

1 DONALD SPECTER – 083925
 RITA K. LOMIO – 254501
 2 MARGOT MENDELSON – 268583
 PRISON LAW OFFICE
 3 1917 Fifth Street
 Berkeley, California 94710-1916
 4 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704
 5
 MICHAEL W. BIEN – 096891
 6 GAY C. GRUNFELD – 121944
 PENNY GODBOLD – 226925
 7 MICHAEL FREEDMAN – 262850
 ROSEN BIEN
 8 GALVAN & GRUNFELD LLP
 101 Mission Street, Sixth Floor
 9 San Francisco, California 94105-1738
 Telephone: (415) 433-6830
 10 Facsimile: (415) 433-7104

CALIFORNIA OFFICE OF THE
 ATTORNEY GENERAL
 XAVIER BECERRA
 Attorney General of the State of California
 MONICA ANDERSON
 Senior Assistant Attorney General
 ADRIANO HRVATIN
 Supervising Deputy Attorney General
 SEAN LODHOLZ
 ANTHONY J. TARTAGLIO
 TRACE O. MAIORINO
 Deputy Attorneys General
 State Bar No. 179749
 455 Golden Gate Avenue, Suite 11000
 San Francisco, CA 94102-7004
 Telephone: (415) 510-3594
 Fax: (415) 703-5843
 E-mail: Trace.Maiorino@doj.ca.gov
 Attorneys for Defendants Gavin Newsom
 and the California Department of Corrections
 and Rehabilitation

11 LINDA D. KILB – 136101
 DISABILITY RIGHTS
 12 EDUCATION & DEFENSE FUND,
 INC.
 13 3075 Adeline Street, Suite 201
 Berkeley, California 94703
 14 Telephone: (510) 644-2555
 Facsimile: (510) 841-8645

15 Attorneys for Plaintiffs

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

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

Case No. C94 2307 CW
JOINT CASE STATUS STATEMENT
 Judge: Hon. Claudia Wilken

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

5 CURRENT ISSUES¹

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

7 1. Plaintiffs’ Statement

8 The State’s mismanagement of the COVID-19 pandemic within its prison system,
 9 including its failure to adequately reduce population density, failure to timely develop and
 10 enact safe and effective quarantine and isolation protocols, and creation of a “public health
 11 disaster” through transfer of medically vulnerable people earlier in the pandemic without
 12 proper safeguards, has resulted in needless suffering, illness, and death.² As of March 12,
 13 2021, 49,168 (over 51% of) incarcerated people have been infected in the California prison
 14 system, and at least 215 have died.³ *Armstrong* class members have been particularly
 15 affected; as the Court Expert noted, “*Armstrong* class members have been almost five
 16 times more likely to die of COVID-19 than non-class members” Doc. 3201 at 2.

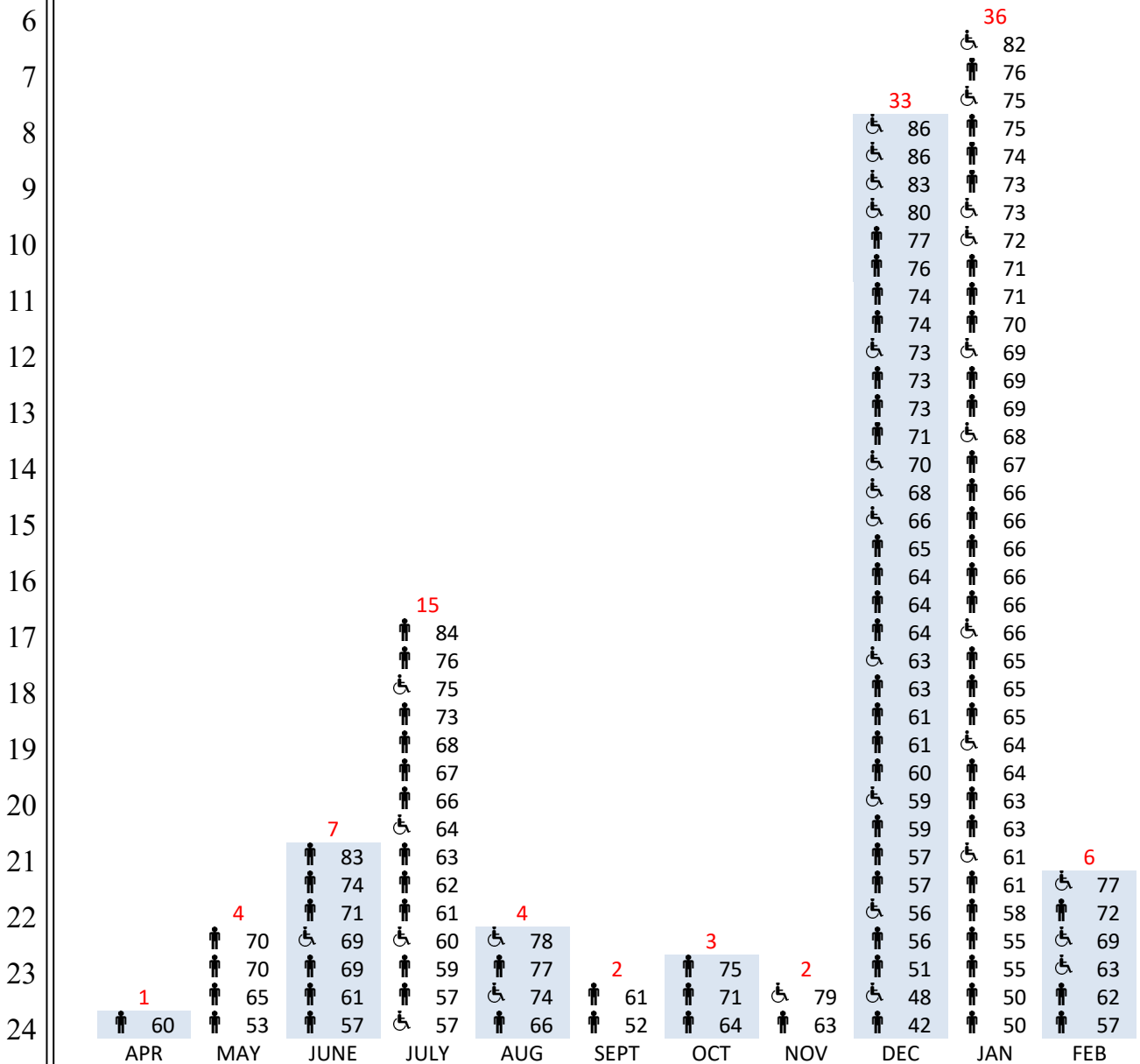
17 Two days before Christmas, Judge Tigar sounded the alarm about an outbreak in a
 18 dormitory at the California Medical Facility that housed “21 old men in wheelchairs”:
 19 “there’s no way to quarantine them because there aren’t 21 individual wheelchair-
 20 accessible cells at CMF. So not surprisingly COVID-19 is now spreading in that group.”
 21 *Plata v. Newsom*, Tr. at 65:12-18 (N.D. Cal. Dec. 23, 2020). Three weeks later, Judge
 22

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

25 ² See Office of the Inspector General, COVID-19 Review Series, Part III: California
 26 Correctional Health Care Services and the California Department of Corrections and
 Rehabilitation Caused a Public Health Disaster at San Quentin State Prison When They
 Transferred Medically Vulnerable Persons From the California Institution for Men
 Without Taking Proper Safeguards (Feb. 2021), available at <https://www.oig.ca.gov/>.

27 ³ See CDCR, Population COVID-19 Tracking,
 28 <https://www.cdcr.ca.gov/COVID-19/population-status-tracking/> (last visited March 12,
 2021).

1 Tigar reported on the “heartbreaking increase in fatalities”: “It won’t surprise anyone to
 2 find out that the vast majority of them were elderly. . . . Many were in wheelchairs. They
 3 needed commode chairs to use the bathroom. So when the virus hit, they were defenseless
 4 and then they died. . . . These deaths were sad and they were unnecessary.” *Plata v.*
 5 *Newsom*, Tr. at 18:2-20 (N.D. Cal. Jan. 14, 2021).



Armstrong Class Member Deaths Related to COVID-19, by Month and Age
 (April 2020 – February 2021)

Total Armstrong Class Member Deaths: 113*

♿: Wheelchair user

*This chart is based on the information available to Plaintiffs as of March 10, 2021. It may undercount the total number of COVID-19 related deaths of Armstrong class members during this time period.

1 Inadequate accessible housing for people with disabilities continues to place
2 *Armstrong* class members at heightened risk of infection. The current methodology used
3 by Defendants to prepare for outbreaks provides the minimum number of isolation and
4 quarantine beds (combined) that each prison needs, but does not specify how institutions
5 should allocate that space between isolation and quarantine. Although the purpose of the
6 set-aside space is “to identify and respond to an outbreak at the earliest onset which means
7 **most of the space will be for quarantine,**” *see* CDCR/CCHCS Public Health Workgroup
8 Recommendations (Aug. 17, 2020) (emphasis added), Defendants have failed to require or
9 recommend at any time during the pandemic that “most” (or at minimum, a majority) of
10 the set-aside space should be for quarantine. A number of institutions have therefore set
11 aside significantly more space for isolation than for quarantine (which is easier to do, as
12 people may be isolated in congregate living environments, as they already are infected),
13 making them less prepared to respond to outbreaks. *Armstrong* class members have
14 suffered disproportionately as a result, as it is more difficult to locate additional accessible
15 beds for quarantine at the outset of an outbreak if they have not already been set aside, due
16 to the shortage of accessible beds in CDCR. If Defendants will not direct institutions to
17 follow the public health experts’ recommendations, it must be determined how to ensure
18 that sufficient accessible quarantine beds are set aside so that institutions will be prepared
19 to adequately respond to outbreaks in the future, and so that *Armstrong* class members will
20 no longer be disproportionately harmed due to inadequate planning by Defendants.

21 The Court Expert also has noted that “Defendants have an obligation to ensure that
22 class members have equal access to single-cell, solid-door quarantine space,” and that the
23 “obligation to identify such discrepancies does not lie solely with Plaintiffs and that CDCR
24 must also work to identify and remedy instances of unequal access to preferable quarantine
25 space prior to an outbreak.” Doc 3201 at 5 (Feb. 1, 2021). But, beyond rejecting
26 Plaintiffs’ proposal for how to do so, almost a year into the pandemic, Defendants have
27 failed to explain what (if anything) they will do to meet this affirmative obligation,
28 choosing instead to rely on Plaintiffs to bring problems to Defendants’ attention as they

1 identify them, which is inappropriate in light of the significant delay and incomplete view
2 Plaintiffs' counsel have into the prison, including lack of access to SOMS; as a result, in
3 practice, Defendants' inaction has resulted in this problem being identified only after
4 Plaintiffs' counsel belatedly (and often serendipitously) learn of discrimination against
5 class members only after the damage has been done, including the hospitalizations and
6 deaths of class members who were housed in less safe quarantine spaces because of their
7 disabilities.

8 In December 2020, for example, wheelchair users at California State Prison, Los
9 Angeles County, were left in housing units with infected people because there was no
10 other wheelchair-accessible housing available. Three of them died in late December and
11 early January 2021, after they became infected themselves. Defendants did not notify
12 Plaintiffs' counsel of this problem; Plaintiffs' counsel uncovered it through class member
13 interviews. And, in November 2020, wheelchair users with direct exposure to the virus
14 were left in a shared-air setting at the California Substance Abuse and Treatment Facility
15 and State Prison, Corcoran, and later became infected, while their peers who did not
16 require wheelchair-accessible housing were moved to safer, single-cell quarantine housing.
17 Once again, Defendants did not identify or alert Plaintiffs' counsel to this problem.

18 In addition, as of March 5, 2021, 251 class members remain housed in areas not
19 designated for their disabilities, and 79 people are housed in violation of a lower bunk
20 and/or lower tier restriction. The process negotiated by the parties to identify problems
21 and quickly provide disability accommodations to such class members—an interview
22 within 24 hours documented in a CDCR 128-B chrono—continues to be poorly
23 implemented and ineffective. *See* Doc. 3055 at 16-17 (Sept. 2, 2020) (noting failure to
24 timely interview class members, failure to use Spanish language interpreters during
25 interviews, and failure to resolve identified disability problems). In January 2021, for
26 example, a monolingual Spanish speaker who struggled to access his bed while housed in
27 converted office space at Mule Creek State Prison reported that he did not understand the
28 interview, which was conducted in English, and was therefore unable to request needed

1 grab bars. In December 2020—at the height of the COVID-19 surge in the prison
2 system—an interviewer directed a class member who reported that he was unable to fit his
3 walker through the door of his quarantine cell to get help from an incarcerated ADA
4 worker, in violation of existing public health directives about the safe operation of the
5 ADA worker program.

6 The types of discrimination and mistreatment due to disabilities during the
7 pandemic are varied and widespread. Deaf class members at the California Institution for
8 Men, for example, apparently were said to have “refused” an offer to move to safer, celled
9 quarantine housing in February 2021, when the class members in fact may not have
10 understood the offer because no sign language interpreter was provided. And a full-time
11 wheelchair user with paraplegia who uses a colostomy bag was housed in a negative
12 pressure room at the California Health Care Facility, Stockton, for 23 days in December
13 2020 and January 2021, and denied access to the shower during that time because of
14 legionella in the water, forcing him to attempt to clean himself in the sink. In addition,
15 four full-time wheelchair users were transferred from CIM into a burgeoning COVID-19
16 outbreak at CHCF in December 2020, because no wheelchair-accessible quarantine cells
17 were available at CIM. In February 2021, two months later, two of those class members
18 remained housed in psychiatric inpatient cells, apparently because there was no appropriate
19 accessible housing available, even though their quarantine period ended on January 4, and
20 even though they did and do not require inpatient mental health care; in fact, their mental
21 health appears to be worsening due to the prolonged and severe restrictions applied in that
22 housing area.

23 Plaintiffs are particularly concerned that Defendants have failed to learn from
24 missteps earlier in the pandemic and failed to take swift and comprehensive action to
25 prevent them from recurring. *See* Doc. 3191 at 1-3. Plaintiffs, for example, repeatedly
26 have raised concerns regarding lack of planning ahead of housing class members in
27 gymnasiums, and later documented dangerous and inaccessible conditions in gymnasiums.
28 *See, e.g.,* Doc. 2996 at 16-17 (July 14, 2020) (Plaintiffs’ Motion to Protect *Armstrong*

1 Class Members During the Pandemic); Doc. 3191 at 87 (Sept. 14, 2020) (noting that, the
2 day before elderly people with disabilities were moved into a gym, “ADA staff reported
3 that they did not know whether the gym would be used to house anyone for any purpose;
4 that they did not know if a trapeze bar could be installed in the gym, had not discussed the
5 matter with Plant Ops, and had no plan in place if someone required that accommodation;
6 that there was no appeals box; and that they did not know of any plan to address cords
7 from the outlets on the back wall so they would not pose a tripping hazard”).

8 Nonetheless, Defendants failed to implement a comprehensive solution. **Almost six**
9 **months later**, in January 2021, *Armstrong* class members housed in a gym for medical
10 isolation at MCSP reported filthy and feces-covered toilets and walls, urine-soaked floors,
11 and difficulty accessing medication lines, meals, and the single accessible indoor toilet
12 because of crowded conditions and a floor littered with extension cords and property. *See*
13 **Exhibit A**, Letter from Amber Norris & Patrick Booth, Plaintiffs’ Counsel, to Tamiya
14 Davis, CDCR Office of Legal Affairs, Conditions in MCSP Gym COVID-19 Isolation
15 Housing (Jan. 7. 2021).

16 In addition, Plaintiffs repeatedly have raised concerns regarding placing people with
17 significant disabilities on flimsy cots made of a sagging nylon material that are not bolted
18 to the ground. *See, e.g.*, Doc. 2996-3 at 14-18 (July 6, 2020) (noting that class members at
19 CHCF with significant mobility disabilities and with fistulas reported problems safely
20 getting on and off cots). Notwithstanding Defendants’ assurance that since at least May
21 2020, CDCR has a “commitment of not housing inmates with impacting placement DPP
22 codes into cots,” many class members with impacting-placement codes, including
23 wheelchair users, have been housed in cots in converted offices at MCSP **eight months**
24 **later**. *See* CHCF Response to the *Armstrong* Monitoring Tour—July 2020 at 5 (Jan. 19,
25 2021). In fact, of the 48 *Armstrong* class members housed in cots at MCSP as of
26 January 13, 2021, 39 (or over 81%) had impacting-placement codes, and almost all were
27 elderly, with twenty-one class members between 70 and 83 years old. Class members
28 reported struggling to safely get onto and off of the cots and that cots repeatedly have

1 broken under their body weight. *See Exhibit B*, Letter from Ilian Meza-Peña, Tovah
 2 Ackerman, and Patrick Booth, Plaintiffs' Counsel, to Gannon Johnson, CDCR Office of
 3 Legal Affairs, Inaccessible Housing at MCSP (Feb. 4, 2021).



12 In September 2020, Plaintiffs' counsel alerted Defendants to a full-time wheelchair
 13 user with a documented need for trapeze (grab) bars, who was housed in a gym at SATF
 14 without that accommodation. As a result, before Plaintiffs' counsel intervened over a
 15 week later, an incarcerated person who was in quarantine due to direct exposure to the
 16 novel coronavirus had to physically lift the class member up from his bed each time he
 17 wanted to sit up or get out of bed, placing the class member at increased risk of infection
 18 and death due to Defendants' failure to accommodate his disability and provide accessible
 19 housing. *See Exhibit C*, Letter from Ilian Meza-Peña & Rita Lomio, Plaintiffs' Counsel,
 20 to Tamiya Davis, CDCR Office of Legal Affairs, Failure to Provide Trapeze Bars During
 21 the SATF Outbreak (Dec. 24, 2020); Doc. 3055-1 at 131-32 (class member declaration).

22 Although the institution later installed trapeze bars for the class member in the
 23 gymnasium, the institution failed to identify the cause of its noncompliance and failed to
 24 put a system in place to prevent the problem from happening again. The problem
 25 happened again, and again the institution was unaware. In particular, **over two months**
 26 **later**, that same full-time wheelchair user tested positive for COVID-19 and was moved to
 27 medical isolation. First, he was housed in a cell that did not allow him to bring his
 28 wheelchair in and, as a result, he could not access the toilet. He reported that he did not eat

1 because he knew he would not be able to use the toilet. Then, he was moved to different
2 housing. At no time was he provided needed trapeze bars, and he reported that he injured
3 his shoulder when he momentarily forgot that he did not have trapeze bars and fell while
4 attempting to transfer from his bed to his wheelchair. The class member, a monolingual
5 Spanish speaker who cannot read or write in English or Spanish, reported that he asked
6 custody and healthcare staff for help, but they would not help him. It was not until
7 Plaintiffs' counsel intervened almost a month later that he was moved to an accessible cell
8 with trapeze bars. And the problem occurred yet again in February 2021, when another
9 full-time wheelchair user at SATF with a documented need for trapeze bars was housed in
10 designated isolation and quarantine housing without being provided that accommodation,
11 notwithstanding the fact that he directly informed ADA staff of his need for that
12 accommodation.

13 Plaintiffs have demanded that Defendants address these problems on a statewide
14 basis through clear, written direction. This is particularly critical due to the constant
15 turnover in institution ADA staff and their increased responsibilities during the pandemic;
16 since May 2020 alone, 27 of the 35 prisons have had either a new ADA Coordinator or a
17 new Class Action Management Unit (CAMU) CCII (or both), and multiple institutions
18 have had at least three staffing changes during that time. Defendants committed on
19 January 22, 2021, to providing written direction regarding non-traditional housing areas,
20 temporary staging areas, and installation of trapeze bars, as well as to providing Plaintiffs'
21 counsel an opportunity to review and comment. Defendants, however, instead issued two
22 inadequate email directives about trapeze bars without notice to or input from Plaintiffs'
23 counsel. Plaintiffs hope this problem can be remedied collaboratively as soon as possible.

24 Next, the Court ordered Defendants to "develop and implement a plan to ensure that
25 the ADA worker program can safely and effectively function without undue risk of
26 transmission of COVID-19." *See* Doc. 3015 at 1 (July 20, 2020). Nonetheless, Plaintiffs
27 continue to receive reports of an inadequate number of ADA workers, unprofessional
28 conduct by ADA workers, lack of accountability and oversight, lack of knowledge about

1 PPE and building restrictions, and improper use of ADA workers in quarantine units.
2 These issues must be immediately addressed.

3 The Court also ordered Defendants to “develop a reliable process . . . to ensure that
4 adequate accessible quarantine and isolation space is set-aside in advance of *Armstrong*
5 class members transferring into the institution, and in response to any changes in disability
6 codes or movement within the institution.” Doc. 3072 ¶ 4. Since October 2020, Plaintiffs
7 have been raising concerns about whether CDCR’s intake processes adequately take into
8 account the accessible housing needs of both new arrivals from county jails and class
9 members who are already housed at the reception centers. From October 2020 on,
10 Plaintiffs have been making recommendations on what steps CDCR should take so that
11 there is a sustainable process in place that can be scaled up as the number of new arrivals
12 increases, with more than 10,000 people in county jails awaiting transfer to CDCR.
13 Defendants paused intake in mid-November 2020 in response to the massive outbreaks
14 throughout CDCR, but restarted intake the week of January 11, 2021, with hundreds of
15 people entering CDCR custody each week. As the Court Expert noted, “Plaintiffs have
16 expressed concern that there is a lack of accessible space at intake centers, giving rise to
17 the possibility of class members either being housed inaccessibly or being forced to spend
18 longer in county jails awaiting intake, with the concomitant risk of potential exposure to
19 the virus.” Doc. 3201 at 6. On February 12, 2021, Defendants stated that they were “in the
20 process of operationalizing” Plaintiffs’ recommendations. Plaintiffs hope this can be done
21 without further delay.

22 **2. Defendants’ Statement**

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

1 severe effects from COVID-19, but note that “[d]isability alone may not be related to
2 higher risk for getting COVID-19 or having severe illness.”⁴ Nonetheless, Defendants are
3 dedicating their resources to addressing the COVID-19 pandemic and providing timely
4 information to address Plaintiffs’ concerns in an effort to obviate the need for judicial
5 intervention and maximize invaluable resources. Defendants continue to make significant
6 and comprehensive efforts to contain and minimize the effects of an unprecedented, global
7 pandemic on the people housed in its institutions, staff, and visitors by implementing a
8 robust vaccination process, maintaining a stringent testing process, reducing institution
9 populations, enforcing mitigation measures, working with Plaintiffs to address individual
10 concerns, and many other proactive efforts.

