DONALD SPECTER – 083925
RITA K. LOMIO – 254501
MARGOT MENDELSON – 268583
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, California 94710-1916
Telephone: (510) 280-2621
Facsimile: (510) 280-2704

MICHAEL W. BIEN – 096891
GAY C. GRUNFELD – 121944
PENNY GODBOLD – 226925
MICHAEL FREEDMAN – 262850
ROSEN BIEN
GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
Telephone: (415) 433-6830
Facsimile: (415) 433-7104

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

Attorneys for Plaintiffs

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL
ROB BONTA
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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

JOINT CASE STATUS STATEMENT

Judge: Hon. Claudia Wilken

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

CURRENT ISSUES[1]

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

1. Plaintiffs' Statement

"COVID-19 has had a devastating and disproportionate impact on people with disabilities." U.S. Dep't of Justice, Statement by the Principal Deputy Assistant Attorney General for Civil Rights Leading a Coordinated Civil Rights Response to Coronavirus (COVID-19) (Apr. 2, 2021). This certainly has been true in the California prison system, where people with disabilities have been housed in unsafe and less safe areas because of their disabilities, have been almost five times more likely to die of COVID-19 than their peers, and have been denied equal access to the most basic of programs, services, and activities during the pandemic, including the ability to communicate with loved ones, to use an accessible toilet or shower, to safely transfer between a bed and wheelchair, and to meaningfully participate in (and, later, potentially earn sentence-reducing credits for) milestone and education programs.

With the roll-out of vaccinations in the prison system and in the outside community, Plaintiffs are hopeful that the worst of the pandemic is behind us. We agree with Judge Tigar, however, that "we can't let down our guard," and that we must "capture what we're learning." *See* Case Management Conference, *Plata v. Newsom*, No. 01-1351, Tr. at 5:10-6:2 (N.D. Cal. Mar. 26, 2021) ("THE COURT: And when we think COVID is over, we will be wrong because variants of COVID will have emerged. My prediction is that will happen to us at least once. Even if I am wrong about that, or even when those variants are over new organisms will be evolving. That's what happened here. That's what happened;

[1] Statements are joint unless otherwise delineated as either *Plaintiffs' Statement* or *Defendants' Statement*.

an organism evolved, and we weren't ready.").

a. Safe, accessible housing of *Armstrong* class members

As of May 7, 2021, 268 *Armstrong* class members remained housed in areas not designated for their disabilities, including 81 class members awaiting transfer to a mainline facility from a reception center, and class members who have been mis-housed for over a year. An additional 54 people were not housed in compliance with a lower bunk and/or lower tier housing restriction. Although the Court Expert, on February 1, 2021, had noted that these numbers were "of concern" and "the sooner the number of mis-housed class members can be reduced and class members returned to designated housing, the better," Defendants appear, until recently, to have made no effort to do so. *See* Doc. 3201 at 8. The number of mis-housed class members, over three months later, remained largely unchanged. *See id.* (noting that, as of January 22, over 310 class members were not housed in accordance with their DPP codes and approximately 60 class members were not housed in accordance with their lower/lower designations).

The cause may be two-fold. First, Defendants apparently made no effort to expedite or prioritize the movement of mis-housed *Armstrong* class members, even though, in April 2021 alone, there were 4,390 transfers of people between prisons. Second, Defendants had not, until recently, designated accessible post-transfer quarantine space at all institutions. Indeed, as of April 9, 2021, a number of *Armstrong* class members were endorsed to prisons that had no post-transfer quarantine beds designated to accommodate their disabilities. It is critical that Defendants ensure that class members are expeditiously transferred out of non-designated areas, and that, as programming begins to open up statewide, class members—particularly those housed in restrictive reception center settings—are able to receive equivalent access to programs and credit-earning opportunities available to incarcerated people without disabilities.

Even after the conclusion of this pandemic, the issue of sufficient accessible housing for people with disabilities will remain a concern. Defendants have stated that they are "considering long-term strategies for a safer and more resilient prison system into

1 the future," and that "[n]ew consideration must be given to the long term use of
2 dormitories, placements of older inmates, and the need for dedicated space to isolate
3 inmates in the event of additional outbreaks of either COVID-19 or other airborne
4 communicable diseases." *See* Governor's Budget Summary – 2021-22, at 177 (Jan. 8,
5 2021), available at http://www.ebudget.ca.gov/2021-22/pdf/BudgetSummary/
6 FullBudgetSummary.pdf. Many *Armstrong* class members are housed in dormitory
7 settings and, due to advanced age and underlying medical conditions, are particularly
8 vulnerable to communicable diseases. There currently are a limited number of accessible
9 cells throughout the prison system.

