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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

[CORRECTED] 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 ISSUES¹

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, 45,041 (or 47%) of incarcerated people have tested positive for
 10 COVID-19, and 174 people, including 83 *Armstrong* class members, have died while in
 11 CDCR custody.² The pandemic has had a devastating impact on people with disabilities,
 12 who are particularly at risk of getting very sick or dying from the disease. Doc. 2996 at 4-
 13 5 (“Over 83% of people with a weighted risk score of 9 or higher are *Armstrong* class
 14 members.”). Indeed, a 79-year-old full-time wheelchair user who previously filed a
 15 declaration in this case regarding unsafe and discriminatory quarantine housing later
 16 became infected and died of complications related to COVID-19. *See* Doc. 3055 at 2
 17 & Doc. 3055-1 at 135-37.

18 Plaintiffs are deeply concerned by the extraordinarily slow pace of providing clear,
 19 written direction to the institutions about the need to accommodate *Armstrong* class
 20 members during the pandemic, Defendants’ failure to address their institutions’ repeated
 21 and substantial noncompliance with existing directives, and the number of tasks that
 22 remain outstanding as COVID-19 surges through the prisons.

23 For example, on October 23, 2020, the Court Expert informed the Court that “the
 24 subject of non-architectural modifications has not received sufficient attention and must be
 25

26 ¹ Statements are joint unless otherwise delineated as either *Plaintiffs’ Statement* or
Defendants’ Statement.

27 ² *See* CDCR, Population COVID-19 Tracking,
 28 <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited January 15,
 2021).

1 addressed promptly.” Doc. 3142 at 7. Nonetheless, **two months later**, Defendants still had
2 not drafted the agreed-upon directive to the field or put a monitoring system in place.³

3 For many *Armstrong* class members, that simply was too late. By then, 2,681
4 *Armstrong* class members already had been infected. At the California Substance Abuse
5 Treatment Facility and State Prison, Corcoran (SATF), for example, 15 of the 17 class
6 members who use sign language had been infected by the novel coronavirus by
7 December 15. Although four months earlier, Director Gipson had ordered institutions to
8 ensure that videophones are available in all isolation and quarantine units, SATF had made
9 no effort to comply. *See* Doc. 3048 at 6. As a result, Deaf class members were not able to
10 speak with their loved ones while in medical isolation and fighting COVID-19. As one
11 Deaf class member informed Plaintiffs’ counsel (in ASL), “I’m shut out. Now I’m in total
12 silence. I could write letters, but not many of the Deaf individuals I know are proficient
13 enough in English for that to work. It’s very rare. When I am able to communicate with
14 the Deaf family, I will feel good, I’ll feel relieved ... so much to catch up on. I want more
15 interaction, more contact with the family.” *See Exhibit A*, Letter from Skye Lovett & Rita
16 Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, and Andrea
17 Moon, Office of the Attorney General, Accommodations for Deaf Class Members at SATF
18 During the Current Outbreak 3 (Dec. 15, 2020).

19 In addition to being unable to contact their families and loved ones, Deaf class
20 members reported being unable to understand what was happening in quarantine and
21 isolation units, being isolated and without accessible content during severe and indefinite
22 program restrictions, and being without effective communication during interactions with
23 custody and healthcare staff. *Id.* at 4-8. Moreover, forty-one people infected with the
24 virus, including class members who use walkers and wheelchairs, were held overnight in a
25 gym at SATF without beds and were forced to sleep on the floor or sitting up in their

26 _____
27 ³ With the assistance of the Court Expert and Plaintiffs, Defendants issued a directive over
28 120 days after the Court’s September 9, 2020 order related to non-architectural
accommodations. Plaintiffs look forward to working with Defendants to ensure that the
directive is effective and implemented appropriately.

1 walker, something that Defendants did not report to Plaintiffs’ counsel because Defendants
2 viewed the gym as a “temporary staging area” and not what it was—overnight housing.

3 And blind, elderly class members were placed in an unfamiliar gymnasium and
4 stopped drinking fluids because they could not locate and safely navigate to the toilets.
5 See **Exhibit B**, Email from Patrick Booth, Prison Law Office, to Andrea Moon, Office of
6 the Attorney General, Monitoring Compliance re Non-Architectural Accommodations for
7 *Armstrong* Class Members (Dec. 16, 2020).

8 These are just a few problems uncovered by Plaintiffs’ counsel at a single prison
9 last month. Plaintiffs have conducted a handful of regularly scheduled *Armstrong*
10 monitoring tours virtually in the past few months, and have identified significant (and
11 unreported) discrimination against people with disabilities, including placement in
12 congregate environments for quarantine while able-bodied people are in safer single cell
13 quarantine housing, and continued use of ADA workers in quarantine units in violation of
14 existing directives and basic public health principles.

15 The issues could not be more urgent. In the last two months, COVID-19 has
16 saturated the prison system and reached staggering heights. As of last month, the novel
17 coronavirus has a foothold in all prisons, with most prisons having between 150 and 1,000
18 active cases at a time, and some prisons exceeding an extraordinary 80% infection rate.
19 Winter has brought more danger. Initial reports out of High Desert State Prison, for
20 example, where over half of the population now has been infected, suggest that the virus
21 may have spread rapidly at least in part because 75-90% of the air now is recirculated to
22 support heating of the housing units against below-freezing outside temperatures.

23 Unfortunately, the limited set-aside space that had been the focus of the parties’
24 advance planning efforts has proven inadequate to address current realities. Even a
25 relatively small outbreak at SATF resulted in discriminatory and unsafe housing because
26 there was not sufficient set-aside space. In August and September 2020, six full-time
27 wheelchair users, an 83-year-old man designated DPM, and two people designated DLT
28 who had volunteered to provide disability-related assistance—all with direct exposure to

1 the virus—were housed together for weeks in a shared-air, poorly-ventilated gymnasium
 2 with a single accessible toilet, sink, and shower because there were no accessible
 3 quarantine cells available to them. To Plaintiffs’ knowledge, all other similarly situated
 4 people were housed in single cells with solid doors for quarantine at that time. *See* J. Clark
 5 Kelso, Receiver, Transferring COVID-19 High-Risk Patients to Safer Housing at 1, 7
 6 (Oct. 21, 2020) (“Dorms and open-cell-front housing are more dangerous than closed-door
 7 cells because, as very recently confirmed by the CDC, transmission of COVID-19 occurs
 8 both through droplets and through aerosolization.”). Defendants did not notify Plaintiffs’
 9 counsel of this situation or take any steps to remedy it. *See Exhibit C*, Letter from Rita
 10 Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Medical
 11 Isolation and Quarantine Housing for *Armstrong* Class Members at the California
 12 Substance Abuse Treatment Facility and State Prison, Corcoran (Sept. 14, 2020).



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Armstrong Class Members in SATF-A Gymnasium (Aug. 27, 2020)

21 And Plaintiffs have found that Richard J. Donovan Correctional Facility (RJD),
 22 where nearly 600 confirmed cases have been recorded in two weeks in early
 23 December 2020, is systematically failing to transfer patients with confirmed, active cases
 24 of COVID-19 to designated isolation housing; instead, RJD has housed hundreds of
 25 positive patients in spaces that also house incarcerated people who are COVID-naïve and
 26 have not tested positive for COVID-19. In one egregious case, RJD chose to house a
 27 positive class member returning from treatment in an outside hospital in RJD’s designated
 28 quarantine unit, which houses people who may have symptoms or have been exposed but

1 have not tested positive for COVID-19, thereby directly exposing all incarcerated people
2 in the quarantine unit to COVID-19. The mismanagement of the ongoing outbreak at RJD,
3 which houses the second-largest population of class members in CDCR, is a significant
4 concern in *Armstrong* given that people with disabilities may be at increased risk of
5 becoming infected or of having unrecognized symptoms of the illness. *See*
6 [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html)
7 [disabilities.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html) (last accessed Dec. 18, 2020).

8 The pandemic has laid bare Defendants’ inability to independently identify and
9 expeditiously remedy systemic ADA violations, develop and implement advance
10 emergency response plans, and otherwise adapt to changing conditions. Too often, people
11 with disabilities remain an afterthought. And ADA staff at the institutions, many of whom
12 are new to the role, are given inadequate or no training, guidance, and support. Indeed,
13 since May 2020 alone, there have been at least 37 ADA Coordinator and/or CAMU CCII
14 personnel changes at 23 institutions.

15 The incomplete “snapshot” data produced by Defendants is illustrative. On
16 September 1, 2020, before the current COVID-19 surge, at least 108 class members at 21
17 institutions were housed in prisons not designated for their disabilities. *See* Doc. 3147.
18 They had been so housed for, on average, **92 days**, with 46 class members so housed for
19 **over 100 days**, and one class member so housed for **218 days**. In almost every case, the
20 reason given was “No movement due to Covid Restrictions.”

21 And the data does not capture the longest stays in non-designated housing:
22 Defendants unilaterally decided to produce data only for those class members who were
23 moved to non-designated housing areas on or after March 1, 2020. But, as Plaintiffs
24 explained, that excludes class members who have been most affected by pandemic-related
25 movement restrictions. At least one DPV class member at RJD, for example, was moved
26 to a non-designated location in February 2020, and, apparently due to movement restric-
27 tions, has remained there for over eight months. He remained so housed on October 13,
28 2020, when he spoke with Plaintiffs’ counsel. He reported to Plaintiffs’ counsel that he

1 often falls off the track and rolls his ankles due to the yard’s uneven terrain and potholes.

2 Plaintiffs are alarmed by the significant delays in institution staff interviewing class
3 members moved into non-designated areas about their disability accommodation needs.

4 On average, according to the data produced by Defendants, class members were
5 interviewed **over 28 days** after being placed in a non-designated housing unit. And a
6 number of institutions had significantly longer delays (see table below).

CCI	CIM	COR	CRC	FOL	NKSP	SCC	WSP
156 (DLT)	46 (DPM)	195 (DPM) 123 (DPO)	135 (DLT)	103 (DPV)	181 (DPO) 173 (DPM) 171 (DPW) 150 (DPW) 46 (DPO) 43 (DPO) 40 (DPO)	168 (DPM) 144 (DLT) 138 (DLT) 106 (DLT) 63 (DLT)	136 (DPM)

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11 Number of days between placement of class member in area not designated
12 for their DPP code and interview about disability accommodations

13 This calls into question Defendants’ previous representation to the Court that “all
14 *Armstrong* class members are accessibly housed.” Doc. 3048, Court Expert’s Report and
15 Recommendations Regarding Housing of Armstrong Class Members During the
16 COVID-19 Pandemic at 5 (Aug. 19, 2020) (quoting Doc. 3047, Status Report of Assistant
17 Deputy Director Adam Fouch at 6 (Aug. 19, 2020)). According to Defendants’ data, a
18 number of class members who were housed in non-designated areas well before
19 August 19, 2020 were not interviewed to see if they were adequately accommodated in
20 those areas until days or months after August 19. In addition, Plaintiffs have raised
21 concerns regarding whether interviews of class members housed in areas not designated
22 for their DPP codes, if they happened at all, adequately identified accessibility barriers.
23 *See* Doc. 3055 at 16-17.

24 The data also calls into question whether Defendants have been complying with the
25 24-hour notice provision in the Court’s July 20, 2020 order. *See* Doc. 3015 at 2 (“If, due
26 to emergent and unforeseen circumstances, Defendants temporarily are not able to house
27 an Armstrong class member in safe, accessible housing, Defendants shall: ... within 24
28 hours, provide notice to Plaintiffs, the Court Expert, and the Receiver, and confer with the

1 Court Expert and representatives for Plaintiffs and the Receiver as soon as possible”).
2 Since that time, Defendants have notified Plaintiffs’ counsel and the Court Expert of only a
3 couple class members who were, in Defendant’s view, inaccessibly housed. Plaintiffs’
4 counsel’s inquiries and requests for more information related to other class members in
5 non-designated areas at several institutions have largely gone unanswered.

6 Plaintiffs were not aware of the scope and magnitude of the problem before
7 receiving the snapshot data. Plaintiffs’ counsel, of course, have only a limited and delayed
8 view into conditions in the prison system. Nonetheless, Plaintiffs repeatedly had raised
9 concerns regarding accessible housing of class members and failure to timely or
10 adequately interview them about their accommodation needs in August and September at
11 Mule Creek State Prison; Sierra Conservation Center; California State Prison, Sacramento;
12 Folsom State Prison, and Wasco State Prison. Nonetheless, as of January 12, 2021,
13 Defendants have provided no response, notwithstanding the Court Expert’s direction in
14 November that they do so. Even more alarming, again notwithstanding repeated requests,
15 Defendants apparently have made no effort to identify and remedy the cause of systemic
16 noncompliance with existing directives and court orders that their “snapshot” data
17 exposed.

18 In the meantime, the problem has only worsened. As of December 11, 2020, the
19 number of class members housed in areas not designated for their disabilities **increased**
20 **almost three-fold to 297**, with an **additional 152** people housed not in compliance with a
21 lower bunk and/or lower tier housing restriction. Full-time wheelchair users remained at
22 the California Institution for Men, which the Court Expert recognized was “the impetus for
23 Plaintiffs’ motion to protect class members” over five months ago, *see* Doc. 3048 at 17,
24 even though there still were not any wheelchair-accessible quarantine cells, putting the
25 class members at heightened risk of infection and death.

26 Finally, the parties are also engaged in ongoing discussions concerning Plaintiffs’
27 questions about DAPO’s handling of parole holds and the crowding of jails those holds
28 create. Defendants assert they are statutorily required to re-incarcerate people who violate

1 Penal Code 3010.10 which requires specific parolees to report to their parole agent within
2 one working day of release to have a global positioning system (“GPS”) device affixed to
3 their person. At issue is when Defendants’ failure to accommodate parolees with
4 disabilities results in automatic re-incarceration for parolees who are unable to report
5 within one day, as a result of their disability. Plaintiffs assert that more must be done to
6 provide accommodations to people with disabilities who are required to report for GPS
7 monitoring to enable compliance with this requirement. Plaintiffs are also concerned
8 about accommodations for the additional parolees whom Defendants have agreed to parole
9 early, as discussed in more detail below. Plaintiffs are discussing with Defendants ways to
10 ensure that agents timely complete notice serves, inform county jail staff about class
11 members’ reported disability accommodation needs, and document and achieve effective
12 communication with class members during the notice serve process. Plaintiffs’ counsel
13 has also requested that Defendants take steps to decrease the number of days that class
14 members are housed in county jails on parole holds, in an effort to decrease jail crowding
15 during the pandemic, especially during this surge.

16 *Defendants’ Statement*

17 Defendants are sensitive to and addressing the needs of inmates and parolees at
18 higher risk of severe effects from COVID-19, but note that “[d]isability alone may not be
19 related to higher risk for getting COVID-19 or having severe illness” and “[m]ost people
20 with disabilities are not inherently at higher risk for becoming infected with or having
21 severe illness from COVID-19.” See CDC, Coronavirus Disease 2019: People with
22 Disabilities, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html)
23 [with-disabilities.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html) (last visited January 13, 2021).

24 In concert with the federal Receiver responsible for medical care and infectious
25 disease control within the prisons, Defendants have worked tirelessly to provide a
26 comprehensive and proactive response to the unprecedented challenges caused by the
27 global pandemic to ensure that class members are accommodated and to ensure the safety
28 and security of all incarcerated people, whether class members or not. Defendants are

1 dedicating their resources to addressing the COVID-19 pandemic, which is surging in
2 California (like it is worldwide), and providing timely information to address Plaintiffs'
3 concerns in an effort to obviate the need for judicial intervention and to conserve valuable
4 resources that could be put to better use elsewhere. Defendants continue to make
5 significant and comprehensive efforts to contain and minimize the effects of an
6 unprecedented, global pandemic on the people housed in its institutions, staff, and visitors.

7 To demonstrate Defendants' ongoing commitment during the pandemic, some
8 *Armstrong* class members, were included in the initial phase of CDCR's COVID-19
9 vaccination program and were some of the very first persons to receive the vaccine in
10 California. On December 23, 2020, CDCR and California Correctional Health Care
11 Services (CCHCS) received the first allocation of the COVID-19 vaccine and began
12 vaccinations in accordance with state and federal guidelines.⁴ Under these guidelines,
13 COVID-naïve frontline medical staff and inmates housed in skilled-nursing facilities were
14 the initial recipients of the vaccine. As of January 12, 2021, 2,348 inmates at CHCF and
15 CMF and 17,160 staff members, statewide, had received the first of two doses of the
16 vaccine.

17 Throughout the pandemic, CDCR has initiated proactive measures including an
18 expansive testing program. CDCR's testing program requires testing of all adult-
19 institutions' staff and health-care staff regardless of the number of COVID-19 cases at
20 their individual institution. Once that baseline testing at all institutions was completed,
21 serial testing of employees began at institutions who had positive test results. The serial
22 testing occurs every fourteen days until no new cases are identified in two sequential
23 rounds of testing. Once that goal is met, the institution resumes their regular surveillance
24 testing schedule. Surveillance testing is used to detect outbreaks in an early phase, even
25 before the development of symptoms. Further, all staff at all facilities are tested each
26

27 ⁴ [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CDPH-Allocation-
28 Guidelines-for-COVID-19-Vaccine-During-Phase-1A-Recommendations.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CDPH-Allocation-Guidelines-for-COVID-19-Vaccine-During-Phase-1A-Recommendations.aspx) (last visited
January 13, 2021).

1 week. This element of the testing protocol minimizes the risk of exposure to all inmates, including class members.

3 Further, CCHCS is conducting surveillance testing of incarcerated people at all
4 adult institutions. This voluntary testing is performed across multiple facilities at each
5 institution every month. All facilities are testing outbreak areas every three to ten days.
6 Priority is given to asymptomatic individuals who have been identified as vulnerable or
7 high-risk for complications of COVID-19. Additionally, CDCR has implemented an
8 additional COVID-19 testing process that provides results within fifteen minutes or less at
9 each prison. This point-of-care rapid testing is used to facilitate the transfer and reception
10 process at CDCR institutions. It is also used for high-risk patients when immediate
11 knowledge of infection status is critical. Moreover, all new arrivals are tested within
12 twenty-four hours of arrival and placed into quarantine for fourteen days.

13 Defendants continue to take significant steps to increase opportunities for social
14 distancing to minimize the spread of COVID-19 within its institutions. Beginning in
15 March 2020, CDCR took extraordinary measures to directly address the COVID-19
16 pandemic in its institutions, including one of the largest reductions in state prison
17 population in recent history. In that timeframe, CDCR significantly reduced its total
18 incarcerated population by taking the following actions: (1) suspension of county jail
19 intake; (2) implementation of a series of expedited-release actions; and (3) continued
20 release of prisoners having served their full term as defined by the law. CDCR reached a
21 milestone on July 30, 2020, and, for the first time in three decades, the in-prison
22 population fell below 100,000 prisoners. The last time the in-prison population fell below
23 100,000 prisoners was in 1990, when California's overall population was almost 10
24 million people less than it is today. CDCR's efforts continue to benefit the safety of the
25 prison population because, as of January 11, 2021, the total in-custody population was
26 94,855 and the total prison population was 90,122, a reduction of 24,196 since March 11,
27 2020. *See* <https://www.cdcr.ca.gov/covid19/> (last visited January 13, 2021).

28 During this ever-evolving worldwide health crisis, CDCR has taken other measures

1 to increase social distancing that include reducing the number of people who use common
2 spaces at the same time, transferring people from lower-level dorms to celled housing, and
3 erecting tents to create alternate housing and care sites. Defendants continue to consider
4 additional steps and have converted other areas in the prisons, such as gymnasiums and
5 visiting areas, into living areas. Defendants' efforts continue to be addressed here, as well
6 as in *Plata v. Newsom*, No. 01-1351 JST (N.D. Cal.) and *Coleman v. Newsom*, No. 90-
7 0520 KJM DB (E.D. Cal.). Defendants are committed to continue discussions concerning
8 how any changes in housing and restrictions on movement will affect *Armstrong* class
9 members.

10 Defendants' decision to enter into a stipulation in response to Plaintiffs' motion
11 concerning *Armstrong* class members during the COVID-19 pandemic further
12 demonstrates Defendants' commitment to providing safe and accessible housing to class
13 members through stakeholder collaboration. Defendants continue to work with Court
14 Expert Ed Swanson and Plaintiffs to facilitate Mr. Swanson's review of Defendants'
15 existing supply of accessible housing, including housing for medical isolation or
16 quarantine, so that he may continue to present his recommendations to the Court.
17 Additionally, Defendants are diligently working to meet their obligations under the Court's
18 order to ensure compliance. In his second report, Mr. Swanson "commend[ed] both sides
19 for their hard work, creativity, and commitment to addressing the complicated issues
20 involved in ensuring there is adequate housing for disabled inmates during a disruptive and
21 unprecedented epidemic." (ECF No. 3142 at p. 2.) As part of these efforts, Defendants
22 have developed a means to conduct a statewide daily count to ensure that class members
23 are provided safe, accessible housing and to provide a daily snapshot of class members'
24 housing status. Further, Defendants have developed the means to provide a weekly update
25 to ensure that the institutions have adequately designated isolation and quarantine space
26 that comports with Mr. Swanson's methodology.

27 Defendants believe that through the parties' collaborative efforts and a great deal of
28 work by staff, they are able to adequately address Plaintiffs' concerns of "significant

1 delays in institution staff interviewing class members moved into non-designated areas
2 about their disability accommodation needs.” In accordance with a November 5, 2020
3 directive, staff must interview class members within twenty-four hours of being placed in
4 non-designated or non-traditional housing area and complete a 128B checklist. Once
5 completed, the 128B checklist is forwarded to CDCR’s Class Action Management Unit
6 (CAMU) and produced to Plaintiffs’ counsel on a rolling basis. The 128B checklist is a
7 five-page document that addresses the class members DPP code, necessary DME, cell/bed
8 area, toilets, sinks, paths of travel, recreation, non-architectural accommodations,
9 accommodations provided to the inmate, and even includes questions to the staff-member
10 interviewer. These questions posed to the staff-member interviewer are meant to ensure
11 the inmate is appropriately accommodated, familiar with the Form 1824 process, able to
12 alert staff to future needs, and to encourage the inmate to request accommodations.

13 Additionally, Defendants continue to work collaboratively with Plaintiffs’ counsel
14 and have recently issued two directives that address Plaintiffs’ concerns about non-
15 architectural modifications and accommodations for blind or low-vision people. On
16 January 15, 2021, CDCR issued a directive concerning non-architectural accommodations
17 during the pandemic. The directive specifically addresses access to non-architectural
18 accommodations such as videophones, electrical outlets, assistance with reading or
19 writing, recreational materials, text-to-speech software, and other accommodations
20 requested by Plaintiffs for people with disabilities while housed in isolation, quarantine, or
21 non-traditional housing because of the pandemic. To ensure compliance with the directive,
22 staff are required to include non-architectural information on the 128B checklist that is
23 completed by staff after interviewing class members within twenty-four hours of being
24 moved into a non-designated or non-traditional housing. Once completed, these 128B
25 checklists are forwarded to CAMU and then produced to Plaintiffs’ counsel on a rolling
26 basis to provide timely information concerning housing and accommodations. Also on
27 January 14, 2021, CDCR issued a directive concerning blind and low-vision class
28 members that should address Plaintiffs’ concerns about situating and orienting these

1 individuals to new housing placements because of the pandemic. The directive mandates
2 that staff identify and document beds within a housing unit that are most suitable for these
3 inmates. Staff must consider distance to toilets and shower, whether there are obstacles or
4 protruding objects in the paths of travel, whether the location is in a high traffic area, and
5 other factors. Further, the directive mandates that staff must take immediate steps to
6 orientate the person to the new housing environment to ensure that they can independently
7 navigate the housing unit, yard, and avoid any dangers that they may encounter as a blind
8 or low-vision person. To ensure compliance with this directive, staff must complete an
9 orientation-checklist chrono, 128B, that is produced to CAMU.

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

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

1 ensure the vision-impaired class members are appropriately oriented to their living areas,
2 CAMU sent a June 23, 2020 directive to all institutions. The directive sought to ensure
3 that all DPV class members were informed of any physical changes to housing units,
4 clinics, yards, or other facilities and that they are advised of any other pandemic-related
5 changes or barriers such as placement of hand-sanitizing stations, placement of social-
6 distancing markers, or other measures taken in response to the COVID-19 pandemic. By
7 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 memorandum to the field concerning DPV
10 inmates' access to auxiliary aids in the library for the duration of the pandemic and
11 provides for CAMU's receipt of proof of practice from the institutions. To the extent
12 possible, CDCR continues to consider solutions that address Plaintiffs' concerns that there
13 is a lack of accessible recreational material or written education assignments. CDCR,
14 however, provides educational opportunities to class members and participating inmates
15 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 Additionally, Defendants continue to coordinate with the Court expert and Plaintiffs
23 to ensure that the COVID-19 issues raised in this matter are specifically related to class
24 members and fall squarely within the scope of *Armstrong*. Defendants will continue to
25 coordinate with Plaintiffs so that COVID-19 issues that impact all inmates,
26 notwithstanding a disability, are properly raised and addressed in *Plata* instead of
27 *Armstrong*. Defendants have raised this issue with Plaintiffs' counsel, who represent
28 inmates across several cases, to make sure that inmates' needs are addressed efficiently in

1 the proper class action.

2 Plaintiffs' statement regarding CDCR's COVID-19 response suggests that
3 defendants have put their heads in the sand and are doing nothing to address the pandemic.
4 But Plaintiffs know, and the record shows, that CDCR has been one of the most proactive
5 correctional systems in the country in battling an insidious virus not seen in over a
6 century.⁵ Defendants will continue to be transparent and collaborate with the Court's
7 expert, Plaintiffs' counsel, and other stakeholders as they work to protect the inmates
8 under their charge and the staff dedicating themselves to this duty during this crisis.