11 According to the Center for Disease Control (CDC), “all COVID-19 vaccines
12 currently available in the United States have been shown to be highly effective at
13 preventing COVID-19.”⁵ Yet, Plaintiffs fail to acknowledge that many *Armstrong* class
14 members were included in the initial phase of CDCR’s COVID-19 vaccination program
15 and were some of the very first persons to receive the vaccine in California (and the world)
16 as part of a program that began nearly three months ago. On December 23, 2020, CDCR
17 and California Correctional Health Care Services (CCHCS) received the first allocation of
18 the COVID-19 vaccine and began a vigorous vaccination program in accordance with state
19 and federal guidelines.⁶ Under these guidelines, COVID-19-naïve frontline medical staff
20 and incarcerated people housed in skilled-nursing facilities were the initial recipients of the
21 vaccine. This included all patients housed at California Medical Facility (CMF),
22 California Health Care Facility (CHCF), and certain units within the Central California
23

24 ⁴ See CDC, Coronavirus Disease 2019: People with Disabilities,
25 <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html> (last visited March 14, 2021).

26 ⁵ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-benefits.html> (last visited March 14, 2021).

27 ⁶ <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
28 March 14, 2021).

1 Women's Facility (CCWF). Now that all patients at skilled-nursing facilities have been
2 offered the vaccine, additional groups of COVID-19 naïve incarcerated people have been
3 prioritized, as follows: patients age 65 or older at all CDCR institutions; patients with a
4 COVID-19 weighted risk score of 6 or greater; patients with a COVID-19 weighted risk
5 score of 3 or greater; certain psychiatric patients and patients who require a higher level of
6 care; and incarcerated people with jobs.⁷ Importantly, nearly all of the first three groups
7 have been offered the vaccine. For example, as of March 12, 2021, of the COVID-19
8 naïve patients age 65 or older at all CDCR institutions, 2,393 (98%) have been offered the
9 vaccine and 89% have accepted it. As of March 12, 2021, of the COVID-19 naïve patients
10 with a COVID-19 weighted risk score of 3 or greater, 7,919 (98%) have been offered the
11 vaccine and 83% have accepted it.⁸ As of March 2, 2021, there were 9,954 DPP residents
12 and 7,558 of those had been offered the vaccine. Finally, as of March 12, 2021, 42,603
13 incarcerated people and 26,022 staff members have received at least the first dose of the
14 vaccine.

15 Despite the rollout of this robust vaccination program, CDCR continues with its
16 proactive measures to minimize the risk of COVID-19, including its expansive testing
17 program. CDCR's testing program first required testing of all adult-institutions' staff and
18 health-care staff regardless of the number of COVID-19 cases at their individual
19 institution. Once that baseline testing at all institutions was completed, serial testing of
20 employees began at institutions that had positive test results. The serial testing occurs
21 every fourteen days until no new cases are identified in two sequential rounds of testing.
22 Once that goal is met, the institution resumes their regular surveillance testing schedule.
23 Surveillance testing is used to detect outbreaks in an early phase, even before the
24 development of symptoms. Further, all staff at all facilities are tested each week. This
25 element of the testing protocol minimizes the risk of exposure to all inmates, including

26 _____
27 ⁷ ADA workers are among the eleven job categories that are prioritized for vaccination
over incarcerated people with other jobs.

28 ⁸ This statistic captures all patients with a COVID-19 weighted risk score of 6 or greater.

1 class members.

2 Further, CCHCS is conducting surveillance testing of incarcerated people at all
3 adult institutions. This voluntary testing is performed across multiple facilities at each
4 institution every month. All facilities are testing outbreak areas every three to ten days.
5 Priority is given to asymptomatic individuals who have been identified as vulnerable or
6 high-risk for complications of COVID-19. Additionally, CDCR has implemented an
7 additional COVID-19 testing process that provides results within fifteen minutes or less at
8 each prison. This point-of-care rapid testing is used to facilitate the transfer and reception
9 process at CDCR institutions. It is also used for high-risk patients when immediate
10 knowledge of infection status is critical. Moreover, all new arrivals are tested within
11 twenty-four hours of arrival and placed into quarantine for fourteen days. There has been a
12 substantial reduction in active cases of COVID-19. As of March 15, 2021, there were 63
13 incarcerated persons with COVID-19.⁹

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

27 _____
28 ⁹ <https://www.cdcr.ca.gov/COVID-19/population-status-tracking/html> (last visited
March 14, 2021).

1 94,890 and the total prison population was 90,126, a reduction of 24,192 since March 11,
2 2020.¹⁰

3 Plaintiffs allege specific incidents at approximately five of the thirty-five
4 institutions, including CIM, CHCF, MCSP, SATF, and LAC that have arisen over the
5 course of the pandemic concerning safe and accessible housing that Defendants have
6 worked hard to address so as to respond to the individual class-members' needs and to
7 avoid repetition of a similar issue in the future.¹¹ Defendants have already modified policy
8 and procedure during the pandemic to address the concerns raised by Plaintiffs and have
9 issued comprehensive written direction to the field outlining requirements and
10 expectations. Defendants have also provided specific instruction to the institutions about
11 their obligations under these various directives in multiple statewide meetings with ADA
12 Coordinators and CAMU Correctional Counselor IIs to ensure compliance and ensure that
13 information is timely provided to Plaintiffs. One such directive is the November 5, 2020
14 directive that mandates staff interview class members within twenty-four hours of being
15 placed in non-designated or non-traditional housing area and complete a 128B checklist.
16 Once completed, the 128B checklist is forwarded to CDCR's CAMU and produced to
17 Plaintiffs' counsel on a rolling basis. The 128B checklist is a five-page document that
18 addresses the class member's DPP code, necessary DME, cell/bed area, toilets, sinks, paths
19 of travel, recreation, non-architectural accommodations, accommodations provided to the
20 inmate, and even includes questions to the staff-member interviewer. These questions
21 posed to the staff-member interviewer are meant to ensure the inmate is appropriately
22 accommodated, familiar with the Form 1824 process, able to alert staff to future needs, and
23 to encourage the inmate to request accommodations.

24
25 ¹⁰ See <https://www.cdcr.ca.gov/COVID-19/> (last visited March 14, 2021).

26 ¹¹ Because Defendants have held numerous conferences with Plaintiffs, the Court Expert,
27 and prison officials to address and remedy these incidents, and to develop a process for
28 preventing similar occurrences from happening in the future, Defendants do not believe
that a specific response to each incident raised by Plaintiffs is appropriately included in
this joint statement.

1 Additionally, Defendants continue to work with Court Expert Ed Swanson and
2 Plaintiffs to facilitate Mr. Swanson’s review of Defendants’ existing supply of safe and
3 accessible housing, including housing for medical isolation or quarantine, so that he may
4 continue to present his recommendations to the Court. Defendants are diligently working
5 to meet their obligations under the Court’s order to ensure compliance. As part of these
6 efforts, Defendants have developed a means to conduct a statewide daily count to confirm
7 that class members are provided safe, accessible housing and to provide a daily snapshot of
8 class members’ housing status. Further, Defendants have developed the means to provide
9 a weekly update to Plaintiffs and the Court Expert to verify that the institutions have
10 adequately designated isolation and quarantine space that comports with Mr. Swanson’s
11 methodology. In his fourth report dated February 1, 2021, Mr. Swanson stated that,
12 “[c]urrently, there are sufficient DPW and lower/lower isolation and quarantine beds at
13 each institution under the methodology that the parties have agreed should apply to each
14 institution.” (ECF No. 3201 at p. 3.)

15 Despite this compliance, Plaintiffs continue to complain about set-aside accessible
16 quarantine space, but Defendants have addressed these concerns. First, Plaintiffs request
17 that “at least 51% of the isolation and quarantine beds that are accessible to class members
18 be reserved for quarantine, rather than isolation.” (*Id.*) But as noted by the Court Expert,
19 “this issue pertains to the entire prison population, not only *Armstrong* class members, and
20 it is therefore appropriate to address it in *Plata* rather than here.” (ECF No. 3201 at 4.)
21 The methodology applied under *Plata* does not require Defendants to identify and set aside
22 separate isolation and quarantine space.” (*Id.*) The Court Expert recommends that
23 Plaintiffs either raise this issue in *Plata* or continue to address it on an institution-by-
24 institution basis, as they have done to date. (*Id.*) Nonetheless, in response to Plaintiffs’
25 concerns, and to the extent possible, Defendants have worked with the institutions to
26 increase the proportion of quarantine space and will continue to meet and confer with
27 Plaintiffs to address their concerns on an institution-by-institution basis.

28 Plaintiffs have raised another related concern about the extent that class members

1 have access to single-celled, solid-door, quarantine space under the current methodologies.
2 But Defendants are well aware of their obligation to “ensure that class members have equal
3 access to single-cell, solid-door quarantine space,” as do non-class members. (ECF
4 No. 3201 at p. 5.) As noted by the Court Expert, Plaintiffs identified six institutions (SOL,
5 CCWF, CMF, MCSP, SATF, and VSP) at which they believed were “disadvantaged.”
6 (ECF No. 3201 at p. 5.) In accordance with the Court Expert’s recommendation to meet
7 and confer concerning this issue, the parties have done so on a continuing basis to establish
8 that there is equal access under the applicable methodology.

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

16 Plaintiffs have shared their concerns and recommendations about the resumption of
17 the intake process with Defendants. Defendants hear Plaintiffs, and Defendants are in the
18 process of operationalizing these recommendations. Defendants will continue to engage
19 Plaintiffs in this process and provide substantive updates as these operational efforts
20 develop.

21 Plaintiffs’ contentions regarding CDCR’s COVID-19 response are offensive—
22 Plaintiffs suggest that Defendants have put their heads in the sand for almost a year and
23 have done nothing, and are doing nothing, to address the pandemic. The *Plata* court
24 completely rejected two motions Plaintiffs brought challenging Defendants’ COVID-19
25 response. Plaintiffs know, and the record shows (including through court orders), that
26 CDCR has been one of the most proactive correctional systems in the country in battling
27
28

1 an insidious virus the likes of which have not been seen in over a century.¹² Defendants
2 will continue to be transparent and collaborate with the Court Expert, Plaintiffs’ counsel,
3 and other stakeholders as they work to protect the inmates under their charge and the staff
4 dedicating themselves to this duty during this crisis.

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

7 **1. Plaintiffs’ Statement**

8 Plaintiffs’ counsel has presented evidence of a hostile environment at many
9 institutions that discourages people from asking for disability accommodations and
10 discriminates against people with disabilities. Plaintiffs’ counsel has also documented
11 allegations of widespread abuse and violations of the rights of people with disabilities and
12 CDCR’s lack of accountability for the abuse. On September 8, 2020, the Court issued
13 orders finding remedial efforts were necessary in order to “prevent further violations of the
14 ARP and class members’ ADA rights at RJD.” Doc. 3059 at 42. The requirements
15 necessary to prevent further violations, as well as timeframes for compliance, were
16 outlined by the Court in an Order for Remedial Measures. *See* Doc. 3060. The parties
17 have agreed to take additional time to negotiate the staff misconduct investigation and
18 disciplinary remedies. *See* Doc. 3219. The parties have agreed on portions of a Remedial
19 Plan for RJD and Plaintiffs filed objections regarding portions of the proposed plan that
20 remain in dispute. *See* Doc. 3177. On January 20, 2021, the Court agreed with Plaintiffs’
21 Objections and ordered Defendants to issue a revised partial plan for RJD. Doc. 3192.
22 The parties continue to discuss ways to address the excessive use of pepper spray on class
23 members.

24 On March 11, 2021, the Court issued further orders finding remedial efforts were
25 necessary to prevent ongoing violations of the ADA and ARP at five additional prisons –
26 SATF, COR, LAC, CIW, and KVSP. *See* Doc. 3217. The Court found that, in order to
27

28 ¹² *See Plata v. Newsom*, No. 01-01351 JST (N. D. Cal.), ECF No. 3291 at p. 14.

1 remedy the systemic violations found at these five prisons, CDCR must come up with a
2 plan to deploy body-worn cameras and fixed surveillance cameras, install additional
3 supervisory staff, and implement sweeping changes to its staff misconduct investigation
4 and disciplinary system to ensure that officers are held accountable for violations of class
5 members' rights, among other remedies. *Id.* at 45-53; *see also* Doc. 3218. CDCR is a
6 statewide system. Plaintiffs assert that violations of the ADA and ARP found thus far at
7 six prisons exist systemwide and Plaintiffs are committed to bringing such evidence before
8 the Court until all class members are protected.

9 Plaintiffs continue to raise significant disability-related staff misconduct concerns
10 throughout the state, including violent assaults, false RVRs, and retaliation for reporting
11 misconduct or requesting accommodations, including during the COVID-19 pandemic.
12 *See* Doc. 3190 at 91-94. Since September 2020, Plaintiffs' counsel has been requesting
13 information regarding how Defendants are handling the investigation of a raid that took
14 place this summer at CTF where dozens of incarcerated people who are Black were
15 forcefully rounded up in the middle of the night, dragged to a dining hall, and left for hours
16 without clothes, restroom access, disability accommodations, or COVID-19 precautions,
17 before being questioned by staff. Plaintiffs presented Defendants with evidence of class
18 members who were injured when they were pulled from their bunks to the concrete floor
19 and whose disabilities were further exacerbated as a result of force during incident. *See*
20 **Exhibit D**, Letter from Penny Godbold, Plaintiffs' Counsel, to Tamiya Davis, CDCR
21 Office of Legal Affairs (Jan. 15, 2021). Defendants have yet to respond to Plaintiffs'
22 requests for information about the status of any investigation into allegations that class
23 members' disability rights were violated during the raid.

24 At California State Prison, Corcoran, Plaintiffs' counsel reported retaliation against
25 a class member for reporting misconduct who now feels unsafe requesting disability
26 accommodations or submitting grievances. *See* **Exhibit E**, Letter from Patrick Booth,
27 Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (Feb. 4, 2021). And
28 at the California Institution for Men, Plaintiffs' counsel reported continued harassment and

1 abuse in a Level II dorm that primarily houses elderly class members with significant
2 disabilities, through invasive and unprofessional strip searches of wheelchair users,
3 apparently in retaliation for a class member's attempt to access the grievance process. *See*
4 **Exhibit F**, Letter from Jordan Payne & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis,
5 CDCR Office of Legal Affairs, Continued Reports of Abuse and Retaliation in Joshua
6 Hall, CIM (Feb. 9, 2021). This letter builds on a letter regarding staff misconduct in the
7 same dorm sent in May 2019, which Defendants still have not answered.

8 Plaintiffs also previously reported that two *Armstrong* class members—a full-time
9 wheelchair user and a Deaf man—were gruesomely bludgeoned to death at SATF last
10 year, after staff failed to take a Deaf class member's safety concerns seriously and failed to
11 provide sign language interpretation so he could effectively communicate the real and
12 immediate threat to his life. *See* Doc. 3153 at 20; *id.* at 56-63. Defendants assert that a
13 homicide investigation is pending, but apparently have not directed or conducted a
14 comprehensive review of the incident to identify potential staff misconduct or ways to
15 increase protections for vulnerable *Armstrong* class members.

16 As these and other incidents illustrate, Defendants do not appear to acknowledge
17 the connection between the failure to accommodate disabilities and harm to class
18 members. Further, Defendants' ongoing reference to changes made as a result of the
19 *Madrid* litigation, a case that was filed over 30 years ago, is unhelpful in light of the
20 findings by this Court and the OIG that the current system fails to hold officers
21 accountable for violating the ADA and court orders. Notwithstanding progress made to
22 reform the staff misconduct and disciplinary process during ongoing RJD negotiations,
23 Defendants are failing to meaningfully address staff accountability for disability-related
24 abuse and retaliation.

25 **2. Defendants' Statement**

26 Defendants take all allegations of staff misconduct seriously and are committed to
27 investigating and taking appropriate remedial action where warranted. Defendants dispute
28 many of Plaintiffs' overreaching and baseless allegations, but Defendants continue to

1 diligently work with Plaintiffs concerning their staff misconduct allegations at Richard J.
2 Donovan (RJD), as well as the seven institutions identified in Plaintiffs' June 3, 2020
3 motion, including California State Prison, Los Angeles County (LAC), Kern Valley State
4 Prison (KVSP), California State Prison – Corcoran (COR), California Correctional
5 Institution (CCI), Salinas Valley State Prison (SVSP), Substance Abuse Treatment Facility
6 (SATF), and California Institute for Women (CIW).

7 On September 8, 2020, the Court ordered Defendants to implement remedial
8 measures to achieve compliance with the *Armstrong* Remedial Plan and the ADA at RJD.
9 Although Defendants have sought appellate review, Defendants have developed an initial
10 remedial plan and have engaged in several substantive meet and confer sessions with
11 Plaintiffs and the Court's Expert to comply with the Court's orders and to develop a
12 responsive remedial plan. During the meet-and-confer sessions, the parties have identified
13 disputed elements of the remedial plan, shared information related to positions taken
14 concerning the plan, and sought to settle those areas of disagreement that may be resolved.
15 Defendants have provided Plaintiffs with extensive written policies related to the remedial
16 plan and presented third-party tutorials concerning officer training and the operation and
17 placement of fixed surveillance cameras. As noted above, the parties have agreed to take
18 additional time to negotiate the portion of the plan that concerns staff misconduct
19 investigation and disciplinary remedies. (ECF No. 3178.)

20 Meanwhile, as demonstrated by the parties' recent pleadings, significant progress
21 has been made with the remaining portions of the plan that concern increased staffing,
22 body-worn cameras, fixed camera installation (AVSS), document production, and other
23 remedies. (ECF Nos. 3177, 3183.) AVSS deployment remains scheduled for April 5,
24 2021, and Defendants will continue to apprise the Court Expert and Plaintiffs of the status
25 of this remedial measure. Defendants look forward to continuing their efforts with the
26 Court Expert and Plaintiffs to develop the remaining portions of the RJD Remedial Plan,
27 noting that the Office of Inspector General's February 16, 2021 report will further inform
28 this process to the benefit of all stakeholders.

1 On March 11, 2021, the Court ordered Defendants to implement remedial measures
2 to achieve compliance with the *Armstrong* Remedial Plan and the ADA at five institutions
3 including LAC, SATF, KVSP, CIW, and COR. Notwithstanding future procedural
4 developments, Defendants will continue its efforts to comply with the orders of this Court.

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

11 Nonetheless, Defendants maintain that not all of Plaintiffs' allegations of staff misconduct
12 implicate the *Armstrong* class or are appropriately before this Court. Defendants maintain
13 that some of Plaintiffs' allegations fail to establish even a tenuous connection between the
14 alleged staff misconduct with the rights of disabled inmates, Defendants' compliance with
15 the ADA or the Rehabilitation Act, or this Court's orders. Allegations made by non-class
16 members and allegations not related to violations of the ADA or the Remedial Plan are
17 processed and addressed through CDCR's staff disciplinary process as set forth in the
18 Department Operations Manual. (*See* CDCR Department Operations Manual, Chapter 3,
19 Art. 22.) It is important to note that this process was developed as a result of the *Madrid*
20 litigation, and the Prison Law Office was significantly involved in its development.

21 Finally, Plaintiffs refer to a number of incidents at CTF,¹³ CIM,¹⁴ COR,¹⁵ and to an
22 incident at SATF concerning the homicide of two incarcerated deaf people at SATF by
23 another inmate. Concerning the incident at SATF, Defendants do not condone violence of
24

25 ¹³ AIMS established reasonable belief in this case and it is now an open and on-going OIA
26 investigation assigned to special agents who have already interviewed over 100
incarcerated people,

27 ¹⁴ This matter is being processed as an *Armstrong* advocacy.

28 ¹⁵ On February 5, 2021, the entire matter was referred, in accordance with the *Madrid*
process, for staff-misconduct investigation.

1 any kind and have initiated a homicide investigation regarding this incident as previously
2 reported in the joint statement. Further, Defendants do not condone retaliation or
3 harassment as alleged to have occurred at CTF, CIM, or COR against class members or
4 non-class members, alike. These matters are taken seriously by Defendants and
5 investigations of these allegations are underway in accordance with Defendants' existing
6 policies.

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

9 **1. Plaintiffs' Statement**

10 The Division of Rehabilitative Programs ("DRP") must take immediate and
11 comprehensive action to ensure that people with disabilities are no longer left out of its
12 programs. This will require the allocation of sufficient resources and specialized staff to
13 evaluate and provide long-needed accommodations to ensure equal access. Defendants'
14 failure to provide such accommodations results in longer terms of incarceration for people
15 with disabilities and impedes their successful reintegration into society.

16 Prior to the pandemic, Plaintiffs raised a number of disability access concerns,
17 including related to real-time captioning (CART) for deaf class members who do not know
18 sign language, assistive technology and skills training for blind class members, and
19 accommodations for people with learning disabilities. Pandemic-related restrictions have
20 imposed new barriers, as in-person instruction has been suspended and class members
21 have had severely limited or no access to auxiliary aids located in law libraries. As a result,
22 class members with communication difficulties, including those who are blind, Deaf, and
23 have learning disabilities, struggle to meaningfully access written education, rehabilitative,
24 mental health, and recreational materials. *See, e.g., Exhibit G*, Letter from Jordan Payne &
25 Rita Lomio, Plaintiffs' Counsel, to Alexander Powell, CDCR Office of Legal Affairs
26 (Feb. 4, 2021) (accessible mental health materials and recreational reading for low-vision
27 class member who depends on accessible recreational materials to keep voices telling him
28 to harm himself from bothering him); Doc. 3191 at 4-5 & Doc. 2965 at 69-76 (accessible

1 recreational material for Deaf class members); Doc. 3153 at 37-41 (access to auxiliary aids
2 for learning disability); Doc. 3044 at 55-56 (accessible recreational material for Deaf class
3 members in administrative segregation); Doc. 2965 at 55, 63-67 (scribing and writing
4 accommodations for blind class members).

5 Plaintiffs are committed to working with Defendants to remove these barriers and
6 also to ensure that, as soon as in-person programming is up and running, people with
7 disabilities will have equal access. Plaintiffs were dismayed, however, to learn for the first
8 time through this Statement that Defendants will not seek to enter into a contract for
9 CART services until after June 30, 2022. That simply is too late and there is no good
10 reason for the delay; deaf class members who do not know sign language already have
11 been denied equal access to educational and rehabilitative programming for decades,
12 potentially decreasing the likelihood of successful reentry into the community and
13 resulting in disproportionate prison terms through lack of equal access to credit earning
14 opportunities.

15 **2. Defendants' Statement**

16 Defendants continue to be committed to allocating the resources and staff necessary
17 to evaluate and provide accommodations to ensure equal access to rehabilitative
18 programming, services, and activities to people with disabilities. The parties met on
19 September 11 and October 14, 2020, and January 15 and February 25, 2021 to discuss
20 accommodations for DNH/DPH class members and made progress toward shared goals.

21 Defendants are also exploring different ways to provide training to inmates with
22 disabilities regarding the various accommodation tools, including JAWS, that are available
23 for their use.¹⁶ Although initially delayed by COVID-19, staff training for JAWS
24 utilization is now complete. This training included a May 12, 2020 webinar that provided
25 training to staff and provided them an opportunity to ask questions related to JAWS.