10 **b. Core failures in Defendants' disability accommodation system**

11 The pandemic also has laid bare pre-existing foundational infirmities in Defendants'
12 disability accommodation system. One foundational problem is frequent turnover of, and
13 lack of formal training for, critical ADA staff at each institution. Indeed, in the past twelve
14 months, 23 of the 35 institutions had at least one change in the ADA Coordinator, who
15 oversees the Reasonable Accommodation Panel, and ten institutions had multiple changes
16 at that position. Many instances of disability discrimination and serious harm that should
17 have been identified and resolved at the institution level during the pandemic were not.
18 And we continue to see seriously flawed responses to requests for disability
19 accommodations, particularly by new ADA Coordinators. *See, e.g.*, **Exhibit A**, Letter
20 from Rita Lomio & Tania Amarillas, Plaintiffs' Counsel, to Alexander Powell, CDCR
21 Office of Legal Affairs, Operation of the CDCR 1824 Process at SATF (Apr. 8, 2021).

22 And, more generally, Defendants provide inadequate guidance to, and oversight of,
23 ADA staff at the institutions to ensure appropriate implementation of pandemic response
24 plans and other ADA requirements. Put differently, in some cases, the requisite policy is
25 clear—either through Court order or a headquarters directive—but institutions either do
26 not implement it or do so in a punitive and discriminatory manner. It was only during
27 Plaintiffs' monitoring of institutions' pandemic response plans that these important issues
28 were uncovered. For example:

1 **Non-Compliance with the Court's 2015 Administrative Segregation Order:**
2 Defendants self-report, through monthly logs, near-perfect compliance with the Court's
3 2015 order. *See* Doc. 2496 at 4 ("The Court orders that if Defendants place an Armstrong
4 class member in administrative segregation due to the lack of an accessible bed, they must
5 fully document their reasons for doing so" and produce specific, detailed information to
6 Plaintiffs' counsel). But Plaintiffs identified an instance earlier in the pandemic where an
7 institution (in this case, SATF) failed to identify or report placement of a full-time
8 wheelchair user in administrative segregation because no other accessible housing was
9 available. In response, Defendants issued a directive in November 2020, reminding
10 institutions of the need to comply with the Court's 2015 order. At that time, Plaintiffs
11 voiced their concern that institutions still lacked sufficient guidance on how to do so.
12 Unsurprisingly, Plaintiffs later identified another apparent violation of the Court's order,
13 this time at CMF, which the institution had failed to identify or report. And, during a
14 monitoring tour in January 2021, the ADA Coordinator at CSP-SAC could not explain
15 what, if any, system was in place to identify such violations. In fact, the ADA Coordinator
16 said that the problem simply would not happen. As a result, Plaintiffs do not have
17 confidence that the ASU logs produced during the pandemic are complete or accurate, and
18 there appears to be no reliable system in place to comply with the Court's previous order.
19 **Non-Compliance with *Armstrong* Remedial Plan Provision Regarding Use of**
20 **Medical Beds:** Full-time wheelchair users were housed for months in the acute unit of a
21 Psychiatric Inpatient Program ("PIP") facility and the Outpatient Housing Unit ("OHU") at
22 CHCF, even after completing quarantine and after they were fully vaccinated, simply
23 because there were no wheelchair-accessible quarantine cells available at their "home"
24 institution of CIM. Their retention in the PIP, because it is an acute care setting, meant
25 reduced access to programs and services compared to their general population placement at
26 CIM. There appeared to be no effort to comply with Section IV.I.21.e of the *Armstrong*
27 Remedial Plan, which provides: "Inmates with disabilities who are placed in medical beds
28 because of their disability (including those placed in medical beds for the sole purpose of

assistance with activities of daily living and those so placed because of a risk of injury to themselves) shall have access to equivalent programs and privileges for which they are eligible according to their privilege group and which they would be receiving if they were placed in a nonmedical setting unless the individual condition, needs, or limitations of the inmate make access to the program or privilege unreasonable."

Punitive Action Against People with Disabilities Due to Institution's Own Failure to Comply with Accessible Housing Requirement: In his last report, the Court Expert found the number of class members "not housed in accordance with their lower/lower designations" to be "of concern." Doc. 3201 at 8.[2] Plaintiffs previously had raised the same concerns, which had gone unanswered. In the meantime, it appears that at least two institutions responded with punitive, retaliatory, and discriminatory action.

In particular, beginning in December 2020, Plaintiffs repeatedly raised concerns about CSP-SAC's failure to house people in accordance with their lower/lower restrictions and asked, among other things, whether there was sufficient lower/lower housing at the institution to accommodate its current population and, if not, what would be done. Defendants did not respond (it now has been over 150 days). Plaintiffs later learned, through staff interviews during a regularly scheduled monitoring tour, that the institution had issued RVRs to at least two people because they appeared on a lower/lower non-compliance report. After reviewing the RVRs and speaking with the class members, it appears that the RVRs were falsified and that the institution failed, at every turn, to appropriately address the class members' disability needs.

The Reporting Employee for both RVRs alleged that both class members somehow made identical statements in response to being asked to move: "Man, I already told your cops earlier that I'm not moving. You can't just expect me to live with just anyone. I'm not moving." That is implausible on its face.

