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17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA

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

Case No. C94 2307 CW

**JOINT CASE STATUS STATEMENT**

Judge: Hon. Claudia Wilken

1 The parties submit this Joint Case Status Statement pursuant to the Stipulation and  
 2 Order entered March 28, 2011 (Doc. 1868), which provides that “[t]he parties will file  
 3 periodic joint statements describing the status of the litigation” every other month,  
 4 beginning on May 16, 2011.

### 5 CURRENT ISSUES<sup>1</sup>

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

##### 7 *Plaintiffs’ Statement*

8 The COVID-19 pandemic continues to affect all aspects of prison and parole  
 9 operations. As of today, 17,499 incarcerated people have tested positive for COVID-19,  
 10 and 82 people, including 36 *Armstrong* class members, have died while in CDCR custody.<sup>2</sup>  
 11 The pandemic has had a devastating impact on people with disabilities, who are  
 12 particularly at risk of getting very sick or dying from the disease. Doc. 2996 at 4-5 (“Over  
 13 83% of people with a weighted risk score of 9 or higher are *Armstrong* class members.”).  
 14 A study by the U.S. Centers for Disease Control and Prevention (“CDC”) analyzing more  
 15 than 1.3 million laboratory-confirmed COVID-19 cases reported in the United States found  
 16 that **hospitalizations were six times higher and deaths were twelve times higher** among  
 17 patients with underlying conditions, which the CDC study defines to include people with  
 18 no risk factors other than having a physical, hearing, visual or intellectual disability.  
 19 Stokes E.K. *et al.*, Coronavirus Disease 2019 Case Surveillance—United States,  
 20 January 22-May 30, 2020, CDC Morbidity & Mortality Weekly Report, Vol. 69:759-765  
 21 (June 19, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm>.

22 Unfortunately, the pandemic is expected to continue for some time (*see* Doc.  
 23 2996-8 ¶ 3); in the meantime, the number of people in state prison who are infected with  
 24 the novel coronavirus will continue to climb.

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

27 <sup>2</sup> *See* CDCR, Population COVID-19 Tracking,  
 28 <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited November 16,  
 2020).

1           During the first several months of the pandemic, the parties conducted a series of  
2 meetings to discuss Plaintiffs’ concerns regarding the housing and programmatic needs of  
3 people with disabilities. Those meetings did not result in any significant corrective action.  
4 As a result, on July 14, 2020, Plaintiffs filed a Motion to Protect *Armstrong* Class  
5 Members During the COVID-19 Pandemic, which addressed housing of *Armstrong* class  
6 members and the ADA worker program. *See* Doc. 2996. The Court issued an order on  
7 July 20, 2020, following the parties stipulated agreement. *See* Doc. 3015.

8           On August 19, 2020, the Court Expert filed a report finding “extreme” and  
9 “dramatic” deficiencies in accessible quarantine and isolation housing for people with  
10 disabilities in a number of California prisons and recommended further judicial action. *See*  
11 Doc. 3048. The Court issued another order on September 9, 2020, following a second  
12 stipulation between the parties. *See* Doc. 3072. The parties and Court Expert will  
13 continue to review designated quarantine and isolation space, as well as policies and  
14 procedures to ensure appropriate housing of *Armstrong* class members during the  
15 remainder of the pandemic. Plaintiffs appreciate Defendants’ current efforts and  
16 collaboration with Plaintiffs on these complicated and important issues.

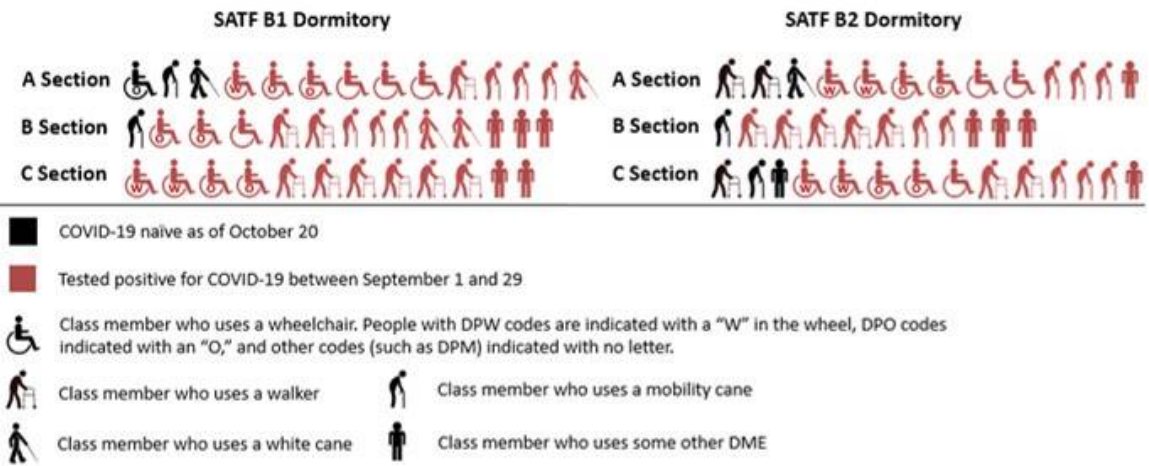
17           The harm to the *Armstrong* Class, however, is real and immediate. In fact,  
18 *Armstrong* class members already have been harmed. In September 2020, for example,  
19 Defendants made the extraordinary decision to “quarantine in place” people in dormitories  
20 on B1 and B2 at California Substance Abuse and Treatment Facility and State Prison,  
21 Corcoran (“SATF”). At that time, there were insufficient quarantine cells to house the  
22 substantial *Armstrong* population on Facility B. The decision to quarantine people in place  
23 had staggering consequences for *Armstrong* class members. Almost all class members  
24 housed in B1 and B2 on September 1 were infected with the novel coronavirus that month  
25 (67 of 78), as the following graphic illustrates:.

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Also in response to the Court’s orders, Defendants have issued direction to the field regarding the ADA worker program. Plaintiffs do not know whether Defendants’ actions have addressed the problem and have requested institution-level proof of practice from Defendants. Plaintiffs will continue to review documentation provided by Defendants, as well as class member and ADA worker accounts, and will bring any concerns to the attention of Defendants, the Court Expert, and, if necessary, the Court.

In addition, Plaintiffs consistently have raised, since March 2020, specific concerns related to lack of accommodations during the pandemic for blind and low-vision class members, D/deaf class members, and other people who are unable to read and write. Plaintiffs have sent dozens of individual advocacy letters raising systemic issues. There are substantial delays in Defendants responding to Plaintiffs’ questions and reports of significant disability-related problems, making it difficult to determine whether the issues have been addressed at the institution and/or statewide level.

For example, Defendants have significantly limited the number of in-person health care encounters during the pandemic and instead have relied on written “patient letters.” On May 22, 2020, Plaintiffs raised concerns with use of such written medical information for people who cannot read or write, without provision of effective communication, and gave an example where a class member with a TABE score of 00.0 reported that he had not received (and did not otherwise receive effective communication of) a patient letter

1 informing him that his phenytoin level “has decreased significantly,” asking whether he  
2 was taking his medication three times a day, and directing him to let medical staff know.  
3 *See Exhibit A*, Letter from Skye Lovett & Rita Lomio, Prison Law Office, to Tamiya  
4 Davis, CDCR Office of Legal Affairs (May 22, 2020). Over three months later, when  
5 Defendants had not responded, Plaintiffs’ counsel again wrote to explain that the same  
6 class member apparently was sent four additional written patient letters in June and July,  
7 and reported that he had not received effective communication of any of the letters. *See*  
8 *Exhibit B*, Letter from Rita Lomio & Skye Lovett, Prison Law Office, to Tamiya Davis,  
9 CDCR Office of Legal Affairs (Aug. 25, 2020). Plaintiffs’ counsel also noted that D/deaf  
10 and blind class members at the institution reported that they did not receive effective  
11 communication of written medical information. *Id.* As of November 12, 2020,  
12 Defendants still have not responded.

13         This is just one example of Plaintiffs’ attempts to informally resolve statewide  
14 accommodation issues during the pandemic. Other issues raised by Plaintiffs include  
15 insufficient access to auxiliary aids located only in law libraries, lack of accessible  
16 recreational materials, lack of accommodations for written education assignments, and  
17 failure to orient blind and low-vision people to new living areas. To date, Plaintiffs’  
18 counsel’s resources largely have been directed toward litigating and enforcing orders  
19 related to safe, accessible housing and the ADA worker program. But if these other  
20 program access issues are not fully and timely addressed, Plaintiffs will have little choice  
21 but to seek judicial relief.

22         Although Defendants point to directives they have issued to the field in an attempt  
23 to address some of these concerns, those directives often do not provide sufficient  
24 guidance to the institutions, do not represent a complete solution, and have not proven to  
25 be effective. For example, Defendants state that they sent a directive to all institutions on  
26 June 23, 2020, to “ensure the vision-impaired class members are appropriately oriented to  
27 their living areas, CAMU sent a June 23, 2020 directive to all institutions.” This directive  
28 was cursory, did not provide the institutions sufficient information or resources to

1 meaningfully address the problem, and has in fact failed to fix the problem. *See*  
2 **Exhibit C**, Letter from Rita Lomio & Tania Amarillas, Prison Law Office, to Tamiya  
3 Davis, CDCR Office of Legal Affairs, Situating Blind Class Members to New Housing  
4 Assignments (Sept. 24, 2020) (quoting directive and noting that an institution failed to  
5 orient a blind class member to his environment after he was released from isolation).  
6 Plaintiffs will continue to work with Defendants to ensure that institutions have the  
7 guidance and resources necessary to comply with directives from headquarters.

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

17 *Defendants' Statement*

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

25 Defendants have worked tirelessly to provide a comprehensive and proactive  
26 response to the unprecedented challenges caused by the pandemic to ensure that class  
27 members are accommodated, and to ensure the safety and security of all incarcerated  
28 people, whether class members or not. To the extent possible, Defendants have provided

1 timely information and addressed Plaintiffs' concerns to obviate the need for judicial  
2 intervention and to conserve valuable resources that could be put to better use elsewhere.  
3 Defendants continue to make significant and comprehensive efforts to contain and  
4 minimize the effects of an unprecedented, global pandemic on the people housed in its  
5 institutions, staff, and visitors, some of which are detailed below.

6 As part of these proactive measures, CDCR initiated a testing program in July 2020,  
7 that required testing of all adult-institutions' staff and health-care staff statewide,  
8 regardless of the number of COVID-19 cases at the individual institution. Once that  
9 baseline testing at all institutions was completed, serial testing of employees began at  
10 institutions who had positive test results. The serial testing occurs every fourteen days  
11 until no new cases are identified in two sequential rounds of testing. Once that goal is met,  
12 the institution resumes their regular surveillance testing schedule. Further, California  
13 Correctional Health Care Services (CCHCS) is conducting surveillance testing of  
14 incarcerated people at all adult institutions. Surveillance testing is used to detect outbreaks  
15 in an early phase, even before the development of symptoms. This voluntary testing is to  
16 be performed across multiple facilities at each institution every month. Priority is given to  
17 asymptomatic individuals who have been identified as vulnerable or high-risk for  
18 complications of COVID-19. Further, CDCR has implemented at each prison an  
19 additional COVID-19 testing process that provides results within fifteen minutes or less.  
20 This point-of-care rapid testing is used to facilitate the transfer and reception process at  
21 CDCR institutions. It is also used for high-risk patients where immediate knowledge of  
22 infection status is critical. Moreover, all new arrivals are tested within twenty-four hours  
23 of arrival and placed into quarantine for fourteen days.

24 Defendants continue to take unprecedented steps to increase opportunities for social  
25 distancing to minimize the spread of COVID-19. Beginning in March 2020, CDCR took  
26 extraordinary measures to directly address the COVID-19 pandemic in its institutions,  
27 including one of the largest reductions in state prison population in recent history. In that  
28 timeframe, CDCR significantly reduced its total incarcerated population by taking the

1 following actions: (1) suspension of county jail intake for those prisoners having been  
2 found to have violated parole; (2) implementation of a series of expedited-release actions;  
3 and (3) the release of prisoners having served their full term as defined by the law. CDCR  
4 reached a milestone on July 30, 2020, and, for the first time in three decades, the in-prison  
5 population fell below 100,000 prisoners. The last time the in-prison population fell below  
6 100,000 prisoners was in 1990, when California’s overall population was almost 10  
7 million people less than it is today. CDCR’s efforts continue to benefit the safety of the  
8 prison population because, as of November 16, 2020, there are 92,661 incarcerated persons  
9 in California’s prisons—a reduction of 21,657 since March 12, 2020. *See*  
10 <https://www.cdcr.ca.gov/covid19/> (last visited Nov. 16, 2020).

11 During this ever-evolving situation, CDCR has taken other measures to increase  
12 social distancing that include reducing the number of people who use common spaces at  
13 the same time, transferring people from lower-level dorms to celled housing, and erecting  
14 tents to create alternate housing and care sites. Defendants continue to consider additional  
15 steps and have converted other areas in the prisons, such as gymnasiums, into living areas.  
16 The sufficiency of Defendants’ efforts continue to be the subject of active litigation here,  
17 as well as in *Plata v. Newsom*, No. 01-1351 JST (N.D. Cal.) and *Coleman v. Newsom*, No.  
18 90-0520 KJM DB (E.D. Cal.). Defendants are committed to continue discussions  
19 concerning how any changes in housing and restrictions on movement will affect  
20 *Armstrong* class members.

21 In fact, Defendants’ decision to enter into a stipulation in response to Plaintiffs’  
22 motion concerning *Armstrong* class members during the COVID-19 pandemic—instead of  
23 litigating it—further demonstrates Defendants’ commitment to providing safe and  
24 accessible housing to class members. Defendants continue to collaborate with Court  
25 Expert Ed Swanson and Plaintiffs to facilitate Mr. Swanson’s review of Defendants’  
26 existing supply of accessible housing, including housing for medical isolation or  
27 quarantine, so that he may continue to present his recommendations to the Court.  
28 Additionally, Defendants are diligently working to meet their obligations under the Court’s



1 order to ensure compliance. In his second report, Mr. Swanson “commend[ed] both sides  
2 for their hard work, creativity, and commitment to addressing the complicated issues  
3 involved in ensuring there is adequate housing for disabled inmates during a disruptive and  
4 unprecedented epidemic.” (ECF No. 3142 at p. 2.) As part of these efforts, Defendants  
5 have developed a means to conduct a statewide daily count to ensure that class members  
6 are provided safe, accessible housing and to provide a daily snapshot of class members’  
7 housing status. Further, Defendants have developed the means to provide a weekly update  
8 to ensure that the institutions have adequately designated isolation and quarantine space  
9 that comports with Mr. Swanson’s methodology.

10 In accordance with the foregoing stipulation and order, Defendants have also  
11 provided direction to ensure that the ADA Worker Program safely functions during the  
12 COVID-19 pandemic by prohibiting workers from assisting inmates who are not housed  
13 within the workers’ building or unit. To the extent necessary, institutions are permitted to  
14 create new positions for workers or enlist volunteers. The directive also provides for the  
15 effective training of these new workers or volunteers. Further, institutions must submit a  
16 weekly proof of practice to CAMU on the adequacy of the ADA worker program.

17 Plaintiffs’ concerns about blind or low-vision class members and hearing impaired  
18 class members are well-taken by Defendants. Defendants have sought to address these  
19 concerns by ensuring that important information concerning the pandemic is provided in  
20 an accessible format to *Armstrong* class members who have barriers to effective  
21 communication, such as those with vision and hearing impairments. To that end,  
22 Defendants have made efforts to educate the incarcerated population about COVID-19,  
23 preventive measures, and program changes in a variety of ways, including through Centers  
24 for Disease Control and Prevention (CDC) videos, regularly broadcasting video messages  
25 from former Secretary Diaz, CCHCS-produced videos, written flyers, and posters.  
26 Further, staff conduct weekly meetings with deaf class members, requiring ASL, to  
27 communicate important COVID-19 information to ensure these class members are  
28 well-informed and can take proactive measures for their own safety during the pandemic.

1 To ensure the vision-impaired class members are appropriately oriented to their living  
2 areas, CAMU sent a June 23, 2020 directive to all institutions. The directive sought to  
3 ensure that all DPV class members were informed of any physical changes to housing  
4 units, clinics, yards, or other facilities and that they are advised of any other  
5 pandemic-related changes or barriers such as placement of hand-sanitizing stations,  
6 placement of social-distancing markers, or other measures taken in response to the  
7 COVID-19 pandemic. By June 26, 2020, all institutions had responded to this directive.

8 Defendants have sought to ensure that class members have adequate access to  
9 auxiliary aids. Defendants have issued a memo concerning access to auxiliary aids in the  
10 library for the duration of the pandemic. The memo sets forth weekly access to DPV  
11 inmates who need access to the auxiliary aids in the library. CAMU has received proof of  
12 practice from the institutions. To the extent possible, CDCR continues to consider  
13 solutions that address Plaintiffs' concerns that there is a lack of accessible recreational  
14 material or written education assignments. Education, however, is being completed and  
15 participating inmates are provided written educational packets to complete.

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

22 **B. Allegations of Abuse, Retaliation, and Violence by CDCR Staff Against Class**  
23 **Members**

24 *Plaintiffs' Statement*

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

1 September 8, 2020, the Court issued orders finding remedial efforts were necessary in  
2 order to “prevent further violations of the ARP and class members’ ADA rights at RJD.”  
3 Doc. 3059 at 42. The requirements necessary to prevent further violations, as well as  
4 timeframes for compliance, were outlined by the Court in an Order for Remedial  
5 Measures. *See* Doc. 3060. The parties are currently meeting and conferring regarding  
6 Defendants’ proposed plan and, if the parties are unable to reach agreement, Plaintiffs will  
7 file objections to Defendants’ plan in the near future, subject to Court approval. Plaintiffs’  
8 June 3, 2020, statewide Motion to Stop Defendants from Assaulting, Abusing and  
9 Retaliating against People with Disabilities (collectively, “Plaintiffs’ Motions”) is still  
10 pending. *See* Doc. 2948.