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

11 *Plaintiffs' Statement*

12 Plaintiffs' counsel has presented evidence of a hostile environment at many
13 institutions that discourages people from asking for disability accommodations and
14 discriminates against people with disabilities. Plaintiffs' counsel has also documented
15 allegations of widespread abuse and violations of the rights of people with disabilities. On
16 September 8, 2020, the Court issued orders finding remedial efforts were necessary in
17 order to "prevent further violations of the ARP and class members' ADA rights at RJD."
18 Doc. 3059 at 42. The requirements necessary to prevent further violations, as well as
19 timeframes for compliance, were outlined by the Court in an Order for Remedial
20 Measures. *See* Doc. 3060. The parties have agreed to take additional time to negotiate the
21 staff misconduct investigation and disciplinary remedies. *See* Doc. 3178. The parties have
22 agreed on portions of a Remedial Plan for RJD and Plaintiffs filed objections regarding
23 portions of the proposed plan that remain in dispute. *See* Doc. 3177. Defendants are now
24 reporting delays in complying with previously agreed on timeframes for installation of the
25 audio-video surveillance system ("AVSS") at RJD. *See* Doc. 3183-2, ¶ 9. Plaintiffs'

26 _____
27 ⁵ As noted in *Plata v. Newsom*, No. 01-01351 JST (N. D. Cal.), ECF No. 3291 at p. 14,
28 "No bright line divides a reasonable response from one that is deliberately indifferent in
violation of the Eighth Amendment. In this case, the Court concludes without difficulty
that Defendants' response has been reasonable."

1 June 3, 2020, statewide Motion to Stop Defendants from Assaulting, Abusing and
2 Retaliating against People with Disabilities (collectively, “Plaintiffs’ Motions”) is under
3 submission following oral argument on December 8, 2020. *See* Doc. 2948.

4 Plaintiffs continue to raise significant staff misconduct concerns throughout the
5 state, including violent assaults, false RVRs, and retaliation for reporting misconduct or
6 requesting accommodations, including during the COVID-19 pandemic statewide.
7 Plaintiffs’ counsel has written multiple letters regarding ongoing staff misconduct at RJD,
8 including allegations of serial misconduct involving certain staff members who continue to
9 work at RJD—all of which have gone unanswered to date. *See Exhibit D*, Letter from
10 Penny Godbold to Tamiya Davis, CDCR Office of Legal Affairs (Dec. 9, 2020).

11 In addition, Plaintiffs previously reported that two *Armstrong* class members were
12 gruesomely bludgeoned to death at SATF earlier this year, after staff failed to take a Deaf
13 class member’s safety concerns seriously and failed to provide sign language interpretation
14 so he could effectively communicate the real and immediate threat to his life. *See* Doc.
15 3153 at 20; *id.* at 56-63, Letter from Tovah Ackerman & Rita Lomio, Prison Law Office,
16 to Tamiya Davis, CDCR Office of Legal Affairs, Recommendations Following the Killing
17 of *Armstrong* Class Members at SATF (Sept. 29, 2020). Defendants responded to
18 Plaintiffs’ recommendations for basic program changes in cursory and dismissive fashion,
19 refusing—remarkably—to mandate provision of sign language interpretation to allow a
20 Deaf person to raise immediate personal safety concerns. And Defendants altogether
21 failed to address potential staff accountability for these deaths. Defendants asserted that
22 they will conduct an investigation of the incident, but have provided no information on
23 what type of investigation will be conducted, how it will be conducted, and whether it will
24 include consideration of disability-related concerns. Plaintiffs remain seriously concerned
25 that Defendants, yet again, appear unable to acknowledge the connection between the
26 failure to accommodate disabilities and harm to class members and thus fail to
27 meaningfully address staff accountability, notwithstanding the RJD Orders and ongoing
28 litigation regarding staff misconduct.

1 *Defendants' Statement*

2 Defendants take all allegations of staff misconduct seriously and are committed to
3 investigating and taking appropriate remedial action where warranted. Defendants dispute
4 many of Plaintiffs' overreaching and baseless allegations, but Defendants continue to
5 diligently work with Plaintiffs concerning their staff misconduct allegations at Richard J.
6 Donovan (RJD), as well as the seven institutions at issue in Plaintiffs' June 3, 2020
7 motion, including California State Prison, Los Angeles County (LAC), Kern Valley State
8 Prison (KVSP), California State Prison – Corcoran (COR), California Correctional
9 Institution (CCI), Salinas Valley State Prison (SVSP), Substance Abuse Treatment Facility
10 (SATF), and California Institute for Women (CIW).

11 On September 8, 2020, the Court ordered Defendants to implement remedial
12 measures to achieve compliance with the *Armstrong* Remedial Plan and the ADA at RJD.
13 Although Defendants have sought appellate review, Defendants have developed an initial
14 remedial plan and have engaged in several substantive meet and confer sessions with
15 Plaintiffs and the Court's Expert to comply with the Court's orders and to develop a
16 responsive remedial plan. During the meet-and-confer sessions, the parties have identified
17 disputed elements of the remedial plan, shared information related to positions taken
18 concerning the plan, and sought to settle those areas of disagreement that may be resolved.
19 Defendants have provided Plaintiffs with extensive written policies related to the remedial
20 plan and presented third-party tutorials concerning officer training and the operation and
21 placement of fixed surveillance cameras. As noted above, the parties have agreed to take
22 additional time to negotiate the portion of the plan that concerns staff misconduct
23 investigation and disciplinary remedies. (ECF No. 3178.) Meanwhile, as demonstrated by
24 the parties' recent pleadings, significant progress has been made with the remaining
25 portions of the plan that concern increased staffing, body-worn cameras, fixed camera
26 installation (AVSS), document production, and other remedies. (ECF Nos. 3177, 3183..) As
27 noted by Plaintiffs, AVSS deployment may be delayed by unforeseen circumstances
28 caused by a variety of factors including the global pandemic. Defendants first alerted

1 Plaintiffs to this development on November 11, 2020, and have strived to provide timely
2 updates, thereafter. Nonetheless, CDCR is committed to AVSS deployment as quickly as
3 possible while being mindful of all necessary safety precautions.

4 Defendants take seriously all allegations of staff misconduct including abuse against
5 inmates, allegedly false disciplinary actions against inmates, retaliation against inmates for
6 reporting abuse, and others. To that end, Defendants have engaged in ongoing discussions
7 with Plaintiffs regarding allegations of staff misconduct, are working diligently to provide
8 requested information to Plaintiffs, and are continuing to discuss additional changes that
9 Plaintiffs believe are necessary to remedy confirmed incidents of staff misconduct.

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

25 To further address staff-misconduct allegations, Defendants developed a new
26 framework for handling administrative grievances concerning staff misconduct that
27 included organizational change and staff training this year. CDCR created the Appeal
28 Inquiry Management Section (AIMS), a unit that is under the umbrella of the Office of

1 Internal Affairs (OIA), and developed regulations to change CDCR's appeals and
2 grievance process. AIMS is primarily responsible for completing allegation inquiries
3 concerning misconduct allegations that are submitted through the grievance process that, if
4 true, would meet the definition of staff misconduct, but for which reasonable belief has not
5 yet been established. This new section significantly changes staff-misconduct inquiries by
6 taking the local investigative services unit and supervisory staff out of the inquiry process
7 for most allegations of staff misconduct and places the responsibility with non-institution
8 staff from the OIA. The new appeals regulations were finalized and implemented on an
9 emergency basis on June 1, 2020. Now that the regulations have been implemented,
10 CDCR has begun the process of turning the emergency regulations into permanent
11 regulations. Training has also been provided to necessary staff on implementation of the
12 new regulations.

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

26 Finally, Plaintiffs refer to the homicide of two incarcerated deaf people at SATF by
27 another inmate—Defendants do not condone violence of any kind and have initiated an
28 investigation regarding this incident. Defendants further address this incident in more

1 detail below.

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

4 *Plaintiffs' Statement*

5 The Division of Rehabilitative Programs (“DRP”) must take immediate and
6 comprehensive action to ensure that people with disabilities are no longer left out of its
7 programs. This will require the allocation of sufficient resources and specialized staff to
8 evaluate and provide long-needed accommodations to ensure equal access. Defendants’
9 failure to provide such accommodations results in longer terms of incarceration for people
10 with disabilities and impedes their successful reintegration into society. *See* Cal. Code
11 Regs., tit. 15, § 3043(a) (“all inmates who participate in approved rehabilitative programs
12 and activities...shall be eligible to earn Milestone Completion Credit, Rehabilitative
13 Achievement Credit, and Educational Merit Credit...The award of these credits...shall
14 advance an inmate’s release date if sentenced to a determinate term or advance an inmate’s
15 initial parole hearing date...if sentenced to an indeterminate term with the possibility of
16 parole”).

17 **First**, Defendants do not provide real-time captioning to deaf class members who
18 cannot hear what is being said in a classroom or self-help group setting. “Real-time
19 captioning (also known as computer-assisted real-time transcription, or CART) is a
20 service...in which a transcriber types what is being said at a meeting or event into a
21 computer that projects the words onto a screen. This service, which can be provided
22 on-site or remotely, is particularly useful for people who are deaf or have hearing loss but
23 do not use sign language.” U.S. Dep’t of Justice, ADA Requirements: Effective
24 Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>. Late-deafened
25 people in California prisons who do not know sign language overwhelmingly report
26 feelings of isolation in prison due to their disability, an inability to fully participate in
27 programs, and an unawareness of accommodations that may be able to help them. *See*

28

1 Doc. 2910 at 18-27. Plaintiffs repeatedly have raised the need for real-time captioning.⁶ It
2 is critical that Defendants put in place a system to provide real-time captioning soon,
3 before regular programming resumes in the prison system. If they do not, Plaintiffs expect
4 to bring the issue to the Court for resolution.

5 **Second**, blind class members do not have equal access to education and
6 rehabilitative programming. Defendants do not evaluate blind class members' learning
7 media needs based on functional vision assessments. There are no teachers for the visually
8 impaired, low-vision therapists, or alternative media specialists, including braille
9 transcribers. Defendants do not regularly provide materials in large print, braille, or audio
10 formats, and do not track individual class members needs for different accessible formats.
11 *See* Doc. 2910 at 36-37. And Defendants' new prison literacy initiative leaves blind
12 students behind—Defendants do not provide braille instruction, even though studies show
13 that people who are braille literate have higher employment rates, are better educated, and
14 are more financially self-sufficient. *Id.* at 35.

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

21 The parties first about issues related to blind/low-vision class members in
22 January 2020 and did not reach any agreements. Plaintiffs were dismayed that, during the
23 second meeting last month, it was clear Defendants had given the issues little or no
24

25 ⁶ *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 attention during the intervening year. The parties are scheduled to continue discussions.

2 **Third**, Plaintiffs have concerns about the types of accommodations and supports
3 available to class members with learning disabilities. For example, in January 2020,
4 Defendants discontinued the Voluntary Education Program (VEP) statewide, which
5 severely limited (and in some cases eliminated) access to tutoring services for students
6 with learning disabilities. Plaintiffs also are concerned with the low number of people that
7 Defendants designate as having a learning disability—157 (verified) and 127 (unverified)
8 at last count. That is substantially lower than the approximately 4,300 one would expect in
9 a prison system of 123,010 people, based on U.S. Census data. *See* Danielle M. Taylor,
10 *Americans with Disabilities: 2014* at 8 (Nov. 2018),
11 <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p70-152.pdf>.
12 Plaintiffs also have continuing concerns that as part of what was apparently an effort to
13 ensure detailed accommodation chronos were written for class members with learning
14 disabilities, as required by the March 7, 2018 memo the parties negotiated on
15 accommodations for people with learning disabilities, SATF actually removed a number of
16 people from the LD verified category because they could not locate the evidence originally
17 used to verify these individuals as LD. Plaintiffs look forward to working with Defendants
18 to further investigate and address these issues.

19 *Defendants' Statement*

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

25 Defendants are also exploring different ways to provide training to inmates with
26 disabilities regarding the various accommodation tools, including JAWS, that are available
27
28

1 for their use.⁷ Although initially delayed by COVID-19, staff training for JAWS
2 utilization is now complete. This training included a May 12, 2020 webinar that provided
3 training to staff and provided them an opportunity to ask questions related to JAWS.
4 Plaintiffs' concern that this technology is rendered "functionally inaccessible," is being
5 addressed by CDCR. CDCR upgraded the ADA computers to support JAWS and other
6 technologies to make these new technologies accessible to the class members who need
7 them. In fact, JAWS is available at all institutions and all ADA computers have Microsoft
8 Windows with the Narrator Ease of Access feature. Once COVID-19 restrictions are
9 lifted, library staff will develop a schedule to train all class members on all assistive
10 devices and all library resources. Further, Defendants have spent significant efforts to
11 locate resources for braille instruction for the small number of class members who may
12 require it. Despite these efforts, Defendant have not yet been able to secure braille
13 instruction. Braille is a highly specialized skill and the people with these skills have not
14 been available to provide instruction to class members. CDCR does, however, provide
15 access to the Hadley School of the Blind, which is a correspondence Braille course, and to
16 the Library of Congress' Braille and Talking Book Program. Defendants will continue to
17 pursue this highly specialized programming. Nonetheless, DPV inmate-students have the
18 opportunity to receive additional tutoring support from DPP teachers at designated
19 institutions which may include a Student Study Team (SST) to develop an Individually
20 Tailored Education Plan (ITEP), access to large print educational materials, and usage of
21 electronic magnifiers, oversize monitors, and various screen readers in education
22 classrooms.

23 In response to Plaintiffs' request for CART, real-time captioning for hearing-
24 impaired class members, Defendants have been in contact with the current vendor for
25 Video Remote Sign Language Interpreting to explore the addition of this service to the
26

27 ⁷ Job Access With Speech (JAWS) is a computer screen reader program for Microsoft
28 Windows that allows blind and visually impaired users to read the screen either with a
text-to-speech output or by a refreshable Braille display.

1 current contract. Meanwhile, teachers are able to provide written materials and notes in
2 education programs. Further, DPH inmate-students have the opportunity to receive
3 additional tutoring support from DPP teachers at designated institutions which may include
4 a Student Study Team (SST) to develop an Individually Tailored Education Plan (ITEP),
5 access to SLI, in person and/or remote, or blue-tooth speaker systems to participate in
6 classroom discussions or for amplification.

7 CDCR does not test for learning disabilities. CDCR's policy, however, addresses
8 Plaintiffs' concerns about class members with verified or unverified learning disabilities.
9 If an inmate self-identifies as having a learning disability, CDCR will make efforts to
10 obtain documentation to verify that disability. If the learning disability remains unverified,
11 CDCR nonetheless provides assistance to those inmate-students with unverified
12 disabilities. Additionally, CDCR is in the process of implementing its Peer Literacy
13 Mentorship Program (PLMP) to assist inmate-students with learning disabilities. One
14 purpose of this program is to provide more focused attention for students in educational
15 programs. Per the Governor's budget, all institutions will receive a PLMP teacher. This is
16 part of a new initiative to provide flexible mentoring for students who have barriers to
17 attending educational programs in a traditional classroom setting and is available on nights
18 and weekends, in dayrooms, etc. Peer mentors work with up to twenty students and
19 receive sentencing credits and pay. Mentees also earn credits. Hiring for PLMP teachers
20 and mentors began last year. Tutoring is first provided to those students with verified
21 learning disabilities, and then to students with unverified learning disabilities as space
22 permits. DRP/OCE conducted training on October 15, 2020 for staff working with DPP
23 population, including DPV/DNV, DPH/DNH, and LD. This training is being provided to
24 assist with Armstrong Remedial Plan compliance and included lessons on assistive
25 devices. As noted above, Plaintiffs express concern that a "number" of people at SATF
26 have been removed from the LD category. But only six such people were removed. One
27 person paroled, one person is completing his GED and stated he was not LD, and the
28 remaining four people were not in education. Finally, Plaintiffs contend that they would

1 expect to see up to 4,300 with a designated learning disability. But his ignores the fact that
2 incarcerated people have had a lapse in their education during their years of K-12
3 education and that this is a disqualifier for public-school special-education programs,
4 including specific learning disabilities.

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

6 *Plaintiffs' Statement*

7 As stated above, earlier this year, a Deaf class member who used sign language to
8 communicate was bludgeoned to death at SATF. At the time of his death, he was housed
9 in a dorm with no other people who knew or used sign language, with no videophone, with
10 no whiteboard for written notes, with staff who were not used to caring for D/deaf people,
11 and with no clear or confidential way to report safety concerns. *See* Doc. 3153 at 20; *id.* at
12 56-63. A few months later, ADA staff at the institution inexplicably told another Deaf
13 class member that a sign language interpreter is **not** required for “a safety/enemy concern”
14 and instead is required only for due process encounters. *See id.* at 80-84. Defendants have
15 now doubled down on this position, contending in a written letter response that they need
16 not provide sign language interpretation to Deaf class members with immediate personal
17 concerns and see no need to make any changes—including discontinuing the unnecessary
18 isolation of Deaf people upon transfer—in the wake of a Deaf class member’s brutal death
19 while in their custody and care.

20 Plaintiffs are concerned by Defendants’ additional discussion in this Statement
21 about this issue. Defendants’ statement that the Deaf class member was housed on a new
22 facility for “just over twenty-four hours before the homicide occurs” only underscores the
23 urgency of ensuring Deaf class members are safely housed immediately upon arrival to a
24 new facility, preferably with other people who know sign language. Otherwise, they are
25 particularly vulnerable and unprotected. Similarly, Defendants’ belief that an incarcerated
26 person who worked “as an ADA worker and sign-language aide” and lived in separate
27 building somehow addresses the ability of Deaf class members to confidentially and
28 effectively report personal safety threats from other incarcerated people ignores both

1 existing local operating procedure and federal law. *See, e.g.*, SATF Local Operating
2 Procedure 497, Sign Language Interpretation Services, at 10 (Apr. 2019) (sign language
3 aides “**should not be utilized in areas requiring confidentiality**” (emphasis in original));
4 28 C.F.R. § 35.160(b)(2) (noting that “auxiliary aids and services must be provided . . . in
5 such a way as to protect the privacy and independence of the individual with a disability”);
6 Prison Rape Elimination Act, Prison and Jail Standards, 28 C.F.R. § 115.16(c) (“The
7 agency shall not rely on inmate interpreters, inmate readers, or other types of inmate
8 assistants . . .”); *cf.* U.S. Dep’t of Justice, Guidance to Federal Financial Assistance
9 Recipients Regarding Title VI Prohibition Against National Origin Discrimination
10 Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,462 (June 18,
11 2002).

12 Plaintiffs are reviewing Defendants’ grossly inadequate response and determining
13 what action to take. Plaintiffs may bring the matter to the Court for resolution.

14 Next, Plaintiffs remain deeply concerned by Defendants’ failure to ensure that sign
15 language interpretation is provided to D/deaf class members during off-site medical
16 appointments. D/deaf class members have been hospitalized, undergone surgery, and
17 received other medical treatment without interpretation services. Defendants currently do
18 not require that the off-site medical providers they contract with document whether and
19 how effective communication was achieved during the medical appointment (including
20 whether sign language interpretation was provided), and Defendants do not otherwise
21 review or track whether effective communication was in fact achieved during off-site
22 appointments. It was unsurprising, then, that Defendants failed to identify a number of
23 instances in which sign language interpretation was not provided during off-site
24 appointments. The parties in *Armstrong* and *Plata* met to discuss this issue in
25 February 2020, and the Receiver at that time directed CCHCS to convene a workgroup and
26 develop a complete solution. Defendants recently reported, however, that no work has
27 been done in the intervening year. In the meantime, however, Deaf class members
28 continue to suffer. *See* Doc. 3153 at 86-90. If Defendants do not re-start the workgroup

1 soon, Plaintiffs will have no choice but to bring this matter to the Court's attention.

2 *Defendants' Statement*

3 Defendants are committed to ensuring that Deaf and hard-of-hearing class members
4 who require sign language interpretation are provided equal access to programs, services,
5 activities, and assignments. Defendants have taken proactive steps to provide these class
6 members with access to a variety of programs. As previously reported, Defendants
7 anticipate creating a unique state-run television channel dedicated to ASL, which will
8 include Daily Moth content and, potentially, an on-demand video library. In fact, to date,
9 all nine institutions housing D/deaf class members have one DRP television channel
10 reconfigured to show ASL-based content. The new channel features daily news shows,
11 mandated departmental videos from the Secretary, pertinent health care related information
12 and other programming with rehabilitative content. As to the state-run channels,
13 Defendants are in the process of finalizing ASL inserts, including programming that
14 addresses PREA information. Additionally, PREA information has been included in the
15 orientation video, for inmates who require ASL. Defendants continue to work toward
16 adding more content with ASL interpretation and have added up to eleven such videos,
17 with staff working to add even more.

18 Plaintiffs' contention that Defendants failed to "ensure that sign language
19 interpretation is provided to [class members] during off-site medical appointments," is
20 inaccurate. In fact, CDCR ensures these services are provided through its contracts with
21 third-party providers. It is a contractual obligation that hospitals provide a Sign Language
22 Interpreter (SLI) for all hearing-impaired inmate patients whose primary method of
23 communication is American Sign Language. Should the hospital not be able to provide the
24 appropriate accommodations, they are required to contact the sending institution so that
25 staff can provide the appropriate accommodation. Outside hospitals are made aware of
26 each patient's medical disability and what accommodations are needed for communication
27 with that patient. For offsite specialty clinics that do not provide SLI, the offsite health
28 care schedulers are trained to contact the onsite SLI before the appointment to provide an

1 interpreter for the appointment. CCHCS has reported that it has been developing potential
2 alternatives to solely relying on external providers to ensure interpreters are present for
3 off-site encounters. Defendants have put together a working group to address contract
4 language for off-site encounters, policies and regulations, and an escalation process for
5 when an off-site provider fails to provide SLI. The working group held its first meeting on
6 March 12, 2020, but in light of the almost complete cessation of off-site appointments, this
7 initiative is temporarily paused and CCHCS will keep Plaintiffs informed of any new
8 developments through the meet-and-confer process.

9 Plaintiffs refer to the homicide of an incarcerated deaf people at SATF by another
10 inmate—Defendants do not condone violence of any kind and have initiated an
11 investigation. Plaintiffs seemingly contend that a lack of services contributed to this
12 unforeseen tragedy. But it should be noted that the victim had only been housed at the
13 housing facility, Facility A, just over twenty-four hours before the homicide occurred,
14 despite there being ASL resources available to him in that unit. There is an inmate on
15 Facility A that works as an ADA worker and sign-language aide. This ADA worker acts
16 as an interpreter to help communicate basic information between the officers and Deaf
17 inmates who use ASL as a method of communication. This ADA worker is readily
18 available to provide general orientation and yard-specific procedures. Further, upon
19 arrival to SATF, each Deaf inmate receives an orientation book and is shown an
20 orientation video in ASL. The inmate-television, channel 45, continuously plays
21 informational videos in ASL and the DRP-ASL channel is played on the dayroom
22 televisions according to a designated schedule. Moreover, at SATF mental health staff
23 may be utilized with the assistance of a SLI and VRI if mental health help is requested.
24 Following the homicide, the ADA Coordinator met with all Deaf class members at SATF
25 with a SLI to explain the process to access mental-health services.

26 Defendants have made significant strides in providing Deaf and hard-of-hearing
27 class members who require sign language interpretation with access to an increasing
28 number programs, services, and activities. And Defendants remain committed to ensuring

1 that these class members' concerns related to healthcare, safety, and recreation are
2 appropriately accommodated.

3 **E. Problems Regarding Access to Assignments for Class Members**

4 With regard to the broader problem of equal access to job and program assignments
5 for people with disabilities, the parties convened a small work group to address Plaintiffs'
6 concerns, as documented in multiple tour reports and letters. *See* Doc. 2680, at 13-14.
7 The parties agreed to exchange program assignment data on a quarterly basis. The data
8 continues to show disparities in assignments for people with disabilities. The parties agree
9 to work cooperatively toward ensuring equal access in program assignments for people
10 with disabilities but these conversations have been put on hold during the pandemic.

11 **F. Effective Communication for Parolees Who Are Deaf**

12 Plaintiffs have conducted a review of DPH parole files. In summary, despite
13 assertions that DAPO is providing additional oversight regarding the supervision of class
14 members who are Deaf or hard of hearing, Plaintiffs continue to identify problems with
15 Defendants' provision of effective communication to parolees including: failures to
16 provide adequate sign language interpretation during initial interviews and other due
17 process encounters; inappropriate use of written notes to communicate with DPH parolees
18 who cannot communicate effectively in writing; failures to use VRI properly and
19 technological issues with VRI; and confusion regarding the distinction between VRI and
20 VRS, causing likely violations of federal law. *See* Letter from Ben Bien-Kahn and
21 Caroline Jackson to Tamiya Davis and Nicholas Myer (January 8, 2021) attached hereto
22 as **Exhibit E** (showing that despite Defendants' assertion that one staff member misstated
23 an acronym, the ongoing attempted use of VRS instead of VRI was apparent again during
24 Plaintiffs' review of files and showing that VRI use caused barriers to effective
25 communication.)

26 The parties remain in disagreement about the use of civilian in-person sign language
27 interpreter during non-due process parole field encounters presenting safety and security
28 issues. With this concern in mind, Defendants note that the U.S. Department of Justice has

1 recognized that agencies can use advanced technology, such as tablets, to provide sign
2 language interpretation to individuals in areas where it is difficult or impossible to provide
3 an in-person interpreter. (See ECF No. 2874 Ex. C.) DAPO purchased and implemented
4 the use of VRI tablets, high-speed connectivity, and an expanded SLI contract provider to
5 increase VRI capabilities. DAPO has provide additional training and instructions for staff
6 supervising SLI parolees. Additionally, DAPO tracks any issues with the VRI services,
7 and there have been no instances where the use of VRI has created a barrier to effective
8 communication. Defendants have addressed Plaintiffs' concerns related to the distinction
9 between VRS and VRI. Defendants have explained to Plaintiffs that one staff member
10 misstated the acronym VRS when they meant VRI. Defendants have assured Plaintiffs
11 that this one staff member knows that VRS is not to be used in the same room as the
12 individual receiving the services. Plaintiffs remain concerned, but will continue to monitor
13 field use of VRI.

