prisonlaw.com

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

Institution	Location and type of reserved space	Number of Beds	Spaces that Must Still Be Vacated
ASP	Facility A, Housing Unit 120 (191 dorm beds); Facility A, Housing Unit 140 (200 cell beds)	Dorm Beds - 191 Cell Beds - 200 double or 100 single CCHCS QM - 248	HU 140 must be vacated
CAC	Facility A, Building 2, A and B Pod - (168 cell beds)	Cell Beds - 168 double or 84 single CCHCS QM - 4	n/a
CAL	Facility A, Building 5 (200 cell beds); Facility B, Building 5 (200 cell beds)	Cell Beds - 400 double or 200 single CCHCS QM - 180	Facility B, Building 5 must be vacated
CCC	Facility C, Building 3 (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM - 48	n/a
CCI	Facility A, Housing Unit 8 (124 cell beds); Facility C Housing, Unit 1 (200 cell beds); Facility E, Davis Hall (94 dorm beds); Facility D, Housing Unit 9 (48 cell beds); Facility D Gym (60 beds)	Dorm/Gym Beds - 154 Cell Beds - 248 double or 124 single CCHCS QM - 235	Facility A, Housing Unit 8 must be vacated
CCWF	Facility A, Building 503 (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM - 16	n/a
CEN	Facility A, Building 5 (200 cell beds); Facility D, Building 5 (200 cell beds)	Cell Beds - 400 double or 200 single CCHCS QM - 193	Facility D, Building 5 must be vacated
CHCF	Facility E, Main Yard Tents (100 beds); Facilities A, B, C and D Negative Pressure Rooms (NPR) (92 NPR beds)	NPR Beds - 92 Tent Beds - 100 CCHCS QM - 277	n/a
CIM	Facility B, Birch Hall(102 single cell beds); Facility C, Del Norte (200 cell beds)	Cell Beds - 200 double or 100 single Single Cell Beds - 102 CCHCS QM - 188	Facility C, Building 4 must be vacated
CIW	Housing Unit A RCU (220 cell beds)	Cell Beds - 220 double or 110 single CCHCS QM - 4	n/a
CMC	Facility C, Building 5 (300 single cell beds)	Single Cell Beds - 300 CCHCS QM - 143	n/a

Institution	Location and type of reserved space	Number of Beds	Spaces that Must Still Be Vacated
CMF	S-3 Housing Unit (18 cell beds); W-1 Housing Unit (41 cell beds); W-3 Housing Unit (42 cell beds); H-1 Housing Unit (21 cell beds, 26 dorm beds); I-1 Housing Unit (10 dorm beds, 36 cell beds)	Single Cell Beds - 158 Dorm Beds - 36 CCHCS QM - 162	Housing Units H-1 and I-1 must be vacated
COR	Facility 3B, Building 02 (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM - 46	n/a
CRC	Facility D, Dorm 410 (78 dorm beds); Facility D, Dorm 311 (77 dorm beds); Facility D, Gym (78 beds)	Dorm Beds - 155 Gym Beds - 78 CCHCS QM - 187	n/a
CTF	Central Facility, Y wing (258 cell beds)	Cell Beds - 258 double or 129 single CCHCS QM - 127	n/a
CVSP	Facility D, Building 11 (192 dorm beds); Facility A, Building 3 (200 cell beds)	Cell Beds - 200 double or 100 single Dorm Beds - 192 CCHCS QM - 91	Facility A, Building 3 must be vacated
DVI	Facility A, G-wing (264 cell beds)	Cell Beds - 264 double or 132 single CCHCS QM - 66	n/a
FOL	Facility A, Unit IV, Tier 2, A & B side cells (88 cell beds); Facility B, FWF A Dorm Pods 3/4 (126 dorm beds); MSF Dorm 500/600 (32 dorm beds)	Cell Beds - 88 double or 44 single Dorm Beds - 158 CCHCS QM 1380	n/a
HDSP	Facility C, Building 1 (128 cell beds); Facility A, Building 4 (200 cell beds)	Cell Beds - 328 double or 164 single CCHCS QM - 71	Facility A, Building 4 must be vacated
ISP	Facility C, Building 1 (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM - 63	n/a
KVSP	Facility D, Building 6 (128 cell beds); Facility A, Building 1, Section B (20 cell beds)	Cell Beds - 148 double or 74 single CCHCS QM - 66	Facility A, Building 1, Section B must be vacated

Institution	Location and type of reserved space	Number of Beds	Spaces that Must Still Be Vacated
LAC	Facility C, Building 5 (200 cell beds); Facility B, Building 2 (200 cell beds); Facility B Gym (24 beds)	Cell Beds - 400 double or 200 single Gym Beds - 24 CCHCS QM - 210	Facility B, Building 2 must be vacated
MCSP	Facility A, Building 2 (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM - 29	n/a
NKSP	Facility D, Building 3 (198 cell beds)	Cell Beds - 198 double or 99 single CCHCS QM - 78	n/a
PBSP	Facility A, Building 1 (128 cell beds)	Cell Beds - 128 double or 64 single CCHCS QM - 49	n/a
PVSP	Facility D-5 Building (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM - 78	n/a
RJD	Facility D, Housing Unit 20 (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM - 39	n/a
SAC	Facility A, Building 2 (20 cell beds); Facility B, Building 1 (48 cell beds); Facility C, Building 8 (128 cell beds)	Cell Beds - 196 double or 98 single CCHCS QM - 11	n/a
SATF	Facility E, Building 2 (200 cell beds);	Cell Beds - 200 double or 100 single CCHCS QM - 16	n/a
SCC	Facility C, Building 3 (200 cell beds)	Cell Beds - 200 double or 100 single CCHCS QM 63	Facility C, Building 3 must be vacated
SOL	Facility B, Building 7 (200 cell beds); Facility B, Building 9 (200 cell beds); Facility B Gym (64 beds)	Cell Beds - 400 double or 200 single Gym Beds - 64 CCHCS QM - 211	Facility B, Building 9 must be vacated
SQ	Gym (108 beds)	Gym Beds - 108 CCHCS QM 1550	n/a
SVSP	Facility C, Building 7 (182 cell beds); Facility D, Building 6, Section B (40 cell beds)	Cell Beds - 222 double or 111 single CCHCS QM - 78	Facility D, Building 6 must be vacated
VSP	Facility A, Building 4 (88 cell beds); Facility A, Building 3 (199 cell beds)	Cell Beds - 287 double or 143 single CCHCS QM - 16	Facility A, Building 3 must be vacated
WSP	Facility B, Building 1 (200 cell beds); Facility B, Building 5 (200 cell beds)	Cell Beds - 400 double or 200 single CCHCS QM - 152	Facility B, Building 5 must be vacated

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jon S. Tigar, Judge

MARCIANO PLATA, ET AL.,)	
)	
Plaintiffs,)	
)	
VS.)	NO. CV 01-01351-JST
)	
GAVIN NEWSOM, ET AL.,)	
)	
Defendants.)	
)	

Oakland, California
Friday, August 21, 2020

TRANSCRIPT OF PROCEEDINGS
CASE MANAGEMENT CONFERENCE HELD VIA ZOOM

APPEARANCES:

For Plaintiffs:

PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
BY: DONALD H. SPECTER, ESQUIRE
ALISON HARDY, ESQUIRE
STEVEN FAMA, ESQUIRE
SOPHIE HART, ESQUIRE

For Defendants:

HANSON BRIDGETT LLP
425 Market Street - 26th Floor
San Francisco, CA 94105
BY: PAUL B. MELLO, ESQUIRE
SAMANTHA D. WOLFF, ESQUIRE

OFFICE OF THE ATTORNEY GENERAL
455 Golden Gate Avenue - Suite 11000
San Francisco, CA 94102
BY: DAMON MCCLAIN
DEPUTY ATTORNEY GENERAL

Reported By: Pamela Batalo-Hebel, CSR No. 3593, RMR, FCRR
Official Reporter

APPEARANCES CONTINUED:

For the Receiver J. Clark Kelso:

FUTTERMAN DUPREE DODD CROLEY MAIER LLP
601 Montgomery Street - Suite 333
San Francisco, CA 94111

BY: MARTIN H. DODD, ESQUIRE

For California Correctional Peace Officers Association:

MESSING ADAM & JASMINE
980 9th Street, No. 380
Sacramento, CA 95814

BY: GREGG ADAM, ESQUIRE

CCPOA
755 Riverpoint Drive - No. 200
West Sacramento, CA 95605

BY: DAVID A. SANDERS, ESQUIRE

Also Present:

J. CLARK KELSO, RECEIVER

1 Friday - August 21, 2020

2:00 p.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Your Honor, now calling civil matter
5 01-1351-JST, Marciano Plata, et al. vs. Gavin Newsom, et al.

6 If counsel could please identify themselves for the
7 record, starting with counsel for plaintiffs.

8 **MR. SPECTER:** Good afternoon, Judge. Don Specter,
9 Steve Fama, Sophie Hart, and Alison Hardy from the Prison Law
10 Office for the plaintiffs.

11 **MR. MELLO:** Good afternoon. Paul Mello for
12 defendants.

13 **MS. WOLFF:** Good afternoon, Your Honor. Samantha
14 Wolff for defendants.

15 **MR. MCCLAIN:** Good afternoon. Damon McClain for
16 defendants.

17 **MR. DODD:** Good afternoon, Your Honor. Martin Dodd
18 for the Receiver.

19 **MR. KELSO:** Good afternoon, Your Honor. Clark Kelso,
20 the Receiver.

21 **MR. ADAM:** Good afternoon, Your Honor. Gregg Adam for
22 CCPOA.

23 **MR. SANDERS:** Good afternoon, Your Honor. David
24 Sanders for CCPOA.

25 **THE COURT:** Welcome. Welcome, everyone.

1 This is another Case Management Conference in the Plata
2 case related to the management of COVID in the prisons.

3 I hope you can't hear it, but my printer decided -- it has
4 a mind of its own -- that it needed to perform some kind of
5 calibration exercise, so it's doing that, and I apologize if
6 that's distracting to you.

7 I also want to say I think the parties continue to do a
8 very good job of meeting and conferring with each other under
9 constant time pressure and over matters of great importance, so
10 I am very appreciative of that. I won't note every instance in
11 which that meet-and-confer has produced results, but I notice
12 that when I read the Case Management Statements.

13 I'll go through the individual items in order. As usual,
14 some of them are just informational. Some of them require some
15 discussion, even if it's not clear the Court has any power to
16 issue an order; nonetheless, we've included topics like that in
17 our case management, and some of them are more squarely within
18 the confines of the Court's authority, and then because there
19 have been some changes, operational changes at the CCHCS level,
20 I will probably ask Mr. Kelso for one or two updates as we go
21 along.

22 A housekeeping item and then a just kind of note of
23 condolence.

24 The housekeeping item is that the defendants were ordered
25 to file something -- I no longer even remember what it was --

1 about a week and a half ago, and it came in a few minutes late,
2 and the defendants filed a motion for me to excuse the late
3 filing and deem that it had been timely filed nunc pro tunc,
4 and what I want to say to the defendants, but also to
5 everybody, is that's not the kind of judge I am and I hope I
6 don't give the impression that I am that kind of judge. Of
7 course I expect everyone to file their stuff on time, and you
8 do, and every now and then something might happen and you might
9 be 20 minutes or an hour late. Whatever. I mean, "whatever"
10 is not a very judicial thing to say, but I guess what I want to
11 say is provided everyone is doing a good job of holding
12 themselves accountable, if something like that happens, you
13 don't need to take your time, Mr. Mello or Ms. Wolff or whoever
14 of your colleagues had to work on it. You have more important
15 things to do. Don't worry about it. I didn't even notice, and
16 if I had noticed, I wouldn't have even cared. I think the
17 lawyering in this case is very good, and you should apply it to
18 something else. You have an important client to represent.

19 The other thing I want to say is that a lawyer named
20 Michael Satris died at the relatively young age of 70. I
21 didn't know him but many of you did. He founded the Prison Law
22 Office in 1976. Astonishing to find out that he was 70 years
23 old and that, nonetheless, he did something of that consequence
24 46 years ago.

25 As I said, I didn't know him, but I've worked as a judge

1 with the Prison Law Office now for almost 20 years, and
2 everybody on this video conference and almost anybody in the
3 law knows what the Prison Law Office is and about the
4 contributions that they have made.

5 So, anyway, it's a big loss, and I mostly just want to
6 extend my condolences to Mr. Satris's colleagues at the PLO.

7 **MR. SPECTER:** Thank you, Your Honor.

8 **THE COURT:** Let's go through the items in the Case
9 Management Statement in order.

10 The first one is "Population Reduction," and that's
11 divided into "Status," a section on the status of that and a
12 section on "Population Reduction Reports" and the parties'
13 meet-and-confer efforts.

14 I apologize to you. I'm going to have to get a cough
15 drop. I had a morning full of hearings this morning, and I'm
16 starting to get a little hoarse.

17 The second item is just informational to me so we don't
18 need to talk about that.

19 The first item is about the status of the review of 6200
20 files of incarcerated persons who are deemed to be more at risk
21 medically than other people, a review of those files for
22 release.

23 As I read the Case Management Statement, BPH, the parole
24 board, has completed about 700 individual summaries of those
25 files, and a secretary has reviewed 210 case summaries to date.

1 I appreciate getting that information. It begs a couple
2 of questions.

3 Math is not my strongest suit, but I think it means it
4 will take more than a year at this rate to review these files.
5 So my first question is, is that true? Is my math right?

6 My next question is how does CDCR feel about that? Are
7 they comfortable with that deadline? Do they intend -- is that
8 the deadline that they've set for themselves?

9 I can't imagine how crowded Secretary Diaz's desk is. We
10 all know that the word "desk" in these circumstances has a
11 variety of meanings. I have to think perhaps there's a way of
12 doing this review process that would result in somewhat higher
13 output.

14 Also I'd like to know how the State is prioritizing its
15 review. There are many possibilities, of course. One could be
16 least serious offense to most serious offense. You could have
17 the least amount of time remaining on the sentence to the most
18 time. You could have, by the criteria we've set, most
19 medically at risk and least medically at risk. You could not
20 have any priority. It could just be random. It could be by
21 PFN number. I mean, I have no idea. But it would be useful to
22 know if there is a priority, what is that priority, and if the
23 priority is not by the level of risk, medical risk, to the
24 inmate, if that's not the dominant priority, is that factor
25 nonetheless being considered in some way?

1 So, Mr. Mello, let me turn it over to you to see if you
2 know the answer to any of these questions.

3 **MR. MELLO:** And so I don't know the answer to several
4 of your specific questions, but I can provide updates and what
5 information I do have right now.

6 As of 10:00 a.m. this morning, the Secretary has reviewed
7 285 files. Thirty-four have been approved for release under
8 this program --

9 **THE COURT REPORTER:** I'm sorry, Your Honor. I didn't
10 catch that. How many have been approved for release?

11 **MR. MELLO:** 34.

12 **THE COURT REPORTER:** Thank you.

13 **MR. MELLO:** Sure. And I apologize.

14 And 251 have been not approved for release. That's,
15 again, as of 10:00 a.m. this morning. That's number one.

16 Number two -- and I think it was reported in the CMC
17 statement, but individuals who fall into the high-risk medical
18 category are also being released under other programs or
19 cohorts, and so part of the analysis is to determine whether
20 they fall under one of the 180- or 365-day cohorts, and
21 therefore the review that is done at the desk of the Secretary
22 and actually by the Secretary -- it is not delegated to
23 somebody else. He receives the information, and then he does
24 it. It is his discretionary duty and act under the government
25 code. So some of those individuals -- that's one way that the

1 list is shrunk down. And so I think that that's some important
2 context.

3 But your questions as to priority, whether it's based upon
4 status and potential release date and crime other than the
5 filters possibly -- strike that as to "filters."

6 I don't have answers to those questions. I am glad to
7 report them at the next Case Management Conference and in the
8 Case Management Conference Statement, Your Honor. I just don't
9 have them right now, and I'm not getting that magical text that
10 we've discussed from previous CMCs, and I'd rather put it in
11 writing and make sure we have it right when we answer your
12 questions.

13 **THE COURT:** Thank you.

14 I'm going to order the State in the next Case Management
15 Statement to provide a specific date deadline by which it
16 expects to complete these file reviews and to indicate by what
17 metrics, if any, it is prioritizing those reviews, and we'll
18 talk about it further then.

19 Let me make a couple of observations about that, in part
20 for the parties' benefit and in part because I know members of
21 the public are listening.

22 I do not take any position about the appropriate number of
23 people to be released. Some people in the state prison system
24 need to be there. I understand that. And I don't know out of
25 any 100 group of files who can safely be released and who

1 can't. So I don't want to be misunderstood to be arguing that
2 any particular percentage of these persons should be released.

3 On the other hand, I do have a concern that it's
4 inarguable that some percentage of persons within this group
5 can and should be released, and the Secretary recognizes that
6 because he's released them. If we have 6200 applicants and the
7 6,159th person to be reviewed is a person who, by all likes,
8 doesn't need to be in state custody anymore but it takes more
9 than a year from today to get to that person's file, very much
10 of the benefit of this review will be lost as to that person
11 and anyone who is in a similar circumstance. That's all. So
12 it's really about the efficacy of the review and not any
13 particular determination that I'm focused on.

14 Would anyone like to say more about the topic generally in
15 Roman Numeral I, which is population reduction? Mr. Specter or
16 anyone else from the PLO?

17 **MR. SPECTER:** Mr. Fama would like to speak,
18 Your Honor.

19 **THE COURT:** Mr. Fama.

20 **MR. FAMA:** Your Honor, good afternoon, and thank you
21 first, if I may, for recognizing the contributions of Michael
22 Sattris to the Prison Law Office.

23 With regards to the topic of population reduction, an
24 observation -- two observations, one of which may lead to a
25 question.

1 First, even with the releases of high-risk medical
2 patients under the other cohorts, the other two early release
3 programs, I believe the total number released to date amounts
4 to less than three percent of the 6200 who are eligible. So
5 the pace is discouraging and slow, and Your Honor's questions
6 to the defendants, I think, are perfect.

7 Plaintiffs also have the question sparked by the learning
8 in the exchange of the statement, draft statements, that the
9 department is currently still considering how it is going to
10 review and determine whether release will be provided for any
11 of the almost 4,000 of the 6200, as we understand it, who are
12 indeterminately sentenced.

13 We just saw this, for the first time the other day,
14 inserted, I think, a half sentence in our portion of the
15 statement to note that fact. We will be asking the defendants,
16 you know, as soon as we can as to when they are going to have a
17 plan for that, but I just wanted to mention that to Your Honor.

18 **THE COURT:** Very well.

19 There have been times in this case -- I'm sure the parties
20 will remember this -- that I've had tutorials on things. This
21 case is far more complicated and has a lot more moving parts
22 and much more resembles a social or political problem than does
23 a typical litigated civil case in the federal court, so it's
24 been useful to me from time to time to get tutorials on
25 different subjects, and the parties have been very generous in

1 putting the right people in the courtroom to provide those to
2 me.

3 I'm not at this point directing this, but what I would say
4 to the defendants is I think it might be very helpful to the
5 Court, potentially to plaintiffs' counsel, and even to the
6 public, if you were able to provide either a sanitized file
7 that did not reveal anyone's personal information but that
8 contained the real kind of facts -- the "real kind of facts" --
9 the kind of real facts that the Secretary looks at in making
10 these determinations or a hypothetical file that you create for
11 that purpose because I think that would enable everyone better
12 to understand the challenges of weighing the need to protect an
13 individual inmate's medical health and the public safety
14 challenges that are out there.

15 The Secretary has justifiably been proud of his efforts,
16 and I know that the Governor has approved of these efforts, and
17 the Governor has been proud of the efforts to reduce population
18 within the state prison system, and they've released press
19 releases about it using numbers. I think it might be helpful
20 to all aspects of this case at some point if we could get some
21 additional clarity.

22 I also think -- not to put too fine a point on it -- but
23 if you have someone in prison who has committed two separate
24 murders for which they have been sentenced separately by
25 separate courts and also has other lengthy -- also has a record

1 of -- a lengthy record of other violent crimes, it's going to
2 be very difficult for somebody to read that file and conclude
3 that it would be safe to release them. And there are people in
4 the public who probably think that many of the inmates in
5 question fit that description. On the other hand, I'm sure it
6 goes the other way, too. I'm sure there are files where
7 someone's been in custody for a very, very long time. For
8 reasons of age or physical disability, it's hard to imagine
9 them even being able to commit any crime at this point, and the
10 crime of offense itself may not have been all that serious. So
11 I'm really just thinking out loud here, but I think our
12 discussion might benefit from some particulars at some point.

13 Anyway, Mr. Fama, thanks for those comments.

14 Mr. Mello, anything further on this subject before we move
15 to the next one?

16 **MR. MELLO:** No, Your Honor.

17 **THE COURT:** Okay. Transfer number -- excuse me.

18 "Transfer."

19 Roman Numeral II is "Testing and Transfer Protocols." So
20 I reviewed the description of the process in the Case
21 Management Statement. This has been the subject of an awful
22 lot of work and discussion.

23 The Receiver's office has issued what it, I think, regards
24 as the final for now, because it will be revised -- the
25 final-for-now August 19, 2020, Screening and Testing Matrix.