11 In the meantime, Plaintiffs continue to raise significant concerns with staff  
12 misconduct, including violent assaults, false RVRs, and retaliation for reporting  
13 misconduct or requesting accommodations, including during the COVID-19 pandemic  
14 statewide. Most notably, Plaintiffs’ counsel wrote about two vulnerable class members at  
15 California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”) who  
16 were bludgeoned to death by another incarcerated person. *See Exhibit D*, Letter from Rita  
17 Lomio and Tovah Ackerman, Prison Law Office, to Tamiya Davis, CDCR Office of Legal  
18 Affairs (September 29, 2020). In one case, the class member (who was Deaf and whose  
19 primary form of communication was American Sign Language) was seen attempting to  
20 effectively communicate with staff that he was in danger and in fear for his life after being  
21 threatened by the assailant. *Id.* His concerns were not taken seriously, he was not  
22 provided with an interpreter to effectively communicate his safety concerns, and he and  
23 another vulnerable class member (who was a full-time wheelchair user) were gruesomely  
24 killed. *Id.* Plaintiffs have also raised multiple serious concerns at California State Prison,  
25 Corcoran (“COR”). *See, e.g., Exhibit E*, Letter from Patrick Booth, Prison Law Office, to  
26 Tamiya Davis, CDCR Office of Legal Affairs (Oct. 8, 2020); *Exhibit F*, Letter from  
27 Juliette Mueller & Patrick Booth, Prison Law Office, to Tamiya Davis, CDCR Office of  
28 Legal Affairs (Oct. 14, 2020) (discussing continued staff misconduct at COR and

1 Plaintiffs' previous reports). Although Plaintiffs' counsel have reported serious staff  
2 misconduct against class members at COR over the last eight months, through tour reports,  
3 *Armstrong* advocacy letters, *Coleman* advocacy letters, and a letter to then-Secretary Diaz,  
4 Defendants have not responded.

5 Below, Defendants make assertions about AIMS and their existing policies that the  
6 Court has already rejected with regard to RJD and describe ongoing discovery matters  
7 which are outside of the scope of the Joint Case Management Statement. On October 28,  
8 2020, Defendants requested to suspend the production of documents responsive to  
9 Plaintiffs' first request for production in light of the RJD remedial orders. On October 30,  
10 2020, Plaintiffs' counsel agreed to Defendants' request subject to the constraint that certain  
11 documents would be included in the quarterly production required by the Court's Remedial  
12 Order. *See* Doc. 3060 at 5. Defendants have not responded to Plaintiffs' conditional  
13 proposal to suspend production responsive to Plaintiffs' first request. Plaintiffs do not  
14 agree to suspend discovery regarding disability-related staff misconduct events at LAC  
15 because the Statewide Motion is still pending before this Court and subject to additional  
16 briefing.

#### 17 *Defendants' Statement*

18 Defendants take all allegations of staff misconduct seriously and are committed to  
19 investigating and taking appropriate remedial action where warranted. Although  
20 Defendants do not concede the veracity of all of the allegations that have been raised by  
21 Plaintiffs, Defendants continue to diligently work with Plaintiffs concerning their staff  
22 misconduct allegations at Richard J. Donovan (RJD), as well as the seven institutions at  
23 issue in Plaintiffs' June 3, 2020 motion, including California State Prison, Los Angeles  
24 County (LAC), Kern Valley State Prison (KVSP), California State Prison—Corcoran  
25 (COR), California Correctional Institution (CCI), Salinas Valley State Prison (SVSP),  
26 Substance Abuse Treatment Facility (SATF), and California Institute for Women (CIW).

27 On September 8, 2020, the Court ordered Defendants to implement remedial  
28 measures to achieve compliance with the *Armstrong* Remedial Plan and the ADA at RJD.

1 Although Defendants have sought appellate review, Defendants have developed an initial  
2 remedial plan and have engaged in several substantive meet and confer sessions with  
3 Plaintiffs and the Court's Expert, Ed Swanson, to comply with the Court's orders and to  
4 develop a responsive remedial plan. During the meet and confer sessions, the parties have  
5 identified disputed elements of the remedial plan, shared information related to positions  
6 taken concerning the plan, and sought to settle those areas of disagreement that may be  
7 resolved. Defendants have provided Plaintiffs with extensive written policies related to the  
8 remedial plan and presented third-party tutorials concerning officer training and the  
9 operation and placement of fixed surveillance cameras. Although not all areas of  
10 disagreement have been resolved, the parties have agreed to a brief extension of time to  
11 continue their dispute resolution efforts concerning the remedial plan.

12 Moreover, despite the Court's recent order concerning Plaintiffs' motion for relief  
13 at RJD and the significant discovery produced to date, Defendants continue to produce  
14 discovery in this case as detailed here. Over the last twelve months, Defendants have  
15 produced a significant amount of discovery in response to Plaintiffs' written discovery  
16 requests that included a Federal Rule of Civil Procedure 30(b)(6) deposition notice,  
17 requests for production of documents, and interrogatories. Defendants have produced  
18 three persons most knowledgeable for depositions; their expert witness, Ken McGinnis, for  
19 a deposition in Flint, Michigan; responses to interrogatories; and continue to produce  
20 documents on a weekly basis in response to Plaintiffs' expansive document requests. On  
21 April 2, 2020, Plaintiffs served another request for production of documents related to  
22 allegations of staff misconduct at RJD that expanded the scope of requested documents.  
23 Plaintiffs' requests sought documents related to non-class members, and allegations of  
24 staff misconduct at LAC. Defendants have served their timely responses and the parties  
25 have met and conferred concerning a rolling document production. To date, Defendants  
26 have produced approximately 13,747 separate documents in response to these requests in  
27 thirty-eight weekly productions. Defendants will continue to meet and confer with  
28 Plaintiffs concerning the production of documents in this matter.

1 In support of Plaintiffs' second motion, on August 4, 2020, Plaintiffs served special  
2 interrogatories related to their allegations of staff misconduct at LAC, KVSP, COR, and  
3 CCI. Plaintiffs' interrogatories sought a tremendous amount of data that requires a  
4 significant effort to produce. After meeting and conferring, the parties agreed to a  
5 schedule to produce the interrogatory responses and, as of October 21, 2020, Defendants  
6 had served their complete responses to these interrogatories. Defendants have also  
7 produced three expert witnesses in response to Plaintiffs' Notice of Depositions, including  
8 Matthew Cate, Bernard Warner, and John Baldwin. Additionally, Plaintiffs served a  
9 Federal Rule of Civil Procedure 30(b)(6) deposition notice concerning their staff  
10 misconduct allegations at LAC, KVSP, COR, and CCI, and Defendants anticipate  
11 producing a witness no later than November 19, 2020. Finally, Defendants are preparing  
12 substantive responses to Plaintiffs' fifth request for documents concerning inmate  
13 allegations of staff misconduct at the prisons identified in Plaintiffs' second motion for  
14 relief.

15 Defendants' opposition to Plaintiffs' second motion alleging staff misconduct at  
16 seven additional prisons, including LAC, KVSP, COR, CCI, SVSP, SATF, and CIW, was  
17 filed on September 11, 2020, and the Court heard argument on October 6, 2020, but  
18 because Plaintiffs had submitted new evidence in support of their reply, the Court granted  
19 Defendants' request to depose inmate-declarants and file a sur-reply. Defendants will file  
20 their sur-reply on November 17, 2020, and the Court will hear argument on December 8,  
21 2020.

22 To further address staff-misconduct allegations, Defendants developed a new  
23 framework for handling administrative grievances concerning staff misconduct that  
24 included organizational change and staff training this year. CDCR created the Appeal  
25 Inquiry Management Section (AIMS), a unit that is under the umbrella of the Office of  
26 Internal Affairs (OIA), and developed regulations to change CDCR's appeals and  
27 grievance process. AIMS is primarily responsible for completing allegation inquiries  
28 concerning misconduct allegations that are submitted through the grievance process that, if

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

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

23 As previously mentioned, Defendants take all allegations of staff misconduct or  
24 abuse against inmates seriously. To that end, Defendants have engaged in ongoing  
25 discussions with Plaintiffs regarding allegations of staff misconduct, are working diligently  
26 to provide requested information to Plaintiffs, and are continuing to discuss additional  
27 changes that Plaintiffs believe are necessary to remedy confirmed incidents of staff  
28 misconduct. Nonetheless, Defendants maintain that not all of Plaintiffs' allegations of

1 staff misconduct implicate the *Armstrong* class or are appropriately before the *Armstrong*  
2 Court. Defendants maintain that Plaintiffs' allegations fail to establish even a tenuous  
3 connection between the alleged staff misconduct with the rights of disabled inmates,  
4 Defendants' compliance with the ADA or the Rehabilitation Act, or this Court's orders.  
5 Allegations made by non-class members and allegations not related to violations of the  
6 ADA or the Remedial Plan are processed and addressed through CDCR's staff disciplinary  
7 process as set forth in the Department Operations Manual. (See CDCR Department  
8 Operations Manual, Chapter 3, Art. 22.) It is important to note that this process was  
9 developed as a result of the *Madrid* litigation, and the Prison Law Office was significantly  
10 involved in its development. Where there simply is no nexus between allegations of staff  
11 misconduct and an inmate's disability, that allegation does not warrant inclusion of the  
12 alleged incidents in the *Armstrong* accountability logs. Some of the allegations presented  
13 by Plaintiffs' counsel attempt to draw a nexus between disability and staff misconduct  
14 based on pure speculation without any supporting evidence.

15 Finally, concerning Plaintiffs' reference to the homicide of two incarcerated deaf  
16 people at SATF by another inmate, Defendants, do not condone violence of any kind and  
17 are committed to ensuring that a complete investigation of the circumstances of this  
18 incident takes place.

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

21 *Plaintiffs' Statement*

22 The Division of Rehabilitative Programs ("DRP") must take immediate and  
23 comprehensive action to ensure that people with disabilities are no longer left out of its  
24 programs. This will require the allocation of sufficient resources and specialized staff to  
25 evaluate and provide long-needed accommodations to ensure equal access. Defendants'  
26 failure to provide such accommodations results in longer terms of incarceration for people  
27 with disabilities and impedes their successful reintegration into society. See Cal. Code  
28 Regs., tit. 15, § 3043(a) ("all inmates who participate in approved rehabilitative programs



1 and activities...shall be eligible to earn Milestone Completion Credit, Rehabilitative  
 2 Achievement Credit, and Educational Merit Credit...The award of these credits...shall  
 3 advance an inmate's release date if sentenced to a determinate term or advance an inmate's  
 4 initial parole hearing date...if sentenced to an indeterminate term with the possibility of  
 5 parole”).

6 **First**, Defendants do not provide real-time captioning to deaf class members who  
 7 cannot hear what is being said in a classroom or self-help group setting. “Real-time  
 8 captioning (also known as computer-assisted real-time transcription, or CART) is a  
 9 service...in which a transcriber types what is being said at a meeting or event into a  
 10 computer that projects the words onto a screen. This service, which can be provided  
 11 on-site or remotely, is particularly useful for people who are deaf or have hearing loss but  
 12 do not use sign language.” U.S. Dep’t of Justice, ADA Requirements: Effective  
 13 Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>. Late-deafened  
 14 people in California prisons who do not know sign language overwhelmingly report  
 15 feelings of isolation in prison due to their disability, an inability to fully participate in  
 16 programs, and an unawareness of accommodations that may be able to help them. *See*  
 17 Doc. 2910 at 18-27. Plaintiffs repeatedly have raised the need for real-time captioning.<sup>3</sup>  
 18 The parties were scheduled to discuss this issue in January 2020, but the meeting was  
 19 postponed at Defendants’ request and has not been rescheduled. If Defendants do not  
 20 develop a system to provide real-time captioning soon, Plaintiffs expect to bring the issue  
 21 to the court for resolution.

22 **Second**, blind class members do not have equal access to education and  
 23 rehabilitative programming. Defendants do not evaluate blind class members’ learning  
 24

25 <sup>3</sup> *See* Doc. 2910 at 20-23; Doc. 2936 at 45-53, Letter from Caroline Jackson, Plaintiffs’  
 26 Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Communication Needs of DPH,  
 27 Non-SLI Class Members (Jan. 24, 2020); Doc. 2936 at 55-63, Letter from Caroline  
 28 Jackson, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Advocacy  
 Letter, RJD (Feb. 14, 2020); Doc. 2936 at 65-76, Letter from Rita Lomio, Plaintiffs’  
 Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Advocacy Letter, SATF (Feb. 25,  
 2020).

1 media needs based on functional vision assessments. There are no teachers for the visually  
2 impaired, low-vision therapists, or alternative media specialists, including braille  
3 transcribers. Defendants do not regularly provide materials in large print, braille, or audio  
4 formats. *See* Doc. 2910 at 36-37. And Defendants’ new prison literacy initiative leaves  
5 blind students behind—Defendants do not provide braille instruction, even though studies  
6 show that people who are braille literate have higher employment rates, are better  
7 educated, and are more financially self-sufficient. *Id.* at 35.

8 Blind students also do not receive skills training in the assistive technology that  
9 Defendants do provide. For example, last year, Defendants installed JAWS for Windows  
10 (“JAWS”) text-to-speech software on the LexisNexis computer in each law library. They  
11 have not installed it, however, on the word processing, “ADA” computer. In any event,  
12 Defendants have not provided instruction to blind class members on how to use that  
13 technology, rendering it functionally inaccessible.

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

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

1 ensure detailed accommodation chronos were written for class members with learning  
2 disabilities, as required by the March 7, 2018 memo the parties negotiated on  
3 accommodations for people with learning disabilities, SATF actually removed a number of  
4 people from the LD verified category because they could not locate the evidence originally  
5 used to verify these individuals as LD. Plaintiffs look forward to working with Defendants  
6 to further investigate and address these issues.

7 *Defendants' Statement*

8 Defendants are committed to allocating sufficient resources and staff to evaluate  
9 and provide accommodations to ensure equal access to rehabilitative programming,  
10 services, and activities to people with disabilities. The parties met on September 11, 2020  
11 and on October 14, 2020, to discuss accommodations for DNH/DPH class members and  
12 made progress toward shared goals.

13 Defendants are also exploring different ways to provide training to inmates with  
14 disabilities regarding the various accommodation tools, including JAWS, that are available  
15 for their use. Although initially delayed by COVID-19, staff training for JAWS utilization  
16 is now complete. This training included a May 12, 2020 webinar that provided training to  
17 staff and provided them an opportunity to ask questions related to JAWS. CDCR is  
18 working on upgrading the ADA computers to support JAWS and other technologies. Once  
19 COVID-19 restrictions are lifted, library staff will develop a schedule to train all class  
20 members on all assistive devices and all library resources.

21 CDCR does not test for learning disabilities. However, if an inmate self-identifies  
22 as having a learning disability, CDCR will make efforts to obtain documentation to verify  
23 that disability. If the learning disability remains unverified, CDCR nonetheless provides  
24 assistance to those inmate-students with unverified disabilities. Additionally, CDCR is in  
25 the process of implementing its Peer Literacy Mentorship Program (PLMP) to assist  
26 inmate-students with learning disabilities. One purpose of this program is to provide more  
27 focused attention for students in educational programs. Per the Governor's budget, all  
28 institutions will receive a PLMP teacher. This is part of a new initiative to provide flexible

1 mentoring for students who have barriers to attending educational programs in a traditional  
2 classroom setting and is available on nights and weekends, in dayrooms, etc. Peer mentors  
3 work with up to twenty students and receive sentencing credits and pay. Mentees also earn  
4 credits. Hiring for PLMP teachers and mentors began last year. Tutoring is first provided  
5 to those students with verified learning disabilities, and then to students with unverified  
6 learning disabilities as space permits. DRP/OCE conducted training on October 15, 2020  
7 for staff working with DPP population, including DPV/DNV, DPH/DNH, and LD. This  
8 training is being provided to assist with Armstrong Remedial Plan compliance and  
9 included lessons on assistive devices.

10 **D. Provision of Sign Language Interpretation and Safety of Deaf Class Members**

11 *Plaintiffs' Statement*

12 As stated above, earlier this year, a Deaf class member who used sign language to  
13 communicate was bludgeoned to death at SATF. At the time of his death, he was housed  
14 in a dorm with no other people who knew or used sign language, with no videophone, with  
15 no whiteboard for written notes, with staff who were not used to caring for D/deaf people,  
16 and with no clear or confidential way to report safety concerns. *See Exhibit D*, Letter  
17 from Tovah Ackerman & Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office  
18 of Legal Affairs, Recommendations Following the Killing of *Armstrong* Class Members at  
19 SATF (Sept. 29, 2020). A few months later, ADA staff at the institution inexplicably (and  
20 improperly) told another Deaf class member that a sign language interpreter is **not** required  
21 for “a safety/enemy concern” and instead is required only for due process encounters. *See*  
22 **Exhibit G**, Letter from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of  
23 Legal Affairs at 1 (July 29, 2020).

24 Plaintiffs repeatedly have reported the need for increased training of staff on Deaf  
25 culture and communication; the need for increased communication opportunities for  
26 D/deaf people, including systems that would allow them to confidentially report personal  
27 safety concerns, sexual abuse, and sexual harassment; and the need to house people who  
28 use sign language with other people who use sign language. *See, e.g.*, Doc. 2863 at 24-33.

1 Plaintiffs have set forth several minimum actions that immediately must be taken in the  
2 wake of the brutal killings to ensure that appropriate systems are in place to protect all  
3 D/deaf class members. *See Exhibits D & G.* Plaintiffs will attempt to resolve these  
4 concerns with Defendants, but are dismayed by Defendants’ stunning suggestion in their  
5 statement below that effective communication with, and the safety and housing of, Deaf  
6 class members are outside the scope of *Armstrong*. If that truly is Defendants’ position  
7 and the parties are unable to reach agreement soon, and given the serious safety concerns  
8 at issue, Plaintiffs may bring the matter to the Court for resolution.

9       Next, Plaintiffs remain deeply concerned by Defendants’ failure to ensure that sign  
10 language interpretation is provided to D/deaf class members during off-site medical  
11 appointments. D/deaf class members have been hospitalized, undergone surgery, and  
12 received other medical treatment without interpretation services. Defendants currently do  
13 not require that the off-site medical providers they contract with document whether and  
14 how effective communication was achieved during the medical appointment (including  
15 whether sign language interpretation was provided), and Defendants do not otherwise  
16 review or track whether effective communication was in fact achieved during off-site  
17 appointments. The parties in *Armstrong* and *Plata* met to discuss this issue in February  
18 2020, and the Receiver directed CCHCS to convene a workgroup and develop a complete  
19 solution. It does not appear that any further action has occurred, however, and the problem  
20 has continued. *See Exhibit H*, Letter from Caroline Jackson, Rosen Bien Galvan  
21 & Grunfeld LLP, to Tamiya Davis, CDCR Office of Legal Affairs at 1 (Oct. 13, 2020)  
22 (“[A Deaf class member] reported to us that he was hospitalized at Alvarado Hospital on  
23 four separate occasions between April 29 and July 2, 2020. These hospitalizations each  
24 lasted multiple days and involved highly invasive procedures, such as surgery to insert  
25 multiple cardiac stents and to remove a large amount of infected muscle tissue. As  
26 recounted below, he received scant access to sign language interpreting services during his  
27 hospital stays and none at all during subsequent care and treatment in a CDCR  
28 infirmary.”).