14 **G. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
15 **Disability Tracking Information**

16 Defendants completed a physical, statewide durable-medical-equipment ("DME")
17 reconciliation encompassing all thirty-five institutions in early January 2019. The audit
18 revealed: (1) that 7,346 class members were missing one or more items of DME that their
19 custody and medical records indicated they should have had in their possession; and
20 (2) that 2,349 class members' DME records had errors. CCHCS implemented the DME
21 Discrepancy Report Tool in January 2020. At the time, there were 5,973 discrepancies
22 between EHRS and SOMS for Armstrong class members. The discrepancy rate was 54.3
23 percent. The documented number of discrepancies began to decrease significantly during
24 the following months. On August 31, 2020, CCHCS implemented an update to the tool to
25 improve accuracy of the SOMS records. As of November 4, 2020, there are 3,636
26 discrepancies and a discrepancy rate of only 35.8 percent. While it appears that
27 Defendants have made significant strides towards developing an electronic method to
28 ensure that orders for DME are reconciled with receipts for DME, Plaintiffs remain

1 concerned that there is still no plan to confirm that class members actually have their
2 required DME as indicated in the system. This is a necessary step in the prison
3 environment where DME can be easily lost during transfer or get damaged or taken.
4 CDCR is working on a sustainable method to reconcile electronic records with actual
5 possession by class members.

6 Plaintiffs remain concerned about how frequently they encounter *Armstrong* class
7 members with DME and clear *Armstrong* disabilities who do not have a DPP disability
8 tracking code. On December 8, 2020, Plaintiffs sent Defendants an email with an analysis
9 of the 216 individuals on the weekly chart Defendants produce of people who have lower
10 bunk, lower tier chronos who are not properly housed. Plaintiffs reviewed the DME for all
11 199 individuals on the list who did not have a DPP code. Based on the DME listed, we
12 believe that approximately 40 percent of these individuals are *Armstrong* class members
13 missing DPP codes. On the same day, Plaintiffs sent Defendants an email with the
14 December 4, 2020 SOMS Disability Roster produced by Defendants filtered to list all
15 individuals on the Roster who have a hearing aid listed, but who do not have Disability
16 Placement Program (DPP) code indicating a hearing impairment (DPH or DNH). Any
17 incarcerated individual who requires a hearing aid should have a DPP code. We also
18 sorted the same DPP roster to highlight for Defendants the following groups of people on
19 the December 4, 2020 SOMS DPP Roster: (a) 144 incarcerated individuals who have a
20 cane but no mobility code, (b) 15 incarcerated individuals who have a wheelchair but no
21 mobility code, (c) 74 incarcerated individuals who have a mobility vest but no mobility
22 code, (d) 33 individuals on the SOMS roster statewide who have walkers but no mobility
23 code, (e) 24 incarcerated individuals who have a Hearing Vest (but no hearing aid, so they
24 are not duplicates of the list above) but who do not have a hearing disability code.

25 There were also a large number of Declarants in the recent RJD and statewide staff
26 misconduct motions who had an *Armstrong* disability but had not been properly identified
27 and given a DPP code by Defendants, and whom Defendants claimed in their briefing were
28 not class members. Defendants have acknowledged a problem with missing codes and

1 have distributed some training materials to CDCR clinicians about how to assign the
2 proper codes, and the parties will work collaboratively to ensure proper identification of
3 DPP codes and to reach a sustainable resolution for DME reconciliation in the future.

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

5 *Plaintiffs' Statement*

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

17 Plaintiffs also object to the many transitional housing programs listed in DAPO’s
18 directory of transitional housing programs that explicitly exclude people with hearing,
19 mobility, vision, and mental health disabilities from their programs. For example, in
20 Plaintiffs’ December 2, 2020 report on a STOP Region 2 tour, we listed the following
21 express disability-based exclusions in the Division of Rehabilitative Programs list of
22 contracted programs, in Region 2 alone (there are six such regions in California):

- 23 • Exclusions of Individuals with Mental Health Disabilities: A total of 48 out of the
24 73 STOP Region 2 programs have some sort of categorical mental health exclu-
25 sion—which equals 66% of all subcontractors in Region 2. Specifically, 17 Region
26 2 STOP subcontractor program sites exclude individuals with either EOP or
27 CCCMS level of care when released from CDCR, 22 programs exclude only indi-

28

1 individuals at the EOP level of care when released, and nine programs exclude individ-
2 uals at the CCCMS level of care but accept individuals at the EOP level of care.

- 3 • Exclusions of Individuals With Mobility Disabilities: A total of 16 out of the 73
4 STOP subcontracted programs in Region 2 categorically exclude people with
5 mobility disabilities—which equals 22% of all STOP subcontractors in Region 2.
- 6 • Exclusions of Individual with Vision Disabilities: A total of 18 out of the 73 STOP
7 subcontractor programs in Region 2 categorically exclude people with vision
8 impairments—which equals 25% of all STOP subcontractors in Region 2.
- 9 • Exclusions of Individuals Who Are Deaf and Hard of Hearing: A total of 24 out of
10 the 73 STOP subcontractor programs in Region 2 categorically exclude people who
11 are deaf and hard of hearing—which equals 33% of all STOP programs in
12 Region 2.

13 This issue is particularly important now that CDCR has released thousands of
14 incarcerated people early, and is in the process of releasing thousands more in order to help
15 address COVID-19. In addition, DRP has authorized STOP programs to retain current
16 residents in their transitional housing programs in light of the shelter-in-place orders
17 statewide, increasing the possibility that there is inadequate transitional housing for
18 individuals being released at this time.

19 In addition, there were already waiting lists for homeless parolees seeking
20 transitional housing before the pandemic. For example, in early April 2020, the San Diego
21 area had 60 parolees in the community on its waiting list for transitional housing programs,
22 many or most of them homeless. Similarly, in September, the STOP contractor overseeing
23 transitional housing programs in the Bay Area and Central California Coast reported a
24 waiting list of 8 parolees, but reported that at times the waiting list can get up to 30 to 35
25 individuals. Plaintiffs are also concerned by the low percentage of paroling prisoners who
26 are given an identification card through the Cal-ID program. This problem has been
27 exacerbated by the closure of DMV offices throughout the state. Without an identification
28 card, parolees cannot open a bank account, rent a hotel, or rent an apartment, and the lack

1 of identification can delay access to public benefits and medical care.

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

7 Recently, Defendants have shared some data about rates of parole for life prisoners
8 with disabilities, and have shared a detailed memo that has been approved by CDCR
9 stakeholders and that will provide for an expanded role for CDCR counselors in helping
10 life prisoners prepare for Board hearings and eventual parole. The parties met in early
11 January about the new memo and resource documents relating to this plan. Plaintiffs are
12 preparing additional comments, and the parties expect to reach agreement and finalize the
13 plan in the near future. While Plaintiffs very much welcome the new memo and process
14 for correctional counselors to assist in preparing parole plans for certain class members,
15 that process, once finalized and implemented, will only provide assistance to life term
16 prisoners who are going to the Board of Parole Hearings for parole consideration. Most
17 prisoners who parole are not life prisoners and thus are not going to be receiving this CCI
18 assistance with parole planning.

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

28 Plaintiffs have ongoing concerns about the benefit application process for paroling

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

10 Plaintiffs request that Defendants make every effort to speed up the proposed
11 remedy to the major obstacle of issuing California identification cards to many more
12 paroling prisoners and the need for new DMV-compatible photographs to be taken by
13 CDCR for individuals who have not had a California identification card for more than 10
14 years. The plan to fix this problem was discussed over a year ago in the September 2019
15 C-ROB report, but still has not been accomplished.

16 *Defendants' Statement*

17 Plaintiffs' argument that "CDCR and DAPO fail to ensure that parolees with severe
18 and placement-impacting disabilities receive adequate planning for parole and adequate
19 transitional housing, transportation, and other transitional services," lacks merit, as detailed
20 below. (*See* ECF No. 2786, at 19-21.)

21 Defendants' February 20, 2020 letter detailed the additional assistance that
22 correctional counselors will provide to prepare inmates with disabilities for release on
23 parole. Specifically, that letter informed Plaintiffs that counselors will be directed to
24 discuss different sources of support upon release including family, housing, employment,
25 financial, or community-based programs, and counselors will then help the inmate fill out
26 a template letter to send to potential sources of support. The waiting lists Plaintiffs refer to
27 are for individuals who paroled, then after having been paroled for some time determine
28 that an additional program would be beneficial. That is not a transition-to-parole issue.

1 Defendants' responses to Plaintiffs' transition-to-parole advocacy letters consistently
2 demonstrate that pre-parole services are regularly and adequately provided to class
3 members and that class members are not always reporting information accurately to
4 Plaintiffs' counsel. Defendants believe that the additional assistance provided by
5 correctional counselors, as detailed in the February 20, 2020 letter, will assist class
6 members with understanding what pre-parole services are available to them. Counselors
7 have already been provided with a memo detailing their additional responsibilities with
8 respect to class members in the release planning process.

9 Nonetheless, Plaintiffs' counsel continues to send advocacy letters that demonstrate
10 no nexus between their allegations and Defendants' compliance with the ADA,
11 Rehabilitation Act, the Remedial Plan, or this Court's orders. Rather, the letters imply that
12 CDCR has an obligation to provide housing for every inmate who is disabled and paroling.
13 But the law does not require Defendants to fund and secure housing for every disabled
14 inmate who is paroling, nor does it require CDCR to create and fund new programs. The
15 law requires that the programs and benefits Defendants offer, such as assistance in direct
16 placements for housing or community-based programs, be provided in a manner that treats
17 all parolees equally. CDCR has programs in place to assist with transportation and
18 locating housing upon release, but it does not guarantee or provide housing for everyone.
19 To create an obligation to secure housing for all class members would be discriminatory
20 toward non-class members and would create a new obligation for disabled persons that is
21 not provided to all parolees. The ADA does not require the creation of new programs
22 solely for disabled persons.

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

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

9 Plaintiffs' objection to "the many transitional housing programs listed in DAPO's
10 directory of transitional housing programs [that] explicitly exclude" people with certain
11 disabilities from their programs, ignores CDCR's significant efforts to address this issue.
12 The parties developed disability definitions to educate community-based program
13 providers and to help them decide whether it is feasible for them to accommodate persons
14 with certain disabilities. The parties are also collaborating on the Division of
15 Rehabilitative Programs' education video for providers and will continue to work together
16 on the development of this initiative. Further, Defendants have significantly increased the
17 re-entry-housing capacity of available beds pace by accessing additional funding to meet
18 the increased need for additional bed space.

19 Plaintiffs also complain about transition to parole services. Again, Plaintiffs show
20 no nexus between their allegations and Defendants' compliance with the ADA,
21 Rehabilitation Act, the Remedial Plan, or this Court's orders. Moreover, Defendants have
22 been successful in providing transition-to-parole services to parolees in spite of the
23 challenges posed by COVID-19. As noted above, and as Plaintiffs acknowledge, CDCR
24 has released thousands of inmates since March 2020, due to the COVID-19 pandemic.
25 Defendants have provided transition-to-parole services to those thousands of people in a
26 short period of time. Indeed, Plaintiffs were informed on a July 23, 2020 phone call that
27 the vast majority of paroling inmates have submitted applications for Medi-Cal or
28 Supplemental Security Income (SSI) benefits before paroling, and that those who have not

1 submitted applications have generally not done so because they are not eligible due to
2 availability of other insurance. While parolees may not be receiving benefits immediately
3 upon being paroled and additional follow-up may be necessary to receive benefits, it is
4 important to note that nearly all of the applications have been completed. With respect to
5 Cal-ID, Defendants anticipate that upcoming legislation will address Plaintiffs' concerns.
6 Under the current law, only individuals who have renewed a California ID in the preceding
7 ten years are eligible to renew a Cal-ID. If a parolee was eligible to renew, Defendants
8 assisted with that process before parole. If a parolee was not eligible to renew, that
9 individual was required to visit the DMV in person, which could not be done before
10 release despite Defendants' best efforts. Following extensive efforts, the Division of
11 Rehabilitative Programs (DRP) will introduce legislation to remedy this barrier to parolees.
12 Under the new legislation to be introduced, inmates who have been incarcerated for more
13 than ten years will be permitted to obtain a Cal-ID before leaving prison without an
14 updated photograph of themselves.

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

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

21 The parties convened a work group to address issues facing blind and low-vision
22 class members. *See* Doc. 2786 at 20; Doc. 2910 at 29-41. The work group first met in
23 January 2020. Issues for discussion included documentation of methods of effective
24 communication, orientation and mobility training, audio description, electronic submission
25 of forms, text-to-speech software, accommodations assessments and skills training, braille
26 literacy, accessibility of mental health groups, and access to magnifiers of different
27 magnification levels. The parties met for a second time last month, and Plaintiffs were
28 disappointed by Defendants' lack of progress, particularly with respect to documenting

1 individual class members' needs for certain accessible materials, such as large print,
2 braille, and audio formats, in order to have equal access to programs, services, and
3 activities. The parties met again on December 23, 2020 about the issues noted above. But,
4 if they are not resolved soon, Plaintiffs expect to bring them to the Court for resolution.
5 Defendants are committed to working with Plaintiffs to resolve these issues without
6 judicial intervention.

7 In addition, the parties have been working collaboratively to put interim measures
8 in place to ensure that blind and low-vision class members are properly situated to new
9 living environments—a matter that has taken on particular urgency in light of the large-
10 scale and frequent movements within institutions in an attempt to manage and prevent the
11 spread of the novel coronavirus. *See* Doc. 3153 at 49-54, Letter from Rita Lomio & Tania
12 Amarillas, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, *Situating*
13 *Blind Class Members to New Housing Assignments* (Sept. 24, 2020).

14 **J. Joint Monitoring Tool**

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

22 The parties previously identified a number of substantive areas that will require
23 further negotiation and the development of new policies. In addition, the parties have
24 identified additional issues during the course of the off-site reviews that are ongoing. The
25 parties met November 19, 2020, to discuss current issues and outstanding to-do lists but
26 additional meetings are required. The parties have not yet drafted the headquarters section
27 of the joint monitoring tool, as well as some individual tool questions, including how to
28 monitor whether class members are receiving equal access to program assignments, and

1 questions regarding whether staff have received required training. The parties must first
2 complete larger policy discussions before these portions can be drafted.

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

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

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

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

26 **L. Investigation of County Jails**

27 Plaintiffs continue to assert that a pattern and practice of denying disability
28 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680

1 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA
2 accommodations at Kern County, San Bernardino, Orange, and Fresno County jails. *See*
3 Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions and have been meeting
4 with county counsel for a number of counties in an effort to improve relations and
5 information sharing and ADA compliance at the jails. Unfortunately, these conversations
6 have largely been put on hold due to the pandemic. While improved communication with
7 the counties is a welcome idea, Plaintiffs believe that Defendants will likely need to do
8 more than communicate with counties to ensure accommodations for class members in
9 county jails.

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

13
14 Respectfully submitted,

15 DATED: January 15, 2021

ROSEN BIEN GALVAN & GRUNFELD LLP

16 By: /s/ Penny Godbold

17 Penny Godbold

18 Attorneys for Plaintiffs

19
20 DATED: January 15, 2021

XAVIER BECERRA

Attorney General of the State of California

21
22 By: /s/ Trace O. Maiorino

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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: January 15, 2021

/s/ Penny Godbold

Penny Godbold

EXHIBIT A



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VIA EMAIL ONLY

December 15, 2020

Ms. Tamiya Davis
 CDCR Office of Legal Affairs

Ms. Andrea S. Moon
 Office of the Attorney General

Armstrong v. Newsom:
 RE: Accommodations for Deaf Class Members at SATF During the Current Outbreak

Dear Ms. Davis and Ms. Moon:

As you know, the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”), is in the midst of a large outbreak. Over 63% of the incarcerated population at that prison now has been infected; at least 1,611 have tested positive in the past month alone.



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Ms. Tamiya Davis and Ms. Andrea S. Moon
Re: Accommodations for Deaf Class Members at SATF During the Current Outbreak
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SATF historically has housed the largest population of people who use sign language. As of December 11, 2020, seventeen such class members were housed at the institution. Of those, at least fifteen (or 88%) have been infected with the novel coronavirus. Last week, representatives from the Prison Law Office interviewed seven of them. Class members reported that they, and their disability needs, felt forgotten or, at most, like an afterthought as the institution responds to the current outbreak. They reported being unable to understand what was happening in quarantine and isolation units, being unable to contact their families and loved ones, being isolated and without accessible content during severe and indefinite program restrictions, and being without effective communication during interactions with healthcare staff. In this letter, we summarize some of their concerns.

1. Videophone Access

On August 13, 2020, Director Gipson ordered institutions to ensure that videophones are available to class members who use sign language in isolation and quarantine units. *See* Doc. 3048 at 6. The significance of this requirement cannot be overstated. As then-Secretary Ralph Diaz promised the incarcerated population early in the pandemic, CDCR is “doing everything we can to increase the communication opportunities and availability for you. . . . I need you in contact with your family because your family needs to be aware how you’re doing.” Secretary Diaz, Population Message, <https://vimeo.com/400758862/824c4cf567> (Mar. 25, 2020).

Nonetheless, SATF apparently made no efforts, over the following four months, to ensure videophone access in its isolation and quarantine units. In fact, on December 2, 2020, ADA staff stated that they would provide only TDD access in those units that did not already have a videophone installed. That is grossly inadequate. As we repeatedly have explained, TDDs are archaic devices, are largely obsolete in the community, and are no substitute for a videophone.¹

██████████, DPH (SLI), reported that he was moved to Building E2 for quarantine on December 6, 2020. He reported that he requested, through written notes, access to the videophone. He reported that the officer, and then a sign language interpreter the next day, did not explain how he could access a videophone. Instead, the officer simply said that hearing people were permitted to use the regular phone weekly, and the interpreter said that he could use a TDD, but he was never told where it was or how to use it.

In any event, as Mr. ██████ explained, he would not be able to call his many Deaf family members. This is because, even for individuals with some English literacy, TDD calls are far more cumbersome than videophone calls. The TDD is a text-based service, which requires the

¹ For more information about use of TDD by the Deaf community, please review paragraphs 24-25 of the attached expert declaration, which we filed earlier this year in another case.

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deaf user to type out every word on a standard keyboard, then type “GA” for “go ahead” to signal that the other party may begin typing out their response. The user must then wait while the other person types out a message and finishes with “GA” before adding anything or responding. A TDD-user can call a standard telephone only through TDD relay. During this process, the person using TDD relay must speak at a painfully slow rate, so that the relay operator can type out what they say, verbatim, on a Qwerty keyboard.

And the process of using a TDD to call another deaf person is far more cumbersome. Very few deaf individuals in the free world own a TDD; they use videophones instead. To call deaf friends and family members, a class member must place a call to TDD relay, who then places a call to the VRS, who then places the call to the deaf videophone user. The process of ASL-English translation does not lend itself well to the painfully slow pace of TDD calls, making it nearly impossible for the deaf individuals participating in the call to understand each other. When coupled with the continued problem of TDD calls garbling repeatedly, the process becomes completely unworkable.

As a result, Mr. [REDACTED] was separated from his loved ones at this critical and frightening time. As he explained (in ASL):

I’m shut out. Now I’m in total silence. I could write letters, but not many of the Deaf individuals I know are proficient enough in English for that to work. It’s very rare. When I am able to communicate with the Deaf family, I will feel good, I’ll feel relieved . . . so much to catch up on. I want more interaction, more contact with the family.

During a meeting regarding non-architectural accommodations on December 4, 2020, Defendants said that they will work to install software on VRI laptops at SATF, to allow D/deaf class members to make videophone calls in units that do not have videophones already installed. The institution’s quarantine and isolation spreadsheet, dated December 11, 2020, however, still states that videophones are not available in all isolation and quarantine units, and in fact are not available in the units that currently house half the population that requires them.²

REQUEST: Please let us know when installation of videophone software on the VRI laptops is complete and whether there is sufficient connectivity to allow videophone calls, which require live-streaming of high-quality video in two directions. Please also add Mr. [REDACTED] allegations to the accountability log.

² We were confused that the institution’s spreadsheet said videophones are not available in Buildings E3 and F1, where six Deaf class members currently are housed. It was our understanding that videophones already are installed in those units.

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Re: Accommodations for Deaf Class Members at SATF During the Current Outbreak
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Next, even in those units with videophones already installed, class members reported that they were in fact unable to place calls for a variety of reasons.

- **Poor quality and technical errors.** One class member who was housed in Building F1 for isolation reported that in each of his three attempts, the videophone shut off after he dialed the number. As a result, he was not able to talk with his family while he was infected with the virus and let them know how he was doing, which made him feel “very low.”
- **Access denied by officers.** Two class members reported that officers on Facility F denied them access to the videophone. One class member, who was housed there for isolation, reported that an officer denied his request to use the videophone and that he did not know how to contact his loved ones otherwise to let them know how he was doing during his ten-day medical isolation. The other class member reported that the videophone was not installed in his building section and that, during his week-long stay in medical isolation, officers repeatedly told him that they were too busy to escort him to the section in his building that had the videophone. As a result, he was not able to talk to his family, who were worried about his health, during his time on isolation, even though he saw other people in his unit regularly have access to the dayroom phone.
- **Not provided sufficient time.** [REDACTED], DPH (SLI), reported that for two weeks in isolation in Building F1, he was released from his pod for showers, kiosks, and phones only three times. He reported that, each time, he was allowed an hour to complete all three tasks. He said that was not sufficient time to speak with his family, who were worried about him (people are supposed to be allowed 45 minutes on the videophone, compared to 15 minutes on a regular dayroom phone).

REQUEST: Please explain how the institution will ensure that people who use sign language will have equal access to working videophones, including while on isolation and quarantine, and what training and oversight will be provided to housing officers assigned to those units.

2. Accessible Recreation

Several class members reported that they did not have access to the ASL DRP-TV channel while on quarantine or isolation, a particularly lonely and isolating experience for many Deaf people who are not surrounded by others who know sign language. Three class members on Facility E reported that they could not watch the channel because the picture quality is so poor. Mr. [REDACTED] described the channel as having a “snow effect.” Another class member added that there is so much static that he cannot understand the content on the channel.

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Meanwhile, class members in isolation in Buildings A2 and F1 apparently cannot watch DRP-TV channels on their personal televisions. Those channels are available only on the television in the dayroom. However, while in quarantine or isolation, class members could not watch the television in the dayroom. One class member reported that in Building F1, the television was turned off because the dayroom was not in use. As a result, class members in isolation in those buildings had and have no access to ASL content at all. Since August 2020, we have asked ADA staff at the institution what they will do to address the issue. As of earlier this month, they still had no plan or response.

Finally, all class members reported that content from the Daily Moth does not play on the ASL DRP-TV channel. Of that channel, one class member said (in ASL), “I don’t look at that. It’s always the same stuff. It’s nothing new.” He said that all that plays on the channel is a loop of one of the staff interpreters describing the rules of prison life, educational opportunities, and the law library. Mr. [REDACTED] reported that he has repeatedly raised his concerns with the SATF ADAC and Facility Captain at meetings, but nothing has changed.

REQUEST: Please explain how Deaf class members on all yards will be provided clear access to the ASL DRP-TV channel and what content is available on that channel.

3. Effective Communication of Healthcare Information

Class members reported that they did not receive effective communication of healthcare information while in quarantine or isolation. Mr. [REDACTED] for example, reported that he was not notified of medication administration, and so missed medication while in quarantine in Building E2. In particular, Mr. [REDACTED] is prescribed a PRN (as-needed) medication to manage his anxiety. He reported that on December 7, 2020, he realized late in the evening that nursing staff had left the building without giving him an opportunity to request his anxiety medication. He reported that he was not notified that nursing staff were in the building for medication administration, and that nursing staff did not come to his cell door to offer him the medication (or if they did, they only announced their presence orally, which he could not hear due to his disability).

In addition, three class members reported that they were not provided sign language interpretation during encounters with nursing staff related to COVID-19, even though “SLIs are required for exchanges of health care information with patients whose primary method of communication is American Sign Language.” HC-DOM § 2.1.2(e)(2)(C). And two class members reported that they were inconsistently provided with interpretation during daily surveillance rounding by nursing staff. *See CCHCS, COVID-19 and Seasonal Influenza: Interim Guidance for Health Care and Public Health Providers, Control Strategies for Contacts to Cases* (rev. Oct. 29, 2020) (discussing surveillance rounding). Mr. [REDACTED] reported that while in isolation in Building F1, at least one of the two daily encounters with nursing staff began when he and other Deaf

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patients were called out to speak together with an interpreter. The interpreter asked questions like, “Is anyone sick?” or “Do you have COVID?” and reported their answers to the nurse. Deaf people were not provided an opportunity to answer and ask questions about their symptoms with an interpreter confidentially. And the interpreter left before the nurse checked their temperature, blood pressure and oxygen saturation. Mr. ██████ reported that nursing staff often then asked him additional questions. Although they sometimes did so through written notes, Mr. ██████ reported that he frequently had to remind them that he is Deaf after they started speaking to him. In some cases, they did not have a pen or paper to write notes with him. In light of his DPP code and a sticker on his ID card highlighting that he is Deaf, Mr. ██████ was concerned by staff’s failure to provide interpretation: “How can you miss that? It’s impossible for you to miss that.” He reported that he was not confident that he could report symptoms or ask questions about his vital signs through written English notes or without an interpreter present. Another Deaf class member reported that a sign language interpreter has never been present during nursing staff’s surveillance rounding while in isolation; staff reportedly have (wrongly) told him that he is only entitled to an interpreter for emergencies.