1 The defendants' position is *we're going to follow the matrix*.
2 The plaintiffs' position is they feel that the draft changed
3 following the submission of their comments in ways they didn't
4 have a chance to weigh in on.

5 And I think my question for the plaintiffs is how did it
6 change in a way that you have concerns about? And here's what
7 I mean. In the statement, these are the examples of new
8 measures that were included in the plan that you feel you
9 didn't have a chance to weigh in on: That people be
10 quarantined or in single cells or cohorts of 10 or fewer prior
11 to transfer; that people in transit, both incarcerated and
12 staff, wear N95 masks; and that rapid tests be used prior to
13 some transfers. That's a quote from the statement.

14 I'm assuming those are all good things, and they're better
15 than -- in other words, that the plan became better with the
16 addition of those things than without it.

17 Are there examples of ways in which the plan changed that
18 you think are deleterious to the matrix? Anybody?

19 **MR. SPECTER:** I'll let Ms. Hardy -- oh, sorry.

20 **THE COURT:** Ms. Hardy.

21 **MS. HARDY:** Hello, Your Honor.

22 Yes. We have questions about the new procedure because we
23 saw it for the first time and learned that it was final as of
24 yesterday.

25 The provision for pre-transfer quarantine adds the

1 quarantine of people in groups of up to ten. The question that
2 that raises for us is that under the matrix, someone who tests
3 positive on the 14th -- I'm sorry -- tests negative on the 14th
4 day, according to the matrix, will be transferred to the next
5 institution.

6 What our question is, is what if that person tested
7 negative but others in the cohort tested positive, would that
8 nix the transfer? Perhaps; perhaps not. But that's not
9 answered in the matrix, so we don't know.

10 It's possible that that concern will be addressed by the
11 fact that when they arrive at the next prison, they will be in
12 quarantine for the next 14 days; however, we don't know what
13 happens on that bus. On that bus will there be people from
14 other institutions who may be exposed to somebody and you don't
15 know that they are necessarily negative because they've been
16 exposed.

17 So these are the scenarios that are playing out that
18 because we just received this, we've not had an opportunity to
19 discuss with the Receiver or the defendants, and we have asked
20 our public health expert to weigh in on this as well, but we
21 haven't had time to hear back yet.

22 As to the N95 masks, yes, N95 masks are wonderful. Our
23 question is how do you get the counties and the county staff to
24 provide them to the people who are transferred to the prisons
25 from the jails?

1 **THE COURT:** Let's talk about that when we get to
2 intake.

3 **MS. HARDY:** Okay.

4 **THE COURT:** I actually --I want to sing a verse from
5 that song when we get to intake.

6 **MS. HARDY:** Okay.

7 **THE COURT:** But right now, let's focus on
8 intra-system -- inter-institutional but intra-system transfers.

9 **MS. HARDY:** Sure.

10 And then as for the rapid tests, the rapid tests, I think
11 as we all know, are less precise than the PCR tests, and so it
12 may be appropriate to use them under the circumstances that the
13 Receiver has identified for the first time in this matrix, but
14 perhaps it's required or should be required that both the PCR
15 and the rapid test be used, and so that's a question, again,
16 that we're pursuing with our healthcare -- I'm sorry -- our
17 public health expert.

18 And so it's not that we think this is necessarily a bad
19 matrix; it's that it has new provisions that are substantially
20 different from what we had known the matrix to be, and so we
21 are trying to do our due diligence to ensure that it contains
22 all of the measures that are necessary to make this as safe as
23 possible under the circumstances.

24 **THE COURT:** Thank you. That's helpful.

25 Mr. Mello or Ms. Wolff, do you want to say anything

1 further on this subject?

2 **MR. MELLO:** No, Your Honor.

3 **THE COURT:** Mr. Kelso, do you want to respond now?

4 **MR. KELSO:** Yes, Your Honor.

5 We're happy to take additional input from all
6 stakeholders, including the PLO, and we're delighted to have
7 continuing conversations about ways of improving the matrix. I
8 think, as you said, this is final for now. We expect, frankly,
9 over the course of the next several weeks as we begin to use
10 the matrix we will learn things. Some things may not be at all
11 feasible. We'll discover that. So it's going to remain very
12 much a document that we have to modify on an ongoing basis.

13 And, again, we look forward to having conversations with
14 the PLO to answer some of these questions.

15 **THE COURT:** Thank you. A lot of chicken-and-egg
16 problems in this case.

17 We need to have sufficient space set aside in our
18 institutions to provide isolation and quarantine cells. Not
19 all cells are created equal. As I understand it,
20 Judge Armstrong is in the process of briefing and ordering
21 orders that will set aside sufficient cells for disabled
22 persons. I welcome that order. Judge Wilken's case is part of
23 the coordination with Judge Mueller's *Coleman* case.

24 Also we need to address the housing needs of our medically
25 high-risk incarcerated persons. That process has begun, but it

1 is not complete.

2 Providing adequate set-aside for quarantine and isolation
3 will require -- the good news is in many institutions, thanks
4 in part to the population reductions but also the hard work of
5 a lot of people, we've got the space, but we all know there are
6 institutions where that's not true. And absent a population
7 reduction order, the only way we're going to get that space is
8 by moving incarcerated persons from one institution to another.
9 And we all want all those things, including the very best
10 Screening and Testing Matrix we can get.

11 I'll think about it. This might not be the last word on
12 the subject, but I'm probably not going to make any order
13 regarding the Screening and Testing Matrix because I want these
14 other efforts to proceed, and, I frankly, trust Mr. Kelso to
15 conduct -- or to allow, rather, and to supervise
16 intra-institution transfers at a low enough rate that we can
17 take this slowly. And I also take him at his word when he says
18 he'll consider these additional comments.

19 Ms. Hardy, that's not in any way to minimize the concerns
20 you raised. I thought those were good questions, and I had not
21 thought of those, obviously, when I said what I said.

22 Okay. Let's talk about intake. The State has indicated
23 its intent to resume intake on Monday. It's true I said I
24 wanted notice. I didn't say how much, so here we are.

25 Intake for now will consist of 50 new incarcerated persons

1 at each of North Kern State Prison and Wasco State Prison.

2 I have some questions. First of all, previously I raised
3 the subject of what requirements can the State impose on
4 transferor county institutions as a condition of accepting new
5 inmates from those institutions, and Mr. Mello gave me a very
6 good answer. It wasn't clear, but that's not his fault. I
7 mean, he wrote it in a clear way. What he said is, "The law is
8 not clear. Here's the law as we understand it." It was very
9 helpful.

10 Not that long ago, the Michigan Department of Health and
11 Human Services issued an emergency order requiring, among other
12 things -- well, it was about prison staff testing. That's one
13 thing. But also they temporarily suspended all intake unless
14 the transferring jail or local lockup satisfactorily
15 implemented risk reduction protocols and testing protocols that
16 had been devised and implemented by the state.

17 Was everybody in this conference already aware of the
18 Michigan order? No. Well, I don't like it when people
19 surprise me at Case Management Conferences. If I had thought
20 about it, maybe I would have circulated something.

21 So here are my questions: The first is why shouldn't I
22 order -- why shouldn't I issue an order imposing similar
23 requirements on the State? I anticipate Mr. Mello might say,
24 "You don't have the authority. First of all, you'd have to
25 show we're deliberately indifferent. You don't have the

1 record." I'm not too worried about that, frankly, on this
2 issue. But he might say, "It has the effect of reducing
3 population. It's a population-reduction order. You don't have
4 the power to do that by yourself."

5 The reason I ventilate that argument now is I just want to
6 know whether the State would resist the order for any reason,
7 because it just seems like such a darned-good idea, what
8 Michigan did.

9 The next question -- the other questions after that are a
10 lot smaller. Where are the inmates coming from? Are they
11 coming from any particular institutions? Can we identify which
12 ones? How numerous are they? Have any decisions been made on
13 that subject, or is it just kind of first come/first serve, or
14 is it random? What do we know about the public health and
15 infectious disease practices of the transferor institutions and
16 the communities in which they are located? With regard to the
17 communities, the best word is probably not "practices"; it's
18 "conditions" or something like that.

19 How soon after the first hundred will there be another
20 hundred? As to that group of hundred or however many it is,
21 same questions.

22 Mr. Mello?

23 **MR. MELLO:** Thank you, Your Honor. And I will look at
24 that Michigan order.

25 With respect to our appetite for such an order, I would

1 have to ask my clients, Your Honor, and I will not restate your
2 very good PLRA arguments that you indicated earlier.

3 I can answer your questions about the first week. I think
4 this is a test and -- my term. We are accepting 50 from two
5 different counties: 50 from San Joaquin County will go to one
6 of the reception centers and 50 from Kings County will go to a
7 different reception center.

8 It is worth noting a couple of things. The two reception
9 centers are Wasco and North Kern. They currently stand at a
10 population density of, at Wasco, 63.8 percent of design bed
11 capacity, and North Kern State Prison at 59.8 percent of design
12 bed capacity. There is a great deal of isolation and
13 quarantine space.

14 We are, of course, pursuant to the transfer matrix that we
15 were waiting on and we are also waiting on and optimistic but,
16 of course, vigilant -- we were waiting on it to start this
17 test, I believe. It will be reevaluated before a second group
18 is decided, so I suspect sometime next week there will be a
19 determination about the following week and this testing
20 process, Your Honor. That's the information.

21 Of course pursuant to the transfer matrix document and the
22 intake procedures set forth therein, we are acting like we
23 don't have information about these persons who are coming into
24 our facility and we are being hypervigilant as to how they are
25 being housed and how they will be tested multiple times, but we

1 are asking these two counties -- asking -- again, I don't want
2 to overstate it. We asking the counties to not send us anybody
3 who is positive, anybody who has refused to test. We are
4 asking that they all be tested. We are asking that they be
5 transported with both transportation staff and the incarcerated
6 population coming to our facilities in N95 masks. Those are
7 some of the things that we are doing in that process and are
8 asking. We picked these two counties because they are trying
9 to cooperate with us for this test. And, in addition, we are
10 then going to treat --

11 **THE COURT REPORTER:** I'm sorry, Mr. Mello, you --

12 **MR. MELLO:** I broke up?

13 **THE COURT REPORTER:** Yes, you did.

14 **MR. MELLO:** It's probably the smoke. I apologize.

15 So we are again treating them and going to follow the
16 matrix so that if somebody gets in who is asymptomatic or who
17 tested negative, that hopefully our procedures on the front end
18 will work.

19 But those, I believe, are the answers, and then there will
20 be an update next week that I can already assume -- I have an
21 email from Mr. Fama in my email asking for communication about
22 the following week, the week of the 31st, Your Honor. And so
23 we will answer questions as they come.

24 I am sure I missed some of your questions, Your Honor, so
25 if you have more, please, inquire away.

1 **THE COURT:** No. I think we're mostly there. I guess
2 the only remaining of the questions I asked earlier is are
3 there present -- has CDCR presently decided when it will accept
4 its next group of intake, and if so, in what number and from
5 what counties?

6 **MR. MELLO:** And the answer is I don't believe so. I
7 think they're trying to evaluate this in realtime and make
8 decisions and see how next week goes.

9 I should also say I don't believe it's necessarily going
10 to start on Monday, but it will be next week.

11 **THE COURT:** I see. Very good.

12 **MR. MELLO:** So we gave you just a little bit more
13 notice.

14 That was a bad attempt at a joke, Your Honor.

15 **THE COURT:** That's all right. I'll take what I can
16 get, as in all things.

17 Mr. Specter, further comments on this question on intake?

18 **MR. SPECTER:** Yes. I'm going to turn it over to
19 Ms. Hardy again, but before I do, I would just like to say that
20 we are somewhat concerned about the evaluation process, and we
21 haven't heard that Mr. Mello mentioned -- and we haven't
22 discussed this with Mr. Kelso, although I'm sure he will be
23 open to such a discussion -- about how, in fact, they are going
24 to ensure that the policies and procedures which the matrix
25 propounds are implemented properly.

1 I think if you remember back to the CIM incident, they had
2 policies and procedures. They just weren't followed. So
3 that's also part of our concern, and we hope that Mr. Mello and
4 Mr. Kelso will give us more answers on those.

5 **THE COURT:** Mr. Kelso can respond if he wants to, but
6 I actually think it's probably best if you have that discussion
7 offline. It will take some time. And my guess is that the
8 State is well aware of the failures of process that occurred in
9 regard to the CIM transfer, and they share your desire that
10 there not be mistakes like that again, and so if they have
11 missed something and you're able to point that out to them, I
12 have a feeling that Mr. Kelso and Mr. Mello would be happy to
13 have that conversation. So that's my suggestion.

14 I hope this goes without saying. I very strongly share
15 your feeling that these procedures be rigorously -- that these
16 procedures be widely disseminated, clearly explained, and
17 rigorously enforced.

18 **MR. SPECTER:** Thank you, Your Honor.

19 I will turn it over to Ms. Hardy for any further comments.
20 Thank you.

21 **THE COURT:** Ms. Hardy?

22 **MS. HARDY:** Thank you, Your Honor.

23 I think that you and Mr. Specter have encapsulated our
24 concerns. I would just add that the CDCR has the opportunity
25 to do a sort of trial run on how the matrix works by working

1 within the intra-system transfers that it already has, and
2 there are, as you point out, many people who are likely in
3 prisons now that they ought not to be, and so plaintiffs, once
4 again, ask the defendants, as we have all asked in the past
5 week and have not received a response, to delay until a trial
6 run can be done to ensure that everyone is well-versed in what
7 the matrix protocols are, which are quite complicated and
8 complex, to determine whether or not they are effective.

9 **THE COURT:** Thank you.

10 Mr. Mello, further comments on this intake question?

11 **MR. MELLO:** No, Your Honor.

12 **THE COURT:** I'm trying to think what a next step is
13 with regard to this Michigan idea that I've sprung on
14 everybody.

15 It's hard to say something in the softest possible terms
16 when you're the judge, but I'll try.

17 In the softest possible terms, I might have some interest
18 in testing the limits of my authority with regard to ordering
19 that the State not accept inmates unless it has something
20 stronger with regard to their infectious disease processes than
21 simply a request that they follow those processes, which is
22 what I understand from Mr. Mello is the state of things now.

23 So I hadn't thought this through all the way, but perhaps
24 the best way of getting there as a next step -- because this
25 issue is going to be around for quite a long time -- is just to

1 ask the parties to meet and confer among themselves and answer
2 the following questions:

3 First -- and I don't think you'll have any trouble finding
4 this Michigan order. And it's not their protocols that I'm
5 interested in. It's the fact that -- I don't want to adopt all
6 of their testing protocols and that sort of thing. We have our
7 own protocols. It's the idea that they make the county
8 transferor institutions adopt and follow those protocols.

9 So the question is, is that something that we should be
10 doing here? If not, why not? If some or all of the parties
11 conclude that this is something that we should be doing, who
12 opposes it? And if they do, why? If the State will take the
13 position that I don't have the authority to make that order,
14 that's fine, they can state that position, but I would like to
15 know whether there is any other reason that they oppose that
16 relief or whether it's simply sufficient to say that I
17 shouldn't do it because -- or whether it is the case that they
18 have no public health reason for opposing the release; they
19 simply don't want me to make the order.

20 And if you could just report back on that to me in the
21 next Case Management Statement, that would be great. We will
22 see where the meet-and-confer takes us.

23 As a side note before I get off of this, let me just say
24 obviously it's sort of in everybody's interest because once you
25 establish that as a condition, then it becomes a huge incentive

1 for the counties to get on board because they want to get those
2 inmates into the state system. I have to think that the
3 populations are building up within these counties. I know the
4 county jails are releasing people, but it's been months now.
5 So you create an incentive system where people really have a
6 strong incentive in the counties to come into compliance with
7 good public health practices, and we wind up keeping a lot of
8 people safe, not just the people that are coming into our
9 system. So that's my parting thought on that.

10 The next topic in the Case Management Statement is
11 "Setting Aside Space for Quarantine and Isolation and a Court
12 Order Regarding the Same." And, gosh, everybody has put in so
13 much work on this, and I know there are some disagreements, but
14 overall, you've come to a lot of agreements, you've worked very
15 hard with the public health and infectious disease experts, and
16 I'm grateful both for the work that people put into it and for
17 how well it seems to have come out so far. I know there are
18 some bumps. We'll talk about those.

19 So I guess there are two separate things here. One is
20 institution by institution, what are the problems of figuring
21 out how much space we need? We'll talk about that in a second.

22 The other thing is what happened at CMC, which is they had
23 the space. They knew what to set aside, and they didn't take
24 advantage of it. I don't know that much needs to be said at
25 this conference about that except we need to have clear

1 direction to each prison as to how to use and the necessity of
2 using quarantine and isolation space once it's been set aside.
3 Apparently that didn't happen at CMC.

4 I'm assuming that such direction has already been given
5 and that defendants have confirmed that institutional
6 leadership at each prison is clear on the contents of the
7 policy. And if that isn't so, then I assume it will happen
8 because I just asked that it happen. But I don't have anything
9 substantive beyond that to add.

10 Mr. Specter.

11 **MR. SPECTER:** Thank you for that direction,
12 Your Honor. We will work towards making sure that it happens.
13 We agree with you.

14 And I'm going to turn it over to Mr. Fama to talk about
15 the rest of the issues in that section.

16 **THE COURT:** Well, actually before we get to that, let
17 me just see if the defendants want to say anything because I
18 actually want to say a little bit. I have some questions for
19 the defendants about the other parts of the section which are
20 the specific institutions.

21 So, Mr. Mello, anything further you want to say about
22 making facility leadership understand the set-aside policy?

23 **MR. MELLO:** It was brought to our attention that that
24 occurred. They have been informed and will continue to be
25 informed, Your Honor.

1 **THE COURT:** So let's jump to the other part, and then
2 I can hear from Mr. Fama.

3 What it says in the statement regarding the process of
4 devising -- of identifying set-aside space, "at the
5 majority" -- excuse me -- "at the overwhelming majority of
6 prisons, the first phase of this effort is complete," etc.
7 Then it says, "But CDCR has determined that its original plans
8 for reserved space at California Medical Facility, Chuckawalla
9 Valley State Prison, and Avenal State Prison require
10 significant revision, and transfers might be necessary to
11 create space at Avenal and Chuckawalla," and then there is a
12 separate mention of San Quentin, Folsom, and California
13 Rehabilitation Center.

14 Someone reading that might quickly, if they read it
15 quickly -- they might draw the conclusion that except for those
16 six spaces, the process is done everywhere because those are
17 the six spaces that are called out by name, but I'm not sure
18 that's right. So one question is, is it correct that except
19 for those six institutions, we now know how much set-aside
20 space we need in the various prisons?

21 The second question I have is for the six prisons that
22 I've identified, when will the quarantine and isolation
23 set-aside plans be finalized?

24 **UNIDENTIFIED SPEAKER:** Thank you.

25 **THE COURT:** Somebody just said "thank you" in the

1 background. I'm not sure who said that, but you're welcome.

2 I guess I should ask the defendants first what the answers
3 to those questions are.

4 **MR. MELLO:** So with his permission, I think I may turn
5 this over to Mr. McClain because he's closer to this issue.
6 And so --

7 **THE COURT:** Very good.

8 **MR. MCCLAIN:** Yes. So, Your Honor, I drafted that
9 part of the statement that you just referenced. Sorry if it
10 was confusing.

11 What I was referring to when I said the initial phase, I
12 was referring to CDCR's initial proposal to set aside one
13 housing unit with a minimum of 100 beds, and the Court then
14 ordered that CDCR --

15 **THE COURT:** Oh, I see.

16 **MR. MCCLAIN:** -- proceed with that plan, and that's
17 what I was referring to there, not the -- not the later phases
18 in this process that we're still working through.

19 **THE COURT:** Mr. McClain, I've had a busy week. I'm
20 sure I was just reading too quickly.

21 Let me just ask you the broad question then. Where are we
22 in regards to having a consensus at the various institutions
23 regarding set-aside needs for quarantine and isolation? And
24 this seems like a good place just to insert in this particular
25 transcript that for COVID purposes, the question of delegated

1 and non-delegated is not relevant, so at all the institutions
2 in the state, where are we?

3 **MR. MCCLAIN:** So I think where we are, Your Honor, is
4 we have the assessment that the Court asked for in paragraph 3
5 of the order, which was an assessment of the amount of space
6 that under public health considerations only -- sort of
7 ignoring any other issues or considerations -- the amount of
8 space that would be ideal from a public health perspective. We
9 have that now. And where defendants are in the process is they
10 are looking at those assessments, trying to figure out where
11 transfers may be necessary to create the space that was
12 identified in those assessments, and also evaluating whether
13 they agree completely that all of that identified space is
14 necessary.

15 **THE COURT:** So I'm going to ask the PLO in a second
16 what they think I should do, but I'll let you go first.

17 So if you were me and you're trying to make the fastest
18 reasonable progress on this issue that you can, what would you
19 do?

20 **MR. MCCLAIN:** Well, Your Honor, I think that -- that
21 defendants have been moving fast on this and --

22 **THE COURT:** I agree. That's why I'm asking you.

