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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.
24

Case No. C94 2307 CW

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

Judge: Hon. Claudia Wilken
Crtrm: TBD, Oakland

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1 **I. INTRODUCTION**

2 On July 20, 2020, this Court ordered that “Defendants must establish and maintain
3 adequate safe, accessible housing at all institutions housing class members with impacting-
4 placement disabilities . . . for the duration of the pandemic.” Doc. 3015 at 2. The Court
5 directed the Court Expert “to conduct a review of the sufficiency of Defendants’ existing
6 supply of accessible housing, including for purposes of medical isolation and quarantine in
7 the event of COVID-19 outbreaks.” *Id.* On August 19, 2020, the Court Expert filed his
8 Report and Recommendations, which primarily focused on the isolation and quarantine
9 spaces designated by Defendants on July 30, 2020, and August 5, 2020. *See* Doc. 3048.

10 Plaintiffs appreciate the Court Expert’s coordination with the parties, Receiver, and
11 Public Health Workgroup to develop and apply clear principles and methodology.
12 Plaintiffs share his concern about “extreme” and “dramatic” deficiencies in accessible
13 space at some institutions, as well as the “obvious shortcomings” of the designated space
14 at the California Institution for Men, the “impetus for Plaintiffs’ motion,” as well as
15 several other institutions with significant *Armstrong* populations. *See* Doc. 3048 at 17.
16 Even now, almost six months into the pandemic, and 44 days after the Court’s order,
17 Defendants do not have sufficient accessible housing designated in their prison system,
18 some class members are unable to safely access toilets and showers, and some class
19 members may be exposed to a heightened risk of COVID-19 because of their disabilities.

20 Further action is needed to protect the *Armstrong* class. At least 10,656 people in
21 California state prisons have been infected by the novel coronavirus, and 58 (including 29
22 *Armstrong* class members) have died. Declaration of Patrick Booth (“Booth Decl.”) ¶¶ 2-3.
23 Class members in quarantine at Mule Creek State Prison reported being unable to safely
24 access showers and toilets in August 2020. *See id.*, Ex. K ¶¶ 9-10 (“I slipped and hit my
25 head on the wall of the shower several times while exiting the shower.”), Ex. J ¶¶ 6-7. And
26 class members not on quarantine have been housed in quarantine units, in one case because
27 no other accessible housing was available. *See id.*, Ex. S (Deuel Vocational Institution);
28 Doc. 3047 at 11 ¶ 28 (Richard J. Donovan Correctional Facility); Doc. 3044 at 4 (same).

1 In addition, a recent outbreak at the California Substance Abuse Treatment Facility
 2 and State Prison, Corcoran (“SATF”), resulted in 43 confirmed, active COVID-19 cases as
 3 of August 27. Declaration of Tania Amarillas Diaz (“Amarillas Decl.”) ¶ 6. At least twelve
 4 class members designated DPW (full-time wheelchair users) were either infected with the
 5 virus or in quarantine. *Id.* ¶ 9; Booth Decl. ¶ 24. That exceeded the number of DPW beds
 6 that had been designated for isolation and quarantine (2). Amarillas Decl. ¶¶ 2, 8-9.

7 As a result, a DPW class member with COVID-19 was moved into administrative
 8 segregation, and seven DPW class members with direct exposure to the virus were placed
 9 in an open gym with communal toilets, showers, and sinks, and little ventilation, putting
 10 them at increased risk of infection.¹ *See* Amarillas Decl. ¶¶ 9-10; Order, Doc. 2496 at 2-3
 11 (Feb. 3, 2015) (holding that “housing disabled class members in administrative segregation
 12 solely because of their disabilities violates this Court’s prior orders” and the Americans
 13 with Disabilities Act); Doc. 3048 at 7 (“Unlike individuals in isolation, individuals in
 14 quarantine cannot be housed in a common space with any other individual because of the
 15 risk that an infected quarantined inmate could spread the virus to others in quarantine who
 16 may not yet be infected.”); Booth Decl. ¶ 24 & Exs. L, M, N, O, P (declarations from
 17 DPW class members housed in the gym); Doc. 2996-8 ¶ 16 (Declaration of Dr. Vijayan)
 18 (discussing similar conditions at the California Institution for Men).