[2] "Lower/lower designations" refers to documentation that a person requires housing on a lower bunk and/or on a lower tier (for example, if they are unable to independently climb stairs or onto the upper bunk).

In fact, the first class member reported that he was approached in mid-December by an officer who said that he had a lower tier/lower bunk chrono and that he needed to find himself a lower tier/lower bunk bed in the unit. The officer also told him to fill out a medical slip to have the chrono removed. Even though the unit was on quarantine at the time, the class member followed the direction he had been given and talked to everyone on the first tier of the unit, but no one was willing to voluntarily accept him as a cellmate. When he reported that to the officers, he was handcuffed, told he would be written up, and moved to a cage. The officers reportedly told him, "We have an audit and we have to get you guys out of the system for those bunks." The class member reported that at no time did staff provide him with an opportunity to move to a lower bunk in a different cell. Nonetheless, he was found guilty of refusing to accept assigned housing and delaying a peace officer, serious Division D offenses, and sanctioned with 30 days of credit loss and a 30-day loss of privileges, including phone, canteen, and package privileges. *See* **Exhibit B**, Letter from Gabriela Pelsinger & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (Mar. 26, 2021).

The second class member informed us that he declined to move because he was offered a lower bunk only in a cell with someone with an incompatible security threat group ("STG") affiliation—a particular concern at an institution with, as described by the *Plata* court experts, a "violent and unstable culture" and a number of homicides. Although the class member is documented as refusing to attend the RVR hearing, he reports that in fact he was not allowed to attend. He inexplicably received 90 (as opposed to 30) days loss of credit and privileges for the same alleged conduct as the first class member. *See* **Exhibit C**, Letter from Gabriela Pelsinger & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (Mar. 3, 2021).

And this problem is not limited to CSP-SAC. On March 10, 2021, we relayed concerning reports from people incarcerated at MCSP that in mid-February 2021, custody staff met with them in groups to inform them that they would be transferred to another prison, such as HDSP, if they did not "give up" their lower bunk/lower tier housing

restrictions that accommodate their disabilities. Again, we have not received a response from Defendants to these concerns.

Those are but a few examples of core infirmities in Defendants' disability accommodation system that Plaintiffs have identified during the pandemic. Others have been outlined in past Statements. *See, e.g.*, Doc. 3227 at 3-9. Common threads among all of them are lack of adequate guidance and oversight by headquarters, failure of the institution to recognize and remedy disability discrimination on its own, and Defendants' failure to promptly address and respond to concerns raised by Plaintiffs' counsel. All three issues must be addressed to ensure—both during and after the pandemic—that California has a functioning disability accommodation system in its prisons and that flaws and oversights are promptly identified and addressed. In the coming months, Plaintiffs are committed to addressing the flaws that were uncovered during the pandemic.

2. Defendants' Statement

In concert with the Receiver, who is responsible for medical care and infectious disease control within the prisons, Defendants have worked tirelessly to provide a comprehensive and proactive response to the unprecedented challenges caused by the global pandemic to ensure that class members are accommodated and to ensure the safety and security of all incarcerated people, whether class members or not. Defendants are sensitive to and are actively addressing the needs of inmates and parolees at higher risk of severe effects from COVID-19, but note that "[d]isability alone may not be related to higher risk for getting COVID-19 or having severe illness." Over the past year, Defendants have dedicated resources to addressing the COVID-19 pandemic and providing timely information to address Plaintiffs' concerns to obviate the need for judicial intervention and maximize invaluable resources. Although the number of active cases of COVID-19 have dropped dramatically, Defendants continue to make significant and comprehensive efforts to contain and minimize the effects of an unprecedented, global pandemic on the people housed in its institutions, staff, and visitors by implementing a robust vaccination process, maintaining a stringent testing process, reducing institution