23 Let me tell you what I mean. Some institutions have
24 enough space. I wouldn't say anybody has more than they need
25 because I don't even know what that would mean. I think the

1 more space you have, the better. Nobody has more space than
2 they need. Some people are at target and some people are
3 substantially above target. I'll say that. Some people are
4 below target. They don't have the space they need. As to many
5 of those, the parties will agree; as to a couple, there may be
6 disputes or, you know, differences of opinion.

7 So I see a couple of different things that need to happen,
8 places that we need to get to in terms of a decision-making
9 process.

10 First we have to come to closure on what each institution
11 needs, and let's clean up the table. And by that I mean we
12 have round numbers, 35 institutions, something like that. If
13 we're only going to fight about four of them, let's just put it
14 on record *as to 31 we agree, here's what it is*. Then those
15 institutions can get down to business, and now that we have a
16 transfer matrix, we can get down to the business of figuring
17 out, you know, what to do, which I'll come back to in a second.

18 And then we can figure out well, how do we conclude the
19 fight about the four? What does that mean? Is that a letter
20 brief? Is that a motion? Does it require an evidentiary
21 hearing? It's a very important topic, and it could have large
22 ramifications for other issues in the case.

23 So I want to make sure that we focus our energies -- we're
24 all working very hard on this case. I don't want to spend a
25 lot of time or energy not reaching the right question, but

1 that's going to be -- that's going to be an important fight,
2 whether it's four institutions or ten, whatever it is.

3 So what does that look like? And what do we need to do to
4 make that fight ripe? How long will it take to make that fight
5 ripe? That would be what I would call the first threshold.

6 The second threshold is once you get there for any
7 particular institution, meaning we either agree on what the
8 set-aside is or we don't agree, but there's a dispute and the
9 Court resolves the dispute, one way or another, we know what
10 the set-aside needs to be at this institution.

11 If the institution has sufficient cell space, probably at
12 that institution, all we need is a process of certification.
13 We'll need somebody in leadership to conduct a cell -- a bed
14 audit. It needs to be supervised by Mr. Kelso's office, what
15 that audit looks like. And they come back with an audit. They
16 said, "We did the audit. We have the beds. Here's where they
17 are located. Here's what type of cells they are." You match
18 that up to our general requirements and the specific
19 requirements of the *Coleman* case and the *Armstrong* case. Okay.
20 That institution is done.

21 You have other institutions, they don't have the cells, so
22 you have to figure out what are you going to do? Are you going
23 to use tents? Are you going to do transfers? If you're going
24 to do transfers, where are you going to transfer them to? What
25 is that going to do to the bed space and cell space of the

1 receiving institution? How is that going to affect their
2 set-aside and quarantine plans?

3 I'm taking longer to say all this than I thought I would,
4 but it's in part because this process has so many different
5 parts.

6 My interest is in figuring out how soon we can cross each
7 of these thresholds, make each of these decisions so our
8 institutions can be ready for the next outbreak. And if there
9 are going to be fights that need to be litigated, what is the
10 form -- what form does the litigation take and when can we do
11 that?

12 I don't know if you're ready for that extensive of a pop
13 quiz.

14 Your turn.

15 **MR. MCCLAIN:** Well, I would just say, Your Honor,
16 that, you know, I -- we agree that this -- probably the first
17 step in this process should be to see for which prisons the
18 parties are basically in agreement or satisfied with the space
19 that -- that has been set aside. There probably needs to be
20 some sort of a meet-and-confer about the prisons where there
21 isn't yet agreement or where CDCR has not yet figured out how
22 or whether it can meet the public health assessment that has
23 been generated.

24 As far as sort of a methodology for proceeding, if we're
25 unable to reach agreement on something, I would suggest that

1 the Court's order offers some guidance there, which is that the
2 issue -- if an agreement can't be reached, that the issue be
3 briefed for the Court.

4 **THE COURT:** Very good. That's very helpful.

5 Mr. McClain, you don't frequently address the Court, and I
6 would invite you to do it more often. That was very helpful.

7 Mr. Specter, do you want -- let me hear from the
8 plaintiffs on this question that I just asked Mr. McClain.

9 Let me start by observing tentatively the answer might be
10 to just ask the parties to meet and confer on these topics and
11 then include a section on this in their next Case Management
12 Statement because we're probably not going to get to a
13 resolution on these issues today, and there's a lot of kind of
14 scheduling and intermediate steps and intermediate deadlines
15 and stuff like that.

16 But I would like to hear any preliminary thoughts that you
17 do have, Mr. Specter.

18 **MR. SPECTER:** Sure. I will make another preliminary
19 thought and then turn it over to Mr. Fama.

20 But what we're waiting for at the moment is -- what was
21 required by your order on this subject is an assessment by the
22 CDCR of the public health group's recommendations, and I
23 believe that after that assessment, there's a process for
24 meet-and-confer involving Mr. Kelso and then joint briefs if we
25 have disagreements. But we can't move forward until we hear

1 from the defendants what they are going to do. And I believe
2 this assessment was due sometime earlier this week.

3 **THE COURT:** I see. So maybe actually I -- maybe I
4 already have enough process in place. I can just go with the
5 process I already set out, and we just need to figure out when
6 the assessment is coming in.

7 **MR. SPECTER:** That would -- it would be helpful if we
8 could get a sense of when the assessment is going to -- because
9 they're already late, so we don't know when it's going to come.

10 **THE COURT:** Okay.

11 Mr. McClain, any thoughts on when the assessment might
12 come?

13 **MR. MCCLAIN:** I don't have a deadline from my client
14 for that, but I can tell you that my client has been working
15 very hard on that since Tuesday when we got the assessment
16 based on the public health perspective, so I would hope that we
17 will have a better sense of our position on the various prisons
18 by next week, but I haven't spoken to anybody about exactly
19 when they think that's going to be completed.

20 **THE COURT:** I see.

21 Mr. McClain, does your client have your cell phone number?

22 **MR. MCCLAIN:** I believe so.

23 **THE COURT:** Do you have your cell phone with you?

24 **MR. MCCLAIN:** I do.

25 **THE COURT:** Could you put it in front of you?

1 **MR. MCCLAIN:** Yes.

2 **THE COURT:** Perhaps somebody from your client will
3 send you a text that will suggest a date by which they feel
4 confident they can provide this assessment, which will relieve
5 me of the need to set any kind of deadline. And I'll just make
6 a note to myself that this is a topic that we should come back
7 to before the end of the conference.

8 **MR. MCCLAIN:** If I get that text, I will pass it
9 along.

10 **THE COURT:** I appreciate that.

11 Okay. I obviously have not kept in my own mind the
12 specifics of the process I ordered earlier, which does strike
13 me as adequate, and the parties are free to refine it or make
14 suggestions for its refinement in the next statement. I do
15 think we need to get this assessment so we can get the ball
16 rolling.

17 I appreciate everyone's working very hard. I don't
18 dispute that. It's just we need some kind of deadline so that
19 everybody can know that the thing is moving forward. So we'll
20 just come back to that.

21 **MR. SPECTER:** I think Mr. Fama still wants to add a
22 comment, if you would allow it.

23 **THE COURT:** Sure.

24 Mr. Fama.

25 **MR. FAMA:** Not on the -- Mr. Specter and Your Honor

1 have set forth what needs to be done with quarantine and
2 isolation set-aside space issue, which is the first step is we
3 need the assessment of defendants of the CDCR.

4 If I could just briefly on the topic that you began with
5 with regard to what happened at CMC, of course clear direction
6 must be given to the prisons, but to put a fine point on it but
7 an important one, we believe, it's known that a patient who
8 tests positive should not or shall not be kept in a housing
9 unit with those who are not known to be positive, and that's
10 been known from very early on, and if that direction weren't
11 known, it would be shocking. And what instead we believe is
12 necessary is a specific written procedure that says when the
13 prison receives a lab result stating that a patient is
14 positive, then one, two, three, four, whatever the number of
15 things that have to happen need to happen so that the patient
16 gets moved because a nurse or a doctor reviewing the lab result
17 is not going to be the one that moves the patient. There will
18 need to be communication with custody. The doctor may need to
19 first talk to public health, and public health may then need to
20 talk to custody. And then that policy should address what
21 happens if people don't do that. Provide both a
22 belt-and-suspenders approach and an accountability provision.

23 And it's those sorts of details that are necessary to be
24 provided or required of each prison, and that's what we hope
25 and -- and if -- has to happen in these -- to prevent these

1 situations or minimize them from happening again.

2 **THE COURT:** Thank you.

3 I agree that there should be very specific policies with
4 regard to every aspect of the management of COVID, including
5 the one you identify. And the Receiver has heard your
6 comments, and I'm sure he'll take them into consideration, and
7 you should feel free to raise the issue with him in your side
8 conversations or your meet-and-confer discussions, if you feel
9 you need more specifics.

10 Folks, I need to take a five-minute break. I'm getting a
11 sore throat, and I just need to get some water and some other
12 things. It's going to be like a recess in court. People need
13 to be able to count on court starting and resuming at a
14 particular time. So five minutes from now, I'll turn my video
15 back on, and for five minutes, we'll be in recess. Thank you.

16 (Recess taken at 3:04 p.m.)

17 (Proceedings resumed at 3:10 p.m.)

18 **THE COURT:** Okay. The next topic is Roman Numeral IV,
19 which is, "Safely Housing Medically Vulnerable People."

20 The statement acknowledges that the process of doing that
21 has finally begun, and plaintiffs essentially pose the question
22 what's next? When will there be additional movement on this
23 topic?

24 Mr. Kelso, maybe the fastest way of -- the most efficient
25 way of handling this is just for me to ask you what the current

1 long-term plan at CCHCS or CDCR is for the housing of medically
2 high-risk people who currently live in dorms.

3 **MR. KELSO:** Yes, Your Honor.

4 The plan is to begin movement of a portion of the first
5 group of high -- super high-risk COVID patients early next week
6 now that we've completed the movement matrix and we know how
7 many vacant beds you need to have.

8 The super high risk -- that refers to patients who are in
9 dorms with a COVID adjusted risk score of 11 or higher, and
10 Mr. Cullen has indicated that those moves will take place and
11 can take place, and I think it's around 8 or 10 prisons where
12 those patients are located. I think it's about 40 percent of
13 them are located at CCHCS -- I'm sorry -- at Stockton, at CMF,
14 and that the patients -- the super high-risk patients at
15 Stockton and CMF are unlikely to be moved because they are
16 where they should be within those two facilities.

17 And in the case --

18 **THE COURT:** May I ask you a question about that?

19 **MR. KELSO:** I'm sorry?

20 **THE COURT:** Can I ask you a question about that?

21 **MR. KELSO:** Yes, please.

22 **THE COURT:** I'm hazarding a guess that that's because
23 that's a combination of they need to be at those particular
24 facilities because of their medical-care needs and because
25 those facilities -- I don't really know -- I don't remember

1 anymore the Stockton layout that well, but CMF just doesn't
2 really have that many individual closed-door cells.

3 **MR. KELSO:** That is correct.

4 **THE COURT:** Okay.

5 **MR. KELSO:** And I will reconfirm with my medical team
6 the first assumption that you have asserted, that they should
7 not be moved to any other institution.

8 I want to make sure that that actually -- I did not ask
9 that particular question. I want to make sure that we have
10 asked that question. It's a good question.

11 **THE COURT:** Yes.

12 **MR. KELSO:** The other patients will be moved next
13 week. We had informed, I believe, counsel a few days ago of
14 what that was likely to look like. A fair question was asked,
15 is that the end of the program? Are you going to look at
16 moving more than those people who are at 11 plus? And I
17 responded that it is not the end of the program; that once we
18 have completed those moves, we'll start taking a look at COVID
19 10 plus, COVID 9 plus, and do as many of those moves as we can,
20 consistent with maintaining sufficient open space for
21 quarantine.

22 So the program doesn't end. We simply next week will see
23 if we can do the first set of moves.

24 **THE COURT:** Ms. Hardy, I seem to recall this was your
25 issue last time. Would you like to say anything further on

1 this topic?

2 **MS. HARDY:** Thank you, Your Honor.

3 I'm glad to hear from Mr. Kelso that the process will
4 continue. I look forward to getting a lot more information
5 next week after this group is housed so that we can assess how
6 quickly the next wave should happen.

7 **THE COURT:** Thanks.

8 Mr. Mello, anything further on this topic?

9 **MR. MELLO:** Nothing further.

10 **THE COURT:** Thanks.

11 The Case Management Statement saved the best for almost
12 last. Roman V, "COVID-19 Testing," including "staff
13 screening." I think I should really talk about these issues
14 together.

15 We can cut through a lot of this because CCHCS is taking
16 over staff testing, and I assume that means they're taking over
17 screening also, so a lot of the concerns I raised and the
18 litigation we were inch-by-inching along with appears now no
19 longer to be necessary, at least in that format.

20 I do want to say something very briefly about the OIG
21 report. That was very disappointing to me to read that. The
22 OIG report said that there were failures adequately to screen
23 visitors into the institutions in very large numbers. I don't
24 remember the exact number, but it was in the 20 percent --
25 20-plus percent, so these were not idiosyncratic failures; they

1 were systemic failures. And of course we can't know what
2 resulted from those failures in the past, but nothing good --
3 the answer is nothing good happened because of that. And so I
4 am glad somebody else -- I'm glad somebody else is taking over
5 that process, and I'm glad the "somebody else" is Clark Kelso
6 and his office.

7 I'm sorry. I just need a second with my notes.

8 So I assume that the -- I haven't had a chance to talk to
9 Mr. Kelso about this. I'm assuming that Mr. Kelso is going to
10 start with the testing plan that the defendants promulgated
11 because that's what there is, but I don't know that that's the
12 end of his thinking about this.

13 The parties already know, based on questions that I've
14 asked at earlier Case Management Conferences, what concerns and
15 questions I had about the State's testing plan. I don't need
16 to repeat those here.

17 There also are some aspects of the Michigan public health
18 order that I mentioned earlier that I think might represent
19 improvements if they were adopted.

20 Mr. Kelso, maybe I could just ask you, you obviously know
21 this is happening because you're the one who agreed to do it.
22 Maybe you could share whatever preliminary thinking you have on
23 screening and testing now that CCHCS is taking over that
24 function, and if you want to, you can address the OIG report,
25 but you don't have to.

1 **MR. KELSO:** Yes, Your Honor. Happy to address the OIG
2 report, just to begin with.

3 It clearly has recommendations that need to be followed so
4 that everyone is tested. The testing location needs to be
5 essentially standardized and centralized so that you only get
6 into the facility by going through a place where there is
7 testing that will be done, screening that will be done.

8 **THE COURT:** May I interrupt you?

9 **MR. KELSO:** Yes, please.

10 **THE COURT:** Can I tentatively take away from what you
11 just said that we can now know that symptomatic staff will now
12 be tested?

13 **MR. KELSO:** Symptomatic staff, the -- my team -- we
14 believe the direction that we will take is symptomatic staff
15 will be tested. If they show up symptomatic, they will be
16 tested immediately and then not permitted into the facility.
17 And my understanding is that then the protocol that we are
18 likely to develop would be that if that same worker comes back
19 the next day, we'll be there, and they will be tested until
20 there will be a sufficient belief that that worker does not
21 pose a COVID risk.

22 I'm hedging here a little bit, Your Honor, because it
23 actually is a complex question. My staff needs a week or two
24 to figure out the details.

25 **THE COURT:** I think -- I put you on the spot. I need

1 to provide you with a little cover. I used the word
2 "tentatively," but I'm not sure that's enough.

3 I'm not asking you to make any commitments. I think that
4 everyone should understand is that what you are talking about
5 today -- when you're speaking today, you're talking in terms of
6 goals.

7 **MR. KELSO:** Yes.

8 **THE COURT:** You have to evaluate whether you have the
9 sufficient -- whether you have sufficient resources and the
10 lack of other constraints to achieve your goals. And I just
11 latched on to something that you said because as you know from
12 my earlier questions, this is something of great interest to
13 me.

14 Okay. Well, that's very encouraging and maybe -- not in
15 terms of formal reporting, but could I maybe just ask you to
16 make a report to the parties by the middle of next week about
17 any modifications or improvements you're contemplating with
18 regard to the State's existing testing plan?

19 **MR. KELSO:** Yes. I would be happy to do so.

20 **THE COURT:** Okay. Very good. And then the parties
21 can come to me in the following Case Management Conference, and
22 they can let me know if there is any further attention that
23 they think the Court needs to give this topic or whether for
24 now that subject can revert to an informational item.

25 And I know that -- Mr. Kelso, I know that your team

1 already has a tremendous amount on its plate, and I think I
2 appreciate the amount of work that will be required to take
3 over this testing and screening -- these testing and screening
4 processes, and I am very grateful to you.

5 The next sub-item there is "Testing Incarcerated
6 Population," and that seems informational. It seems like the
7 parties are working well together.

8 Is there anything further anybody else wants to say on
9 that subject?

10 **MR. MELLO:** No, Your Honor.

11 **THE COURT:** I'm seeing shakes of the head from side to
12 side.

13 I think I put in the same category the last two big Roman
14 Numeral items, which are "Patient Education" and "Prison
15 Updates." We saw we still have some progress to make on
16 patient education, but it seems like the parties are getting
17 there, and, again, it seems like people are working well
18 together.

19 Mr. Specter, anything on either of those two items?

20 **MR. SPECTER:** Actually, Your Honor, I think Mr. Fama's
21 points are important, and since you seem to understand the
22 issues, unless he wants to elaborate, I don't think there is
23 anything further to say.

24 **MR. FAMA:** No. Nothing further, Your Honor.

25 **THE COURT:** I'm just pulling up on my screen -- it

1 looks to all of you like I'm looking at you, but I'm not. I'm
2 looking at my screen because I'm looking at a computer copy of
3 the Case Management Statement.

4 I see. Yes. I agree with the comments in that statement
5 about the importance of having clear, consistent patient
6 education regarding COVID diagnosis, and the reason I said it
7 was informational to the Court is that it appears to me that
8 the parties share that concern and that they're making
9 progress, and if in a future conference it appears that that's
10 no longer the case, I'm sure the parties will tell me.

11 Mr. Mello, anything about those last two items, patient
12 education and prison updates?

13 **MR. MELLO:** No, Your Honor.

14 **THE COURT:** So there are a couple of other updates the
15 defendants put at the end of this statement. I was glad they
16 did.

17 One is an article about the hard work and the crucial role
18 of public health nurses and CDCR's institutions during this
19 pandemic. The link was broken, but I liked the idea so much I
20 found the article myself anyway on the CDCR website and then I
21 read it.

22 I love nurses. There is no other way to say it. This is
23 TMI. My mother was a nurse. And I think I told you this story
24 already, and if I did, buckle up, I'm going to tell it to you
25 again.

1 At my first meeting at Elk Grove with the Receiver's
2 office -- one of the first things I did when I got the case was
3 I thought I have to meet the team. Also I'd like to see the
4 buildings and I would like to see what's going on up there.

5 I drove up to Elk Grove. I asked Mr. Kelso to put
6 together his executive team so that I could introduce myself, I
7 could get to know them, put a name to the face, meet the
8 personalities involved, that sort of thing. You all know from
9 hard experience that I think it's a mistake just to do this job
10 by reading paper.

11 So, anyway, I went up. I had a terrific day up there.
12 Mr. Kelso and his team were very welcoming. There's a
13 tremendous amount of smart people up there. They are all
14 working very hard to protect the health of our incarcerated
15 population.

16 I came in the room. Everyone introduced themselves. I
17 said, "Mr. Kelso, where is the head of nursing? I know what
18 your headcount is. I know how many patients you have. I don't
19 know yet how many staff you have, but I know this: A massive
20 number of them are nurses. So let's find the head of nursing,"
21 which he was glad to do. And I'm very pleased to report that
22 that head of nursing and the subsequent head of nursing are
23 fantastic at their jobs. And I've made it a point to talk to
24 the head of nursing when I go into a facility because I know
25 that they have an important perspective, and that if I'm going

1 to get a complete picture, I have to talk to them.

2 Why am I going on at such length about this? For two
3 reasons. First of all, I'm glad the State thinks it's
4 important to recognize the contribution the nurses are making,
5 and I appreciate the pivotal role that nurses play in combating
6 the spread of COVID-19 and in providing care to people that
7 have got the disease, so I am glad that CDCR wants to
8 acknowledge that.

9 The second thing is I never know who is listening to these
10 conferences. My screen says we have 207 participants. That
11 means statistically there is a chance that there is one or more
12 CDCR nurses listening to this conference, and if there are, I
13 just want to say thank you.

14 The next update is on the CDCR Project Hope program. The
15 State didn't give me a link on this one, but that's okay. I
16 found the article myself.

17 This is a project I was not aware of. By the way, if you
18 think I like ending these conferences on a good-news note like
19 this, you're correct, so I'm going to take the bait every time,
20 probably.