26
27 ¹⁶ 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 CDCR upgraded the ADA computers to support JAWS and other technologies to make
2 these new technologies accessible to the class members who need them. In fact, JAWS is
3 available at designated institutions and Defendants are in the process of refreshing the
4 ADA computers with the goal that these computers will have Microsoft Windows with the
5 Narrator Ease of Access feature. Once COVID-19 restrictions are lifted, library staff will
6 develop a schedule to train all class members on all assistive devices and library resources.
7 Further, Defendants have spent significant efforts to locate resources for braille instruction
8 for the small number of class members who may require it. Despite these efforts,
9 Defendants have not yet been able to secure braille instruction. Braille is a highly
10 specialized skill and the people with these skills have not been available to provide
11 instruction to class members. CDCR does, however, provide access to the Hadley School
12 of the Blind, a member of the Council of Schools and Services for the Blind,
13 correspondence Braille course, and to the Library of Congress' Braille and Talking Book
14 Program. Defendants will continue to pursue this highly specialized programming. In the
15 meantime, DPV inmate-students have the opportunity to receive additional tutoring
16 support from DPP teachers at designated institutions which may include a Student Study
17 Team (SST) to develop an Individually Tailored Education Plan (ITEP) to include
18 accommodations such as access to large print educational materials, usage of electronic
19 magnifiers, oversize monitors, and various screen readers in education classrooms.

20 In response to Plaintiffs' request for CART, real-time captioning for hearing-
21 impaired class members, Defendants explored the option of amending the current contract
22 with the current vendor for Video Remote Interpreting (VLI), but this is not possible due to
23 rules related to the contracting and bidding-process. Once, however, the contract expires
24 on June 30, 2022, Defendants will seek to add this service to the next contract in
25 accordance with the applicable process. Meanwhile, teachers are able to provide written
26 materials and notes in education programs. Further, DPH inmate-students have the
27 opportunity to receive additional tutoring support from DPP teachers at designated
28 institutions which may include a Student Study Team (SST) to develop an Individually

1 Tailored Education Plan (ITEP), access to SLI, in person and/or remote, or blue-tooth
2 speaker systems to participate in classroom discussions or for amplification. CDCR does
3 not test for learning disabilities. CDCR's policy, however, addresses Plaintiffs' concerns
4 about class members with verified or unverified learning disabilities. If an inmate self-
5 identifies as having a learning disability, CDCR will make efforts to obtain documentation
6 to verify that disability. If the learning disability remains unverified, CDCR nonetheless
7 provides assistance to those inmate-students with unverified disabilities. Additionally,
8 CDCR is in the process of implementing its Peer Literacy Mentorship Program (PLMP).
9 The purpose of this program is to increase literacy by providing tutoring services to
10 inmates who are not assigned to regular academic programs. Per the Governor's budget,
11 all institutions will receive a PLMP teacher. This is part of a new initiative to provide
12 flexible mentoring for students who have barriers to attending educational programs in a
13 traditional classroom setting and is available on nights and weekends, in dayrooms, etc.
14 Peer mentors work with up to twenty students and receive sentencing credits and pay.
15 Mentees also earn credits. Hiring for PLMP teachers and mentors began last year.
16 DRP/OCE conducted training on October 15, 2020 for staff working with DPP population,
17 including DPV/DNV, DPH/DNH, and LD. This training is being provided to assist with
18 Armstrong Remedial Plan compliance and included lessons on assistive devices. In sum,
19 Defendants will continue to work with Plaintiffs to ensure that incarcerated people with
20 disabilities have equal access to rehabilitative programming, services, and activities.

21 **D. Accommodations for Deaf and Hard-of-Hearing Class Members**

22 **1. Plaintiffs' Statement**

23 The parties have restarted a monthly workgroup to address issues facing Deaf and
24 hard-of-hearing class members. Topics for discussion include educational support for
25 class members who use sign language, including direct instruction using ASL and peer
26 literacy tutors; real-time captioning and FM systems; the DRP-TV ASL channel; access to
27 sign language interpreters during healthcare encounters in quarantine and isolation units;
28 audiology appointments and pocket talkers; and telephone access, including captioned

1 telephones.

2 In addition, Plaintiffs are particularly concerned, as explained in more detail in
3 previous Joint Case Status Statements, *see, e.g.*, Doc. 3191 at 26-28, by Defendants’
4 failure to adequately ensure the safety of Deaf people who are transferred to a new housing
5 location and have no clear or confidential way to report safety concerns, as well as
6 Defendants’ continued failure to ensure that Deaf class members are in fact provided sign
7 language interpreters during off-site medical encounters—a problem that was well-
8 documented before the pandemic and that has continued during the pandemic. *See, e.g.*,
9 Doc. 3153 at 86-90. If these issues cannot be resolved soon, Plaintiffs likely will bring
10 them to the Court for resolution.

11 **2. Defendants’ Statement**

12 Defendants are committed to ensuring that Deaf and hard-of-hearing class members
13 who require sign language interpretation are provided equal access to programs, services,
14 activities, and assignments and believe that they can resolve any issue with Plaintiffs
15 concerning this class-member group through collaborative efforts, thereby avoiding
16 judicial intervention. Defendants have taken proactive steps to provide these class
17 members with access to a variety of programs. As previously reported, Defendants have
18 created a unique state-run television channel dedicated to ASL at designated institutions,
19 which includes Daily Moth content and, potentially, an on-demand video library. In fact,
20 to date, all nine institutions housing D/deaf class members have one DRP television
21 channel reconfigured to show ASL-based content. The new channel features daily news
22 shows, mandated departmental videos from the Secretary, pertinent health care related
23 information and other programming with rehabilitative content. As to the state-run
24 channels, Defendants are in the process of finalizing ASL inserts, including programming
25 that addresses PREA information. Additionally, PREA information has been included in
26 the orientation video, for inmates who require ASL. Defendants continue to work toward
27 adding more content with ASL interpretation and have added up to eleven such videos,
28 with staff working to add even more.

1 Plaintiffs' contention that Defendants failed to ensure that sign language
2 interpretation is provided to class members during off-site medical appointments is
3 inaccurate. In fact, CDCR ensures these services are provided through its contracts with
4 third-party providers. It is a contractual obligation that hospitals provide a Sign Language
5 Interpreter (SLI) for all hearing-impaired inmate patients whose primary method of
6 communication is American Sign Language. Should the hospital not be able to provide the
7 appropriate accommodations, they are required to contact the sending institution so that
8 staff can provide the appropriate accommodation. Outside hospitals are made aware of
9 each patient's medical disability and what accommodations are needed for communication
10 with that patient. For offsite specialty clinics that do not provide SLI, the offsite health
11 care schedulers are trained to contact the onsite SLI before the appointment to provide an
12 interpreter for the appointment. CCHCS has reported that it has been developing potential
13 alternatives to solely relying on external providers to ensure interpreters are present for
14 off-site encounters. Defendants have put together a working group to address contract
15 language for off-site encounters, policies and regulations, and an escalation process for
16 when an off-site provider fails to provide SLI. The working group held its first meeting on
17 March 12, 2020, but in light of the almost complete cessation of off-site appointments, this
18 initiative is temporarily paused and CCHCS will keep Plaintiffs informed of any new
19 developments through the meet-and-confer process. Nevertheless, at the February 25,
20 2021 conference call between the parties, Defendants informed Plaintiffs that this issue is
21 taken seriously and that any contracted medical provider who does not provide sign
22 language interpretation during off-site medical appointments elicits a swift response from
23 Defendants to ensure the service is provided.

24 Defendants disagree with Plaintiffs' contention that Defendants have failed to
25 "ensure the safety of Deaf people who are transferred to a new housing location and have
26 no clear or confidential way to report safety concerns." Defendants have worked hard to
27 meet their obligations to these class members through orientation pamphlets and videos, by
28 providing ASL-capable ADA-workers where available, mental-health services, ADA

1 Coordinator outreach, and other services. Defendants have made significant strides in
2 providing Deaf and hard-of-hearing class members who require sign language
3 interpretation with access to an increasing number programs, services, and activities. And
4 Defendants remain committed to ensuring that these class members' concerns related to
5 healthcare, safety, and recreation are appropriately accommodated. Defendants are
6 committed to addressing these concerns raised by Plaintiffs and believe that collaborative
7 efforts between the parties will result in effective measures to ensure that this group of
8 class members are able to confidentially report safety concerns.

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

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

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

18 Despite assertions that DAPO is providing additional oversight regarding the
19 supervision of class members who are Deaf or hard of hearing, Plaintiffs continue to
20 identify problems with Defendants' provision of effective communication to parolees
21 including: failures to provide adequate sign language interpretation during initial
22 interviews and other due process encounters; inappropriate use of written notes to
23 communicate with DPH parolees who cannot communicate effectively in writing; failures
24 to use VRI properly and technological issues with VRI; and confusion regarding the
25 distinction between VRI and VRS, causing likely violations of federal law. *See* Letter
26 from Ben Bien-Kahn and Caroline Jackson to Tamiya Davis and Nicholas Meyer
27 (January 8, 2021), Ex. E to Doc. 3190. Defendants have not responded.

28 The parties remain in disagreement about the use of civilian in-person sign language

1 interpreter during non-due process parole field encounters presenting safety and security
2 issues. Plaintiffs remain concerned about the provision of EC through VRI due to the
3 unreliability of the technology and about the ongoing confusion between VRS and VRI in
4 the field, despite Defendants' claims that the problem was with one encounter and one
5 staff member, but will continue to monitor the use of VRI.

6 With this concern in mind, Defendants note that the U.S. Department of Justice has
7 recognized that agencies can use advanced technology, such as tablets, to provide sign
8 language interpretation to individuals in areas where it is difficult or impossible to provide
9 an in-person interpreter. (*See* ECF No. 2874, Ex. C.) DAPO purchased and implemented
10 the use of VRI tablets, high-speed connectivity, and an expanded SLI contract provider to
11 increase VRI capabilities. DAPO provided additional training and instructions for staff
12 supervising SLI parolees. Additionally, DAPO tracks any issues with the VRI services,
13 and there have been no instances where the use of VRI has created a barrier to effective
14 communication. Defendants will continue to address Plaintiffs' concerns related to the
15 distinction between VRS and VRI, to ensure that VRS is not to be used in the same room
16 as the individual receiving the services, and to eliminate any confusion that may exist in
17 the field.

18 **G. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
19 **Disability Tracking Information**

20 Following Defendants' statewide durable-medical-equipment ("DME") in early
21 January 2019 that revealed 7,346 class members were missing one or more items of DME
22 and that 2,349 class members' DME records had errors, CCHCS implemented the DME
23 Discrepancy Report Tool in January 2020. While it appears that Defendants have made
24 significant strides towards developing an electronic method to ensure that orders for DME
25 are reconciled with receipts for DME, Plaintiffs remain concerned that there is still no plan
26 to confirm that class members actually have their required DME as indicated in the system.
27 This is a necessary step in the prison environment where DME can be easily lost during
28 transfer or get damaged or taken.

1 Plaintiffs also remain concerned about how frequently they encounter *Armstrong*
2 class members with DME and clear *Armstrong* disabilities who do not have a DPP
3 disability tracking code. Based on data provided in the December 4, 2020 SOMS
4 Disability Roster produced by Defendants Plaintiffs discovered 144 incarcerated
5 individuals who have a cane but no mobility code, 15 incarcerated individuals who have a
6 wheelchair but no mobility code, 74 incarcerated individuals who have a mobility vest but
7 no mobility code, 33 individuals on the SOMS roster statewide who have walkers but no
8 mobility code, 24 incarcerated individuals who have a Hearing Vest (but no hearing aid, so
9 they are not duplicates of the list above) but who do not have a hearing disability code.

10 There were also Declarants in the recent RJD and statewide staff misconduct
11 motions who had *Armstrong* disabilities but had not been properly identified and given a
12 DPP code by Defendants, and whom Defendants claimed in their briefing were not class
13 members. Defendants acknowledged a problem with missing codes and have distributed
14 training materials to CDCR clinicians about how to assign the proper codes. The parties
15 will work collaboratively to ensure proper identification of DPP codes and to reach a
16 sustainable resolution for DME reconciliation in the future.

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

18 **1. Plaintiffs' Statement**

19 CDCR and DAPO fail to ensure that parolees with severe and impacting placement
20 disabilities receive adequate planning for parole and adequate transitional housing,
21 transportation, benefits application assistance, assistance obtaining identification cards,
22 and other transitional services. *See* Doc. 2680 at 11-12; Doc. 2655 at 11-13. Plaintiffs
23 recently learned, during a December 14, 2020 meeting, that DAPO has multiple transition
24 to parole resources (including battery packs that can be issued to people who have
25 difficulty charging GPS devices) and that these support services are allocated to parolees,
26 as needed, at the discretion of the parole agent. Plaintiffs' counsel has never encountered
27 class members who have been issued a GPS battery pack, despite hearing reports from
28 multiple homeless parolees with disabilities who have, over the years, reported great

1 difficulty finding locations to charge GPS devices, and Defendants reported in a recent
2 meeting that these might only be available for use in a natural disaster. Multiple other
3 parolees have reported paroling homeless, or on the verge of homelessness, without ever
4 realizing such support assistance including food and hotel vouchers may be available to
5 them. Baseline support services should not be discretionary for parolees with disabilities
6 who require such reasonable accommodations during their transition to parole. *See*
7 *McGary v. City of Portland*, 386 F.3d 1259, 1267 (9th Cir. 2004) (“The purpose of the
8 ADA’s reasonable accommodation requirement is to guard against the facade of ‘equal
9 treatment’ when particular accommodations are necessary to level the playing field.”). A
10 parolee in a wheelchair or otherwise with a serious mobility disability who is homeless and
11 required to charge a GPS device daily is not similarly situated, for example, to other
12 parolees with GPS devices. Additional supportive services, such as automatically
13 providing a GPS battery pack to such class members, is required to reasonably
14 accommodate parolees with disabilities who are more likely to fail on parole and be
15 re-incarcerated without accommodations. *See Dunlap v. Ass’n of Bay Area Gov’ts*, 996 F.
16 Supp. 962, 965 (N.D. Cal. 1998) (“[T]he ADA not only protects against disparate
17 treatment, it also creates an affirmative duty in some circumstances to provide special,
18 preferred treatment, or ‘reasonable accommodation.’”); *see also Olmstead v. L.C. ex rel.*
19 *Zimring*, 527 U.S. 581, 597-603 (1999) (concluding that “undue institutionalization
20 qualifies as discrimination ‘by reason of . . . disability’” under Title II of the ADA).
21 Plaintiffs have requested to meet with Defendants to establish baseline accommodations
22 that should be provided to all parolees with disabilities, based on their disability and
23 depending on their resources and circumstances on parole.

24 Plaintiffs also object to the many transitional housing programs listed in DAPO’s
25 directory of transitional housing programs that explicitly exclude people with hearing,
26 mobility, vision, and mental health disabilities from their programs.

27 Many programs directly administered by the CDCR’s Division of Rehabilitative
28 Programs have similar exclusions based on disability. This issue is particularly important

1 now that CDCR has released thousands of incarcerated people early, and is in the process
2 of releasing others in order to help address COVID-19. DRP has authorized STOP
3 programs to retain current residents in their transitional housing programs in light of the
4 shelter-in-place orders statewide, increasing the possibility that there is inadequate
5 transitional housing for individuals being released at this time.

6 There were already waiting lists for homeless parolees seeking transitional housing
7 before the pandemic. For example, in early April 2020, the San Diego area had 60
8 parolees in the community on its waiting list for transitional housing programs, many or
9 most of them homeless. Similarly, in December 2020, the STOP contractor overseeing
10 transitional housing programs in Sacramento and 21 other Northern California Counties,
11 STOP Region 1, reported a waiting list of 26 parolees waiting in the community for
12 placement. STOP Region 1 managers said many of the 26 parolees waiting for placement
13 were difficult-to-locate homeless parolees, and that the difficulty of contacting them was a
14 large reason they remained on the waiting list. At the same time, they acknowledged that
15 if all 26 individuals showed up immediately they would not have the program beds to
16 place them all. Plaintiffs are also concerned by the low percentage of paroling prisoners
17 who are given an identification card through the Cal-ID program. This problem has been
18 exacerbated by the closure of DMV offices throughout the state. Without an identification
19 card, parolees cannot open a bank account, rent a hotel, or rent an apartment, and the lack
20 of identification can delay access to public benefits and medical care.

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

26 Recently, Defendants have shared some data about rates of parole for life prisoners
27 with disabilities, and have shared a detailed memo that has been approved by CDCR
28 stakeholders and that will provide for an expanded role for CDCR counselors in helping

1 life prisoners prepare for Board hearings and eventual parole. The parties met in early
2 January about the new memo and resource documents relating to this plan. Plaintiffs are
3 preparing additional comments, and the parties expect to reach agreement and finalize the
4 plan in the near future. While Plaintiffs very much welcome the new memo and process
5 for correctional counselors to assist in preparing parole plans for certain class members,
6 that process, once finalized and implemented, will only provide assistance to life term
7 prisoners who are going to the Board of Parole Hearings for parole consideration, along
8 with determinately sentenced individuals whose sentences are reviewed by the BPH under
9 the Non-Violent Parole Process, the Elder Parole Process, and the Youth Parole Process.
10 Thus, Defendants' assertions below about the scope of this remedy are misleading – while
11 we welcome the new CCI process for life term prisoners and the small number of
12 determinately sentenced prisoners who go to the parole board, most parolees will not
13 benefit from this new process.

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

23 Plaintiffs have ongoing concerns about the benefit application process for paroling
24 class members. For example, submission of benefits applications for class members at
25 CIM was significantly delayed as a result of the months-long and continuing COVID-19
26 outbreak at that institution. *See* Doc. 3044 at 65-67, Letter from Rita Lomio & Megan
27 Lynch, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, Pre-Release
28 Planning at the California Institution for Men (June 23, 2020). The benefits application for

1 a 66-year-old class member who uses a wheelchair and reported having memory problems
2 was submitted at most **seven days** before his release from prison (SSI applications
3 typically take around four months to be approved). *Id.* The class member worried how he
4 would survive outside prison without access to such funds. *Id.*

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

11 Defendants assert that a February 20, 2020 letter details additional assistance that
12 correctional counselors will provide to prepare people with disabilities for parole and that
13 this letter addresses Plaintiffs' concerns about parole planning assistance. Defendants are
14 wrong. The February letter applies only to assistance for people paroling from CDCR
15 after serving life terms in prison. It does not apply to the vast majority of class members
16 who are released on parole into the community after serving determinate sentences and
17 thus has no bearing on the ongoing lack of parole planning and services that Plaintiffs'
18 counsel have been raising for years.

19 **2. Defendants' Statement**

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

24 Defendants' February 20, 2020 letter detailed the additional assistance that
25 correctional counselors will provide to prepare inmates with disabilities for release on
26 parole. Specifically, that letter informed Plaintiffs that counselors will be directed to
27 discuss different sources of support upon release including family, housing, employment,
28 financial, or community-based programs, and counselors will then help the inmate fill out

1 a template letter to send to potential sources of support. The waiting lists Plaintiffs refer to
2 are for individuals who paroled, then after having been paroled for some time determine
3 that an additional program would be beneficial. That is not a transition-to-parole issue.
4 Defendants' responses to Plaintiffs' transition-to-parole advocacy letters consistently
5 demonstrate that pre-parole services are regularly and adequately provided to class
6 members and that class members are not always reporting information accurately to
7 Plaintiffs' counsel. Defendants believe that the additional assistance provided by
8 correctional counselors, as detailed in the February 20, 2020 letter, will assist class
9 members with understanding what pre-parole services are available to them. Counselors
10 have already been provided with a memo detailing their additional responsibilities with
11 respect to class members in the release planning process.

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

26 As part of the pre-release process CDCR staff complete an assessment for each
27 inmate who is paroling, whether or not that inmate has a disability, which identifies their
28 individual needs. Once the needs are determined, the staff and inmate/parolee work

1 collaboratively to complete a case plan identifying community-based programs that receive
2 federal, state, or other local funding to provide housing and other services to disabled
3 citizens.

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

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

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

1 thousands of people in a short period of time. Indeed, Plaintiffs were informed on a
2 July 23, 2020 phone call that the vast majority of paroling inmates have submitted
3 applications for Medi-Cal or Supplemental Security Income (SSI) benefits before paroling,
4 and that those who have not submitted applications have generally not done so because
5 they are not eligible due to availability of other insurance. While parolees may not be
6 receiving benefits immediately upon being paroled and additional follow-up may be
7 necessary to receive benefits, it is important to note that nearly all of the applications have
8 been completed. With respect to Cal-ID, Defendants anticipate that upcoming legislation
9 will address Plaintiffs' concerns. Under the current law, only individuals who have
10 renewed a California ID in the preceding ten years are eligible to renew a Cal-ID. If a
11 parolee was eligible to renew, Defendants assisted with that process before parole. If a
12 parolee was not eligible to renew, that individual was required to visit the DMV in person,
13 which could not be done before release despite Defendants' best efforts. Following
14 extensive efforts, the Division of Rehabilitative Programs will introduce legislation to
15 remedy this barrier to parolees. Under the new legislation to be introduced, inmates who
16 have been incarcerated for more than ten years will be permitted to obtain a Cal-ID before
17 leaving prison without an updated photograph of themselves.

18 Plaintiffs assert above that one class member's SSI application was submitted only
19 seven days before his parole. As Defendants told Plaintiffs on the July 23, 2020 call, the
20 individual's release date (which had previously been years away) was moved up to a much
21 closer date. Defendants will not over-detain inmates to allow their benefits applications
22 time to develop. There was no wrongdoing here.

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

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

1 literacy, accessibility of mental health groups, and access to magnifiers of different
2 magnification levels. After a pandemic-related delay, the workgroup began its regular
3 monthly meetings in December 2020.

4 In addition, the parties worked collaboratively to put interim measures in place to
5 ensure that blind and low-vision class members are properly situated to new living
6 environments—a matter that has taken on particular urgency in light of the large-scale and
7 frequent movements within institutions in an attempt to manage and prevent the spread of
8 the novel coronavirus. *See* Doc. 3153 at 49-54. The new directive was issued to the field
9 on January 15, 2021, and the parties will monitor its rollout and implementation to ensure
10 its effectiveness.

11 **J. Joint Monitoring Tool**

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

19 The parties met with the Court Expert on February 8-9, 2021, to resolve previously
20 identified substantive areas that will require the development of new policies and
21 additional tool questions. In addition, the parties met regarding to-do lists but additional
22 work on the tool is required. The parties have not yet drafted the headquarters section of
23 the joint monitoring tool, as well as some individual tool questions, including how to
24 monitor whether class members are receiving equal access to program assignments, and
25 questions regarding whether staff have received required training. The parties will
26 continue to work collaboratively on these issues.