A third class member reported he was denied a sign language interpreter during a late-night COVID-19 test. He reported that, while housed on Facility E, an officer directed him without a sign language interpreter present to report to the clinic window on the yard to be re-tested for COVID-19 (this interaction is described in greater detail in the next section). The class member was not provided a sign language interpreter, including through VRI, when he reported to the window for the test. He described feeling frustrated, as he had an interpreter present for his COVID-19 test earlier that morning and did not know why he was being tested again or if he needed to do something differently. He reported that the encounter reminded him of previous situations in which medical and custody staff had told him that he was not entitled to an interpreter because “you don’t need it for such a simple thing.”

Without an interpreter, someone who uses sign language cannot fully “explain what happened or describe his symptoms to the medical staff.” *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 209-212 (4th Cir. 2017) (prison officials violate the Eighth Amendment if they do not provide sign language interpreters to deaf patients during medical encounters). This is particularly critical at an institution like SATF, which currently is saturated with the virus. (Five of the six reported COVID-related deaths at SATF have been of *Armstrong* class members.) Deaf class members must be afforded the opportunity to understand their personal health information, report symptoms, and actively participate in their care.

REQUEST: Please explain what direction has been provided to healthcare staff at SATF about provision of sign language interpretation, including during surveillance rounding, and how the institution is ensuring that interpretation is in fact being provided. Please also include the specific allegations listed above on the accountability log.

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4. Effective Communication with Custody Staff

We also received reports that class members did not receive effective communication before being moved into, and while housed in, quarantine and isolation units.

Five class members reported that no sign language interpreter was present to inform them of their positive test results or the need to move into quarantine or isolation housing. *See* CCHCS, COVID-19 and Seasonal Influenza: Interim Guidance for Health Care and Public Health Providers, Control Strategies for Contacts to Cases (rev. Oct. 29, 2020) (“Educate the patient on quarantine (e.g., what it is, what to expect, testing, etc.). Patients should also be provided education about signs and symptoms of the disease they were exposed to and the importance of immediately reporting symptoms to staff, should symptoms develop while they are in quarantine.”). Mr. [REDACTED] for example, reported that another incarcerated person informed him that officers were calling his name over the speaker system. When he approached the officers, they handed him a bag. They did not tell him—through an interpreter, in writing, or otherwise—about the move, including that he was being moved because he had tested positive.

In addition, class members reported that they did not receive effective communication once in quarantine and isolation units. Indeed, Mr. [REDACTED] described being particularly isolated. At the time of the interview, Mr. [REDACTED] was housed in E2-246. He reported that he was housed in the cell alone and that the cell was not in the direct line of sight of the officer’s station. As a result, he had no way to easily and quickly get the attention of officers, which he can do only by flashing lights. He reported that announcements made over the speaker system were not effectively communicated to him and that it appeared the officers did not realize he was Deaf. He reported that this was a real change from his normal experience at SATF, and it felt like being in county jail again. Mr. [REDACTED] similarly reported that, while in medical isolation in F1 and now in A2, officers did not effectively communicate announcements to him and he had to guess at what he was allowed to do whenever pod doors opened by observing others. A class member in isolation on Facility F reported that during his week in isolation, he did not take a single shower because custody staff never informed him of the shower schedule. Another class member in isolation on Facility E reported that he received information about his program and privileges in medical isolation only through a Program Status Report (“PSR”), which he could not understand. He has low English literacy, and explained that he usually places a checkmark next to words he does not understand, then asks another Deaf person to explain them to him. However, while in isolation, no one was available to help him read the PSR. Officers refused to assist him upon his request.

In addition, a class member reported that, while housed on Facility E, an officer, without a sign language interpreter present, attempted late at night to explain through written English notes that he needed to take another COVID-19 test (he already had taken one that morning). The class member could not fully understand the note or why he needed another test after he had taken one

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in the morning. Without an interpreter, the officer apparently became frustrated and threatened to issue the class member a 115. The class member reported that his request for an interpreter to help him understand what was happening was denied. As described above, he subsequently went to the window for another test without an interpreter present.

As you know, we have long been concerned about failure of housing officers to effectively communicate with Deaf class members at SATF. Too often, they rely on inadequate forms of communication, including written English notes. *See, e.g.*, December 2018 SATF Tour Report at 6-9. This problem has been exacerbated by the pandemic, as Deaf class members are moved to isolation and quarantine units staffed by officers with little experience or familiarity with Deaf people and their communication needs. This is why it is particularly critical that officers in isolation and quarantine areas be notified when there are Deaf class members in their unit, that laptops that can provide video remote interpretation are placed in the housing units at SATF, and that officers are trained on the need to use them liberally when staff interpreters are not available.

REQUEST: Please explain what actions have been or will be taken to address these issues. Please also evaluate whether Mr. [REDACTED] should be moved to a cell that allows him better access to officers and add the specific allegations above to the accountability log.

Sincerely yours,



Skye Lovett
Litigation Assistant



Rita Lomio
Staff Attorney

cc: Ed Swanson, Court Expert
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,
Robin Stringer, Patricia Ferguson, OLAArmstrongCAT@cdcr.ca.gov (OLA)
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Dawn Stevens, Alexandra Tonis, Gently Armedo (CCHCS)
Jeremy Duggan, Damon McClain, Adriano Hrvatin, Sean Lodholz, Anthony Tartaglio,
Trace Maiorino (OAG)
Brantley Choate, Hillary Iserman, Shannon Swain, Rod Braly, Jennifer Wynn, Martin
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7 Desiree Licci, Joseph Hefner, Joshua Polson, and
Charlotte Wells, on behalf of themselves and all others
8 similarly situated

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15
16 UNITED STATES DISTRICT COURT

17 DISTRICT OF ARIZONA

18 Victor Parsons; Shawn Jensen; Stephen Swartz;
Dustin Brislan; Sonia Rodriguez; Christina
19 Verduzco; Jackie Thomas; Jeremy Smith; Robert
Gamez; Maryanne Chisholm; Desiree Licci; Joseph
20 Hefner; Joshua Polson; and Charlotte Wells, on
behalf of themselves and all others similarly
21 situated; and Arizona Center for Disability Law,

22 Plaintiffs,

23 v.

24 David Shinn, Director, Arizona Department of
Corrections; and Larry Gann, Division Director,
25 Division of Health Services Contract Monitoring
Bureau, Arizona Department of Corrections, in their
official capacities,

26 Defendants.

No. CV 12-00601-PHX-ROS

**REBUTTAL DECLARATION
OF AMY JUNE ROWLEY,
PH.D.**

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I, AMY JUNE ROWLEY, declare:

1. I am a professor of American Sign Language (ASL) at California State University East Bay, and completed my Ph.D. work in Urban Education, Curriculum and Instruction, with a focus on Second Language Acquisition at the University of Wisconsin, Milwaukee with a dissertation on implementation procedures and identifying empowering practices in advanced studies programs in American Sign Language. I obtained a B.A. in Biology from Gallaudet University, the primary national post-secondary liberal arts institution for Deaf students in the U.S., and I also hold a Master’s Degree in Deaf Education and an ASL Specialist Certification from Western Maryland College, now McDaniel College. Further, I obtained an ASLTA-Professional level certification (now called Master Level) in 2000 from the American Sign Language Teacher’s Association (ASLTA) and obtained a certification of ASLPI-5 (Native level) from the American Sign Language Proficiency Interview (ASLPI).

2. In my former role as Associate Clinical Professor and Coordinator of American Sign Language Programs in the Department of Exceptional Education at The University of Wisconsin, Milwaukee, I was responsible for overseeing five ASL-related programs at both the undergraduate and post-baccalaureate levels. Currently, as a full Professor in the Department of Modern Languages and Literatures at California State University East Bay, I perform similar teaching and administrative work, including curricular development. At present I also work for the University of Maine as a curriculum specialist for distance teaching of ASL, where I support and train Deaf instructors as they transition to distance education of ASL.

3. I am also a nationally recognized authority in the assessment and certification of ASL teachers and have been involved with portfolio development and assessment for ASL Teacher Training Programs. I served on the American Sign Language Teachers Association Revision Task Force to redesign their Teacher Evaluation and Certification Program, and I am currently the Chair of the Evaluations and Certifications Program under

1 the American Sign Language Teachers Association, which is the governing body for
2 certifying teachers of ASL in the United States and beyond. Some of the responsibilities of
3 the Chair include: coordinating evaluation assessment, coordinating training for evaluators,
4 and assessments for candidates. I have published on educational interpreting, the role of
5 ASL in interpreter education, ASL and interpreter education programs, accessibility, and
6 Deaf-related communication access legal cases.

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8 4. I offer my expert opinion as a native signer of ASL with life-long experience
9 in the Deaf community, a nationally certified teacher of ASL, and assessor of ASL
10 proficiency, and a researcher on second language learners of ASL. I have also served as an
11 expert witness in a variety of cases in Wisconsin related to educational placement,
12 discrimination, and access to interpreters in education, arrest, incarceration, and trial
13 contexts. My current *curriculum vitae* is attached as **Exhibit 1** to this declaration, and the
14 list of previous cases where I have served as an expert witness is attached as **Exhibit 2**.

15 5. I have been asked by Plaintiffs' counsel to express an opinion concerning the
16 statements made in Defendants' briefing and declarations (Doc. 3673) concerning Deaf
17 class members and their language interpretation needs, as well as to offer my expert opinion
18 on issues regarding American Sign Language, Deaf Culture, interpreting, and Deaf
19 individuals requiring communication access for medical and mental health services
20 provided in a prison setting.

21 6. I also discuss issues regarding other English-based means of communication
22 access, including lipreading and writing back and forth. I will also address the uniquely
23 different conditions under which Deaf individuals learn to read, and the general English
24 fluency levels among the Deaf community.

25 7. I have reviewed the following documents:

- 26 a. The Stipulation (Doc. 1185) in this case;
- 27 b. The Protective Order (Doc. 140) and Amended Protective Order (Doc.
28 454);

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- c. Plaintiffs’ Motion to Enforce Paragraph 14 of the Stipulation (Doc. 3623);
- d. Declaration of Amber Norris in Support of Plaintiffs’ Motion to Enforce Paragraph 14 of the Stipulation (Doc. 3627), and Exhibits 1-124 thereto;
- e. Defendants’ Response to Plaintiffs’ Motion to Enforce Paragraph 14 of the Stipulation (Doc. 3673), and Exhibit 2 (Declaration of Larry Gann), Exhibit 4 (Declaration of Adalia Cerrillo), and Exhibit 7 (Declaration of Joseph V. Penn, MD CCHP FAPA), thereto.
- f. Health Needs Requests submitted by Deaf class members, submitted as Exhibits 42-50 of the Supplemental Declaration of Amber Norris in Support of in Support of Plaintiff’s Reply in Support of Motion to Enforce Paragraph 14 of the Stipulation.
- g. Connie Mayer, Chapter 10 – *The Demands of Writing and the Deaf Writer*, in 2 *The Oxford Handbook of Deaf Studies, Language, and Education* 144 (Marc Marschark & Patricia Elizabeth Spencer eds., 2010).
- h. Marjorie DeVault, Rebecca Garden & Michael A. Schwartz, *Mediated Communication in Context: Narrative Approaches to Understanding Encounters between Health Care Providers and Deaf People*, 31 *Disability Stud. Q.* 4 (2011).
- i. Michael A. Schwartz, *Communication in the Doctor’s Office: Deaf Patients Talk About Their Physicians*, (Ph.D. Dissertation, Syracuse University, 2006).
- j. Michael A. Schwartz, *Deaf Patients, Doctors, and the Law: Compelling a Conversation About Communication*, 35 *Fla. St. L. Rev.* 947 (2007).

1 k. Katrina R. Miller, *Linguistic Diversity in a Deaf Prison Population: Implications for Due Process*, 9 J. Deaf Stud, and Deaf Ed. 1 (2004).

2
3 **Terminology**

4 8. Throughout this declaration, when the word Deaf is capitalized, I am
5 referring to a person who not only has a hearing loss, but who also identifies with Deaf
6 people and Deaf culture. This person is likely to sign American Sign Language and to seek
7 out other Deaf people and attend Deaf events. This is referred to as a cultural perspective
8 on deafness. When the word deaf is used in lower case, I am referring specifically to a
9 person's medical condition of hearing loss. This is referred to as the medical or pathological
10 perspective on deafness. Sometimes the lines are blurred and a person who is hard of
11 hearing identifies as culturally Deaf and vice versa, a profoundly deaf person may not
12 identify with Deaf culture but still be profoundly deaf.

13 9. The use of "hearing person" while understandable is rather uncommon
14 except in discussions where people who can hear are being contrasted with Deaf people. I
15 will use hearing both for cases in which a person physically can hear and for people who
16 are coming from a perspective of mainstream, hearing culture.

17 10. A person who is referred to as "hard of hearing" has a mild to moderate
18 hearing loss and can with some difficulty (mild) or when using a hearing aid (moderate)
19 hear sounds within the speech range.

20 **American Sign Language and Deaf Communication**

21 11. A very common misconception is that American Sign Language is just a
22 manual coding of English on the hands. This is not true. American Sign Language and
23 English are two completely distinct languages that are mutually unintelligible and do not
24 even fall into the same typological categories the way French, Italian, and Spanish do
25 (Romance languages); or English, German, and Dutch do (Germanic languages). They
26 grammatically differ in how they mark subjects and objects, in how they ask questions,
27 make relative clauses, order information in the sentence, mark gender on pronouns, omit
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1 versus require pronouns in subject position, use prepositions, mark verbal aspect (duration,
2 iteration, etc.), tense (present, past, future), as well as adverbials (carefully, recently, etc.).
3 They are as different from one another as English is from Russian, for example—even
4 more so.

5 12. American Sign Language is a language completely distinct from English in
6 modality (visual and gestural as opposed to auditory), grammar (polysynthetic (complex
7 word-internal morphology) versus isolating (strings of words without much internal
8 structure)), and use (differing pragmatics and discourse structure).

9 13. The deaf population is very heterogeneous. Some have been raised in homes
10 with Deaf families who have signed with them from birth. Others have been raised in
11 homes where all family members can hear and do not sign. In some cases, families may
12 use makeshift gestures, try fingerspell, use Cued Speech (a system that supplements
13 lipreading), write back and forth, or limit communication to the bare minimum. Deaf
14 individuals may need to use multiple modalities to communicate effectively, including
15 residual hearing, hearing aids, lipreading, and sign language. The use of one of these means
16 does not mean that communication access has been achieved.

17 14. Identification of the pathological condition of deafness or loss of hearing
18 during the prison intake process is not the same as identification of a person's
19 communication needs. The fact of a person's deafness does not, on its own, identify how
20 that person communicates. For example, someone who was born deaf or has been deaf
21 since childhood will often be a native ASL user, however a person who is deafened late in
22 life may not communicate using ASL because they never learned the language.
23 Furthermore, communication is usually directed by how a person grew up and what type
24 of educational approach they received, as opposed to their etiology.

25 15. Communication needs are best defined by the Deaf persons themselves
26 because they are the one that knows how they best communicate and they are more apt to
27 show hearing people how to communicate with them. Determination of communication
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1 needs should not be up to the nurse or doctor at each medical encounter since this method
2 invites assumptions, such as how much a Deaf person actually understands compared to
3 what a service provider may think a Deaf person understands.

4 16. The best rule of thumb is to take a Deaf person’s request for an interpreter as
5 a valid indication of need. They know themselves well and know best where
6 communication breakdowns and unreliable communication are likely to occur. It is also
7 important for service providers to recognize that they need reliable communication as well
8 and if they sense that communication is not happening, even if the Deaf person does not
9 request one, that an interpreter should be offered. We would not hesitate to do so if the
10 other person were speaking Chinese or French and we did not understand them or they did
11 not seem to be fully understanding us. Not doing so with ASL can follow from the
12 misconception that ASL is “English on the hands” or the assumption that ASL is not a
13 language—both invalid assumptions.

14 17. Additionally, it is a misconception that literacy is a matter of learning to crack
15 a writing code. When a hearing person learns to read, typically around first grade but also
16 possibly as an adult, what they are learning is to decode a written orthography and to “read
17 aloud” words and sentences that are already in their language repertoire. This approach to
18 reading is called phonics. The learner can sound out the words on the page and associate
19 them with words and grammar that he or she already knows. We cannot project this same
20 experience onto a deaf person learning to read. They typically come to school to learn a
21 written form of a language they do not already know. They may come with prior fluency
22 in a signed language (a language that is not remotely grammatically related to English), or
23 they may come with no language base at all.

24 18. Fluency in English is often more challenging for Deaf individuals because of
25 lack of access to the spoken English around them and poor educational upbringing, often
26 resulting from conflicting philosophies in Deaf Education. As a result, there is a significant
27 majority of Deaf people who remain at a third-grade reading level all of their lives. This is
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1 below the point where students finally transition from “learning to read” to “reading to
2 learn.” Since many individuals who are Deaf haven’t learned how to read with full efficacy,
3 the skills needed to read to learn aren’t present and English usage remains low.
4 Approximately 8% of deaf people read English at an eighth-grade level or above because
5 of the fact that they have always had access to language growing up. Since most do not,
6 many plateau at a 3-4th reading grade level. One study of Deaf prisoners showed that none
7 of them were able to read over 4th grade reading level and more than half were considered
8 to be functionally illiterate—below 2.9th grade level (Miller, 2004).

9
10 **Communication By Written Notes**

11 19. Since American Sign Language is the most accessible language for Deaf
12 people in the United States, communication in other forms such as written English is less
13 desirable because often the Deaf person knows they are not getting full access to language.
14 As noted above, ASL has a different grammatical structure than English, so Deaf people
15 who are trying to use English to write are usually unable to follow the same grammar as
16 English. Many have lower writing levels than reading levels. Deaf people are more likely
17 to read more often than write (e.g., TV captions, texts, email, and social media). There is
18 much written about reading levels among Deaf people, but for writing, which involves
19 much more organization and planning, there is little research that connects with a grade
20 level. Instead what research shows us is that “a typical 17-18 year old deaf student writes
21 at a level that is comparable with a 8-10 year old hearing child” (Mayer, p. 146).

22 20. Further, having competency in written English does not mitigate the need for
23 an interpreter, especially when people who can hear typically access interactive
24 communication with their service providers primarily through spoken communication
25 instead of written communication. For people who can hear, communicating in spoken
26 language is less cumbersome, much more efficient, and much more spontaneous than
27 communicating through written language. The same is true for the use of signed language
28 by Deaf people whose primary and preferred language is ASL.

1 21. When written communication is expected to be used as the primary form of
2 communication, service providers tend to rush through and reduce how much they write,
3 since the time needed for writing is much more labor intensive and time consuming than
4 for a spoken language interchange. As a result, the Deaf person is shortchanged from a full
5 discussion of the issues being addressed. This often leads to the Deaf person “being left in
6 the dark” due to communication limitations. In addition to the variety of disincentives to
7 writing back and forth by hand such as less use and proficiency with cursive script and
8 more reliance on printing, as well as the fact that only a small percentage of Deaf people
9 read English with native-level proficiency, the medical domain presents many obstacles
10 for Deaf people because healthcare interactions may require additional probing for
11 understanding, clarification, contextualization, and expansion of information. One of the
12 greatest obstacles is never knowing for sure if what one thinks they have understood was
13 indeed the message; or worse, assuming one has understood something that was not the
14 case. The simple fact that a Deaf person and a hearing person exchanged written notes does
15 not mean that both parties necessarily fully understood each other. The following example
16 illustrates this: ASL, like Italian, treats “psychological verbs,” like verbs of feeling,
17 differently than English. In English, we can write *John upset Mary* as a transitive sentence
18 and it means that Mary was the one who was upset, and John caused her to be upset. ASL
19 does not allow the sign UPSET to take an agent (someone who causes someone to be
20 upset). Instead, ASL only allows an “experiencer subject” JOHN UPSET, meaning “John
21 was upset.” If a noun phrase follows that sequence, that is taken to be the “cause” of the
22 upsetting. So, the sequence JOHN UPSET MARY in ASL would mean John was upset and
23 Mary had something to do with it. A Deaf person relying upon ASL grammar to understand
24 written English would come to the exact opposite meaning of the sequence *John upset*
25 *Mary* and may never know that they understood a meaning opposite to what was intended.
26 Such misunderstanding, if ever discovered at all, are what lead Deaf individuals to say, “I
27 need an ASL interpreter to effectively communicate.” (Doc. 3627-7 at 88 ¶15) or “because
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1 of the language differences, I may not even know that a misunderstanding has occurred.”
2 Doc. 3627-6 at 70 ¶ 22 (K.P.)

3 22. While the practice of “teach back” is frequently used when doctors are
4 verbally explaining complex things to patients, doctors and other service providers are not
5 accustomed to having to probe for understanding with their notes. We often write things
6 down to be sure they were understood. However, no other disability has low education
7 levels comparable to what a large portion of the Deaf population experiences as a
8 consequence of growing up with a lack of communication. When healthcare providers
9 think of deafness, they are focused on the inability to hear, as opposed to the lack access
10 to English and to an adequate education. This also affects the level and the nature of the
11 writing that they use in trying to pass notes to Deaf patients.

12 23. Writing takes a long time and as a result people on both sides of the dialogue
13 tend to share less information. This leads to frustration from both parties and to curtailed
14 communication. As a result, a Deaf person restricted to reading and writing will not be
15 able to share and access as much information as a hearing person interacting with a hearing
16 service provider using speech. When the healthcare provider sees that there is an
17 additional barrier in terms of the Deaf person’s understanding of the written language
18 communication is pared down even further.

19 24. Typing back-and-forth on a computer or a teletypewriter (TTY) machine
20 poses the same language barrier in terms of forcing the Deaf person to rely upon weak
21 English skills to communicate. The only difference is that now people are a little more
22 used to typing than writing in cursive script or printing. Until the late 1990s, Deaf people
23 had no choice for “phone conversations” but to use a TTY. This was a device that would
24 couple with a telephone receiver and when one typed into it, sound signals would be sent
25 over the phone line and would be received by a similar device on the receiver’s end. As a
26 D/deaf class member explained, “the TTY is not effective for our healthcare
27 communications because it is essentially the same as writing notes, except the information
28 is typed.” [Doc. 3627-6 at 72 ¶ 33 (K.P.)] While a welcome innovation in its time, in that
finally allowed communication at a distance for Deaf people, it still relied upon English.

1 If the assumption is made that writing notes back and forth is all that is needed, it is likely
2 that the same assumption is also applied to the use of a TTY. The TTY depended on
3 meticulously typing out word for word in English and strict turn taking. Deaf people
4 without much English would often just type COME NEED TALK to a family member
5 who would then drive to their house to get the information in ASL. Other Deaf people
6 would actually not use English but rather a glossing of English labels in the order of ASL
7 grammar and would write back to each other in a way that only other Deaf ASL signers
8 could understand. For example,

9 Person 1: TOUCH FINISH CHINESE FOOD YOU QQ GA

10 Person 2: YES NEW RESTAURANT OPEN YESTERDAY GA

11 Person 1: MBMB SK

12 would translate to English as follows:

13 Person 1: "Have you had Chinese food? (go ahead)".

14 Person 2: Yes, a new restaurant opened here yesterday (go ahead)".

15 Person 1: "Oh, is that so, very interesting." (stop keying)".

16 "MBMB" is actually a Deaf indication of a mouth movement that occurs with a sign for
17 opening and closing the mouth, which is hard to translate, but it is a reaction to something
18 that is intriguing.

19 25. The TTY was not great, but for a time it was the only device available to
20 Deaf people to communicate long distance. Today, based upon technology 50 years out
21 of date, the TTY is a dinosaur. There are Deaf young adults who have never seen one.
22 They are akin to the pagers that hearing people tried to use to communicate with each
23 other before the invention of smart phones.

24 Lipreading

25 26. Lipreading raises several concerns regarding low accuracy, and it is usually
26 not enough on its own to effectively communicate, particularly in settings like a medical
27 encounter. One of the most important things to know about lipreading is that both the
28 person doing the talking and the person doing the lipreading usually think that
communication is more successful than it actually is, which leads to both frustration and

1 misunderstandings.

2 27. The average deaf lipreader will catch approximately 30% of what is on the
3 mouth (and typically that speech is predictable and highly routinized, like: *What's your*
4 *name? What's your address?*, etc.). Most speech is occluded from sight. For example, *mom*
5 and *Bob* look the same. One cannot see that one involves nasal bilabial consonants (*mom*),
6 dropping the velum while making exactly the same visible speech gesture, and the other
7 (*Bob*) does not. Everything that can be seen is the same. One has to guess which word was
8 intended and guessing opens up the possibility of more misunderstandings.

9 28. Except in highly exceptional cases, lipreading should not be relied upon for
10 anything other than very superficial communication such as basic needs: *Where is the*
11 *restroom? What's your name?* Anything more risks taking away the Deaf person's ability
12 to fully and reliably communicate. Even more troubling is when lipreading is required by
13 virtue of a lack of access to any other alternative such as signing. Deaf people in this
14 situation often feel forced to accept this as the only option. They may think they are
15 understanding what is being said, but they have no way to know this for sure. And they
16 have had a lifetime of experience that speaks to the unreliability of lipreading.

17 29. Medical professionals are no better than the members of general hearing
18 community in assuming that lipreading is an effective form of communication when it often
19 is not. If they are trained in communication strategies, then they would be aware of gaps in
20 communication when using lipreading or when a Deaf person is nodding thinking that they
21 understand or that they agree, which would be erroneous.

22 30. When communicating with a deaf person, it is a common misconception that
23 nodding one's head is an indication of comprehension. When two people are
24 communicating in English, the receiver often produces a variety of backchanneling signals
25 to show engagement with the person who is talking. The listener may nod their head, which
26 sometimes means agreement with what is being said. Other times shaking the head "no"
27 can indicate disagreement or disbelief. Sometimes, but not always, nodding can mean I am
28

1 listening and “I get it.” In Deaf culture, nodding one’s head is an indication that the Deaf
2 person is attending to you, but not that they are understanding you. ASL signers indicate
3 understanding with a manual gesture of a hand repeatedly moving forward in the handshape
4 of a Y (fist with thumb and index finger extended). This sign is frequently glossed as O-I-
5 C (for Oh, I see). Hearing people are often confused when a Deaf person nods as a question
6 is being asked. They often assume the answer being given is a yes. And then the person
7 may answer with, “No” or “I don’t understand.” One of the first, and much emphasized
8 and repeated, lessons in Interpreting 101 is that nodding is not an indication of
9 understanding. Nodding means, “I am attending to what you are saying,” and not “I am
10 understanding what you are saying,” nor “I am agreeing with what you are saying.”