21 Anyway, CDCR has a Project Hope program, and what it does
22 is it provides support to persons that are released from CDCR
23 who have COVID or are being released as part of this COVID -- I
24 should say who are being released as part of these COVID
25 release programs -- not that have COVID. They're released

1 because of these COVID release programs, and it makes sure that
2 they have the resources that they need in the community. And
3 everybody has recognized how important this is. The Governor
4 has recognized it, the Secretary has recognized it in their
5 public comments about these release programs. It's not enough
6 to simply say, "We're going to release people from CDCR."
7 There are public health reasons, there are public safety
8 reasons, and there are reasons specific to the needs of the
9 individual inmate why we want to make sure that they have the
10 resources that they need when they get to their community of
11 release. And that's what Project Hope does, and they've
12 already helped more than 600 people, so I'm very -- I enjoyed
13 reading about that program. I'm glad the State brought that to
14 my attention. I thank the people that are involved in that.

15 Then I also -- I spent so much time on the CDCR website, I
16 found an additional thing that Mr. Mello didn't even tell me
17 about because he didn't even know. It's from Secretary Ralph
18 Diaz. This is something that he posted in June of this year.
19 It's called -- excuse me. It's called, "Now Is Not The Time To
20 Be Silent." I would say it is a surprising document, and I
21 would say probably you will not see the -- you will certainly
22 not see 100 percent of the other heads of corrections in the
23 various jurisdictions of the United States posting a document
24 like this. And I think you should all read it. And the title
25 again is, "Now Is Not The Time To Be Silent." I will read you

1 two quotes:

2 "This pandemic has brought to light the true capability of
3 our agency to come together not only across multiple
4 professional disciplines but across designations of staff,
5 incarcerated person, family member, activists, and legislator
6 to work together to protect the people in our care and hold one
7 another accountable."

8 Later in the statement toward the end of it he says,
9 "Martin Luther King, Jr., said, 'I have decided to stick with
10 love. Hate is too great a burden to bear.'"

11 Then the Secretary continues in his own words, "The only
12 vaccine for racism, injustice, marginalization, and
13 indifference is love. In the darkest of places in our system,
14 the only light that shines through is love. I love this
15 calling and deliver this message to all of you in love."

16 So I don't always agree with everything the Secretary
17 does, and sometimes I take issue with things that he's doing or
18 not doing, but I commend him for being able in the midst of all
19 of this difficulty and all of this nuts-and-bolts hard work
20 we're doing -- I commend him for having the capacity and the
21 eloquence to put some of those ideas out there, and I thought
22 you might enjoy hearing that.

23 Shall we have another conference on September 1st at
24 10:00 a.m.?

25 **MR. FAMA:** Your Honor --

1 **THE COURT:** Mr. Fama?

2 **MR. FAMA:** I'm wondering, and perhaps you are, too, if
3 Mr. McClain happened to receive a text as to when his clients
4 might complete the assessments? I'm sorry to bring it back to
5 a detail like that, but I think this is an important next step
6 and would like to get that cleared up.

7 **THE COURT:** I like a man with a good memory.

8 **MR. FAMA:** I'm cursed with one.

9 **THE COURT:** Mr. McClain, somebody called the question.
10 We've got to ask you.

11 **MR. MCCLAIN:** That's fine, Your Honor.

12 Yes, that text came through. My client believes it can
13 present the plaintiffs with its assessment and its position on
14 each of the prisons by Thursday.

15 **THE COURT:** I'll take it. I'll order the defendants
16 to provide that by February 27th. Make things a little tight
17 in the Case Management -- I said "February." August -- August
18 27th. Make things a little tight in the meet-and-confer, but
19 what are you going to do? It's a complicated question. The
20 request is not unreasonable.

21 Is there any objection to September 1 at 10:00 a.m. with a
22 Case Management Statement at 3:00 p.m. the day before?

23 **MR. MELLO:** No, Your Honor.

24 **MR. SPECTER:** No, Your Honor.

25 **THE COURT:** Okay. Thanks for indulging me on the

1 Secretary Diaz quote.

2 Anything further for the record today, Mr. Specter?

3 **MR. SPECTER:** Thank you, Your Honor. No.

4 **THE COURT:** Mr. Mello?

5 **MR. MELLO:** Nothing further. Thank you, Your Honor.

6 **THE COURT:** Thank you.

7 (Proceedings adjourned at 3:33 pm.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, August 24, 2020

Pamela Batalo Hebel

Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR
U.S. Court Reporter

EXHIBIT D

From: Sean Lodholz <Sean.Lodholz@doj.ca.gov> on behalf of Sean Lodholz
Sent: Thursday, August 13, 2020 4:31 PM
To: Ed Swanson; Corene Kendrick; Davis, Tamiya@CDCR; August Gugelmann; Rita Lomio
Cc: Trace Maiorino; Joanna Hood; Ferguson, Patricia@CDCR; Margot Mendelson; Fouch, Adam@CDCR; Gay C. Grunfeld; Bravo, Landon@CDCR; Ben Bien-Kahn; knowlesamp@gmail.com; Penny Godbold; Powell, Alexander@CDCR
Subject: RE: Institution Accessible Housing for All facilities
Attachments: 8-13-2020 SOMS DPP Expedited Transfer Report.pdf; 8-13-2020 STATEWIDE DPP Expedited Transfer Report.xlsx

Sorry, there was some confusion on our end as to when the response on displaced class members was due (we mistakenly thought it was today). However, it looks like we will be unable to get this information. CDCR has informed me had the request come prior to clearing these beds it would have been possible, but most of the beds were cleared weeks ago, or in some cases have been long vacant, and there is not a reliable way of gathering this information now. The best we can do is provide a current Expedited Transfer Report (attached).

As for Plaintiffs' request for information on non-solid door housing at the prisons, we are almost done getting that together and will have it out shortly.

EXHIBIT E

[FILED UNDER SEAL]

EXHIBIT F

From: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov> on behalf of Davis, Tamiya@CDCR
Sent: Tuesday, August 25, 2020 6:34 PM
To: PGodbold@rbgg.com; Thomas Nolan; 'rlomio@prisonlaw.com'; 'mmendelson@prisonlaw.com'
Cc: Bravo, Landon@CDCR; Fouch, Adam@CDCR; Armstrong Team; Armstrong Team - RBG only; Sean Lodholz; Joanna Hood; Powell, Alexander@CDCR; Cullen, Vincent@CDCR; Leclerc, Dave@CDCR; Trace Maiorino; Jeremy Duggan; Andes, Chance@CDCR; Ferguson, Patricia@CDCR; Johnson, Gannon@CDCR
Subject: Accommodation chronos (1845 list dated 8/21/2020)
Attachments: [REDACTED]-COR.pdf; [REDACTED]-MCSP.pdf; [REDACTED]-CCI.pdf; [REDACTED]-SAC.pdf; [REDACTED]-CVSP.pdf; [REDACTED]-CCI.pdf

Hello all:

Attached are the 128B chronos for six of the nine individuals on CCHCS's 1845 list dated 8/21/2020. The specifics for the other three are described below.

1. COR [REDACTED] [REDACTED]
2. MCSP [REDACTED] [REDACTED]
3. CMF [REDACTED] [REDACTED] No chrono needed. DKD status.
4. CCI [REDACTED] [REDACTED]
5. SAC [REDACTED] [REDACTED]
6. CVSP [REDACTED] [REDACTED] ** Initially interview 8/18/2020, however chrono required updating.
Second chrono completed 8/24/2020.
7. CCI [REDACTED] [REDACTED]
8. MCSP [REDACTED] [REDACTED] No chrono needed. Moved to lower tier, lower bunk accessible cell.
9. CMC [REDACTED] [REDACTED] No changes made to 1845 dated 8/17/2020 from prior 1845 dated 6/5/2020 (noting same code and housing restrictions).

Best,

Tamiya Davis
Attorney IV, Class Action Team
Office of Legal Affairs
California Department of Corrections and Rehabilitation
Cell: [REDACTED]

INMATE: [REDACTED]

CDC #: [REDACTED]

HOUSING: [REDACTED]

Inmate [REDACTED] is currently housed at CSP-COR-III Facility 3A and was designated with a DPP code of DPO on 07/25/2002 with the following restrictions: Ground Floor-No Stairs, Lower/Bottom Bunk Only, Limited Wheelchair User, Transport Vehicle with Lift, Lifting Restriction- Unable to Lift more than 19 Pounds, Permanent - 12/31/9999. CSP-COR-III Facility 3A is not designated to house inmates with DPO code. [REDACTED] has been referred to committee for expedited transfer. Due to the COVID-19 Pandemic, Inmate [REDACTED] is unable to be expeditiously transferred.


I conducted an interview with inmate [REDACTED] on 08/20/2020 as to what accommodations are needed for him to best access the programs, services, and activities at this institution while pending transfer. Additionally, I asked if any accommodations are needed to enable access to showers, toilets, and the dining facility.

The accommodations inmate [REDACTED] stated he needed are listed below.

Inmate [REDACTED] did not request any accommodations. Inmate [REDACTED] stated he is good with ADA workers and staff assistance.

He was educated on the process for requesting reasonable accommodations (CDCR 1824 process) and the availability of ADA Workers to provide assistance. He was further instructed to notify myself, custody staff, or the ADA Coordinator should he need assistance in the future.

CSP-COR will make the above mentioned accommodations while inmate [REDACTED] is housed at COR-III FACILITY 3A05.

 J. MARTINEZ

Correctional Counselor I

Date: 8/20/2020

Informational – DPP Accommodation Chrono

COR

EXHIBIT G

From: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov> on behalf of Davis, Tamiya@CDCR
Sent: Tuesday, August 25, 2020 6:21 PM
To: PGodbold@rbgg.com; Thomas Nolan; 'rlomio@prisonlaw.com'; 'mmendelson@prisonlaw.com'
Cc: Bravo, Landon@CDCR; Fouch, Adam@CDCR; Armstrong Team; Armstrong Team - RBG only; Sean Lodholz; Joanna Hood; Powell, Alexander@CDCR; Cullen, Vincent@CDCR; Leclerc, Dave@CDCR; Trace Maiorino; Jeremy Duggan; Andes, Chance@CDCR; Ferguson, Patricia@CDCR; Johnson, Gannon@CDCR
Subject: Accommodation chronos (1845 list dated 8/14/2020)
Attachments: [REDACTED]-SAC.pdf; [REDACTED]-CCI.pdf; [REDACTED]-NKSP.pdf

Hello all:

Attached are the 128B chronos for three of the five individuals on CCHCS's 1845 list dated 8/14/2020. The specifics for the other two are described below.

1. SAC [REDACTED] [REDACTED] New chrono not needed. No DPP code change and no new housing restrictions.
2. SAC [REDACTED] [REDACTED]
3. CRC [REDACTED] [REDACTED] No chrono needed. Removed from DPP on 8/14/2020.
4. CCI [REDACTED] [REDACTED]
5. NKSP [REDACTED] [REDACTED]

Best,

Tamiya Davis

Attorney IV, Class Action Team
Office of Legal Affairs
California Department of Corrections and Rehabilitation
Cell: [REDACTED]

INMATE: [REDACTED] CDC #: [REDACTED] HOUSING: [REDACTED]

Inmate [REDACTED] is currently housed at FDB4-[REDACTED] North Kern State Prison (NKSP) and was designated with a DPP code of DPO on 8/6/2020 with the following physical limitations: Lifting Restriction: Unable to lift more than 19 lbs; Limited wheelchair user; No rooftop work. Housing Restrictions: Ground floor- no Stairs; Lower/bottom bunk only. NKSP is not designated to house inmates with an Armstrong Disability code of DPO. He has been referred to committee for expedited transfer. Due to the COVID-19 Pandemic, Inmate [REDACTED] is unable to be expeditiously transferred.

I conducted an interview with inmate [REDACTED] on 08/17/2020 as to what accommodations are needed for him to best access the programs, services, and activities at this institution while pending transfer. Additionally, I asked if any accommodations are needed to enable access to showers, toilets, and the dining facility.

The accommodations inmate [REDACTED] stated he needed are listed below.

Inmate [REDACTED] stated he can access all services, activities and programs in Facility D Building. Therefore, he does not request any accommodations.

He was educated on the process for requesting reasonable accommodations (CDCR 1824 process) and the availability of ADA Workers to provide assistance. He was further instructed to notify myself, custody staff, or the ADA Coordinator should he need assistance in the future.

This inmate did not request any additional accommodations therefore, NKSP staff will monitor this inmate for future accommodation request while housed on FDB4-[REDACTED]

V. Trejo *4* *Chavez C. II*

Correctional Sergeant

Date: 8/17/20	Informational – DPP Accommodation Chrono	
------------------	--	--

EXHIBIT H

From: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov> on behalf of Davis, Tamiya@CDCR

Sent: Monday, July 20, 2020 5:22 PM

To: PGodbold@rbgg.com; Thomas Nolan; 'rlomio@prisonlaw.com'; 'mmendelson@prisonlaw.com'

Cc: Bravo, Landon@CDCR; Fouch, Adam@CDCR; Armstrong Team; Armstrong Team - RBG only; Sean Lodholz; Joanna Hood; Powell, Alexander@CDCR; Cullen, Vincent@CDCR; Leclerc, Dave@CDCR; Trace Maiorino; Jeremy Duggan; Andes, Chance@CDCR

Subject: FW: Accommodation chronos (1845 list dated 6/26/2020)

Attachments: [REDACTED]-CCI.pdf; [REDACTED]-CTF.pdf; [REDACTED]-DVI.pdf; [REDACTED]FSP.pdf; [REDACTED]-FSP.pdf; [REDACTED]-FSP.pdf; [REDACTED]-FSP.pdf; [REDACTED]-FSP.pdf; [REDACTED]-MCSP.pdf; [REDACTED]-SCC.pdf; [REDACTED]-SOL.pdf; [REDACTED]-SOL.pdf

Hello all:

Attached are the 128B chronos for 11 of the 13 individuals on CCHCS's 1845 list dated 6/26/2020. The specifics for the other two are described below.

- 1. CCI [REDACTED] [REDACTED]
- 2. CHCF [REDACTED] [REDACTED] No chrono needed. Returned from Out to Hospital and is housed in an accessible bed/cell.
- 3. CTF [REDACTED] [REDACTED]
- 4. CTF [REDACTED] [REDACTED] No chrono needed. OHU endorsed 6/3/2020. Also, on 7/1/2020 removed from DPO status and DPP program.
- 5. DVI [REDACTED] [REDACTED]
- 6. FSP [REDACTED] [REDACTED]
- 7. FSP [REDACTED] [REDACTED]
- 8. FSP [REDACTED] [REDACTED]
- 9. FSP [REDACTED] [REDACTED]
- 10. MCSP [REDACTED] [REDACTED]
- 11. SCC [REDACTED] [REDACTED]
- 12. SOL [REDACTED] [REDACTED]
- 13. SOL [REDACTED] [REDACTED]

Thank you,

Tamiya Davis
 Attorney III, Class Action Team
 Office of Legal Affairs
 California Department of Corrections and Rehabilitation
 Phone: 916.341.6960
 Cell: [REDACTED]

INMATE: [REDACTED]

CDC #: [REDACTED]

HOUSING: C15 [REDACTED]

Inmate [REDACTED] is currently housed at MCSP, Fac. C and was designated with a DPP code of DPW on 6/24/2020 with the following restrictions: Barrier free/wheelchair accessible, ground floor-no stairs, lower/bottom bunk only. MCSP, Fac. C is not designated to house inmates with DPW. He is being referred to committee for expedited transfer.

I conducted an interview with inmate [REDACTED] on 6/26/2020 as to what accommodations are needed for him to best access the programs, services, and activities at this institution while pending transfer. Additionally, I asked if any accommodations are needed to enable access to showers, toilets, and the dining facility.

The accommodations inmate [REDACTED] stated he needed are listed below.

[REDACTED] stated that he needs assistance getting to medical appointments and that he has had services of a ADA worker who assists him to and from all his appointments. The ADA worker is also housed in the same building as inmate [REDACTED]

[REDACTED] stated that he is on cell fed status and he is getting all his meals in his cell.

[REDACTED] stated that he is able to use the toilet in his cell without any problem.

[REDACTED] stated that the only issue he is facing is that he can't access showers in the building as he can't get over the ledge in the showers in the building. I asked [REDACTED] when was the last time he had showered and he stated "It was sometime last month. I just bird bath now in my cell" It is to be noted that there is a shower chair available in the housing unit for use.

I asked [REDACTED] if had been tested for COVID 19 and he stated "I am not sure"

I advised [REDACTED] about how he could request for help utilizing the CDC 1824 process and he stated that he understood.

He was educated on the process for requesting reasonable accommodations (CDCR 1824 process) and the availability of ADA Workers to provide assistance. He was further instructed to notify myself, custody staff, or the ADA Coordinator should he/she need assistance in the future.



R. DEO
Correctional Counselor II

Date: 6/26/2020	Informational – DPP Accommodation Chrono	MCSP
--------------------	--	------

EXHIBIT I

From: Patrick Booth <patrick@prisonlaw.com> on behalf of Patrick Booth
Sent: Tuesday, August 25, 2020 5:26 PM
To: Davis, Tamiya@CDCR
Cc: Ed Swanson; Cindy@CDCR; Chance@CDCR; Roscoe@CDCR; Robert@CDCR; Bruce@CDCR; Landon@CDCR; Patricia@CDCR; Adam@CDCR; Sean Lodholz; Joanna Hood; Armstrong Team; Armstrong Team - RBG only
Subject: Armstrong Class Members Inaccessibly Housed at Mule Creek State Prison

Dear Tamiya:

I write regarding several *Armstrong* class members at Mule Creek State Prison (MCSP) that are currently or have recently been inaccessibly housed:

- [REDACTED], [REDACTED], DPO, DNH, housed in A 002 [REDACTED] as of August 25, 2020;
- [REDACTED], [REDACTED], DPM, DNH, housed in A 002 [REDACTED] as of August 25, 2020;
- [REDACTED], [REDACTED], DPM, housed in A 002 [REDACTED] as of August 25, 2020;
- [REDACTED], [REDACTED], DPM, recently housed in A 002 [REDACTED] but has since moved to E 020D1 [REDACTED];
- [REDACTED], [REDACTED], DPM, recently housed in A 002 [REDACTED] but has since moved to E 020B1 [REDACTED]; and
- [REDACTED], [REDACTED], DPM, recently housed in A 002 [REDACTED] but has since moved to D 016C1 [REDACTED].

Each of these class members is currently or was recently housed in MCSP's Facility A, Building 2, the unit that the institution designated as its quarantine/isolation space. As noted in the Court Expert's August 19, 2020 Report, MCSP's "quarantine and isolation space is not accessible for DPO, DPM, or DPV class members." Report and Recommendations Regarding Housing of Armstrong Class Members During the COVID-19 Pandemic, ECF 3048 at 14. Plaintiffs understand that Defendants have been generating CDCR 128-Bs for class members that are housed in units not designated for their DPP codes. But we have not received a 128-B for any of these six class members, each of whom have impacting placement codes.

We request that Defendants provide 128-Bs for each of these six class members if they have been previously generated. Also, given that class members with impacting placement codes are now being housed in Facility A, Building 2 for quarantine, we ask that Defendants provide a list of accessible features that have been added to the unit, as well as the date that the features were installed. Lastly, we request that Defendants provide an explanation as to why Plaintiffs were not notified within 24 hours after these class members were transferred to an inaccessible unit.

Outside of Facility A, Building 2, several other *Armstrong* class members at MCSP remain inaccessibly housed:

- [REDACTED], [REDACTED], DPO, housed in A 005 [REDACTED] as of August 25, 2020;

- [REDACTED], [REDACTED], DPM, DNH, housed in B 010 [REDACTED] as of August 25, 2020;
- [REDACTED], [REDACTED], DPM, housed in C 013 [REDACTED] as of August 25, 2020; and
- [REDACTED], [REDACTED], DPM, DNH, housed in B 006 [REDACTED] as of August 25, 2020.

To date, we have only received one 128-B (Mr. [REDACTED]'s) for these four class members. Again, we request that Defendants provide 128-Bs for the other three class members that are inaccessibly housed, a list of accessible features installed to accommodate these class members in their current units, and an explanation as to why Defendants failed to notify Plaintiffs of these class members' inaccessible housing.

Thank you,
Patrick Booth

--

Patrick Booth, Legal Fellow
Pronouns: he/him
Prison Law Office
1917 Fifth Street
Berkeley, CA 94710
(510) 280-2621

EXHIBIT J

DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. I currently am in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). My CDCR number is [REDACTED]. I currently am incarcerated at Mule Creek State Prison (“MCSP”). I am 63 years old.

3. I am an *Armstrong* class member, and I am designated as DPM. I use a walker and a cane to ambulate.

4. On August 3, 2020, I was brought from MCSP to the outside hospital, where I had a total right knee replacement. I returned from the outside hospital that afternoon, but a few days, I had leg swelling and I was anemic because I lost a lot of blood during my surgery. On August 8, 2020, I was brought back to the outside hospital to check up on the medical issues I was experiencing. Later in the afternoon on August 8, 2020, I returned to MCSP and was placed in Facility A, Building 2 for quarantine. Before I was sent to the quarantine unit, no one came to talk to me about how to ask for help if needed anything.

5. I spent most of my time in quarantine in my single cell. A few people at a time were let of their cells to shower and use the phones, and we did not have access to the yard. I did not see the phones consistently cleaned or sanitized.