1 *Defendants' Statement*

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

7 It is a contractual obligation that hospitals provide a Sign Language Interpreter  
8 (SLI) for all hearing-impaired inmate patients whose primary method of communication is  
9 American Sign Language. Should the hospital not be able to provide the appropriate  
10 accommodations, they are required to contact the sending institution so that staff can  
11 provide the appropriate accommodation. Outside hospitals are made aware of each  
12 patient's medical disability and what accommodations are needed for communication with  
13 that patient. For offsite specialty clinics that do not provide SLI, the offsite health care  
14 schedulers are trained to contact the onsite SLI before the appointment to provide an  
15 interpreter for the appointment. CCHCS has reported that it has been developing potential  
16 alternatives to solely relying on external providers to ensure interpreters are present for  
17 off-site encounters. Defendants have put together a working group to address contract  
18 language for off-site encounters, policies and regulations, and an escalation process for  
19 when an off-site provider fails to provide SLI. The working group held its first meeting on  
20 March 12, 2020, but in light of the almost complete cessation of off-site appointments, this  
21 initiative is temporarily paused and CCHCS will keep Plaintiffs informed of any new  
22 developments through the meet-and-confer process.

23 As previously reported, Defendants are in the process of finalizing ASL inserts on  
24 the state-run channels, including programming that addresses PREA information.  
25 Defendants have also completed an orientation video, which includes PREA information,  
26 for inmates who require ASL. The PREA video now has ASL and was distributed to the  
27 institutions on July 15, 2020. Defendants continue to work toward adding more content  
28 with ASL interpretation and have added up to eleven such videos; staff is working to add

1 more. As previously reported, Defendants anticipate creating a unique state-run television  
2 channel dedicated to ASL, which will include Daily Moth content and, potentially, an  
3 on-demand video library. In fact, to date, all nine institutions housing D/deaf class  
4 members have one DRP television channel reconfigured to show ASL-based content. The  
5 new channel features daily news shows, mandated departmental videos from the Secretary,  
6 pertinent health care related information and other programming with rehabilitative  
7 content.

8 Finally, concerning Plaintiffs' reference to the homicide of two incarcerated deaf  
9 people at SATF by another inmate, Defendants, as previously noted, do not condone  
10 violence of any kind and are committed to ensuring that a complete investigation of the  
11 circumstances of this incident takes place.

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

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

24 The parties agree to work cooperatively toward ensuring equal access in program  
25 assignments for people with disabilities.

#### 26 **F. Effective Communication for Parolees Who Are Deaf**

27 Plaintiffs are in the process of conducting a review DPH parole files. Plaintiffs  
28 continue to identify problems with Defendants' provision of effective communication to

1 parolees who are deaf or hard of hearing including: failures to provide adequate sign  
2 language interpretation during initial interviews and other due process encounters;  
3 inappropriate use of written notes to communicate with DPH parolees who cannot  
4 communicate effectively in writing; failures to use VRI properly and technological issues  
5 with VRI; and confusion regarding the distinction between VRI and VRS, causing likely  
6 violations of federal law. *See* Ex. G to Doc. 2936. Plaintiffs will detail ongoing problems  
7 in a forthcoming letter.

8         DAPO Headquarters staff works closely with staff supervising parolees whose  
9 primary method of communication is sign language. Defendants believe that this allows  
10 DAPO's Parole Litigation Management Unit to resolve problems identified while utilizing  
11 SLI or the VRI system. DAPO has implemented a formal tracking process that allows  
12 staff to report connectivity issues through the use of a Service Report. Defendants have  
13 agreed to produce these Service Reports to Plaintiffs on a quarterly basis. Additionally,  
14 PLMU attempts to schedule SLI for parole procedures and supervision processes. It has  
15 been extremely difficult to find in-person interpreters, especially during the COVID-19  
16 pandemic. On the other hand, VRI has proven to be a useful accommodation for SLI  
17 services.

18         Defendants are moving forward with a new on-demand VRI contract that includes  
19 provisions for penalties associated with breach of contract and failure to timely notify  
20 CDCR of the inability to provide requested interpretation services. Additionally, DAPO  
21 implemented a new in-person sign-language-interpreter contract for DAPO Headquarters  
22 and DAPO parole offices, which became effective July 1, 2019. This SLI contract also  
23 includes provisions for penalties associated with breach of contract and failure to timely  
24 notify CDCR of the inability to provide requested or scheduled interpretation services.  
25 The contract also shortened the timeframe in which an interpreter can cancel a scheduled  
26 appointment.

27         The parties remain in disagreement about the use of civilian in-person sign language  
28 interpreter during non-due process parole field encounters presenting safety and security



1 issues. With this concern in mind, Defendants note that the U.S. Department of Justice has  
2 recognized that agencies can use advanced technology, such as tablets, to provide sign  
3 language interpretation to individuals in areas where it is difficult or impossible to provide  
4 an in-person interpreter. (See ECF No. 2874 Ex. C.) DAPO purchased and implemented  
5 the use of VRI tablets, high-speed connectivity, and an expanded SLI contract provider to  
6 increase VRI capabilities. Plaintiffs remain concerned, but will continue to monitor field  
7 use of VRI.

8 **G. Statewide Durable Medical Equipment Reconciliation and Accuracy of**  
9 **Disability Tracking Information**

10 Defendants completed a physical, statewide durable-medical-equipment (“DME”)  
11 reconciliation encompassing all thirty-five institutions in early January 2019. The audit  
12 revealed: (1) that 7,346 class members were missing one or more items of DME that their  
13 custody and medical records indicated they should have had in their possession; and  
14 (2) that 2,349 class members’ DME records had errors. CCHCS implemented the DME  
15 Discrepancy Report Tool in January 2020. At the time, there were 5,973 discrepancies  
16 between EHRS and SOMS for Armstrong class members. The discrepancy rate was 54.3  
17 percent. The documented number of discrepancies began to decrease significantly during  
18 the following months. On August 31, 2020, CCHCS implemented an update to the tool to  
19 improve accuracy of the SOMS records. As of November 4, 2020, there are 3,636  
20 discrepancies and a discrepancy rate of only 35.8 percent. While it appears that  
21 Defendants have made significant strides towards developing an electronic method to  
22 ensure that orders for DME are reconciled with receipts for DME, Plaintiffs remain  
23 concerned that there is still no plan to confirm that class members actually have their  
24 required DME as indicated in the system. This is a necessary step in the prison  
25 environment where DME can be easily lost during transfer or get damaged or taken.  
26 CDCR is working on a sustainable method to reconcile electronic records with actual  
27 possession by class members.

28 Plaintiffs remain concerned about how frequently they encounter *Armstrong* class

1 members with DME and clear *Armstrong* disabilities who do not have a DPP disability  
2 tracking code. This was true of a large number of Declarants in the recent RJD and  
3 statewide staff misconduct motions. Defendants have distributed some training materials  
4 to CDCR clinicians about how to assign the proper codes, and the parties will work  
5 collaboratively to ensure proper identification of DPP codes and to reach a sustainable  
6 resolution for DME reconciliation in the future.

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

##### 8 *Plaintiffs' Statement*

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

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

23 This issue is particularly important now that CDCR has released thousands of  
24 incarcerated people early, and is in the process of releasing thousands more in order to help  
25 address COVID-19. In addition, DRP has authorized STOP programs to retain current  
26 residents in their transitional housing programs in light of the shelter-in-place orders  
27 statewide. As a result, Plaintiffs have concerns about the adequacy of transitional housing  
28 for individuals being released at this time.

1 In addition, there were already waiting lists for homeless parolees seeking  
2 transitional housing before the pandemic. For example, in early April 2020, the San Diego  
3 area had 60 parolees in the community on its waiting list for transitional housing programs,  
4 many or most of them homeless. Plaintiffs are also concerned by the low percentage of  
5 paroling prisoners who are given an identification card through the Cal-ID program. This  
6 problem has been exacerbated by the closure of DMV offices throughout the state.  
7 Without an identification card, parolees cannot open a bank account, rent a hotel, or rent an  
8 apartment, and the lack of identification can delay access to public benefits and medical  
9 care.

10 Plaintiffs believe the long-standing problems with inadequate parole planning  
11 services and the need for better linkage to transitional housing, transportation, and other  
12 supportive services for paroling class members is even more crucial given the pandemic  
13 since being homeless now puts class members' lives at risk, in addition to making it more  
14 likely that they will fail on parole.

15 Recently, Defendants have shared some data about rates of parole for life prisoners  
16 with disabilities, and have shared a detailed memo that has been approved by CDCR  
17 stakeholders and that will provide for an expanded role for CDCR counselors in helping  
18 life prisoners prepare for Board hearings and eventual parole. Plaintiffs received this plan  
19 on October 1, 2020 and are in the process of reviewing the plan.

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

1 Plaintiffs have ongoing concerns about the benefit application process for paroling  
2 class members. For example, submission of benefits applications for class members at  
3 CIM was significantly delayed as a result of the months-long and continuing COVID-19  
4 outbreak at that institution. *See* Doc. 3044 at 65-67, Letter from Rita Lomio & Megan  
5 Lynch, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, Pre-Release  
6 Planning at the California Institution for Men (June 23, 2020). The benefits application for  
7 a 66-year-old class member who uses a wheelchair and reported having memory problems  
8 was submitted at most **seven days** before his release from prison (SSI applications  
9 typically take around four months to be approved). *Id.* The class member worried how he  
10 would survive outside prison without access to such funds. *Id.*

11 The parties met on July 23, 2020, with DRP and DAPO staff members regarding  
12 these initiatives to improve parole planning services for individuals with disabilities, and to  
13 discuss the California Identification program and efforts to expand its reach by installing  
14 DMV-compatible cameras in prisons. The parties also discussed the status of the TCMP  
15 benefits application process, which has been impacted by the pandemic and by the large  
16 number of early releases. This work has taken on even greater urgency in light of the need  
17 to place incarcerated people who are being released during the COVID-19 pandemic to  
18 succeed on parole. Plaintiffs request that Defendants make every effort to speed up the  
19 proposed remedy to the major obstacle of issuing California identification cards to many  
20 more paroling prisoners and the need for new DMV-compatible photographs to be taken  
21 by CDCR for individuals who have not had a California identification card for more than  
22 10 years. The plan to fix this problem was discussed over a year ago in the  
23 September 2019 C-ROB report, but still has not been accomplished.

24 *Defendants' Statement*

25 As noted in previous statements, Plaintiffs' assertion that "CDCR and DAPO fail to  
26 ensure that parolees with severe and placement-impacting disabilities receive adequate  
27 planning for parole and adequate transitional housing, transportation, and other transitional  
28 services" is wrong. (*See* ECF No. 2786, at 19-21.) Defendants' February 20, 2020 letter

1 detailed the additional assistance that correctional counselors will provide to prepare  
2 inmates with disabilities for release on parole. Specifically, that letter informed Plaintiffs  
3 that counselors will be directed to discuss different sources of support upon release  
4 including family, housing, employment, financial, or community-based programs, and  
5 counselors will then help the inmate fill out a template letter to send to potential sources of  
6 support. The waiting lists Plaintiffs refer to above are for individuals who paroled, then  
7 after having been paroled for some time determine that an additional program would be  
8 beneficial. That is not a transition-to-parole issue. Defendants' responses to Plaintiffs'  
9 transition-to-parole advocacy letters consistently demonstrate that pre-parole services are  
10 regularly and adequately provided to class members and that class members are not always  
11 reporting information accurately to Plaintiffs' counsel. Defendants believe that the  
12 additional assistance that will be provided by correctional counselors based on their  
13 February 20, 2020 letter to Plaintiffs will assist class members with understanding what  
14 pre-parole services are available to them. Counselors will be provided with a memo  
15 detailing their additional responsibilities with respect to class members in the release  
16 planning process.

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

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

1 not provided to all parolees. The ADA does not require the creation of new programs  
2 solely for disabled persons.

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

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

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

22 Plaintiffs also complain about transition to parole services. Again, Plaintiffs show  
23 no nexus between their allegations and Defendants' compliance with the ADA,  
24 Rehabilitation Act, the Remedial Plan, or this Court's orders. Moreover, Defendants have  
25 been successful in providing transition-to-parole services to parolees in spite of the  
26 challenges posed by COVID-19. As noted above, and as Plaintiffs acknowledge, CDCR  
27 has released thousands of inmates since March 2020, due to the COVID-19 pandemic.  
28 Defendants have provided transition-to-parole services to those thousands of people in a

1 short period of time. Indeed, Plaintiffs were informed on a July 23, 2020 phone call that  
2 the vast majority of paroling inmates have submitted applications for Medi-Cal or  
3 Supplemental Security Income (SSI) benefits before paroling, and that those who have not  
4 submitted applications have generally not done so because they are not eligible due to  
5 availability of other insurance. While parolees may not be receiving benefits immediately  
6 upon being paroled and additional follow-up may be necessary to receive benefits, it is  
7 important to note that nearly all of the applications have been completed. With respect to  
8 Cal-ID, as has been explained to Plaintiffs, only individuals who have renewed a  
9 California ID in the preceding ten years are eligible to renew a Cal-ID. If a parolee is  
10 eligible to renew, Defendants assist with that process before parole. If a parolee is not  
11 eligible to renew, that individual is required to visit the DMV in person, which cannot be  
12 done before release despite Defendants' best efforts.

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

18 TCMP representatives have continued to work with inmates despite the challenges  
19 presented by the pandemic. In fact, if an individual is quarantined and that individual's  
20 release date is approaching, TCMP works with that individual's counselor to make a  
21 meeting happen and get the benefits applications done before the person is paroled.

#### 22 **I. Accommodations for Blind and Low-Vision Class Members**

23 The parties convened a work group to address issues facing blind and low-vision  
24 class members. *See* Doc. 2786 at 20; Doc. 2910 at 29-41. The work group has met once,  
25 in January 2020. Issues for discussion included documentation of methods of effective  
26 communication, orientation and mobility training, audio description, electronic submission  
27 of forms, text-to-speech software, accommodations assessments and skills training, braille  
28 literacy, accessibility of mental health groups, and access to magnifiers of different

1 magnification levels. Since that meeting, Plaintiffs have become aware of Defendants'  
2 failure to provide orientation when a blind class member was first housed in a dorm  
3 environment, resulting in the class member mistakenly entering the wrong pod and bed and  
4 being placed in administrative segregation for his safety. These problems, unfortunately,  
5 have continued during the pandemic. *See Exhibit C*, Letter from Rita Lomio & Tania  
6 Amarillas, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, Situating  
7 Blind Class Members to New Housing Assignments (Sept. 24, 2020).

8 The parties are scheduled to resume this discussion on December 1, 2020. If these  
9 issues are not resolved, Plaintiffs likely will bring them to the Court for resolution.  
10 Defendants are committed to working with Plaintiffs to resolve these issues without  
11 judicial intervention.

#### 12 **J. Joint Monitoring Tool**

13 The parties remain committed to developing a strong joint monitoring tool. The  
14 parties had planned to test the tool out at different types of prisons beginning in April  
15 2020, and to meet after each audit to discuss if and how the tool should be updated or  
16 revised based on issues identified during each audit. Those plans, unfortunately, have been  
17 delayed by the COVID-19 pandemic. The parties have conducted off-site document  
18 reviews for CMF, PVSP, WSP, and CTF. On-site audits will resume as soon as it is  
19 appropriate and safe to do so.

20 The parties continued to meet through February 2020, on drafting a joint monitoring  
21 tool for measuring compliance in this case. Through this process, the parties identified a  
22 number of substantive areas that will require further negotiation and the development of  
23 new policies. In addition, the parties have identified additional issues during the course of  
24 the off-site reviews that are ongoing. The parties will be meeting on November 19, 2020,  
25 to discuss current issues and outstanding to-do lists. The parties have not yet drafted the  
26 headquarters section of the joint monitoring tool, as well as some individual tool questions,  
27 including how to monitor whether class members are receiving equal access to program  
28 assignments, and questions regarding whether staff have received required training. The



1 parties must first complete larger policy discussions before these portions can be drafted.

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

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

10 The parties agreed to a flexible, collaborative approach in which they would meet  
11 quarterly to discuss different institutions and be joined by local ADA staff with close  
12 knowledge of the institutions. The parties also would be able to discuss issues about a  
13 particular institution informally before or after the scheduled quarterly meeting. The Court  
14 Expert agreed to accompany the parties on these tours. In light of serious public health  
15 issues presented by the global COVID-19 pandemic, these tours have been suspended; the  
16 parties will work together to schedule the in-person tours as soon as it is appropriate and  
17 safe to do so.

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

25 **L. Investigation of County Jails**

26 Plaintiffs continue to assert that a pattern and practice of denying disability  
27 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680  
28 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA

1 accommodations at Kern County, San Bernardino, Orange, and Fresno County jails. *See*  
2 Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions and have been meeting  
3 with county counsel for a number of counties in an effort to improve relations and  
4 information sharing and ADA compliance at the jails. Unfortunately, these conversations  
5 have largely been put on hold due to the pandemic. While improved communication with  
6 the counties is a welcome idea, Plaintiffs believe that Defendants will likely need to do  
7 more than communicate with counties to ensure accommodations for class members in  
8 county jails.

9 Defendants will continue to keep Plaintiffs informed regarding any effects  
10 COVID-19 may have on the county jails and DAPO's response to this unprecedented  
11 public health crisis.

12

13

14 DATED: November 16, 2020

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

15

By: /s/ Penny Godbold

16

Penny Godbold

17

Attorneys for Plaintiffs

18

19 DATED: November 16, 2020

XAVIER BECERRA

Attorney General of the State of California

20

21

By: /s/ Trace O. Maiorino

22

Trace O. Maiorino

Deputy Attorney General

23

Attorneys for Defendants

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25

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**FILER'S ATTESTATION**

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

DATED: November 16, 2020

/s/ Penny Godbold  
Penny Godbold

# **EXHIBIT A**



## PRISON LAW OFFICE

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VIA EMAIL ONLY

May 22, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

*Armstrong Advocacy Letter*

RE: [REDACTED], DPW, DNH, LD (unverified), SATF

Dear Ms. Davis:

We write on behalf of [REDACTED] an *Armstrong* class member housed at the California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF). Defendants classify Mr. [REDACTED] as having an unverified learning disability, with a listed TABE score of 00.0. He also is hard of hearing. We spoke with Mr. [REDACTED] on Wednesday. He relayed several concerns regarding accommodations during the COVID-19 pandemic, which we outline below.

1. Access to the Courts

Mr. [REDACTED] reported that he has two active lawsuits with upcoming deadlines, including one on June 8, 2020. He reported that he needs help writing to complete his legal work and, absent accommodations for his learning disability, he will not be able to meet court deadlines.

Mr. [REDACTED] reported that when he views print material, the words on a line overlap and “bleed into each other.” Lines of text blur together, and words sometimes appear from right to left instead of from left to right. As a result, he has the sensation of “just not being able to see well.” *See Bruce Evans et al., Investigation of Accommodative and Binocular Function in Dyslexia, Opthal. & Physiological Optics* 5-19, 17-18 (1994) (noting that people with dyslexia may experience binocular instability, including transient blurring). Mr. [REDACTED] reported that he is able to read somewhat better in large print, but that small print text in many lines is very difficult for him; for example, he cannot read a book at all. He reported that he needs someone to read print material aloud to him.