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

28 Prior to the pandemic, construction continued at several of the designated

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

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

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

22 **L. Investigation of County Jails**

23 Plaintiffs continue to assert that a pattern and practice of denying disability
24 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680
25 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA
26 accommodations at Kern County, San Bernardino, Orange, and Fresno County jails. *See*
27 Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions and have been meeting
28 with county counsel for a number of counties in an effort to improve relations and

1 information sharing and ADA compliance at the jails. Unfortunately, these conversations
2 have largely been put on hold due to the pandemic. While improved communication with
3 the counties is a welcome idea, Plaintiffs believe that Defendants will likely need to do
4 more than communicate with counties to ensure accommodations for class members in
5 county jails.

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

9

10

11 DATED: March 15, 2021

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

12

By: /s/Penny Godbold

13

Penny Godbold

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Attorneys for Plaintiffs

15

16 DATED: March 15, 2021

XAVIER BECERRA

Attorney General of the State of California

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By: /s/Trace O. Maiorino

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Trace O. Maiorino

Deputy Attorney General

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Attorneys for Defendants

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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: March 15, 2021

/s/Penny Godbold
Penny Godbold

EXHIBIT A



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

January 7, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
Conditions in MCSP Gym COVID-19 Isolation Housing

Dear Ms. Davis:

We write about deeply concerning reports of dangerously inaccessible and filthy conditions in the gyms at Mule Creek State Prison (MCSP). The gyms on all yards (A, B, C, D, and E) have been serving as set-aside isolation space for people who have tested positive for COVID-19. Over the last few weeks, we have received letters from and spoken on the phone with people who are living in the gyms (or who recently were housed in the gyms), and the overwhelming consensus is that the conditions in the gyms are deplorable and require immediate attention.

The move to the gym

On January 5 and 6, 2021, we conducted legal calls with sixteen people who were all housed in one of MCSP's gyms in December 2020. During those calls, *Armstrong* class members with mobility disabilities reported that staff did not adequately accommodate their disabilities when they were moved from their previous housing units to the gym. Generally, after custody staff informed these class members that they were moving to the gym because they had tested positive for the coronavirus, class members were given 30 minutes to pack their belongings. But staff failed to offer assistance packing and physically moving property. Class members who had difficulty packing their belongings relied on other incarcerated people who volunteered to help them. One class member who uses a cane said, "When we moved, the COs said it was up to me to move my things. I helped my cellie who uses a wheelchair. I had to push this 60 pound cart [that had our property]. Eventually, another inmate saw me struggling and he helped me." One class member who was on E yard explained that the move occurred at midnight. After packing his belongings as best he could, he and others sat on an idling bus for one or two hours with the cold air conditioning on before they were moved to the Facility A gym.

Class members were told that they were going to be in the gym for about 14 days and that after those 14 days, they would return to their same bed, so they could leave property at their bed while they were in the gym. However, not all class members returned to their same bed. As a result, their property was packed and moved for them. Class members reported that when they received their property, items were missing, including some durable medical equipment (DME). As one class member who uses a walker explained, "I was told I could leave my things for 14 days. When I was told to pack up, I told the COs that I needed

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help. They didn't want to help me, so they said I could leave my stuff where it was, so I left it. But they packed up my things and things were stolen. I lost stamps, clothing, and a tooth cap which the dentist had told me to hold on to." Another class member said, "[The officer] said I'd be coming back [to my same bed]. I packed my things. I took my wheelchair and cane. I left my walker in my building because I was told by other inmates that it was crowded and I was told I would come back. The next day, one of the counselors came to make sure I had all my appliances. I told him I left my walker. Somebody ended up taking my walker. They had to give me a temporary walker but they don't know where mine is."

Some class members reported that they still did not have all of their durable medical equipment after leaving the gyms. **Please ensure that the following class members have all of their prescribed accommodations:**

- [REDACTED], DPM, DPV, reported that when he received his property after returning from the gym, his cane was not included. He reported that he last had his cane when he was in building E-20.
- [REDACTED], DPW, reported that he has been without his cane and other personal property since he moved to the gym and back.
- [REDACTED], DPO, reported that he went to the gym and then to an outside hospital and since then has not had his leg braces, back brace, orthopedic shoes, or the wheelchair that was assigned to him. He currently has a loaner wheelchair.

Crowded conditions

Class members described crowded conditions in all of the gyms – with around 100 people in each gym – making paths of travel difficult to navigate, especially for people with mobility and vision disabilities. A class member in D gym said, "I left my walker in my building because I was told by other inmates that it was crowded. There wouldn't have been room for my walker. My wheelchair folds up, so I set it at the foot of my bed. I don't know where I would have put my walker." Class members reported difficulty getting to the restroom, showers, meals, and medication lines because there were people, property, lockers, and extension cords in the aisles between bunks. One class member in the E gym explained that he sometimes chose to navigate the aisles without his walker, which was very painful, because of all of the obstacles in the way.

In B gym, one class member who has a mobility disability and who has bowel incontinence explained, "It was a nightmare. I needed to use the restroom, and when I have to use it, I have to go fast. On more than one occasion, I didn't make it to the toilet. I couldn't get from my bunk to the toilet because it was too crowded. I tried to eat and drink very little so I didn't have bowel movements even though I was very sick."

Too few toilets that are filthy and broken

Class members in D and E gyms explained that there is one indoor toilet and about eight portapotties outside. Class members reported that the gym doors remain locked except when custody staff unlocked the doors once an hour so people could access the portable showers and toilets. They explained that the indoor toilet is wheelchair accessible and has grab bars, but that there is usually a 40-minute to one-hour wait in line for the inside toilet (in both D and E gyms) with no place to sit while waiting in line. Class members with mobility disabilities said they had difficulty waiting for so long with nowhere to sit.

In addition to the long lines, the indoor toilets are often broken. In E gym, class members reported that staff instructed them with a sign on the door only to use the indoor toilet in E gym for urinating and to not flush toilet paper down the toilet. Class members said that the E gym toilet rarely flushes at all. Class members in A and B gyms reported that not all of the toilets are functional, with some that do not flush. One class member who was in the B gym and who uses a walker said that when he first arrived to the gym, “There was an inch of standing water for four days before I saw volunteer inmates clean it up. It was unsanitary.”

Class members said that the D and E gym wheelchair-accessible portapotties are in the same trailer as the wheelchair-accessible shower, which is often occupied by somebody taking a shower, and as a result, the accessible toilet usually is not available. Furthermore, class members in E gym reported that custody staff who worked during first watch usually slept and did not regularly unlock the doors, leaving the broken inside toilet the only option.

The lack of available accessible toilets is especially difficult for people with bowel and urinary incontinence. Multiple class members with incontinence described being in the gym as “nightmare.” Class members reported that they had incontinence accidents while waiting for an available toilet. One class member in E gym who uses a wheelchair and has incontinence reported that he felt he could not wait for an available accessible toilet, so he asked another incarcerated person to help him to an inaccessible portapotty. He explained that the volunteer assisting him lifted him over his shoulder and helped him onto and off the toilet.

Class members on all yards described the indoor toilets as filthy, often with feces on the toilets and walls and with urine-soaked floors. A class member in E gym said, “It smelled terrible. [There was] feces on the toilet, sometimes blood on the floor.” Class members in all gyms explained that cleaning supplies and disinfectant are in short-supply in the gyms and that when they asked staff for cleaning supplies, they were told there were not enough.

No clean linens or clothes

The insufficient access to toilets in the gym was especially problematic for people with incontinence because they also explained that they did not have access to clean clothes and linen while they were in the gym. One class member in E gym explained, “We didn’t get laundry for two weeks. The clothes I had on my back, I wore them for two weeks. People washed their own clothes in the sinks near the barber. There

was a line of people washing clothes. I didn't have money to pay somebody to wash my clothes, so I had to wear my soiled pants that I scraped with a rag."

Inaccessible and insufficient showers

Class members in A and B gyms who have mobility disabilities reported that they were concerned that they would fall while taking a shower because there are no grab bars. Class members in D and E gyms reported that the wheelchair-accessible shower is in a trailer outside. They reported that the accessible shower was clean, but there was a longer wait for that shower than for the inaccessible showers, up to 45 minutes. One class member in the D gym explained, "There were approximately 30 dudes who were ADA and only one accessible shower. It would take twice as long for ADAs to get their showers done. It was frustrating because we would have to wait longer for the shower than others. I used it twice because it just took too long. I waited 45 minutes." He explained that he could wait in line while sitting in his walker, but others would have to stand in line, which was difficult for them.

Other class members reported that it was difficult to shower outside while they were sick. One 63-year-old class member said, "There were a few times I was sick, I said the hell with this, I'm going to bed and smell myself. When get inside the shower, the door is always open, it doesn't shut. It's cold in there."

One class member in E gym explained that while showers were offered every three days, he once went four days without a shower because the custody staff refused to allowed people to shower. "People were asking to use the shower and the CO got pissed off and said we weren't getting shower that day. He was first watch. Then second and third watch came and they didn't want to do it either. We got it the following day."

Cots and bunks

Class members in D and E gyms reported that the majority of people were assigned to sleep on cots. At other prisons, we raised concerns about the inappropriateness of cots for people with certain disabilities.¹ When we spoke with class members who were in the gyms at MCSP, we again heard that people with mobility disabilities had difficulty getting in and out of the cots. One class member in D gym explained that being on the cots was "brutal because they were so low – hard to get up and down from. A couple of cots broke when people sat on them." Another class member in E gym explained that his neighbor in the gym was 82-years old and when the man got into the cot, he was unable to get back out. Other gym residents kindly exchanged the man's cot for one of the few metal bunks. However, since the metal bunk was not bolted to the floor, it moved when the man tried to get up and he almost fell. Other class members with mobility disabilities who were assigned to metal bunks reported that their beds were unstable and they were worried that they would fall.

¹ See the July 6, 2020, letter from C. Kendrick to T. Davis re Use of Alternative Housing at CHCF During the COVID-19 Pandemic. ("People with mobility impairments, and DKD class members on dialysis, reported difficulty in getting on-and-off the cots because they are lower to the ground than regular bunks, and because the surface sags and gives when they try to push off the cot. One class member said that when he attempts to get off a cot, he feels like 'a turtle struggling to get off his back.'")

Disability assistance

CDCR relies heavily on the assistance of incarcerated people employed to provide assistance to people with disabilities. However, according to the August 14, 2020, CDCR memorandum regarding the ADA worker program during the pandemic, ADA workers are not permitted to work in quarantine or isolation housing units. Instead, staff must provide assistance to people with disabilities. However, class members who were in the gyms at MCSP reported that staff was usually too busy or otherwise not available to assist them. One class member in the E gym said, “It was hard to find somebody to help. I needed help because I have a cane; my leg gives out and I fall sometimes. I’ve had two strokes. I’m trying to help somebody who’s 82 years old [his neighbor]. I couldn’t lift him and take him places.” Another class member in E gym said, “One night, my [neighbor] fell and couldn’t get up. The COs weren’t even watching. They’d lock themselves in the office.”

128-B interviews

CDCR staff are required to complete an interview with any *Armstrong* class member who is moved to “non-traditional housing” such as a gym and to document the interview on a 128-B form. Some class members with whom we spoke, particularly those in A and B gyms, said that no staff spoke with them about their disability needs while they were in the gym. For example, we did not receive 128-B forms for [REDACTED], DNM with walker; [REDACTED], DNM, DNH; [REDACTED] (although Mr. [REDACTED] reported that a counselor spoke with him). Other 128-B forms appear to be inaccurate. For example, [REDACTED], DPO, DNV, was in the D gym. He explained that CCI Dixon asked him if Mr. [REDACTED] all of his DME. Mr. [REDACTED] explained that he did not have his wheelchair and CCI Dixon left and returned with the wheelchair. The associated 128-B and 128-B list we received from CDCR indicates that Mr. [REDACTED] moved to the gym on December 12, 2020, and the interview was conducted by Correctional Counselor Mosqueda (not CCI Dixon) on December 14, 2020.

Access to CDCR forms

Class members explained that no CDCR forms were available in any of the gyms.

Phones

Class members in A and B gyms explained that there were long lines to use the phones. In A gym, only one phone was working. One class member said, “The list started early in the morning and went on endlessly all day.” Another said, “I never used the phone – there were too many people on the phone all the time so I didn’t request to use it.”

Temperature

Class members in all of the gyms described freezing cold conditions. One class member who was in both A and C gyms said, “They had a big fan pointed toward the beds, so people covered up the fan with blankets and the CO didn’t say anything.” Another class member who was in E gym said, “It looked like a homeless shelter. People were trying to stay warm. It was freezing cold and there were a bunch of elderly

Ms. Tamiya Davis
Conditions in MCSP Gym COVID-19 Isolation Housing
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people. There were sick people vomiting. There were people wearing jackets and all clothes all the time even though the temp gauge said 70 on the wall. It was not 70 degrees.”

Cold food and small portions

Class members reported that the food served in the gyms was cold and much smaller portions than usual. One class member in B gym said, “They put it on a paper plate. I literally got two bites of beans. The portions were very small. I’m not one to complain but it wasn’t up to par.”

Fear of returning the gym

Class members described fear of returning to the gym if they tested positive in the future because of the conditions there.

Thank you for your prompt attention to this matter.

Sincerely,



Amber Norris
Investigator



Patrick Booth
Legal Fellow

cc: Ed Swanson, Court Expert
Co-counsel
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Gannon Johnson, Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdc.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jillian Hernandez, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Robin Hart, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Tammy Foss, Jason Anderson, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Armedo, Dawn Stevens, Jimmy Ly, Jay Powell (CCHCS)
Adrian Hrvatin, Sean Lodholz, Namrata Kotwani, Anthony Tartaglio, Trace Maiorino, Andrea Moon (OAG)
Brantley Choate, Hillary Iserman, Shannon Swain, Rod Braly, Jennifer Wynn, Martin Griffin, Brandy Buenafe, Alicia Legarda (OCE)

EXHIBIT B



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

February 4, 2021

Gannon Johnson
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
Inaccessible Nontraditional Housing at
Mule Creek State Prison

Dear Gannon:

We write to express our concerns about two issues related to the housing of *Armstrong* class members on Facilities D and E at Mule Creek State Prison (MCSP). First, we are concerned about the accessibility of the nontraditional housing units activated in January 2021. Specifically, during the week of January 4, 2021, MCSP staff converted offices in Buildings 16 and 17 on Facility D into nontraditional housing space (called “16-1” and “17-1,” respectively), and similar units in Buildings 18, 19, 20, and 21 have also been designated as nontraditional housing and will be used as needed.¹ According to Defendants, “[t]he only step taken to convert these offices/rooms into housing spaces was the addition of cots as there are accessible bathrooms and showers within the building.”² On January 26, 27, and 28, Plaintiffs’ counsel interviewed 18 class members in these units, 13 in 16-1 and 5 in 17-1. The majority of class members that we spoke with, all of whom had mobility disabilities, described significant issues accessibility issues in the units. In particular, class members struggle to get on and off of the cots, which frequently break, are low to the ground, sink in the middle, are not fastened to the floor, and are not equipped with grab bars. Additionally, the path of travel is a problem for class members, as these nontraditional rooms house many mobility-impaired class members that have canes, walkers, wheelchairs, and other durable medical equipment (DME) that crowd the walkways. Moreover, numerous class members also reported that one-inch brass protrusions stick out of the floor and create a dangerous tripping hazard. It appears that the minimal steps taken to convert the offices to housing space were insufficient to make the space accessible to class members.

Second, we are troubled by the number of reports that we received from class members about ADA staff’s failure to identify, document, and address disability-related issues during the 128-B process. Many class members reported that they were not interviewed when they moved to the nontraditional housing unit or the issues that they raised during the interviews were not accurately documented (or

¹ See Email from Gannon Johnson, CDCR Office of Legal Affairs, to Amber Norris, Plaintiffs’ Counsel, ARM | Housing assignments at MCSP (Jan. 13, 2021) (As of January 13, 2021, 41 people (including 24 class members) were housed in 16-1, and 58 people (including 24 class members) were housed in 17-1.)

² *Id.*

documented at all) on the 128-B chrono. Other class members said that they told the counselor conducting the interview about problems they were having with their DME, but the issues were never addressed or resolved. On the whole, ADA staff at MCSP do not appear to be effectively completing the 128-B chronos to uncover and resolve class members' disability-access issues, as the process was designed to do.

I. Nontraditional Housing Units 16-1 and 17-1 Are Inaccessible to Class Members.

Accessibility Issues with the Cots

Numerous class members reported that, for a variety of reasons, the cots in rooms 16-1 and 17-1 are unsafe. Several people had cots break underneath them, and nearly every class member we spoke with described the cots as "flimsy." Often, when class members reported to correctional staff that their cots had broken, the cots were not replaced until one or two days later. Additionally, class members with more significant mobility disabilities (DPM, DPO) had difficulties sitting down and standing up from the cots because the cots were too low to the ground, not fastened to the floor in any way, and sunk in the middle like a hammock. Troublingly, the vast majority of class members we spoke with expressed concerns about the accessibility of the cots, yet the institution either was unaware of these concerns or knew about the problems but made no efforts to install accessible beds.

Below are examples of the concerns that class members reported:

- [REDACTED] DPM, 16-1, reported problems getting in and out of his cot. He described the cot as working almost like a hammock, wherein the center of it is sunken in making it difficult for him to easily place his feet on the ground when he tries to get out of the cot. Mr. [REDACTED] reported that it typically takes him two to three tries to get out of it. The severe swelling Mr. [REDACTED] suffers from makes getting out of the cot all the more precarious, as he struggles to sit up straight so that he can more safely maneuver his body. Mr. [REDACTED] shared that he would feel much safer if he had grab bars or a trapeze bar to help him transfer out of his cot.
- [REDACTED] DPM, 16-1, reported that the metal cot has broken under his weight three times. Mr. [REDACTED] is 6'7" tall and weighs 380 pounds. When he broke his first cot, correctional officers brought him another. The second time he broke his cot, correctional officers did not bring him another immediately, and he was forced to sleep on the cot with a chair under one end for two nights. Even with the chair under it, the cot was not level and was very uncomfortable. Eventually, correctional officers brought him a different kind of cot, but this cot also broke under his weight. Even if the cots had not broken under his weight, Mr. [REDACTED] would have been in pain sleeping on them. The cot is very low to the ground, and Mr. [REDACTED] has sciatica, a fracture in his spine, and screws in his hips. These injuries were aggravated by sleeping on the cots. He also has had trouble getting in and out of the cots because they are so low to the ground, and they slide out from under him when he stands.

- [REDACTED] DPO, 16-1, reported that a cot broke under him when he sat on it. Luckily, Mr. [REDACTED] was not injured when it broke. He reported it to a correctional officer but was not given a replacement cot that day. The next day he complained to a lieutenant and was moved to another housing unit soon after.
- [REDACTED] DPM, DNH, 16-1, reported that the cot is very painful to sleep on. It aggravates a pre-existing back condition. He stated that the cot is “like a canoe” because it sags so much in the middle and that he has trouble getting in and out of the bed because of the sag, because the cot is so low to the ground, and because it is not bolted to the floor. He stated that the cot slips around on the floor while he tries to get in and out of it. When he stands sometimes, he flips the cots over behind him. In order to avoid this, he has to carefully turn around on the cot and use his arms to push himself up because his arms are stronger than his legs. He believes a trapeze bar would help him get in and out of the bed more easily, since he currently has to use a locker near his cot to pull himself upright. When Mr. [REDACTED] has complained to correctional officers about the cots, he is told that they “don’t want to hear it.”
- [REDACTED] DPM, DNH, 16-1, reported that he is 6’2” and weighs 360 pounds and has broken two cots under his weight. After the second cot broke, a correctional officer moved him out of the room into a traditional housing unit. He said that room 16-1 “was hell while I was in there.” He stated that the cots sagged in the middle when he lay down and caused back pain. He reported that he was too embarrassed to ask the man in the neighboring cot for help standing, especially since that man was in a wheelchair. As a result, he was forced to roll off the side of the cot to get up. He reinjured a pre-existing back issue when doing so.
- One class member with a mobility disability in 16-1 reported that he weighs over 300 pounds and is very nervous about the cots breaking under him. He stated that the cots are “flimsy” and that he has seen cots break under other people. Because of this, he moved a chair into the room so that he does not have to use the cots for anything other than sleeping. In addition, whenever he does try to stand up from the cot it slides out from under him because it is not bolted to the floor. This causes him to lose his balance when he tries to stand. He also reported that the cots have pieces of metal sticking out about 1.5 to 2 inches from their corners that sometimes “scrape the meat off his leg.” He states that the corners are unsafe, and people kick them all the time, especially at night. As a result, he has had to tie blankets around the corner of the bed to protect himself and others from getting hurt. He has seen multiple people with leg injuries because of the metal sticking out from the corner.

Blocked Path of Travel

With the large number of cots and the significant number of class members with durable medical equipment (DME) in these rooms, the path of travel through the rooms is cramped, crowded, and unsafe. Many DPO and DPM class members are not able to bring their wheelchairs or walkers into the rooms because they have no space to store them. Class members have trouble ambulating to and from the pathway because of the limited space. Moreover, class members reported that small, brass fixtures

Gannon Johnson
Re: Inaccessible Housing at MCSP
February 4, 2021
Page 4

protrude from the floor and create a dangerous tripping hazard. Multiple class members said that they had either fallen over the protrusions themselves or witnessed other people fall.

- [REDACTED] [REDACTED] [REDACTED] DPM, 16-1, reported that there are small, brass items that come about ½ inch to an inch out of the floor that get in the way of people's paths of travel. He stated that they are easy to trip on, especially for people using walkers. Mr. [REDACTED] also reported that the amount of durable medical equipment (DME) and other property in the room makes it difficult to move around the room freely without tripping.
- Another class member in 16-1 reported that he trips over the small, brass protrusions frequently, especially when using his walker to ambulate. He stated that the brass items are directly in the path of travel to the door or the bathroom, and he trips over them most frequently when moving around the unit at night.
- [REDACTED] DPO, 16-1, reported that when he was housed in 16-1, he was unable to bring his wheelchair into the room. Mr. [REDACTED] is an amputee and was forced to use his crutches to move around the room because there was not enough space for his wheelchair to navigate. He once fell while using his crutches because other people's property was cluttering his path of travel in the room.
- [REDACTED], DPO, 16-1 reported that while he was housed in unit 16-1, he was unable to bring his wheelchair into the room because there was not enough space for him to move around in it. As a result, he was forced to use his walker while ambulating to and from his cot. He left the wheelchair outside the door of the room.
- [REDACTED] [REDACTED] [REDACTED] DPM, DNH, 16-1, reported that he has to leave his walker outside of the room because so many people have walkers and wheelchairs and with everyone's property between their cots there is not enough space for him to move around with his walker. He has stubbed his toe on people's property multiple times at night when he moves through the room to go to the bathroom. He also stated that because there are a number of elderly people in the room, they often have to use the bathroom at night in the dark, and they would trip over his walker if he kept it next to his cot.