1 populations, enforcing mitigation measures, working with Plaintiffs to address individual
2 concerns, and many other proactive efforts.
3 According to the Center for Disease Control (CDC), "all COVID-19 vaccines
4 currently available in the United States have been shown to be highly effective at
5 preventing COVID-19." In fact, many *Armstrong* class members were included in the
6 initial phase of CDCR's COVID-19 vaccination program and were some of the very first
7 persons to receive the vaccine in California (and the world) as part of a program that began
8 late last year. On December 23, 2020, CDCR and California Correctional Health Care
9 Services (CCHCS) received the first allocation of the COVID-19 vaccine and began a
10 vigorous vaccination program under state and federal guidelines. Under these guidelines,
11 COVID-19 naïve frontline medical staff and incarcerated people housed in skilled-nursing
12 facilities were the initial recipients of the vaccine. This included all patients housed at
13 California Medical Facility (CMF), California Health Care Facility (CHCF), and certain
14 units within the Central California Women's Facility (CCWF). Once all patients at
15 skilled-nursing facilities had been offered the vaccine, additional groups of COVID-19
16 naïve incarcerated people were prioritized, as follows: patients age 65 or older at all
17 CDCR institutions; patients with a COVID-19 weighted risk score of six or greater;
18 patients with a COVID-19 weighted risk score of three or greater; certain psychiatric
19 patients and patients who require a higher level of care; and incarcerated people with jobs.
20 Importantly, nearly all patients in the first three groups had been offered the vaccine within
21 three months of deployment of the vaccination program. For example, as of March 12,
22 2021, of the COVID-19 naïve patients age 65 or older at all CDCR institutions, 2,393
23 (98%) have been offered the vaccine and 89% have accepted it. As of March 12, 2021, of
24 the COVID-19 naïve patients with a COVID-19 weighted risk score of three or greater,
25 7,919 (98%) have been offered the vaccine and 83% have accepted it. As of March 2,
26 2021, there were 9,954 DPP residents and 7,558 of those had been offered the vaccine.
27 CDCR is continuing its efforts to offer all incarcerated persons the vaccine and as of May
28 16, 2021, 65,829 incarcerated people have been fully vaccinated and 2,861 have been

partially vaccinated.[3] As of May 17, 2021, more than 83% of the DPP resident population has been fully vaccinated and 2% of the DPP population is partially vaccinated.

Despite the success of this robust vaccination program, CDCR continues with its proactive measures to minimize the risk of COVID-19, including its expansive testing program. CDCR's testing program first required testing of all adult-institutions' staff and health-care staff regardless of the number of COVID-19 cases at their individual institution. Once that baseline testing at all institutions was completed, serial testing of employees began at institutions that had positive test results. The serial testing occurs every fourteen days until no new cases are identified in two sequential rounds of testing. Once that goal is met, the institution resumes their regular surveillance-testing schedule. Surveillance testing is used to detect outbreaks in an early phase, even before the development of symptoms. In fact, all staff at all facilities are tested each week. This element of the testing protocol minimizes the risk of exposure to all inmates, including class members. Further, CCHCS is conducting surveillance testing of incarcerated people at all adult institutions. This voluntary testing is performed across multiple facilities at each institution every month. All facilities are testing outbreak areas every three to ten days. Priority is given to asymptomatic individuals who have been identified as vulnerable or high-risk for complications of COVID-19. Additionally, CDCR has implemented an additional COVID-19 testing process that provides results within fifteen minutes or less at each prison. This point-of-care rapid testing is used to facilitate the transfer and reception process at CDCR institutions. It is also used for high-risk patients when immediate knowledge of infection status is critical. Moreover, all new arrivals are tested within twenty-four hours of arrival and placed into quarantine for fourteen days. The combination of the robust vaccination program and the multiple protective measures has resulted in a significant drop in active cases of COVID-19. As of May 16, 2021, there

[3] https://www.cdcr.ca.gov/covid19/population-status-tracking/ (as of May 16, 2021)

were 24 incarcerated persons with COVID-19.[4] Early in the pandemic, CDCR took unprecedented steps to increase opportunities for social distancing to minimize the spread of COVID-19 within its institutions. Beginning in March 2020, CDCR began one of the largest reductions in state prison population in recent history. By suspending intake and creating early release opportunities, CDCR reached a milestone on July 30, 2020, and, for the first time in three decades, the in-prison population fell below 100,000 prisoners. The last time the in-prison population fell below 100,000 prisoners was in 1990, when California's overall population was almost ten million people less than it is today. CDCR's efforts continue to benefit the safety of the prison population because, as of May 12, 2021, the total in-custody population was 96,495 and the total prison population was 91,881, a reduction of more than 22,000 since March 11, 2020.

Plaintiffs allege specific incidents at four of CDCR's thirty-five institutions, including CHCF, MCSP, SATF, and LAC, that have arisen over the course of the pandemic concerning safe and accessible housing that Defendants have worked hard to address to respond to the individual class-members' needs and to avoid repetition of a similar issue in the future. Defendants have already modified policy and procedure during the pandemic to address the concerns raised by Plaintiffs and have issued comprehensive written direction to the field outlining requirements and expectations. Defendants have also provided specific instruction to the institutions about their obligations under these various directives in multiple statewide meetings with ADA Coordinators and CAMU Correctional Counselor IIs to ensure compliance and ensure that information is timely provided to Plaintiffs. One such directive is the November 5, 2020 directive mandating that staff interview class members within twenty-four hours of being placed in non-designated or non-traditional housing area and complete a 128B checklist. Once completed, the 128B checklist is forwarded to CDCR's CAMU and produced to Plaintiffs' counsel on a rolling basis. The 128B checklist is a five-page document that addresses the

[4] https://www.cdcr.ca.gov/covid19/population-status-tracking/ (last visited on May 16, 2021.)

class member's DPP code, necessary DME, cell/bed area, toilets, sinks, paths of travel, recreation, non-architectural accommodations, accommodations provided to the inmate, and even includes questions to the staff-member interviewer. These questions posed to the staff-member interviewer are meant to ensure the inmate is appropriately accommodated, familiar with the Form 1824 process, able to alert staff to future needs, and to encourage the inmate to request accommodations.