Mr. [REDACTED] reported that he is able to write independently but that he struggles to do so legibly. He reported that he writes in block letters or in very large, cursive letters to help him avoid penmanship errors and also to address the word blurring—something that is not uncommon for people with learning disabilities. *See Michael Farrell, The Effective Teacher’s Guide to Dyslexia and Other Learning Difficulties (Learning Disabilities)* 32 (2012) (noting that cursive

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Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED]

May 22, 2020

Page 2

script “is more flowing and controllable than forming separate letters.”). He reported that his handwriting sometimes still is hard for people to read.

Mr. [REDACTED] also reported that he struggles with the mechanics of writing due to his learning disability. He reported that he makes frequent grammatical errors, or mistakes in “word logic,” in his writing. He reported that he spells words backwards or inverts letters (for example, by placing the second letter in front of the first letter of a word). These writing problems also are common for people with certain learning disabilities. *See* Yitzchak Frank, *Specific Learning Disabilities* 231-32 (2014). He reported that he also “misplaces” words or skips them altogether, thinking he has already written them. *See* Michael Farrell, *The Effective Teacher’s Guide to Dyslexia and Other Learning Difficulties (Learning Disabilities)* 31 (2012) (when copying text, people with learning disabilities “may find it difficult to co-ordinate movements in hand writing, while maintaining other aspects. These other aspects include retaining the visual memory of the words just read (in order to translate them into writing); and maintaining the sequence of different letters and words and translating these into written sequences.”).

Due to his struggles with penmanship, grammar, and spelling, Mr. [REDACTED] cannot hand-write his legal work. He reported that he has had his paperwork sent back from courts because it was considered illegible and the court computers could not scan it. Even when he writes in block letters and triple-checks his work, he reported, it is not adequately clear to file with the court. We spoke with Kim Cotta, a manager in the Criminal Division of the Kings County Superior Court, about the intake of handwritten court filings from people in prison. She explained that new case filings are typically scanned into a digital case management system. She reported that a handwritten document will be returned to a litigant if staff consider it to be illegible.

As a result, Mr. [REDACTED] reported that he needs to be able to type his legal documents so that they will be clear enough to be accepted by the Superior Court. Unfortunately, due to restrictions related to the COVID-19 pandemic, Mr. [REDACTED] has been unable to access the ADA computer in the law library.<sup>1</sup> Mr. [REDACTED] reported that the ADA computer is particularly helpful because it has

---

<sup>1</sup> Mr. [REDACTED] reported that he previously had a typewriter, but no longer has it. He reported that he also has a J-Pay tablet, which is particularly helpful to him because it has text-to-speech software, which reads to him as he types. He reported that he has a large number of files saved on his tablet with notes, legal information, and court materials: “The tablet is my memory,” he said, “whatever I have is written right here in front of me.” He reported that he can type his legal work on the tablet and send it by email to a family member, which allows him to make copies for the court. Unfortunately, he reported that his tablet is currently broken. He reported that after he downloaded a free game, his tablet started freezing. He is able to view files he has saved, but he cannot access them; the tablet says that the applications are not installed. He reported that he has contacted J-Pay and

Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED]

May 22, 2020

Page 3

the ability to magnify text so that he can see what he is writing more easily. Mr. [REDACTED] reported that he has filed paperwork requesting access to the law library as a Priority Legal User (PLU), but that he has not been able to access the law library due to the COVID-19 pandemic. He reported that if he does not have access to a word processing program, “I put out junk.”

Word processing programs are common accommodations for people with learning disabilities. *See, e.g.*, Carrie Anna Courtad & Emily C. Bouck, Assistive Technology for Students with Learning Disabilities, in Jeffrey P. Bakken *et al.*, ed., Learning Disabilities 153-173, 160 (2013) (“word processors can provide assistance for students with LD who also have handwriting difficulties”); Corinne Smith & Lisa Strick, Learning Disabilities 267 (2010) (“[W]ord processing programs offer a host of advantages to [people] with learning disabilities. By making manipulation of text easy, they facilitate brainstorming and organizing ideas, creating outlines, writing rough drafts, and making improvements and corrections.”); Angela L. Williams, ed., Learning Disabilities Sourcebook 91 (2019) (noting that people with dyslexia may benefit from “word-processing programs with spell-check features”). Access to a word processing program also would allow Mr. [REDACTED] to draft court filings independently, something important in light of his underlying conviction.<sup>2</sup>

REQUEST: Defendants have invited Plaintiffs’ counsel to identify class members who might require access to auxiliary aids in the law library. Please evaluate whether Mr. [REDACTED] can be permitted access to the ADA computer in the law library to meet the deadlines in his active cases. If that is not possible, please explain how Defendants will accommodate his disability, including whether his J-Pay tablet can be fixed.

---

institution staff, but they have not fixed the problem. He reported that he cannot currently use the tablet’s word processor or text-to-speech software.

<sup>2</sup> “The dangers associated with an inmate’s paperwork and R suffix are all too real.” Office of the Inspector General, Special Review: High Desert State Prison 20 (Dec. 2015). Mr. [REDACTED] reported that people have told him that officers sometimes “smut him up,” or share information and rumors about his underlying conviction. He reported that he does not go to yard as a precaution against the “havoc” that could result because officers and other incarcerated people reportedly have discussed his conviction history. *See id.* (“In May 2013, on an SNY facility (not HDSP), an officer discovered an inmate lying unresponsive on the floor of his cell with a sheet pulled over him and a classification document resting on top of the sheet. There was a ligature around the inmate’s neck, wound tight by a connected State-issued cup, and blood near his head. The classification document found on the deceased inmate noted that his commitment offense was for lewd and lascivious acts with a child under 14 years of age.”).

Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED]

May 22, 2020

Page 4

2. Effective Communication of Written Information from Medical Staff

Mr. [REDACTED] is prescribed phenytoin, an anti-epileptic drug that he takes to control seizures. On May 6, 2020, his health care provider apparently sent him a patient letter informing him of test results, asking him about the frequency with which he was taking his prescribed medication, and directing him to let medical staff know so that they could inform her.

**\* Final Report \***

[REDACTED]  
[REDACTED]  
[REDACTED]

Your phenytoin level has decreased significantly from 22.7 to 5.5 since we changed your phenytoin level from 200 mg twice daily to 100 mg three times a day. Please let me know how you are doing on your phenytoin to control your seizures. Are you taking your phenytoin 100 mg three times a day? I do wonder if you are taking it only twice daily. Please let the medical staff know to let me know. I can order another phenytoin level in a few weeks.

Griffith, Eleonor P&S

Sincerely,

California Correctional Health Care Services

Result type: Patient Letter  
Result date: May 06, 2020 09:20 PDT  
Result status: Auth (Verified)  
Performed by: Griffith, Eleonor P&S on May 06, 2020 09:20 PDT

There is no indication in the medical record regarding how, if at all, the letter was effectively communicated to Mr. [REDACTED] who has a TABE score of 00.0. When we spoke with him on May 20, 2020, Mr. [REDACTED] reported that he had not received the letter or otherwise been informed of its content. We read the letter to him during the legal call.

REQUEST: Please explain how patient letters are distributed to class members with documented learning disabilities (verified or unverified) and/or low TABE scores, and where this information is documented. Please provide a copy of any relevant policies or procedures.



Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED]

May 22, 2020

Page 5

3. Effective Communication of Written COVID-19 Information

Mr. [REDACTED] reported that no staff person has talked to him about COVID-19, including regarding measures he can take to protect himself. He noted that he has seen written posters and memoranda regarding COVID-19, but no staff person has read them aloud to him or, to his knowledge, any other incarcerated person.

Mr. [REDACTED] also is hard of hearing. He reported that he has trouble distinguishing sounds, particularly in loud environments with multiple voices speaking at once. In those instances, sounds become mixed together or jumbled, and he cannot discern individual voices. Environments like the dayroom are particularly challenging. He reported that he cannot hear anything on the television in the dayroom. Turning the volume on the television up does not help, as people just speak louder to be heard over it. He also reported that although the dayroom television had captions on at one time, there are no longer captions on that television.

Mr. [REDACTED] nonetheless reported that he is knowledgeable about COVID-19 because he watches ABC News on his personal television to stay informed. He reported that he is able to do that because he was issued a pocket talker earlier this month. Prior to having his pocket talker, he reported that he could not listen to the television because he could not turn the volume on his television up enough to hear without “blowing the cell out.” Mr. [REDACTED] noted that he is grateful for his pocket talker, which “absolutely helps” to amplify and individualize sounds.

REQUEST: Please explain how information related to COVID-19, including preventive measures and rules related to cloth face coverings, were communicated to people with learning disabilities (verified or unverified) and/or low TABE scores at SATF.

\* \* \* \* \*

Thank you for your prompt attention to this matter.

Sincerely yours,



Skye Lovett  
Litigation Assistant



Rita Lomio  
Staff Attorney

cc: Mr. [REDACTED]  
Co-Counsel

Ms. Tamiya Davis

Re: [REDACTED] [REDACTED]

May 22, 2020

Page 6

Ed Swanson, Court Expert

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Lois Welch, Steven Faris (OACC)

Adam Fouch, Teauna Miranda, Laurie Hoogland, Landon Bravo (DAI)

John Dovey, Vince Cullen, Don Meier, Laurene Payne, Ceasar Aguila, Samantha

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Tonis, Barbara Pires, Bruce Beland, Bryan McCloughan, Cathy Jefferson, Ceasar Aguila,

Cindy Flores, Dawn Malone-Stevens, Desiree Collum, Donald Meier, Gently Armedo,

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# **EXHIBIT B**



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Rita Lomio  
Margot Mendelson

VIA EMAIL ONLY

August 25, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*  
[REDACTED] DPW, DNH, LD (unverified), SATF

Dear Ms. Davis:

We write to follow-up on the advocacy letter we sent on behalf of Mr. [REDACTED] over three months ago, on May 22, 2020, regarding his access to the courts and effective communication of written medical information during the pandemic. We have not received a response to that letter. The letter raises significant issues that affect not just Mr. [REDACTED] but also, potentially, a number of other class members throughout the California prison system. During an interview on August 10, 2020, Mr. [REDACTED] reported that the problems have not yet been resolved.

#### Effective Communication of Written Medical Information

In our May 22 letter, we reported that Mr. [REDACTED] is prescribed phenytoin, an anti-epileptic drug that he takes to control seizures. On May 6, 2020, his health care provider apparently sent him a patient letter informing him that his phenytoin level “has decreased significantly,” asking whether he was taking his medication “three times a day,” and directing him to let medical staff know. There was no indication in the medical record regarding how, if at all, the letter was effectively communicated to Mr. [REDACTED] who has a TABE reading score of 00.0. He reported that he had not received the letter or been informed of its content.

According to the electronic medical record, the provider has sent Mr. [REDACTED] at least four additional patient letters since then—on June 18, June 26, July 7, and July 23, 2020. Two letters concerned his phenytoin levels. Mr. [REDACTED] reported during the August 10 interview that he had not received effective communication of any of these letters. We again read the letters to him.

This problem is not limited to Mr. [REDACTED]. Deaf and blind class members at SATF also reported this month that they have not received effective communication of written medical information, including patient letters, which Defendants now rely on due to pandemic-related restrictions on in-person encounters. **Please explain how Mr. [REDACTED] and other class members with limited reading ability will receive effective communication of written medical information during the pandemic, as well as copies of any relevant policies or procedures.**

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Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED]

August 25, 2020

Page 2

Access to the Courts

In addition, as we wrote previously, Mr. [REDACTED] requires access to a word processing program as an accommodation for his reading disability. This would allow him to draft court filings independently, which is particularly important given his conviction.<sup>1</sup>

Mr. [REDACTED] reported that he still is not receiving adequate access to a word processing program. Mr. [REDACTED] also reported that since our May 22 advocacy letter, he could not recall any institution staff interviewing him about accommodations for court access. He reported that his J-Pay tablet is now functional, and that with the new LexisNexis application on the tablet, he is able to use the text-to-speech function to conduct legal research. He also is able to type his legal work on his J-Pay tablet. However, he reported that he cannot print his work from his J-Pay tablet, and so he cannot use his tablet to meet the deadlines in his active cases.<sup>2</sup> As a result, he reported that he has had to file a handwritten document with the court. During our interview, he shared that, “I feel sorry for the court,” and said that he even wrote a letter to the court clerk to apologize for his handwriting and to explain that “this is all that I have.”

Mr. [REDACTED] reported that since our May 22 advocacy letter, he was granted Priority Legal User (PLU) access to the law library, where he is able to print for free because he is indigent. However, due to the pandemic-related modified programming, he was able to visit the law library only three times and to use the ADA computer for an hour each time. He reported that one hour of computer access each week is not adequate for him to type his legal work. He has used his time on the ADA computer to transcribe his previous handwritten filing with the court so that it will be legible (or in his words, “in English.”). However, he reported that “it’s not easy for me to read my own writing either. . . I can, but sparingly,” because “it’s all blurry and crossing-over.” As a result, he reported that during his last visit to the law library, he was able to transcribe only one page of his 25-page filing. Furthermore, he was concerned that he would no longer have access to the ADA computer after August 17, when his PLU status was set to expire.

---

<sup>1</sup> Mr. [REDACTED] reported to us that he is the target of harassment due to his underlying conviction. He reported that bullying, name-calling, and people “pushing on him” have been a regular part of his daily life since a 2014 ABC News broadcast aired in his housing unit. The broadcast covered the arrest of his son (who shares his name) for sexual abuse of children, and named Mr. [REDACTED] and his conviction offense. We previously reported that Mr. [REDACTED] has heard from others that officers share information and spread rumors about his underlying conviction, and that he does not go to yard as a precaution against “havoc.”

<sup>2</sup> Mr. [REDACTED] reported that to print a filing that he typed on his J-Pay tablet, he would have to send an email to a loved one with the document, which costs 35 cents. He reported that he cannot afford to do this regularly.

Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED]

August 25, 2020

Page 3

On August 13, 2020, Defendants issued a memorandum entitled, "Access to Auxiliary Devices in Libraries for Inmates with Vision Impairment Impacting Placement During COVID-19 Pandemic." The memorandum noted that "[l]ack of access to auxiliary devices may impair the ability of DPV inmates to read legal mail, court transcripts, and complete personal correspondence, CDCR forms, and other documentation." The memorandum directed institutions housing people with DPV codes to "develop a schedule to allow DPV inmates access to auxiliary devices located in the libraries for . . . up to four hours per week for priority legal users, during the modified programs caused by the COVID-19 pandemic . . ." The memorandum further noted that "[a]lternative locations, such as classrooms and gyms, may be utilized to allow for more flexible scheduled and increased access to auxiliary devices."

The memorandum, however, does not apply to Mr. [REDACTED] who does not have a DPV code but still requires access to auxiliary aids in the law library due to his learning disability.

**Please explain how Mr. [REDACTED]'s learning disability will be accommodated to allow him equal access to the courts during the COVID-19 pandemic, including how frequently he will be able to access a word processor.**

Thank you for your prompt attention to this matter.

Sincerely yours,



Rita Lomio  
Staff Attorney



Skye Lovett  
Litigation Assistant

cc: Mr. [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, Teana Miranda, Landon Bravo, Laurie Hoogland (DAI)  
Bruce Beland, Robert Gaultney, Saundra Alvarez, Tabitha Bradford, John Dovey, Donald  
Meier, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson,

Ms. Tamiya Davis

Re: [REDACTED] [REDACTED] [REDACTED]

August 25, 2020

Page 4

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)

# **EXHIBIT C**





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VIA EMAIL ONLY

September 24, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

*Armstrong v. Newsom*  
RE: Situating Blind Class Members to New Housing Assignments

Dear Ms. Davis:

Over six months ago, Plaintiffs raised concerns regarding Defendants' failure to ensure that blind class members are oriented to new housing assignments. We gave the example of [REDACTED], a 26-year-old *Armstrong* class member who became blind after he attempted to die by suicide with a shotgun blast to the head and who recently had been admitted into CDCR custody. Mr. [REDACTED] was transferred from a Reception Center to open dorm housing on a GP yard at the California Substance Abuse Treatment Facility and State Prison, Corcoran ("SATF"), but was not provided orientation within the housing unit, including how to safely navigate to and from his bed, toilet, and shower. We reported that officers informed him that he was responsible for flagging down ADA workers himself, which he could not do because he was blind. We reported that after he had accidentally gotten into bed with and bumped into other incarcerated people, he was placed in administrative segregation.

We asked to put discussion of appropriate orientation for blind class members on the agenda for the Blind/Low-Vision Work Group. As you know, that group has met only once—in January 2020—and Plaintiffs have been waiting for Defendants to schedule the next meeting. Over three months ago, and again last month, Defendants represented to the Court that they "anticipate scheduling a meeting with Plaintiffs in the very near future that should negate any need for judicial intervention on this issue." *See* Doc. 2965 at 31; Doc. 3044 at 37. Defendants have not yet done so.

In the meantime, and during the COVID-19 pandemic, we have continued to report similar concerns. For example, on June 18, 2020, we reported:

In an attempt to slow the transmission of the disease in congregate living areas, Defendants have rearranged building layouts to separate beds into cohorts. Changes to the building design or path of travel must be clearly and appropriately communicated to people who are

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blind or have low vision, and those people must be shown how to safely navigate through their living spaces.

Letter from Rita Lomio & Megan Lynch, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Defendants' Response to the COVID-19 Outbreak at CIM (Part II) at 6 (June 18, 2020); *see also* Email from Penny Godbold, Plaintiffs' Counsel, to Vincent Cullen, California Correctional Health Care Services, & Tamiya Davis, CDCR Office of Legal Affairs, Agenda for Friday COVID-19 Call (June 24, 2020) ("What efforts, if any, have Defendants made to orient blind and low vision class members to new housing layouts and installation of new features, including hand sanitizer dispensers?").

The only action reported by Defendants is an email sent to ADA Coordinators on June 23, 2020, stating as follows:

During the department's weekly Armstrong COVID-19 call it has been brought to attention certain inmates who are blind or low visions [sic] may have not been informed of recent physical changes at the institution.

Attached is a roster of inmates identified as DPV. Please check the attachment to see if your institution is currently housing any DPV inmates.

If you are currently housing DPV inmates please ensure they are informed regarding any physical changes in housing units, clinics, yards etc... as it relates to physical barriers/changes, such as (Hand Sanitizer dispensing stations, social distancing markers, etc..) in relation with the COVID-19 pandemic.

Please submit an email verifying this has been completed by CLOB Friday, 6/26/2020.