19 As outlined below, Plaintiffs agree with the Court Expert’s general principles and
 20 methodology, as well as (with a few exceptions) the prison-specific findings regarding the
 21 adequacy of designated isolation and quarantine space. Plaintiffs also agree that the Court
 22 should require Defendants to address inadequate response plans and direct additional Court
 23 Expert review. To guide that review, Plaintiffs propose several modifications to the Court
 24 Expert’s recommended order. The parties have begun discussion of Plaintiffs’ prison-
 25 specific concerns and proposed order, and Plaintiffs appreciate Defendants’ collaborative
 26 approach to addressing these complicated and important issues.

27 _____
 28 ¹ Plaintiffs have requested but not yet received photographs of the gym taken on
 August 20, 2020. Amarillas Decl. ¶¶ 3-4.

1 **II. GENERAL PRINCIPLES AND METHODOLOGY**

2 Plaintiffs do not object to the general principles and methodology set forth in the
 3 Court Expert’s Report. *See* Doc. 3048 at 3-6 (general principles); *id.* at 6-9 (methodology).
 4 The methodology was based on the reasoning underlying the Public Health Workgroup
 5 Recommendations. *Id.* at 8. The methodology may need to be adjusted in the future in
 6 response to, among other things, developments in our understanding of how the virus
 7 spreads within different prison settings, and Plaintiffs reserve the right to raise concerns
 8 with the methodology at a later time.

9 **III. PRISON-SPECIFIC FINDINGS**

10 The Court Expert made a number of prison-specific findings. *See* Doc. 3048 at 9-
 11 17. Plaintiffs note at the outset that Defendants already have modified the bed plans for at
 12 least fourteen institutions. Booth Decl. ¶ 5 & Ex. B. The Court Expert should review those
 13 changes during the next review. *See* Doc. 3048 at 10 (noting that prison-specific findings
 14 “should be viewed as preliminary” because designated spaces “may . . . change”).

15 The Court Expert and Plaintiffs also were given little or no information about how
 16 different space would be used. Depending on how the designated space is used, there may
 17 be additional accessibility concerns. *See, e.g.*, pages 4-6, below (discussing potential
 18 concerns at California State Prison, Sacramento; North Kern State Prison; and Wasco State
 19 Prison based on Defendants’ representations about how designated space would be divided
 20 between isolation and quarantine and/or based on mental health needs). The Court Expert
 21 should evaluate these issues during his next review, as explained in Part IV(A), below.

22 For thirteen prisons, the Court Expert found that designated quarantine and isolation
 23 space was not designated for certain DPP codes and recommended that “CDCR should be
 24 required to make appropriate accommodations within 48 hours if [such a] class member is
 25 isolated or quarantined.” Doc. 3048 at 10; *see id.* at 10-16. Plaintiffs agree with these
 26 findings but disagree with the 48-hour recommendation, as explained in Part IV(B), below.

27 Next, Plaintiffs do not have sufficient information at this time to comment on the
 28 pandemic response plans for California Medical Facility (“CMF”), Folsom State Prison

1 (“FSP”), and San Quentin State Prison (“SQ”). As the Court Expert noted, our
 2 understanding is that the CMF plan “needs to be completely redone.” Doc. 3048 at 12
 3 (quotation marks and citation omitted). The parties similarly agreed that the FSP and SQ
 4 plans would need to be redone. Booth Decl., Ex. A at 6; *Plata v. Newsom*, No. 01-1351-
 5 JST, Joint Case Management Conference Statement, Doc. 3436 at 14 (N.D. Ca. Aug. 31,
 6 2020) (“*Plata Statement*”) (Defendants’ Position) (noting that “CDCR intends to continue
 7 developing special plans” for FSP and SQ). The Court should order Defendants to propose
 8 pandemic response plans for those institutions and direct the Court Expert to evaluate their
 9 sufficiency during the next review, as explained in Part IV(A), below.

10 Finally, Plaintiffs have several additional prison-specific concerns with designated
 11 quarantine and isolation space. Plaintiffs raised these concerns during the Court Expert’s
 12 review process, including by letter dated August 13, 2020, and also shared them with
 13 Defendants and the Court Expert by email dated August 27, 2020. The parties and Court
 14 Expert also discussed them on August 31, 2020, and our understanding is that Defendants
 15 already are working to address them. These issues should be considered during the Court
 16 Expert’s next review, as explained in Part IV(A), below.

