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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOHN ARMSTRONG, et al.,

13 Plaintiffs,

14 v.

15 GAVIN NEWSOM, et al.,

16 Defendants.  
17

Case No. CV 94-2307 CW

**CORRECTION TO SECOND REPORT  
AND RECOMMENDATIONS  
REGARDING HOUSING OF  
ARMSTRONG CLASS MEMBERS  
DURING THE COVID-19 PANDEMIC**

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19 On October 23, 2020, the Court Expert filed his second report and recommendations  
20 regarding housing of *Armstrong* class members during the pandemic (Dkt. 3142). Section VII  
21 of the report stated that, according to data produced by defendants, nine class members were  
22 inappropriately housed according to their DPP code or lower/lower designation as of September  
23 1 but had subsequently been rehoused. That was an error. The data on which the Court Expert  
24 based this statement pertained to class members who were not housed in accordance with their  
25 lower/lower designation, not to class members not housed in accordance with their DPP code.  
26 CDCR's snapshot report did show that nine lower/lower inmates had been inappropriately  
27 housed based on their lower/lower designation, but a separate report showed that, as of  
28 September 1, at least 108 class members at 21 institutions were housed in areas not designated

1 for their DPP codes. Defendants also produced data showing that, as of September 1, at least  
2 one class member was housed in administrative segregation solely because of a disability<sup>1</sup> and  
3 that 42 class members were housed in temporary or non-traditional housing, including gyms,  
4 tents, dayroom cots, and a Prison Industry Authority work area.

5 Following issuance of the Court Expert's October 23 report, Plaintiffs wrote a letter  
6 noting the error and raising concerns about the implications of the data regarding the number of  
7 class members housed in areas not designated for their DPP code. The Court Expert and the  
8 parties discussed the matter on November 2. Defendants' institutions report that all class  
9 members in non-designated housing are being accommodated. Plaintiffs question the accuracy  
10 of that reporting and say they lack sufficient information to determine whether these individuals  
11 are receiving the accommodations necessary to render their housing accessible.

12 The parties continue to negotiate policies designed to ensure that class members receive  
13 appropriate accommodations when housed in non-designated spaces. Those policies will be  
14 discussed in the Court Expert's forthcoming report.

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16 Dated: November 6, 2020

Respectfully submitted,

17 \_\_\_\_\_  
/s/

18 Edward W. Swanson  
SWANSON & McNAMARA LLP

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28 <sup>1</sup> That inmate was subsequently moved out of administrative segregation.