That email, however, is not a complete or durable remedy. Unfortunately, Mr. [REDACTED] again provides an example of why. Mr. [REDACTED] tested positive for COVID-19 in a test administered on September 1, 2020, and was moved from Building B3 (Bed 7) to the designated medical isolation building on Facility C. Mr. [REDACTED] reported that Facility C was celled housing and that his cell mate was able to help him access the limited programs, services, and activities available there, including showers.

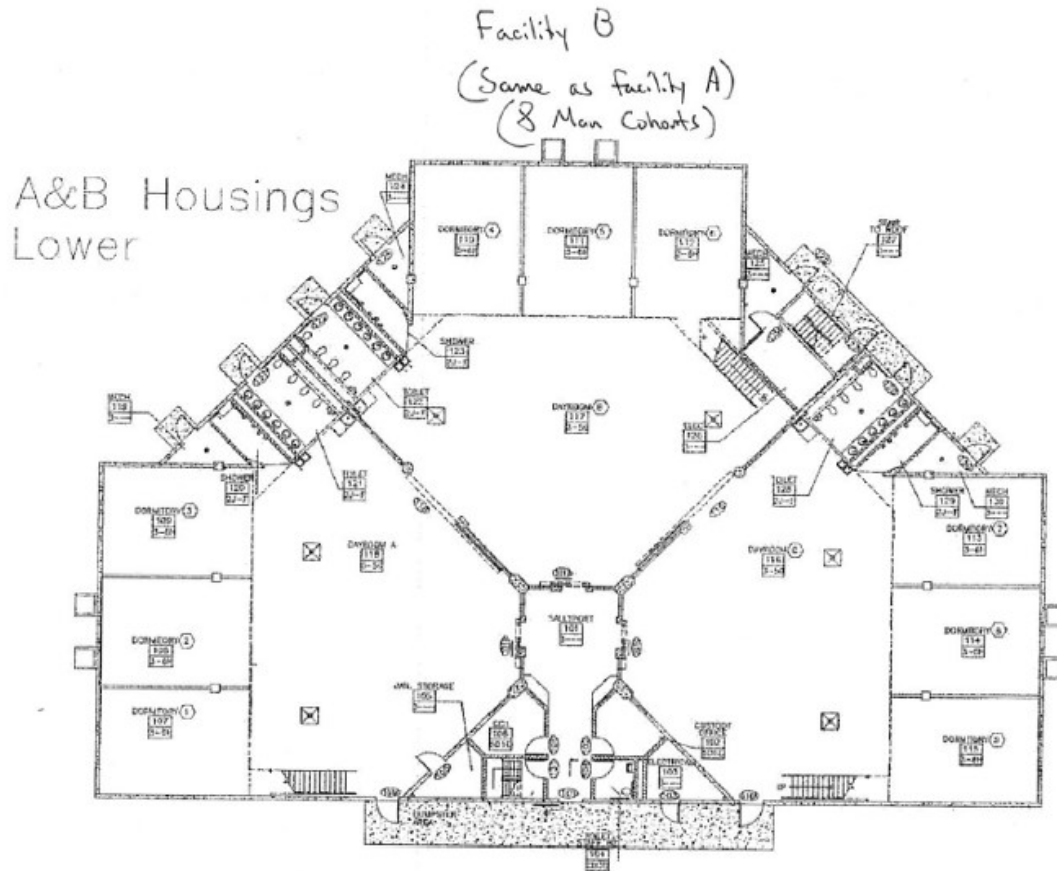
Ms. Tamiya Davis

Re: Situating Blind Class Members to New Housing Assignments

September 24, 2020

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After he was cleared from medical isolation last week, Mr. [REDACTED] was moved to Building B2, dorm housing, and placed in Bed 3, which is toward the back and requires navigating past other bunk beds to get to the dayroom and to the toilet and shower areas.



Building A3, A-Section, SATF

Ms. Tamiya Davis

Re: Situating Blind Class Members to New Housing Assignments

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Mr. ██████ reported that there was only one officer in the building making bed assignments. He reported that he asked the officer if he could be moved to a bed where there was more easy and direct access to the bathroom, if he could be oriented to the building, and if he could receive assistance from ADA workers. The officer reportedly responded that he was busy assigning everyone bunks and, “I’ll get you later.” Mr. ██████ reported that the officer never returned; he never received a bed assignment that took into consideration his disability, never was situated to his new dorm, and never was introduced to ADA workers or told how to find them.

We encourage you to close your eyes and imagine what it would be like to be blind and placed in the middle of an unfamiliar prison dorm, without anyone telling you where you are, where the bathroom is, who is around you, and how to get help. As you know from our visits to SATF, officers typically are not present in the living areas on Facility B. To talk to an officer, you must traverse from the bed area, past the dayroom tables, chairs, and benches (not insignificant obstacles for someone who is blind and has not been oriented to the housing area), to a gate and, if it is open, through the gate, into the center area, and to the staff office. You have no way to identify who ADA workers are (because you cannot see their vests) or how to get their attention. You are, quite simply, at the mercy of others, who you do not know and who likely are not trained in how to situate a blind person to their surroundings and how to guide them.

Over the next few days, Mr. ██████ attempted to speak with the people around him and see if those assigned to Beds 1 and 7 might trade places with him, so he could be on the end of the pod, with easier access to the restrooms. Eventually, one person agreed to trade beds with him. Before then, however, Mr. ██████ reported that he irritated other people in his pod—particularly at night—because he would have to tap his white cane against their beds to try to figure out how to get out of his bed area and to the toilet or shower.

Similarly, Mr. ██████ reported that no one told him that ADA workers were assigned to the building, or his section of the building in particular (the sections are divided by gates), or how to get help from them. He reported that he did not know how to get from his bed to wherever officers were to ask them about ADA workers, and he could not find anyone to help him navigate to the officers. He reported that without knowing how to get help, he went without meals for two days when they were delivered to the building. (Mr. ██████ cannot pick up and carry his tray on his own.) He stated that it was “like torture” knowing that trays were being distributed, but no one cared whether he received his tray.<sup>1</sup>

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<sup>1</sup> We understand that meals now are being provided in the dining hall. Mr. ██████ reported that, after Plaintiffs’ counsel asked Defendants to have institution staff check in on him, he learned that there are in fact two ADA workers in his building, and they have since served as sighted guides so he can get to the dining hall. Before then, he relied on an elderly man who uses a wheelchair and another incarcerated person to help him.

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Without ready access to ADA workers, Mr. [REDACTED] also was unable to get assistance with his laundry slip and therefore was not able to get his laundry exchanged. He also was not aware that education staff had arrived to meet with him regarding enrollment in college correspondence courses until another incarcerated person in his building happened to notice and served as a sighted guide to walk him to education staff.

This is unacceptable. Mr. [REDACTED] described the experience of once again being dropped, blind, in an unfamiliar and unidentified housing environment and left without any orientation to his surroundings as “like opening a wound again.”

We request the following when a blind person is moved into a new housing environment:

1. The institution must take the class member’s disability into consideration when making bed assignments;
2. Trained staff or ADA workers must orient the class member to the new housing environment, including by showing them how to safely navigate to and from their bed, toilets, sinks, sanitizer dispensers, showers, dayroom tables, benches, gates, telephones, J-Pay kiosks, appeals boxes, and all other relevant areas;<sup>2</sup>
3. Staff must introduce ADA workers to the class member and must clearly explain how the class member can request unscheduled assistance as necessary;
4. The class member must be interviewed on when he anticipates needing assistance, including for meals and laundry exchange, and staff must ensure that they or ADA workers will proactively provide such assistance; and
5. The above requirements must be added to the local operating procedures, and staff must be trained on them.

We have seen this process work well. At the California Institution for Men, for example, one blind class member praised an officer who made sure his bed assignment was close to the bathroom and the staff office, helped him get to and from the shower and the phone, and helped situate him to the building when he first arrived so that he could navigate as independently as

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<sup>2</sup> A seeing person, especially one with no training, does not always communicate information about a space’s physical layout effectively because they may gloss over things that a seeing person takes as given but that would be essential for a blind person to know. For example, the location of smaller details, like a soap dispenser, may be missed.

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possible. As we have seen at SATF, however, we cannot rely on officers to perform that function without specific direction.

Thank you for your immediate attention to this matter.

Sincerely yours,



Rita Lomio  
Staff Attorney



Tania Amarillas  
Investigator

cc: Mr. [REDACTED]  
Ed Swanson, Court Expert  
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,  
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Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson,  
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# **EXHIBIT D**



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VIA EMAIL ONLY

September 29, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

RE: *Armstrong v. Newsom*  
Recommendations Following the Killing of *Armstrong* Class Members at the  
California Substance Abuse Treatment Facility and State Prison, Corcoran

Dear Ms. Davis:

We write regarding the killing of two *Armstrong* class members on January 16, 2020, at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). We understand that the alleged assailant, housed on Facility A, a Level II SNY yard, had informed other incarcerated people and staff that he did not want to be in a dorm environment, that he wanted single-cell status, and that he would kill someone if he was not moved off the yard. The alleged assailant was overheard telling a counselor, “I’m going to kill someone if you don’t move me. I’m going to do whatever it takes.”

The assailant then targeted two of the most vulnerable people in the Facility A orientation building—[REDACTED] [REDACTED] [REDACTED] a Deaf man who used sign language to communicate, and [REDACTED], a full-time wheelchair user—and bludgeoned them to death. *Cf.* Doc. 3059 at 23, 40 (Order) (finding that people with disabilities were targeted at Richard J. Donovan Correctional Facility “because they are more vulnerable and are less likely to fight back”). The first medical responder noted that she arrived at the building around 2:43 p.m. and found Mr. [REDACTED] “skull open and separated visible brain matter.”

During an *Armstrong* monitoring tour in February 2020, we discussed the homicides with the warden, then-ADA Coordinator, and then-Captain on Facility A. We recommended specific action that should be taken to protect *Armstrong* class members, and in particular Deaf class members. We were disappointed to learn during a call with ADA staff last month, however, that no such action had been taken or was contemplated. In fact, current ADA staff claimed that they were not aware of our recommendations. They also said that they were not aware of any internal review of the events undertaken by the institution or headquarters.

In this letter, we outline several concerns and recommendations related to Deaf class members. We ask that Defendants be prepared to discuss these concerns on October 15, 2020, during our next scheduled workgroup meeting.

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Re: Recommendations Following the Killing of *Armstrong* Class Members at SATF  
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1. Orientation Housing of Deaf Class Members

At SATF, Deaf people who use sign language to communicate typically are housed together in the same building. On Facility A, they are housed in Building A2. This allows them to communicate with one another in sign language.

When a person first transfers to Facility A, either from another institution or from another yard at SATF, however, they are housed in Building A3 for “orientation.” During the February tour, Captain Jones, the captain assigned to Facility A at the time, explained that orientation can take 7-10 days, and longer over the holidays, and is used while staff double check that the person may be housed on the yard (for example, that they do not have an enemy there). He reported that people on orientation status have “seriously restricted” phone calls and yard privileges.

Captain Jones said that, when staff bring a new person onto the yard, staff provide a basic orientation as they go through work change, and will tell the incarcerated person whom to talk to so that they can access various programs and services. Captain Jones said that a sign language interpreter, however, is not provided for this communication. As a result, when a Deaf person first arrives to Facility A, they are not provided the same information as others. Instead, Captain Jones said, he expects that the Inmate Advisory Council (“IAC”) will provide an orientation to new arrivals. He reported that the IAC has an “orientation team” who will go into the building and talk to people about yard time, chow time, and inform them of other yard-specific information.

A Deaf person who uses sign language would be very isolated in Building A3. There likely would be no other people who know sign language there. The housing officers in that unit do not regularly interact with Deaf people. That building also does not have a videophone and, when we visited in February, did not have a whiteboard to provide written information to Deaf people.

We asked another Deaf person, who had transferred from another yard at SATF to Building A3 in September 2019, what it was like to be housed there. He explained (in ASL):

When first got here, put in A3. No interpreter there. I just arrived and looked around using my eyes. I felt confused. I felt frustrated. I felt lost. . . . I can tell that it was a different housing experience than E yard, so I wasn't comfortable even sleeping, I had to sleep with one eye open, I felt like inmates were looking at me negatively. . . . I don't know what's going on on A yard.

Mr. [REDACTED] transferred from Facility G to Facility A at SATF in January 2020. He had hoped to get access to more rehabilitative programming to help him prepare for his parole hearing. He was housed in Building A3 for orientation and at the time of his death. No other Deaf

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person was housed there; they all were housed in A2. Mr. [REDACTED] was not provided an interpreter to help him communicate with staff when he first arrived on the yard, and he did not speak with the IAC orientation team; the Deaf class member on the IAC at that time told us that she had not been informed that a Deaf person had arrived, and therefore did not speak with him upon his arrival.

During our discussion with Captain Jones and at the exit meeting with the warden, ADA staff, and correctional supervisors, we recommended that in the future, Deaf people should not be isolated in Building A3 when they arrive on Facility A. We also recommended that when Deaf people arrive on a new yard, they meet with relevant officers, with a sign language interpreter present, so they can be provided effective communication during any yard orientation and also so they can meet and become familiar with relevant yard and housing officers. We explained that the California Institution for Men was considering directly placing Deaf class members in their intended housing unit, bypassing the orientation dorm, so that they can communicate with other people in sign language. Captain Jones said that he would consider that and that it should be possible to perform the extra review typically done while someone is on orientation status before the person is moved onto Facility A. It does not appear that, seven months later, any action has been taken; last month, ADA staff claimed that they were unaware of the request.

## 2. Communication with Housing Officers

In a correctional setting, communication between incarcerated people and staff is critical. But Deaf people largely are unable to communicate with housing officers on a day-to-day basis. This is because, to our knowledge, no officers at SATF know sign language; there are no sign language interpreters stationed in the housing units; officers rarely, if ever, call an interpreter; and officers do not have access to video remote interpretation (“VRI”). Instead, as we have documented for years, housing officers at SATF often rely on inadequate and inappropriate forms of communication, including lip reading, hearing aids, and written notes, and lack a basic understanding of Deaf communication. *See, e.g.*, December 2018 SATF Tour Report at 6-9.

And the institution dismisses Deaf people’s attempts to raise concerns with effective communication. For example, three Deaf class members housed in Building A2 filed CDCR 1824s in June 2019, reporting that specific housing officers were not ensuring effective communication. Log Nos. SATF-A-19-03330, SATF-A-19-03370, SATF-A-19-03453. The written responses by the Reasonable Accommodation Panel (“RAP”) to all three CDCR 1824s were essentially identical; the RAP stated that the identified staff person denied failing to provide effective communication, and then said: “Based on this information, the RAP determined the appropriate methods of notification for hearing impaired inmates are being utilized, i.e. written notes, personal notification, and flashing lights.” There is no indication that the multiple, consistent allegations by class members housed in the same unit were placed on the non-compliance log, or that any corrective action was taken, simply because staff did not admit fault.

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Simply put, Deaf people are limited not just in their ability to engage in informal, day-to-day interactions with housing officers, but also in their ability to understand rules and raise safety concerns. We asked a Deaf person how he communicated with housing officers while in Building A3. He explained (in ASL):

They would speak back to me. I couldn't understand. I go to office to talk with CO. I gave CO a paper. CO looked at it, looked me up and down, and then called a porter from outside of the office who was walking about cleaning, gestured for porter to come into office, and said write this for me (the CO). . . I was so confused when I saw that. I felt like I was a low class citizen. Oppressed. Stupid. Deaf people can't communicate? Why are you doing this? I tried to be respectful and friendly to CO, but the CO treated me like trash. After that experience with the CO, I didn't ask for anything else. I was isolated. I felt all alone. I didn't feel comfortable in that environment. I felt negative energy on that yard. I didn't expect that. My experience on E yard and A yard was different. It should have been more accessible on the A yard.

People in Building A3 reported to us that, on the day of his death, Mr. [REDACTED] attempted to ask housing officers and a counselor for help and protection from the alleged assailant. People on the yard reported that he went to the program area and raised his concerns. Mr. [REDACTED] had a limited ability to vocalize, and was overheard repeatedly telling staff, "I can't be in that building. I fear for my life. That inmate keeps telling me he is going to kill me." According to people in the building, in the program area, and on the yard, and as confirmed by SLI logs, Mr. [REDACTED] was not provided with a sign language interpreter for any of these interactions. He reportedly was bludgeoned to death shortly after being escorted back in handcuffs to his housing unit.

The institution apparently has taken no corrective action. As you know, we were alarmed to see a RAP response dated May 2020, just months after Mr. [REDACTED] was killed, denying a Deaf person's request for a sign language interpreter for a "delicate situation," which a sergeant later clarified was "a safety/enemy concern." In particular, the RAP responded: "Per policy and procedure, a Sign Language Interpreter (SLI) is not required for Non-Due-Process communication." Log No. SATF-D-20-2950. That is false. *See, e.g.*, SATF OP 497 at 1, 10; Doc. 2345 at 25 (Order); Doc. 1045 at 3 (Order). It also is dangerous. Additional training and revision to OP 497 are necessary to ensure that housing officers and counselors make more liberal use of interpreters to help them communicate and build relationships with the Deaf people in their care. In addition, the institution should place VRI laptops in the handful of buildings that house people who use sign language and should provide additional training to housing officers and counselors so they know how to use the laptops.

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### 3. Staff Training

As we have reported for years, staff at SATF require additional training on Deaf culture and communication. The Deaf Culture Town Halls in October 2019 were an important first step; we agree with Captain Jones that such training is critical and that it is “going to take events like that to get the Department to the next level.” We were disappointed by the lack of staff turnout and engagement at SATF as compared to San Quentin State Prison.

In addition, during the February tour, the lone housing officer assigned to Building A2, where the Deaf population was housed, was dangerously clueless. We observed him fail to provide effective communication of medical and committee appointments. He was unfamiliar with DPP codes and, even when we directed him to a piece of paper posted in his office with the definition of each code, he got “DNH” exactly wrong—he guessed it meant that someone had a disability “other than” (not related to) hearing. He did not know how to use SOMS and, when asked to find effective communication information for a class member, he read through the DME list, and then the program list, and from that concluded there was no such information. He did not have a plan for evacuation beyond that he would “open the doors.” When asked to check the post orders, he was unable to locate the section on evacuations. When we directed him to the relevant section and asked him to read the sentences aloud, he did so and then announced that, in his opinion, the post order was “discriminatory” because it directed him to provide assistance to people with disabilities and not to people without disabilities.

That is unacceptable. For over two years, we have demanded increased and improved training about Deaf culture and communication at SATF. We informed the institution that Deaf representatives from the Deaf and Hard of Hearing Service Center (“DHHSC”), which has offices in Fresno and Visalia, have offered to provide staff training. (We made the same recommendation to the Board of Parole Hearings, and understand that they immediately engaged the DHHSC Executive Director to present to the Commissioners.) It is hard to understand why SATF, which historically has had the largest population of Deaf class members, has not taken advantage of local resources. Similarly, headquarters staff have been aware of our recommendations but apparently have not taken any action.