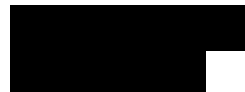
6. In my quarantine cell, there were no grab bars next to the toilet, and I struggled getting onto and off of the toilet, especially because I recently had knee surgery. There was also no bar above my bed to help pull myself up, so it was hard for me to sit up and get out of bed. I would have liked to have had a trapeze bar, but no one told me that I could have one if I needed it.





7. During my first week of quarantine, there was a step at the entrance of the shower. I had difficulties getting into and out of the shower because of the step. But during my second week of quarantine, a ramp was installed into one of the showers. The ramp helped me a lot, but it would have been more helpful if there were bars on the side of

1 the ramp to steady myself while walking into or out of the shower.

2 8. Officers and nursing staff in the quarantine unit did not always wear their
3 masks. On one occasion, a nurse was going to each person's cell to check our
4 temperatures, and she was not wearing a mask. Also, most nurses took our temperatures
5 and checked in on us through a slot in our cell door. But this particular nurse opened the
6 entire cell door to take our temperatures. At one point during her rounds when she was not
7 wearing a mask, she opened my door but then started talking to custody officers instead of
8 taking my temperature. For several minutes, my cell door remained open while she talked
9 to officers a few feet from my cell. I was concerned about both her and officers not
10 consistently wearing masks.

11
12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct, and that this declaration is executed at Ione,
14 California, this 28th day of August, 2020.

15
16  _____

17
18
19 On August 28, 2020, due to the closure of the Mule Creek State Prison in light of
20 the COVID-19 pandemic, I read the contents of this declaration, verbatim, to 
21  by telephone. Mr.  orally confirmed that the contents of the declaration were
22 true and correct. Mr.  also orally granted me permission to affix his signature to the
23 declaration and to file the declaration in this matter.

24
25 DATED: August 28, 2020

26 
27 _____
28 Patrick Booth

EXHIBIT K

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. I currently am in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). My CDCR number is [REDACTED]. I currently am incarcerated at Mule Creek State Prison (“MCSP”). I am 64 years old.

3. I am an *Armstrong* class member, and I am designated as DPM. I use a walker to ambulate, and until recently, I used a wheelchair full-time. In addition to my mobility impairment, I have asthma and stage four kidney failure.

4. In May 2020, I had surgery on my neck. When I returned to MCSP from the outside hospital after my surgery, I was placed on quarantine status and moved from Facility E to Facility A, Building 1. Before being sent to the quarantine unit, no one told me how to ask for help or accommodations if I needed anything. No one asked if I was able to access the shower, the toilet in my cell, or the bed in my cell.

5. The conditions of quarantine were terrible. For example, I was not issued any new white undershirts, blue shirts, pants, or socks when I was sent to the quarantine cell. I was only given one pair of boxers and two sheets while on quarantine, and I was only offered additional clean clothes in the last few days of my quarantine. I asked officers on numerous occasions for new clothes but did not receive any.

6. There was also a step to get into the shower in Facility A, Building 1. Because I was using a wheelchair at the time, I had a hard time clearing the step on my own. When I needed to shower, an ADA worker wheeled my wheelchair from my cell to the shower and helped me step into and out of the shower. I also had no hot water in my cell, so I could not bird bath when I wanted to. I asked custody officers several times to move me to a cell with hot water, but they never did. The person in the cell next to me had hot water in his cell. When his quarantine status ended and he moved out of his cell, I asked officers if I could move into his cell so that I could finally have hot water. Officers

1 told me that they would look into it, but they never moved me.

2 7. I was in Facility A, Building 1 for 14 days, until June 2, 2020, when I was
3 moved back to Facility E. But at the beginning of August 2020, my feet started swelling.
4 Medical staff at MCSP thought that I might have a blood clot in my leg, and they wanted
5 to send me to an outside hospital to have my leg checked out. I refused the appointment
6 initially because I did not want to be forced back into a quarantine unit. The conditions of
7 my first quarantine were awful, and I did not want to experience that again.

8 8. After talking to medical staff, I decided to go to the outside hospital to have
9 my leg examined. I went to the hospital on either August 5 or 6, 2020, and I came back to
10 MCSP later that day. At MCSP, I was taken to Facility A, Building 2 for quarantine. The
11 conditions of this unit were better than Facility A, Building 1, but I had still issues during
12 my quarantine. Again, no one came to talk to me before I went to the quarantine unit or
13 while I was there about how to ask for help if I needed it.

14 9. The showers in Facility A, Building 2 also had a step at the threshold. There
15 was a shower bench attached to the wall and grab bars in the shower, but there was no
16 shower hose. The shower bench was also too far from the shower head, so I had to bring a
17 different shower chair into the shower. To get into or out of the shower, I placed the
18 shower chair right next to the shower step and used the chair to balance. But I slipped and
19 hit my head on the wall of the shower several times while exiting the shower. In the
20 shower, the tiles on the floor are uneven, so the shower chair wobbles and feels unsafe.





21 10. In my quarantine cell, there were no grab bars around the toilet, so I had a
22 hard time getting on and off the toilet. I also struggled to get out of my bed because I had
23 recently had neck surgery. If I had a trapeze bar, or a bar over my bed to help me pull
24 myself up, I would have been able to get out of bed much easier. But no staff members
25 asked me if I was having trouble while on quarantine.

26 11. While in quarantine, we were mostly locked in our cells all day. We were
27 allowed to use the showers and phones every three days, but no one cleaned the phones
28 between each use. There were also no cleaning supplies by the phones so we could not

1 even wipe them down ourselves. The phones were only cleaned once each day, at
2 nighttime before the porters' shifts ended. Custody officers and nurses also did not
3 consistently wear their masks.
4

5 I declare under penalty of perjury under the laws of the United States of America
6 that the foregoing is true and correct, and that this declaration is executed at Ione,
7 California, this 28th day of August, 2020.
8

9  _____
10

11
12 On August 28, 2020, due to the closure of the Mule Creek State Prison in light of
13 the COVID-19 pandemic, I read the contents of this declaration, verbatim, to 
14  by telephone. Mr.  orally confirmed that the contents of the declaration
15 were true and correct. Mr.  also orally granted me permission to affix his signature
16 to the declaration and to file the declaration in this matter.
17

18 DATED: August 28, 2020

19 

Patrick Booth
20
21
22
23
24
25
26
27
28

EXHIBIT L

From: Rita Lomio <rlomio@prisonlaw.com> on behalf of Rita Lomio
Sent: Sunday, August 30, 2020 12:22 PM
To: Davis, Tamiya@CDCR; Powell, Alexander@CDCR; Beland, Bruce@CDCR; Fouch, Adam@CDCR; Bravo, Landon@CDCR
Cc: Ed Swanson; Armstrong Team; Armstrong Team - RBG only
Subject: RE: ARM | Quarantine of DPW Class Members in SATF-A Gym

Hi Tamiya,

The roster you sent on Friday lists ten class members housed in the Facility A gym at SATF. We did not receive a CDCR 128-B for one of those class members: [REDACTED], [REDACTED], DPW. Would you please send that to us?

In addition, you sent four CDCR 128-Bs for class members who were not listed on the roster. Would you please let us know when those class members were housed in the Facility A gym? They are:

- [REDACTED], [REDACTED], DPO
- [REDACTED], [REDACTED], DPM, DNH
- [REDACTED], [REDACTED], DLT
- [REDACTED], [REDACTED], DPO, DNH

Thank you,
Rita

From: Rita Lomio [mailto:rlomio@prisonlaw.com]
Sent: Friday, August 28, 2020 5:23 PM
To: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Powell, Alexander@CDCR <Alexander.Powell@cdcr.ca.gov>; Beland, Bruce@CDCR <Bruce.Beland@cdcr.ca.gov>; Fouch, Adam@CDCR <Adam.Fouch@cdcr.ca.gov>; Bravo, Landon@CDCR <Landon.Bravo@cdcr.ca.gov>
Cc: Ed Swanson <ed@smllp.law>; Armstrong Team <arm-plo@prisonlaw.com>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>
Subject: RE: ARM | Quarantine of DPW Class Members in SATF-A Gym

Thank you, Tamiya. We look forward to receiving the photographs as soon as possible. We have two follow-up questions.

First, is there a process in place for ADA staff to be notified immediately when the institution plans to house *Armstrong* class members in nontraditional spaces, such as gyms, so they can make sure everything is set-up properly? We are concerned that ADA staff was not aware that class members had been moved to the gym until five days later, and therefore had not yet spoken with those class members or ensured that all appropriate items, including 1824s, appeals boxes, and magnifiers, were available. ADA staff at SATF told us that they learned only on August 26 that *Armstrong* class members were housed in the gym; they “just came on the exceptions report today.” This, unfortunately, is similar to the situation at CIM earlier in the pandemic.

Second, is the institution looking into alternate quarantine space that can accommodate DPW class members? The large, open gym, with little ventilation and with communal toilets, showers, and sinks, is not an appropriate place to quarantine class members. See Court Expert Report and Recommendations, Doc. 3048 at 7 (“Unlike individuals in

isolation, individuals in quarantine cannot be housed in a common space with any other individual because of the risk that an infected quarantined inmate could spread the virus to others in quarantine who may not yet be infected.”).

We are particularly concerned that seven DPW class members may be quarantined there because the designated quarantine and isolation spaces, E2 and C3, do not have a sufficient number of DPW beds: The two DPW beds in C3 are occupied with DPW class members with confirmed, active cases, and the two DPW beds in E2 are occupied with other DPW class members on quarantine status. (There also is another DPW class member with a confirmed, active case who is housed in a DPW cell in the STRH. He appears to be the only person with a confirmed, active case housed in the STRH, and he was housed in B3 last night.)

From: Davis, Tamiya@CDCR [mailto:Tamiya.Davis@cdcr.ca.gov]

Sent: Friday, August 28, 2020 4:38 PM

To: Rita Lomio <rlomio@prisonlaw.com>; Powell, Alexander@CDCR <Alexander.Powell@cdcr.ca.gov>; Beland, Bruce@CDCR <Bruce.Beland@cdcr.ca.gov>; Fouch, Adam@CDCR <Adam.Fouch@cdcr.ca.gov>; Bravo, Landon@CDCR <Landon.Bravo@cdcr.ca.gov>

Cc: Ed Swanson <ed@smlp.law>; Armstrong Team <arm-plo@prisonlaw.com>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>

Subject: RE: ARM | Quarantine of DPW Class Members in SATF-A Gym

Hi Rita,

Please see attached and responses below.

1. Please provide a roster of Armstrong class members housed in the gym, including the date they were moved to the gym, which bed they are assigned to, and an explanation of why they were moved to the gym. (A similar request will be made under Plata.)

RESPONSE: Roster is attached. Class members were housed in the A gym as a result from direct exposure with a staff member. They were moved into the gym on Friday, August 21, 2020.

2. Please provide 128-Bs for those class members.

RESPONSE: See attached.

3. Please explain whether and when 1824s, an appeals box, a television, and magnifiers were procured and/or installed.

RESPONSE: The appeals box has been installed, 1824s are located in the gym, and magnifiers were delivered today. A television is being delivered and will be installed.

4. Please produce the photographs we took of the gym. As the gym was not occupied at the time of the tour (and therefore should not need to be redacted) and the photographs all were of the gym (and therefore do not need to be separately labeled), OAG should simply have to Bates-stamp the photographs.

RESPONSE: Photographs have been provided to the OAG and will be sent once processed.

Thank you,

Tamiya Davis

Attorney IV, Class Action Team

Office of Legal Affairs

California Department of Corrections and Rehabilitation

Cell: [REDACTED]

From: Rita Lomio <rlomio@prisonlaw.com>

Sent: Wednesday, August 26, 2020 2:48 PM

To: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Powell, Alexander@CDCR <Alexander.Powell@cdcr.ca.gov>; Beland, Bruce@CDCR <Bruce.Beland@cdcr.ca.gov>

Cc: Ed Swanson <ed@smllp.law>; Armstrong Team <arm-plo@prisonlaw.com>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>

Subject: ARM | Quarantine of DPW Class Members in SATF-A Gym

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 Tamiya and Lex,

During today's call with the SATF ADAC, we were informed that the gym on A yard now is being used to quarantine six DPW class members and a few people with DNM and DLT codes. ADA staff said that they did not know when those class members were moved to the gym. We were informed that ADA staff had not yet met with those class members to discuss whether they require any accommodations, but the CCI would speak with them today. (We were told that sign language interpreters previously had been sent out, but ADA staff could not say why, whether a D/deaf person was housed in the gym, or what the interpreters had talked about.)

When we conducted our virtual tour of the gym last Thursday, the gym did not yet have 1824s, an appeals box, a television, or magnifiers. The ADAC today said that he did not know if those items had been procured and/or installed. We also observed that there were outlets only along the north and south walls, and not at each bed. The ADAC today did not know whether there was a plan in place to cover any electrical cables so they do not cause a tripping hazard.

In addition, the gym does not appear to be a suitable quarantine space. It is a large, open area with communal sinks, toilets, and showers, with minimal ventilation and only a couple fans mounted high on the wall.

We request the following by Friday COB:

1. Please provide a roster of *Armstrong* class members housed in the gym, including the date they were moved to the gym, which bed they are assigned to, and an explanation of why they were moved to the gym. (A similar request will be made under *Plata*.)
2. Please provide 128-Bs for those class members.
3. Please explain whether and when 1824s, an appeals box, a television, and magnifiers were procured and/or installed.
4. Please produce the photographs we took of the gym. As the gym was not occupied at the time of the tour (and therefore should not need to be redacted) and the photographs all were of the gym (and therefore do not need to be separately labeled), OAG should simply have to Bates-stamp the photographs.

Thank you,
Rita

Rita K. Lomio
Staff Attorney
Prison Law Office
1917 Fifth Street

Berkeley, CA 94710

(510) 280-2632

Pronouns: she/her

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. [REDACTED] stated the gym is fine. I ask [REDACTED] if he was getting to all medical appointments and any other appointments while being housed in A GYM. [REDACTED] stated that he is and stated all the sinks, toilets, and showers were operational and were in good working order. I made sure that [REDACTED] was aware there was 1824 and Grievance lock box and showed him where it was located. [REDACTED] has access to all programs, services and activities that are running on Facility A, as well as access to ADA showers, sinks, and restrooms.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono


NAME and NUMBER

██████████

██████████

A GYM ██████████

On 8/27/2020 at approximately 0930 hours, an interview with inmate ██████████ ██████████ was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. S stated that everything is going good in the gym. 'S' is getting to all medical appointments, and stated that all the sinks, toilets, and showers are operational. S is aware there is a 1824 and Grievance lock box in front of the officers podium. ██████████ has access to all programs, services and activities that are running on Facility A. S has access to ADA showers, sinks, and restrooms.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/27/2020 at approximately 0930 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. S stated that everything in the gym is going ok and S stated that S had access to all services, activities and programs while being housed in A GYM. S stated that all the sinks, toilets, and showers were operational. I made sure that [REDACTED] was aware there was an 1824 and Grievance lock box in the GYM, and where it was located. [REDACTED] has access to all programs and services and activities that are running on Facility A, including access to ADA showers, sinks, and restrooms. 'S' was identified with the following disability/communication issue: GPL score below 4.0/ Foreign language (Spanish) Speaker. CCI L. Delatorre was assigned as a staff assistant due to GPL score below 4.0/ Foreign language (Spanish) Speaker designation. CCI L. Delatorre achieved effective communication by speaking slowly and clearly in simple Spanish. 'S' provided appropriate responses to questions asked.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/27/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]**A GYM** [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. 'S' stated that everything in the gym is going good. 'S' stated that 'S' likes being in the GYM and would like to stay there. I asked if 'S' had access to all services, activities and programs while being housed in A GYM. 'S' stated, Yes he does. I ask 'S' if all the sinks, toilets, and showers were operational. 'S' stated yes, there was no problem with them. 'S' stated that he was wondering if this would affect his shoulder surgery. I informed 'S' that was a medical issue and encouraged him to submit a 7362 to Health Care Services for any medical related questions. 'S' was informed there was an 1824 and Grievance lock box in the GYM, and showed where it was located. 'S' has access to ADA showers, sinks, and restrooms while being housed in Facility A GYM. 'S' is at the CCCMS level of care. Effective communication was achieved by speaking slowly and clearly in simple english. 'S' provided appropriate responses to questions asked and stated he understood and did not need any help understanding.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCI


8/26/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. 'S' stated that everything in the gym is going ok. I asked if 'S' had access to all services, activities and programs while being housed in A GYM. 'S' stated, yes he is. I ask 'S' if all the sinks, toilets, and showers were operational. 'S' stated yes, there was no problem with them. I made sure that 'S' was aware there was an 1824 and Grievance lock box in the GYM, and where it was located. 'S' has access to all programs and services and activities that are running on Facility A. 'S' has access to ADA showers, sinks, and restrooms while being housed in Facility A GYM. 'S' was identified with the following disability/communication issue: TABE below 4.0. Effective communication was achieved by speaking slowly and clearly in simple English. 'S' provided appropriate responses to questions asked and stated he understood and did not need any help understanding.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A GYM. 'S' stated he is getting to all medical appointments without a problem. I ask 'S' if all the sinks, toilets, and showers were operational including the ADA ones. 'S' stated yes and that he has access to them. 'S' has access to all programs and services and activities that are running on Facility A. I made sure that [REDACTED] was aware there was an 1824 and Grievance lock box in the GYM, and showed him where it was located. I advised [REDACTED] that if he needed assistance, the GYM officers would be available to help. 'S' stated there was no problem and knew he could request help from staff if needed.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

NAME and NUMBER


██████████

██████████

A GYM

██████████

On 8/27/2020 at approximately 0930 hours, an interview with inmate ██████████ ██████████ was conducted to ensure all accommodations that he requires are being met since being moved to Facility A gym. 'S' stated that everything is fine and 'S' had access to all services, activities and programs while being housed in A GYM. 'S' stated that all the sinks, toilets, and showers were operational. ██████████ was made aware there was an 1824 and Grievance lock box in the GYM, and that it was located in front of the officer's podium. ██████████ has access to all programs and services and activities that are running on Facility A, including access to ADA showers, sinks, and restrooms. ██████████ has a GPL score below 4.0/ Foreign language (Spanish) Speaker. CCI L. Delatorre was assigned as the staff assistant and present during the interview due to GPL score below 4.0/ Foreign language (Spanish) Speaker designation. CCI L. Delatorre achieved effective communication by speaking slowly and clearly in simple Spanish. 'S' provided appropriate responses to questions asked.


S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII


8/27/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that he requires are being met since being moved to Facility A gym. 'S' stated he has access to all services, activities, and programs on Facility A. [REDACTED] was aware there was an 1824 and Grievance lock box in the GYM, and knew where it was located. [REDACTED] is at the CCCMS level of care and DNH/Hearing. [REDACTED] stated he had his hearing aids in place and they are in good working condition. Effective communication was provided by using simple english spoken slowly, clearly and loudly. 'S' provided appropriate, substantive responses to questions asked and asked appropriate questions regarding the information provided.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

NAME and NUMBER

██████████ ██████████

A GYM ██████████

On 8/27/2020 at approximately 0930 hours, an interview with inmate ██████████ ██████████ was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. S stated that everything in the gym is good and S stated that S had access to all services, activities and programs while being housed in the GYM. S stated that all the sinks, toilets, and showers were operational. I made sure that ██████████ was aware there was an 1824 and Grievance lock box in the GYM, and where it was located. ██████████ has access to all programs and services and activities that are running on Facility A, including access to ADA showers, sinks, and restrooms. 'S' was identified with the following disability/communication issue: Foreign language (Spanish) Speaker. CCI L. Delatorre was assigned as the staff assistant due to Foreign language (Spanish) Speaker designation. CCI L. Delatorre achieved effective communication by speaking slowly and clearly in simple Spanish. 'S' provided appropriate responses to questions asked.


S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/27/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. 'S' stated he has access to all services, activities, and programs on Facility A. 'S' was made aware there was an 1824 and Grievance lock box in the GYM, and I showed him where it was located. 'S' stated that he had no issues with being housed in the GYM. 'S' was identified with the following disability/communication issue: Hearing. To ensure effective communication was established, 'S' stated he was wearing hearing aids and they are in good working condition. Effective communication was provided by using simple english spoken slowly, clearly and loudly. 'S' provided appropriate, substantive responses to questions asked and asked appropriate questions regarding the information provided.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/27/2020 at approximately 0930 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. 'S' stated that everything is going good in the gym. 'S' is getting to all medical appointments, and stated that all the sinks, toilets, and showers are operational. 'S' stated that he was receiving mail but wasn't sure the process in sending out the mail. After speaking with Correctional Officer D. Dimmer I was able to relay to [REDACTED] that the outgoing mail is collected at the end of the night and pointed out to [REDACTED] where the mail bag would be located (The Officers Podium), right next to the 1824 and Grievance lock box. 'S' has access to all programs and services and activities that are running on Facility A. 'S' has access to ADA showers, sinks, and restrooms.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] was conducted to ensure that any accommodations that inmate [REDACTED] requires are being met due to being moved to Facility A gym. [REDACTED] stated that he had access to all services, activities and programs while being housed in A GYM. S stated that all the sinks, toilets, and showers were operational and he had no problem being housed in the GYM. I made sure that [REDACTED] was aware there was an 1824 and Grievance lock box in the GYM, and showed him where it was located. [REDACTED] has access to all programs and services and activities that are running on Facility A. [REDACTED] has access to ADA showers, sinks, and restrooms while being housed in Facility A GYM.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

NAME and NUMBER [REDACTED] [REDACTED]

A GYM [REDACTED]

On 8/26/2020 at approximately 1315 hours, an interview with inmate [REDACTED] [REDACTED] was conducted to ensure all accommodations that inmate requires are being met since being moved to Facility A gym. 'S' stated 'S' is getting to all medical appointments without a problem. I ask [REDACTED] if all the sinks, toilets, and showers were operational including the ADA ones. 'S' stated yes and has access to them. 'S' has access to all programs and services and activities that are running on Facility A. I made sure that [REDACTED] was aware there was an 1824 and Grievance lock box in the GYM, and where it was located. 'S' is at the CCCMS level of care. Effective communication was achieved by speaking slowly and clearly in simple English. 'S' provided appropriate responses to questions asked.