11 31. Additionally, the strain of conversing in a language that is not one’s primary
12 language can frequently cause the second language user to nod as if understanding, even
13 when not comprehending--as a politeness measure, or just to keep the conversation going.
14 Deaf individuals who spend much of their time with hearing people in this state of non-
15 comprehension are prone to doing this out of exhaustion or sheer frustration. In a situation
16 with a hearing person where lipreading is used, a deaf person will often eventually nod just
17 to get the conversation over with because they are not getting effective access anyway. The
18 hearing person, also pressured by the inability to make oneself understood in this context,
19 readily accepts this nodding as confirmation of comprehension.

20 32. The desire to believe that lipreading will suffice combined with nodding
21 behavior on the part of a deaf person can lead an individual to attribute unrealistic
22 lipreading abilities to a deaf interlocutor, when in fact comprehension is severely limited
23 or completely lacking. Such interactions can lead to the hearing person deciding that an
24 interpreter is not necessary, when on the contrary, very little communication is being
25 successfully transmitted.

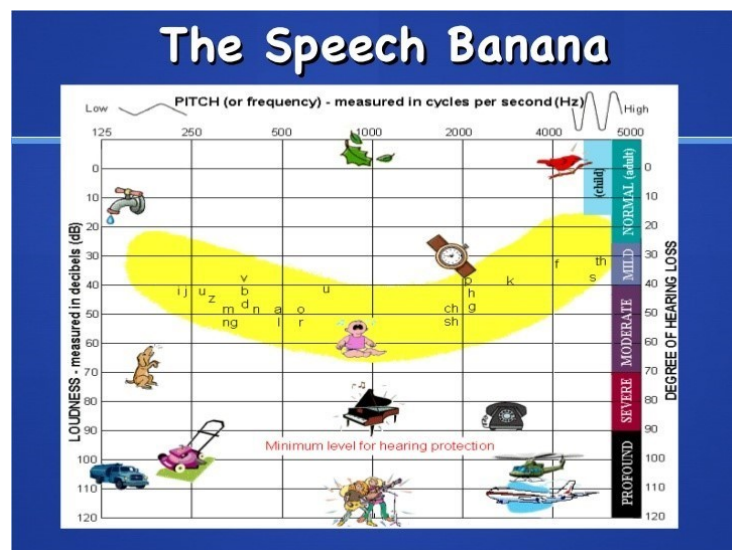
26 33. The medical encounter situation presents even more barriers for effective
27 communication due to the use of specialized terminology which is often unfamiliar to Deaf
28

1 people who do not have high enough reading levels to navigate complex terminology; or
 2 they learn the specialized terminology, but still don't have the English grammar to use that
 3 terminology effectively in sentences to convey their questions or needs.

4 **Hearing Aids**

5 34. Dr. Penn also incorrectly assumes that the fact that some of the Deaf patients
 6 had hearing aids meant that a sign language interpreter was unnecessary. This
 7 misunderstands the nature of hearing aids, and what they can and cannot do, especially for
 8 people who have been deaf their entire life, or people with profound hearing loss. The
 9 hearing aids that the deaf class members here would have had access to could benefit a
 10 person whose hearing loss was mild to moderate by amplifying sound. Until very recently,
 11 a hearing aid may have helped a person with a severe hearing loss to hear speech a bit
 12 better, but it would not completely correct such a loss. A person with a profound hearing
 13 loss could not hear sounds within the speech range even when aided.

14 35. Loss of the ability to hear speech is not a matter of amplitude (loudness or
 15 volume); it is an issue of the frequencies at which sounds resonate, and whether these
 16 frequencies can be detected by a person's auditory system (the nerves in the inner ear that
 17 carry sound input to the brain). The following chart illustrates these differences. The area
 18 in yellow, often referred to as "the speech banana," indicates the range in which speech
 19 sounds fall.



1 36. Even many profoundly deaf people can hear some sounds. They may react
2 to an airplane going overhead, to a car horn, or even to someone yelling. What they cannot
3 do is process and understand sounds within the speech range indicated in yellow above.

4 37. For people who have severe to profound hearing loss, traditional hearing aids
5 served as a tool to let them hear sounds around them and alert them to some things in the
6 environment. They could be used for situational/safety awareness, such as alarms or sirens.
7 Hearing aids were not similar to glasses which correct vision issues. They just amplified
8 sounds around them and those who haven't learned how to "interpret" the sounds will just
9 hear things, but not necessarily understand anything, including speech. Having hearing aids
10 does not supplant a Deaf person's need for a sign language interpreter. Hearing aids are
11 much more effective for a person with only mild hearing loss, because that person has
12 already been able to hear and can interpret sounds more effectively.

13 38. One caveat must be mentioned. Starting in the late 1990s, there have been
14 significant advances in digital hearing aid technology that have made hearing aid
15 technology more applicable to severely and profoundly deaf users. (See the following
16 websites: Phonak History (<https://www.phonakpro.com/us/en/about-phonak/history.html>);
17 and Oticon History (<https://www.oticon.com/inside-oticon/about-us/our-history>)).

18 39. The initial digital aids were more digital clones of analog technology.
19 However, by 2004, hearing aids had multiple mics in 95 frequencies with compression of
20 sound into more hearable frequencies. By 2010 hearing aids could be linked to Bluetooth,
21 allowing the hearing aid to be controlled by apps on one's phone. Modern high-end digital
22 hearing aids have progressively solved two major issues in hearing technology: (1) the
23 internal AI technology to be ability to shift sounds to whatever frequencies the person hears
24 best (2014); and (2) the ability to analyze and filter out environmental sounds that interfere
25 with hearing (2014; fan, motors, etc.), the things that used to be amplified along with
26 everything else. Many hearing people enjoy this sound-filtering technology on their high-
27 end headphones and Airpods. The ability to control and adapt individual frequencies allows
28

1 the right wearer to augment lipreading to a significant degree, even for some people who
2 have a severe-profound or profound hearing loss. So, for the *right* individual, who can
3 afford high-end hearing aids that can cost up to \$6,000, these types of hearing aids *may*
4 benefit the person and allow them to hear words.

5 40. But even if a person has one of these extremely expensive high-end hearing
6 aids, being able now to hear sounds does not mean the person can understand or process
7 the sounds. Thus, the next question is who is the *right* deaf individual to benefit from these
8 newer hearing aids? Part of using a hearing aid involves training the brain to process this
9 new and altered signal. However, for individuals beyond a critical period in which the brain
10 is primed to engage in such “language-specific, auditory learning,” namely a Deaf person
11 who has never heard English, the added “clarity” of these new digital hearing aids is
12 uninterpretable or unhelpful because the brain can no longer learn to process these new
13 sounds that come in as language. For those class members who have had long term hearing
14 loss, brain plasticity is an issue. You can’t teach an old brain new tricks. For them, digital
15 hearing aids may make sounds clearer, but they don’t make speech more special or more
16 understandable. So, unless they were late-deafened, they are unlikely to benefit from this
17 new technology in the same way that people who could once hear, or people fitted with
18 such aids as young children would.

19 Health Needs Requests

20 41. The ability to submit a few sentences in English requesting medical help, such
21 as on a health needs request (HNR) form, is not a reliable indicator that a Deaf person can
22 communicate effectively through written notes in a healthcare encounter. A prior
23 assessment of the Deaf person’s communication abilities and needs is required to determine
24 this. In addition to the concerns detailed above regarding the use of communication via
25 written notes in a medical encounter, several other factors make this reliance on the presence
26 of HNR forms to show access to effective communication problematic.

27 42. First, by their nature, the HNR forms anticipate a simple description of the
28

1 issue for which the person is seeking medical care, and they are designed to only give the
 2 person a few sentences worth of space to describe their need. The language used in this type
 3 of request is by its nature simpler in form and in content than language that would be
 4 exchanged in a medical encounter, which requires substantive and spontaneous
 5 communication. Furthermore, Deaf people who have been raised culturally Deaf depend on
 6 the use of storytelling or elaboration to convey the information they think is needed to the
 7 medical professional, as stated in Schwartz (2008). This requires even more language to be
 8 conveyed. All but a very few cannot achieve any of this expanded communication with
 9 hearing medical providers with the limited language, exemplified below from actual HNRs,
 10 that they may have cobbled together on their own to fill out these forms:

- 11 • Please I want to know fix hurt dental ok I am deaf thank you nice
- 12 • I'm very allergic to Blach [sic] also I have very bad rash all over my body,
 13 neck, foot. I has not slove [sic] yet. can you guy help me Thank you
- 14 • My hear aids is kind hurts and Bother me a lot also I must have special mold
 15 Ear aids That mold Help Lot Better! Help me I'm Deaf Thank you
- 16 • I DON'T FEEL GOOD UPSETTING SMOTACH [sic] AND FEEL LIKE
 17 VOMIT. I AM DEAF CANNOT HEAR OR TALK
- 18 • my both ears hurt. please check and headache Thank you for your time. *I
 19 am Deaf. Need have American Sign Language interpreter due to
 20 communicate. Thank you.
- 21 • since 2 month I have been wait fill back top toot [sic] but now I have other
 22 need fill front tooth so it is pain. I am requesting accommodation under
 23 American with Disabilities Act. I need an American sign language interpreter
 24 for effective communicate for important with dental at the appointment.
 25 Thank you.
- 26 • I am requesting to be sent to TEMPE HOSPITAL to put ~~bande~~ both wooden
 27 flat stick (on top squeeze abit and under) hold for other doctor to wrap
 28 bandage casting because the bone sprial is bent. Till 3 month, recheck bone
 spiral to be flat. If not – 3 to 6 months. Right hand.

[Norris Suppl. Decl. Exs. 42 (W.D.), 43 (F.H.), 46 (K.P.), 47 (F.L.), 48 (S.C.)]

26 43. Several Deaf class members also submitted declarations stating that they
 27 received assistance from other class members in writing out their HNRs because they are
 28 unable to do so independently. It is very common for Deaf people to be helped by family

1 members, or in this case fellow prisoners, to fill out forms like these. It is also common for
2 Deaf individuals needing to request accommodations to have memorized or written down
3 canned phrases like: “ I am requesting accommodation under American with Disabilities
4 Act. I need an American sign language interpreter for effective communicat(ion)” or “Help
5 me. I am Deaf. Thank you.” Reliance on the HNRs of such class members as an indication
6 of their ability to access written English and ability to effectively communicate by written
7 notes in a medical encounter would additionally be entirely inappropriate because the
8 HNRs do not necessarily demonstrate that person’s actual skill level in written English.

9
10 44. As seen in the examples above, the HNRs submitted by Deaf class members
11 clearly demonstrate that for most, their written English skills are generally poor, for the
12 reasons discussed above concerning the inherent difficulty in acquisition of fluency in
13 English, and limited literacy levels among the Deaf community. Many of these HNR’s do
14 not clearly tell the medical provider what the issue is and should serve as red flags that in-
15 depth communication and probing will be necessary to get to the bottom of the medical
16 concern in the medical encounter.

17 Grievances

18 45. If denied an interpreter, the grievance process, which is also accessed through
19 writing becomes a further barrier, again because of the reading/writing level of most Deaf
20 people. Limitations on reading and writing suggest that lack of access to English and to an
21 adequate education had been a life-long obstacle to this person as well. Older Deaf
22 individuals who experienced their education and their medical care without interpreters (or
23 without privacy by relying upon friends or family members) prior to the Americans with
24 Disabilities Act (ADA), were particularly disempowered in this regard and, over a lifetime,
25 became resigned to a lack of communication access in critical encounters. Even when the
26 ADA was enacted many of them were so resigned to their lack of access that they didn’t
27 even ask, or in asking and being denied once, quickly gave up for fear of offending the
28 healthcare provider and not receiving the care they needed. They resigned themselves to

1 “making do” and suffering the consequences when problems arose. Post ADA, many Deaf
2 people tried to exercise their rights and requested interpreters. In many cases they were told
3 that the final decision as to what constituted an adequate accommodation was in the hands
4 of the service provider; and if they disagreed, they would need to file a grievance or pursue
5 a legal remedy.

6 46. Deaf people have been conditioned though experience after experience to
7 recognize that they are a burden to society and that requiring interpreters (even if it benefits
8 both parties better) requires extra steps that providers do not want to deal with, such as
9 calling for an interpreter, scheduling an interpreter, arranging to pay a fee, and sometimes
10 scheduling a longer appointment. Furthermore, in his dissertation, Schwartz (2006) labels
11 a phenomenon called “letting go,” which is a response to juggling the stress of dealing with
12 the need to further advocate for communication access on top of worrying about their
13 health and dealing with whatever pain they may be experiencing. In the context of setting
14 up a medical appointment that needs an interpreter with a provider that is resistant to
15 providing one, “letting go” involves a cost benefits analysis that weighs current discomfort
16 and the urgency to be treated, against the risk of missed communication and the
17 consequences that could result from that. Often “letting go” means the priority is on getting
18 immediate care instead of battling it out to get clear and concise access to communication.
19 Choosing communication can result in delays in receiving care, which could lead to more
20 severe health issues in the long run. (DeVault et al, 2011).

21
22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on August 23, 2020, in Livermore, California.

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26 s/
27 _____
28 AMY JUNE ROWLEY, PH.D.

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020 I electronically transmitted the above document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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EXHIBIT B

From: [Patrick Booth](#)
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Subject: Re: Monitoring Compliance re Non-Architectural Accommodations for Armstrong Class Members
Date: Wednesday, December 16, 2020 5:07:35 PM
Attachments: [20.12.15 Arm Adv Ltr Accommodations for Deaf CMs at SATF During Current Outb....pdf](#)

Thank you for the quick reply, Andrea. I've attached Skye and Rita's recent letter about accommodations for Deaf class members at SATF in isolation and quarantine units. Regarding the information from our interviews with DPV class members, I have included below my colleague's notes from their calls. To give a bit more context, my colleague conducted three calls yesterday with DPV class members in isolation units. The notes below are only a rough outline of the issues. Please let me know if you have any questions.

NOTES FROM DPV CALLS:

Class members: [REDACTED], DNM, DPV), [REDACTED], DPM, DNH, DPV), and [REDACTED], DLT, DPV)

Gym Accessibility (Placement & Mobility)

All three class members were housed in the Facility A gym for some period of time for isolation. They described being placed in locations where they could not access the restrooms, and reported features (like unsecured cords on the floor) that made it difficult for them to ambulate safely and independently. Mr. [REDACTED] and Mr. [REDACTED] both reported not drinking water for extended periods to minimize the number of times they would need to use the restroom, during times they had active cases of COVID-19 and despite their underlying medical conditions.

- Mr. [REDACTED] reported that he was moved to the gym from Building A1 on Friday, November 27. He described the single bunk he was assigned as a "nosebleed bed," because it was a long way from the restroom and shower and required him to weave through others' bed areas. In his words, "It was no-man's land. . . it was chaos in there." He stopped drinking water on Saturday to avoid needing to use the restroom. He reported that a nurse recorded him as having low blood pressure during surveillance rounding because of his low fluid intake. He reported that several people were moved out of the gym to other yards at 1am to 2am on Saturday, and that he begged officers to move him as well - in a pod or a cell, he would have had easier access to the restroom than in the gym. He reported that midday on Saturday, a friend checked on him, and subsequently advocated for him to be moved to a different bed in the gym, which he was on Sunday morning. Once he was moved, an officer approached him and asked if he was "okay now." Mr. [REDACTED] recalled thinking, "Why didn't he ask me that when I moved in here?"
- Mr. [REDACTED] who is congenitally blind, reported that he was moved to the gym from Building A1 on a Thursday around three and a half weeks ago. He was assigned to a bed that was a ways from the bathroom, which he could not reach independently due to bunks and other obstacles in the path of travel. Mr. [REDACTED] has a medical condition related to his prostate that results in him needing to use the restroom frequently throughout the night. However, he reported that while in the gym, he drank

hardly any water, so that he would not need to ask a neighbor for help getting to the restroom in the middle of the night. He described being stressed and unable to relax because he was so focused on not drinking or using the restroom. He reported that at the first opportunity on his first day in the gym, he asked officers to move him to a different bunk closer to the restroom. The officers responded that they would not be doing any moves. He also asked a representative from the ADA office who interviewed him on the Friday after he moved to the gym. The representative said they would talk to the lieutenant, but Mr. [REDACTED] reported that he never heard back. He described having to pester custody staff for three days, and ask his loved ones in the community to call the prison on his behalf, before he was moved out of the gym to Building A2.

Mr. [REDACTED] and Mr. [REDACTED] also described encountering extension cords on the floor that made it dangerous for them to ambulate around the gym.

- On his first day in the gym, another incarcerated person showed Mr. [REDACTED] the path from his bunk to the restroom. At that time, there were no cords on the floor that could cause Mr. [REDACTED] to trip. However, on his second day in the gym, he noticed that there were cables running along the floor between his bunk and the restroom. Another incarcerated person saw that Mr. [REDACTED] was stuck and came over to guide him around the obstacle. However, Mr. [REDACTED] said that, "Had it not been for the guys helping me around obstacles, yeah, it was a safety concern there. Nothing stays the same. Everything from one day to the next changes."
- Mr. [REDACTED] reported that he tripped over someone's extension cord several times, cutting off the person's television. Fortunately the individual was understanding, but Mr. [REDACTED] was concerned that the situation could have escalated to conflict with someone less sympathetic. Mr. [REDACTED] had surgery in which a shunt was placed in his right eye, and often worries about being hit or falling on his right side, because he doesn't not know what would happen to the shunt and whether it could damage his eye.

All three class members also reported that they were provided minimal orientation to the space, and that what orientation they did receive was provided by other incarcerated people. For example,

- Mr. [REDACTED] reported that he did not know what hours the showers were on, and speculated based on when he heard the shower running.
- Mr. [REDACTED] had another incarcerated person show him the path from his bunk to the bathroom on his first day in the gym, but did not receive any additional orientation. As a result, he reported that he was only able to get up and walk around once in the three days he was in the gym, when he asked another incarcerated person for help going on a short walk. He said that sighted people in the gym often got up and walked around to pass the time, and that he would have liked to be able to do so independently (as he typically would in the building), but could not.
- Mr. [REDACTED] also reported that he could not take walks to pass the time because he was not oriented to the gym. He added that the gym was crowded and that bunks were very close together.

Staff Assistance

All three class members reported that custody staff rarely asked them what they needed or offered assistance (although Mr. [REDACTED] and Mr. [REDACTED] described being interviewed by ADA staff, below). For example,

- Because of the lack of orientation provided in the gym, Mr. [REDACTED] reported that he would not have been able to flag down an officer to ask for assistance without help from another incarcerated person. "I was out of my element. I didn't know where they had stuff set, I didn't know where nothing was." He was moved to the gym at night and the lighting in the gym was dim, which made it difficult for him to initially get his bearings or to use his residual vision once in the gym. He was aware that there was likely a podium in the gym where officers were stationed, but did not know where it was. He said that he would only have been able to find an officer if he heard the sound of keys nearby.
- Mr. [REDACTED] described being stranded and relying on other incarcerated people to identify when he needed assistance and volunteer to help. For example, when showering, he described asking someone to guide him to the shower, check that the shower was empty, and help him get into the shower. After he was dressed, he reported that he would stand in front of the shower area, and wait until someone approached him and offered to guide him back to his bunk. He reported that in this and other situations, the only assistance he received was because other incarcerated people could see that he needed help. Officers never offered him assistance.
- Mr. [REDACTED] reported that he overheard an officer say to someone assisting Mr. [REDACTED] that he would not provide disability accommodations because, "that's his problem." He reported the comment to the ADA staff representative during the interview described below, but said that the staff member did not ask for additional information or witnesses.

Interviews with ADA Staff

Mr. [REDACTED] and Mr. [REDACTED] both reported that they were interviewed by someone from ADA staff, likely a CCII, between one and three days after moving to the gym. They were interviewed at the same time, with a group of other people with disabilities.

- Mr. [REDACTED] reported that this interview took place mid-morning on the Friday after he was moved to the gym. He could not recall who the representative from the ADA staff was, but that he interviewed around six to eight people with disabilities at once. He reported that the staff member asked if they were being accommodated, if everything was going well, and if people had any issues to raise. Mr. [REDACTED] was able to speak to him one-on-one after the group discussion, at which time he asked to be moved to a bunk closer to the restrooms. Mr. [REDACTED] said he got the impression that the ADA staff representative was willing to work with him around his disability, and was discouraged that no action was taken on his reported issue for another two days.
- Mr. [REDACTED] reported that the interview took place three days after he moved to the gym. The ADA CCII asked questions to a group of six to eight people with disabilities about how they felt, whether they were getting along, and whether they

were able to ambulate. Mr. [REDACTED] reported that the CCII did not explain why he was interviewing the group, and that as a result, Mr. [REDACTED] was concerned he would be moved in response to any issues he raised. He did not want to risk going to another yard (particularly a Level IV yard), so did not share any of his individual concerns.

Access to Auxiliary Aids

None of the class members currently have access to auxiliary aids that would allow them to read and write independently. Mr. [REDACTED] reported that he is primarily using his JPay tablet, but that unfortunately there are issues with text-to-speech software on the tablet with a few applications. Rita and I are planning to follow-up on that separately. Otherwise, class members have been reliant on ADA workers during the outbreak. Mr. [REDACTED] reported particular problems with the lack of access to auxiliary aids.

- Prior to his isolation placement, Mr. [REDACTED] reported that there was a member of free staff who came to Building A1 where he was housed on the first Wednesday of every month. The free staff would ask if any people with vision disabilities wanted to use the DaVinci, located in education, for 45 minutes. He does not currently have active cases, but regardless, that amount of access is not adequate for Mr. [REDACTED] he joked that it can take him 45 minutes just to get situated. He reported that 90 minutes would be a more appropriate amount of time to be allowed to use the DaVinci. He reported that he has previously exhausted appeals asking for a DaVinci to be placed in the housing unit instead, where blind and low-vision people can access it more readily.
- Since being placed in isolation, Mr. [REDACTED] reported that it has been difficult for him to stay in touch with his family due to the lack of access to auxiliary aids. He only uses the phones on free call days due to his family's financial situation, so primarily writes letters. He prefers to type his letters so they are clear, because his brother has a similar vision disability to his own; "I know what it's like to try to read a hand-written letter on a magnifier," he said. "He's liable to cuss me out." However, Mr. [REDACTED] does not have a personal typewriter. As he cannot go use the typewriter in the library, he reported that he has not been able to write to his brother or other family members for two months. He does not trust ADA workers to help him write to his family, which involves sharing their addresses and other personal information, due to previous experiences with ADA workers and other incarcerated people trying to take advantage of him; at least one of these experiences led to violence. He reported having one friend in his Building A2, his current building, who he trusts to write to his family. However, he does not want to overwhelm his friend with requests for assistance, and so has gone without reading and writing to his family.

On Wed, Dec 16, 2020 at 4:48 PM Andrea Moon <Andrea.Moon@doj.ca.gov> wrote:

Patrick,

Thank you for your email. Defendants will be prepared to discuss Plaintiff's monitoring proposal, as well as the proposed memorandum. A copy of that memorandum will be provided upon final

EXHIBIT C



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VIA EMAIL ONLY

September 14, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

Armstrong v. Newsom
RE: Medical Isolation and Quarantine Housing for *Armstrong* Class Members at the California Substance Abuse Treatment Facility and State Prison, Corcoran

Dear Ms. Davis:

Plaintiffs continue to have serious concerns regarding the housing of *Armstrong* class members in medical isolation and quarantine at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). We appreciate that, in response to our concerns, Assistant Deputy Director Fouch visited the institution on September 3, 2020, and provided institution staff with additional information about their responsibilities during the pandemic.

As we discussed on September 4, Plaintiffs are concerned that many of the issues at SATF are very similar to those at the California Institution for Men earlier in the pandemic. To prevent these serious issues from happening again at any institution, Defendants must put in place clear, detailed written procedures. This is particularly important because, in the last four months alone, there have been changes to the ADA Coordinator and/or CAMU CCII at fifteen institutions. *See* note 4, below. In this letter, we outline several issues that must be addressed.

1. Defendants May Not Expose Class Members to a Heightened Risk of Infection Because of Their Disabilities and Lack of Appropriate Accessible Housing.