Additionally, Defendants continue to work with Court Expert Ed Swanson and Plaintiffs to facilitate Mr. Swanson's review of Defendants' existing supply of safe and accessible housing, including housing for medical isolation or quarantine, so that he may continue to present his recommendations to the Court. Defendants are diligently working to meet their obligations under the Court's July 20, 2020 order (ECF No. 3015) to ensure compliance. As part of these efforts, Defendants have developed a means to conduct a statewide daily count to confirm that class members are provided safe, accessible housing and to provide a daily snapshot of class members' housing status. Further, Defendants have developed the means to provide a weekly update to Plaintiffs and the Court Expert to verify that the institutions have adequately designated isolation and quarantine space that comports with Mr. Swanson's methodology. In his fourth report dated February 1, 2021, Mr. Swanson stated that, "[c]urrently, there are sufficient DPW and lower/lower isolation and quarantine beds at each institution under the methodology that the parties have agreed should apply to each institution." (ECF No. 3201 at p. 3.)

Despite this compliance, Plaintiffs continue to complain about set-aside accessible quarantine space, but Defendants have addressed these concerns. Defendants have requested each institution to designate single-celled-solid-door quarantine to the maximum extent feasible. If this does not result in an adequate number of beds, the institution is to create a plan to address how it will accommodate class members if it requires more space than it has designated. Whether space is "adequate" requires an institution specific assessment. Nevertheless, most prisons have worked to designate enough single-celled-solid-door quarantine space to cover 100% of the DPW beds, for example, required under

1 the Court Expert's methodology for total isolation-quarantine beds. To ensure compliance,
2 Defendants review the institutions' isolation-quarantine spreadsheets each week to identify
3 issues. Frequently, institutions will reach out to CAMU in advance of making any changes
4 to their spaces to ensure that they will not have a disparate impact on the *Armstrong* class.
5 Defendants seek input from Plaintiffs to address their concerns on an institution-by-
6 institution basis, but that should not replace the processes Defendants have worked so hard
7 to establish.

8 On April 26, 2021, California Correctional Healthcare Services (CCHCS) issued
9 updated guidance regarding COVID screening and testing when moving
10 inmate/patients. These updated guidelines now permit the transfer of people with
11 disabilities impacting placement. Prior to this change, many individuals were placed on
12 the Expedited Transfer List, but unable to transfer due to pandemic related movement
13 restrictions. Because of these limitations, Defendants worked with Plaintiffs to create a
14 robust system of monitoring and reporting. These policies required institutions to meet
15 with class members in non-designated placements biweekly to verify and document that
16 they were being accommodated. This documentation is provided to Plaintiffs on a rolling
17 basis along with weekly reporting on class members on the Expedited Transfer List and
18 Housing Restriction Compliance Reports.

19 Throughout the pandemic, Plaintiffs voiced their concerns about the extent that
20 class members have access to single-celled, solid-door, quarantine space under the current
21 methodologies. As noted, Defendants are well aware of their obligation to "ensure that
22 class members have equal access to single-cell, sold-door quarantine space," as do non-
23 class members. (ECF No. 3201 at p. 5.) However, this may have led to a
24 misunderstanding between the parties concerning the housing of full-time wheelchair users
25 who were transferred from CIM to CHCF in late December. As noted above, Plaintiffs
26 complain that these class members were housed in PIP or OHU "for months." At the time,
27 Defendants believed that Plaintiffs preference was for these individuals to remain housed
28 in solid-door, single-celled housing, but once it was made clear that dormitory housing was

acceptable, Defendants quickly transferred these individuals to appropriate dormitory housing. It should be noted, however, that because these class members were present at CHCF in late December, they were offered, and some received, the very first doses of the vaccine.

Defendants believe that recent errors in a small number of ASU logs were isolated incidents and have already provided additional training and instruction on this issue during statewide ADA Coordinator meetings. Defendants are also in the process of preparing revised direction to the institutions regarding compliance with the Court's 2015 Administrative Segregation Order. Defendants will provide a draft of this directive and meet and confer with Plaintiffs' Counsel and the Court Expert prior to issuing it to the field.

Plaintiffs' contention that Defendants failed to respond to their concerns related to sufficient lower/lower housing at CSP-SAC is without merit because Plaintiffs receive regular housing restrictions reports detailing this information. Starting in the month of December, CSP-SAC had about thirty-five inmates on their lower/lower report, by December 12, 2020, CSP-SAC had reduced this number to three inmates. The speed at which CSP-SAC was able to remove inmates from this list is an indication that CSP-SAC had sufficient housing to accommodate inmates with a lower/lower housing restriction, despite Plaintiffs' contentions. In fact, the May 8 lower/lower report was the last time that CSP-SAC had an inmate appear on the report. Currently, CSP-SAC has no inmates appearing on the report. Similarly, Plaintiffs' contention that two inmates received "falsified" RVRs is not accurate. Rather, both RVRs were voided after it was determined that a 128 Chrono was more appropriate under the circumstances. Further, custody staff worked with the medical staff to have the DPP codes and lower/lower restrictions re-evaluated.