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 18 **California State Prison, Sacramento (SAC)**

Court Expert	SAC “has sufficient DPW and sufficient lower/lower beds. Although there are two DPW-accessible beds available, the Court Expert understands that the sole DPW class member at SAC is housed where he can be appropriately isolated or quarantined in place if necessary. Two of the three quarantine and isolation areas are not accessible to DPO, DPM, or DPV class members. CDCR will make necessary accommodations should the remaining quarantine and isolation unit prove insufficient for the number of these class members.” Doc. 3048 at 15.
Plaintiffs	SAC has designated three areas for isolation and quarantine—A2, B1, and C8. Only A2 is designated for DPO, DPM, and DPV class members (10 lower/lower beds), and the institution houses class members with those codes. During the parties’ call with the institution on August 7, 2020, the institution stated that A2 would primarily be used for isolation and quarantine of <i>Coleman</i> class members with segregation terms until an outbreak occurred. At that time, the institution stated, A2 would be used only for isolation. In that case, there would be no accessible quarantine beds available for DPO, DPM, or DPV class members.

1 **North Kern State Prison (NKSP)**

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Court Expert	NKSP “has sufficient DPW and sufficient lower/lower beds. As noted above, the Court Expert understands that generally institutions will use designated space for either quarantine or isolation, but not both. At NKSP, however, one side of the designated unit is intended for quarantine and the other for isolation. This raises the possibility that although the total number of beds is sufficient, there may not be enough beds in either quarantine or isolation depending on the nature of an outbreak. In addition, the only DPW accessible showers are on the quarantine side. In the event that a DPW class member requires isolation, NKSP should make necessary changes to the showers on the isolation side of the building within 48 hours.” Doc. 3048 at 14.
Plaintiffs	All six DPW beds (and not just the DPW shower) are on the quarantine side; as a result, it will not be sufficient for NKSP to modify the showers alone to accommodate DPW class members in need of isolation.

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11 **Richard J. Donovan Correctional Facility (RJD)**

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Court Expert	RJD “has insufficient DPW and insufficient lower/lower beds. Although there are 90 DPW class members at RJD, 17 of whom live in the two largest congregate housing areas, [RJD] has no DPW-accessible beds in its quarantine and isolation areas. It has only 50 lower/lower beds, when based on the lower/lower population in the two largest living areas it needs at least 162. In addition, its quarantine and isolation space is not accessible to DPO or DPW class members.” Doc. 3048 at 15.
Plaintiffs	The designated space also is not designated for DPV class members, and there are multiple DPV class members housed at the institution.

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18 **Valley State Prison (VSP)**

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Court Expert	VSP “has insufficient DPW but sufficient lower/lower beds. Based on the number of DPW class members in the two largest living areas, VSP needs at least 5 additional DPW beds. Plaintiffs have not raised concerns about the accessibility of the quarantine and isolation spaces.” Doc. 3048 at 16.
Plaintiffs	The designated space is not designated for DPV class members, and there is a DPV class member housed at the institution.

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24 **Wasco State Prison (WSP)**

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Court Expert	WSP “has sufficient DPW and sufficient lower/lower beds. However, WSP has divided its designated area into one portion for isolation and one for quarantine, and the only DPW-accessible showers are on the quarantine side. CDCR has informed the Court Expert that the showers on the isolation side of the unit cannot be altered to accommodate DPWs, and therefore CDCR must designate an alternate, DPW-accessible space for quarantine.” Doc. 3048 at 16-17.
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1 2 3 4	Plaintiffs All four DPW beds (and not just the DPW shower) are on the quarantine side: as a result, there are no DPW beds designated for isolation. In addition, if the shower on the isolation side cannot be modified to accommodate DPWs, it is unclear whether it can be modified to accommodate DPO and DPM class members.
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5 IV. RECOMMENDATIONS FOR FURTHER RELIEF

6 A. Updated Pandemic Response Plans

7 The Court Expert recommended that the Court order (1) the institutions “identified
8 in this report that have insufficiently accounted for the needs of *Armstrong* class
9 members[] immediately to revisit and revise their pandemic response plan,” (2) that
10 Defendants “propose new quarantine and isolation spaces that are sufficient for *Armstrong*
11 class members within 21 days,” (3) that, “in designated substitute or additional quarantine
12 and isolation space, [Defendants] must ensure there are both necessary architectural
13 accommodations and sufficient DPW-accessible and lower/lower beds according to the
14 methodologies applied in this report,” and (4) “that any class members who are displaced
15 must be appropriately rehoused.” Doc. 3048 at 17.