Missing or Broken DME

Several class members reported that they were unable to bring their DME to the nontraditional housing units or that their requests for new DME have gone unanswered:

- [REDACTED] [REDACTED] [REDACTED] DPM, 16-1, stated that he is 6'7" tall, and during the chaotic move to unit 16-1, he lost his cane. This cane was extra tall to accommodate his height. A couple of correctional officers at the front desk gave him another cane, but it is not extra tall and so he has to stoop to use it. This makes him less stable on his feet and aggravates his pre-existing injuries. Mr.

██████ also reported that he lost his compression stockings. Mr. ██████ has deep vein thrombosis, a pulmonary embolism, and is on blood thinners. The stockings help with his blood circulation. He has put in a CDCR Form 7362 about compression stockings but has not yet received them. *Please ensure that Mr. ██████ is provided a new, extra tall cane and his compression stockings.*

- ██████ ██████ ██████ DPM, DNH, 16-1 reported that on Tuesday, January 19, 2021, he submitted a CDCR Form 7362 requesting a cane because he is unable to bring his walker into room 16-1, the nontraditional housing unit that he is in. Mr. ██████ should not be required to use a cane instead of his walker because his current housing unit is inaccessible. *Please ensure that Mr. ██████ is permitted to use his walker in nontraditional unit.*
- ██████ ██████ ██████ DPM, DNH, 16-1, reported that although he is now in a traditional cell, he has been asking for a trapeze bar to help him get in and out of bed. Mr. ██████ reports that he submitted a CDCR Form 1824 around six months ago requesting a trapeze bar, but he never received a response. He stated that he has looked for 1824s recently, including when he was housed in room 16-1, but that they have not been readily available. He also stated that he observed another person housed in the room 16-1 request an 1824 form but was not provided one. *Please ensure that CDCR Form 1824s are available in all units, including the nontraditional housing unit room, and that Mr. ██████ is immediately evaluated for a trapeze bar.*

II. ADA Staff at MCSP Are Frequently Failing to Identify, Document, and Address Issues Raised During the 128-B Interviews

ADA staff at MCSP are generally not addressing and resolving class members' disability-access issues during the 128-B process. We are particularly concerned that institution staff are completing these chronos in a perfunctory manner and not using the interviews as an opportunity to remedy urgent disability-related problems. Class members reported that the counselors conducting the interviews either did not read through the entire 128-B form (and instead only asked if the class member had their DME), or that the counselor did not document issues the class member raised during the interview. The 128-B process is of little use when counselors fail to properly conduct the interviews or accurately document the class members' responses.

Below are a few examples of class members' reports about the ineffective 128-B process:

- Two monolingual Spanish-speaking class members housed in 17-1 reported that they had problems communicating with staff during the 128-B interviews. Although CDCR 128-B chronos were generated for both class members, both reported that their conversations with counselors were in English, and neither was offered an interpreter. As a result, neither class member understood the purpose of the conversation, nor did they know how to request disability accommodations in the future. The counselor, however, completed the chronos as if both class members understood the conversation and neither had any disability-related issues. But one of the class members was missing his eyeglasses, and the counselor failed to document it on the 128-B. Also, the 128-B chrono for one of the class members indicates that the class member was provided with a Sign Language Interpreter (SLI) during the interview, but the class member does not have a

hearing impairment, does not know American Sign Language, and was not, in fact, provided an SLI during the interview.

- [REDACTED] [REDACTED] [REDACTED] DPM, 16-1, reported that he was not interviewed by a counselor or correctional officer within 24 hours of being placed in the non-traditional housing unit. He also stated that when he was interviewed, he made complaints about the amount of belongings being in the way of the path of travel, and his lack of properly lengthy cane and his lack of compression stockings. None of this information was noted in his 128-B, dated January 4, 2021.
- [REDACTED] [REDACTED] [REDACTED] DPM, DNH, 16-1 reported that he was not asked all of the questions on the 128-B form. He stated that he was merely asked if he had all of his DME and was asked nothing further. At the time, Mr. [REDACTED] did not know what the term “DME” meant and had to ask someone else in the unit what it meant. Despite the fact that Mr. [REDACTED] was asked only a single, cursory question that at the time he did not even understand, his 128-B chrono, dated January 4, 2021, is fully filled out and indicates that he is having no problems with accessibility whatsoever.
- One class member in 16-1 reported that when he was interviewed for his 128-B, he told the Correctional Counselor I (CCI) who conducted the interview that the room was too crowded and was not wheelchair accessible. He also informed the CCI that other people in the room had to leave their wheelchairs outside of the room, which was a problem for the class member. However, none of this information is recorded in his 128-B form. In addition, when the class member informed the CCI that the room was not wheelchair accessible, the class member was not given any advice or solutions to the problem. The CCI merely told the class member to be patient, but that the CCI had no notion of how long the class member would be housed in that unit.
- [REDACTED] [REDACTED] [REDACTED] DPM, 16-1, reported that his walker has been broken for the past three months, after he fainted and fell on top of it. Despite submitting a CDCR Form 7362 requesting repairs, Mr. [REDACTED] has not received a loaner wheelchair nor has his walker been fixed. Instead, Mr. [REDACTED] has continued to use a faulty walker that makes it difficult for him to ambulate long distances and prevents him from going out to yard. Mr. [REDACTED] reported his concerns to the counselor when they filled out the 128-B chrono. The counselor then noted Mr. [REDACTED] concerns about his broken walker on the chrono and that a CDCR Form 7362 had been submitted on Mr. [REDACTED] behalf. However, when we spoke with Mr. [REDACTED] on January 26 (18 days after his 128-B chrono was completed), his faulty walker still had not been replaced.

* * * * *

Given that people with mobility disabilities have experienced (and are continuing to experience) significant accessibility issues in these nontraditional rooms, we request that class members with mobility-related DPP codes (DNM, DLT, DPM, DPO, and DPW) are not housed in these rooms. We ask that class members with mobility-related DPP codes currently housed in these rooms are moved to different units as soon as possible. Further, we request that Defendants provide additional training to ADA staff at MCSP about the goals of the 128-B process, how to properly conduct and document 128-B interviews, and how to resolve the disability-access issues that class members might raise during these

Gannon Johnson
Re: Inaccessible Housing at MCSP
February 4, 2021
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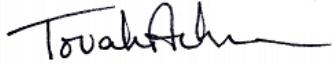
interviews. Because Plaintiffs' counsel has not conducted widespread class member interviews at all 35 institutions to verify the accuracy of the 128-B chronos, we are concerned that MCSP is not the only institution that is failing to identify and resolve disability-access issues through the 128-B process. We ask that Defendants proactively provide training to all ADA institution staff about the 128-B process and its importance for complying with the Americans with Disabilities Act and the *Armstrong* Remedial Plan.

Thank you for your prompt attention to this matter.

Sincerely,



Ilian Meza-Peña
Litigation Assistant



Tovah Ackerman
Investigator



Patrick Booth
Legal Fellow

cc: Ed Swanson, Court Expert
Co-counsel
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Tamiya Davis, Erin Anderson, Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jillian Hernandez, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Robin Hart, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Tammy Foss, Jason Anderson, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Armedo, Dawn Stevens, Jimmy Ly, Jay Powell (CCHCS)
Adrian Hrvatin, Sean Lodholz, Namrata Kotwani, Anthony Tartaglio, Trace Maiorino, Andrea Moon (OAG)

EXHIBIT C



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

December 24, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

Armstrong Advocacy Letter
RE: Failure to Provide Trapeze Bars During the COVID-19 Outbreak at SATF

Dear Ms. Davis:

For over four months, Defendants have represented that trapeze bars “will be on hand and can be promptly installed where necessary.” Report and Recommendations Regarding Housing of *Armstrong* Class Members During the COVID-19 Pandemic, Doc. 3048 at 6 n.1 (Aug. 19, 2020). Nonetheless, as we reported in September, the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”), failed to provide trapeze bars to [REDACTED], DPW, when he was moved to the SATF-A gymnasium for quarantine, even though he had that accommodation documented in his record. As a result, before Plaintiffs’ counsel intervened over a week later, an incarcerated person who was in quarantine due to direct exposure to the novel coronavirus had to physically lift Mr. [REDACTED] up from his bed each time he wanted to sit up or get out of bed, placing Mr. [REDACTED] at increased risk of infection and death due to Defendants’ failure to accommodate his disability. *See* Doc. 3055-1 at 131-32.

Although the institution subsequently installed trapeze bars for Mr. [REDACTED] in the gymnasium, the institution failed to identify the cause of its noncompliance and failed to put a system in place to prevent the problem from happening again. It is unsurprising, then, that the problem happened again. And, again, the institution was unaware.

In particular, after testing positive for COVID-19 on November 25, 2020, Mr. [REDACTED] reports that he was moved to different housing. First, he was placed on Facility D. Then, he was placed for one night on Facility F, where he reported that he could not bring his wheelchair into his cell and, as a result, could not access the toilet. He reported that he did not eat that day because he knew he would not be able to use the toilet. He reported that he was then moved back to Facility D. **There were no trapeze bars in any of these placements.** He further reported that he injured his shoulder on Facility D when he momentarily forgot that he did not have trapeze bars and fell while attempting to transfer from his bed to his wheelchair.

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Ms. Tamiya Davis
Failure to Provide Trapeze Bars During the SATF Outbreak
December 24, 2020
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Mr. [REDACTED] a monolingual Spanish speaker who cannot read or write in Spanish or English, reported that he asked both custody and healthcare staff for help. He reported that when he was on Facility F, he immediately told staff that he could not use the toilet because he could not fit his wheelchair beside it. Staff reportedly told him that it was not their problem and that they had been told to house him there. In addition, he reported that while on Facility D, he told the nurses that he needed to be in a cell with grab bars but was told that there were no such cells available. He also reported that he wanted to fill out a 7362 to see a provider about his injured shoulder. Although two nurses gave him a 7362 form, they refused to help fill it out.

Mr. [REDACTED] additionally reported that he wanted to submit paperwork about all these problems but was dissuaded from doing so because unnamed officers made threatening comments, telling him that if he filled out paperwork, things would get worse for him and that this mistreatment is what he gets “por andar de mitotero” (for being a gossip). He also reported that officers refused to help him fill out an 1824 or 602, and that the ADA workers in the building did not speak Spanish and ignored him.

Last Friday, Plaintiffs’ counsel emailed you and asked you to see whether Mr. [REDACTED] had trapeze bars installed in his current housing. The next day, you responded: “SATF checked on Mr. [REDACTED] and since his cell did not have grab bars they moved him to an appropriate DPW cell with the grab bar /trapeze bars.” We appreciate your prompt action, but are concerned that, once again, the institution failed to properly accommodate Mr. [REDACTED] for almost a month, and only did so after Plaintiffs’ counsel alerted you (and them) to the situation.

Mr. [REDACTED] reports are deeply concerning and, unfortunately, consistent with what other class members at SATF have reported during the pandemic. We are deeply concerned that ADA staff at the institution and headquarters only became aware of the problem when notified by Plaintiffs’ counsel. That is not a meaningful oversight mechanism. Plaintiffs’ counsel have an extremely narrow and delayed view into the prisons. It was only by serendipity that we learned of these issues; we had requested a legal call with Mr. [REDACTED] before he was infected to discuss a separate matter, and the call was delayed until he was cleared from medical isolation.

In the non-architectural accommodations workgroup, we have been focused on ensuring that a detailed memorandum is issued to the field that informs institutions of their responsibility to have trapeze bars and other accommodations on hand. But that does little good where, as here, the institution is entirely unaware of when they need to install those trapeze bars.

We also are alarmed that Mr. [REDACTED] repeatedly asked custody and healthcare staff for help, that none provided such help, and that, in fact, they actively threatened or otherwise impeded him from reporting problems and seeking help. We are, quite frankly, in the same place we were in August, when another wheelchair user was told, after he raised access and safety

Ms. Tamiya Davis
Failure to Provide Trapeze Bars During the SATF Outbreak
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concerns in quarantine housing, that he “better get used to it.” *See* Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Medical Isolation and Quarantine of *Armstrong* Class Members at SATF at 6 (Sept. 14, 2020). The reported behavior by staff at SATF is, unfortunately, entirely consistent with the evidence Plaintiffs have presented in the RJD staff misconduct litigation of “acts that have served to discourage class members from requesting reasonable accommodations for their disabilities, either through the formal grievance process or otherwise.” Order, Doc. 3059 at 5 (Sept. 8, 2020).

We request the following:

1. Please produce a Bed History Report for Mr. [REDACTED] from January 1, 2020, to present.
2. Please explain whether each of Mr. [REDACTED] housing placements since November 25, 2020, including his overnight stay on Facility F, was wheelchair accessible and had trapeze bars installed. Please explain why Mr. [REDACTED] was moved to each housing placement and, if it was not wheelchair accessible and/or trapeze bars were not installed, (a) when, how, and who at the institution became aware of that, and (b) what action, if any, was taken.
3. Please explain in detail how the institution will prevent this scenario from happening to Mr. [REDACTED] or any other class member again and how it will independently identify any similar problems in the future.
4. Please add all the allegations above, including the repeated failure of custody and healthcare staff to properly respond to Mr. [REDACTED] requests for help and accessible housing, to the non-compliance log.
5. Please retrain custody and healthcare staff, particularly those assigned to quarantine and isolation units, of the need to properly and promptly respond to disability-related concerns.

Thank you for your prompt attention to this matter.

Sincerely yours,



Ilian Meza-Peña
Litigation Assistant



Rita Lomio
Staff Attorney

Ms. Tamiya Davis
Failure to Provide Trapeze Bars During the SATF Outbreak
December 24, 2020
Page 4

cc: Ed Swanson, Court Expert
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,
Robin Stringer, Patricia Ferguson, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chance Andres, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Robin
Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Tammy Foss,
Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis, Olga Dobrynina,
Dawn Stevens, Alexandra Tonis, Gently Armedo (CCHCS)
Sean Lodholz, Anthony Tartaglio, Trace Maiorino (OAG)

EXHIBIT D



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com
Penny Godbold
Email: PGodbold@rbgg.com

January 15, 2021

VIA ELECTRONIC MAIL ONLY

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

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Re: *Armstrong v. Newsom*: Advocacy Letter Regarding July 20, 2020 Raid at
Correctional Training Facility (“CTF”)
Our File No. 0581-03

Dear Tamiya:

I write regarding the “raid” that occurred on Facility C at Correctional Training Facility (“CTF”) on July 20, 2020. As you know, Plaintiffs first requested information about this incident, including whether it was being investigated by OIA and whether allegations of misconduct raised by *Armstrong* class members who were involved were being tracked and investigated pursuant to *Armstrong* accountability protocols, on September 4, 2020. See September 4, 2020 Email from P. Godbold to T. Davis, et al. We have not received a response to our inquiries beyond being told that Defendants do not see a connection to the *Armstrong* case.

The *Armstrong* Court previously rejected similar claims from Defendants that dozens of staff misconduct allegations raised by Plaintiffs’ counsel at Richard J. Donovan Correctional Facility (“RJD”) fell outside the scope of the case because the declarants were, according to Defendants, not targeted as a result of their disability, were not identified as class members, or showed little connection between the misconduct and the disabilities. Dkt. 5059 at 25. While the target of the raid at CTF was incarcerated people who are Black, the impact of this horrific event on the elderly and those with disabilities who were involved demonstrates clear violations of the Americans with Disabilities Act (“ADA”).

As the *Armstrong* Court found, “[a] failure to provide a reasonable accommodation can occur where a correctional officer could have used less force or no force during the performance of his penological duties with respect to a disabled person.” Dkt. 3059 at 17. There is no indication that these class members, asleep in their beds at 3

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a.m., posed any imminent threat to staff. *Id.* at 18. As documented below and in attached declarations, using force to pull elderly class members out of their bunks onto the concrete floor, failing to give them adequate time to comply with orders, forcing them to the dining hall without disability accommodations, with no clothes on and without access to restrooms, and flagrantly violating COVID-19 precautions are all clear examples of failures to accommodate class members during the July 20, 2020 raid at CTF.

I. Violations of the ADA

Multiple *Armstrong* class members who are Black report that on July 20, 2020, they were forcefully dragged from their cells in Facility C at 3 a.m. by CDCR staff in “riot gear” without any disability accommodations. These class members report that they were forced into a dining hall, where they were made to wait for hours, in their underwear, in some cases without restroom access, in close proximity to many other incarcerated people, and without any COVID-19 precautions. Some report that they endured or witnessed racial insults and reported a jubilant and unprofessional environment among staff, with some staff high-fiving one another during the incident.

Class members report that they were physically injured or further disabled when pulled from their bunks and dragged to the dining hall without disability accommodations. [REDACTED], a 58 year old class member who has mobility disabilities but has not been assigned a DPP code, reports that he was attempting to comply with officer orders when he was yanked from the top bunk to the concrete ground, landing on his knees, and causing mobility difficulties that continue today. *See* Declaration of [REDACTED] attached hereto as **Exhibit A**, ¶¶ 5, 16. He further reports that, after he was dragged from his cell, staff jumped on his back so hard that he urinated on himself. *Id.*, ¶ 8. He was dragged in a way that caused pain and exacerbated existing injuries and, when he complained, he was told to shut up, “Fuck Black Lives Matter.” *Id.*, ¶ 7. Mr. [REDACTED] injuries are corroborated by contemporaneous medical records documenting abrasions and contusions in Mr. [REDACTED] knee and shoulder. *See* July 20-21, 2020 Progress Notes, attached hereto as **Exhibit A1**. Additionally, two different CDCR physicians have recognized Mr. [REDACTED] as having suffered a “significant upper extremity injury” requiring accommodations, in the immediate aftermath of the raid. *See* Ex. A1 (July 21, 2020 7410 and August 26, 2020 7410).

[REDACTED], a 53 year old class member with a DLT mobility code, reports that he has ongoing low back and knee problems from being dragged off of his bunk by custody staff and hitting the concrete ground. *See* Declaration of [REDACTED] attached hereto as **Exhibit B**, ¶¶ 8, 37. He asked for but has not received a cane as a reasonable accommodation for his ongoing mobility difficulties. *Id.*, ¶ 37. In the days

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following the raid, a nurse, concerned by Mr. [REDACTED] serious injuries, requested an x-ray for his left shoulder, noting that he had a limited range of mobility and rotation in his left shoulder and left knee. *See* July 27, 2020 General Message, attached hereto as **Exhibit B1**.

[REDACTED], a 57 year old class member with upper extremity limitations who has not been assigned a DPP code, reports that injuries he sustained during the raid exacerbated ongoing problems causing difficulty moving, muscle loss, and nerve damage. *See* Declaration of [REDACTED] [REDACTED] attached hereto as **Exhibit C**, ¶¶ 23-24. As early as July 2019, Mr. [REDACTED] had been recognized by two different CDCR physicians as having “weakness and atrophy” in his biceps and hand muscles, constituting a “severe weakness of his upper extremity”. *See* July 25, 2019 7410 & September 25, 2019 7410, attached hereto as **Exhibit C1**. His ADA Patient Summary confirms that he requires special cuffing, a bottom bunk, and has documented lifting restrictions. *See* Ex. C1 (ADA Patient Summary, last updated September 25, 2019).

Sadly, it appears this raid may have been a Covid-19 “super-spreader” event. Multiple class members report testing positive for COVID-19 following the raid. Mr. [REDACTED] was forced to wait in the dining hall – in close proximity to other incarcerated people, all without COVID-19 precautions – for approximately eight hours before being questioned. Ex. A, ¶¶ 10-12. Mr. [REDACTED] tested positive for COVID-19 nine days after the raid. *Id.*, ¶ 17. Mr. [REDACTED] reports that COVID-19 spread through his unit following the raid and that he eventually tested positive, a few months following the raid. Ex. C, ¶¶ 25, 26. Mr. [REDACTED] reports that many people tested positive in his unit following the raid including one person who was seated very close to him during the raid. Ex. B, ¶ 38. According to historical reports from the COVID-19 Registry, out of the incarcerated people currently housed on Facility C, not one person was confirmed COVID-19 positive prior to the raid. Nine days after the raid, on July 29, 2020, two people (including Mr. [REDACTED] currently housed on Facility C tested positive for COVID-19. **Between July 30 and September 1, 2020, 53 more individuals now housed on Facility C tested positive. Overall, 301 individuals currently housed on Facility C had tested positive between the first case on July 29, 2020, and November 5, 2020, when Mr. [REDACTED] tested positive.** The COVID-19 Registry data confirming the spread of COVID-19 among individuals now housed on Facility C following the raid is attached hereto as **Exhibit D**.

The impact of COVID-19 in CDCR has been especially devastating on *Armstrong* class members who account for approximately 50% of statewide deaths, even though they amount to only 10% of the prison population. At CTF, 53% of deaths thus far are *Armstrong* class members even though only 10% of positive COVID-19 cases are class

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members. CDCR staff members' decision to conduct an unsafe and reckless raid during a global pandemic showed disregard for the lives of all incarcerated people but has clearly had a disparate impact on those elderly class members with disabilities at CTF whose lives were at even greater risk. *See Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996).

Many people we have spoken to who are also *Coleman* class members report decompensation and exacerbated mental health problems resulting from the raid. Mr. [REDACTED] who is CCCMS and has PTSD, has had trouble sleeping since the raid, states that he jumps when he hears custody keys jingling, that the incident has triggered his PTSD, and that he is having trouble coping. Ex. A, ¶ 18. Mr. [REDACTED] was made CCCMS due to the trauma, stress and anxiety he has been experiencing as a result of the raid. Ex. C, ¶¶ 31-32; *see also* Ex. C1 (November 1, 2020 MHPC Note and MH LOC Status).

Many class members report that they filed 602s reporting the staff misconduct that occurred during the raid. Some report that their 602s were flatly rejected. Others state that they have been told that the matter is under investigation but that they have not received any response nor any information about the status of the investigation. Mr. [REDACTED] reports that he has not received a response but that many people he knows received responses denying their 602s alleging excessive force during the raid. *See* Ex. A, ¶ 19. It is noteworthy that two of the three attached declarations report retaliation by Officer Perez for filing staff misconduct complaints against him, in one case about this very event. *See* Ex. A, ¶ 20; Ex. B, ¶¶ 23-27. Retaliation against class members for exercising their rights under the ADA violates the ADA. *Armstrong v. Newsom*, 475 F. Supp. 3d 1038, 1059 (N.D. Cal. 2020).

II. Requests for Information

As stated above, Plaintiffs' counsel has requested, but not received, any information regarding any investigation of this incident. The *Armstrong* Court has held that allegations regarding the failure to accommodate disabilities described in the attached declarations, and by many additional class members we have spoken to, must comply with *Armstrong* accountability protocols. Dkt. 3059 at 34. Further, any alleged violation of the ADA's anti-retaliation and anti-interference provisions must also be tracked and investigated. *Id.* at 35. Yet, a review of the DAI *Armstrong* accountability logs produced for CTF since the raid do not include any apparent allegations stemming from the raid, despite reports from multiple class members that they filed such

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complaints. *See* DAI Employee Non-Compliance Logs from July-October 2020,¹ attached hereto as **Exhibit E**.