S. FLEMING
Correctional Counselor
ADA CCI CSATF-SP

Original: Central File
cc: Facility A Captain
Facility A CCII

8/26/2020

General Chrono

Disability Inmate Roster

Run By: jerry.ourique

Date Run: 08/28/2020 01:34 PM

Inst.	Name	CDC Number	Current Facility-Bed	Code	Housing Restrictions	Durable Medical Equipment	Non Formulary Accommodations / Comments	LD	LD Comments	SLI
					Only	Orthoses/Knee Ankle Foot Orthoses (AFO/KAFO), Canes, Eyeglass Frames, Hearing Aid, Incontinence Supplies, Non-invasive Airway Assistive Devices - C-Pap Machine	Chrono: 1845/7410 written as cutover process. Medical condition requires accommodation., DPP Verification: 1845/7410 written as cutover process. Medical condition requires accommodation.			
SATF			A 003	DNM	Lower/Bottom Bunk Only	Eyeglass Frames	Accommodation Chrono: LS spinal disease., DPP Verification: LS spinal disease.			
SATF			A GYM	DPW	Barrier Free/Wheelchair Accessible, Ground Floor-No Stairs, Lower/Bottom Bunk Only	Canes, Compression Stocking, Eyeglass Frames, Mobility Impaired Disability Vest, Therapeutic Shoes/Orthotics, Wheelchair	Accommodation Chrono: Rt knee meniscus tear, DPP Verification: Rt knee meniscus tear			
SATF			A GYM	DPW	Barrier Free/Wheelchair Accessible, Ground Floor-No Stairs, Lower/Bottom Bunk Only	Back Braces, Compression Stocking, Eyeglass Frames, Other (Include in Comments), Urologic Supplies, Wheelchair	Durable Medical Equipment: ADA-GRAB BARS IN CELL	Unverified		
SATF			A GYM	DPW	Barrier Free/Wheelchair Accessible, Ground Floor-No Stairs, Lower/Bottom Bunk Only	Eyeglass Frames, Incontinence Supplies, Wheelchair				
SATF			A GYM	DPW	Barrier Free/Wheelchair Accessible, Ground Floor-No Stairs, Lower/Bottom Bunk	Back Braces, Compression Stocking, Eyeglass Frames, Pressure Reducing Support Services-				

Disability Inmate Roster

Run By: jerry.ourique

Date Run: 08/28/2020 01:34 PM

Inst.	Name	CDC Number	Current Facility-Bed	Code	Housing Restrictions	Durable Medical Equipment	Non Formulary Accommodations / Comments	LD	LD Comments	SLI
					Only	Groups 1,2 & 3 (Mattress), Walkers, Wheelchair				
SATF	[REDACTED]	[REDACTED]	A GYM [REDACTED]	DPW	Barrier Free/Wheelchair Accessible, Ground Floor-No Stairs, Lower/Bottom Bunk Only	Compression Stocking, Eyeglass Frames, Wheelchair	Accommodation Chrono: Ongoing left-sided weakness., DPP Verification: Ongoing left-sided weakness.			
SATF	[REDACTED]	[REDACTED]	A GYM [REDACTED]	DPW	Barrier Free/Wheelchair Accessible, Ground Floor-No Stairs, Lower/Bottom Bunk Only	Air Cell Cushion - High Profile (Roho), Compression Stocking, Incontinence Supplies, Wheelchair	Accommodation Chrono: Lower tier and lower bunk, DPP Verification: Lower tier and lower bunk			
SATF	[REDACTED]	[REDACTED]	A GYM [REDACTED]	DPW	Barrier Free/Wheelchair Accessible, Ground Floor-No Stairs, Lower/Bottom Bunk Only	Air Cell Cushion - High Profile (Roho), Back Braces, Eyeglass Frames, Incontinence Supplies, Mobility Impaired Disability Vest, Other (Include in Comments), Pressure Reducing Support Services-Groups 1,2 & 3 (Mattress), Therapeutic Shoes/Orthotics, Wheelchair	Durable Medical Equipment: Large-soft neck collar, cervical pillow			
SATF	[REDACTED]	[REDACTED]	A GYM [REDACTED]	DLT	Ground Floor-Limited Stairs, Lower/Bottom Bunk Only	Back Braces, Canes, Eyeglass Frames, Mobility Impaired Disability Vest, Non-invasive Airway Assistive Devices - C-Pap Machine, Other (Include in Comments), Reading Glasses, Therapeutic Shoes/Orthotics	Accommodation Chrono: Diabetes, obesity, gait abnormality using a cane., Durable Medical Equipment: bilateral elbow brace, DPP Verification: Diabetes, obesity, gait abnormality using a cane.			

Disability Inmate Roster

Run By: jerry.ourique

Date Run: 08/28/2020 01:34 PM

Inst.	Name	CDC Number	Current Facility-Bed	Code	Housing Restrictions	Durable Medical Equipment	Non Formulary Accommodations / Comments	LD	LD Comments	SLI
SATF	[REDACTED]	[REDACTED]	A GYM [REDACTED]	DLT	Ground Floor-Limited Stairs, Lower/Bottom Bunk Only	Compression Stocking, Eyeglass Frames, Foot Orthoses, Knee Braces	Accommodation Chrono: Severe right knee osteoarthritis. Awaiting total right knee replacement., DPP Verification: Severe right knee osteoarthritis. Awaiting total right knee replacement.			
SATF	[REDACTED]	[REDACTED]	A GYM [REDACTED]	DPM	Ground Floor-No Stairs, Lower/Bottom Bunk Only	Canes, Eyeglass Frames, Mobility Impaired Disability Vest, Therapeutic Shoes/Orthotics				
SATF	[REDACTED]	[REDACTED]	B 001 [REDACTED]	DPM	Ground Floor-No Stairs, Lower/Bottom Bunk Only	Canes, Eyeglass Frames, Mobility Impaired Disability Vest				
SATF	[REDACTED]	[REDACTED]	B 001 [REDACTED]	DLT	Ground Floor-Limited Stairs, Lower/Bottom Bunk Only	Back Braces, Canes, Eyeglass Frames, Foot Orthoses, Knee Braces, Urologic Supplies, Wheelchair				
SATF	[REDACTED]	[REDACTED]	B 001 [REDACTED]	DPM	Ground Floor-No Stairs, Lower/Bottom Bunk Only	Canes, Eyeglass Frames, Knee Braces				
SATF	[REDACTED]	[REDACTED]	B 001 [REDACTED]	DLT	Ground Floor-Limited Stairs, Lower/Bottom Bunk Only	Canes, Compression Stocking, Eyeglass Frames, Knee Braces, Mobility Impaired Disability Vest	Accommodation Chrono: Mobility vest, DPP Verification: Mobility vest			
SATF	[REDACTED]	[REDACTED]	B 001 [REDACTED]	DPM	Ground Floor-No Stairs, Lower/Bottom Bunk Only	Ankle Foot Orthoses/Knee Ankle Foot Orthoses (AFO/KAFO), Canes, Compression Stocking, Eyeglass Frames, Mobility Impaired Disability Vest,	Accommodation Chrono: Patient Safety, DPP Verification: Patient Safety			

EXHIBIT M

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. I currently am in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). My CDCR number is [REDACTED]. I currently am incarcerated at the Substance Abuse Treatment Facility (“SATF”). I am 49 years old.

3. I am an *Armstrong* class member, and I am designated as DPW. I use a wheelchair for mobility.

4. I arrived to SATF on March 2016. I was housed on Building 3 on Facility A, in bed [REDACTED] of pod [REDACTED] prior to being moved to the gym. I was housed on a lower bunk. The other people in my pod had helped me make cords out of braided t-shirts that we installed under the upper bunk of my bed, so that I could use them to lift myself up and transfer between my bed and wheelchair. I need help transferring between my bed and wheelchair because I have difficulty with balance and coordination due to past gunshot wounds to my face and neck. I filed an 1824 a while ago, requesting trapeze bars. I don’t remember exactly when; it may have been a year ago. I did not get a response.

5. I moved to the gym on Friday, August 21, 2020. Officer Castro from Building 3 told me to collect my belongings to move to the gym. I asked her why I was being moved to the gym and for how long. Officer Castro told me that she did not know why I was being moved to the gym. Nobody asked me what I needed for the gym to be accessible to me before I was moved. Nobody explained how I should ask for help if I had accessibility needs in the gym before I was moved.

6. I was sent to the gym without my property so that I could make it there before the 5 p.m. count. Then staff let me return to my housing unit to collect my belongings. I needed help collecting my property because there were items on the floor that I couldn’t collect on my own due to my disability. The ADA worker ([REDACTED]) who is assigned to help me and three other men who live in my pod helped me collect my

1 property. [REDACTED] was wearing a cloth facial covering and gloves. [REDACTED] was within 6 feet of
2 me while he was helping me pack my belongings. [REDACTED] and one other person from my pod
3 helped me move my belongings to the gym, and they connected the extension cords I
4 needed to use for my appliances and set up my television, my fan, and my kettle in a place
5 where I could reach it. They also put my belongings underneath the bed and in the locker.

6 7. When I arrived to the gym, an officer told the group of us that we could ask
7 for help if we needed it. Nobody met with me individually to explain how I should ask for
8 disability-related help.

9 8. When I arrived at the gym, an officer showed me the beds that had enough
10 space around them for wheelchairs. I chose one of these beds, which was in the middle of
11 the gym. Because this bed was not a bunk bed and was in the middle of the gym, there was
12 no place to install trapeze bars. I did not ask staff for trapeze bars to be installed because I
13 was afraid that I would be sent to “the hole” (administrative segregation) so that I could
14 quarantine in a bed with trapeze bars. I know that the cells in administrative segregation
15 have trapeze bars because I have been housed in administrative segregation at SATF
16 before.

17 9. I asked other people in quarantine if they would agree to help me transfer
18 between my bed and my wheelchair. They agreed to help me and have been helping me
19 transfer between my bed and wheelchair since I have been in the gym. I tell my neighbor
20 [REDACTED] ([REDACTED]) when I wake up and want to get out of bed. Because my left arm is very
21 weak from past injuries, Mr. [REDACTED] takes my right hand and pulls me up to a seated position.
22 I then use my right hand to move my legs towards the wheelchair and Mr. [REDACTED] picks me
23 up from behind and moves me into my wheelchair. Mr. [REDACTED] always wears a mask when he
24 helps me transfer between my bed and wheelchair. I need to transfer between my bed and
25 my wheelchair approximately three times a day. I try to stay out of bed during the day, and
26 spend my time studying and writing to my family. I go back to my bed when I need to rest.

27 10. There are two people in quarantine with me who help me with disability-
28 related needs at this time: [REDACTED] and Mr. [REDACTED], whose first name I don't know. When

1 the number of people in quarantine went down to nine, they volunteered to help me and the
2 other wheelchair users with the help we usually receive from ADA workers. There are six
3 people in quarantine now who use wheelchairs. Some of the things they help me with
4 include: picking up items stored under my bed (including food and clothing items),
5 disinfecting and cleaning my bed area, pushing me to the clinic for medication, picking up
6 my meals, transferring between my bed and my wheelchair. Mr. [REDACTED] and Mr. [REDACTED] told
7 me that they are not getting paid for assisting me with my disability needs.

8 11. There is one ADA shower in the gym with a bench that I can sit on while I
9 shower. The floor around the ADA shower is uneven, and there is an incline that I need to
10 go up to get to the shower. The incline is about 1 to 2 feet in length. I cannot push my
11 wheelchair up this incline. I need someone to push my wheelchair up this incline so that I
12 can access the shower. Whenever I need to shower, I have to ask one of the other people in
13 quarantine to push my wheelchair.

14 12. There is one ADA bathroom in the gym that I can use. The bathrooms are
15 cleaned by Mr. [REDACTED] and Mr. [REDACTED]. They clean the bathrooms, by mopping and cleaning
16 the sinks, twice a day, after breakfast and after dinner. I bring my own disinfectant to the
17 bathroom when I use the bathroom to clean the toilet and the bars. Because the bathroom is
18 used frequently, I think it would be safer if the bathroom could be cleaned in the middle of
19 the day too, so that the bathrooms would be cleaned three times a day.

20 13. Gabriela Pelsinger from the Prison Law Office told me that CDCR staff
21 completed a 128-B chrono that said I was interviewed by CCI Fleming on August 27 about
22 accommodations in the gym. The chrono states that I said that everything in the gym is
23 good. The chrono also states that CCI L. Delatorre was assigned as the staff assistant due
24 to Foreign Language (Spanish) Speaker designation and that he achieved effective
25 communication by speaking slowly and clearly in simple Spanish. A few days ago, no
26 more than ten days ago, CCI Fleming came to speak with me in the morning about my
27 ADA-related needs. I don't remember the exact date that I spoke with CCI Fleming. No
28 one else accompanied CCI Fleming to speak with me in Spanish. CCI Fleming and I spoke

1 in English. I can only understand conversations in English when people speak slowly and
2 use simple language. I don't feel comfortable communicating in English about my ADA
3 needs. I told CCI Fleming that I was concerned that our mail to our family was not being
4 sent out. I was concerned about this because other people in the gym told me that they had
5 seen a bag with our mail to our family in the staff office, which had not been mailed out.
6 CCI Fleming said he would look into this issue and that he would try to help. I didn't tell
7 CCI Fleming about my need for trapeze bars because I didn't want to be sent to the hole.

8 14. No staff person has spoken to me in Spanish about my ADA-related needs
9 since I arrived at the gym. Mr. [REDACTED] speaks English and Spanish, so when I have questions
10 about what's going on, I ask him to explain things, like the announcements that officers
11 give.

12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct, and that this declaration is executed at Corcoran,
14 California, this 1st day of September, 2020.

15 /s/ [REDACTED]
16 [REDACTED]

17
18 On September 1, 2020, due to the closure of the Substance Abuse Treatment
19 Facility in light of the COVID-19 pandemic, I translated from English to Spanish and read
20 the contents of this declaration, verbatim, to [REDACTED] by telephone. I am fluent in
21 Spanish. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and
22 correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the
23 declaration and to file the declaration in this matter.

24
25 DATED: September 1, 2020

Gabriela Pelsinger

26 _____
27 Gabriela Pelsinger
28

EXHIBIT N

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. I currently am in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). My CDCR number is [REDACTED]. I currently am incarcerated at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). I am 68 years old.

3. I am an *Armstrong* class member, and I am designated as DPW. I am prescribed the following Durable Medical Equipment (“DME”): a wheelchair, back brace, compression stockings, eyeglasses, urological supplies, and grab bars to help me get out of bed.

4. I have been housed at SATF since July 2017. I was most recently housed in Facility A, Building 3 (“A3”) prior to being moved to the Facility A gym.

5. On or around August 20, 2020, I was told that I would be receiving a nose swab to test for COVID-19. I was told to pack my things because I would be moving to the gym on my yard. I was not given any information regarding the specifics of why I was being moved.

6. When I first arrived to the gym, I was housed with over 30 people all from my building. Currently, there are only nine people left in the gym because most people have been moved back to A3. There are only about four people with disabilities in the gym currently.

7. I was assigned to a bed near the middle of the gym. There is a distance of about four to five feet between each bed.

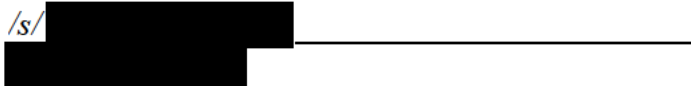
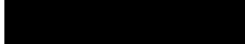
8. I have not been provided grab bars to help me sit up in my bed. I previously had grab bars that went along the sides of my bed that I could hold on to when I was housed in Facility E, Building 4. In A3, I was able to use the bottom bar of the top bunk to pull myself up. In the gym, I require the assistance of another person to help lift me up

1 from my bed, so that I can sit up. If no one is available, I have to figure out how to get up
2 myself, which causes me significant pain in my arms and back. The person who helps me
3 is a volunteer because there are no ADA workers in the gym. This person wears their mask
4 around me but does not have any other personal protective equipment.

5 9. I was not seen by anyone from the ADA office or other staff regarding my
6 ADA accommodations in the gym. I was informed by Plaintiffs' counsel that a 128-B
7 chrono, dated August 27, 2020, was done that stated I was fine and was showed were
8 CDCR Form 1824s and lockboxes are located in the gym. However, I have never been
9 asked by anyone since I have been in the gym about my accommodations. I have seen
10 CDCR Form 1824s on a bench in the gym, but I do not know where the lockboxes are.

11 10. I would like to return to my housing unit, A3, so that I can have the
12 accommodations I need, including grab bars by my bed. I have never have any symptoms
13 of COVID-19 and every test I have taken has come back negative.

14 I declare under penalty of perjury under the laws of the United States of America
15 that the foregoing is true and correct, and that this declaration is executed at Corcoran,
16 California, this 1st day of September, 2020.

17
18 /s/ 
19 

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

1 On September 1, 2020, due to the closure of the California Substance Abuse
2 Treatment Facility and State Prison, Corcoran in light of the COVID-19 pandemic, I
3 translated from English to Spanish and read the contents of this declaration, verbatim, to
4 [REDACTED] by telephone. Mr. [REDACTED] orally confirmed that the contents of the
5 declaration were true and correct. Mr. [REDACTED] also orally granted me permission to affix
6 his signature to the declaration and to file the declaration in this matter.

7

8 DATED: September 1, 2020



Tania Amarillas Diaz

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

EXHIBIT O

DECLARATION OF [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. I currently am in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). My CDCR number is [REDACTED]. I currently am incarcerated at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). I am 79 years old.

3. I am an *Armstrong* class member, and I am designated as DPW. I am currently prescribed the following Durable Medical Equipment (“DME”): a wheelchair, walker, back brace, compression stockings, and eyeglasses.

4. I have been incarcerated at SATF for approximately one year. I was housed in Facility A, Building 2 before coming to the Facility A gym. A small number of people came from Building 2; however, most people in the gym seem to come from Building 3.

5. I moved to the gym on or around August 21, 2020. I was told that because I had a doctor’s appointment, and the doctor had been confirmed positive for COVID-19, I had to be placed into quarantine in the gym. I was told that after quarantine I would be able to return to my building, and I would have the same bed. Other people were placed in the gym after I had arrived and many have already returned to their building.

6. Currently, there are about eight people in the gym. However, at one point, there seemed to be about 50 people in the gym. When there were 50 people, the gym felt very crowded. For example, because there is only one ADA toilet, I had to wait until it was free to use it.

7. I was assigned a bed in the middle of the gym, which is less than six feet distance from the next bed. To my right, I could touch the bed next to me. To my left, there is a large aisle that people use as a walkway. In the aisle, two wheelchairs could barely squeeze by and next to my bed; only one wheelchair fits.

8. I noticed that there are particles floating down from the ceiling in the gym. I

1 see debris in my bed every day when I make my bed, and I am breathing this debris in the
2 air.

3 9. We are delivered our meals, which often sit outside for several minutes
4 before the officers pick them up. We have to go to the pill call window to pick up our
5 medications. Because we only have a few minutes between getting our meal and pill call,
6 by the time I get my medication, my meal is cold.

7 10. There are currently no ADA workers in the gym. There are two volunteers
8 who work as porters and help push people in wheelchairs. These volunteers get gloves and
9 masks when they are helping push people. While I usually opt to push my wheelchair
10 myself, I would like to have assistance with changing my bed sheets.

11 11. As previously mentioned, there is one ADA toilet in the restroom area. The
12 toilet has two grab bars around it. Because one of the grab bars sticks out from the back of
13 the toilet, it is difficult to sit properly. The placement of the grab bar causes me discomfort
14 when I sit on the toilet, so I have opted to use another non-ADA toilet. I find it difficult to
15 use the non-ADA toilets and have trouble getting on and off without the grab bar, but this
16 is the only way because the ADA toilet causes so much discomfort.

17 12. There are currently several cables and individuals' extension cords on the
18 floor scattered in the gym because there are not many outlets available near the beds. Some
19 of the cables are taped down, but they still cause a tripping hazard. While I have not
20 personally tripped on the cables, I have seen other people have trouble.

21 13. Since I have been in the gym, I have not spoken to anyone from the ADA
22 office or other staff regarding my disability accommodations. I was not oriented to where
23 the CDCR Form 1824s and lockboxes are in the gym.