16 Plaintiffs agree, and recommend the following modifications:

17 1. The Court should add California State Prison, Sacramento; Folsom State
18 Prison; and San Quentin State Prison to the list of institutions that must revisit and revise
19 their pandemic response plan, for the reasons outlined in Part III, above.

20 2. The Court should require Defendants, when proposing new quarantine and
21 isolation spaces, to identify which buildings or portions of buildings will be used for
22 quarantine and which will be used for isolation, as well as any planned limitations on
23 which type of people will be housed in each area (e.g., based on classification level, mental
24 health status, or SNY status).

25 3. The Court should shorten the time period for Defendants to propose new
26 quarantine and isolation spaces from 21 days to seven days. Defendants represented to
27 Plaintiffs and the Court Expert on August 27, 2020, that they already are in the process of
28 identifying new quarantine and isolation spaces that would address the concerns outlined

1 in the Court Expert's Report. Shortening the time will allow the parties and Court Expert
 2 additional time to discuss the proposed spaces, coordinate with the Receiver in *Plata v.*
 3 *Newsom* and the Special Master in *Coleman v. Newsom*, and attempt to resolve any
 4 concerns before the Court Expert's next report is filed.²

5 **B. Architectural Modifications to Quarantine and Isolation Space**

6 The Court Expert recommended that the Court "order that where class members are
 7 moved into quarantine or isolation housing that lacks necessary architectural
 8 accommodations, [Defendants] must promptly, and no later than 48 hours, make necessary
 9 modifications to render the spaces accessible." Doc. 3048 at 17. Plaintiffs disagree.

10 The Court should order Defendants to make such modifications in advance of
 11 housing class members in that space where possible. There is no reason to delay making
 12 such modifications when Defendants already have designated specific areas for quarantine
 13 and isolation and know what modifications must be made based on the *Armstrong*
 14 population at a given prison.³ See Doc. 3048-1 (outlining necessary architectural features).

15 _____
 16 ² In addition to changes in response to the disability-related issues identified by the
 17 Court Expert, Defendants also may make changes to designated quarantine and isolation
 18 spaces based on concerns raised in *Plata* and *Coleman*. See *Plata* Statement at 12
 19 (Plaintiffs' Position) ("Plaintiffs are reviewing CDCR's August 27 and 29 proposed set
 20 asides for each prison. We intend to promptly raise our concerns about particular prisons
 21 with Defendants and the Receiver"); Booth Decl., Ex. C, *Plata v. Newsom*, No. 01-1351-
 22 JST, Transcript of Proceedings at 17:17-23 (N.D. Cal. Aug. 21, 2020) ("THE COURT: We
 23 need to have sufficient space set aside in our institutions to provide isolation and
 24 quarantine cells. Not all cells are created equal. As I understand it, Judge Armstrong [sic]
 25 is in the process of briefing and ordering orders that will set aside sufficient cells for
 26 disabled persons. I welcome that order. Judge Wilken's case is part of the coordination
 27 with Judge Mueller's *Coleman* case."); *Coleman v. Newsom*, No. 90-0520-KJM-DB,
 Order, Doc. 6791 at 5 (E.D. Cal. July 28, 2020) ("Defendants shall work with the Special
 Master throughout the process of the quarantine bed identification and implementation
 required by the July 22, 2020 order of the *Plata* court."); *Coleman v. Newsom*, No. 90-
 0520-KJM-DB, Fourth Joint Update on the Work of the Covid-19 Task Force, Doc. 6841
 at 9 (E.D. Cal. Aug. 28, 2020) ("Because necessary CDCR representatives were not
 present to discuss these topics, the parties agreed to discuss the issues further on the next
 Task Force call with the appropriate representatives available.").