As you are aware, in compliance with the RJD Injunction's provisions mandating further remedial measures needed to address ongoing violations of class members' ADA rights due to the failure to hold responsible staff accountable for misconduct, the parties are undergoing negotiations regarding improvements to the staff misconduct investigation and disciplinary process. In order to inform the ongoing negotiations, Plaintiffs request the following information about the CTF raid that is highly relevant to Defendants' current staff misconduct investigation and disciplinary system:

1. Did the Hiring Authority at CTF submit a 989 referral to OIA related to this incident? If so, was it a request for investigation or for direct adverse action? What triggered the 989 referral to OIA (e.g., complaint by staff, complaint by incarcerated person, etc.)? What is the status of the 989 referral? If the Central Intake Unit authorized an investigation or direct adverse action, how many officers are the subject of the investigation or direct action? Are any supervisory staff, at the level of sergeant or higher, among those named on the 989 referral submitted by the Hiring Authority? Have these officers been administratively re-directed or suspended pending the outcome of the investigation or the imposition of direct adverse action? If not, why not?

2. Are any allegations raised by *Armstrong* class members for excessive force/failure to accommodate disabilities currently under inquiry or investigation? Please let us know who the class members are and the status of those inquiries/investigations.

- Have any such allegations been referred to AIMS? How many? What is the status of each allegation? Please produce any completed AIMS inquiries for *Armstrong* class members alleging staff misconduct (including excessive force/failure to accommodate) resulting from the raid.
- Have any such allegations been tracked/investigated pursuant to *Armstrong* accountability protocols? How many? What is the status of each allegation? Please produce any completed non-compliance inquiries for *Armstrong* class members alleging staff misconduct (including excessive force/failure to accommodate) resulting from the raid.

¹ The October 2020 DAI logs were the most recent logs produced to Plaintiffs' counsel at the time of this letter.

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3. Was the raid, which was clearly planned by CDCR in advance, considered a controlled use of force such that the events were video recorded by staff consistent with DOM Section § 51020.12? What staff members authorized the raid? Were they present during the raid?

4. Was any portion of this raid captured on any audio-video surveillance system (“AVSS”) at CTF? If so, please produce any video footage that was reviewed in conjunction with any completed inquiry or investigation for *Armstrong* class members alleging staff misconduct (including excessive force/failure to accommodate) resulting from the raid.

We look forward to receiving your response and request that it be produced within 15 days to ensure that the information can inform negotiations regarding the staff misconduct disciplinary process.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold

PMG:hg

Enclosures: Exhibits A-E

cc: Ed Swanson
August Gugle
Roy Wesley
Special Masters Team
Dillion Hockerson
Nick Weber
Melissa Bentz
Carrie Stafford
Alexander “Lex” Powell
Nicholas Meyer
Patricia Ferguson
Gannon Johnson
Amber Lopez
Robin Stringer
Adriano Hrvatin
Trace Maiorino

Sean Lodholz
Anthony Tartaglio
OLA Armstrong
Namrata Kotwani
Andrea Moon
Adam Fouch
Chantel Quint
Jillian Hernandez
Landon Bravo
Bruce Beland
Robert Gaultney
Tammy Foss
John Dovey
Robin Hart
CCHCS Accountability
Joseph (Jason) Williams

Amy Padilla
Jason Anderson
Joseph Edwards
Lynda Robinson
Barb Pires
Courtney Andrade
Miguel Solis
Olga Dobrynina
Dawn Stevens
Alexandrea Tonis
Jimmy Ly
Jay Powell
Gently Arredo
Steven Faris
Lois Welch
Co-Counsel

EXHIBIT A

**PRIVILEGED AND
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**SUBJECT TO
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DECLARATION OF ██████████ ██████████

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I, ██████████ ██████████ declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation (“CDCR”) number is ██████████ I am currently housed at Correctional Training Facility (“CTF”) on Facility C in Building OW, cell ██████████. I am 58 years old.

3. I am a *Coleman* class member at the CCCMS level of care, which is the lowest level of mental health care that the Mental Health Services Delivery System (“MHSDS”) offers. I struggle with depression and anxiety and I have been told I have Post Traumatic Stress Disorder (“PTSD”).

4. I also have mobility disabilities. I am not identified as an *Armstrong* class member with a DPP code, but I do struggle with mobility. I have a lower bunk, lower tier chrono and I have great difficulty climbing stairs and climbing to an upper bunk. I also have lifting restrictions due to problems with my left shoulder.

5. I was a victim of a July, 20, 2020, raid conducted by CDCR staff on Facility C at CTF. On that day I was woken up at 3 a.m. by an officer who entered my cell in full riot gear. He was shouting at me and my cellie, yelling for us to hurry up, to get up and get out of bed. I was confused, it was the middle of the night, the officer was wearing full riot gear and he just kept shouting and threatening us. I saw my cellmate get dragged off his bunk out of the cell. I was attempting to comply with the orders but I am older and I need extra time to climb off the top bunk. Instead, the officer grabbed me and yanked me off the top bunk on to the concrete floor. I slammed to the ground on my knees and nearly hit my head on the toilet on the way down. I was stunned. I could not believe that an officer had just grabbed me off the top bunk and threw me to the ground like I was a piece of garbage. I felt excruciating pain in my knees and I could not stand up.

6. Next, the officer dragged me out of the cell to the common area of the building. I could see many officers in full riot gear, including helmets. None of the

1 officers had name tags on. Many officers had a place for a video camera on their helmet
2 but I did not see any video cameras present. There was a lot of yelling and confusion in
3 the common area and I saw many people being dragged out of their cells by staff in riot
4 gear. I recognized Officer Perez who works in my unit. I did not understand why Officer
5 Perez was there because this was a Monday and he is usually off on Mondays. I yelled to
6 him, "What's going on?" but he just turned away from me.

7 7. As the officer was dragging me I was yelling that I was in pain. I yelled,
8 "you are hurting me" but he just told me to, "shut the fuck up, shut the fuck up" and
9 continued to drag me. I heard another officer, I think it was his partner yell, "Fuck Black
10 Lives Matter!"

11 8. Next thing I know, the officer who was dragging me jumped on my back,
12 injuring my bad shoulder, and causing a sharp pain. I urinated on myself. I felt
13 completely humiliated and violated. I was in the middle of the common area where
14 everyone, including all the staff and other incarcerated people who were being dragged
15 from their cells, could see me. I knew this was going to be perceived by others as a sign of
16 weakness on my part and I was worried and felt ashamed.

17 9. Next the officer placed handcuffs on me so tightly that I could feel my wrists
18 start to swell. I was unable to walk so he yanked me up by my left shoulder and dragged
19 me out of the unit for approximately 80 yards to the dining hall.

20 10. When I entered the dining hall, I saw about 80 other incarcerated people
21 there. All of us were without shoes, many without shirts, and most of us were in our
22 underwear. I noticed we were all black. I noticed that the officers there were
23 predominantly white. The officer who dragged me to the dining hall was also white. I was
24 scared. I saw only one black officer there, Officer Brown.

25 11. None of the incarcerated people I saw had COVID-19 masks on. Staff sat us
26 very close together, not socially distanced. There were people from outside of my housing
27 unit wing in the dining hall. I knew that we were not supposed to be mixing with other
28 people from outside of our housing unit wing due to COVID-19.

1 12. I was left in the dining hall, in my underwear, in pain, with handcuffs on that
2 were too tight for eight hours. During that time I asked for my cuffs to be loosened and for
3 medical attention, but was denied.

4 13. The atmosphere in the dining hall among staff was disgraceful. Staff
5 appeared jubilant. I saw multiple staff members high-fiving one another and staff were
6 laughing and joking around about what was happening. It seemed like they were proud of
7 what they had done. I was shocked. It was all extremely unprofessional.

8 14. I had not seen any incarcerated people resisting. I would have walked
9 willingly to the dining hall, if I were asked to do so. So, I did not understand the need for
10 staff to harass me, yank me out of bed, injury me, make racially disparaging comments,
11 and to completely degrade me all while they appeared to be celebrating. I heard some
12 incarcerated people complain about their treatment and about how blacks were being
13 targeted and they were put in holding cages. Multiple incarcerated people were pleading
14 with Officer Brown for help and for answers, given that he was the only black officer
15 involved. He did not respond. I do not blame him for not saying anything, I do not think
16 he could have stood up to the other officers involved in that environment. It got pretty
17 heated and I heard one of the incarcerated people call Officer Brown a “house nigger”
18 because he was not standing up for us blacks. The other officers sent Officer Brown away
19 from the scene at that point.

20 15. After eight hours, when I was finally interviewed by staff, I was upset. They
21 asked me to show them any tattoos and asked about my connection to gangs. I am not
22 affiliated with any gangs, I have never received a rule violation report, I have a good
23 relationship with staff, I do not understand why I was singled out. When I posed this
24 question to the interviewer he said I was “collateral damage” and they let me go. I was
25 furious.

26 16. The July 20 raid had a major impact on my mobility. After being pulled to
27 the ground off the top bunk I have craters in my knees, and my right knee pops when I
28 walk. It is extremely painful. My knees have been X-rayed and I was told they are not

1 broken, but I have difficulty walking now. Prior to the raid I could walk and run with little
2 problem. Now I am in constant pain and am unable to walk for long periods. My left
3 shoulder was a problem before but now I can hardly move my arm. I was given temporary
4 a lower bunk, lower tier housing restriction chrono following the raid due to my ongoing
5 mobility problems. Medical staff told me that my chrono would be extended in February.
6 I do not see how I will ever be able to climb on to a top bunk again.

7 17. On July 29, 2020, 9 days after the raid, I tested positive for COVID-19. I
8 was taken to isolation for approximately three weeks. People in my housing unit told me
9 they thought I died. I realize that I may not ever know the exact source of my COVID-19
10 infection but, following the raid, COVID-19 starting spreading like wildfire through my
11 housing unit. My unit, wing D, was the first to go on lockdown and were on/off quarantine
12 lockdown for nearly three months following the raid. At least one person in my wing, an
13 incarcerated person named "██████████" died from COVID-19. He died around the middle
14 of August, I think it was about a month after the raid. ██████████ was black. I do not know
15 if he was involved in the raid but he was housed with all of us who were involved and
16 COVID-19 was spreading everywhere in the unit.

17 18. The raid has also impacted my mental wellbeing. I have had nightmares
18 since the raid and I cannot fall asleep. I do not feel safe as a result of what staff did to me.
19 When I hear keys jingling, meaning that staff are coming, I jump. My heart races, I feel
20 anxious, I fear that I am going to be assaulted again. I feel so violated. I have PTSD and
21 this feeling of violation throws me right back to the day, when I was a little kid, that an
22 adult was on top of me violating me. I am having trouble coping with these intense
23 feelings. This incident made me feel less than human.

24 19. I filed a 602 staff complaint approximately one month after the raid alleging
25 excessive force, racial discrimination and civil rights violations. I waited a month because
26 I was scared of retaliation and worried about what might happen to me if I filed a staff
27 complaint. At some point, after I filed the 602, I was interviewed by a CTF Lieutenant. I
28 don't remember his name but the interview was videotaped. He told me the investigation

1 into the incident was ongoing. I received a written notification that my 602 was received
2 by staff. The notice said that an “emergency” was detected on my 602 and that I would
3 receive a response by October 31, 2020. I still have not received a response. I am aware
4 that many people filed 602s regarding staff misconduct following the raid. I have heard
5 from multiple people that their complaints regarding excessive force have all been denied.
6 I do not know why I have not received a response.

7 20. After I filed the 602, I started being retaliated against by Officer Perez. He
8 started making harassing comments telling me that I was wasting my time filing a staff
9 misconduct complaint. He started asking me repeatedly whether I was filing a lawsuit. He
10 kept telling me that a lawsuit would go nowhere, and that everyone needs to just drop it.
11 Then he stopped letting me out of my cell during dayroom time, even though he had never
12 done this before I filed a staff complaint. I believe he was making trouble for me because I
13 filed a staff complaint.

14 21. I do not trust custody staff. I do not feel like I can ask staff for help. I do not
15 feel like I can tell staff that I am suffering and need mental health help. Since the raid a
16 few staff from CTF have apologized to me for what happened. They say things like they
17 were not involved, did not know it was going to happen, it was above their pay grade, and
18 they had no control over what happened that night. I do not buy these excuses. If you
19 work for CDCR and you were there and you witnessed the atrocities that occurred you
20 have an obligation to speak up and say that what happened to us was wrong. If you do not
21 do that then you are just as guilty as the people who hurt us in my mind.

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1 22. I hope that the staff that were involved are held accountable for their actions.

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3 I declare under penalty of perjury under the laws of the United States of America
4 that the foregoing is true and correct, and that this declaration is executed at Soledad,
5 California this 8th day of December, 2020.

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/s/ [REDACTED] _____
[REDACTED]

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10 On December 8, 2020, due to the closure of CTF, in light of the COVID-19
11 pandemic and ongoing concerns that officers might retaliate against witnesses in support of
12 Plaintiffs' Motions, including ongoing concerns about the confidentiality of the legal mail
13 system at CTF, I read the contents of this declaration, verbatim, to [REDACTED] [REDACTED] by
14 telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and
15 correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the
16 declaration and to file the declaration in this matter.

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DATED: December 8, 2020

/s/ Penny Godbold

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Penny Godbold

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EXHIBIT B

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DECLARATION OF [REDACTED]

I, [REDACTED] declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation (“CDCR”) number is [REDACTED]. I am currently housed at Correctional Training Facility “CTF” on Facility C in Building DW-1. I am 53 years old.

3. I am an *Armstrong* class member. I have a mobility disability, and I am designated as DLT. I have two knee braces, lifting restrictions, work restrictions, and a special cuffing chrono due to my mobility impairment. I have a lower tier, bottom bunk chrono because I have great difficulty climbing stairs.

4. I used to be a *Coleman* class member at the CCCMS level of care up until a few months ago. I decided to drop out of the mental health services because my clinician visits were not helpful. I felt like mental health staff were just trying to medicate me and not give me proper counseling.

5. I have been housed at CTF since January 2018.

6. During the entire time I have been at CTF, I have been housed in the same cell on Facility C in Building DW.

7. I was a victim of staff misconduct at CTF.

8. On July 20, 2020, at about 3:00 am, I woke up to three officers in my cell and someone screaming, “Grab his ass out of there.” The officers were wearing tactical gear, including army helmets with lights attached and vests, no name tags, and their faces were covered with ski-masks. One of the officers snatched me off my bed by my arm and threw me to the concrete ground. My head hit the steel toilet on my way to the ground. I was groggy and in a daze. I could hear an officer saying, “He’s a big one. Drag his ass out of there.” I tried to not make any sudden moves because I was scared of what they were going to do if they thought I was resisting them.

1 9. Two officers then dragged me out of the cell by my arms. I was dragged on
2 my back all the way to the front of the building, past about 20-25 cells. I was wearing only
3 my boxers. I was not allowed to grab any clothes, shoes, socks, or my COVID-prevention
4 mask. I have a chrono that says officers are supposed to let me put my braces on my legs
5 before cuffing me, because of my disability. These officers did not do this.

6 10. There were no lights on in the building. The only lights were coming from
7 the side of the officers' helmets and military-style vests which had lights on the shoulders.
8 Although I could not see much, I could tell they were only going to certain cells. It
9 seemed like they had handpicked us. The officers were shouting nasty insults. They were
10 screaming, "You assholes, your families are out there marching. Screw Black lives! Fuck
11 you!" and "N*gg*r lives don't matter."

12 11. At the front of Delta Wing, they then rolled me onto my stomach, twisted my
13 arms behind my back, and put zip ties on me. Three officers then hoisted me to my feet.
14 They put me up against a wall and said, "You better not move." I heard one of the officers
15 pick up his radio and say, "Escorting one from Delta Wing to the chow hall." It appeared
16 that the officers were grabbing people from different cells, but I could not see exactly what
17 was happening because there was a lot of chaos.

18 12. Then they led me down into the chow hall. I was forced to walk barefoot on
19 the disgusting chow hall floor. I was instructed to sit at a table on the right side of the
20 chow hall. The chow hall is currently closed due to the inability to social distance at the
21 tables during the COVID-19 pandemic. The officers ignored this and forced us to sit down
22 right next to each other. No one was wearing masks. At this point, I could see that there
23 were close to 100 incarcerated people in the dining hall.

24 13. They left us in there for about 4 to 5 hours. Everyone sitting around me was
25 Black. As far as I know, they only raided Facility C, and there were people from every
26 wing in Facility C.

1 14. I was startled and frightened and did not know what was going on. Some of
2 the officers had taken off their masks, so I could see there was not a single Black officer.
3 They were laughing. One officer said, “You N*gg*rs will all have COVID when we’re
4 done with this.” I was very confused.

5 15. After about one hour of us sitting zip-tied in the chow hall, some people
6 began to get restless, and others had to use the bathroom. The officers blew them off.
7 Then some people who were very frustrated started screaming at the sergeant. An officer
8 then radioed for a “gunner,” meaning an officer with a gun, to come in. An officer with a
9 gun climbed into the birds nest, a caged in area on the second tier of the chow hall, which
10 is not normally used in a Level 2 prison, like CTF. The officer sat there with a gun pointed
11 at us, watching. I could not tell if the gun was a block gun or filled with tear gas. This
12 was meant to intimidate us. No one was allowed to use the restroom.

13 16. We sat there for four to five more hours. Officers were standing in the
14 corner, taking off their COVID-19 masks, laughing and joking around with each other. A
15 bunch of us starting saying, “Hey, put your masks back on. You’re coming off the streets.
16 Don’t bring COVID in here.” The officers ignored us.

17 17. Then we were escorted one at a time to offices down the corridor. Before
18 escorting me to the office, I was told to strip, even though I was only wearing my shorts. I
19 was then interrogated by two officers identified as “OCS” or “Office of Correctional
20 Safety – Gang Intelligence Operation.” The officers interrogating me were R. Villalba and
21 B. Barron. They took pictures of my tattoos on arm and leg.

22 18. They asked me if I was part of the gang “BGF” or “Black Guerrilla Family,”
23 which was a group in the 1970s. I do not know if that gang exists anymore. They asked
24 me if I knew anything about an incident at Folsom State Prison, where an officer was
25 attacked by a Black incarcerated person. I said that I knew nothing about the incident. I
26 do not get involved in prison politics and like to keep to myself. I told them that I have
27 never been part of a gang, that I coached children’s baseball, that I’m a grandfather, and
28 that I just want to do my time.

1 19. They took out a packet and said, “It says here that you have not been in
2 trouble in 20 years, and I really don’t have anything on you, but do you know anything
3 about INMATE X (name omitted for privacy).” I do not know INMATE X, but I was
4 frustrated by the situation, so I told him to go to hell. I told him I did not even know that
5 person. He said that he was going to validate me unless I gave him information on this
6 inmate, but I refused because how could I give information on someone I do not know.

7 20. When I was finally escorted back to Delta Wing, I could see that all of our
8 cells had been searched. I have spoken to some incarcerated people who were also pulled
9 out of their cell during the raid. They told me that the officers took all of their paperwork.
10 When I got back to my cell, I could see that the officers had taken every piece of
11 paperwork from my cell, including my greeting cards and family pictures.

12 21. I am on the Men’s Advisory Committee (“MAC”), which is a group of
13 incarcerated individuals who meet with the warden and diffuse problems in the prison. We
14 make sure people get showers and hot meals. The head of the MAC later told me that, the
15 day after the raid, the warden told him the raid occurred because of Security Threat Group
16 activity, meaning prison gang activity, which does not make any sense. This is a positive
17 program facility. Everyone has worked to get their security level lowered. It also did not
18 make sense that Black individuals were targeted. There have not been any incidents of
19 gang violence among Blacks in CTF that I am aware of for a long time. By contrast, the
20 Hispanic and White gangs have recently had a couple riots, in which Black and Asian
21 individuals did not participate.

22 22. The officers from OCS hung around Facility C for about 10 days after the
23 event on July 20, 2020. Our property was given back to us about a week after the raid.
24 For the next 10 days, the officers were putting paperwork under all of our doors.

25 23. I think I was picked in retaliation for staff complaints I have written against
26 Officer Perez, who is the building officer for Delta Wing. On April 14, 2020, I wrote a
27 staff complaint against Officer Perez for inciting racial tensions in our building on April 7,
28

1 2020. On that day, after yard, instead of allowing people to shower, Officer Perez locked
2 everyone down in their cells. I think he did this because he was lazy or on a power trip.

3 24. When people started to complain, he told the MAC representatives for the
4 Whites and Hispanics, "I'm not going to run showers for you, because the Blacks won't
5 lock up." Even if a Black individual was refusing to lock up, Officer Perez should not
6 have blamed the entire Black population of the housing area. He knew that by blaming the
7 Blacks, the Whites and Hispanics would be angry with the Blacks. My 602 was rejected as
8 a group appeal.

9 25. I know Officer Perez found out about my staff complaint, because he told me
10 he could give me anything, if I would withdraw it. I refused to withdraw it.

11 26. I also believe Officer Perez targeted me for retaliation because of my role on
12 the MAC. As a member of the committee, when incarcerated individuals have had a
13 problem with Officer Perez, I have told them to file staff complaints. As a result, he has
14 had many complaints against him.

15 27. I believe Officer Perez put my name on the list of individuals to be
16 questioned and searched in the July 20 raid. As the building officer, I believe he would
17 have been asked which individuals should be targeted. He is also friends with officers on
18 the Investigative Services Unit ("ISU"), because he used to be on the ISU.

19 28. Five or six days after the raid, I received a notice that CDCR was
20 considering validating me as a gang member. CDCR has a point system for validating a
21 prisoner as a gang member. If you accrue ten points over a four year period, you are
22 considered a gang member. For example, one factor that would get you a point is
23 association with gang members.

24 29. Because of the raid, on or around August 30, 2020, I had to try to prove to a
25 classification committee that I am not a gang member. At the hearing, I told the committee
26 that I was not a gang member and told them I did not self-admit to being in a gang.

27 30. On October 12, 2020 I received a chrono notifying me that I have been
28 validated as a gang member. According to the paperwork they sent me, I accrued 11

1 points for my tattoos (6 points), for writing on the back of a photograph in my cell (2
2 points), and for self-admission to Officers Villalba and Barron during the July 20 raid (5
3 points).

4 31. I do not understand why they believe I have gang tattoos. The tattoos that
5 they say are gang tattoos are from when I was 14 or 15 years old and was on a dance crew.
6 The tattoo in question says, "[REDACTED]." To my knowledge this is not a gang phrase. I
7 have not gotten a new tattoo in almost 30 years.