24 ///

25 ///

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct, and that this declaration is executed at Corcoran,
3 California, this 1st day of September, 2020.

4

5

/s/

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25


26

27

28

On September 1, 2020, due to the closure of the California Substance Abuse Treatment Facility and State Prison, Corcoran in light of the COVID-19 pandemic, I read the contents of this declaration, verbatim, to [REDACTED] by telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the declaration and to file the declaration in this matter.

DATED: September 1, 2020



Tania Amarillas Diaz

EXHIBIT P

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. I currently am in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). My CDCR number is [REDACTED]. I currently am incarcerated at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). I am 83 years old.

3. I am an *Armstrong* class member, and I am designated as DPM. I use a cane to ambulate and I need level terrain. I have atrophy and foot pain which makes walking difficult. I also have trouble with my balance due to advanced degenerative disc disease. I require grab bars in the shower in order to prevent falls.

4. I arrived to SATF in early 2018. On or around August 23, 2020, I was tested for the novel coronavirus. I do not know why I was tested. After being tested, I moved from building A3 to the gym on or around August 23, 2020. I was given one hour to pack up my property to move to the gym. I was not informed why I was being moved to the gym. Due to my disability, I have difficulty moving around and needed assistance packing my belongings. Custody staff did not explain how I could receive assistance. My neighbor agreed to assist me with packing up my belongings into a cart. Prior to being moved, no one asked me if the gym would be accessible given my disability. No one explained to me how I could ask for assistance if the gym was not accessible to me. I am aware of the 1824 process, but no one informed me of a lockbox where I could submit 1824 reasonable accommodation requests. I did not observe a lockbox in the gym. I did not receive information about how long I would be in the gym; I still have not received that information.

5. There were approximately 30 other people who had been moved into the gym with me, mixed from each of the three buildings on Facility A. There are 46 beds in the gym. The gym was initially very crowded. I was within three feet of the next bunk at

1 all times, on all sides. Walkways divide the bunks into six sections of around eight bunks
2 each. The walkways are approximately four feet wide.

3 6. Around three or four days after I arrived at the gym, approximately ten to 12
4 people were rehoused from the gym to somewhere else at the prison. I did not make a
5 record of the exact dates, because nobody had any knowledge of when we would be
6 leaving the gym. I did not think I would be housed in the gym for this long. Others were
7 then rehoused so that only nine of us were left. After that, one person moved into the gym
8 from Facility E, and left the next day. From that point to today, nine of us remain in the
9 gym.

10 7. After the initial wave of people was rehoused from the gym to elsewhere in
11 the prison, the nine of us who are currently in the gym were moved to bunks towards the
12 back of the gym, where we still are at present. I am in Bed [REDACTED]. My bunk has a locker
13 welded to the head. The locker is around four feet tall and its back is welded to the back of
14 an identical locker that is connected to my neighbor's bunk (Bed [REDACTED]). I sleep with my head
15 at the head of my bunk, as does my neighbor. There are three feet between the head of my
16 bunk and the head of my neighbor's bunk. There are also three feet to my side to reach the
17 next bunk. There is currently someone only on one side of me, because I am at the last
18 bunk at the end of the gym. I do not wear a mask while sleeping.

19 8. Every person currently in the gym has a visible mobility disability. I observe
20 that two people currently living in the gym assist wheelchair users and are regularly within
21 six feet of the wheelchair users when pushing them to pill line or assisting them with the
22 commode chair.

23 9. On or around August 26, the Associate Warden and a CCI or CCII spoke to a
24 group of seven of us about whether the sinks and toilets were functional. One person was
25 asleep. Another person is a full-time wheelchair user who did not have assistance
26 ambulating from his bunk to join the conversation at the podium; I did not observe custody
27 staff offer him assistance.

28 10. While he was there, the Associate Warden said that he would try to get us a

1 TV, which was installed the following day. He also coordinated clothing exchange; that
2 was the only clothing exchange I have had since arriving at the gym. He also taped down
3 the extension cords on the floor. Prior to that, there were cords everywhere for people's
4 CPAP machines, TVs, fans, hot pots, and other personal appliances, because there were a
5 limited number of outlets. When the cords were not taped down, and I tripped on them
6 more than once while walking from my bunk to the sink. I came close to falling; I would
7 have fallen if not for my cane.

8 11. Skye Lovett from the Prison Law Office told me that CDCR staff completed
9 a 128B chrono that said that I was interviewed on August 26 about accommodations in the
10 gym. The chrono asserted that I told CCI Fleming that I was getting to all medical
11 appointments and any other appointments, and that all sinks, toilets, and showers were
12 operational and in good working order. The chrono also asserted that I was shown the 1824
13 and Grievance lockbox. I was not interviewed individually. I do not recall being asked
14 about medical and other appointments. I did not say that sinks, toilets, and showers were
15 operational. In fact, I told one staff person who visited the gym on around August 26 that
16 the buttons on the toilet were leaking. I also was not shown the grievance lockbox.

17 12. On or around Sunday, August 30, I filed a 602 HC about my KOP
18 medication by sending it through institutional mail, because there was no appeals lockbox
19 that I was aware of in the gym. I did not learn of the appeals lockbox until around August
20 31, when a lady came in with an officer to open the box. I do not believe there was
21 anything in the box, because no one was aware it was there to file paperwork.

22 I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct, and that this declaration is executed at Corcoran,
24 California, this 1st day of September, 2020.

25
26 /s/ [REDACTED]
27 [REDACTED]
28

1 On September 1, 2020, due to the closure of the California Substance Abuse
2 Treatment Facility and State Prison, Corcoran in light of the COVID-19 pandemic, I read
3 the contents of this declaration, verbatim, to [REDACTED] by telephone. Mr. [REDACTED]
4 orally confirmed that the contents of the declaration were true and correct. Mr. [REDACTED] also
5 orally granted me permission to affix his signature to the declaration and to file the
6 declaration in this matter.

7

8 DATED: September 1, 2020



Skye Lovett

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT Q

DECLARATION OF [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is [REDACTED]. I am currently housed at Deuel Vocational Institution (DVI) in H-Wing. I am a Reception Center status individual. I am 59 years old.

3. I am an *Armstrong* class member. I am designated as DPO, which means that I require a wheelchair to travel longer distances. I can stand for short periods. For example, I sometimes stand in the shower using the grab bars.

4. I have several serious medical conditions. I am high risk medical. I have high blood pressure and diabetes. I also have sciatica and degenerative disk disease.

5. I have been housed at DVI from February 4, 2020 to the present.

6. During my time at DVI, I was housed in the following locations: G-Wing and H-Wing. When I was housed in G-Wing, I was housed in the wheelchair accessible cells there, which are four man cells. G-Wing also has accessible showers for individuals in wheelchairs. I was moved to H-Wing a few weeks ago, when G-Wing was emptied out to create isolation and quarantine space.

7. In H-Wing, I have struggled somewhat, because the showers are not as accessible as they were in G-Wing. When I was in G-Wing, I would often use the shower bench and the hand-held shower. In H-Wing, there is also a shower bench and a hand-held shower fixture. However, the hand-held shower hose is broken, and there is no water pressure. In fact, all of the showers in H-Wing are clogged and do not have any pressure. I have reported this to staff, and staff reported that they passed on the complaint, but nothing has been changed. I never feel clean from showering in H-Wing. I am able to stand for long enough to use one of the non-wheelchair accessible showers when I am feeling okay. If I am having pain, I don't shower, because the hand-held shower by the shower bench does not work.

1 8. Because the DVI reception center is closing, there are only about 15 or 16
2 Reception Center individuals left on H-Wing, including me. We are waiting to be
3 transferred.

4 9. However, recently, DVI has been moving new mainline transfer cases into
5 H-Wing. Some are from NKSP Reception Center. They are in this unit on quarantine
6 status. Some of them are housed on the first tier across from me. They are using the same
7 showers as us. They also walk by our cells. Although our cells have solid doors, I am
8 afraid of catching Covid-19 from sharing the showers with these individuals.

9 10. I do not know whether the showers are being cleaned in between when we
10 use them and when the new arrivals use them.

11 11. In the past, we were getting good cleaning supplies, including bleach. In the
12 last two weeks, however, I have not gotten any cleaning supplies.

13 12. It is my understanding that G-Wing is empty. I go by G-Wing when I go to
14 yard, which is every day, and when I go to canteen. I never see anyone in there. I do not
15 understand why G-Wing is not being used to quarantine the new arrivals.

16 I declare under penalty of perjury under the laws of the United States of America
17 that the foregoing is true and correct, and that this declaration is executed at Tracy,
18 California this 28th day of August 2020.

19

20

/s/ [Redacted Signature]

21

22

//

23

//

24

//

25

26

27

28

On August 28, 2020, due to the closure of the DVI in light of the COVID-19
pandemic, I read the contents of this declaration, verbatim, to [Redacted] by
telephone. Mr. [Redacted] orally confirmed that the contents of the declaration were true and

1 correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the
2 declaration and to file the declaration in this matter.

3

4

5 DATED: August 28, 2020



6 Thomas Nolan

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT R

1 **DECLARATION OF** [REDACTED]

2 I [REDACTED], declare:

3 1. I have personal knowledge of the matters set forth herein, and if called as a
4 witness, I could and would competently so testify.

5 2. My California Department of Corrections and Rehabilitation (“CDCR”)
6 number [REDACTED]. I am currently housed at Deuel Vocational Institution (“DVI”) in H-
7 Wing. I am 25 years old.

8 3. I am an *Armstrong* class member. I am designated as DPO, which means
9 that I require a wheelchair to travel longer distances. I have a prosthetic leg, and I can
10 stand for short periods, but even when I am wearing my prosthetic, most of the time I use a
11 wheelchair to get around. When I shower, I always need to use a shower bench, because
12 cannot take my prosthetic leg into the shower, and I cannot stand on one leg.

13 4. I have been housed at DVI from February 18, 2020 to the present.

14 5. During my time at DVI, I have been housed in the following locations: West
15 Hall, East Hall, G-Wing and H-Wing. When I was housed in G-Wing, I was housed in the
16 wheelchair accessible cells there, which are four-man cells. G-Wing also has accessible
17 showers for individuals in wheelchairs, and the showers there had a working hand-held
18 shower head.

19 6. I was moved to H-Wing a few weeks ago, when G-Wing was emptied out to
20 create isolation and quarantine space.

21 7. In H-Wing, I have struggled to shower, because the showers are not as
22 accessible as they were in G-Wing. When I was in G-Wing, I would always use the
23 shower bench and the hand-held shower. In H-Wing, the hand-held shower hose is broken
24 and the handheld shower device is clogged and does not have any water pressure. The
25 water just drips out of it. I have reported this to staff, but nothing has changed.

26 8. Also, the shower bench in H-Wing is too low, which makes it difficult to
27 transfer back and forth from my wheelchair. Also, with the low water pressure and the
28 limited time we are given to shower, I never am able to finish cleaning myself during the

1 allotted time. Frequently I end up leaving the shower with soap on my body that has not
2 been washed off yet.

3 9. Because the DVI Reception Center is closing, there are only about 15 or 16
4 Reception Center individuals left on H-Wing, including me. We are waiting to be
5 transferred.


6 10. However, for the last two weeks DVI has been moving new mainline transfer
7 cases from other prisons into H-Wing. These individuals are in this unit on quarantine
8 status. Some of them are housed on the first tier across from me. These individuals are
9 using the same showers as us. These individuals on quarantine status also come out of
10 their cells and stand next to us in the medication line.

11 11. The quarantined individuals also use the same set of phones at the same time
12 we are using them. There are two phones right next to each other on the unit. At times
13 when I have been making a phone call, one of the new individuals on quarantine has been
14 right next to me making a call. I have not seen anyone cleaning the phones in between
15 each person using them. I am afraid of catching Covid-19 from sharing H-Wing with these
16 individuals.

17 12. When I am on the phone, I always wear a mask, but some of the new arrivals
18 do not wear a mask when they are on the phones. The two phones are about two or three
19 apart from one another.


20 I declare under penalty of perjury under the laws of the United States of America
21 that the foregoing is true and correct, and that this declaration is executed at Tracy,
22 California this 28th day of August 2020.

23
24  _____

25
26
27 On August 28, 2020, due to the closure of the DVI in light of the COVID-19
28 pandemic, I read the contents of this declaration, verbatim, to , by

1 telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and
2 correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the
3 declaration and to file the declaration in this matter.
4

5 DATED: August 28, 2020



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

EXHIBIT S

From: arm-plo@prisonlaw.com on behalf of Thomas Nolan
Sent: Friday, August 28, 2020 2:29 PM
To: Davis, Tamiya@CDCR; Sean Lodholz; Fouch, Adam@CDCR; Bravo, Landon@CDCR
Cc: Armstrong Team - RBG only; 'arm-plo@prisonlaw.com'; Ed Swanson (ed@smllp.law); Britt Evangelist; August Gugelmann; Donald Specter; Ferguson, Patricia@CDCR; Gaultney, Robert; Trace Maiorino; Joanna Hood; Bick, Joseph@CDCR; Barrow, Roscoe@CDCR; Powell, Alexander@CDCR; Vincent Cullen; knowlesamp@gmail.com; Dodd, Martin; Steve Fama; Alison Hardy
Subject: Armstrong -- Inaccessible Housing of DPO, DPM Individuals at DVI When They Were Removed From Designated Isolation and Quarantine Space [IWOV-DMS.FID3579]

Via E-mail Only

Privileged and Confidential – Subject to Protective Orders

August 28, 2020

Dear Sean and Tamiya –

It has come to our attention that at least two Reception Center DPO individuals housed at DVI, and likely at least 6 such DPO individuals, were moved to H-Wing from G-Wing at the beginning of August, when G-Wing was designated as the isolation and quarantine unit for DVI.

During a legal call today, we spoke with two such individuals, Mr. [REDACTED], [REDACTED], and Mr. [REDACTED], [REDACTED], who are both DPO and who both reported that they have had difficulty accessing the showers in H-Wing because the shower bench is too low, the hand-held shower device is broken, and the water pressure is extremely low. According to the “DPP Matrix - Designated Bed Level Attributes Summary” chart that you sent to us on July 13, 2020 -- which you explained was “the current DPP Matrix being used” – H-Wing is not designated to house DPO individuals or DPM individuals.

In addition, both individuals we spoke with today reported that during the last week or so, individuals transferring into DVI from other prisons have been housed in their unit on quarantine status, and that they have been sharing showers and phones with these people on quarantine status, without necessarily having the showers or phone cleaned in between each use. Mr. [REDACTED] also reported that he is routinely lining up for medications with the new arrivals who are on quarantine status.

The failure to properly re-house the DPO and DPM individuals from G-Wing is not consistent with our understanding of headquarters directives regarding movement of class members out of quarantine and isolation spaces, or with the finding of the Court Expert on this issue. *See* Court Expert Report, ECF 3048 at 5 (“In any institution where the selection of a building for isolation or quarantine has resulted in the displacement of *Armstrong* class members, they must be appropriately rehoused.”)

We do not believe that we have received any notice of these class members being housed inaccessibly, as required by the July 20, 2020 Stipulated Order, ECF 3015, at ¶4. We also do not believe we have received a 128-B for these individuals. Please explain why we were not provided with the required notice, and please produce the 128-B for these individuals, as well as for all of the other DPO and DPM individuals housed on H-Wing in violation of the accessible housing matrix.

According to the SOMS DPP Roster dated today, there are currently 4 DPO individuals, 1 DPM individual, and 1 DPW individual housed in H-Wing contrary to the Matrix. (We would be especially concerned about Mr. [REDACTED], [REDACTED], who was DPO earlier this month but is apparently now DPW, as there are no DPW cells on H-Wing. However, when we asked to speak to Mr. [REDACTED] today, we were told he has been hospitalized since August 17, 2020. We hope he was not housed on H-Wing at any point after he was made DPW.)

Please let us know if Mr. [REDACTED] was ever housed in H-Wing as a DPW individual. We also request a copy of the SOMS bed movement history for Mr. [REDACTED] as well as a copy of the CDCR 1845 form changing his disability code from DPO to DPW.

Please contact me at my cell phone below if you have any questions about these requests.

Sincerely yours,

Thomas Nolan
Of Counsel



101 Mission Street, 6th Floor
San Francisco, CA 94105
(415) 310-2097 (cell)
(415) 433-6830 (telephone)
(415) 433-7104 (fax)
tnolan@rbgg.com

CONFIDENTIALITY NOTICE

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this e-mail message in error, please e-mail the sender at rbgg@rbgg.com.

IRS CIRCULAR 230 NOTICE: As required by United States Treasury Regulations, you should be aware that this communication is not intended by the sender to be used, and it cannot be used, for the purpose of avoiding penalties under United States federal tax laws.

EXHIBIT T

REASONABLE ACCOMMODATION PANEL (RAP) RESPONSE

RAP Meeting Date: 7/23/2020 **Date IAC Received 1824:** 7/21/2020

1824 Log Number: CSPC -20-3147

Inmate's Name: ██████████ **CDCR #:** ██████████ **Housing:** ASU ██████████

RAP Staff Present: Captain E. Burden, Custody Appeals Coordinator L. Carrol Health Care Appeals Coordinator A. Ybarra, Health Care Compliance Analyst C. Aguilera, Chief Physician Surgeon C. McCabe, Psychologist B. Adam

Summary of Inmate's 1824 Request: Install grab bars under the top bunk; make storage space at waist high; install a thinner desk; be re-housed back in ██████████ you would like a 7-inch tablet.

Interim Accommodation:

No interim accommodation required:

FINAL RESPONSE:

Response: On **07/23/2020**, the Reasonable Accommodation Panel (RAP) was able to render a decision in response to your request. You are a class member as defined under Armstrong vs. Newsom as DPM/DNV and DNH. You are a participant in the Mental Health Delivery System (MHDS) at the Correctional Clinical Case Management System (CCCMS) level of care. You state you would like grab bars installed under the top bunk; more storage space at waist-high level because it is hard for you to adjust your property with the storage space being low. You state you have pain in your back due to leaning forward when using the desk provided in the cell. You also state you would like a 7-inch tablet vs. the 5-inch tablet you already have.

Per Interim Accommodation Procedure (IAP) worksheet dated 7/21/2020: You were interviewed by staff at cell front and you reiterated what you mentioned in your 1824 about the grab bar, desk, cubbyholes and the like. You showed the Sergeant how your feet hit the wall and the desk needs to be higher so it goes over the wheelchair/walker so you do not have to lean out so far to work on the

REASONABLE ACCOMMODATION PANEL (RAP) RESPONSE

RAP Meeting Date: 7/23/2020 Date IAC Received 1824: 7/21/2020
1824 Log Number: CSPC -20-3147

Inmate's Name: [REDACTED] CDCR #: [REDACTED] Housing: ASU [REDACTED]

desk. Staff stated you do not go to yard and they have visually seen you having trouble getting out of bed or retrieving paperwork from storage space provided.

You are housed in STRH, cell [REDACTED] in E section, which is appropriate, based on all case factors. There has been a work order submitted for grab bars under the top bunk to assist with getting out of the bed; a higher desk and further out, for better accessibility and property storage at a height more appropriate for and ADA inmate. At this time, alternate size tablets are available. However, you can check out a full-page magnifier for use to enlarge the text. In addition, there may be a function on your tablet which can enlarge your text, please work with unit staff/clinicians to assist with this.

Not true!

Direction if dissatisfied: If you disagree with a decision upon which the Reasonable Accommodation Panel (RAP) relied on in reaching its conclusion, you can file a blue CDCR 602 Health Care Grievance for medical concerns. For all other disagreements with disability access or disability discrimination decisions, you can file on a green CDCR 602. Ensure you attach a copy of this response along with your CDCR 1824 as supporting documents.

EFFECTIVE COMMUNICATION: A review of your Test of Adult Basic Education (TABE) score in SOMS revealed you have a TABE score below 4.0 (your TABE score is 1.9) you are DNH and DNV; therefore, you **do require special accommodation** to achieve effective communication. Your primary form of communication is Reading lips.

REASONABLE ACCOMMODATION PANEL (RAP)
RESPONSE

RAP Meeting Date: 7/23/2020 Date IAC Received 1824: 7/21/2020

1824 Log Number: CSPC -20-3147

Inmate's Name: [REDACTED] CDCR #: [REDACTED] Housing: ASU [REDACTED]

E. Burden

ADA Coordinator (A)



Signature


Date sent to inmate:

AUG 10 2020

INMATE COPY

STATE OF CALIFORNIA
REASONABLE ACCOMMODATION REQUEST
 CDCR 1824 (Rev. 09/17)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

INSTITUTION (Staff use only) CSP-CORCORAN	LOG NUMBER (Staff Use Only) 20-3147	DATE RECEIVED BY STAFF: 	
<p align="center">*****TALK TO STAFF IF YOU HAVE AN EMERGENCY*****</p> <p>DO NOT use a CDCR 1824 to request health care or to appeal a health care decision. This may delay your access to health care. Instead, submit a CDC 7362 or a CDCR 602-HC</p>			
INMATE'S NAME (Print) [REDACTED]	CDCR NUMBER [REDACTED]	ASSIGNMENT [REDACTED]	HOUSING 2- [REDACTED]

INSTRUCTIONS:

- You may use this form if you have a physical or mental disability or if you believe you have a physical or mental disability.
- You may use this form to request a specific reasonable accommodation which, if approved, will enable you to access and/or participate in a program, service or activity. You may also use this form to submit an allegation of disability-based discrimination.
- Submit this form to the Custody Appeals Office.
- The 1824 process is intended for an individual's accommodation request. Each individual's request requires a case-by-case review.
- The CDCR 1824 is a request process, not an appeal process. All CDCR 1824 requests will receive a response.
- If you have received an 1824 decision that you disagree with, you may submit an appeal (CDCR 602, or CDCR 602-HC if you are disagreeing with a medical diagnosis/treatment decision).