28 ³ This is particularly true in light of apparent delays in installing necessary
 accessible features during the pandemic. See, e.g., Booth Decl. ¶¶ 33-36 (California State
 Case No. C94 2307 CW
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1 In fact, Defendants apparently already have directed institutions to do so. *See* Doc. 3048 at
 2 6 (“[O]n August 13, 2020, Director Gipson issued a directive instructing the wardens to
 3 ‘ensure that all buildings/units identified for isolation/quarantine have all necessary
 4 accessibility features installed by August 28, 2020, including: ramps to allow a level
 5 entrance to the building and shower, shower grab bars and a shower chair/bench, and any
 6 other features necessary to ensure that disabled inmates are able to access everything in the
 7 unit that non-disabled inmates are able to access, including phone calls, if permitted within
 8 the building, for deaf persons (e.g. video phones).” (quoting Doc. 3047 at 10)).

9 This also would allow the parties and Court Expert to review the modifications and
 10 discuss any necessary adjustments. This is in line with the Court Expert’s recommendation
 11 that “[t]he Court should order the parties to meet and confer on any deficiencies identified
 12 by Plaintiffs [regarding directives requiring that architectural . . . accommodations be
 13 provided promptly] and to raise with the Court Expert any issues the parties believe may
 14 need to be brought to the Court’s attention.” Doc. 3048 at 18. In order for such a review to
 15 be meaningful, Plaintiffs must be able to review the specific modifications, and it is better
 16 for that to happen before the institution is in the midst of managing an outbreak. *See, e.g.*,
 17 Doc. 2996-2 at 345 ¶ 9 (California Institution for Men) (declaration from class member
 18 moved to isolation area not designated for his disability code) (“The toilets in Mariposa
 19 Hall are very low to the ground. Only one of the four toilets has a grab bar, but even that
 20 bar is difficult to use because it is too low to effectively help me get up from the toilet.
 21 There is not enough room between the toilets to get on the toilet from my wheelchair, so I
 22 have to walk to the toilets without my wheelchair.”); Doc. 3044 at 42-44 (email from
 23 attorney for Defendants stating that additional grab bars and ramps had been or would be
 24 installed in response to Plaintiffs’ concerns).

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 26
 27 Prison, Corcoran) (noting that for over a month after a work order was issued, institution
 28 has not installed grab bars above class member’s bed, even though class member has fallen
 on multiple occasions); Doc. 2996-1 at 46-48 (California Institution for Men).

1 Unfortunately, based on the spread of the novel coronavirus within the prison
 2 system to date, it is likely that the designated spaces will be insufficient. *See* Doc. 3048 at
 3 3 (“The Court Expert recognizes that, in the event of a large outbreak, the beds currently
 4 designated for quarantine and isolation will almost certainly prove insufficient in
 5 number.”). In that case, additional areas of the prison may be used for quarantine and
 6 isolation even though they were not previously designated for that purpose. In those
 7 instances, Plaintiffs agree that Defendants should be ordered to make modifications to
 8 render the spaces accessible promptly, and no later than 48 hours after a class member is
 9 housed there.

10 Plaintiffs therefore propose that the Court issue the following order:

11 1. Defendants must, within seven days of the Court’s order or within 48 hours
 12 of a class member being moved into designated quarantine or isolation space, whichever is
 13 sooner, make all necessary modifications to render that space accessible to all DPP codes
 14 housed at the institution and produce an inventory and photographs of such modifications
 15 to Plaintiffs and the Court Expert.

16 2. If Defendants designate or use additional space for quarantine or isolation,
 17 Defendants must make all necessary modifications to render that space accessible to all
 18 DPP codes housed at the institution within seven days of the designation or within 48
 19 hours of a class member being moved there, whichever is sooner, and produce an
 20 inventory and photographs of such modifications to Plaintiffs and the Court Expert.

21 3. The parties must meet and confer on any deficiencies identified by Plaintiffs
 22 and raise with the Court Expert any issues the parties believe may need to be brought to
 23 the Court’s attention.