### 4. Counselors and Social Workers

After the homicides in Building A3, the on-duty sergeant and lieutenant walked through the housing units on the yard and told incarcerated people that mental health staff was available to help. But Captain Jones conceded that no sign language interpreter accompanied them; therefore, Deaf people were not aware of this service. That, too, is unacceptable.

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In addition, in the aftermath of an event such as this, the institution should enlist therapists and social workers who have specialized training and experience working with Deaf people to help the many Deaf class members at the institution, including those on Facility A and those housed elsewhere at the institution. This would allow Deaf people to process the gruesome and public killings with, ideally, the assistance of someone who shares their language, and, at a minimum, the assistance of someone who can address the unique needs of this population in a culturally informed manner. *See* Maartje De Meulder & Hilde Haualand, Sign Language Interpreting Services, *Translating and Interpreting Studies* 1-23, 11 (Sept. 2019) (“[T]he research . . . indicates that, although interpreters are an essential solution to the problem of language barriers in health care, they are also an imperfect one, and that there is a need for language-concordant health services.” (citations omitted)). DHHSC appears to have counselors on staff that meet this profile, and also has referral information for others who can provide similar services.

5. Information on Personal Safety and PREA Complaints

Mr. [REDACTED] like far too many Deaf people, had been assaulted and raped while in jail and prison, including in December 2014, when he was transferred from Facility A at SATF to Facility E for his safety. For years, we have reported that Deaf people at SATF are unfamiliar with the PREA process and do not have a mechanism to report concerns confidentially in sign language. They report that they do not know how to make a PREA complaint and are afraid to do so. This is of particular concern because sexual abuse of people with disabilities often goes unreported. Deaf people uniformly have reported that written information on PREA and personal safety is too complicated for them to understand.

In response, Defendants placed an ASL inset on the PREA video. On August 20, 2020, we asked ADA staff at SATF if the video had been shown to Deaf class members. They reported that it had not; they instead simply set it up to run in R&R, where it of course is not accessible to Deaf people already housed at the institution.

This reflects a broader concern we have at SATF and elsewhere—that keeping Deaf people safe and informed is only an afterthought. The institution had not thought, in response to our years-long advocacy or the newly created PREA video, to either show the PREA video to Deaf class members, or have supervisory staff, during one of the biweekly meetings, discuss PREA and personal safety issues with Deaf class members and answer any questions they had. In addition, at least as of August 5, 2020, supervisory staff apparently have not explained the new appeals process, which had been in place since July 1, to Deaf class members.

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

Ms. Tamiya Davis  
Re: Recommendations Following the Killing of *Armstrong* Class Members at SATF  
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In sum, we request:

- (1) Deaf people should not be isolated in an orientation building when they arrive to a new yard at SATF, and should be provided a sign language interpreter upon arrival to a new yard so they can understand any yard-specific procedures and meet and communicate with relevant officers;
- (2) SATF should place VRI laptops in the handful of buildings that house class members who use sign language and should provide additional training to housing officers and counselors so they know that they can and should call for a staff interpreter, or use the VRI laptops, to help them communicate and build relationships with the Deaf people in their care;
- (3) SATF should develop additional and robust training on Deaf culture and communication, including by bringing in Deaf presenters;
- (4) SATF should enlist therapists and social workers with specialized training and experience working with Deaf individuals; and
- (5) SATF should develop processes to ensure that Deaf people are informed and kept up-to-date on how to report PREA violations, personal safety concerns, and staff misconduct.

Thank you for your immediate attention to this matter.

Sincerely yours,

*/s/ Tovah Ackerman*

Tovah Ackerman  
Investigator

*/s/ Rita Lomio*

Rita Lomio  
Staff Attorney

cc: Ed Swanson, Court Expert  
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,  
Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)  
Lois Welch, Steven Faris (OACC)

Ms. Tamiya Davis  
Re: Recommendations Following the Killing of *Armstrong* Class Members at SATF  
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Adam Fouch, Landon Bravo, Laurie Hoogland (DAI)  
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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 Arnedo  
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Trace Maiorino (OAG)

# **EXHIBIT E**





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Margot Mendelson

VIA EMAIL ONLY

October 8, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter  
[REDACTED] SCC

Dear Ms. Davis:

I write on behalf of [REDACTED] DPM, an *Armstrong* class member currently housed at Sierra Conservation Center (SCC). On February 12, 2020, I sent an advocacy letter to Defendants detailing an incident of staff misconduct that Mr. [REDACTED] experienced at California State Prison, Corcoran. *See* Exhibit A, Letter from Patrick Booth, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED] COR (Feb. 12, 2020). Specifically, I reported that custody officers assaulted Mr. [REDACTED] resulting in his broken nose and worsening hip and leg pain, and then issued him a false Rules Violation Report (RVR). *See id.* at 1-2. I also reported that our office had received a number of similar reports of custody officers flagrantly abusing people housed at Corcoran, and that several of the reports identified Officer [REDACTED] as someone that frequently engages in and encourages these violent assaults. *See id.* at 3.

In my previous letter, I requested that Defendants investigate and dismiss Mr. [REDACTED] RVR because the reporting employee’s (Officer [REDACTED] account of the incident was false. *See id.* We also asked that the institution provide a response to the CDCR Form 602 that Mr. [REDACTED] filed about the incident, and that Officer [REDACTED] and all other custody officers at Corcoran are provided additional training on use of force incidents. *See id.*

Nearly eight months after I sent the letter, Defendants have not yet issued a response. During that eight-month period, however, we have continued to receive—and make Defendants aware of—reports of ongoing abuses that individuals at Corcoran, including *Armstrong* class members, face at the hands of custody officers. Mr. [REDACTED] for example, experienced retaliation as a result of the advocacy letter that I sent on his behalf.<sup>1</sup> He reports that on April 15, 2020, Officer [REDACTED] the building 3A05 tower officer, summoned Mr. [REDACTED] to the control tower and said, “You need to drop that staff complaint against [REDACTED]

<sup>1</sup> Mr. [REDACTED] detailed his September 2019 staff assault and subsequent retaliation in a declaration for Plaintiff’s Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People with Disabilities. *See* Reply Declaration of Gay Crosthwait Grunfeld in Support of Plaintiffs’ Motion to Stop Defendants from Assaulting, Abusing, and Retaliating against People with Disabilities, Dkt. No. 3108-1, Exs. 33-33a.

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or bad things could happen to you and that release date.” When Mr. [REDACTED] told him to mind his own business and walked away, Officer [REDACTED] yelled, “Okay, smart ass!” On the following day, Mr. [REDACTED] was taken to the administrative segregation unit (ASU) for “threatening staff.”

While in ASU, Corcoran custody officers continued to mistreat Mr. [REDACTED] which he believes resulted from the advocacy letter that our office sent on his behalf. For example, Mr. [REDACTED] reports that Officer [REDACTED] frequently made lewd and inappropriate sexual comments to him, which led Mr. [REDACTED] to file a Prison Rape Elimination Act (PREA) complaint. Officer [REDACTED] also repeatedly and intentionally threw Mr. [REDACTED] food through the food port and directly onto the floor. On one occasion, on May 18, 2020, Officer [REDACTED] and Officer [REDACTED] approached Mr. [REDACTED] cell with his Kosher meal and made eye contact with Mr. [REDACTED]. Officer [REDACTED] opened the food port and yelled “chow!” As Mr. [REDACTED] approached the front of the cell, Officer [REDACTED] threw Mr. [REDACTED] food onto the floor and said, “Have a good breakfast, Mr. [REDACTED].” Then as the officers walked away, Officer [REDACTED] called Mr. [REDACTED] a “bitch” and said that throwing his food on the floor was a message sent by Officer [REDACTED].

On that same day, officers conducted a search of Mr. [REDACTED] cell, and he was handcuffed and escorted to the non-ADA shower while officers completed the search. Officer [REDACTED] escorted Mr. [REDACTED] to the shower, and while escorting him, Officer [REDACTED] repeatedly called Mr. [REDACTED] a “bitch” and told him to drop his staff complaint about Officer [REDACTED]. When they arrived at the shower, Officer [REDACTED] shoved Mr. [REDACTED] into the shower, causing him to hit his toe on the step into the shower. His toe began bleeding, and his part of his toenail eventually fell off.<sup>2</sup> When he alerted Officer [REDACTED] of his injury, Officer [REDACTED] continued to call Mr. [REDACTED] a “bitch.” After the search, Officer [REDACTED] escorted Mr. [REDACTED] back to his cell. During the escort, Officer [REDACTED] asked Mr. [REDACTED] “Have you ever been fucked by a correctional officer in the ass?” Mr. [REDACTED] told Officer [REDACTED] that he would file a PREA complaint over his continued inappropriate comments.

Upon arriving at his cell, Mr. [REDACTED] saw that a large swastika had been made with soap on the metal panel behind the sink and toilet.<sup>3</sup> Officers had also ripped open files containing his legal work and copies of his medical records. The paperwork had been torn into pieces, crumpled, and piled on top of Mr. [REDACTED] bed. Pictures of Mr. [REDACTED] loved ones and deceased family members had been destroyed. Officers also had also smashed all of his new canteen and hygiene items and thrown them around the cell and on his bunk. His toothpastes and lotions had been completely emptied onto his belongings. His new coffee and laundry detergent had been dumped out and mixed together so that neither could be used. All of his belongings, his legal and medical paperwork, and his destroyed canteen items had been left in one giant pile on his bunk. Mr. [REDACTED] also could not find—and believes officers confiscated—his copy of Title 15,

<sup>2</sup> See CDCR Form 7362 – Nursing, May 19, 2020 (“I’m requesting to see someone concerning my left big toe! Earl[i]er Correctional Officer [REDACTED] pushed me into the shower! It has a lip. I’m ADA and I walk with a cane & walker, which I kick[ed] the lip of the shower due to being pushed by office[r] 5-18-20”).

<sup>3</sup> Mr. [REDACTED] is Jewish, and we noted in our February 12th advocacy letter that Officer [REDACTED] assaulted Mr. [REDACTED] after confronting Mr. [REDACTED] about whether he was permitted to bring his Kosher meal back to his housing unit. See Exhibit A at 1.

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all of his writing utensils, and two completed CDCR Form 602s detailing prior misconduct of Officers [REDACTED] and [REDACTED]. Officer [REDACTED] threw Mr. [REDACTED] into the cell and said, “Now clean that up.” When Mr. [REDACTED] asked to speak to a lieutenant, Officer [REDACTED] grabbed his crotch and said, “Here is your Lieutenant right here.” He then sarcastically said, “Do you want a confiscation receipt?” When Mr. [REDACTED] said that he did, in fact, want a receipt, Officer [REDACTED] laughed, put up his middle finger, and walked away.

After the cell search, Mr. [REDACTED] had an encounter with his mental health clinician. *See* MHPC Progress Note, May 18, 2020. In the clinician’s notes, she confirmed Mr. [REDACTED] reports of the destroyed state in which officers left his cell:

Custody placed a consult for IP [REDACTED] due to odd behaviors.... PC conducted a cell front contact and IP reported that Custody is retaliating against him because he did a 602 on one of the officers. IP’s cell was messy. His papers, food, and clothing was [*sic*] on his bed. He also indicated that there was graffiti on his wall that custody did but I was unable to see it.

*Id.*

The continual harassment had a negative effect on Mr. [REDACTED] mental health. On May 20, 2020, two days after officers destroyed his belongings, Mr. [REDACTED] expressed to his clinician that he was experiencing suicidal ideations. *See* Crisis Intervention Team, May 20, 2020 (“IP claimed [suicidal ideations] triggered by alleged harassment by custody officers.”). In response to Mr. [REDACTED] reports that officers were continually mistreating him and making him suicidal, his clinician advised him to “write it up and let the Sgt. know.” MHPC Progress Note, May 20, 2020. The clinician’s notes indicate that she “notified a [sergeant] who let our main Sgt. Navaro [*sic*], know about this.”<sup>4</sup> *Id.* Now in October 2020, more than a year after Mr. [REDACTED] initial September 2019 assault, and nearly eight months after our February 12th advocacy letter, Mr. [REDACTED] still has a false RVR in his file, and the officers that engaged in a pattern of misconduct have not faced any consequences, as far as Plaintiffs are aware.

Mr. [REDACTED] reports of retaliation and abuse are, sadly, consistent with reports that our office has received about the behavior of custody officers at Corcoran. Since we sent the February 12th letter on behalf of Mr. [REDACTED] we have sent an additional three advocacy letters on behalf of *Coleman* class members that were assaulted at Corcoran, each of whom were transported to an outside hospital for the significant injuries they suffered at the hands of officers. *See* Letter from Margot Mendelson & Patrick Booth, Plaintiffs’ Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED] CSP-SAC

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<sup>4</sup> Sergeant [REDACTED] was the subject of two advocacy letters that we sent on behalf of *Coleman* class members [REDACTED] and [REDACTED], both of whom described incidents in which Sergeant [REDACTED] engaged in outrageous and violent staff misconduct. *See* Letter from Margot Mendelson & Patrick Booth, Plaintiffs’ Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED], CSP-SAC (Feb. 14, 2020); Letter from Margot Mendelson & Patrick Booth, Plaintiffs’ Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED], KVSP (August 27, 2020).

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(Feb. 14, 2020); Letter from Margot Mendelson & Patrick Booth, Plaintiffs' Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED], KVSP (June 8, 2020); Letter from Margot Mendelson & Patrick Booth, Plaintiffs' Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED], KVSP (August 27, 2020).<sup>5</sup>

Similarly, on June 20, 2020, we sent a letter to CDCR Secretary Ralph Diaz describing the "culture of violence and retaliation that permeates the institution." Letter from Don Specter, Plaintiffs' Counsel, to Ralph Diaz, Secretary of CDCR, Corcoran Staff Misconduct (June 8, 2020) at 1. In that letter, we detailed the reports that we had recently received from people, including *Armstrong* class members, housed at Corcoran:

Over the last nine months, we have received more than 40 reports of brutal and rampant staff misconduct at Corcoran, including reports of custody officers egregiously assaulting people; falsifying RVR paperwork; destroying or inappropriately confiscating people's personal property; retaliating against people for submitting CDCR Form 602s; engaging in an extensive cellphone trade; and even organizing "gladiator fights" when housing units are locked down.

*Id.*

We also raised the issue of staff misconduct in our most recent *Armstrong* Monitoring Tour Report:

Class members expressed they often do not request accommodations because they fear custody staff will retaliate against them. Several class members also reported that they do not submit 602s because they fear that officers will retaliate. One class member reported that he was severely beaten by custody officers. When the class member filed a 602, custody staff pulled him into the chapel and told him to withdraw the 602 or he would continue to suffer beatings. The class member said that he withdrew the 602 after custody staff's threats. Another class member reported that he was beaten by custody officers, but, before he could file a 602, officers told him that he would be beaten again if he reported the incident by filing a 602. One class member plainly stated, "Staff will retaliate if you file a 602." Class members also reported that they frequently do not receive responses to the 602s they file.

California State Prison, Corcoran November 2019 *Armstrong* Monitoring Tour Report (June 29, 2020) at 28.<sup>6</sup>

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<sup>5</sup> Officers [REDACTED] and [REDACTED] both responsible for Mr. [REDACTED] continued abuse, were also named as participants in the assaults of Mr. [REDACTED] and Mr. [REDACTED].

<sup>6</sup> In another *Armstrong* advocacy letter, we similarly noted that many class members have reported that they do not file CDCR Form 602s or CDCR Form 1824s to report staff misconduct or request

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More recently, our co-counsel sent a letter to CDCR describing the practice at particular institutions, including Corcoran, of “issuing false and retaliatory rule violation reports (‘RVRs’) against *Coleman* class members (as well as class members in *Armstrong* and other cases).” Letter from Thomas Nolan, Plaintiffs’ Counsel, to Nick Weber & Melissa Bentz, CDCR Office of Legal Affairs, Plaintiffs’ Concerns about the Issuance of False and Retaliatory Rule Violation Reports Against Class Members (Sept. 24, 2020) at 1. In that letter, Plaintiffs’ counsel explained that “we have provided dozens of examples that show it is a routine practice for CDCR employees to assault, abuse, and retaliate against *Coleman* and *Armstrong* class members and then issue false and retaliatory RVRs to those they victimize.” *Id.* The letter also detailed that those RVRs are often referred to local district attorneys for prosecution, which results in additional criminal punishment and lengthier prison sentences, on top of the punishments issued in-prison (*e.g.* loss of credits and privileges, increased classification points, and reduced chances of success at parole hearings, etc.). *See id.* Finally, the letter described assaults on—and false RVRs issues to—four different individuals housed at Corcoran, including one *Armstrong* class member. *See id.* at 8-9.

The evidence of Corcoran custody staff’s inappropriate and violent behavior is overwhelming. We remain troubled by Corcoran staff’s frequent and egregious staff misconduct, and we are concerned about the mental and physical impact it has on people housed at the institution, including *Armstrong* class members. Moreover, Defendants’ failure to issue a timely response to any of the above mentioned reports of staff misconduct, including my February 12th advocacy letter on behalf of Mr. [REDACTED] is unacceptable. We are concerned that Defendants’ failure to address these well-documented incidents of abuse and false RVRs allows for the rampant staff misconduct to continue.<sup>7</sup>

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reasonable accommodations because the forms often disappear or people suffer retaliation, rendering the process futile and even dangerous. *See* Letter from Patrick Booth, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], DNH (Feb. 21, 2020) at 2, fn. \*.

<sup>7</sup> The Office of the Inspector General (OIG) has expressed similar concerns in a recent sentinel report: “The Department Made an Egregious Error in Judgment and Relied on Poor Legal Advice When It Did Not Sustain Dishonesty Allegations and Dismiss Two Officers in a Use-of-Force Case.” Office of the Inspector General, Sentinel Case No. 20-04 (August 19, 2020) at 1.

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Therefore, I again renew my request that Defendants dismiss Mr. [REDACTED] September 2019 RVR, as it was issued on the basis of fabricated information. I also request that Defendants investigate Mr. [REDACTED] claims of retaliation and provide to Plaintiffs on any findings such investigations. Lastly, I request that Defendants provide training to Corcoran custody officers on use of force incidents and report to Plaintiffs on what that training entails.