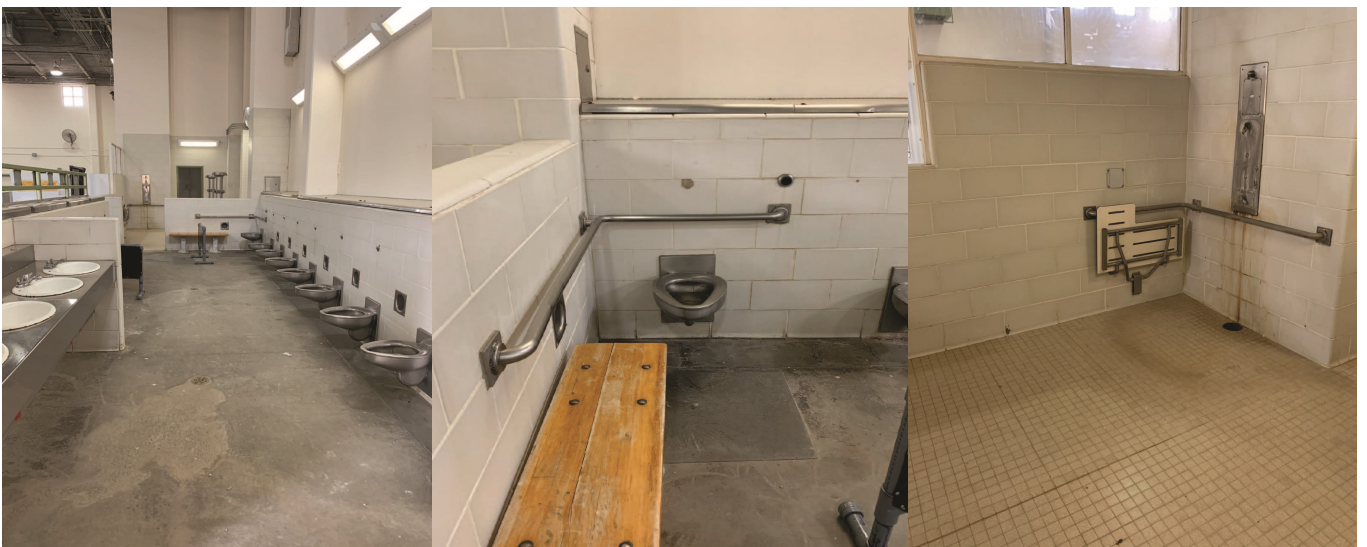
The Court Expert found that the deficiencies of accessible housing for purposes of medical isolation and quarantine at SATF were “extreme” and “dramatic.” Doc. 3048 at 17 (“SATF has more than 70 DPW class members but has selected quarantine and isolation spaces that can house no more than two of them”). Unfortunately, two days after the Court Expert filed his Report and Recommendations, Defendants’ failure to appropriately plan for the housing of *Armstrong* class members during the pandemic exposed, and continues to expose, class members at SATF to an unacceptable and heightened risk of infection from the novel coronavirus.

On August 21, 2020, eighteen *Armstrong* class members were moved to the gymnasium on Facility A after “direct exposure” to an infected staff member. The gym is an open, poorly ventilated converted living area with only one accessible toilet, sink, and shower. Photographs of the gym appear on the next page.

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Re: Medical Isolation and Quarantine of *Armstrong* Class Members at SATF
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Facility A Gymnasium, SATF

Ms. Tamiya Davis
 Re: Medical Isolation and Quarantine of *Armstrong* Class Members at SATF
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Six days later, on August 27, class members with DPO, DPM, DLT, DNM, and DKD codes were moved out of the gym and into designated quarantine space in Building E2. That left nine class members in the gym—six people designated DPW, an 83-year-old man designated DPM, and two people designated DLT.¹ (The two DLT class members had volunteered to provide disability-related assistance to others in the gym.) Most of those class members are in their 60s, 70s, and 80s, and have significant underlying medical conditions that put them at increased risk of getting very sick and dying from COVID-19. Those class members were exposed again to a staff person who tested positive on September 3, and remain in quarantine in the gym. They now have been housed in the gym for **24 consecutive days**.

Name	CDCR No.	DPP Code	Age	COVID Weighted Risk Score (Risk Factors)	Bed Nos.*
		DPW	68	10 (COPD, CVD-CHF, CVD-IHD, CVD-PVD, CVD-HTN, CVD-Valvular, Diabetes, Age)	26, 14
		DPW	60	2 (CVD-HTN, BMI)	28, 15
		DPW	79	10 (CKD, CVD-HTN, Diabetes, Advanced Liver Disease, BMI, Age)	13, 29, 13
		DPW	57	1 (Persistent Asthma)	16, 39, 41
		DPW	61	3 (CVD-HTN, Advanced Liver Disease)	29, 40
		DPW	49	1 (BMI)	19, 42, 16
		DPM	83	9 (CKD, CVD-HTN, Diabetes, Advanced Liver Disease, Age)	2, 46
		DLT	65	10 (CKD, CVD-HTN, Diabetes, Advanced Liver Disease, BMI, Age)	44, 44
		DLT	55	5 (CKD, CVD-IHD, CVD-PVD, CVD-Thromboembolic, CVD-HTN, BMI)	6, 45

* The first bed number is where the person was assigned on August 25, the first day that SATF recorded gym bed numbers. The second bed number listed for [REDACTED], [REDACTED] and [REDACTED] is for August 26, when they moved beds. All class members except [REDACTED] moved beds on September 2, so that is the next bed number listed. Finally, according to the medical record, it appears that [REDACTED] currently is housed in a new bed, although we do not know when he was moved there. The last bed number listed for him reflects his bed assignment as of this afternoon.²

¹ [REDACTED], DPW, was moved from Building A3 into the gym on August 26, 2020, and then returned to A3 two days later. It is unclear why he was moved into the gym and how he was cleared to return from the quarantine unit to regular housing so quickly.

² Plaintiffs repeatedly have requested a diagram of the gym with bed numbers. Defendants have not yet produced one. One class member reported that he and others were told to move to beds toward the back of the gym in preparation for more people moving in, so people were housed relatively close together, even though no one later moved in.

Ms. Tamiya Davis

Re: Medical Isolation and Quarantine of *Armstrong* Class Members at SATF

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The placement of *Armstrong* class members in the Facility A gym due to their disabilities is unacceptable. The gym is unsuitable for quarantine and puts class members at increased risk of infection compared to other people on Facility A who instead were placed in single cells with solid doors in the building that had been designated for quarantine. *See* Doc. 3048 at 7 (Aug. 19, 2020) (Court Expert Report) (“[I]ndividuals in quarantine cannot be housed in a common space with any other individual because of the risk that an infected quarantined inmate could spread the virus to others in quarantine who may not yet be infected. . . . Because of the risk of airborne spread of the disease, individuals in quarantine should be housed in cells with solid doors.”).

Defendants must ensure that this type of discriminatory and unsafe quarantine housing does not occur again at SATF or any other institution.

2. Defendants May Not House *Armstrong* Class Members in Administrative Segregation Simply Because There Is No Other Accessible Housing.

██████████, DPW, B3, was tested on August 25, 2020, and found to be infected by the novel coronavirus. At that time, the few designated medical isolation and quarantine DPW cells already were occupied. As a result, the institution moved Mr. ██████ into Short-Term Restricted Housing (“STRH”) on August 27. When our office spoke with him six days later, Mr. ██████ had not been told that he had COVID-19. He reported that he had not received any of his personal property and that he had not been given access to the phone or recreation. *See* CCHCS, COVID-19 and Seasonal Influenza: Interim Guidance for Health Care and Public Health Providers, Control Strategies for Suspected and Confirmed Cases, <https://cchcs.ca.gov/covid-19-interim-guidance/> (rev. Aug. 21, 2020) (“Medical isolation conditions should be as similar to regular housing as possible.”). In fact, the institution initially denied our legal call request because Mr. ██████ was in medical isolation. No one else who has been infected with the novel coronavirus has been housed in the STRH at SATF.³

That, too, is unacceptable, and violates prior court orders. *See* Doc. 2496 at 2 (Order) (Feb. 3, 2015) (holding that “housing disabled class members in administrative segregation solely because of their disabilities violates this Court’s prior orders,” the Americans with Disabilities Act, and its implementing regulations).

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³ Another DPW class member remained housed in the cell next to Mr. ██████ presumably using the same shower (the only accessible shower in the STRH).

Ms. Tamiya Davis
Re: Medical Isolation and Quarantine of *Armstrong* Class Members at SATF
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3. ADA Staff at Each Institution Must Be Aware of and Involved in Housing Decisions for *Armstrong* Class Members.

As with CIM earlier in the pandemic (*see* Doc. 2996-1 at 61), ADA staff at SATF were not informed of or involved in quarantine and medical isolation housing decisions related to *Armstrong* class members. ADA staff informed Plaintiffs' counsel on August 26, 2020, that they had learned that *Armstrong* class members were housed in the gym earlier that day, **five days** after class members had been housed there, and only after reviewing a DPW exception report. As with CIM, ADA staff at SATF did not appear to see a role for themselves in such housing decisions or understand why placement in the gym might be inappropriate.

During a regularly scheduled *Armstrong* tour on August 20, the day before class members were moved into the gym, ADA staff reported that they did not know whether the gym would be used to house anyone for any purpose; that they did not know if a trapeze bar could be installed in the gym, had not discussed the matter with Plant Ops, and had no plan in place if someone required that accommodation; that there was no appeals box; and that they did not know of any plan to address cords from the outlets on the back wall so they would not pose a tripping hazard.

In addition, we are concerned that the institution did not accurately record where class members were housed. In particular, between August 21 and 25, class members housed in the gym were still listed as being in their previous dorm housing on Facility A. Their gym housing apparently was entered into SOMS only on August 25. The only way the institution was able to identify who was housed in the gym between August 21 and 25 was by review of the Out-Count Rosters (an example Out-Count Roster attached), which list incorrect bed assignments.

Defendants cannot comply with the housing and notice requirements in the Court's July 20, 2020 Order if they do not have an accurate record of where class members are housed and if ADA staff is not informed of and involved in housing decisions. We thought these issues had been addressed after CIM, but unfortunately it appears they have not been.

4. Defendants Must Account for Changes in ADA Staffing.

At both CIM and SATF, Defendants stated that errors may have resulted in part from the fact that the ADA Coordinators had been on scheduled leave during the pandemic. It has been six months since the beginning of the pandemic, and the pandemic is expected to last for another year or more. Defendants must develop procedures to ensure that they comply with court orders when ADA staff take scheduled or unscheduled leave and when, as already has happened at SATF and at least fifteen other institutions during the pandemic, there are changes in critical ADA staffing.⁴

⁴ Since May 2020, the ADA Coordinator and/or CAMU CCII has changed at least once at ASP, CCWF, CTF, CVSP, DVI, FSP, ISP, KVSP, LAC, PBSP, RJD, CSP-SAC, SVSP, VSP, and WSP.

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5. Defendants Must Ensure That the CDCR 128-B Process Is Timely and Reliable.

Finally, we remain concerned about the manner in which CDCR 128-Bs were completed for class members in the gym. They were untimely; ADA staff completed chronos five and six days after class members had been housed in the gym. ADA staff told us on August 26, 2020, that they believed, based on an April 10, 2020 memorandum, that they had five days to complete the chronos. The chronos contained perfunctory, template language, and class members disputed the information contained in them, including whether a Spanish language interpreter was provided and whether they had been interviewed at all. *See* Doc. 3055-1 at 125-142. The chronos also failed to identify that two class members required trapeze bars, including one who had “ADA-GRAB BARS IN CELL” listed in SOMS. Defendants told us that after we raised this concern, medical staff evaluated at least one class member, determined that he needed trapeze bars, and the institution planned to install them shortly. We see no evidence of that, however, in the electronic medical record. We request photographs of the trapeze bars in the gym, as well as information regarding which beds they were installed in, and when they were installed.

The CDCR 128-Bs are particularly important where, as here, class members with significant disabilities are moving from a dorm environment with bunk beds to a single (“Cadillac-style”) bed. This is because in the dorm environment, class members were able to use the bars on the upper bunk, with or without makeshift trapeze bars, to get in and out of bed. Staff should let class members know that trapeze bars are available and that they will not be placed in administrative segregation simply because they request them. *See* Doc. 3055-1 at 129.

For similar reasons, it is important to check in with DPO class members moving from dorm environments to cells for purposes of medical isolation or quarantine. It may be that they should have a DPW code, but do not because in their dorm environment, they are able to maneuver their wheelchair around their bed and access grab bars in the toilet and shower areas, and therefore there was no need for them to request a DPW code. This appears to have been the case at SATF. For example, [REDACTED], DPO, A3, reported that he is a full-time wheelchair user and cannot walk or stand. (An entry in his medical record dated September 14, 2018, states that he “does not walk is wheelchair bound.”) He reported that he was housed in the gym for about a week and then was housed for a day in E2, before returning to A3. He reported that the cell in E2 was too narrow for his wheelchair to maneuver to the bed, so he had to get out of his wheelchair and crawl to his bed.

Similarly, [REDACTED], DPO, DNH, A2, reported that he was housed in the gym for about a week and then housed briefly in E2. He reported that he can stand for only a very short amount of time, that he had trouble getting from his wheelchair to his bed in E2, and that he was afraid to get out of bed. He reported that he raised these concerns with housing officers, but they did not offer him any help and instead simply told him, “You better get used to it.” He

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reported that when a nurse later saw him attempt to get to the cell door for his medication, she requested that he receive help getting in and out of his cell, which a porter then provided.

Defendants represented to the Court that “all class members are currently in safe and accessible housing.” Doc. 3047 at 11 ¶ 29. That appears to be based on a flawed, unreliable, and incomplete CDCR 128-B process. In addition to the problems identified at SATF, Plaintiffs have reported that, at multiple institutions, CDCR 128-Bs either are not done at all (MCSP, DVI, and CIM), are done days or weeks after someone is housed in an area not designated for his DPP code (CSP-COR, NKSP), or are being completed without discussion with the class member, even when significant disability concerns result in the class member being housed in administrative segregation instead of the area that Defendants unilaterally have declared “accessible,” notwithstanding the parties’ longstanding DPP matrix agreements (CSP-SAC).

Defendants must develop clear and detailed guidance about the CDCR 128-B process, including when the chronos must be completed and what information must be discussed with the class member. Defendants had intended to address this problem, which also arose at CIM earlier in the pandemic, by creating a “checklist.” That, unfortunately, was never created. On September 4, 2020, Defendants stated that they would develop the checklist and provide a draft to Plaintiffs for review and comment. We have not yet received a draft.

* * * * *

Please let us know if you would like to further discuss any of the concerns above and how best to address them. Plaintiffs would like to review any draft guidance, directives, or checklists meant to address the above concerns before they are issued to the field.

Thank you for your attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney

cc: Ed Swanson, Court Expert
Sean Lodholz, Office of the Attorney General
Alexander Powell, CDCR Office of Legal Affairs
Bruce Beland, CCHCS Office of Legal Affairs
Adam Fouch, Landon Bravo, Division of Adult Institutions

EXHIBIT D



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December 9, 2020

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

Re: *Armstrong v. Newsom*: Renewed Request for Defendants to Address
Problematic Staff at RJD and Produce Information and Documents Related
to DART
Our File No. 0581-03

Dear Tamiya:

Plaintiffs write to request that Defendants respond to multiple letters we have written about problematic staff at RJD including our August 26, 2020 letter regarding unprofessional conduct of CDCR officers on social media, our September 11, 2020 letter regarding multiple allegations of misconduct involving Officer [REDACTED] and our November 19, 2020 letter regarding serial complaints against Officer [REDACTED]

We would like to schedule a call in the next week to discuss the status of investigations into these allegations. We are available on Tuesday, December 15, 2020 or on Friday, December 18, 2020 (after 1:00 p.m.) for this call. Please let us know what day/time works for Defendants.

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Tamiya Davis
December 9, 2020
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Further, we have the following additional information to share relating to the allegations against Officer ██████████ contained in the September 11, 2020 letter:

Mr. ██████████), referenced in the September 11, 2020 letter, reports that he was induced by staff into withdrawing his 602 against Officer ██████████ for the events described in the November 11, 2020 letter. During an appeal interview, Lieutenant ██████████ reportedly told Mr. ██████████ that Officer ██████████ was “gone” and encouraged him to withdraw his 602 because Officer ██████████ had been removed from his post. Mr. ██████████ agreed to withdraw his 602 because Officer ██████████ had not been at his post for a number of weeks prior and, therefore, Mr. ██████████ interpreted Lieutenant ██████████ comment to mean that he would no longer have to interact with Officer ██████████ because he had been re-assigned or terminated. Mr. ██████████ reports that the withdrawal was documented on a chrono.

A few days later, however, Officer ██████████ returned to the facility. Since Officer ██████████ return, Mr. ██████████ reports that Officer ██████████ continues to refuse to open his cell door for medication and, when Mr. ██████████ calls out to be released, Officer ██████████ makes comments like, “you don’t take medication, what do you want?” even though Mr. ██████████ takes medication daily. As a result, Mr. ██████████ continues to be harassed by Officer ██████████. Mr. ██████████ allegation is consistent with prior reports from other class members, including Mr. ██████████ who also reported that Officer ██████████ had refused to let him out of his cell to receive medication. *See* Declaration of Michael Freedman in Support of Plaintiffs’ Ex Parte Motion for Temporary Restraining Order, Dkt. 2969-7, Ex. 3. These reports have been credited by the Court. *See* Order Granting in Part Motion for a Preliminary Injunction, Dkt. 3025 (“Inmate 2 asserts that officers repeatedly failed to release him from his cell on a timely basis so that he could take his medications, and he believes that such failures are connected to his assistance with the enforcement motions. The Court finds these assertions credible.”).

Please investigate these additional allegations thoroughly and in conjunction with those previously raised in our September 11, 2020 letter. Please also investigate the allegation that Lieutenant ██████████ induced Mr. ██████████ to withdraw his 602. Please provide a response regarding the status of any inquiries/investigations into ongoing reports of Officer ██████████ misconduct, and please let Plaintiffs know who is handling the inquiry/investigation, whether he has been redirected pending investigation as required by the RJD Injunction, and the outcome of any conclusions reached so far in that process.

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We have also received reports from class members housed on Building 1 on Facility A that there are no anti-retaliation notices posted in the building. As you know, CDCR is obligated by Court Order to post these notices in housing units at RJD. *See* March 17, 2020 Stipulation and Order Prohibiting Retaliation, Dkt. 2931 (“Anti-retaliation order”), ¶ 2 (c); *see* also Order for Additional Remedial Measures, Dkt. 3060, ¶ 5.h. This stipulation remains in effect until at least six months after the Court’s ruling on the motion becomes final. *See* Anti-retaliation Order, ¶ 6.

Please ensure that anti-retaliation notices are posted in Building 1 at RJD as soon as possible. Please also ensure that a CAMU representative tours each of RJD’s 23 primary housing units to ensure that RJD is in compliance with the notice-posting requirements of the Anti-retaliation Order. If any other housing units do not have notices posted, please ensure that CAMU staff immediately post the notices. Please report back when you have confirmed that all housing units at RJD are in compliance with ¶ 2 (c) of the Anti-retaliation Order.

Plaintiffs also renew our request that Defendants produce information and documentation related to the forty-one DART interviews conducted since July 2020. To date, Defendants have refused to produce any information or documentation related to these DART interviews, other than to inform Plaintiffs that the general purpose of DART is to investigate the reports of disability-related staff misconduct contained in the declarations.

As we have previously expressed, many of the forty-one DART interviews observed by Plaintiffs’ counsel have been biased and are not comprehensive. *See* Reply Declaration of Penny Godbold in Support of RJD Motion, Dkt. 3023-7, ¶¶ 6-9 & Ex. B. For example, in many cases, the declaration at issue contains a straightforward account of events and yet much of the interview is spent attempting to ascertain names of witnesses or involved officers when the declarations either have those listed or state that the class member does not recall. Further, Defendants have conducted multiple DART interviews with many declarants whose declarations are straightforward, like: Mr. ██████████ (interviewed three times regarding one declaration containing cell-door-closure reports); Mr. ██████████ (interviewed two times regarding one declaration containing single report); Mr. ██████████ (interviewed two times regarding one declaration containing cell-door-closure reports); and Mr. ██████████ (interviewed once, but second interview scheduled on December 10, 2020, regarding one declaration containing single report). If the DART interviews were conducted efficiently, these duplicative interviews to investigate relatively simple declarations would not be necessary. As it stands, conducting multiple,

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Tamiya Davis
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in-person interviews, in most cases with three of four people in the room, during a pandemic, is unnecessary and places the health of our clients at great risk.

Plaintiffs therefore urge Defendants to ensure that DART interviews are conducted as efficiently and comprehensively as possible to preclude the need for repeat interviews or at the very least, to eliminate the need for in-person interviews of our clients. It is unclear why any repeat DART interviews could not be conducted telephonically.

We reiterate our request that Defendants produce documentation and information related to the DART interviews. Plaintiffs have prepared a spreadsheet requesting information regarding the forty-one DART interviews, enclosed herewith. Plaintiffs request that Defendants complete the spreadsheet and produce any documentation associated with the information on the spreadsheet no later than January 8, 2020. If Defendants are unable to complete the enclosed spreadsheet and produce associated documentation, Plaintiffs intend to serve discovery on Defendants to obtain this information.

We look forward to scheduling a meeting with you to discuss these issues further.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold

PG:JRG

Enclosure (in email)

cc: Ed Swanson
August Gugelmann
Adriano Hrvatin
Alicia Bower
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EXHIBIT E



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January 8, 2021

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Re: *Armstrong v Newsom*: Plaintiffs' Review of Parole Field Files for DPH
Class Members
Our File No. 0581-09

Dear Tamiya and Nick:

In October 2020, Defendants produced the parole field files of twenty DPH parolees. Plaintiffs' past letters have identified serious problems in the field files of parolees requiring sign language interpretation ("SLI") for effective communication. See February 11, 2020 Letter from Jenny Yelin and Caroline Jackson to Russa Boyd and Nicholas Meyer ("February 11, 2020 Letter"); May 30, 2017 Letter from Jenny Yelin and Benjamin Bien-Kahn to Russa Boyd and Nicholas Meyer; July 1, 2016 Letter from Tom Nolan to Russa Boyd and Andrea Moon; October 23, 2015 Letter from Blake Thompson to Trina Hirsig and Andrea Moon.

Although DAPO has made improvements in ensuring that certified sign language interpreters are present during initial interviews and containment team meetings, our review of these parole field files and Record of Supervision ("ROS") entries reveals that many of the problems identified in Plaintiffs' past letters persist, including:

- Denial of access to needed programs and services on parole based on lack of sign language interpretation services;

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- Failures to provide sign language interpretation services for due process communications regarding compliance with conditions of parole, reporting requirements, and subsequent instructions for which a parolee's non-compliance may result in a parole hold;
- Use of written notes instead of a sign language interpreter for class members with no alternate communication methods, cognitive/intellectual disabilities, and/or low TABE scores; and
- Failure to follow required steps to verify achievement of effective communication.

Plaintiffs' review of this subset of field files for DPH parolees focused specifically on DAPO's use of Video Remote Interpreting ("VRI") services. In our prior letters, we recommended that DAPO increase its use of VRI and relay services in order to improve its agents' effective communication with DPH-SLI parolees. Although parole agents seemingly have increased their usage of VRI, Plaintiffs note the following deficiencies:

- Multiple examples of staff encountering technological and/or connectivity issues when attempting to use VRI, and failures of staff to log and track these failures;
- Failure to adequately train staff on how and under what conditions to use VRI, resulting in the partial, inconsistent or infrequent use of VRI services during supervision contacts;
- Multiple examples of staff improperly using Video Relay Services ("VRS") rather than VRI for in-person supervision contacts, in violation of federal law; and
- Multiple examples of staff improperly using VRI rather than in-person sign language interpreters for due process encounters.

As detailed below, DAPO's current practices violate the Parole Field Operations Section of the *Armstrong* Remedial Plan, the *Armstrong* Remedial Plan II, this Court's previous Orders, including the September 11, 2007 Order, and the ADA Title II regulations, and inflict serious harm on *Armstrong* class members.

The issues outlined below indicate that DAPO continues to fall short in meeting the effective communication needs for parolees requiring sign language interpretation.

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By failing to address and make improvements on these issues, DAPO ultimately puts those DPH parolees at risk of violating their conditions of parole and subsequent instructions that may lead to their detention on parole holds because parole agents never effectively communicated with them in the first place.

1. Inadequate SLI Services for Notice of Conditions of Parole

The *Armstrong* Remedial Plan (“ARP”) requires that “for parolees who use sign language as their primary method of communication, a sign language interpreter must be provided for communication of the conditions of parole [and] initial interview.” ARP Parole Field Operations Section, p. 3. Although in most instances DAPO agents provided DPH-SLI parolees notice of their conditions of parole with sign language interpreters, there was one instance where they failed to do so, attached as **Appendix A**:

- [REDACTED] Ms. [REDACTED] agent informed her of her amended conditions of parole—which added GPS surveillance—without a sign language interpreter. *See* Aug. 5, 2020 ROS Entry. The ROS entry notes that the agent tried to use VRI but the tablet did not work. The agent documented that he and Ms. [REDACTED] wore masks due to COVID-19 and communicated by her reading his lips; however, it is not possible to read the lips of a person wearing a mask.

Plaintiffs’ counsel also noted numerous instances in which DAPO provided a single sign language interpreter for an initial interview, as opposed to a team of two interpreters. Plaintiff’s counsel has previously explained the importance of providing two qualified sign language interpreters on site during an interview explaining the initial conditions of parole. *See* J. Yelin & C. Jackson, Report re LA Central 1, 2, 3, 4 & GPS Parole Units (July 17, 2019) (“July 2019 Report”); C. Jackson, Report re 2-27-2020 Observation of [REDACTED] at Fresno GPS Parole at 6-7 (March 18, 2020) (“March 2020 Report”); C. Jackson, Report re Q4 2020 Observation of Initial Interview of [REDACTED] (DPH) (October 28, 2020) (“October 2020 Report”).

We identified five instances in which DAPO agents conducted initial parole interviews using a single sign language interpreter. Supporting documents is attached as **Appendix B**:

- [REDACTED]: Mr. [REDACTED] received his initial conditions of parole through a single sign language interpreter. Plaintiffs’ counsel

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observed the initial interview and documented this event in the subsequent report. *See* October 2020 Report.

- [REDACTED] Mr. [REDACTED] received his initial conditions of parole through a single sign language interpreter. *See* July 29, 2019 ROS Entry.
- [REDACTED] Ms. [REDACTED] received her initial conditions of parole through a single sign language interpreter. *See* July 30, 2020 ROS Entry.
- [REDACTED] Mr. [REDACTED] received notice of his conditions of parole through a single sign language interpreter on October 6, 2019, even though the initial interview lasted four hours. *See* CDCR 1650-B and Notice and Conditions of Parole; *see also* DAPO Q4 October 2019 SLI Scheduling.
- [REDACTED] Mr. [REDACTED] received his initial conditions of parole through a single sign language interpreter. Plaintiffs’ counsel observed the initial interview and documented this event in the subsequent report. *See* C. Jackson, Q3 Tour of Bakersfield 2, 3 & GPS Parole Units (October 10, 2019). Those present indicated that DAPO had sought a second interpreter unsuccessfully. *See id.* at 2.