24 **C. Non-Architectural Accommodations**

25 The Court Expert stated that “institutions must ensure that class members in
 26 quarantine and isolation housing have the same access to whatever programming,
 27 recreation and outside communication is available to other quarantined or isolated inmates.
 28 That includes appropriate telephones, magnifiers, talking books, captioned telephones and

1 any other accommodations,” including trapeze bars. Doc. 3048 at 5-6 & n.1; *see also id.* at
 2 17-18 (“CDCR must also ensure that amenities such as telephone access, books, and
 3 televisions are available to class members in quarantine and isolation to the same extent
 4 they are available to non-class members.”). Plaintiffs agree. The Court Expert
 5 recommended that the Court order “the parties to meet and confer on any deficiencies [to
 6 Defendants’ directives requiring that non-architectural accommodations be provided
 7 promptly] and to raise with the Court Expert any issues the parties believe may need to be
 8 brought to the Court’s attention.” *Id.* at 18.

9 Plaintiffs are not aware of any directive outlining specific non-architectural
 10 accommodations that must be provided promptly. But Plaintiffs agree that Court Expert
 11 review is warranted. Plaintiffs already have documented delays in provision of non-
 12 architectural accommodations in quarantine space. *See* Booth Decl., Ex. L at 2 (Aug. 28,
 13 2020) (email from attorney for Defendants stating that CDCR 1824s, appeals boxes, and
 14 magnifiers were placed in quarantine space in gym at SATF a week after *Armstrong* class
 15 members were first housed there and only after Plaintiffs raised the issue); *id.*, Ex. Q ¶ 7 &
 16 Ex. R ¶¶ 7-8, 10 (Aug. 28, 2020) (declarations from class members at Deuel Vocational
 17 Institution stating that area being used for quarantine for last two weeks has broken hand-
 18 held shower hose and the shower bench is too low).

19 Plaintiffs therefore propose that the Court issue the following order:

20 1. Defendants must ensure that class members in quarantine and isolation have
 21 the same access to whatever programming, recreation, and outside communication is
 22 available to other people in quarantine and isolation.

23 2. Defendants must, within seven days of the Court’s order or within 48 hours
 24 of a class member being moved into designated quarantine or isolation space, whichever is
 25 sooner, provide all necessary non-architectural accommodations to render that space
 26 accessible to all DPP codes housed at the institution and produce an inventory of such
 27 accommodations to Plaintiffs and the Court Expert.

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1 3. If Defendants designate or use additional space for quarantine or isolation,
2 Defendants must provide all necessary non-architectural accommodations to render that
3 space accessible to all DPP codes housed at the institution within seven days of the
4 designation or within 48 hours of a class member being moved there, whichever is sooner,
5 and produce an inventory of such accommodations to Plaintiffs and the Court Expert.

6 4. The parties must meet and confer on any deficiencies identified by Plaintiffs
7 and raise with the Court Expert any issues the parties believe may need to be brought to
8 the Court's attention.

9 **D. Further Review by the Court Expert**

10 Finally, the Court Expert recommended "that the Court order a follow-up report on
11 quarantine and isolation in 30 days." Doc. 3048 at 18; *see also id.* at 3 ("Given the
12 likelihood of changes in the near future in response to the Receiver's report, this report,
13 and developments with the spread of the virus in the prison system, the Court Expert
14 recommends that the Court order an updated report in 30 days."). Plaintiffs agree. For the
15 reasons below, Plaintiffs ask that the Court Expert's next report also cover (1) adjustment
16 of quarantine and isolation space in response to changes in prison population, and
17 (2) sufficiency of safe, accessible general housing.

18 **1. Adjustment of Isolation and Quarantine Space Based on Changes**
19 **in Prison Population**

20 As the Court Expert noted, the prison-specific findings were based on the current
21 population at the prisons at the time of his review. Doc. 3048 at 10. Because the Court
22 Expert's methodology is based on current population, the number of required accessible
23 isolation and quarantine spaces will change as the population at a prison changes. To
24 Plaintiffs' knowledge, Defendants do not yet have a process in place to ensure that
25 accessible isolation and quarantine space is reviewed and adjusted before additional
26 *Armstrong* class members are transferred into a prison, or in response to people already in
27 a prison receiving new DPP codes or moving to new areas of the prison.

