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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 JOHN ARMSTRONG, et al.,

14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, et al.,

17 Defendants.  
18

Case No. CV 94-2307 CW

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

**I. Background**

19 On September 9, 2020, the Court ordered Defendants to ensure that the needs of  
20 *Armstrong* class members were met in relation to CDCR’s designation of space for quarantine  
21 and isolation of prisoners exposed to, or infected with, COVID-19. Dkt. 3072. The Court  
22 directed the Court Expert to “review Defendants’ compliance with [its orders] and the  
23 sufficiency of the designated quarantine and isolation space and present his findings and  
24 recommendations to the Court[.]” Dkt. 3072, ¶ 17. As in the Court Expert’s previous report,  
25 the sections below correspond to the numbered paragraphs in the Court’s September 9 order,  
26 with the relevant paragraph numbers identified in parentheses in each header.  
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1       **II. Adequacy of pandemic response plans for *Armstrong* class members (¶¶ 1-2)**

2           In his first report, the Court Expert outlined his methodology for evaluating whether the  
3 quarantine and isolation beds set aside in *Plata* were adequate for the needs of *Armstrong* class  
4 members and reported on whether CDCR’s facilities had sufficient beds under that  
5 methodology. Dkt. 3048. The Court then ordered CDCR to “revisit and revise pandemic  
6 response plans” at institutions where there had been insufficient quarantine or isolation space  
7 for class members. Dkt. 3072, ¶ 1.

8           As of the Court Expert’s last report, all institutions had sufficient DPW beds set aside,  
9 and only RJD had insufficient lower/lower beds, under the previously-outlined methodology.  
10 *See* Dkt. 3142, 4. Currently, all institutions have sufficient isolation and quarantine space for  
11 inmates with DPW placement codes and for inmates who require lower/lower accommodations.  
12 However, as discussed below, Plaintiffs request that the methodology be adjusted to increase  
13 the number of DPW beds at RJD.

14           The parties continue to negotiate a number of issues related to the sufficiency of  
15 isolation and quarantine space for *Armstrong* class members. The Court Expert will report on  
16 the outcome of these negotiations in a future report.

17           **DPW beds in isolation and quarantine space at RJD.** Under the Court Expert’s  
18 methodology, institutions at which *Armstrong* class members are housed in shared spaces must  
19 have at least as many DPW and lower/lower isolation and quarantine beds as there are inmates  
20 requiring DPW and lower/lower in the two largest congregate living areas (the “congregate  
21 approach”); institutions where such inmates are housed in individual cells must have accessible  
22 isolation and quarantine beds in proportion to the relevant population (the “proportional  
23 approach”). Thus, an institution with 15 percent DPW inmates must ensure that at least 15  
24 percent of its isolation and quarantine beds are DPW beds. RJD has 95 DPW inmates, and  
25 because some of them live in communal housing, RJD has applied the congregate approach.  
26 The issue is that the congregate living areas are small, with only four inmates in the two largest,  
27 so RJD has set aside only four DPW-accessible isolation and quarantine beds. Under the  
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1 proportional approach, RJD would need at least 11 DPW beds.<sup>1</sup> The Court Expert agrees with  
2 Plaintiffs that, given the large number of DPW inmates at RJD, it is more appropriate to apply  
3 the proportional approach to DPW isolation and quarantine beds there. The Court Expert  
4 therefore recommends that CDCR provide enough DPW beds to comply with the proportional  
5 approach. The Court Expert also recommends the parties inform the Court Expert if it appears  
6 that the proportional approach would better suit the needs of *Armstrong* class members at other  
7 facilities at which the congregate approach is currently being employed.

8 **Issues related to “cohorting” in quarantine.** As noted in the Court Expert’s October  
9 23 report, CDCR permits individuals with similar exposures to quarantine in “cohorts” of up to  
10 ten individuals. Dkt. 3142, 3. The parties agree, however, that it is preferable to quarantine  
11 inmates in single cells with solid doors where possible. The parties also agree that *Armstrong*  
12 class members must have equal access to this preferable method of quarantining – in other  
13 words, an institution that provides single-cell quarantine space to non-class members must  
14 make such space equally available to class members. Plaintiffs have raised concerns that the  
15 isolation and quarantine space at certain institutions is not equitably allocated and have  
16 proposed a methodology for calculating the apportionment of set-aside space. The parties  
17 continue to meet and confer on this issue.