Despite Plaintiffs' contentions, Plaintiffs know, and the record shows (including through Court orders), that CDCR has been one of the most proactive correctional systems in the country in battling an insidious virus the likes of which have not been seen in over a

1 century. Defendants will continue to be transparent and collaborate with the Court Expert,
2 Plaintiffs' counsel, and other stakeholders as they work to protect the inmates under their
3 charge and the staff dedicating themselves to this duty during this crisis.

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

6 **1. Plaintiffs' Statement**

7 Plaintiffs' counsel has presented widespread evidence of abuse, assaults and
8 retaliation against incarcerated people at many institutions that discourages people from
9 asking for disability accommodations and discriminates against people with disabilities.
10 Plaintiffs' counsel has also documented CDCR's lack of accountability for the abuse. On
11 September 8, 2020, the Court issued orders finding remedial efforts were necessary in
12 order to "prevent further violations of the ARP and class members' ADA rights at RJD."
13 Doc. 3059 at 42. The requirements necessary to prevent further violations, as well as
14 timeframes for compliance, were outlined by the Court in an Order for Remedial
15 Measures. *See* Doc. 3060. The parties have agreed to take additional time to negotiate the
16 staff misconduct investigation and disciplinary remedies, which they expect will be
17 applicable statewide. *See* Doc. 3219, 3242. The parties have agreed on portions of a
18 Remedial Plan for RJD and Plaintiffs filed objections regarding portions of the proposed
19 plan that remain in dispute. *See* Doc. 3177. On January 20, 2021, the Court agreed with
20 Plaintiffs' Objections and ordered Defendants to issue a revised partial plan for RJD. Doc.
21 3192. The parties continue to discuss the one remaining issue in the RJD Remedial Plan:
22 ways to address the excessive use of pepper spray on class members. Body worn cameras
23 were deployed at RJD on January 2021 and Audio Visual surveillance went live on April
24 5, 2021. Plaintiffs are closely monitoring the RJD Remedial Plan roll out.

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

1 plan to deploy body-worn cameras and fixed surveillance cameras, install additional
2 supervisory staff, and implement sweeping changes to its staff misconduct investigation
3 and disciplinary system to ensure that officers are held accountable for violations of class
4 members' rights, among other remedies. *Id.* at 45-53; *see also* Doc. 3218. The parties are
5 engaged in discussions with the assistance of Court Expert Edward Swanson regarding the
6 Five Prisons Remedial Plan and look forward to its prompt implementation.

7 Notwithstanding the Court's order, class members at SATF continue to report that
8 staff, particularly those assigned to SNY yards, ridicule and harass people because of their
9 disabilities, disclose information about their underlying convictions, spread other rumors
10 that put class member lives in danger, and do not take class member safety concerns
11 seriously. Indeed, over the past two years, seven incarcerated people have been murdered
12 at SATF. Five were *Armstrong* class members, and four were over 62 years of age,
13 including an elderly man with incontinence who is believed to have been killed by his
14 cellmate on May 6, 2021. We were deeply alarmed to learn that people who identified
15 themselves as employed at SATF posted vile public comments celebrating the gruesome
16 murders of *Armstrong* class members ("**Was there when it happened. Epic**.") and
17 praising the person who confessed to the murders ("**He's the SATF Batman. The hero**
18 **we needed but not the one we deserve**"). *See* **Exhibit D**, Letter from Tovah Ackerman &
19 Rita Lomio, Plaintiffs' Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, and
20 Tamiya Davis, CDCR Office of Legal Affairs (May 13, 2021). Defendants must take
21 immediate action to protect *Armstrong* class members at SATF, including through swift
22 and meaningful disciplinary action, improved staff training, and a system to review
23 significant events resulting in serious harm to *Armstrong* class members to determine all
24 contributing factors and whether there should be any disciplinary action or policy or
25 procedure revisions.

26 CDCR is a statewide system. Plaintiffs assert that violations of the ADA and ARP
27 found thus far at six prisons exist systemwide. Plaintiffs are committed to bringing such
28 evidence before the Court until all class members are protected.