28

1 Movement into and between prisons largely has been suspended during the
 2 pandemic. But that is expected to change as intake resumes and as Defendants designate
 3 and empty quarantine and isolation space. *See, e.g., Plata* Statement at 10 (Defendants’
 4 Position) (“CDCR resumed intake the week of August 24, and accepted a total of 100
 5 inmates into custody.”); Booth Decl., Ex. C, *Plata v. Newsom*, No. 01-1351-JST,
 6 Transcript of Proceedings at 18:2-8 (N.D. Cal. Aug. 21, 2020) (“THE COURT: And absent
 7 a population reduction order, the only way we’re going to get [adequate quarantine and
 8 isolation] space is by moving incarcerated persons from one institution to another.”). In
 9 addition, as of August 13, 2020, 242 *Armstrong* class members were on the Expedited
 10 Transfer Report.⁴ Booth Decl. ¶ 8. Of those, at least 160 already were endorsed to another
 11 location, including 19 full-time wheelchair users (DPW), and 22 impacting-placement
 12 class members endorsed to buildings at the California Institution for Men.⁵ *Id.* ¶¶ 10-12.

13 This Court therefore should order Defendants to develop a reliable process within
 14 21 days to ensure that adequate accessible quarantine and isolation space is set-aside in
 15 advance of *Armstrong* class members transferring into the institution, and in response to
 16 any changes in disability codes or movement within an institution. *See* Doc. 3015 at 2
 17 (ordering Defendants to “establish **and maintain** adequate safe, accessible housing . . . for
 18 the duration of the pandemic” (emphasis added)); *see also Plata* Statement at 10
 19 (Defendants’ Position) (noting that current “limited intake allows CDCR and CCHCS to
 20 test its processes, mitigate risk and ensure that intake can be done safely in compliance
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22 _____
 23 ⁴ “Expedited transfer” refers to “the expeditious transfer of inmates with disabilities
 24 impacting placement to appropriate DPP designated institutions/facilities.” *Armstrong*
 25 Remedial Plan at 17 § IV(D).

26 ⁵ Five of the 22 class members endorsed to the California Institution for Men
 27 currently are housed there, but in areas not designated for people with their disability code.
 28 Booth Decl. ¶ 12. Their movement within the institution nonetheless may affect the
 number of set-aside beds needed at the institution. That is because four currently are
 housed in celled environments but are endorsed to a congregate housing unit designated
 for their disability code. *Id.*; *see* Doc. 3048 at 9 (Court Expert’s methodology based in part
 on *Armstrong* population in “largest two congregate housing units”).

1 with the movement matrix”). The Court should direct the Court Expert to evaluate the
 2 sufficiency of the process and include his findings and recommendations in his next report.

3
 4 **2. Safe, Accessible Housing of Class Members Not in Quarantine or Isolation**

5 The Court Expert’s Report primarily focused on the adequacy of designated
 6 quarantine and isolation space. The Court Expert noted that “CDCR has informed the
 7 Court that ‘all *Armstrong* class members are accessibly housed.’” Doc. 3048 at 5 (quoting
 8 Doc. 3047 at 6, Status Report of Assistant Deputy Director Adam Fouch). Plaintiffs do not
 9 agree with Defendants’ assertion. The parties also have a dispute as to whether Defendants
 10 are complying with the Court’s order that Defendants report to Plaintiffs, the Receiver, and
 11 the Court Expert within 24 hours if, “due to emergent and unforeseen circumstances,
 12 Defendants temporarily are not able to house an *Armstrong* class member in safe,
 13 accessible housing.” Doc. 3015 at 2. The parties are discussing that issue and hope to reach
 14 an agreement; they will bring the matter to the Court’s attention if it cannot be resolved.

15 For present purposes, Plaintiffs ask that the Court direct the Court Expert to review
 16 the housing of *Armstrong* class members not on isolation or quarantine status, including
 17 those displaced from quarantine and isolation areas. That falls squarely within this Court’s
 18 prior order and the Court Expert’s recommendations.⁶ *See* Doc. 3015 at 2 (Order)
 19 (requiring Defendants to house *Armstrong* class members in safe, accessible locations and
 20 directing Court Expert to review “the sufficiency of Defendants’ existing supply of
 21 accessible housing”); Doc. 3048 at 5 (Court Expert’s Report) (“The Court should further
 22 order that any class members who are displaced must be appropriately rehoused.”).⁷

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 24
 25 ⁶ This issue also was featured in Plaintiffs’ Motion. *See, e.g.*, Doc. 2996 at 8-9
 26 (compiling evidence that class members were left in inaccessible placements for long
 periods of time after recovering from COVID-19).