2. Denial of Access to Programs and Services on Parole

Parolees who require sign language interpreting services must not be denied access to programs provided to other parolees based on the lack of sign language interpreting services. *See* 28 C.F.R § 35.160(b)(1) (“A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.”). DAPO’s August 6, 2018 memo regarding “Effective Communication and/or Reasonable Accommodations during Parole Proceedings and/or Supervision Processes” also highlights parole agents’ roles in helping secure interpreters for programs (“Staff shall collaborate with sex offender treatment program providers and other CDCR contracted providers to ensure they are providing reasonable accommodations and EC to parolees with disabilities.”).

We identified a number of instances, attached in **Appendix C**, where deaf parolees were denied access to mandatory programs because sign language interpreting services were not available. These denials violate the ADA and the ARP. *See Paulone v. City of*

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Frederick, 787 F. Supp. 2d 360, 405 (D. Md. 2011) (granting summary judgment to Plaintiff on ADA claim when denied access to Victim Impact program because no sign language interpreter was provided).

- [REDACTED] Mr. [REDACTED] is required to attend sex offender treatment as a condition of parole. On September 3, 2020, however, his Agent of Record stated that, “[p]er subject’s clinician, S. Cervantes, he last attended [sex offender treatment] on 6/23/20. Subject has been excused from attending since then as he requires a SLI and due to treatment sessions now being held by phone, that accommodation is not available.” *See* Sept. 3, 2020 ROS Entry.
- [REDACTED] Mr. [REDACTED] is required to attend sex offender treatment as a condition of parole. On September 3, 2020, however his Agent of Record indicated that “[a]s a result of COVID-19, the parolee last attended sex offender therapy on 2/8/20,” a full *seven months* earlier. The agent indicated that Mr. [REDACTED] “is tentatively scheduled to return to sex offender treatment on 9/12/20,” however the ROS entries produced by Defendants ended on September 10, 2020, and did not indicate one way or the other whether Mr. [REDACTED] would be able to resume this mandatory treatment.

The COVID-19 pandemic is no excuse for excluding deaf and hard of hearing individuals from programs and services. Numerous options exist for providing a deaf person with remote access, including: (1) calling into telephone-based services using a standard telephone and having a qualified sign language interpreter come to the deaf person’s residence and interpret the call; (2) if the deaf individual has a reliable Internet connection and a web camera, having a qualified sign language interpreter interpret the sessions from a remote location; and (3) if the deaf individual has a videophone, having the individual use this service to automatically connect to a qualified sign language interpreter and access any telephone-based services. The first two options are strongly preferred for ongoing services, such as sex offender treatment, because they allow DAPO to ensure the same interpreter or the same small pool of interpreters will attend every session. Such consistency greatly improves the efficacy of the sign language interpreter.

DAPO’s failure to permit deaf and hard of hearing parolees to access sex offender treatment will have lasting effects. In addition to be denied the benefit of the treatment, these parolees will be delayed in completing their programming and earning the potential reduction in parole that comes with it.

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For example, Mr. ██████████ September 3, 2020, Containment Team Meeting resulted in a total score of 8, just one point too high to be considered for a reduction in parole. *See* CDCR Form 3043 (Sept. 3, 2020). The Form 3043 documents that he received that score because he had “partially participated” in programs and treatment, but had not completed them. This means that DAPO’s seven-month failure to permit Mr. ██████████ to participate in his sex offender treatment telephonically will also delay his consideration for a reduction in parole supervision. DAPO also failed to invite Mr. ██████████ to the September 2020 Containment Team Meeting, *see* Sept. 3, 2020 ROS Entry, depriving Mr. ██████████ of the opportunity to self-advocate for DAPO to take into consideration the fact that DAPO itself had prevented him from attending treatment for seven months.

Given that the COVID-19 pandemic is likely to preclude in-person services for at least several more months, Plaintiffs’ counsel strongly urges DAPO to develop protocol to ensure that class members who require sign language interpreters can access programs and services during this time.

3. Failure to Provide Sign Language Interpreters for Due Process Encounters

The ARP provides that “[b]ecause of the critical importance of communications involving due process, the standard for equally effective communication is higher when a due process interest is involved. Communications involving such issues as conditions of parole and requirements to report or register come under this category as well as any subsequent instruction(s) from a parole agent for which the parolee’s non-compliance may result in a parole hold.” ARP Parole Field Operations Section, p. 3.

In a concerning number of instances, parole agents attempt to communicate with deaf parolees about potential violations of parole and/or provided instructions that the parolees were required to follow without a sign language present and without the use of VRI technology. These interactions can and often do lead to the imposition of parole holds, and are therefore communications involving due process for which DAPO is required to use the parolees’ primary means of communication—sign language. *See* September 11, 2007 Order, Docket No. 1199 at 15 (discussing heightened standard for effective communication for “events related to the hearings that occur prior to . . . the [life prisoner or revocation] hearings,” including the “[c]onsideration of remedial sanctions in lieu of returns to custody for parolees with pending parole violation charges”).

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Unlike parolees who are able to hear and speak, when denied a sign language interpreter, these parolees do not have any opportunity to communicate clearly with the parole agent to explain their actions. *See Bahl v. Cnty. of Ramsey*, 695 F.3d 778, 787-89 (8th Cir. 2012) (post-arrest interview is a covered service or activity where interview provided opportunity “to ask questions and tell his side of the story, which arguably could have affected the charging decision.”).

These examples include the following, which are attached in **Appendix D**:

- [REDACTED] Mr. [REDACTED] primary method of communication is sign language and he has a TABE score of 2.0, so written notes are not an effective method of communication for him. Mr. [REDACTED] parole agent nevertheless usually used written notes to attempt to communicate with him, including during an interaction where he was informed of a change to his conditions of parole, *see* Apr. 23, 2020 ROS Entry (notification of modified reporting requirements during the pandemic via text message), and during an interaction where Mr. [REDACTED] was provided instructions for which his non-compliance may have resulted in his detention on a parole hold, *see* Feb. 26, 2020 ROS Entry (instruction via written notes only on how to obtain permission to leave jurisdiction for court appearance without violating conditions of parole).
- [REDACTED] Mr. [REDACTED] has a primary communication method of sign language and a TABE score of 5.1, but his parole agent used written notes only to communicate with him during several due process encounters. On August 6, 2020, the agent used written notes to notify Mr. [REDACTED] that he violated the conditions of his parole by absconding from parole, failing to complete a substance abuse program, and failing to complete a batterers’ intervention program. *See* Form 1502-B (Aug. 6, 2020). The written notes for this encounter reflect that Mr. [REDACTED] had a limited opportunity to explain his actions. For example, when asked to explain why he stopped responding to the parole agent, he simply responded: “My sister died.” *See* Aug. 7, 2020 Written Notes.
- [REDACTED] Mr. [REDACTED] primary method of communication is sign language and his alternative method is “very simple written notes,” according to CDCR, although given his TABE score of only 2.8 and his verified learning disability, written notes are likely not an effective method of communication for him. Mr. [REDACTED] parole agent used written notes

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several times during office visits where he was provided instructions regarding his reporting requirements, with no explanation why no effort was made to provide sign language interpretation. *See, e.g.* Apr. 1, 2020 ROS Entry (notification of modified reporting requirements during the COVID-19 pandemic via written notes); Mar. 25, 2020 ROS Entry (same).

- [REDACTED] Mr. [REDACTED] has a primary communication method of sign language, no alternative communication method, and a TABE score of 2.2. Written notes are not an effective method of communicating with him. Nevertheless, his agent repeatedly administered drug tests during home visits without using a sign language interpreter, either on site or remotely through VRI. This included an instance where Mr. [REDACTED] drug test came back positive, and the agent obtained an admission from Mr. [REDACTED] through exchanging written notes. *See* CDCR Form 1500 (Jan. 3, 2019). The parole agent inappropriately continued to use written notes to attempt to communicate about urinalysis tests rather than using Mr. [REDACTED] primary method of effective communication on August 13, 2019, September 18, 2019, January 9, 2020, and February 14, 2020. In addition, the agent relied on written notes when threatening Mr. [REDACTED] with a return to custody on a parole hold after he allegedly broke curfew. *See* Mar. 9, 2020 ROS Entry.
- [REDACTED] Although Mr. [REDACTED] has no alternative method of effective communication to sign language and a TABE score of only 2.6, his parole agent used written notes to communicate regarding potential parole violations on multiple occasions. In most cases, the agent provided no explanation as to why he did not at least attempt to use VRI for these due process encounters. *See, e.g.*, July 29, 2019 ROS Entry (using written notes to discuss Mr. [REDACTED] admission to using methamphetamine); June 25, 2019 ROS Entry (using written notes to question Mr. [REDACTED] about positive drug test). The parole agent also improperly relied upon Mr. [REDACTED] mother as a sign language interpreter during a home visit where Mr. [REDACTED] failed a drug test and was questioned about this potential parole violation. *See* Sept. 26, 2019 ROS Entry. On March 27, 2019, Mr. [REDACTED] agent reported that he used written notes rather than VRI during a home visit “for safety purposes,” because he planned to conduct a comprehensive search and possible arrest for drug possession. Although the search uncovered nothing, the nature of the home visit—with

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the parole agent anticipating a due process encounter that might lead to an arrest and detention on an alleged parole violation—demonstrates the necessity of providing sign language interpreting services.

- [REDACTED] Mr. [REDACTED] has a primary communication method of sign language and a TABE score of 4.4. He made clear during his initial interview that he requires a sign language interpreter and needs help understanding documents and procedures. Yet Mr. [REDACTED] parole agent routinely failed to attempt to use VRI to communicate with him. *See* Feb. 7, 2020, May 20, 2020, June 10, 2020, June 16, 2020, July 19, 2020, Aug. 4, 2020, and Sept. 16, 2020 ROS Entries.¹ These interactions included providing Mr. [REDACTED] with forms related to earned discharge. *See* June 16, 2020 ROS Entry. Because the earned discharge process is directly related to how long an individual remains on parole, the agent should have used a qualified sign language interpreter to ensure effective communication and to give Mr. [REDACTED] the opportunity to ask questions about the form or the early discharge process.

Mr. [REDACTED] parole agent also used bystanders to facilitate effective communication, in violation of the ADA. On May 20, 2020, the agent improperly used a minor child to interpret for Mr. [REDACTED]. *See* May 20, 2020 ROS Entry (“the [agent] effectively communicated through text and the subject’s 15 year old daughter who knew sign language as her mother is deaf.”). This is a blatant violation of the ADA’s provision against relying on minor children to interpret except in cases of “imminent threat” to safety or welfare when no interpreter is available. *See* 28 C.F.R. § 35.160(c)(3). The agent also improperly used Mr. [REDACTED] father to interpret for him, *see* Feb. 7, 2020 ROS Entry, in violation of the ADA. *See* 28 C.F.R. § 35.160(c)(2) (prohibiting reliance on adult companions to interpret unless the person with the disability specifically requests it, the adult agrees, and it is appropriate under the circumstances).

4. Use of Written Notes as an Alternate Method of Communication

The parole field files Plaintiffs’ counsel reviewed demonstrate that parole agents frequently use written notes as an alternative to sign language interpreters. Although

¹ For some of these entries, such as the July 19, 2020 encounter, the agent wrote “SLI” at the top of the entry. However, the notes indicated that the agent used an interpreter only to call the parolee on the telephone unsuccessfully. All communication with the parolee during that encounter appears to have taken place through written notes.

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written notes function as a secondary method of communication for *some*, they do not serve as an appropriate method to establish effective communication for *all* DPH parolees. We are particularly concerned about the use of written notes for DPH-SLI parolees with:

- a. No alternative methods of communication other than American Sign Language;
- b. Developmental disabilities and other cognitive or psychiatric disabilities that effect their reading comprehension skills; and
- c. Low or Unknown TABE scores.

The ADA establishes that state entities such as DAPO “must honor the person’s *choice*” of communication method “unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden” *See* U.S. Dep’t of Justice, ADA Requirements: Effective Communication at 6, available at <https://www.ada.gov/effective-comm.pdf> (Jan. 2014) (emphasis added). DAPO should consider—on a case-by-case basis—the parolees’ individual circumstances and needs, before utilizing written notes as an alternative to sign language. The following examples, attached in **Appendix E**, are illustrative of this issue:

- [REDACTED] [REDACTED] Mr. [REDACTED] agent inappropriately relied on written notes to communicate with him in 11 of 15 supervision contacts (or 73.3%) between September 2019 and August 2020, even though he has a TABE score of only 2.0. These interactions sometimes included instructions regarding Mr. [REDACTED] conditions of parole, and important reminders about upcoming mandatory appointments. *See, e.g.* Apr. 23, 2020 ROS Entry (agent used text message to notify Mr. [REDACTED] of his modified reporting requirements during the COVID-19 pandemic); Feb. 26, 2020 ROS Entry (agent used written notes to instruct Mr. [REDACTED] that he must take his psychiatric medications, to remind him of his upcoming POC appointment, and to instruct him on how to obtain permission to leave the jurisdiction for a court appearance without violating conditions of parole).
- [REDACTED] Mr. [REDACTED] has a primary communication method of sign language, no alternative method of communication, and a TABE score of only 1.5. DAPO produced Mr. [REDACTED] ROS for only July 2020 through

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September 2020, yet these three months reflected multiple instances where agents communicated with Mr. [REDACTED] through written notes, stating without explanation that a sign language interpreter was “unavailable.” *See, e.g.*, Aug. 18, 2020 and Aug. 19, 2020 ROS Entries. Written notes in his file illustrated the tremendous difficulty Mr. [REDACTED] had communicating in writing. For example, on a page dated April 20, 2020, in handwriting that appeared to be Mr. [REDACTED] someone had written: “Say yesterday for Drug Chirs and #16 – Bob – Black,” the word “Chirs” also had arrows pointing from the word “only” and to “#3.” In different handwriting, someone had responded: “Meth? Trying to give Courtney drugs? I’ll call Lucy.” On a page dated January 3, 2020, someone who likely was an agent had written: “What happened to your shoulder?” In handwriting that appeared to be Mr. [REDACTED] someone responded: “4 Day Last other Wall House Lucy” and drew a picture underneath, next to which the apparent agent wrote “fence?” These communications reflect the tremendous difficulty Mr. [REDACTED] has conveying even simple information through written notes. He very likely has equal difficulty understanding written communication, and every effort must be made to use sign language to communicate with him.²

- [REDACTED] Mr. [REDACTED] has a primary communication method of sign language and no alternate method of communication. He is also DD1 and has a TABE score of only 1.7. DAPO failed to produce Mr. [REDACTED] Record of Supervision as part of his parole field file, so Plaintiffs’ counsel are unable to determine how frequently parole agents inappropriately used written notes to communicate with him, but the incomplete production contains written notes dated July 10, July 11, and July 15, 2019, through which agents appeared to improperly ask—via written notes only—about potential parole violations, including for tampering with a GPS device.

² DAPO has previously appeared to blame Mr. [REDACTED] for his decision “live in a non-CDCR funded group housing that due to the nature of its population and location, is fairly unsafe.” *See* N. Meyer, Re: Plaintiff’s Review of DAPO DPH files (Sept. 4, 2020) (“DAPO Response Letter”) at 10. Mr. [REDACTED] choice of where to live is not a knowing and voluntary waiver of his right to effective communication; it does not relieve DAPO of their obligation to ensure they achieve effective communication, which in Mr. [REDACTED] case, appears to only be possible through a qualified sign language interpreter.

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- [REDACTED] [REDACTED] Mr. [REDACTED] primary method of communication is sign language, and he has a verified learning disability and a TABE score of only 2.8. Yet agents used written notes in half the supervision contacts with him in 2020 (7 of 14), including in several interactions where agents instructed Mr. [REDACTED] about modifications to his reporting requirements at the parole office. No explanation was provided why the agents did not attempt to provide sign language interpretation services through VRI. *See, e.g.*, May 4, 2020 ROS Entry (agent communicated via written notes on 3x5 index cards and Mr. [REDACTED] “explained with hand motions”).
- [REDACTED] DAPO recently informed Plaintiffs’ counsel that Mr. [REDACTED] regards sign language and lip-reading as equally effective for communication, and prefers both to written notes. *See* DAPO Response Letter at 9. Review of ten supervision contacts for Mr. [REDACTED] between September 2019 and August 2020 indicated that the parole agent primarily relied on having Mr. [REDACTED] read his lips, and occasionally on writing notes. *See* Sept. 26, 2019, Oct. 28, 2019, Nov. 20, 2019, Dec. 4, 2019, Jan. 25, 2020, Feb. 6, 2020, Mar. 17, 2020, and Aug. 19, 2020 ROS Entries. Mr. [REDACTED] field file gave no indication that the agent had offered him VRI at any point prior to May 2020, when the agent used the service just twice before a new agent took over and reverted to having Mr. [REDACTED] read his lips. *See* May 27, 2020, July 8, 2020, and Aug. 19, 2020 ROS Entries. For most lip-readers, the ability to understand a speaker varies depending on certain traits of the person speaking (e.g., facial hair and accents), their familiarity with the speaker, and their familiarity with the topic of discussion. For this reason, agents should always offer VRI to Mr. [REDACTED] with the understanding that he may decline VRI in favor of reading lips.
- [REDACTED] [REDACTED] Mr. [REDACTED] has a primary communication method of sign language, no alternative method of communication, and a TABE score of only 2.2, yet from January 2019 through September 2020, his agents relied almost exclusively on written notes in the field. The few written notes in the file cast significant doubt that communication was effective. *See, e.g.*, Undated Notes (Handwriting likely belonging to agent: “Why are your pillow & bed sheets wet?” Handwriting likely to be [REDACTED] “Bloodso” ... Handwriting likely to be agent’s: “Were you mad at him for

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jerking off?” Handwriting likely to be [REDACTED] “underroom EHT”);³ Undated Notes (Handwriting likely to be agent’s: “I found a school! Sierra College.” Handwriting likely to be [REDACTED] “narcar”).

- [REDACTED] [REDACTED] Mr. [REDACTED] has a primary communication method of sign language, no alternative communication method, and a TABE score of 2.6, yet his agent used written notes almost exclusively in the field, including for multiple due process encounters. *See* Sept. 18, 2020, June 25, 2020, Sept. 26, 2019, July 29, 2019, June 25, 2019, and Mar. 27, 2019 ROS Entries.
- [REDACTED] [REDACTED] Mr. [REDACTED] has a primary communication method of sign language and indicated in his initial interview that he needs a sign language interpreter and needs help understanding documents, procedures, and forms. Despite this information, Mr. [REDACTED] agent routinely failed to attempt to use VRI to communicate with Mr. [REDACTED]. *See* Feb. 7, 2020, May 20, 2020, June 10, 2020, June 16, 2022, July 19, 2020, Aug. 4, 2020, and Sept. 16, 2020 ROS Entries.

On several occasions, various parole agents indicated that they had obtained the parolee’s consent to communicate without a sign language interpreter, such as through written notes, text messaging, or lip-reading. *See, e.g.* Aug. 18, 2020 ROS Entry for [REDACTED] [REDACTED] [REDACTED] (“Written notes utilized as secondary means of communication, *at parolee’s request*, as primary means unavailable.”) (emphasis added). **Yet CDCR’s own records show that Mr. [REDACTED] has no alternative means of communication and his TABE score is only 1.5**, indicating that written notes are not an effective method of communication for him.

DAPO should discourage the practice of attempting to obtain consent to communicate with parolees without a sign language interpreter. **Multiple parolees have**

³ The handwriting attributed to Mr. [REDACTED] was so poor and the content so bizarre that it is possible that somebody else (likely a young child) had written on the paper either before or after the agent used it to communicate with Mr. [REDACTED]. If so, however, this means that, during the visit in question, Mr. [REDACTED] likely never responded to the agent except through rudimentary gestures such as nodding his head or giving a thumbs up. This latter possibility reflects even less communication than the words Mr. [REDACTED] may have written.

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reported to Plaintiffs' counsel that they are not comfortable self-advocating for effective communication with their parole agent, and will not give permission for Plaintiffs' counsel to advocate on their behalf, because they fear hurting the relationship with the agent and experiencing negative consequences as a result.

Therefore, parolees' apparent "consent" to communicate through writing or reading lips is not necessarily voluntary, given the power dynamic between the parolee and the agent.

The following examples illustrate this distinction: The ROS for [REDACTED] indicates that she may have voluntarily consented to communicating with her parole agent without an interpreter. Numerous ROS entries indicate that the agent brought a VRI tablet to the encounter, and Ms. [REDACTED] declined to use it, explaining that she is "not deaf, but hard of hearing" and only needs interpreters for group settings. *See, e.g.*, Sept. 11, 2020 ROS Entry. Based on this account, it is quite likely that Ms. [REDACTED] voluntarily chose to communicate with the parole agent without an interpreter.

By contrast, the ROS for [REDACTED] indicates the opposite. For Mr. [REDACTED] his agent typically brought a VRI tablet with him and used it during the encounters. On one occasion, however, the VRI tablet did not work. *See* Feb. 25, 2020 ROS Entry. The agent recorded that he began communicating with Mr. [REDACTED] through text, "his alternate method of communication and a method he has previously stated that he prefers." The agent also noted, however, that Mr. [REDACTED] called over his brother to interpret the interaction. Mr. [REDACTED] solicitation of his brother's help suggests he does not prefer to communicate in writing—he prefers using sign language over written notes, even for simple interactions.

Not every deaf parolee lives with other people whom they can ask to interpret during encounters with their parole agent. Nor should any deaf parolee be put in a position of having deciding between communicating with their agent in a way that is limiting and that risks miscommunications, and potentially upsetting their parole agent by advocating for their own communication needs. Rather, DAPO should ensure that agents have a reliable way of providing a sign language interpreting services during every parole encounter. Only when the agent offers this reliable method and the parolee declines it is it acceptable for the agent to communicate in another way. *See* 28 C.F.R. Part 35, App'x B ("The public entity must prove an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice.... The public entity shall honor the choice....").

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a. Failure to Include Written Notes in Field Files

According to Directive 18-05, Effective Communication and/or Reasonable Accommodations During Parole Proceedings and/or Supervision Processes (August 6, 2018), “[i]f the parolee communicates via written notes, the written notes shall be retained in the field file.” This directive serves the important purpose of allowing others to review written communication between the parole agent and the parolee to determine the length of the complexity of the communication attempted, and whether the interaction suggests that communication was effective. While some agents complied with these requires, as evidenced by dozens of pages of written notes contained in the field file, others did not. In particular, the field files for the following parolees contained few or no examples of written notes:

- [REDACTED] [REDACTED] Mr. [REDACTED] ROS contained eleven entries between September 2019 and August 2020 where agents noted they communicated with him via written notes or text messages, but no notes are included in the field file.
- [REDACTED] [REDACTED] Mr. [REDACTED] ROS contains eight entries from August 2019 through August 2020 in which the agent documented that they had communicated via written notes, but the field file contains written notes only for the most recent of those encounters, on August 28, 2020.
- [REDACTED] [REDACTED]: Mr. [REDACTED] ROS contained a number of entries where the agent indicated that they had communicated via written notes or text messages, but none are included in the field file.
- [REDACTED] [REDACTED] Mr. [REDACTED] field file indicated that his agent relied primarily on text messages, written notes and lip-reading for communication. However, the field file contains none of the written notes or text messages.
- [REDACTED] [REDACTED] Mr. [REDACTED] ROS contained dozens of entries where the agent indicated that they had communicated via written notes or text messages. However, the field file contains very few written notes—a total of six pages, with one dated in 2017.
- [REDACTED] [REDACTED] Mr. [REDACTED] ROS contains six entries from March 2019 through September 2020 in which the agent documented communication via written notes, but the field file contains written notes only for the most recent of those encounters, on September 18, 2020.

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- [REDACTED] [REDACTED] Mr. [REDACTED] ROS contained at least eight entries where the agent indicated that they had communicated via written notes or text messages, but the field file contains none of the written notes or text messages.

In nearly every one of the preceding examples, the parolee had a low TABE score, making it particularly important to keep a record of all written communications, as it was highly unlikely that the parolee fully understood anything the agent wrote regardless of how he responded at the time.

5. Verifying Effective Communication

Directive 18-05 requires parole staff to “determine if EC has been achieved through an interactive process with the parolee. For example, the parolee might be asked to summarize their understanding of the discussion or material conveyed in their own words.” Having the parolee summarize their understanding of information in their own words is essential any time that an agent delivers instructions of any kind, as opposed to simply asking the parolee whether they understood. This is because the parolee may not realize they have misunderstood the instruction, and so might indicate that they do understand when they do not.

Plaintiffs’ counsel noted a number of occasions where agents did not appropriately verify effective communication with class members. This included (1) due process encounters that took place in the parolee’s alternate method of communication; and (2) encounters with individuals with low TABE scores, where the agent explained an important matter. The following examples, which are attached in **Appendix F**, are illustrative:

- [REDACTED] [REDACTED] On July 1, 2020, an agent provided Mr. [REDACTED] written instructions about updating his sex offender registration, submitting a copy to the parole office, and attending a Containment Team Meeting. It appeared that, after each instruction, the agent wrote “Understand?” and Mr. [REDACTED] responded “Yes.” However, it was not clear what understanding Mr. [REDACTED] had taken away from the encounter. Given the legal implications of failing to register as a sex offender, it was important to ensure what understanding Mr. [REDACTED] had taken away from what he wrote, instead of just accepting that Mr. [REDACTED] believed he understood.
- [REDACTED] [REDACTED] Mr. [REDACTED] parole agent used written notes to discuss violations of conditions of his parole by absconding from parole, failing to complete a substance abuse program, and failing to complete a batterers’

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intervention program. *See* CDCR Form 1502-B (Aug. 6, 2020). The Effective Communication documentation from this encounter states: “Parolee [was] asked if he had any questions and if he understood process at the end of the interview and he shook his head no.” *Id.* The written notes from this encounter show that the agent did not try to explain to Mr. [REDACTED] that he had violated his conditions of parole, nor what she would or would not be doing with the information he provided in response to her written questions. *See* Written Notes (Aug. 7, 2020). That Mr. [REDACTED] had no questions did not necessarily indicate he understood—it indicated he did not know what to ask.