8 32. Similarly, the photograph they say has gang symbols written on the back
9 does not refer to gang participation. The photo is from the 1980s and is of a friend's
10 cousin with a hat on, sitting and smiling. He is not using his hands in any way that could
11 be construed as a gang symbol. "GG" is written on the back of the photo. To the my
12 knowledge, "GG" is not a gang phrase.

13 33. According to the papers I received, Officers Villalba and Barron say that I
14 admitted to them I was in a gang. This is not true. I have never been in a gang. In fact, I
15 was a gang interventionist for the City of Los Angeles for five years. I would never join a
16 gang.

17 34. I have heard on the news about Los Angeles Police Department Officers who
18 lied, saying that individuals on the street had self-admitted to gang membership when they
19 really had not. I believe Officers Villalba and Barron did the same to me in order to add
20 more points to validate me.

21 35. I am 53 years old. I can barely move. I would not join a gang at this age
22 because it would be stupidly dangerous. The strained logic of the validation leads me to
23 believe that this was retaliation.

24 36. Now that I have been falsely validated, I am scared that officers will be more
25 aggressive with me and that I may be targeted for a use of force incident. I also may be
26 targeted by an opposing gang.

27 37. The July 20 raid also had an impact on my health. My lower back has been
28 killing me ever since I was dragged out of the bed. My left shoulder feels like it was

1 popped out of its socket when the officer pulled it. My left knee has been swollen and in
2 pain from when it came in contact with the concrete ground. I have also been having
3 recurring headaches and dizzy spells from when my head smashed into the steel toilet. I
4 have been examined by medical staff several times since July 20th because of my injuries.
5 The only pain medication that I have received for my injuries is Aspirin, which is not
6 adequate for my pain levels. I have requested a cane multiple times, as it hurts to walk and
7 get out of bed, but I have not been approved of one yet.

8 38. A few weeks after the event, there was a massive COVID-19 outbreak on
9 Facility C, the facility targeted by the raid. Delta Wing was the first wing to be
10 quarantined. Sadly, many people who were snatched from their cells and dragged into the
11 dining hall on July 20, 2020, have tested positive. The first person to test positive was
12 sitting a few rows down from me on that July 20 night. This event has impacted my
13 mental wellbeing. It has been a mental struggle for me. I've been trying my best to stay
14 sane, but life in prison is hectic enough already. This event has been very stressful and
15 depressing to me. The saddest part is that the average correctional officer is 25-30 years
16 old. They play with our lives and don't have a clue what's going on, because they are too
17 young to understand how they are messing with our lives.

18 39. I am frustrated that Black people were targeted the July 20th raid, that
19 officers used racial slurs during the raid, and that Officer Perez tried to incite racial
20 violence against Black people in my housing area. I feel that this prison discriminates
21 against Black individuals, solely because of race.

22 40. The officers do not take disability limitations or mental illnesses seriously
23 here at CTF. Officer Perez, for example, has the power to refer incarcerated people to the
24 mental health clinic. He abuses his power by tearing apart the cells of people with mental
25 illnesses and waiting for them to react before referring them to mental health. For the past
26 three months, Officer Perez has not been letting me out of my cell to do my MAC duties.
27 I'm supposed to have access to the floor to check in on all of the Black individuals on my
28 floor and make sure everyone is doing okay. Perez allows every other representative out to

1 do their MAC duties except for me. A few weeks ago, Officer Perez came to my cell and
2 said “Is it bothering you? Is it getting to your head yet? Being locked up in your cell?” I
3 think he was trying to antagonize me. I said “you can lock the doors, but Black don’t
4 crack.”

5 41. When anyone files a 602, Officer Perez knows about it. He often approaches
6 the individuals who filed against him, letting them know that he knows about the paper
7 work that they filed. 602s get denied or “go missing” all the time. The 602 process is the
8 only thing we have to try to keep ourselves safe from staff misconduct around here. If the
9 602 process is being tampered with, we really don’t have a chance. It’s like a lost cause.

10
11 I declare under penalty of perjury under the laws of the United States of America
12 that the foregoing is true and correct, and that this declaration is executed at Soledad,
13 California this 24 day of November, 2020.

14
15 /s/ [REDACTED]
16 [REDACTED]

17 On November 24, 2020 due to the closure of CTF in light of the COVID-19
18 pandemic, I read the contents of this declaration, verbatim, to [REDACTED] [REDACTED] by
19 telephone. [REDACTED] [REDACTED] orally confirmed that the contents of the declaration were true
20 and correct. [REDACTED] [REDACTED] also orally granted me permission to affix his signature to the
21 declaration and to file the declaration in this matter.

22
23 DATED: November 24, 2020

/s/ Heather Gans

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Heather Gans

EXHIBIT C

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

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DECLARATION OF [REDACTED] [REDACTED]

I, [REDACTED] [REDACTED] declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation (“CDCR”) number is [REDACTED]. I am currently housed at CTF on Facility C in Building EW-2. I am 57 years old.

3. I am a *Coleman* class member. I am at the CCCMS level of care. I struggle with anxiety and insomnia, with which I was diagnosed in the past couple of months.

4. Although I am not designated with a DPP code, I do have lifting restrictions, a special cuffing chrono, and a bottom bunk chrono. I have an issue with the discs in my neck, which causes pain in my hands, arms, shoulders, back, and neck. It is causing deterioration of the muscles in my hands. As a result I cannot use my upper body to pull myself up to a top bunk. I also have a cervical pillow for neck pain.

5. I was a victim of a July, 20, 2020 raid conducted by CDCR staff on Facility C at CTF.

6. At about 3:30 a.m., two officers came into my cell. They woke me by yelling, “Freeze! Don’t move! Shut up! Shut up!” and by jumping onto my back while I was lying on the bottom bunk. They pulled me to the ground – one officer had my feet and the other one grabbed my torso. I landed on the hard, ice cold concrete on my hands and knees. I felt sharp pain in my wrists and arm. I told the officers about the pain, but they said, “Shut up!” While I was on the ground, one officer sat on my back, pushing his forearm into my neck. The other officer held my legs. I was not resisting. I asked them what they were doing, but they kept saying, “Shut up!”

7. The officers never ordered me or my cellmate to get down and they never gave us any chance to comply with an order. Had they done so, I would have willingly gotten out of my bed and would have done exactly what they ordered, without the need for such force.

1 8. The officers were carrying shields and were wearing helmets with lights.
2 Their nametags were covered up and they were wearing ninja masks.

3 9. One the officers put handcuffs on my arms and then lifted me to my feet by
4 pulling up on the handcuffs. I felt pain in both my shoulders. Even though I told the
5 officers that I had a neck and shoulder problems, they did not listen to me. They kept on
6 screaming, "Shut up!"

7 10. They led me out of my cell. The officer leading me said, "Don't look at us!"
8 and told me to keep my eyes down. Standing just outside of my cell, I saw a Sergeant
9 Sesma. I was only wearing my boxers. The officers did not let me put on clothes, shoes,
10 or my COVID-prevention mask. It was cold in the building. As the officers led me down
11 the hall, I said, "Can I get my clothes? Why are your colleagues not wearing masks?"
12 Sergeant Martinez, who was in the hallway overheard me and said, "I'm not doing shit for
13 you, Niggers. We don't care about COVID." I knew who the staff member was because I
14 have seen Sergeant Martinez around the facility.

15 11. I did not see staff using video cameras to document taking me out of my cell
16 or down the hall to the chow hall.

17 12. They brought me to the chow hall. There were already 60-70 incarcerated
18 people in there. The chow hall had been closed due to COVID-19, so I was surprised they
19 brought us to that building. Staff had us sit at the tables – shoulder to shoulder. I was
20 sitting next to my cellmate, but the person sitting beside me on my other side was from a
21 different housing unit, even though I knew we are not supposed to intermingle with people
22 from other housing units due to COVID-19. The person sitting across from us at the same
23 table was from yet another housing unit.

24 13. They brought in about 35-40 more people. All of the incarcerated people I
25 saw were Black. Everyone was seated at the tables. Everyone was in only their
26 underwear, except for one man who was wearing his blue uniform for work. No one was
27 wearing masks.

28

1 14. It was very loud in the chow hall – everyone was screaming and hollering.
2 At first, the officers said nothing. Then, they started telling everyone, “Shut the fuck up!”

3 15. After about thirty minutes, an officer came in with a real gun, a mini-14 rifle.
4 At CTF, sometimes officers having block guns, but I have never seen a real gun like this at
5 this prison. People were very scared and became quiet.

6 16. Some staff had their masks on, but others did not. Individuals starting asking
7 staff to put their masks on, “What are you trying to do? Give us COVID?” Some of the
8 staffs pulled their masks up, but not all of them.

9 17. People started complaining that their handcuffs and the zip ties used to cuff
10 some people were too tight and uncomfortable. I saw some staff loosen cuffs for some
11 people.

12 18. The officers started taking people out of the chow hall one at a time. At that
13 point, the Warden of CTF came in and started congratulating the officers, high fiving them
14 and telling them, “Good job.” I felt very upset. Why would he tell them, “Good job,”
15 after what they did to us? I was still in pain in my shoulders, neck, and back. My hands
16 were numb from the cuffs. My cellmate’s hands were bright red.

17 19. While we were seated in the chow hall, the officers began verbally fighting
18 with individuals on the right side of the chow hall. I could hear them hollering, “Black
19 lives don’t matter! Fuck Black lives!” I was shocked. The officers were acting like
20 children, not professionals.

21 20. We were cuffed in the dining hall for about five hours. At that point, they
22 walked me down the hall to a room. In the room, they asked me if I belonged to a gang,
23 where I was from, if I heard about someone wanting to do something to the officers, and if
24 I had tattoos. I told them I have never been part of a gang and that I did not have tattoos. I
25 told them I did not know anything about someone wanting to hurt the officers. They asked
26 me about the Black Guerrilla Family (“BGF”), a known gang. I have never been in BGF.
27 As far as I know, BGF is not active at CTF. The interview lasted about 10-12 minutes. I
28 did not know the officer asking me questions. They did not videotape the interview.

1 21. After the interview, they walked me back to my cell. I could tell that my cell
2 had been searched because some of my property was missing. They took my paperwork,
3 including all my legal paperwork, my letters, my pictures, and my books. They gave some
4 property back a few days later, but they kept a postcard, a letter, and some notes. I
5 received a receipt saying they were taken for an investigation.

6 22. About a week after the raid, I was told by a counselor I had to go before a
7 classification committee to be validated as a gang member. He told me that a confidential
8 source said I was gang member. I was supposed to attend classification hearings on
9 September 9, 2020 and October 13, 2020, but these hearings did not happen. I am not sure
10 but I believe the hearings did not occur because they do not have enough information to
11 validate me as a gang member, because I do not participate in gang activity and I am not a
12 gang member.

13 23. Right after the raid, when I was back in my cell, I submitted a health care
14 request form about injuries to my neck, shoulders, and back. Two days after the raid, I
15 was seen by a nurse and then a doctor. They prescribed an ice pack, which I had to get
16 from the medical area each night from the 22nd until the 25th of July. Medical staff said
17 that, during the raid, the officers had reinjured an old injury. Medical staff said I would
18 never get back my full range of motion in my arms.

19 24. Because of my injuries from the raid, I am in great pain. I cannot exercise
20 my arm because of muscle loss and nerve damage. The injuries have caused my fingers to
21 occasionally lock up when I am writing. I now have a special cuffing chrono, which
22 means I have to be cuffed in front of my body.

23 25. After the raid, I began to hear that people in Facility C were getting COVID-

24 26. I myself contracted COVID-19 in November. I tested positive. They kept
25 my cellmate, who also had COVID-19, and me isolated in a cell for fourteen days. I had a
26 headache. I lost my sense of smell and taste. I still cannot smell or taste.

27
28

1 27. On July 22, I filed a 602 staff misconduct complaint about the raid, because
2 the officers had jumped on my back causing injuries. In August, Sergeant McDonald
3 conducted a videotaped interview of me about the raid.

4 28. Someone from the Officer of Internal Affairs met with me later in August.

5 29. Later that month, I received a response to my 602 saying the raid did not
6 happen, so I appealed it. I have not received a response to my appeal.

7 30. My mental health has been declining since I was snatched out of my bed on
8 July 20, 2020. Right after the raid, I could not sleep for five days straight. My thoughts
9 were racing and I kept seeing the raid happen in my mind. I thought about it all the time.
10 Something like the raid has never happened to me before. I have not been able to sleep
11 since then. I stay up all night with anxiety worrying that I will be ripped out of bed again.

12 31. About three months ago, I put in health care request forms to see a
13 psychiatrist. I am afraid of the raid happening again, and need professional help to work
14 through the trauma.

15 32. About a month and a half ago, I was able to see a psychiatrist, and she
16 prescribed a sleeping pill. I told the psychiatrist that I had anxiety causing tightness in my
17 chest, preventing me from breathing. She told me that is because I had not been sleeping.
18 I told her that I was always thinking about what happened to me in the raid. The sleeping
19 pill she prescribed has not helped, and I am still having trouble sleeping and with my
20 thoughts about the raid. She told me that I may have post-traumatic stress disorder. She
21 did not say she was elevating my level of mental health care, but I later found out that I
22 was designated to the CCCMS level of care due to the anxiety and insomnia I have
23 experience since the raid.

24 33. Ever since the raid, I distrust staff. I feel like all of the staff are against the
25 Blacks at the prison. I believe staff treat us worse than others.

26 34. I do not feel comfortable asking staff for help. If I need help carrying
27 something due to my injuries, I would not want to ask staff for help. Even though some
28 officers are not racist, I feel like staff will stick together against Black individuals.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at Soledad, California this 12th day of December, 2020.

/s/ [REDACTED] _____
[REDACTED]

On December 12, 2020, due to the closure of CTF, in light of the COVID-19 pandemic and ongoing concerns that officers might retaliate against witnesses, including ongoing concerns about the confidentiality of the legal mail system at CTF, I read the contents of this declaration, verbatim, to [REDACTED] [REDACTED] by telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the declaration and to file the declaration in this matter.

DATED: December 12, 2020

/s/ *Rekha Arulanantham*

Rekha Arulanantham

EXHIBIT E



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

February 4, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
[REDACTED] COR

Dear Ms. Davis:

Over the last year, Plaintiffs’ counsel has repeatedly reported serious staff misconduct at California State Prison, Corcoran. We have detailed accounts of people being violently assaulted by custody staff,¹ officers issuing false Rules Violation Reports (RVRs),² and staff inappropriately screening out or retaliating against class members for filing grievances.³ We have not received a response to any of our letters. For *Armstrong* class members, however, these incidents of staff misconduct often serve as a barrier to the disability grievance system at Corcoran, deterring class members from submitting CDCR paperwork or requesting needed disability accommodations—the very concerns that led Judge Wilken to order corrective action at the R.J. Donovan Correctional Facility. *See* Dkt. No. 3059 at 62.

¹ *See, e.g.*, Letter from Patrick Booth, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], COR (Feb. 12, 2020) (describing how a Corcoran officer kicked a DLT class member’s legs, slammed him to the ground, broke his nose, and high-fived nearby officers afterwards); Letter Patrick Booth, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED] COR (Jan. 5, 2021) (describing how officers rushed into a DPO class member’s cell, kicked and punched him repeatedly, then used the riot shield to repeatedly stab at his torso).

² *See, e.g.*, Letter from Juliette Mueller & Patrick Booth, Plaintiffs’ Counsel, to Tamiya Davis, CDCR, Office of Legal Affairs, [REDACTED], COR (Oct. 14, 2020) at 5-6 (“The staff misconduct that Mr. [REDACTED] faced, including the April 20th assault, the issuance of two retaliatory RVRs, the subsequent cell-search that led to the confiscation of his legal paperwork, and his ongoing fear about interacting with custody officers, is emblematic of the type of abuse and retaliation that *Armstrong* class members endure at Corcoran.”).

³ *See, e.g.*, Letter from Don Specter, Plaintiffs’ Counsel, to Ralph Diaz, Secretary of CDCR, Corcoran Staff Misconduct (June 8, 2020) at 5 (“Some have reported that officers also destroy property in retaliation for apparent disrespect or for filing 602s.”); Letter from Patrick Booth, Plaintiffs’ Counsel, to Russa Boyd, CDCR, Office of Legal Affairs, [REDACTED], COR (Feb. 21, 2020) at 2, fn. * (“A number of class members at Corcoran on all yards have reported that their 602s go unanswered. Others report that 602s reporting staff misconduct are not kept confidential and that they are told to withdraw them.”).

Ms. Tamiya Davis
Re: [REDACTED]
February 4, 2021
Page 2

In our most recent *Armstrong* monitoring report for Corcoran, we highlighted the issues with the grievance process at the institution and the resulting effect on class members:

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

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

We write—yet again—with similar concerns. In particular, [REDACTED] [REDACTED] DLT, an *Armstrong* class member currently housed at Corcoran, reports that officers retaliated against him when he filed a CDCR Form 602 to report staff's failure to wear face coverings when in the housing unit, putting him and his peers at risk of serious illness or death. In particular, he alleges that staff used excessive force against him and that he was issued and found guilty of an RVR that targeted him (and only him) for conduct that others in the housing unit perform on a daily basis. As a result of staff's retaliation, Mr. [REDACTED] says that he now feels unsafe requesting disability accommodations or submitting grievances.

On June 11, 2020, California Department of Corrections and Rehabilitation (CDCR) Secretary Ralph Diaz and California Correctional Health Care Services (CCHCS) Receiver J. Clark Kelso issued a memorandum requiring "[s]taff working or performing duties on institutional grounds [to] wear cloth or other approved face barrier coverings at all times with the exception of an outdoor setting where 6 feet physical distancing can be accomplished."⁴ Around that time, Mr. [REDACTED] was housed in Corcoran's 3B03 unit, and he observed custody officers frequently not wearing face coverings while working in the housing unit. In July 2020, he asked Officer J. Gonzalez, the usual housing unit officer on second watch, why he and the other officers were not wearing a face covering, hoping that his questions would remind the officers to comply with the Secretary's and the Receiver's public health directive. Mr. [REDACTED] reports that, in order to avoid conflict with the officer, he made sure not to ask in a confrontational manner. Officer Gonzalez told Mr. [REDACTED] that the COVID-19 pandemic "is a hoax," and that we would not have to worry about the pandemic after the November 2020 presidential election.

⁴ See Memorandum from R. Diaz and C. Kelso to all CDCR and CCHCS staff re "Update to the March 13, 2020 memorandum message to employees regarding COVID-19," June 11, 2020.

Ms. Tamiya Davis
Re: [REDACTED] [REDACTED]
February 4, 2021
Page 3

Having transferred early in the pandemic from the California Institution for Men (CIM), where the virus has ended the lives of nearly 30 people, Mr. [REDACTED] was not satisfied with the officers' response and their refusal to wear face coverings. On July 20, 2020, Mr. [REDACTED] submitted a CDCR Form 602 to report officers' frequent noncompliance with CDCR's face covering policy. *See* CDCR Form 602, Log No. 01962 (July 20, 2020). Mr. [REDACTED] placed the 602 in the lockbox in the evening to avoid being pressured or retaliated against by the second watch officers he was reporting. He says that two days later, Officer Gonzalez and another officer came by his cell and asked, "Oh you like writing 602s?" Mr. [REDACTED] understood the officers' comments to mean that they were aware that he had reported them and that they were not happy about it.

Less than a week later, on July 26, 2020, Mr. [REDACTED] was in the dayroom preparing to give another incarcerated person, [REDACTED] [REDACTED] [REDACTED], a haircut. Although he had not before given a haircut at Corcoran, Mr. [REDACTED] had been a barber at CIM, and had observed people in his unit at Corcoran giving haircuts in the dayroom on a daily basis; officers had even provided people with state-owned clippers to give haircuts. As Mr. [REDACTED] was preparing his haircutting tools in the dayroom, Mr. [REDACTED] stood around 10 feet away. Both men were wearing masks at the time, and Mr. [REDACTED] assured Mr. [REDACTED] that he could keep his mask on during the haircut. As Mr. [REDACTED] prepared for the haircut, still about 10 feet from Mr. [REDACTED] Officer Gonzalez, who had been near the upper tier storage closet, came running down to stairs and told the men that they were being written up for failing to maintain six feet of distance. But Mr. [REDACTED] reports that he had not yet started the haircut, and he was (and had been) more than six feet away from Mr. [REDACTED] Officer Gonzalez did not issue either men a warning before issuing them an RVR. Later, when Mr. [REDACTED] and Mr. [REDACTED] returned to their cells, another group of men started giving haircuts in the dayroom. When Mr. [REDACTED] pointed out to Officer Gonzalez that they were giving haircuts, Officer Gonzalez told him, "I know they are, but you can't."

At Mr. [REDACTED] RVR hearing, which took place in a small program office, neither the officers in the room nor the lieutenant were wearing face coverings. Mr. [REDACTED] was found guilty of "Disobeying an Order"; Officer Gonzalez alleged that, as a practice, when he lets people out to dayroom, he gives a general announcement over the PA system advising people to maintain six feet of distance. *See* RVR Log No. 7018491 (July 26, 2020). Mr. [REDACTED] says that these announcements are more like advisory messages, and there is no indication that people will be disciplined if they do not maintain six feet of distance. Indeed, Mr. [REDACTED] observed people giving haircuts in the dayroom on a daily basis, and those individuals were not punished—only he was.

At the conclusion of the hearing, the two escorting officers leading Mr. [REDACTED] out of the room grabbed him by the back of his shirt and threw him into the hallway. Mr. [REDACTED] left shoulder immediately began hurting, and he submitted a CDCR Form 7362 that day to seek medical attention. *See* CDCR Form 7362 – Nursing, August 17, 2020 ("I am 60 years old mobility impaired with impaired left shoulder mobility, which now has been exacerbated due to the officer's [*sic*] unnecessary use of excessive force."). He has been experiencing pain in his left shoulder since that day.

Mr. [REDACTED] believes that the entire incident—the targeted RVR and the excessive force—was an effort to ensure that he does not submit any more grievances. His belief is reinforced by the fact that (as Mr. [REDACTED] understands it) Mr. [REDACTED] who received an RVR at the same time and for the same incident

Ms. Tamiya Davis
Re: [REDACTED]
February 4, 2021
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as Mr. [REDACTED] never had an RVR hearing. Instead, correctional staff slid a paper under Mr. [REDACTED] cell door shortly after Mr. [REDACTED] RVR hearing, and the paper stated that Mr. [REDACTED] RVR was dismissed. Again, this suggests to Mr. [REDACTED] that he is being singled out and retaliated against for reporting staff misconduct.

Now, Mr. [REDACTED] is concerned about submitting any grievances, even CDCR 1824 Forms to request accommodations, because he is afraid that officers will further retaliate against him. Mr. [REDACTED] reports that he is incarcerated for a non-violent, non-serious third strike, and he has a parole hearing in the near future. With this unfounded RVR in his central file, he is concerned that he might not be granted parole because of this retaliatory RVR.