18 At CIM, non-class members can quarantine in single cells, but the DPW-designated  
19 single cells have perforated doors that cannot safely be converted to solid doors (due to  
20 insufficient airflow). Thus, DPW inmates have unequal access to single-cell quarantine spaces.  
21 CDCR has plans in place to move any DPW inmate in need of quarantine to the OHU or to an  
22 ADA-accessible tent, but erecting an ADA tent for a single individual is an inefficient solution.  
23 The parties are discussing whether the DPW inmates should be transferred to other institutions  
24 and are currently addressing the issue on an inmate-by-inmate basis.

25 **Isolation and quarantine space for individuals in medical dorms.** Plaintiffs have  
26 raised concerns about inmates at CMC and CMF who live in special dormitories because their

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27 <sup>1</sup> Of the 3,627 inmates at RJD, 2.6% (95 individuals) have DPW codes. Thus, 2.6% of the 408  
28 quarantine and isolation beds (11 beds) would be set aside under the proportional approach.

1 medical conditions prevent them from being housed with the general population. The current  
2 isolation and quarantine spaces are inaccessible to such inmates, and Plaintiffs believe CMC  
3 and CMF should designate additional space for them. Defendants contend, and the Court  
4 Expert agrees, that this is an issue that should be raised in *Plata*, as it concerns the sufficiency  
5 of quarantine and isolation space generally, not just for *Armstrong* class members.

6 **Access to isolation and quarantine space at FSP.** At FSP, CDCR is using a “stair-  
7 climbing chair” to bring class members to isolation and quarantine space on upper tiers.  
8 Plaintiffs’ expert disagrees with this practice on the grounds that such devices should only be  
9 used in emergencies. Defendants have agreed to reevaluate use of the chair in light of  
10 Plaintiffs’ concerns, and the parties will continue to discuss.

11 **Separate isolation and quarantine spaces for inmates of different security**  
12 **classifications.** The Court Expert’s October 23 report also noted that certain institutions had  
13 opted to designate separate isolation/quarantine spaces for inmates housed in special needs  
14 yards (SNY) and inmates housed in general population (GP) and that some institutions have  
15 designated separate isolation and quarantine spaces for inmates of different security  
16 classifications. The Court Expert recommended that CDCR apply the same congregate and  
17 proportional analyses to determine whether these separate isolation/quarantine spaces are  
18 sufficient for inmates requiring lower/lower and DPW beds. CDCR has now undertaken this  
19 analysis and reports that there are enough beds in each of the separate isolation and quarantine  
20 spaces. The parties have not yet resolved whether CDCR should be required to designate  
21 separate areas for GP and SNY inmates at other institutions and whether it is appropriate to  
22 have GP and SNY inmates in the same isolation/quarantine space if they are “clustered” in  
23 separate areas. These matters will be raised in *Plata* or addressed in later reports, as  
24 appropriate.

25 **Separate isolation and quarantine spaces.** Lastly, Plaintiffs believe the CDCR should  
26 be required to specify how much of the housing it has set aside will be used for quarantine and  
27 how much for isolation. The Court Expert recommends that this issue be addressed in *Plata*.

1 **III. Notification of changes in housing designations (¶ 3)**

2 The parties agree that CDCR’s directive on “Tracking of Isolation/Quarantine Units for  
3 *Armstrong* Class Members” satisfies the Court’s requirement of 72-hour notice to Plaintiffs and  
4 to the Court Expert of changes in designated isolation and quarantine space. *See* Dkt. 3072, ¶ 3.

5 **IV. Adjustment of Set-Aside Space (¶ 4)**

6 Defendants must “develop a reliable process . . . to ensure that adequate accessible  
7 quarantine and isolation space is set-aside in advance of *Armstrong* class members transferring  
8 into the institution, and in response to any changes in disability codes or movement within an  
9 institution.” Dkt. 3072, ¶ 4. As the Court Expert noted in his last report, the parties have spent  
10 a significant amount of time on this issue, which is complex given the population fluctuations  
11 resulting from the resumption of intake from county jails and transfers between institutions.  
12 Defendants have provided information on the steps CDCR is taking to ensure that the  
13 availability of isolation and quarantine space for *Armstrong* class members is taken into account  
14 during planning for intake and transfers. The parties continue to meet and confer on this issue.

15 **V. Architectural modifications (¶ 5-7)**

16 The Court’s September 9 order requires Defendants to “make all necessary  
17 modifications to render any existing designated quarantine or isolation space at an institution  
18 accessible to all DPP codes housed at that institution” and to document those modifications.  
19 Dkt. 3072, ¶ 5. The parties have had several meetings regarding architectural modifications.  
20 Defendants have produced photographs of modifications, which Plaintiffs’ accessibility expert  
21 has reviewed and commented on, and CDCR has made changes in response to those comments.  
22 The Court Expert recommends that this process continue.