Sincerely,

*/s/ Patrick Booth*

Patrick Booth  
Legal Fellow

cc: Mr. [REDACTED] (redacted)  
Ed Swanson, Court Expert  
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez, Robin Stringer, Patricia Ferguson, OLAArmstrongCAT@cdcr.ca.gov (OLA)  
Lois Welch, Steven Faris (OACC)  
Adam Fouch, Chance Andres, Landon Bravo, Laurie Hoogland (DAI)  
Bruce Beland, Robert Gaultney, Saundra Alvarez, Tabitha Bradford, John Dovey, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Vincent Cullen, Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandria Tonis, Gently Armedo (CCHCS)  
Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio, Trace Maiorino (OAG)  
Brantley Choate, Hillary Iserman, Shannon Swain, Rod Braly, Jennifer Wynn, Martin Griffin, Brandy Buenafe, Alicia Legarda (OCE)

# **EXHIBIT F**



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VIA EMAIL ONLY

October 14, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter  
[REDACTED] [REDACTED] [REDACTED] COR

Dear Ms. Davis:

We write regarding [REDACTED] [REDACTED] [REDACTED] DNH, an *Armstrong* class member currently housed at California State Prison, Corcoran. Mr. [REDACTED] reports that he was physically assaulted by a Corcoran correctional officer.

Mr. [REDACTED] reports that, on April 20, 2020, he was assaulted during third watch by Officer [REDACTED]. After he was assaulted, it took three days for a nurse to examine him for injuries, and he received a Rules Violation Report (RVR) for the incident preceding the assault. Mr. [REDACTED] reports that the assault has affected his ability to use his right arm, and that he has not showered since the incident occurred, for fear of encountering the officers responsible for his assault. Below, we have listed Mr. [REDACTED] timeline of the assault and events following.

**April 20:** Officer [REDACTED] escorted Mr. [REDACTED] from the bottom tier to the upper tier for third watch showers. About four minutes later, Officer [REDACTED] approached Mr. [REDACTED] in the shower to tell him to “hurry up” and to give him a five-minute warning. Mr. [REDACTED] reports being mid-shave during this interaction, and was surprised by Officer [REDACTED]’s warning; Mr. [REDACTED] was usually able to shower for as long as he wanted, even up to 20 minutes. As he finished shaving and began soaping his body, Officer [REDACTED] warned Mr. [REDACTED] that if his next shower took this long, he would issue Mr. [REDACTED] an RVR. Officer [REDACTED] who was standing on the bottom tier during this interaction, overheard Officer [REDACTED]’s warning to Mr. [REDACTED] and ascended the stairs. By the time Officer [REDACTED] arrived in front of the shower, Mr. [REDACTED] had exited the shower and was drying his body. At that point, Officer [REDACTED] handcuffed Mr. [REDACTED] behind his back, took hold of Mr. [REDACTED] left arm, and began escorting Mr. [REDACTED] toward the stairs to return him to his cell. After a few initial steps toward the stairs, Officer [REDACTED] suddenly and violently slammed Mr. [REDACTED] against a metal door near the showers between cells 14 and 15. Officer [REDACTED] then warned Mr. [REDACTED] “When my partner says five minute showers, that’s it. I don’t give a fuck who you are, who you run with.” Mr. [REDACTED] told Officer [REDACTED] not to threaten him. Officer [REDACTED] then thrust his entire body weight, which Mr. [REDACTED] estimates to be about 200 pounds, against Mr. [REDACTED] pressing the front of Mr. [REDACTED] body to the door so that it was difficult for Mr. [REDACTED] to breathe. Officer [REDACTED] then removed the pressure from Mr. [REDACTED]

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back, and yanked Mr. [REDACTED] down the stairs at a rapid pace, so that Mr. [REDACTED] had to scramble to descend the stairs quickly enough. As Officer [REDACTED] hastily led Mr. [REDACTED] down the stairs, he told Mr. [REDACTED] that he did not “give a fuck” if Mr. [REDACTED] fell.

Because his chest and right shoulder ached from being shoved against the wall and being pulled down the stairs by Officer [REDACTED] Mr. [REDACTED] requested medical attention, and to talk to a Lieutenant, within seconds of being locked in his cell. He reports that he made eye contact with Officer [REDACTED] as he walked past Mr. [REDACTED] cell during a 20 minute count, but Officer [REDACTED] looked away without responding to Mr. [REDACTED] request. Officer [REDACTED] approached Mr. [REDACTED] cell an hour after he was returned there, and told him, “Look, I want you to squash this. If you don’t squash this, it’s going to be bad for you.” As he distributed Mr. [REDACTED] dinner tray later that evening, Officer [REDACTED] told Mr. [REDACTED] “you’re cool.” Mr. [REDACTED] understood Officer [REDACTED] comments to mean “don’t be dramatic, you’re fine and there is no problem.” When Mr. [REDACTED] insisted that he was not fine, or “cool,” and that he needed medical attention, Officer [REDACTED] slammed Mr. [REDACTED] tray slot closed with emphasis to end the conversation. Mr. [REDACTED] received an RVR for “Delaying a Peace Officer” that day (Log No. [REDACTED]). He reports having no known issues or animosity with Officer [REDACTED] prior to being attacked.

**April 21:** Because his chest and shoulder still hurt the next day, Mr. [REDACTED] submitted a CDCR Form 7362 in the morning asking for a nurse to check him for injuries. *See* CDCR Form 7362 – Nursing, April 22, 2020 (Submitted on April 21, 2020, “[R]equest immediate medical attention. [U]nder a lot of pain. In my chest and shoulder left area. Possible chest bone fracture and dislocated shoulder”). Later that day, as he was being escorted to a podiatrist appointment by Officers [REDACTED], he repeated his request for nursing attention, but the officers did not relay his request to nursing staff. Officer [REDACTED] told Mr. [REDACTED] that he would get Mr. [REDACTED] medical attention, but the officer did not follow through. Mr. [REDACTED] did not ask his podiatrist about his injuries during his appointment because he felt he needed to see a nurse instead. When Mr. [REDACTED] was returned to his cell after his podiatrist appointment, a registered nurse was standing by the office door in his unit. Mr. [REDACTED] yelled to her that he needed medical attention, and shared his cell number, but she did not visit Mr. [REDACTED] That evening, since he had not yet seen a professional and remained in pain, Mr. [REDACTED] “clicked” his right shoulder, which he believes was dislocated, back into place himself by pressing it against his cell wall.

**April 22:** Mr. [REDACTED] was called in to see a registered nurse at the medical clinic. She noted inflammation in Mr. [REDACTED] chest area, ordered him x-rays, and gave him pain medication. *See* XR CHEST 2 VWS, April 24, 2020 (indicating that Mr. [REDACTED] had an x-ray for his chest).

**April 23:** Mr. [REDACTED] reported the April 20th assault via the CDCR Form 602 process. *See* Exhibit A. His Form 602 stated, in part, “On 4/20/20, CO [REDACTED] [sic] violently assaulted me while I was handcuffed being escorted back to my cell from 4A-2R top tier shower.” The Form 602 provides details about the assault, and requests an investigation into the attack. He reports that staff did not mark his 602 as received until June 5, 2020, at which point the 30-day deadline to file his grievance had expired, and then rejected his complaint as untimely. *See* Exhibit B.

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**April 24:** Mr. [REDACTED] had a medical appointment. The doctor's note from that appointment states in part: "Patient stated his arm was injured on Tuesday when it was slammed into the metal door, right shoulder hurts and goes to my collar. Patient stated he was slammed into a metal door. Patient complained of constant achy and sharp pain in his right shoulder.... Patient was noted to have some slight muscle swelling to the right collar region. Limited motion active. Patient stated that it hurt to place his arm behind his back. Patient stated that he cannot [be] handcuffed behind his back but can put his shirt over his head and can shrug his shoulders." Outpatient Progress Note, April 27, 2020.

**April 30:** Mr. [REDACTED] received an RVR for "Unlawful Influence" after asking Officer [REDACTED] to "tell the truth" when he was interviewed about the April 20th incident. *See Exhibit C.*<sup>1</sup> Mr. [REDACTED] reports that when this April 30th RVR was heard, he was not given an opportunity to make a statement of defense, and that the interviewing Lieutenant placed Mr. [REDACTED] paperwork in a folder without reading it. He also reported that while his RVR was heard, he was wearing only one hearing aid because the battery in his other hearing aid was dead. The interviewing Lieutenant's words were muffled beneath his mask, and this, combined with Mr. [REDACTED] single hearing aid, meant that Mr. [REDACTED] could not clearly understand most of the RVR hearing. He asked the interviewing Lieutenant to postpone the hearing because of his difficulty hearing, but the Lieutenant did not. Mr. [REDACTED] was found guilty.

**May 14:** Mr. [REDACTED] was interviewed by Office of Internal Affairs Officer [REDACTED] regarding his April 27th 602 staff complaint. Officer [REDACTED] escorted Mr. [REDACTED] to his interview. This escort is inconsistent with best practices, and placed Mr. [REDACTED] at great risk of retaliation. He and Officer [REDACTED] were silent as they walked to his interview. Mr. [REDACTED] cell was searched later that day during a building cell search. During the search, his property was strewn around his cell, and his court transcripts were removed from his cell. Mr. [REDACTED] suspects they were thrown away. Within days of the search, Mr. [REDACTED] filed a Form 602 about his missing court transcripts. The cell search and destruction of property appear to be retaliatory and should be separately investigated by OIA. Mr. [REDACTED] also reported the staff assault by Officer [REDACTED] in a letter to Warden Ken Clark dated that day. To ensure it would be received, Mr. [REDACTED] had this letter sent to Warden Clark by attorney Jeff Champlin. *See Exhibit D.*

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<sup>1</sup> The exact language that served as the basis of Mr. [REDACTED] April 30th "Unlawful Influence" RVR is as follows: "Respectfully, I ask that you first approach C/O [REDACTED] to ask him the attached questions. Please let him know that he knows that the Rules violation Report (RVR) that C/O [REDACTED] had made is fabricated. False and not the true facts of occurrences. That to please know that he needs to tell the truth. That if he doesn't tell the truth and I get found guilty of this false and fabricated (RVR) C/O [REDACTED] issued[,] I will take this matter to the courts and file suit on C/O [REDACTED] for making a false fabricated (RVR) and on him too for not telling the truth. Conspiring to cover-up and backing up a false fabricated (RVR) claim. If he tells the truth and gets this (RVR) dropped and taken off my rec'd [*sic*] C-File[,] I will leave this (RVR) matter alone and not get him [i]nvolved... Thank you." *See Exhibit C.*

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**May 15:** Mr. [REDACTED] submitted another CDCR Form 7362 requesting the results from his April 22nd x-rays, as he continued to experience shoulder and chest pain. *See* CDCR Form 7362 – May 16, 2020 (Submitted on May 15, 2020, “Been waiting to be called by doctor to my chest/shoulder x-ray test result? Still having pain on my chest bone and shoulder. Request to be seen by doctor to his concern. Thank you!”).

**May 18:** Mr. [REDACTED] was told by a registered nurse that his x-rays indicated no bone fractures. The nurse administered additional pain medication and recommended that he see a doctor. *See* Nursing Face-to-Face / 7362, May 18, 2020. Mr. [REDACTED] reports that the nurse told him his right shoulder might take up to six months to heal.

**May 19:** Mr. [REDACTED] RVR for “Delaying a Peace Officer in the Performance of Duties” was heard, and he was found not guilty. *See* Exhibit E.

**May 26:** Mr. [REDACTED] saw a doctor, who told Mr. [REDACTED] that he should not exercise his right arm until it healed, and prescribed him naproxen and capsaicin for the pain. *See* Outpatient Progress Note, May 26, 2020 (“Patient stated[,] ‘[M]y shoulder bone and right shoulder has [*sic*] pinched when I do certain movements.’ Stated it just started after he got slammed. Onset of pain 4/20/2020. Patient reported intermittent sharp pain to bilateral chest/breastbone as well as right shoulder.”)

**June 24:** Officer [REDACTED] approached Mr. [REDACTED] cell and slid a copy of the Office of Grievance’s June 18th letter acknowledging receipt of Mr. [REDACTED] letter to Warden Ken Clark, along with a copy of the May 14th letter, under his cell door, and walked away. *See* Exhibit D. A few seconds later, Officer [REDACTED] walked back to the door and laughed, saying “ni modo” (a Spanish expression that translates to “Oh well, nothing to be done about it”).

Since being assaulted in April, Mr. [REDACTED] has not showered outside of his cell. He “bird bathes” when needed rather than interact with Officers [REDACTED] and [REDACTED] who still work the third watch shift as shower escorts. Mr. [REDACTED] has not been able to perform physical activities, including exercising or lifting objects, with his right arm because of the injury he sustained during his assault.

The above timeline is a constellation of concerning incidents: an unprovoked use of force by a correctional officer, a flimsy RVR designed to cover up the assault, a retaliatory cell search, a subsequent retaliatory RVR for asking an officer to be truthful during an RVR hearing, and a purposeful delaying of Mr. [REDACTED] administrative appeal that prevented his access to the courts. Moreover, Mr. [REDACTED] is not alone in being victimized by Officer [REDACTED]. He reports that in late September 2020, also during third watch top tier showers, he heard a “rumble” in his unit and looked out of his cell to see Officer [REDACTED] straddling another incarcerated person, likely an *Armstrong* class member, on the floor. He reports seeing the incarcerated person’s glasses on the floor a few feet away from the tangle, and the incarcerated person bleeding from or around one of his eyes.

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Re: [REDACTED] [REDACTED] [REDACTED]

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The several incidents of staff misconduct that Mr. [REDACTED] alleges mirror the reports of abuse at Corcoran that are the subject of Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing and Retaliating against *Armstrong* class members ("Statewide Motion"), Dkt. No. 2948, and that Plaintiffs' counsel has continued to raise to Defendants for nearly a year. Since February 2020, we have raised concerns about violent staff assaults at Corcoran in advocacy letters sent on behalf of *Armstrong* class members,<sup>2</sup> advocacy letters sent on behalf of *Coleman* class members,<sup>3</sup> a monitoring tour report,<sup>4</sup> court filings,<sup>5</sup> and a letter to then-Secretary of CDCR, Ralph Diaz.<sup>6</sup> In those letters, the tour report, and the court filings, we presented examples of the pattern of abuse that individuals with disabilities at Corcoran face at the hands of custody officers. We reported that officers continually assault individuals, with impunity, then issue false and retaliatory RVRs.<sup>7</sup> More recently, we detailed an incident in which officers conducted a seemingly retaliatory cell-search against an *Armstrong* class member, at which time officers destroyed the class member's property, confiscated his legal paperwork, and drew a hateful symbol on the wall using soap.<sup>8</sup> The staff misconduct that Mr. [REDACTED] faced, including the April 20th assault, the

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<sup>2</sup> See Letter from Patrick Booth, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], COR (Feb. 12, 2020); Letter from Patrick Booth, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], SCC (Oct. 8, 2020).

<sup>3</sup> See Letter from Margot Mendelson & Patrick Booth, Plaintiffs' Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED], CSP-SAC (Feb. 14, 2020); Letter from Margot Mendelson & Patrick Booth, Plaintiffs' Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED], KVSP (June 8, 2020); Letter from Margot Mendelson & Patrick Booth, Plaintiffs' Counsel, to Nick Weber, CDCR Office of Legal Affairs, [REDACTED], KVSP (August 27, 2020).

<sup>4</sup> California State Prison, Corcoran November 2019 Armstrong Monitoring Tour Report (June 29, 2020) at 28-31.

<sup>5</sup> See, e.g., Reply Declaration of Gay Crosthwait Grunfeld in Support of Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing, and Retaliating against People with Disabilities, Dkt No. 3108-1, Exs. 17-17a, 20-36a (including 20 twenty declarations from people currently or formerly housed at Corcoran describing staff misconduct); Notice of Motion and Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against People with Disabilities; Memorandum of Points and Authorities, Dkt. No. 2948.

<sup>6</sup> Letter from Don Specter, Plaintiffs' Counsel, to Ralph Diaz, Secretary of CDCR, Corcoran Staff Misconduct (June 8, 2020)

<sup>7</sup> See, e.g., Letter from Thomas Nolan, Plaintiffs' Counsel, to Nick Weber & Melissa Bentz, CDCR Office of Legal Affairs, Plaintiffs' Concerns about the Issuance of False and Retaliatory Rule Violation Reports Against Class Members (Sept. 24, 2020) at 8-9.

<sup>8</sup> Letter from Patrick Booth, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], SCC (Oct. 8, 2020).

Ms. Tamiya Davis  
Re: [REDACTED] [REDACTED] [REDACTED]  
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issuance of two retaliatory RVRs, the subsequent cell-search that led to the confiscation of his legal paperwork, and his ongoing fear about interacting with custody officers, is emblematic of the type of abuse and retaliation that *Armstrong* class members endure at Corcoran.

The Court has ordered anti-retaliation posters to be on display at Corcoran. *See* Order Prohibiting Retaliation in Prisons Subject to Statewide Motion, Dkt. No. 3034, at 4. Please confirm these posters are on display in all housing units, law libraries, clinics and Receiving & Release at Corcoran, and that officers are aware of the anti-retaliation order.

Officers have instilled fear in the people with disabilities who are incarcerated at Corcoran such that some of them prefer to remain celled nearly all day rather than interact with correctional officers or ask for help with their disabilities. We remain deeply concerned about the unrelenting, pernicious trend of staff misbehavior at this institution, as well as its effect on *Armstrong* class members. Such continued abuse necessarily results in *Armstrong* class members' reluctance to request the reasonable accommodations that they are entitled to under the Americans with Disabilities Act and the *Armstrong* Remedial Plan. *See* Order Granting in Part Motion to Modify Remedial Orders and Injunctions, Dkt. No. 3059, at 62 (concluding that CDCR staff members' "intimidation, threats, and coercion" violate the *Armstrong* Remedial Plan and the Americans with Disabilities Act because class members consequently lose "their rights to make requests for reasonable accommodations or to file ADA grievances" and suffer "severe emotional distress.").

Moreover, the ongoing disability-related staff misconduct at Corcoran is not isolated to a particular officer or unit, although we have named several officers in multiple advocacy letters. Instead, the misconduct demonstrates a systemic failure to address officer misbehavior. The RVR system and the grievance system have demonstrated themselves to be ineffective, and neither institutional leadership nor CDCR headquarters staff have taken steps to adequately address and correct the pattern and practice of disability-related staff misconduct at Corcoran. Defendants' Opposition to the Statewide Motion, lack of response to any of the above mentioned advocacy letters, the tour report, or the letter to Secretary Diaz exemplify Defendants' failure to redress the significant harm that people at Corcoran have experienced.<sup>9</sup>

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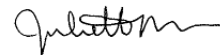
<sup>9</sup> The *Armstrong* Court has similarly highlighted Defendants' failure to investigate and discipline incidents of staff misconduct at R. J. Donovan State Prison. *See* Order Granting in Part Motion to Modify Remedial Orders and Injunctions, Dkt. No. 3059, at 35 ("The Court finds that the root cause of the violations of the ARP and class members' ADA rights is the systemic and long-term failure by CDCR to effectively investigate and discipline violations of the ARP and class members' ADA rights by RJD staff.").