27 ⁷ Defendants have represented that “there is not a reliable way” of identifying which
 28 *Armstrong* class members already have been displaced from designated quarantine and
 isolation space. Booth Decl., Ex. D; *see also* Doc. 3047 at 11 ¶ 28 (same).

1 Plaintiffs at this time have only limited and incomplete information, but there is real
 2 cause for concern about the adequacy of Defendants' current system for determining
 3 whether *Armstrong* class members are in safe, accessible housing.

4 First, class members displaced from designated quarantine and isolation areas have
 5 reported that they are housed in areas not designated for their DPP codes and that they are
 6 unable to safely access showers. *See* Booth Decl., Exs. Q-R (declarations of class members
 7 at Deuel Vocational Institution).⁸

8 Second, more generally, institution staff do not appear to be timely meeting with
 9 class members housed in areas not designated for their DPP codes to discuss or provide
 10 any necessary accommodations. *See, e.g.*, Booth Decl. ¶ 14 & Ex. F (class member
 11 interviewed 26 days after he was designated DPO on July 25, 2020); *id.* ¶ 16 & Ex. G
 12 (11 days after DPP code change on August 6, 2020). In some cases, it does not appear that
 13 institution staff is meeting with class members at all. *See, e.g.*, Booth Decl., Ex. S (Deuel
 14 Vocational Institution); *id.*, Ex. I (Mule Creek State Prison); Amarillas Decl. ¶ 12
 15 (California Institution for Men).

16 Third, setting aside Plaintiffs' concerns with the adequacy of Defendants' current
 17 CDCR 128-B process for documenting accessibility concerns (*see* Doc. 3047 at 6 ¶ 13), in
 18 at least one case, the CDCR 128-B raises significant accessibility concerns, but it is not
 19 clear from the CDCR 128-B whether or how the class member would be accommodated.
 20 Booth Decl., Ex. H (CDCR 128-B) (“[H]e can’t access showers in the building as he can’t
 21 get over the ledge in the showers in the building. I asked [him] when was the last time he
 22 had showered and he stated ‘*It was sometime last month. I just bird bath now in my cell*’ It
 23 is to be noted that there is a shower chair available in the housing unit for use.”).

24
 25 ⁸ Plaintiffs shared these concerns with Defendants on August 28, 2020, and
 26 conferred with Defendants about the situation on August 31, 2020. *See* Booth Decl., Ex. S.
 27 Plaintiffs understand that, after being alerted to the situation by Plaintiffs' counsel,
 28 Defendants transferred the class members at Deuel Vocational Institution to accessible
 housing that same day and are determining how the error occurred and what will be done
 to correct it. Plaintiffs appreciate Defendants' immediate action.

1 Finally, based on interviews with class members at SATF, Plaintiffs have concerns
2 about whether the CDCR 128-Bs are accurate and properly identify disability-related
3 needs. *See* Booth Decl., Ex. M ¶¶ 13-14 (stating that although CDCR 128-B said he was
4 interviewed in Spanish, he was interviewed in English and is not comfortable talking about
5 disability needs in English, and he was fearful of requesting accommodations because he
6 thought he would be placed in segregation); *id.*, Ex. N ¶ 9 (stating that he had not been
7 asked about disability accommodation needs and had not been shown where the appeals
8 box is located); *id.*, Ex. P ¶ 11 (stating that information in the CDCR 128-B was incorrect).

9 **V. CONCLUSION**

10 This Court should enter the order recommended by the Court Expert, with the
11 modifications that Plaintiffs outline above. A proposed order is attached.

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13 DATED: September 2, 2020

Respectfully submitted,

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PRISON LAW OFFICE

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By: /s/ Rita K. Lomio

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Rita K. Lomio

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Attorneys for Plaintiffs

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