23 **VI. Non-Architectural Modifications (¶¶ 10-15)**

24 The Court ordered Defendants to “provide all necessary non-architectural  
25 accommodations to render any existing designated quarantine or isolation space at an institution  
26 accessible . . . and produce an inventory of such accommodations.” Dkt. 3072, ¶ 11. CDCR  
27 has finalized (with input from Plaintiffs) and disseminated its directive on “Tracking of  
28 Isolation/Quarantine Units for *Armstrong* Class Members.” That directive instructs institutions

1 that they must “provide for any non-architectural accommodations[] to render newly designated  
2 isolation or quarantine spaces accessible to all Disability Placement Program (DPP) codes at the  
3 institution” within 14 days of a space being designated or within 48 hours of an *Armstrong* class  
4 member actually being placed in such a space. The parties are generally in agreement on what  
5 non-architectural accommodations are necessary, and CDCR is working on a system to monitor  
6 whether those accommodations are in fact being provided. To that end, CDCR drafted (with  
7 input from Plaintiffs) a survey on the non-architectural accommodations currently available at  
8 its facilities. The institutions have responded to that survey, and the parties will discuss the  
9 results in early December. Plaintiffs have also requested that CDCR provide lists of all class  
10 members currently in isolation or quarantine housing, which will allow Plaintiffs to spot-check  
11 whether necessary non-architectural accommodations are being provided.

#### 12 **VII. Rehousing of displaced *Armstrong* class members (¶16)**

13 *Armstrong* class members who are displaced because their housing was designated as  
14 isolation or quarantine space must be appropriately rehoused. Dkt. 3072, ¶ 16. As of the last  
15 report, Defendants had drafted policies to address accessible housing for all class members,  
16 including those displaced by the designation of quarantine and isolation space. After meeting  
17 and conferring with Plaintiffs, Defendants have finalized and issued a directive entitled  
18 “Procedures for Reviewing and Reporting Housing for *Armstrong* Class Members During  
19 COVID-19.”

#### 20 **VIII. Housing of *Armstrong* class members (¶ 18)**

21 The Court ordered the Court Expert to “review the housing of *Armstrong* class members  
22 not on isolation or quarantine status, including those displaced from quarantine and isolation  
23 areas.” Dkt. 3072, ¶ 18. As noted above, CDCR has finalized and issued its directive on  
24 “Procedures for Reviewing and Reporting Housing for *Armstrong* Class Members During  
25 COVID-19.” That directive provides guidance to assist institutions in making sure class  
26 members receive necessary accommodations if they are placed in non-designated or non-  
27 traditional housing and mandates data collection and reporting on class member housing. It  
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1 further instructs institutions to ensure that no class member is placed in administrative  
2 segregation (ASU) solely because the facility lacks other accessible housing.

3 Previously, CDCR produced a “snapshot” showing that, as of September 1, nine class  
4 members were improperly housed according to their lower/lower designations, 109 class  
5 members were in housing that was not designated for their DPP code, 42 class members were in  
6 non-traditional housing, and one class member was in ASU housing. The parties disputed  
7 whether those class members had received the appropriate accommodations to make that  
8 housing accessible. *See* Correction to Court Expert’s Second Report (Dkt. 3147). The policies  
9 in the directive discussed above are designed to address the issues that arise when class  
10 members are housed in non-designated areas, and the parties have agreed that, while Plaintiffs  
11 may request another “snapshot” in the future, CDCR will not be producing such data pending  
12 evaluation of the effectiveness of these new policies.

13 In his last report, the Court Expert noted Plaintiffs’ concerns that blind class members  
14 cannot be appropriately housed unless they are properly oriented to new living space.  
15 Defendants have requested guidance on best practices for helping blind and low-vision inmates  
16 become familiar with their new housing. The parties have met to discuss policies, and Plaintiffs  
17 have agreed to draft an initial set of recommendations. The parties continue to meet and confer  
18 on this issue.

### 19 **IX. Conclusion**

20 Given the progress the parties are making, and given the intervening holidays, the Court  
21 Expert recommends that the Court order a follow-up report on quarantine and isolation housing  
22 for *Armstrong* class members in 60 days.

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24 Dated: November 25, 2020

Respectfully submitted,

25 /s/

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