Plaintiffs continue to raise significant disability-related staff misconduct concerns throughout the state, including violent assaults, false RVRs, and retaliation for reporting misconduct or requesting accommodations, including during the COVID-19 pandemic. *See* Doc. 3190 at 91-94. Most recently Plaintiffs' counsel reported on class member declarants receiving retaliatory and false RVRs as a result of their participation in the litigation and their ongoing efforts to hold staff accountable. *See* **Exhibit E**, Letter from Penny Godbold and Earnest Galvan, Plaintiffs' Counsel, to Tamiya Davis and Nick Weber, CDCR Office of Legal Affairs (April 14, 2021). Plaintiffs remain concerned that, as long as staff members are permitted to issue retaliatory RVRs to incarcerated people who report staff misconduct, it will result in a chilling effect that could undermine the very efforts to implement court ordered reforms the parties are working towards. The disciplinary process for incarcerated people is not currently identifying potentially retaliatory and false RVRs. Plaintiffs' counsel have asked Defendants to consider changes to this process, similar to changes to the staff misconduct investigation process, whereby the adjudication of such RVRs is taken out of the hands of institution staff. Plaintiffs hope they can work with Defendants to remedy this very serious problem impeding the staff misconduct complaint process.

2. Defendants' Statement

Defendants take all allegations of staff misconduct seriously and are committed to investigating and taking appropriate remedial action where warranted. Although Defendants dispute many of Plaintiffs' overreaching and baseless allegations, Defendants continue to diligently work with Plaintiffs concerning their staff misconduct allegations at Richard J. Donovan (RJD), California State Prison, Los Angeles County (LAC), Kern Valley State Prison (KVSP), California State Prison – Corcoran (COR), Substance Abuse Treatment Facility (SATF), and California Institute for Women (CIW), in accordance with the Court's recent orders.

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

1 Although Defendants seek appellate review, Defendants developed an initial remedial plan
2 and have engaged in several substantive meet-and-confer sessions with Plaintiffs and the
3 Court's Expert to comply with the Court's orders and to develop a responsive remedial
4 plan. During the meet-and-confer sessions, the parties have identified disputed elements of
5 the remedial plan, shared information related to positions taken concerning the plan, and
6 sought to resolve areas of disagreement. Defendants have provided Plaintiffs with
7 extensive written policies related to the remedial plan and presented third-party tutorials
8 concerning officer training and the operation and placement of fixed surveillance cameras.
9 As noted above, the parties agreed to take additional time to negotiate the portion of the
10 plan that concerns staff misconduct investigation and disciplinary remedies. (ECF No.
11 3178.) To that end, Defendants have engaged in ongoing discussions with Plaintiffs
12 regarding allegations of staff misconduct, have worked diligently to provide requested
13 information to Plaintiffs, and are continuing to discuss additional changes that Plaintiffs
14 believe are necessary to remedy the staff-misconduct investigation and discipline processes
15 currently in place.

16 As demonstrated by the parties' recent pleadings, significant progress has been
17 made with the remaining portions of the plan that concern increased staffing, body-worn
18 cameras, fixed camera installation (AVSS), document production, and other remedies.
19 (ECF Nos. 3177, 3183.) For example, body-worn cameras were fully deployed on January
20 19, 2021 at RJD. On April 5, 2021, AVSS deployment at RJD was successfully completed
21 with over 980 fixed cameras in operation. Defendants look forward to continuing their
22 efforts with the Court Expert and Plaintiffs to develop the remaining portions of the RJD
23 Remedial Plan.

24 Further, much of the work completed in accordance with RJD Remedial Plan is
25 applicable to the Court's March 11, 2021 order that mandates Defendants implement
26 remedial measures to achieve compliance with the Armstrong Remedial Plan and the ADA
27 at five institutions including LAC, SATF, KVSP, CIW, and COR. In accordance with this
28 order, the parties have agreed that body-worn cameras will be deployed at these five

prisons by July 30, 2021. Additionally, the parties have agreed that fixed cameras will be deployed at LAC by October 1, 2021, at COR by November 1, 2021, and at SATF, CIW, and KVSP by December 1, 2021. To demonstrate that Defendants take seriously all allegations of staff misconduct, CDCR has agreed to effect historic change statewide. As revealed in the May Revision of the State's budget, in addition to implementing AVSS (fixed cameras) at the five institutions required by the *Armstrong* orders, CDCR committed in fiscal year 2021-2022 to install AVSS at four additional institutions—namely, Salinas Valley State Prison (SVSP), California State Prison – Sacramento (CSP-SAC), California Correctional Institution (CCI), and Mule Creek State Prison (MCSP).[5] In the following three fiscal years, CDCR will install AVSS at nine to ten institutions a year, until AVSS has been installed at all institutions. Further, once the pepper-spray and staff-misconduct investigation and discipline processes are finalized as part of the Court-ordered remedial plans, these policies will be expanded to all institutions statewide.