Ms. Tamiya Davis  
Re: [REDACTED] [REDACTED] [REDACTED]  
October 14, 2020  
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Therefore, we ask that Defendants investigate Mr. [REDACTED] reports using investigative staff from OIA, and that Defendants report back on the findings of such investigation. We also request that Defendants log the retaliatory RVR hearing at which Mr. [REDACTED] could not hear on the *Armstrong* accountability log and dismiss Mr. [REDACTED] April 30th RVR (Log No. [REDACTED]). We request that Officers [REDACTED] and [REDACTED] be either suspended or reassigned to positions where they no longer interact with or supervise incarcerated people. Finally, we ask that Defendants take significant action to ameliorate correctional officer staff culture at Corcoran.

There is no need for the institution to wait for the Court to decide the Statewide Motion. Corcoran can now start to increase discipline and accountability for officers who engage in disability-related staff misconduct. Corcoran can send these incidents to the OIA and can enhance training among all staff, including medical and mental health professionals, who need to feel free to document and report injuries without fear of retaliation. We look forward to working with you to improve disability accommodation at Corcoran.

Sincerely,



Juliette Mueller  
Litigation Assistant



Patrick Booth  
Legal Fellow

cc: Mr. [REDACTED] (redacted)  
Ed Swanson, Court Expert  
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez, Robin Stringer, Patricia Ferguson, OLAArmstrongCAT@cdcr.ca.gov (OLA)  
Lois Welch, Steven Faris (OACC)  
Adam Fouch, Chance Andres, Landon Bravo, Laurie Hoogland (DAI)  
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Vincent Cullen, Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandria Tonis, Gently Arredo (CCHCS)  
Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio, Trace Maiorino (OAG)  
Brantley Choate, Hillary Iserman, Shannon Swain, Rod Braly, Jennifer Wynn, Martin Griffin, Brandy Buenafe, Alicia Legarda (OCE)

# **EXHIBIT G**



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VIA EMAIL ONLY

July 29, 2020

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

*Armstrong Advocacy Letter*

RE: [REDACTED] [REDACTED] [REDACTED] DPH, SATF

Dear Ms. Davis:

[REDACTED] [REDACTED] is a 46-year-old Deaf class member whose primary form of communication is sign language. He is housed at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). On May 7, 2020, Mr. [REDACTED] submitted a CDCR 1824 reporting that an officer refused to call for a sign language interpreter “after a delicate situation arose.” See Log No. 20-2950 (attached). He wrote that instead, the officer placed him in handcuffs and put him in a holding cage for almost three hours.

In response to the CDCR 1824, a sergeant interviewed Mr. [REDACTED] the next day. In a CDCR 128-B, the sergeant wrote that the Appeals Office had asked him “to clarify what [Mr. [REDACTED]] meant by ‘Delicate situation’, specifically they wanted to ensure he was not denied a SLI interpreter for a Due Process Issue.” The sergeant then reported (emphasis added): “Inmate [REDACTED] stated that the ‘Delicate situation’ was not a due process issue, but instead **a safety/enemy concern** and a misunderstanding on how he stated ‘delicate situation’ on the CDCR 1824.”

The Reasonable Accommodation Panel (“RAP”) met and discussed Mr. [REDACTED] CDCR 1824 on May 13, 2020. The RAP denied the request, stating: “Per policy and procedure, a Sign Language Interpreter (SLI) is not required for Non-Due Process communication.” The RAP did not identify the “policy and procedure” relied on. The RAP directed Mr. [REDACTED] “to submit a CDCR 22” for “housing issues” or “speak with your counselor” during “open line.” The RAP did not send Mr. [REDACTED] a copy of the decision until June 12, 2020.

**Board of Directors**

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Ms. Tamiya Davis  
Re: ██████████ ██████████ ██████████ DPH, SATF  
July 29, 2020  
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The RAP response is inadequate for several reasons.

First, provision of sign language interpretation is not limited to due process encounters.<sup>1</sup> It is particularly critical that sign language interpretation be provided when a Deaf person expresses a safety or enemy concern. The RAP's failure to appreciate the significance of that sort of request is hard to understand. Earlier this year, a Deaf class member was bludgeoned to death at SATF. People reported to our office that they observed the Deaf class member on the day he was killed tell staff, "I can't live there; the guy [is] going to kill me," and be handcuffed, escorted to the program office, and placed in a holding cage. According to the SLI logs, no sign language interpreter met with the Deaf class member on the day he was killed.<sup>2</sup>

Second, the RAP failed to provide Mr. ██████████ with accurate and timely information about how to raise safety concerns. The RAP response was not sent to Mr. ██████████ until over a month after he submitted his request and, without explanation, a month after the RAP decided to deny his request. *See* CDCR 1824 Desk Reference Manual at 9 (rev. Oct. 2, 2017) ("Responses to an inmate's CDCR 1824 must be completed within thirty (30) calendar days of receipt. . . . The review period ends on the date the response is sent to the inmate."). The RAP then directed Mr. ██████████ to utilize the CDCR 22 process—a process that apparently no longer existed at the time

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<sup>1</sup> *See, e.g.*, OP 497, Sign Language Interpretation Services, at 1, 10 ("The purpose of this procedure is to outline the process whereby inmates, whose primary method of communication is ASL, are identified, scheduled for, and are provided sign language interpretation for programs, services, and activities offered at CSATF/SP, as well as certain institutional processes. . . . For other general communication with DPH-SLI inmates, custody staff may use the secondary method of communication if appropriate. If there are concerns regarding effective communication, custody staff should call (1) the ADA office to schedule a certified SLI or (2) the Inmate Sign Language Aide, as appropriate. . . . Inmate Sign Language Aides should not be utilized in areas requiring confidentiality"); Dkt. 2345, Order at 24 (June 4, 2013) (holding that Defendants must "employ, through whatever salary is necessary, sufficient qualified interpreters to serve the needs of the DPH prisoners housed at SATF, including all educational and vocational classes in which a DPH inmate is enrolled, barring unforeseen circumstances."); Dkt. 1045, Injunction at 3 (Jan. 18, 2007) (holding that deaf class members have been denied access to "education, work, and other programming" due to failure to provide sign language interpreters).

<sup>2</sup> Two people who, like Mr. ██████████ were housed on Level IV yards at SATF were killed in June 2020; two *Armstrong* class members at SATF also were killed in January of this year; and one *Armstrong* class member at SATF was killed in September 2019. Three of the deceased were deaf or hard of hearing.

Ms. Tamiya Davis  
Re: [REDACTED] [REDACTED] [REDACTED] DPH, SATF  
July 29, 2020  
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the RAP's decision was sent to Mr. [REDACTED].<sup>3</sup> The RAP also said that “[i]f you feel your need for an SLI is emergent, you may utilize your secondary method of communication to inform officers of your request”—something he apparently already did without success (as Mr. [REDACTED] wrote on his CDCR 1824: “I asked c/o Alvarez to [get] SLI to come out here to help communication better, but she said no”).

Third, the RAP failed to acknowledge or consider Mr. [REDACTED] report that he had been handcuffed and left in a holding cage for hours after requesting a sign language interpreter and attempting to speak with staff about an important issue without one. If the RAP had, it may have determined that a housing officer reacted improperly to Mr. [REDACTED] attempts to convey his request to housing officer, without a sign language interpreter, and mistakenly viewed Mr. [REDACTED] as aggressive—the exact scenario that was presented to staff who chose to attend the Deaf Culture Town Hall last year.<sup>4</sup>

Finally, Mr. [REDACTED] reported to us that, on May 8, 2020, he was taken to the program office because Lt. Lunes wanted to speak to him. (According to the sergeant's CDCR 128-B, “Facility D Staff will be completing an investigation into his safety/enemy concerns and will document the findings.”) Mr. [REDACTED] reported that there was no interpreter present for the majority of his conversation with Lt. Lunes, although a staff interpreter showed up toward the end to say only that he was being sent to the STRH for his safety. The SLI logs do not state that the sign language interpreter was present for only part of the staff interview. Mr. [REDACTED] reported that he remained in the STRH for three days and only on the last day did Lt. Moreno inform him that he was there because someone on Facility D had made a threat against him.

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<sup>3</sup> Notice of Approval of Regulatory Action, OAL Matter Number: 2020-0309-01, Appeals Emergency Regulations (effective June 1, 2020), [https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Master-File-Appeals-Emerg-Regs\\_ADA.pdf](https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Master-File-Appeals-Emerg-Regs_ADA.pdf)

<sup>4</sup> See George Castelle, *Misunderstanding, Wrongful Convictions, and Deaf People*, in Ceil Lucas, ed., *Language and the Law in Deaf Communities* 168-175, 172 (2003) (“[H]earing individuals often mistake ASL facial expressions as expressions of emotion.”); Deirdre M. Smith, *Confronting Silence: The Constitution, Deaf Criminal Defendants, and the Right to Interpretation During Trial*, 46 *Me. L. Rev.* 87, 101 (1994) (“American society often regards ‘exaggerated’ gesturing or facial expressions as ‘vulgar,’ whereas the opposite is true in deaf culture.”); cf. Irene W. Leigh *et al.*, *Deaf Culture* 196 (2018) (“If [Deaf prisoners] complain about treatment in prison, they also run the risk of being punished. Deaf prisoners tend to be very isolated as other prisoners or guards rarely know ASL well enough to communicate with them.”).

Ms. Tamiya Davis  
Re: [REDACTED] DPH, SATF  
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We are very concerned that we are beginning to lose the hard-fought gains the parties have made over the past several years regarding accommodations for Deaf class members at SATF, including the provisions in OP 497 negotiated by the parties.

We request the following:

1. Please explain how Deaf class members can confidentially and immediately report safety concerns through sign language, and how class members have been or will be informed of this process.
2. Please propose revisions to OP 497 to explain how Deaf class members will be provided with a sign language interpreter during a counselor's open line and how they can report immediate safety concerns in sign language.
3. Please explain why Mr. [REDACTED] was placed in a holding cage on May 7, 2020, and when a sign language interpreter was provided, and produce all related paperwork.
4. Please retrain ADA staff and housing officers regarding OP 497, Deaf culture, and the importance of ensuring effective communication.
5. Please add these allegations to the accountability log.

We look forward to your prompt response.

Sincerely yours,



Rita Lomio  
Staff Attorney

cc: Mr. [REDACTED] (redacted)  
Ed Swanson, Court Expert  
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,  
Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)  
Lois Welch, Steven Faris (OACC)  
Adam Fouch, Teauna Miranda, Landon Bravo, Laurie Hoogland (DAI)  
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Donald  
Meier, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson,

Ms. Tamiya Davis

Re: [REDACTED] DPH, SATF

July 29, 2020

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Vincent Cullen, Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis,  
Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Armedo (CCHCS)  
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# **EXHIBIT H**



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Caroline E. Jackson  
Email: cjackson@rbgg.com

October 13, 2020

VIA ELECTRONIC MAIL

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

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

Re: *Armstrong v. Newsom*: Advocacy for [REDACTED] [REDACTED] [REDACTED] DPH  
Our File No. 0581-03

Dear Tamiya:

I write on behalf of [REDACTED] [REDACTED] [REDACTED] a DPH class member who uses sign language as his primary method of communication, housed on Facility E at R.J. Donovan Correctional Facility (RJD). We request that CDCR investigate why Mr. [REDACTED] (1) went through four recent hospitalizations with little or no interpreter access; (2) spent eight days in the infirmary at a facility not designated for DPH class members and with no access to sign language interpreting services; and (3) spent weeks housed without access to an accessible telephone or accessible shower. We further request that CDCR take steps to ensure Mr. [REDACTED] and other DPH class members do not have to go through similar circumstances again.

Mr. [REDACTED] reported to us that he was hospitalized at Alvarado Hospital on four separate occasions between April 29 and July 2, 2020. These hospitalizations each lasted multiple days and involved highly invasive procedures, such as surgery to insert multiple cardiac stents and to remove a large amount of infected muscle tissue. As recounted below, he received scant access to sign language interpreting services during his hospital stays and none at all during subsequent care and treatment in a CDCR infirmary. Worse still, according to Mr. [REDACTED] the doctors and nurses at Alvarado Hospital made little attempt to communicate with him. By Mr. [REDACTED] account, he suffered through a terrifying ordeal with no contemporaneous explanation of the ways he was being poked,

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Tamiya Davis  
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Page 2

prodded, medicated, sedated, and cut open. And he left without any explanation of what had happened to him or how he should care for himself after discharge. Unsurprisingly, he believes that the lack of discharge information caused complications, resulting in additional hospitalizations where the same nightmare ensued.

This conduct violates Title II of the Americans with Disabilities Act and the *Armstrong* Remedial Plan (ARP). *See* 28 C.F.R. § 35.160 (requiring public entities to provide effective communication, including qualified sign language interpreting services, during medical encounters); 28 C.F.R. § 36.303 (same, with respect to places of public accommodation); ARP § II.E.2 (requiring CDCR to provide qualified sign language interpreters during medical encounters with class members who use sign language as their primary means of communication). Importantly, these obligations carry over to any entity that provides services for CDCR via “through contractual, licensing, or other arrangements,” such as a hospital providing medical care for CDCR prisoners. *See* 28 C.F.R. § 28.130(b)(1).

Mr. ██████ first hospitalization began on April 29, 2020. He was taken to Alvarado Hospital for a cardiac stress test. He failed the test and immediately was admitted to the hospital. He received a sign language interpreter at the very beginning of his hospitalization, but not thereafter. The second day of his stay, Mr. ██████ recalls receiving pills and an injection, but without communication. Mr. ██████ reports he fell asleep right away and woke up to a doctor writing him a note that he had had five stents placed in his heart. However, according to Mr. ██████ the doctor provided no information—before or after the fact—regarding why the stents had been inserted, what medications he had received or been prescribed, nor any discharge information, such as activity limitations or symptoms to monitor.

Mr. ██████ returned to the hospital five days later, on May 7, 2020, due to heartbeat irregularities. Initially, he was taken to Sharp Chula Vista Medical Center but was transfer to Alvarado Hospital where he ultimately spent six more days—without access to a sign language interpreter—where he underwent additional procedures such as cardiac catheterization. Further, according to Mr. ██████ the medical staff gave him no explanation of the procedures they performed on him, the medications he had received or been prescribed, nor any discharge information, such as activity limitations or symptoms to monitor.

Mr. ██████ reports he returned to Alvarado Hospital on May 16, 2020, due to an infection stemming from his surgery. At Alvarado, he underwent surgery on May 18, without receiving sign language interpreting services for any of his medical encounters. Following surgery, he received limited access to sign language interpreting services, but

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not enough to give him an opportunity to participate in his own medical care equal to what a non-deaf person has in similar circumstances. After eight days with scant communication access, he was discharged in a wheelchair and with a PICC line for long-term I.V. antibiotic therapy.

After discharge, CDCR transported Mr. [REDACTED] to California State Prison – Centinela (“Centinela”), which is not designated for DPH class members. Mr. [REDACTED] reports that he received no interpreting services whatsoever for the eight days he spent in the infirmary at Centinela, either onsite or through VRI. Medical records from his time at Centinela confirm this account. During this time, Mr. [REDACTED] received a Skype call from his stepfather informing him that his mother had passed away. Despite receiving this devastating news on top of his serious health condition, Mr. [REDACTED] had no way to communicate with religious or psychological services because CDCR provided no access to sign language interpreting services.

Mr. [REDACTED] last visit to Alvarado Hospital occurred from June 29 to July 2, 2020. According to Mr. [REDACTED] he received interpreting services through VRI during this stay, but just twice and for a few minutes each time. Again, this limited access did not approach the level of comprehensive (that is, effective) communication that other patients receive in similar situations.

Upon Mr. [REDACTED] return to RJD, Mr. [REDACTED] reports that he was quarantined for fourteen days in Building D-16, which lacks a videophone, TTY and accessible shower (at this time, Mr. [REDACTED] required a wheelchair full-time). Following quarantine, he was moved to Building D-18, which likewise lacks a videophone, TTY or accessible shower. As of the writing of this letter, the Disability Inmate Roster reflects that Mr. [REDACTED] has returned to Facility E, where he has access to a videophone.

Under the Armstrong Remedial Plan, “[q]ualified sign language interpreters ... will be provided for ... medical consultations that fall within the scope of those described below when sign language is the inmate’s primary or only means of effective communication, unless, the inmate waives the assistance of an interpreter, reasonable attempts to obtain one are not successful, and/or delay would pose a safety or security risk.” ARP § II.E.2. Such medical consultations include: “Determination of the inmate patient’s medical history or description of ailment or injury; Provision of the inmate patient’s rights, informed consent or permission for treatment; Diagnosis or prognosis of ailment or injury; Explanation of procedures, tests, treatment, treatment options, or surgery; Explanation of medications prescribed ...; [and] Discharge instructions.” *Id.* This provision unquestionably requires CDCR to ensure sign language interpreters are



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provided for the invasive procedures for emergent, life-threatening conditions that Mr. [REDACTED] went through.

Notably, other DPH class members at RJD have similarly reported that they did not receive access to sign language interpreting services at outside hospitals during the last six months. *See* C. Jackson, Report re DPH-DNH Interview Tour at RJD, at 1, 7 (August 17, 2020).

The COVID-19 pandemic does not excuse the failure to provide interpreting services at a hospital. When it is not feasible for a sign language interpreter to come on site, VRI provides a viable alternative, provided that the service functions appropriately and the hospital uses it to the extent necessary to provide full communication access (as opposed to limiting it to a handful of brief interactions over the course of several days).

The COVID-19 pandemic also does not excuse CDCR's decision to place Mr. [REDACTED] in multiple locations that lacked the accommodations he requires—first, repeatedly sending him to a hospital without sign language interpreting services; second, placing him for eight days at Centinela without access to sign language interpreting services or an accessible telephone; and subsequently, placing him for several weeks on Facility D in buildings without accessible telephones or showers.

**Plaintiffs' counsel requests that CDCR investigate why Mr. [REDACTED] (1) had four hospital visits with little to no interpreter access; (2) spent eight days at a facility not designated for DPH class members and with no access to sign language interpreting services; and (3) spent weeks housed without access to an accessible telephone or accessible shower.**

**Plaintiffs' counsel further requests that CDCR taken immediate steps to ensure that Mr. [REDACTED] receives qualified sign language interpreting services during any subsequent hospitalizations, and that all DPH class members receive sign language interpreting services during all off-site medical visits—especially multi-day hospitalizations.**

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**PRIVILEGED AND CONFIDENTIAL**

Tamiya Davis  
October 13, 2020  
Page 5

Thank you for your attention to this important matter.

Sincerely,

ROSEN BIEN  
GALVAN & GRUNFELD LLP

*/s/ Caroline E. Jackson*

By: Caroline E. Jackson

CEJ:CJ

cc: Ed Swanson  
Alexander "Lex" Powell  
Nicholas Meyer  
Patricia Ferguson  
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Cindy Flores  
Joseph (Jason) Williams  
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