WHAT CAN'T YOU DO / WHAT IS THE PROBLEM?

① The ADA cells in ASU I have no grab bar(s) under top bunk so it's very difficult for me to get out of bed. I've used the sink and have slipped and fallen twice.

② I cannot store property in cubby holes under lower bunk they are too low & too deep.

③ The "desk" or "surface" is not wheelchair accessible. My toes get smashed into the wall and my knees hit the lower edge of surface and the foot rests get stuck on "extra shelving" or steps and to write on "surface" I must lean forward causing back pain.

WHY CAN'T YOU DO IT?

is not wheelchair accessible. My toes get smashed into the wall and my knees hit the lower edge of surface and the foot rests get stuck on "extra shelving" or steps and to write on "surface" I must lean forward causing back pain.

WHAT DO YOU NEED?

① Install a grabbar under top bunk;

② Make storage space(s) at waist high to store bottom bunk occupants property, etc.; and

③ Install a thinner, extended out concrete desk. (See ASU I at HDSP)

And/or rehouse me back in [REDACTED]

④ Give me a Finch Tablet ~~and~~ (Use the back of this form if more space is needed)

DO YOU HAVE DOCUMENTS THAT DESCRIBE YOUR DISABILITY? Yes No Not Sure

List and attach documents, if available:

I understand that staff have a right to interview or examine me, and my failure to cooperate may cause this request to be disapproved.

[REDACTED] INMATE'S SIGNATURE 07/18/2020 DATE SIGNED

Assistance in completing this form was provided by:

Last Name First Name Signature

EXHIBIT U



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

August 26, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*
██████████, ██████████, COR

Dear Ms. Davis:

I write regarding ██████████, ██████████, DPM, DNH, DNV, who is currently housed at California State Prison, Corcoran. Mr. ██████████ is experiencing a number of disability-access issues that ADA staff at Corcoran have failed to address.

Failure to Accommodate Mr. ██████████'s Incontinence

Mr. ██████████ reports that he has both urinary and fecal incontinence, and he receives a weekly supply of briefs, wipes, paper tape, and disposable underpads (or “chucks”). *See, e.g.*, 7536 DME/Supply Receipt, August 23, 2020 (listing Mr. ██████████'s incontinence supplies). He reports, however, that the supplies issued to him do not effectively accommodate his disability-related incontinence. Specifically, the briefs do not contain the amount of waste that Mr. ██████████ produces, so urine and feces leak out of the briefs and down his legs. Mr. ██████████ says that he cannot move up to the next brief size because the briefs would be too loose on him, and urine and feces would still leak.

Mr. ██████████'s incontinence is preventing him from accessing prison programs and services. He reports that he does not leave his cell for dayroom or any other recreational out-of-cell time because he does not want to have urine or feces on his leg while outside of his cell. He must remain near his cell so that he is can change his clothes and wash himself if he soils his diaper.

To address the inadequate incontinence supplies that he currently receives, Mr. ██████████ submitted a CDCR Form 1824 on May 5, 2020. CDCR Form 1824, Log No. 20-2520 (May 5, 2020). In his 1824, Mr. ██████████ requested “2-pairs of white poly/plastic reusable cover-up briefs,” among other accommodations. *Id.* The briefs that Mr. ██████████ described are waterproof, washable briefs that are worn over adult diapers or briefs and serve as an extra layer of absorption in case waste leaks outside of the diaper.¹ Mr. ██████████ requested two pairs so that if he has accident, he can launder one pair while still

¹ The “SANI-PANT Waterproof Cover-Up Briefs” are sold by Dr. Leonard's, a health and personal care company, and are available at: <https://www.drleonards.com/sani-pant-waterproof-cover-up->

Ms. Tamiya Davis
Re: ██████████, ██████████
August 26, 2020
Page 2

wearing the other.² The RAP did not address Mr. ██████████'s request for the poly/plastic briefs in its response, nor did it offer an effective alternative accommodation. *See* CDCR Form 1824, Log No. 20-2520 (May 5, 2020).

Mr. ██████████'s disability-related incontinence is not currently being accommodated, as he is still unable to access prison programs and services without being covered in feces and urine. *See Armstrong Remedial Plan (ARP) § 1* ("No qualified inmate or parole with a disability as defined in Title 42 of the United States Code, Section 12102 [the Americans with Disabilities Act] shall, because of that disability, be excluded from participation in or denied the benefits of services, programs, or activities of the Department or be subjected to discrimination."). The RAP should have provided Mr. ██████████ with either the accommodation that he requested or an effective alternative. *See id.* at § II(H) ("A request for accommodation may be denied if equally effective access to a program, service, or activity may be afforded through an alternative method"). Mr. ██████████ should not be required to choose between foregoing out-of-cell activities or sitting in his feces outside of his cell.

REQUEST: We request that Corcoran ADA staff provide Mr. ██████████ with either the two pairs of poly-plastic briefs that he requested or an equally effective alternative accommodation that prevents feces and urine from leaking out of his briefs.

In addition to his inadequate incontinence supplies, Mr. ██████████ reports that custody staff do not allow him to shower or provide him with new clothes or linens after he has an accident. He says that when he has asked officers in the past for a shower or new linens after an accident, they have immediately denied his request. On several occasions, a particular officer responded, "This is not a Holiday Inn. Deal with it." He reports that he no longer asks for showers or clean sheets because officers have consistently refused to accommodate him. Instead, he tries to clean himself and his clothes in the sink in his cell.

Custody officers refusing to allow Mr. ██████████ to shower or provide him with new linens after an accident is dehumanizing and unacceptable. The long-standing policy regarding provision of showers to those with incontinence provides that individuals "who receive incontinence supplies shall be provided additional shower and hygiene supplies on an individualized basis as needed." Memorandum from Connie Gipson, Director of Division of Adult Institutions, and Vincent S. Cullen, Director of CCHCS, to

[briefs/72755.cfm](#) (last accessed August 24, 2020).

² In his 1824, Mr. ██████████ requested permission to purchase the briefs at his own expense. CDCR, however, has an obligation to accommodate Mr. ██████████'s disability. *See Armstrong Remedial Plan § II(F)* (requiring CDCR to "provide reasonable accommodations or modifications for known physical or mental disabilities for qualified inmates/parolees."). Such accommodations should be provided at no cost. *See* 28 C.F.R. § 35.130 (f) ("A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part"). Unless Corcoran ADA staff can provide an equally effective alternative accommodation for Mr. ██████████'s disability-related incontinence, it should issue him the poly-plastic briefs that he requested.

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
August 26, 2020
Page 3

Wardens and Chief Executive Officers, Revised Durable Medical Equipment Policy (March 5, 2020) ; *see also* Memorandum from M.D. Stainer, Director of Division of Adult Institutions, to Associate Directors of Division of Adult Institutions and Wardens, Durable Medical Equipment Policy (December 30, 2014) (“Hygiene supplies/accommodations ... include toileting supplies, additional shower accommodations, additional clothing/linen exchange, etc. Hygiene supplies/accommodations are available without a prescription.”). Regardless of the time of day, if Mr. [REDACTED] has an accident, he should receive a shower and fresh linens from custody staff upon request.

Mr. [REDACTED] also reports that before moving to his current housing unit in administrative segregation, he was housed on Corcoran’s 4A Facility. He reports that custody officers on that yard also did not permit him to shower or provide him with new linens when he had an accident. In other words, custody officers’ failure to accommodate individuals with incontinence appear to be a widespread issue at Corcoran and not isolated to a particular housing unit.

REQUEST: We request that Corcoran ADA staff ensure that Mr. [REDACTED] receives showers and fresh linens upon request after he has an accident.

REQUEST: We request that Corcoran ADA staff provide additional training to custody officers on their responsibilities in the provision of as-needed showers and hygiene supplies to individuals with incontinence.

REQUEST: We request that Mr. [REDACTED]’s reports of custody staff’s failure to accommodate him after an accident are placed on the noncompliance log.

Failure to Accommodate Mr. [REDACTED]’s Vision Disability

Mr. [REDACTED] reports that he has limited vision, and he has difficulty reading print materials. On multiple occasions, Mr. [REDACTED] has requested access to auxiliary aids to help him read paperwork while in his cell. For example, on March 10, 2020, Mr. [REDACTED] submitted an 1824, stating that he is “print disabled” and “visually impaired due to trauma to eye nerves,” and requesting “access, possession, and use of a sight-saving typewriter.” CDCR Form 1824, Log No. 20-1296 (March 10, 2020). The RAP response, dated March 12, 2020, states in relevant part that Corcoran “does not currently have ‘sight saving’ typewriters in the Law Libraries,” and “that CCII Messer gave you a pocket magnifier while speaking to you on 03/12/2020.” *Id.*

Mr. [REDACTED] reports that the pocket magnifier he was issued does not accommodate his vision disability for several reasons. The magnifier is the size of a credit card, and it has a narrow slot that magnifies print material when held over the page. Mr. [REDACTED] reports that it takes him hours to read paperwork that would normally take minutes because he must methodically move the card magnifier across the page. Additionally, he has carpal tunnel syndrome, and he wears a brace on each wrist for support. As a result of his carpal tunnel, his hands shake, and he cannot hold the small magnifier steady enough to read his paperwork. He reports that any magnifier that he must hold in place will not properly accommodate his disability.

Ms. Tamiya Davis
 Re: [REDACTED], [REDACTED]
 August 26, 2020
 Page 4

On May 5, 2020, Mr. [REDACTED] again submitted an 1824 to request an accommodation for his vision disability, requesting access to the Merlin machine for in-cell use. *See* CDCR Form 1824, Log No. 20-2520 (May 5, 2020). The RAP response, issued on May 14, 2020, stated:

The Merlin machine is accessible in the Law Library however, only PLU (Priority Library Users) inmates can access the library, due to COVID-19 restrictions. Full-page magnifiers are available from the officers in your building to use within your cell. The RAP notes staff will allow you to check out a full page magnifier as you cannot go to the library and use the Merlin machine at this time.

Id.

Similar to the card magnifier, Mr. [REDACTED] reports that the full page magnifier does not properly accommodate his disability because he cannot hold the page steady enough for it be useful. The full page magnifier is also not personalized to Mr. [REDACTED]'s particular level of vision, nor does it take into account his upper extremity mobility disability.

We have previously noted that the RAP's issuance of magnifiers as a "one-size-fits-all disability accommodation does not reflect an individualized assessment" of a person's disability-needs, as required by the ARP and the Americans with Disabilities Act (ADA). Letter from Patrick Booth, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], [REDACTED], SATF (Dec. 12, 2019) at 3; *see also Fortynuev.Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1083 (9th Cir. 2004) ("[I]t is clear that the determination of whether a particular modification is 'reasonable' involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the nature of the disability in question and the cost to the organization that would implement it."). We have also indicated that CDCR should offer a variety of magnifiers to people with low vision:

Outside of prison, magnifiers are available "at several magnification levels, from the lowest level, 2x, up to 15x." [Peggy R. Wolfe, *Vision Loss: Strategies for Living with Hope and Independence* (Park Publishing, Inc. ed., Third Edition, 2014) at] pp. 47- 48, 194-95. Similarly, magnifiers can be found with or without light, in hand-held or stand style, battery-operated or rechargeable, or with different style lights. *See* [Marshall Flax et al., *Coping with Low Vision* (Singular Publishing Group, Inc. ed., 1993) at] p. 71. Individuals with low vision should try a variety of magnifiers to determine which style is most helpful. Each person's "own needs and ... intended use for the magnifier will help determine which type is best" for the individual. Wolfe, *supra*, at pp. 47-48, 194-95. **The prison-issued magnifiers ... do not necessarily accommodate all low vision class members.**

Letter from Patrick Booth, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], [REDACTED], SATF (Dec. 12, 2019) at 2-3 (emphasis added).

Given his carpal tunnel and shaky hands, Mr. [REDACTED] reports that he requires a magnifier that he does not need to hold when using it. He says that a magnifier that clips onto his book or paperwork

Ms. Tamiya Davis
 Re: [REDACTED], [REDACTED]
 August 26, 2020
 Page 5

would allow him to read in his cell.³ Mr. [REDACTED], and all others in prison, have a “right to read.” *In re Martinez*, 216 Cal. App. 4th 1141, 1152 (2013). Corcoran ADA staff, therefore, must provide Mr. [REDACTED] with an accommodation that takes into consideration his disabilities allows him to read independently in his cell.

Plaintiffs are aware that Defendants have issued a new directive regarding blind and low vision class members’ access to the auxiliary aids in the law libraries. *See* Memorandum from Brant Choate, Director of the Division of Rehabilitative Programs, & Connie Gipson, Director of the Division Adult Institutions, to Associate Wardens & ADA Coordinators, Access to Auxiliary Devices in Libraries for Inmates with Vision Impairment Impacting Placement During COVID-19 Pandemic (Aug. 13, 2020). This directive, however, only applies to DPV class members and not DNV class members, like Mr. [REDACTED], or other low vision class members that do not have a DPP code. *See id.*; *see also* Letter from Rita Lomio & Skye Lovett, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], [REDACTED], SATF (Aug. 25, 2020) (raising the same issue). But even if Mr. [REDACTED] was permitted to access the law library under this memorandum, the time allotted to him would be insufficient. Mr. [REDACTED] reports that he reads and writes in his cell for several hours each day. The two hours per week that this memorandum allows is not enough for Mr. [REDACTED] to complete his reading and writing.

REQUEST: We request that Corcoran ADA staff provide Mr. [REDACTED] with either a clip-on magnifier or an equally effective alternative accommodation so that he can read independently.

REQUEST: We request that Defendants provide additional training to Corcoran’s ADA staff about the diverse nature of disabilities and need for assessing the reasonableness of an accommodation on a case-by-case basis.

Failure to Make Modifications to Mr. [REDACTED]’s Inaccessible Cell

Lastly, Mr. [REDACTED] reports that, although he is in cell designated for DPW class members, it lacks several important accessibility features. For example, the cell does not have a grab bar over his bed (or a trapeze bar), so he has difficulty pulling himself out of bed. He says that his bed is double-bunked, but there is currently no one living on the top bunk. To get out of bed in the morning, Mr. [REDACTED] requires a grab bar that runs horizontally along the underside of the top bunk (i.e. trapeze bar). Without the bar, he struggles to transfer from his bed to his wheelchair or seated-walker. Additionally, he reports that the grab bars near the toilet are not positioned in a place where he can effectively use them. He says that one of the bars is directly behind the toilet, and he lacks the flexibility and strength required to reach completely behind himself to push himself up. He also reports that other grab bars near the toilet are too

³ A clip-on magnifier is available through Maxi-Aids (listed as “Reizen Magnifier – Clip on Magnifier”): https://www.maxiaids.com/reizen-magnifier-clip-on-magnifier?gelid=CjwKCAjwkJj6BRA-EiwA0ZVPVvPCoE0jDn-rB2mdPC5VOGC1oaKR3cf_TFdPdQ3hp8EjYP0h75VZUBoCXskQAvD_BwE (last accessed August 26, 2020). As indicated in footnote 2, Defendants should provide this auxiliary aid to Mr. [REDACTED] at no cost.

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
August 26, 2020
Page 6

far from the toilet seat, so he cannot put his entire weight onto the bar without falling. With the position of the grab bars, Mr. [REDACTED] moves very slowly to get onto the toilet, and he has had accidents on himself in the time it takes him to transfer from his wheelchair or walker to the toilet seat.

The desk in his cell also is not accessible for wheelchair-users like Mr. [REDACTED]. In fact, Mr. [REDACTED] reports that there is no desk in his cell at all, and the only writing surface is a large, concrete slab attached to the wall that is intended as a step for someone accessing the top bunk. Mr. [REDACTED] reports that the writing surface is too low for him to position his wheelchair under it. He says that there are also two smaller steps under the writing surface, so even if he was able to position himself under it, his feet would still run into the smaller steps. Mr. [REDACTED] reports that the writing surface also extends too far into the other living areas in his cell, and he has trouble turning around his wheelchair in his cell because there is limited space. His feet extend past the footrests on his wheelchair, so when he turns around his cell, his feet bump into the concrete slab.

On July 1, 2020, Mr. [REDACTED] submitted an 1824 about the inaccessibility of his cell, stating, “There is no desk in the cell to which I can access [without] having to lean forward – thus, causing sharp back pains.” CDCR Form 1824, Log No. 20-3135 (July 1, 2020). Accordingly, he requested “[a] desk in the cell so I may do my legal work.” *Id.* On July 9, 2020, the RAP issued its response, which stated in relevant part: “[C]urrently you are in an ADA cell in ASU-STRH which is equipped with a surface for writing, along with extra shelves. Per the IAP, you are safely accessing all programs, services, activities with no complaints of back pain.” *Id.*

The RAP’s response to Mr. [REDACTED]’s request failed to address the disability-access issue that he raised. The response did not indicate whether any staff members interviewed Mr. [REDACTED] about his request. *See* 1824 Desk Reference Manual (Oct. 2, 2017) at p. 8 (“[T]he IAC/designee may still use “Step 2” on the IAP Worksheet to interview the inmate and/or staff to obtain additional information to be utilized during the RAP. This can be especially useful when the concerns/requests raised by the inmate are unclear, or when staff observations may assist the RAP.”). Instead, the RAP response disregarded his request entirely, assuming that he cannot have an inaccessible desk in a cell designated for DPW class members. But the RAP should have assumed that his description of the issue was true until it had information to either confirm or refute it. *See id.* at p. 3 (“When the description of the problem or what can be reasonably inferred from the description suggests that a disability access issue or a disability discrimination issue exists, the inmate’s claim shall be taken at ‘face value’ until it has been reviewed and the Interim Accommodation Procedure (IAP) or the RAP is able to confirm or refute the allegations.”). Without interviewing Mr. [REDACTED] or having a staff member assess the accessibility of the desk in-person, the RAP could not have determined whether Mr. [REDACTED] could properly use the desk. The mere fact that a class member is assigned to a housing unit designated for his DPP code does not mean that the person can properly access the bathroom, the bunk, the shower, the dayroom, or any other part of the housing unit.

Again, on July 18, 2020, Mr. [REDACTED] submitted another 1824 to request that accessibility features are installed in his cell. *See* CDCR Form 1824, Log No. 20-3147 (July 18, 2020). Specifically, he wrote that there are no grab bars above his bed, the cubby holes are too deep and too low for him to use, and the desk (or writing surface) is not accessible. *Id.* Mr. [REDACTED] also noted that he has fallen several times when getting out of bed because of the lack of grab bars. *Id.* In its response issued on July 23, 2020, the RAP

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
August 26, 2020
Page 7

appropriately stated that a work order had been issued for each of the three accessibility features that Mr. [REDACTED] raises in his 1824. *Id.*

However, Mr. [REDACTED] reports that, as of August 20, 2020, **almost a month later**, there has been no alterations to his cell. He still cannot use the writing surface; he still does not have grab bars above his bed; and he still cannot access his cubby holes. More concerning, it has been over a month since Mr. [REDACTED] informed the RAP that he has fallen on multiple occasions because he does not have grab bars above his bed, yet Corcoran's ADA and plant operations staff have failed to make any modifications to his cell. Mr. [REDACTED] reports that there is another DPW-designated cell in his current housing unit. Staff can make the necessary alterations to that cell immediately, and then transfer Mr. [REDACTED] to that cell when the work is complete.

REQUEST: We request that Corcoran ADA staff ensure that Mr. [REDACTED] can safely access all parts of his cell, including the bed, toilet, desk, and cubby holes. We also request that the necessary modifications to make these parts of his cell accessible are completed on an urgent basis.

More generally, Corcoran's delay in installing accessibility features for Mr. [REDACTED] is concerning because Defendants have assured Plaintiffs that such features will be added to designated isolation and quarantine spaces throughout CDCR's prisons. It is unclear whether the delay in accommodating Mr. [REDACTED] was due to factors specific to Corcoran – e.g., too few staff, too many work orders, inability to procure the necessary parts – or that such features are unable to be installed in fewer than thirty days.

REQUEST: We also request that Defendants provide a reason for the delay in installing the specific accessibility features in Mr. [REDACTED]'s cell that Corcoran's RAP generated a work order for – i.e. installing grab bars above his bed, making the cubby holes accessible for him, and installing a new desk.

Sincerely,



Patrick Booth
Legal Fellow

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

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

August 26, 2020

Page 8

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, Alexandra Tonis, Gently Armedo (CCHCS)
Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio, Trace Maiorino (OAG)
Brantley Choate, Hillary Iserman, Shannon Swain, Rod Braly, Jennifer Winistorfer, Martin Griffin, Alicia Legarda (OCE)