- [REDACTED] [REDACTED] Multiple ROS entries indicate that Mr. [REDACTED] can have difficulty understanding information even when presented through a sign language interpreter. *See, e.g.*, Apr. 23, 2019 ROS Entry (“AOR received the following email from New Beginnings Krista Wilts: Mr. [REDACTED] appears to be doing satisfactory- though it is difficult to communicate.”) June 14, 2019 ROS Entry (“AOR spoke to New Beginnings staff ... [who] say he’s attending as directed but the communication is still very hard.”); CDCR Form 2289 (Sept. 15, 2017) (indicating Mr. [REDACTED] “[a]ppears to have difficulty understanding his parole conditions, which were explained through an interpreter”). These limitations make it particularly important to verify that effective communication is achieved with him. On March 9, 2020, however, the agent used written notes to admonish Mr. [REDACTED] for returning late for curfew. The agent stated, “I told him that future violations may result in a return to custody. He stated that he understood.” *See* Mar. 9, 2020 ROS Entry. This is not an adequate response for an individual with a TABE score of 2.2, given the risk he may not understand the words “future” “violations” “result” “return” or “custody,” particularly in the way the agent meant them. On July 2, 2020, an agent used text messages to discuss how Mr. [REDACTED] could pay his outstanding court fees. *See* July 2, 2020 ROS Entry. Again, due to the legal implications of this kind of conversation, it was essential that the parole agent ensure effective communication. The ROS Entry gives no indication of how the agent determined Mr. [REDACTED] understood him.

6. Video Remote Interpreting Services

Plaintiffs’ review of the parole field files revealed continuing problems with DAPO’s use of VRI services. Given DAPO’s intention to use VRI for effective communication with DPH class members, the frequency with which these problems occurred is concerning.

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a. Technological and Connectivity Issues

There were a number of examples of staff experiencing technological issues when attempting to use VRI, which are included in **Appendix G**:

- [REDACTED] [REDACTED] During a home visit on October 25, 2019, the parole agent was not able to use the VRI tablet “due to poor reception.” During a home visit on January 14, 2020, the parole agent was again not able to use the VRI tablet “due [to] bad signals in the area.” On February 26, 2020, the agent once again reported she could not use VRI “due to the tablet freezing and ... a bad connection in the home.” The problem occurred again during a July 6, 2020 home visit, where the agent used written notes because the VRI tablet “was not receiving a cellular signal.”
- [REDACTED] [REDACTED] During a home visit on August 29, 2019, the parole agent was not able to use VRI because he “was unable to obtain internet access.” The agent then transported Mr. [REDACTED] to the Riverside Superior Court to help him obtain a new court date, but was again “unable to successfully use the SLI VRS services,” as the interpreter was “unable to hear audio and his movements were blurred [and] pixelated so it was impossible to see his hand signing” in the courthouse. On October 30, 2019, the agent reported that he successfully used VRI during a home visit with Mr. [REDACTED] but noted that “the screen froze approximately 4-5 times but only for less than 15 seconds each time.” During a home visit on May 26, 2020, the agent noted that he was unable to use VRI because the “tablet was not functional,” and instead improperly relied on Mr. [REDACTED] mother to translate for him, as well as using written notes, which are not an effective method of communication for Mr. [REDACTED]
- [REDACTED] [REDACTED] On August 7, 2020, a parole agent attempted to use VRI to discuss with Mr. [REDACTED] multiple ways that he had violated his parole, but noted that “SLI unavailable. Tablet not working in the field.”
- [REDACTED] [REDACTED] During a home visit on October 1, 2019, the parole agent noted that the VRI “services were not working properly due to poor cell signal.” During another home visit on November 26, 2019, the parole agent again noted that he “was unable to contact an American Sign Language interpreter via Voiance Interpreter.”

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- [REDACTED] [REDACTED] On August 28, 2020, the parole agent tried to use VRI during a home visit but “could not get tablet to connect to VRI service.”
- [REDACTED] [REDACTED] During a home visit on February 25, 2020, the agent indicated that he tried to secure an interpreter through VRI, however “[t]he call to Voiance rang and rang until someone finally answered. The man stated he did not have an SLI interpreter available” and did not have an estimate for when an interpreter would be available.
- [REDACTED] [REDACTED] During a home visit on September 16, 2020, the agent stated he “attempted to log into the Wilder App and could not access the app nor could not access the Zoom app to complete the residence visit.”
- [REDACTED] [REDACTED] During a due process encounter during which the agent notified Ms. [REDACTED] of her conditions of parole, attached her GPS device, and explained “her curfew and duration on electronic monitoring ... [and] instances of the device being damaged or tampered with, along with the consequences,” the agent was unable to successfully use the VRI device, explaining that he “attempted to use the VRI device, but would continue to ask for a PIN number just after a couple minutes.” The agent instead reported that he communicated with Ms. [REDACTED] by speaking slowly and having her read his lips, yet the agent also documented that they “both wore masks and practiced social distancing,” indicating that it would not have been possible for Ms. [REDACTED] to read his lips.

Plaintiffs’ counsel further noticed that DAPO failed to log and track many of the technological problems noted in field files on its monthly SLI Scheduling Logs. Specifically, Plaintiffs’ counsel noted the following problems:

- [REDACTED] [REDACTED] The October 2019 SLI Scheduling Log’s entry for the October 25, 2019 home visit states, “No issues reported” with the VRI, which conflicts with the ROS entry stating that the agent was unable to use VRI due to “poor reception.” The January 2020 SLI Scheduling Log does not include *any* entry for the January 14, 2020 home visit, even though the ROS entry records a failed attempt to use VRI because of connectivity issues.
- [REDACTED] [REDACTED] The August 2019 SLI Scheduling Log does not contain entries for either of the attempts to use VRI with Mr. [REDACTED] on August 29, 2019, despite the problems encountered when attempting to do so with Mr. [REDACTED] during a home

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visit and at the courthouse on that date. The May 2020 SLI Scheduling Log also does not include an entry for the May 26, 2020 home visit, even though the ROS entry states that the VRI tablet “was not functional.”

- [REDACTED] [REDACTED] The October and November 2019 SLI Scheduling Logs do not contain entries for attempting to use VRI with Mr. [REDACTED] on October 1, 2019 and November 26, 2019, despite the problems encountered during both home visits.
- [REDACTED] [REDACTED] The February 2020 SLI Scheduling Log does not contain an entry for the attempt to use VRI with Mr. [REDACTED] on February 25, 2020, despite encountering problems that caused the agent to abandon using the device.
- [REDACTED] [REDACTED] The August 2020 SLI Scheduling Log does not contain an entry for the attempt to use VRI with Ms. [REDACTED] on August 5, 2020, despite encountering problems that caused the agent to abandon using the device.
- [REDACTED] [REDACTED] The September 2020 SLI Scheduling Log does not contain an entry for the attempt to use VRI with Mr. [REDACTED] on September 16, 2020, despite problems that caused the agent to abandon using the device. The ROS also indicates that Mr. [REDACTED] agent used a sign language interpreter with him on March 3, 2020, but this is not logged on the March 2020 SLI Scheduling Log.

It is important that DAPO agents log and track on the SLI Scheduling Logs every time that they use VRI to provide SLI services for class members, and each time that they attempt to do so but are unable to due to technological problems. The above examples indicate that more training is needed so that DAPO agents understand their obligations. **We also request that DAPO produce, when available, any updated VRI service reports from the past 12 months.**

b. Failure to Train Staff on How and When to Use VRI

There were multiple examples of staff not being able to use VRI because they were either untrained or unfamiliar with the service, which are included in **Appendix H**:

- [REDACTED] [REDACTED] On January 16, 2020, Mr. [REDACTED] parole agent “attempted to use the [VRI] tablet but was unable to sign in,” and to telephone the PLMU to get help “on how to update the password.” In fact, Mr. [REDACTED] agent of record had not yet ever successfully used VRI with him as of this date, indicating that the agent may not have received

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sufficient training to be able to use the service. Plaintiffs' counsel are also concerned about this incident because Mr. [REDACTED] had reported to the office for a scheduled appointment; as such, the parole agent should have made an appointment for on-site SLI services in advance rather than relying on VRI.⁴

- [REDACTED] On July 16, 2019, Mr. [REDACTED] parole agent attempted a home visit but “was unable to remember what email address and user ID to use,” so was unable to use VRI. While the agent returned later that day and used VRI, he should have been prepared to do so prior to attempting to meet with Mr. [REDACTED] at his residence.
- [REDACTED] In twenty-one months of ROS entries, from January 4, 2019 to September 1, 2020, documenting dozens of encounters between Mr. [REDACTED] and parole agents, the agents appeared to use VRI *only* for office visits. With one exception,⁵ agents always opted to communicate through written notes or lip-reading when visiting Mr. [REDACTED] in the field. Mr. [REDACTED] has a TABE score of 2.2, making it extremely unlikely that he can communicate effectively through either writing notes or reading lips. These entries gave the impression that DAPO did not train Mr. [REDACTED] agents to use VRI in the field.
- [REDACTED] From March 27, 2019 through September 18, 2020, Mr. [REDACTED] parole agents almost never attempted to use VRI during home visits, instead relying on written notes. Although the agents usually provided no explanation for these failures, on June 25, 2020, the agent noted that he “did not utilize the state issued [VRI] tablet due to an

⁴ It is unclear whether the parole agent was actually able to resolve the VRI issues and provide SLI services to Mr. [REDACTED] during this office visit. According to the January 2020 SLI Scheduling Log, the agent completed a one-minute VRI “test call” on this date, but no SLI services were actually provided to Mr. [REDACTED]

⁵ This sole exception occurred on July 9, 2020, when an agent used VRI to convey amended special conditions of parole. Notably, the explanation of parole conditions—including amended conditions—is a due process interaction that requires a sign language interpreter to appear on site. *See infra*, pp. 25-27.

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unexpected home visit.” These consistent failures indicate that the agents do not understand when or how to use VRI.

- [REDACTED] [REDACTED] Upon taking over his case in May 2020, Mr. [REDACTED] new agent of record made no attempt to provide a qualified sign language interpreter to communicate with Mr. [REDACTED] for his first six encounters. When the agent finally attempted to use the VRI tablet on his seventh encounter with Mr. [REDACTED] he could not get the tablet to work, and had to fall back on written notes. *See* Sept. 16, 2020 ROS Entry.

DAPO must ensure that staff have sufficient VRI training **before** they attempt to use VRI to communicate with DPH-SLI parolees. This prevents staff from having to rely on written notes, or alternate communication methods, when relaying important information, reminders, and instructions regarding DPH class members’ conditions of parole. Staff should also be trained on how to troubleshoot technological problems that may arise when operating VRI.

c. Use of Wrong Service for Remote Interpreters, Potentially Violating Federal Law

The field files indicated some confusion with respect to the type of remote interpreter to use. In the United States, interpreters can be accessed remotely in two different ways: Video Remote Interpreting and Video Relay Services. Although the names and equipment involved are similar, using VRS incorrectly carries legal consequences. It is imperative that DAPO recognize the difference and train its agents to use VRI through state-provided equipment *only*.

Plaintiffs’ counsel has previously explained the difference between these two services. *See* February 11, 2020 Letter. Briefly, VRI is a service DAPO pays for, which is designed to be used to ensure effective communication between a hearing person and a deaf person located in the same room, typically when it is impractical or impossible to provide an onsite sign language interpreter. VRS, by contrast, is a federally funded service designed to ensure that people who are deaf or hard of hearing can use telephone services in a manner functionally equivalent to people without hearing disabilities, and may be used to place and receive telephone calls between deaf and hearing individuals. The federally funded VRS must *not* be used as a substitute for DAPO-provided sign language interpreters, however; to do so violates federal law.

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The field files indicated some attempts on the part of parole agents to use VRS instead of VRI, which are included in **Appendix I**:

- [REDACTED] [REDACTED] During a home visit on August 28, 2020, the parole agent reported without explanation that the “VRI tablet was not available” and instead “attempted to use the Effective Communication telephone number” for communication. The agent reported that he was connected to a sign language interpreter who was then unable to connect to Mr. [REDACTED] phone number. *See* Aug. 28, 2020 ROS Entry. This appears to describe an attempt to use VRS for a communication between the parole agent and Mr. [REDACTED] while they were in the same location, in violation of federal law.
- [REDACTED] [REDACTED] On February 6, 2020, Mr. [REDACTED] agent appears to have used VRS rather than VRI for a due process encounter that resulted in remedial sanctions for an alleged parole violation. During a home visit, the agent reportedly found photographs and video that Mr. [REDACTED] had taken of himself during a search of the parolee’s phone. The agent used “ASLI telephone service,” i.e., VRS rather than VRI, to notify Mr. [REDACTED] that possession of these photographs and video was a parole violation and that the agent was referring him for mandatory sex offender treatment as a remedial sanction. *See* Feb. 10, 2020 Parole Violation Decision Making Instrument. The agent’s use of VRS rather than VRI for an in-person due process encounter with Mr. [REDACTED] in violation of federal law, is corroborated by the February 2020 SLI Scheduling Logs, which confirms the agent did not use VRI during this encounter.

It is vital that DAPO train its agents to observe this distinction and to decline any parolee’s attempt to use VRS in place of VRI. Not all deaf people are aware of the distinction or its significance; DAPO should not put them in the position of unwittingly violating federal law.

Plaintiffs’ counsel did observe several notations in the field file suggesting that some agents were correctly using VRS to engage in business that they normally would conduct over the telephone. For example, a March 27, 2020 ROS entry for [REDACTED] states “Received a call from GF [REDACTED] through her interpreting service,” and related the contents of the call. This is an appropriate use of the service, as the notes indicated the agent had used the telephone as she normally would in conducting parole business, and not as a substitute for a DAPO-provided VRI interpreter. Similarly, a July 29, 2020, ROS entry for [REDACTED] [REDACTED] [REDACTED] indicated that the agent used VRS

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to call Mr. [REDACTED] in an attempt to locate him for a home visit. The entry indicates that once the agent located Mr. [REDACTED] they did not rely on VRS for communication. This is another example of using VRS appropriately, as the agent would otherwise use telephone services.

d. “Safety Concerns” as Reason Not to Use VRI

The parole field files revealed that even when there was an opportunity to use VRI during home visits, DAPO staff sometimes did not do so, citing safety reasons. In response to Plaintiffs’ February 11, 2020 letter, Defendants stated they would not pressure their agents to use VRI when they felt it was unsafe to do so. *See* DAPO Response Letter at 14. Plaintiffs’ counsel acknowledge that circumstances may arise occasionally where it is not safe to use VRI. However, it is not appropriate for agents to take the position that the parole office is the only location where it is safe to use VRI. Examples of these instances are as follows, and are collected in **Appendix J**:

- [REDACTED] [REDACTED] On September 27, 2019, Mr. [REDACTED] parole agent refused to use VRI during a home visit based on alleged “safety” concerns. *See* Sept. 27, 2019 ROS Entry (“THE TABLET WAS NOT UTILIZED FOR THE HOME VISIT, DUE TO THE SURROUNDING NOT BEING SAFE.”). This visit took place inside Mr. [REDACTED] family home, where he lived with his mother and brother. The parole agent did not explain why his mother or brother posed any kind of safety concern, nor why the agent could not find a private room to safely have a conversation with Mr. [REDACTED] using VRI.⁶
- [REDACTED] [REDACTED] On July 1, 2020, Mr. [REDACTED] parole agent refused to use VRI during a home visit due to “safety” concerns. *See* July 1, 2020

⁶ Plaintiffs’ counsel have previously reported that Mr. [REDACTED] parole agent never used VRI during home visits from June 2019 through August 2019, and blamed unexplained safety concerns each time. *See* February 11, 2020 Letter at 17. The DAPO Response Letter defends the propriety of using Mr. [REDACTED] alternative method, but does not assess whether it was truly “unsafe” to use VRI. *See* DAPO Response Letter at 11. We are concerned that during this monitoring period—from September 2019 through August 2020—the parole agent once again either chose not to use VRI or was unable to do so for nearly every home visit with Mr. [REDACTED] successfully using VRI only twice over a twelve month period. Such a blanket failure to use VRI must be evaluated, as it is also possible the agent’s felt “unsafe” due to inadequate training on VRI.

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ROS Entry (“VRI WAS NOT UTILIZED FOR THIS VISIT AS IT WAS DEEMED UNSAFE TO DO SO AS THERE WERE MULTIPLE OTHER PROGRAM RESIDENTS IN THE IMMEDIATE VICINITY AND UNSAFE FOR AOR TO HAVE HIS HANDS AND ATTENTION DIVERTED.”). These safety concerns easily could have been addressed by asking the other residents to give them privacy, or by finding a private room to communicate. In addition, the agent could have had the conversation in an outside space or even inside his car.

- [REDACTED] [REDACTED] On March 27, 2019, Mr. [REDACTED] agent refused to use VRI during a visit to Mr. [REDACTED] family home, “for safety purposes,” because the agent planned to conduct a comprehensive search and possible arrest of Mr. [REDACTED] for drug possession. Since the agent anticipated that the home visit might result in an arrest and detention for an alleged parole violation—and was thus a due process encounter requiring use of Mr. [REDACTED] primary method of communication—it was imperative to provide him SLI services.

In the event that the agent believes that a parolees’ residence is too dangerous to use VRI, DAPO must make every effort to determine a safe way to provide sign language interpreting services when communicating with that individual. In Mr. [REDACTED] case, for example, DAPO stated that agents regard his residence as too dangerous ever to use VRI. *See* DAPO Response Letter at 10. However, given that Mr. [REDACTED] has a TABE score of only 1.5 and his obvious struggles in conveying even the simplest information in writing, it is not appropriate to rely on written notes to communicate with him for all encounters in the field. DAPO must work with the agents to brainstorm a solution that would allow them to provide sign language access for Mr. [REDACTED] such as using on-site sign language interpreters (which the agent must schedule in advance, but need not tell Mr. [REDACTED] or arranging to meet with Mr. [REDACTED] in a safer location.

e. Use of VRI for Due Process Encounters

DAPO staff should only use VRI during home or office visits that do not qualify as due process encounters. **These restrictions on VRI use are important to follow, due to the unreliability of VRI, and the risk that the agent and parolee will have to resort to communicating through written notes or other, less effective methods.** However, there were at least nine occasions on which a parole agent used VRI for due process encounters, including two where the VRI failed and the agent had to resort to written notes and/or lip-reading for effective communication, illustrating the unreliability

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of VRI and the importance of using on-site sign language interpreters for such encounters. The examples are attached as **Appendix K**:

- [REDACTED] [REDACTED] On October 30, 2019, the parole agent used VRI for a due process encounter during which Mr. [REDACTED] was questioned about drug use, admitted that he had consumed alcohol, marijuana, and methamphetamine, and signed a CDCR 1527 Voluntary Statement of Admission without a sign language interpreter present. On December 17, 2019, Mr. [REDACTED] agent again used VRI for a due process encounter at the parole office, during which Mr. [REDACTED] was notified of several parole violations, and was arrested on parole revocation charges. In this instance, the agent had instructed Mr. [REDACTED] to report to the parole office the day before after discovering the violations, and thus had enough time to schedule an in-person sign language interpreter in advance of the office visit.
- [REDACTED] Mr. [REDACTED] agent reported using VRI for due process encounters on September 18, 2019 (failed drug test), February 5, 2020 (failed drug test), and August 7, 2020 (multiple parole violations). Notably, the VRI device failed during the August 7 encounter, causing the agent to rely on written notes to communicate with Mr. [REDACTED] about his multiple alleged parole violations.
- [REDACTED] [REDACTED] On July 30, 2020, Mr. [REDACTED] agent used VRI for a due process encounter at the office to notify Mr. [REDACTED] he had committed a parole violation, obtain his statement regarding the violation, and warn Mr. [REDACTED] that he might be placed in jail for a parole revocation if he violated his curfew again. *See* July 30, 2020 Parole Violation Decision Making Instrument.⁷

⁷ Mr. [REDACTED] agent also twice improperly used VRS to communicate with him during due process encounters regarding alleged parole violations. *See* Dec. 30, 2019 Parole Violation Decision Making Instrument (using “SLI telephone service” to notify Mr. [REDACTED] that his failure attend sex offender treatment therapy session was a parole violation and to obtain his statement on the alleged violation); Feb. 10, 2020 Parole Violation Decision Making Instrument (using “ASLI telephone service” to notify Mr. [REDACTED] of a parole violation, obtain his statement on the alleged violation, and notify him of his remedial sanction).

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- [REDACTED] [REDACTED] On July 9, 2020 Mr. [REDACTED] agent reported using a VRI tablet for effective communication to explain his conditions of parole, rather than an in-person sign language interpreter.
- [REDACTED]: On June 23, 2020, Mr. [REDACTED] was provided notice of his amended conditions of parole using a VRI tablet, rather than an in-person sign language interpreter.
- [REDACTED] [REDACTED] Ms. [REDACTED] agent attempted to use VRI to inform her of her amended conditions of parole. *See* Aug. 5, 2020 ROS Entry. The VRI failed and the agent had to resort to written notes and lip-reading for effective communication.

Plaintiffs' counsel are concerned that DAPO's current procedures regarding VRI make it too unreliable to establish effective communication with DPH parolees when an on-site interpreter is not available. *See* February 11, 2020 Letter at 19. We will continue to monitor DAPO's use of VRI closely for the issues identified in the above sections.

7. Discriminatory Conduct

The Armstrong Remedial Plan prohibits discrimination on the basis of disability, both in terms of the failure to provide reasonable accommodations, and conduct more traditionally regarded as discriminatory. *See* ARP § I.

In one field file a parole agent interfered in a deaf parolee's affairs in what appears to be a discriminatory manner. *See* **Appendix L**. The ROS for Mr. [REDACTED] [REDACTED] indicates that he requested a travel pass from his agent to attend a family reunion out of state. *See* June 4, 2019 ROS Entry. The agent made contact with Mr. [REDACTED] father, who verified the dates and purpose of the travel. *See* June 13, 2019 ROS Entry. According to the ROS entry, however, the agent took the opportunity to "explain[] to Ramon senior that he has concerns about Subject traveling alone due to his disabilities of not being able to communicate," convincing the father to rescind the invitation he had extended to the son he had not seen since 1979. *Id.*

This interference was unnecessary and discriminatory.⁸ To the extent that the agent had reservations about Mr. [REDACTED] ability to make the trip, it may have been

⁸ It bears pointing out that airports and airlines routinely accommodate individuals who may have difficulty navigating the airport independently, for any number of reasons.

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appropriate to discuss the matter with Mr. [REDACTED] (through a qualified sign language interpreter). There is no indication the agent ever paid Mr. [REDACTED] this courtesy, opting instead to advance his own discriminatory views on whether he could engage in the very common adult task of independent travel.

8. Incomplete Document Production

The document production was incomplete as follows:

- [REDACTED] [REDACTED] Mr. [REDACTED] field file contained Record of Supervision entries only from a six-week period beginning July 2020, despite a clear indication that he has been on parole for several years.
- [REDACTED] [REDACTED]: The records produced contained just two ROS entries, despite Mr. [REDACTED] having been on parole for several years. What documents did appear in his file suggest that Mr. [REDACTED] may have been in custody from November 2018 until March 2020. It would be particularly important to see these records to determine why Mr. [REDACTED] was taken into custody, and whether he has received effective communication since his more recent release. It is also important to review Mr. [REDACTED] ROS because he has a TABE score of just 2.0.
- [REDACTED] [REDACTED] Mr. [REDACTED] field file did not include *any* Record of Supervision entries, even though he has been on parole since May 2019. Given that Plaintiffs' counsel identified several significant violations from the limited production, we are concerned there may be many more instances where agents failed to appropriately provide SLI services to Mr. [REDACTED]
- [REDACTED]: Mr. [REDACTED]'s field file contained Record of Supervision entries only from May 2020 until the present, even though he has been on parole since January 2020.

Such individuals include unaccompanied minors, and individuals with mobility and sensory disabilities. With a small amount of advance planning, Mr. [REDACTED] should have been able to make this trip alone, regardless of his communication ability or his familiarity with air travel.

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- [REDACTED] [REDACTED] The August 2, 2019 ROS Entry refers to a CDCR Form 1527 Voluntary Statement of Admission that Mr. [REDACTED] purportedly signed on August 2, 2019, but the form itself is not included in the field file.

Overall, DAPO has made improvements in providing on-site sign language interpreters during initial parole interviews and Containment Team Meetings, but Plaintiffs' counsel continues to observe significant deficiencies in DAPO's efforts to establish effective communication with DPH parolees requiring sign language. **Please include the allegations mentioned herein on DAPO's employee non-compliance logs.**

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Ben Bien-Kahn

By: Ben Bien-Kahn
Senior Counsel

/s/ Caroline E. Jackson

By: Caroline E. Jackson
Associate Attorney

BBK:CEJ:rk

Encls.: Appendices A-L

cc:

Ed Swanson	Andrea Moon	Amy Padilla	Jay Powell
Alexander Powell	Sean Lodholz	Jason Anderson	Gently Arredo
Patricia Ferguson	Bruce Beland	Joseph Edwards	Lois Welch
Gannon Johnson	Robert Gaultney	Lynda Robinson	Steven Faris
Amber Lopez	Sandra Alvarez	Barbara Pires	Jaimee Lacey
Robin Stringer	Tabitha Bradford	Courtney Andrade	Amenthia Tisdale
OLA Armstrong	Tammy Foss	Miguel Solis	Rachelle Velasquez
Adriano Hrvatin	John Dovey	Olga Dobrynina	Robert Wahl
Trace Maiorino	Robin Hart	Dawn Stevens	John Carbone
Anthony Tartaglio	CCHCS Accountability	Alexandrea Tonis	Asvi Phuong
Namrata Kotwani	Joseph Williams	Jimmy Ly	Co-Counsel