* * * * *

I request that Defendants investigate Mr. [REDACTED] reports using investigative staff from OIA, and that Defendants report back on the findings of such investigation. I also request that Defendants dismiss Mr. [REDACTED] July 26th RVR.

More broadly, however, I am concerned about the continued and consistent allegations of serious staff misconduct at Corcoran, including retaliation against those who file grievances. This has a real chilling effect on class members' willingness to request help for their disabilities. We cannot continue to send reports of serious misconduct without any indication of investigation or corrective action at the institution and headquarters level. I ask to meet and confer about what has been and will be done to investigate these reports and prevent further intimidation of *Armstrong* class members at Corcoran.

Thank you for your prompt attention to this matter.

Sincerely,



Patrick Booth
Legal Fellow

cc: Mr. [REDACTED] (redacted)
Ed Swanson, Court Expert
Co-counsel
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Gannon Johnson, Erin Anderson, Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jillian Hernandez, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Saundra Alvarez, Tabitha Bradford, John Dovey, Robin Hart, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Tammy Foss, Jason Anderson, Joseph

Ms. Tamiya Davis

Re: [REDACTED] [REDACTED]

February 4, 2021

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Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Arnedo, Dawn Stevens, Jimmy Ly, Jay Powell (CCHCS) Adrian Hrvatin, Sean Lodholz, Namrata Kotwani, Anthony Tartaglio, Trace Maiorino, Andrea Moon (OAG)

EXHIBIT F



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

February 9, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
Continued Reports of Abuse and Retaliation in Joshua Hall, CIM

Dear Ms. Davis:

We write again regarding reports of staff misconduct in Joshua Hall at the California Institution for Men (“CIM”). As you know, Joshua Hall is the only Level II dorm at that prison designated for *Armstrong* class members with impacting-placement DPP codes. Currently, 54 class members are housed there, including twelve wheelchair users and 31 people who use walkers. Almost all class members housed there are elderly; the average age is 60.5 years, and twenty class members are between 71 and 88 years of age.

Over a year and a half ago, we reported concerns about widespread bullying and victimization of vulnerable *Armstrong* class members in Joshua Hall, as well as an environment where “class members feel like they cannot tell staff or ask staff for help because they fear staff may be complicit with the victimization, or at least unwilling to address it.” See Letter from Shira Tevah, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Reports of Abuse and Extortion of Class Members in Joshua Hall (May 15, 2019). We have not yet received a response to our letter, which was based on the reports of at least sixteen class members.

We are deeply concerned that these serious problems have not been meaningfully addressed. We have received reports that staff in Joshua Hall target elderly class members for harassment and retaliate against those who attempt to use the grievance process. Thus—as in May 2019—people with disabilities are afraid to request the help they need. In this letter, we outline an example based primarily on the reports of full-time wheelchair users who were recently transferred to another institution due to lack of accessible quarantine housing at CIM.

In particular, on or around September 24, 2020, about six officers reportedly searched the persons and bunk areas of three full-time wheelchair users, including [REDACTED], who is 70 years old, and [REDACTED], who is 58 years old, in an unprofessional manner, apparently because another class member had stated an intention to submit a grievance. The officers reportedly made offensive and false statements about the class members’ disabilities during the search. The following description of events includes information reported by four class members who were housed in Joshua Hall at the time.

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Ms. Tamiya Davis

Re: Continued Reports of Abuse and Retaliation in Joshua Hall, CIM

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Officer Ynostroza reportedly approached Mr. [REDACTED] while Mr. [REDACTED] was resting in bed. The officer was not wearing a mask, in violation of public health directives.¹ The officer moved Mr. [REDACTED] wheelchair in order to stand where the wheelchair had been and then asked Mr. [REDACTED] to take off his clothes and stand up from his bed. When Mr. [REDACTED] who is designated DPW, said that he could not stand up and that he needed his wheelchair moved back towards him in order to transfer into it, Officer Ynostroza said, “You’ll walk. I’ve seen you walk.”

Other incarcerated people gathered around to watch the interaction. Due to Mr. [REDACTED] disability, it takes him longer than others to undress and re-dress. During this process on September 24, Mr. [REDACTED] estimates that over a dozen incarcerated people were gathered near his bunk. He was then strip searched while he was in his bed, notwithstanding the onlookers.

As the strip search was being performed, other officers, including Officers Rios and Zavala, began searching Mr. [REDACTED] locker. They ended up searching the lockers and bunk areas of three lower bunks that house wheelchair users, as well as the corresponding upper bunks. Officer Ynostroza finally pushed the wheelchair towards Mr. [REDACTED] so that he could get into it. After the strip search, Mr. [REDACTED] and others moved about thirty feet away while the rest of the bunk search was conducted. Mr. [REDACTED] returned to his bunk area to find that it was a complete wreck: art supplies were spilled on the floor, food items including rice and beans were scattered on the floor, and paintings he had created for his family were destroyed.

Mr. [REDACTED] bunk was also searched. Like Mr. [REDACTED] Mr. [REDACTED] was strip searched and as he was putting his underwear back on, an officer called Mr. [REDACTED] a “phony cripple.”² He reported that everything was “dumped” onto his bed and not cleaned up. Mr. [REDACTED] reported that he wrote a letter to Plaintiffs’ counsel about this inappropriate search but we never received it. Because Mr. [REDACTED] is in a wheelchair and because he has limited use of his left arm due to a stroke, it took him two days to clean up the mess that was created during the search.

Beyond the disruptive and unprofessional nature of these searches, multiple class members were offered explanations for the searches that suggested they were in retaliation for another class member’s use of the grievance process. In particular, when Mr. [REDACTED] asked the same officer who

¹ See Memorandum from Secretary Ralph Diaz and Receiver Clark Kelso to all CDCR and CCHCS employees entitled, “Update to the March 13, 2020 memorandum message to employees regarding COVID-19” (June 11, 2020) (directing “[s]taff working or performing duties on institutional grounds [to] wear cloth or other approved face barrier coverings at all times with the exception of an outdoor setting where 6 feet physical distancing can be accomplished”).

² Mr. [REDACTED] does not know the name of this officer because the officer’s suspenders were covering his name tag.

Ms. Tamiya Davis
Re: Continued Reports of Abuse and Retaliation in Joshua Hall, CIM
February 9, 2021
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called him a “phony cripple” why the search was being conducted, the officer replied, “This is what happens when you write 602s.”

Similarly, when Mr. ██████ inquired about the purpose of the search, an officer implied that it was tied to retaliation efforts against another *Armstrong* class member. In particular, Officer Zavala told Mr. ██████ to go speak to the person in bunk ██████ about why the search was conducted. This statement was corroborated by ██████, also a full-time wheelchair user, who reported that Officer Zavala said, “This shit is happening because of ██████.” ██████, also an *Armstrong* class member, was housed in bunk ██████. We have previously reported discrimination and retaliation by staff against Mr. ██████ including in our May 2019 letter, and Mr. ██████ had recently told staff he intended to file a 602.³ After Mr. ██████ spoke with Mr. ██████ they decided to speak with Officer Zavala. Officer Zavala was with five or six other officers when they approached him. In front of this group, Officer Zavala called Mr. ██████ a “rat” and a “snitch,” which led people to believe that they would continue to be targeted if they sought to access the grievance process.

These reports raise significant concerns, including regarding the manner in which the searches were conducted (*see* DOM §§ 52050.14, 52050.16, 52050.16.5), the way staff harassed, ridiculed, and downplayed our clients’ disabilities (calling a full-time wheelchair user a “phony cripple” and telling another, “You’ll walk”), and staff’s stated reasoning that the disruptive searches were due to another person’s attempt to access the grievance process.

Reports of staff using unprofessional and targeted bed searches to retaliate against class members is not new in Joshua Hall. Mr. ██████ reported that he previously had surgery in his rectal area and could not sit straight due to the surgery. During the week of his surgery, when count was being conducted, Officer Zavala told him to sit up. Mr. ██████ explained that he was sitting tilted to the side because of his surgery and he told Officer Zavala that was unable sit straighter. Officer Zavala responded by demanding that Mr. ██████ sit up straight anyways. Officer Zavala then left to finish count. He came back after count with trash bags, told Mr. ██████ and his bunkmate to leave, and threw away items of Mr. ██████ including rice and soap. Officer Zavala told Mr. ██████ that the next time he does not sit up when he (Officer Zavala) tells him to, he would come and take everything. Mr. ██████ reported, before he was

³ In particular, about a week before the September 24, 2020 search incident, Mr. ██████ raised concerns about food quality to Officer Tejada, and said that he would file a 602 about the issue. He was taken to a holding cage where Sergeant Banales said, “Look, we know everything that you do in this building,” and the sergeant warned Mr. ██████ not to file more 602s. When he returned to his housing unit, it had been searched and, among other items, his disability vest had been taken.

Ms. Tamiya Davis
Re: Continued Reports of Abuse and Retaliation in Joshua Hall, CIM
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transferred to another institution, that he avoids Officer Zavala due to this experience. (In addition, enough time had passed since the surgery that he can now sit straight.)

And Mr. [REDACTED] also reported that Officer Zavala will “tear up your area and locker” if you are not sitting upright on your bunk for count. Because of Mr. [REDACTED] height, it is impossible for him to sit up straight while he is sitting on his bunk. Mr. [REDACTED] is thus forced to transfer to his wheelchair when this staff member is conducting count, notwithstanding significant mobility constraints.

These tactics have had a real chilling effect on class members’ willingness to ask staff for help and to report misconduct, similar to that at Richard J. Donovan Correctional Facility, which led Judge Wilken to order substantial corrective action. *See* Doc. 3059 at 61 (holding that when “staff frustrate the effectiveness of [the disability grievance] system by threatening, coercing, or intimidating class members into foregoing their rights to request reasonable accommodations or file ADA-related grievances, that constitutes a violation of the ARP and the Court’s prior orders and injunctions regarding the same”). For example, Mr. [REDACTED] reported limited faith in the 1824 process because after years of being mistreated because he is in a wheelchair, he believes that nothing will improve. Mr. [REDACTED] also reported that Officer Zavala and his fellow officers “seem to enjoy making a mess of inmates’ areas.” Other class members reported concerns that their grievances and requests for accommodations are ignored or denied without consideration by staff members. Mr. [REDACTED] stated that some officers even tell incarcerated individuals, “Write it up, nothing will happen.” Mr. [REDACTED] reported that he does not get a log number or response for half of the grievances that he files. Mr. [REDACTED] further stated that when other incarcerated people see incidents such as the bunk search described in this letter, they do not want to ask for disability-related accommodations because they want to avoid having the same experience. Mr. [REDACTED] reported that his wheelchair gloves are “in threads,” but he is not going to ask for new gloves because he “does not want to hear the answer.”

Please investigate the allegations in this letter and retrain officers on how to conduct searches and the need to treat all people, including people with disabilities, with dignity and respect. Please investigate conditions in Joshua Hall more generally, including through confidential interviews with class members, and take all necessary corrective action to ensure that class members have a safe environment within which to ask for help and report misconduct.

Sincerely yours,



Jordan Payne
Litigation Assistant



Rita Lomio
Staff Attorney

Ms. Tamiya Davis
Re: Continued Reports of Abuse and Retaliation in Joshua Hall, CIM
February 9, 2021
Page 5

cc: Ed Swanson, Court Expert
Co-counsel
Gannon Johnson, Nicholas Meyer, Patricia Ferguson, Tamiya Davis, Erin Anderson,
Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jillian Hernandez, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Robin
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Anderson, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis,
Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Armedo, Dawn Stevens,
Jimmy Ly, Jay Powell (CCHCS)
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Andrea Moon (OAG)

EXHIBIT G



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

February 4, 2021

Mr. Alexander Powell
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*
[REDACTED] EOP, SAC

Dear Mr. Powell:

We write on behalf of [REDACTED] currently housed at California State Prison, Sacramento (“SAC”). Mr. [REDACTED] has an unverified learning disability and a vision disability.

In December 2019, our office alerted you to delays in Mr. [REDACTED] access to the talking book program while housed at the California Health Care Facility, Stockton (“CHCF”). *See* Letter from Tommy Nosewicz, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, *Armstrong Advocacy Letter*, [REDACTED] [REDACTED] [REDACTED] CHCF (Dec. 9, 2019).

Three months later, you informed us that Mr. [REDACTED] primary care provider (“PCP”) and an optometrist signed his talking book application, and that he was issued a talking book player on December 31, 2019. *See* Letter from Alexander Powell, CDCR Office of Legal Affairs, to Margot Mendelson & Skye Lovett, Plaintiffs’ Counsel, *Armstrong v. Newsom Advocacy Letter Regarding* [REDACTED] [REDACTED] [REDACTED] CHCF (Feb. 28, 2020).

On September 4, 2020, while housed at SAC, Mr. [REDACTED] submitted a CDCR 1824 reporting that his talking book player had been lost. He requested a replacement. He reported that he has “visual problems and difficulties which prevents or impairs me from being able to read or see small objects.” *See* Log No. SAC-H-20-02198.

On September 23, 2020, the Reasonable Accommodation Panel (“RAP”) sent Mr. [REDACTED] a response in a small font size, stating that his PCP had submitted an RFS for ophthalmology, and “[y]our need for participation in the Talking Book Program will be re-evaluated upon completion of your Ophthalmology appointment.” The RAP further stated that “[t]he issue of dyslexia was discussed with your treatment team and was proven to not be true.”

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Mr. Alexander Powell

Re: [REDACTED] [REDACTED] [REDACTED] [REDACTED]

February 4, 2021

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Response: The Reasonable Accommodation Panel (RAP) convened and reviewed your request on 9/10/2020, and it was determined the issues addressed in this 1824, are being addressed by the appropriate staff.

Medical Staff report you were approved for the talking book program due to dyslexia and problems with your visual acuity. You recently reported you lost your book reader and requested another one. You stated after you read for about 30 minutes, your vision becomes blurry and you cannot see the book anymore. It is noted you do not have any trouble reading the computer monitors and have completed several task in your computer education appropriately.

Your most recent Optometry report on 3/10/2020, shows you have a visual acuity of 20/25 on the right sight and 20/20 on the left side with correction. A review of your prior authorization for audio-books, indicates you also have dyslexia. The issue of dyslexia was discussed with your treatment team and was proven to not be true. Prior approval of the talking book program was solely based off your claims of blurry vision after 30 minutes. Visual acuity is within normal limits, however, your Primary Care Physician (PCP) has submitted a Request for Service for Ophthalmology to further evaluate your claims and validity of your request. Your need for participation in the Talking Book Program will be re-evaluated upon completion of your Ophthalmology appointment.

Education Principal reports you have a TABE Reading score of 6.8 and you earned your GED on 4/24/1992 at Folsom State Prison. You participated in Coastline College Program and are currently a student in the Computer Class. SOMS records indicate you are participating in the OSRT Program.

There is no indication in SOMS of any educational or intellectual limitations. You are eligible to participate in the library book clubs, where inmates read and discuss books in a group setting.

We have several concerns with this RAP response.

First, Mr. [REDACTED] previously had been approved for the talking book program. What is SAC's process for obtaining replacements of talking book players that have been lost or improperly confiscated? Where is that process documented? Why did the institution feel the need to request and wait for an ophthalmology appointment before facilitating access to a disability accommodation someone already had been approved for? We note that we recently raised a similar concern at SATF, and it appears that that institution was able to procure a replacement player without requiring a reassessment of eligibility. *See* Letter from Alexander Powell, CDCR Office of Legal Affairs, to Rita Lomio & Skye Lovett, *Armstrong v. Newsom* Advocacy Letter Regarding [REDACTED], DPH, SATF (Feb. 3, 2021). Why is the presumption at SAC that a person is *not* entitled to a previously approved disability accommodation?

Second, given the significant delays in non-essential specialty care during the pandemic, why was Mr. [REDACTED] not provided with an interim accommodation, such as a CD player with audio books? Pandemic-related programming restrictions have had a disproportionate effect on people with disabilities, who are more likely to be isolated and unable to access regular written material, and who may therefore suffer from higher rates of depression and anxiety. That risk is clear from Mr. [REDACTED] medical record; indeed, since the RAP response, Mr. [REDACTED] has been placed in mental health crisis beds and has been housed in medical isolation due to infection with the novel coronavirus. He reported on December 21, 2020, "The voices tell me to harm myself but focusing on other things helps me ignore the voices." MHMD Inpatient Progress Note (Dec. 21, 2020); *see also, e.g.*, MH RVR MH Assessment Results (Nov. 5, 2020) ("IP reported that appliances, packages, and phone calls are important to him."); Recreational Therapist (Nov. 28,

Mr. Alexander Powell
 Re: [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 February 4, 2021
 Page 3

2020) (“IP was complaining about not being able to read material.”); RVR MH Assessment (Oct. 7, 2020) (“Documentation consistently shows that IP has a low level of distress tolerance . . . IP uses his television as a way to cope with stressors indicating that his television likely helps maintain psychological stability.”). Mr. [REDACTED] reported to us that the talking book device helps keep the voices from bothering him and that custody had confiscated his television and radio, leaving him without the ability to focus on other things without substantial eye-related pain.

Third, why did the institution believe that an ophthalmologist needed to determine eligibility? The National Library Service states that an optometrist is a “competent authority” to make eligibility determinations. See National Library Service for the Blind and Print Disabled, Eligibility, <https://www.loc.gov/nls/about/eligibility-for-nls-services/> (last visited Feb. 4, 2021). And Mr. [REDACTED] was seen by an optometrist on October 13, 2020, three weeks after the RAP sent its response to Mr. [REDACTED] regarding “throbbing pain after reading” and “seeing double.”* Was the optometrist asked to evaluate eligibility? If not, why not? Based on the optometrist’s evaluation, should Mr. [REDACTED] have received a DPP code? If so, why did he not receive one?

State of California
 OPTOMETRY EXAMINATION
 CDCR 7224-A

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Today's eyes are very blurry after computer class

Eye/Visual Complaint: *throbbing pain after reading, seeing double*

Hx: *Last exam (on site) 9/30/20*

FHx: *sun eye & PE*

UNAIDED VISUAL ACUITY	PREVIOUS PRESCRIPTION			DATE OF CORRECTION				
	Sphere	Cylinder	Axis	Prism	Vision	Retinoscopy		
O.D. 20/400 FAR	O.D. <i>-1.0 DS</i>			<i>25'</i>				
O.S. 20/400	O.S. <i>-1.75</i>	<i>-0.50</i>	<i>180</i>	<i>70</i>				
PRESCRIBED CORRECTION	Sphere			Cylinder	Axis	Prism	Vision	Auto Ref / Retinoscopy
	FAR	O.D.	<i>NE PH</i>					<i>NO READING</i>
	NEAR	O.U.					<i>NO READING</i>	

ASSESSMENT:

Myopia Presbyopia other *cataract*

Hyperopia Glc suspect *PCU/OP*

Astigmatism Cataract *CAT 05*

PLAN: NO spectacle RX needed

GLASSES RX ORDERED FTW/dist/reading/BF

Other: *Next day before (or up) computer*

Annual/PRN weeks/ mo/for

* Mr. [REDACTED] consistently has reported difficulty reading, as documented in his medical record. See, e.g., Nursing Face-to-Face (Oct. 6, 2020) (“I am having pain in my eyes maybe 3 hours after I read.”); SOAPE (Oct. 19, 2020) (“still reporting eye pain after reading”); Outpatient Progress Note (Oct. 30, 2020) (“Diagnosis: 2. Reading difficulty. The patient claims that after looking at the written text for a few minutes he starts to experience double vision. He has been diagnosed with left eye cataract and dry eyes and he reports that the artificial tear has not helped.”); Nursing Face-to-Face (Nov. 3, 2020) (“Comment: 6/10 eye pain when reading”).

Mr. Alexander Powell

Re: [REDACTED] [REDACTED] [REDACTED] [REDACTED]
February 4, 2021
Page 4

Fourth, we are concerned by the RAP's statement that "the issue of dyslexia was discussed with your treatment team and was proven to not be true." Who made that determination, and how was that determination made? Please provide all relevant documentation. During the *Armstrong* monitoring tour last month, we asked medical and ADA staff about this RAP response. They could not remember the specifics, but the ADA Coordinator stated that her assumption was that education "weighed in heavily and ran tests." Defendants, however, have asserted that "CDCR is not required to test for LDs, and does not test for them." *See* Brant R. Choate, Director, Division of Rehabilitative Programs, and Kathleen Allison, Director, Division of Adult Institutions, Meeting the Learning Needs of Inmate-Students at 2 (Mar. 7, 2018).

Fifth, why was the RAP response not provided in large print or otherwise effectively communicated to Mr. [REDACTED]. Is Mr. [REDACTED] need for large print documented anywhere? Is he being provided with large-print materials, including mental health, medical, and recreational materials, during the pandemic? He has requested them several times. *See, e.g.*, Recreational Therapist (Oct. 16, 2020) ("In-cell packet was delivered including word searches, mazes, Sudoku and various mental health information. . . . IP was also wondering if he could receive a magnifying glass to help him read."); Recreational Therapist (Oct. 28, 2020) ("IP requested larger print material, expressing he had a visual impairment. IP was informed that the request would be brought to the attention of the RT team."); Outpatient Progress Note (Oct. 30, 2020) ("IP requested larger print material, expressing he had a visual impairment. IP was informed that the request would be brought to the attention of the RT team."); Recreational Therapist (Dec. 21, 2020) ("IP was offered an activity packet that consisted of Christmas puzzles and Christmas lined paper. IP refused the material that was offered to them."). If he is, how are these large-print materials created? Please produce an example. If he is not, why not?

Thank you for your attention to this matter. In addition to answers to the questions set forth throughout this letter, we request that Mr. [REDACTED] be provided with a replacement talking book player as soon as possible. We also request all documentation related to SAC's determination of whether to allow him to have a talking book player.

Sincerely yours,



Jordan Payne
Litigation Assistant



Rita Lomio
Staff Attorney

Mr. Alexander Powell

Re: [REDACTED]

February 4, 2021

Page 5

cc: Mr. [REDACTED] (redacted)
Ed Swanson, Court Expert
Co-counsel
Gannon Johnson, Nicholas Meyer, Patricia Ferguson, Tamiya Davis, Erin Anderson,
Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jillian Hernandez, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Saundra Alvarez, Tabitha Bradford, John Dovey, Robin
Hart, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Tammy Foss, Jason
Anderson, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis,
Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Armedo, Dawn Stevens,
Jimmy Ly, Jay Powell (CCHCS)
Adrian Hrvatin, Sean Lodholz, Namrata Kotwani, Anthony Tartaglio, Trace Maiorino,
Andrea Moon (OAG)
Brantley Choate, Hillary Iserman, Shannon Swain, Rod Braly, Jennifer Wynn, Martin
Griffin, Brandy Buenafe, Alicia Legarda (OCE)