CDCR takes seriously all allegations of wrongdoing against class members and is addressing class-members' recent allegations of staff misconduct at SATF. These allegations are subject to review in accordance with current CDCR policy. In addition, CDCR will deploy body-worn cameras at SATF by July 30, 2021, and all correctional officers who may interact with class members must wear a body-worn camera. Plaintiffs' attorneys recently received a demonstration of the body-worn cameras deployed at RJD, including the cameras' extensive ability to capture video and audio interactions between staff and inmates. All who attended the demonstration, including Plaintiffs' counsel, were impressed by the camera technology and encouraged by the anticipated positive impact on staff and inmate relations. CDCR is confident that this technology, unprecedented in scope with expected statewide deployment and application, will contribute to addressing Plaintiffs' counsel's concerns at SATF. In the interim, CDCR will continue to investigate Plaintiffs' recent allegations and take appropriate action to protect class members and hold

[5] http://www.ebudget.ca.gov/FullBudgetSummary.pdf. (Last visited on May 16, 2021.)

staff accountable, including through appropriate discipline.

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

1. Plaintiffs' Statement

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

Prior to the pandemic, Plaintiffs identified a number of program access barriers for people with disabilities, including Defendants' failure to provide real-time captioning for deaf class members who do not know sign language, braille materials for blind class members, assistive technology and skills training for blind class members, and accommodations for people with learning disabilities. (Defendants' failure to remove program access barriers for D/deaf class members is addressed in a separate section below.) In their statement below, Defendants assert that they provide braille books from the Library of Congress Braille and Talking Books Program to blind class members. That appears to be false. Earlier this year, Defendants, in response to Plaintiffs' request that they make braille materials available to blind class members, stated: "The Talking Book library requires a patron to be proficient in braille before enrollment in the braille book program can take place," and that SATF, which houses the largest number of blind class members and over 30% of the population statewide, "does not have a proper assessment tool or a qualified interpreter to determine a class member's braille proficiency level." Plaintiffs' communications with the Talking Book library suggest that Defendants are badly misinformed, that no such assessment tool or interpreter is necessary, and that Defendants have imposed their own barrier to deny blind class members access to any braille materials. (In fact, library staff informed Plaintiffs that people learning braille can request

books at the children's level.) And the DPP teachers highlighted in Defendants' statement below are available at only six of the 35 institutions.

Pandemic-related restrictions have created new barriers, as in-person instruction was suspended and class members had severely limited or no access to sign language interpreters and auxiliary aids located only in law libraries, such as text-to-speech software and electronic magnification, to help them understand the written assignments that had replaced in-person instruction. As a result, a number of *Armstrong* class members with communication disabilities, including those who are blind, Deaf, and have learning disabilities, have struggled to successfully complete written educational assignments during the pandemic. That may cause them to receive fewer credits—and therefore to serve longer sentences—than their peers because they are unable to access to the "significant milestone and education credit awards" that Defendants expect will result from people's successful completion of independent written assignments during the pandemic:

> [D]ue to reduced movement and programming in accordance with COVID-19 safety measures, incarcerated people have been completing coursework for milestone and education programs on their own time, outside a classroom setting. When classes resume, incarcerated people may submit their completed work and take tests to earn credits. … CDCR expects this will result in significant milestone and education credit awards.

Doc. 3566, Joint Case Management Conference Statement, *Plata v. Newsom* at 10-11 (N.D. Cal. Mar. 24, 2021) (Defendants' Statement).

Plaintiffs have asked to meet and confer with Defendants to ensure that *Armstrong* class members are not discriminated against in award of credits because of the lack of disability accommodations provided during the pandemic.

2. Defendants' Statement

Defendants continue to be committed to allocating the resources and staff necessary to evaluate and provide accommodations to ensure equal access to rehabilitative programming, services, and activities to people with disabilities. The global pandemic presented unprecedented challenges and DRP made every effort to ensure that people with

1 disabilities could participate in education and rehabilitative programs and successfully
2 complete their work assignments. Because in-person classes were suspended, educational
3 packets were distributed and resources were provided to people with disabilities to assist
4 them. Notwithstanding the obstacles presented by the global pandemic, Defendants sought
5 to provide these resources, including sign language interpretation, assistive devices, and
6 auxiliary aids, whenever possible to provide disabled people with learning and prepare for
7 credit-earning opportunities. In August 2020, schedules were developed to provide DPV
8 class members access to the assistive devices in the library in small groups by housing
9 units.

10 The parties have engaged in monthly meetings to discuss accommodations for
11 DNH/DPH and DNV/DPV class members and made progress toward shared goals.
12 Defendants continue to explore different ways to provide training to inmates with
13 disabilities regarding the various accommodation tools, including the Job Access With
14 Speech (JAWS) screen reader for the Lexis Nexis law library database, that are available
15 for their use. Although initially delayed by COVID-19, staff training for JAWS utilization
16 was completed virtually during this challenging time. In fact, CDCR upgraded the ADA
17 computers to support JAWS and other technologies to make these new technologies
18 accessible to the class members who need them. JAWS is available at designated
19 institutions, including the online JAWS application, Microsoft Word, and Windows Ease
20 of Access Narrator and Magnifier features. Once COVID-19 restrictions are lifted, library
21 staff will develop a schedule to train all class members on all assistive devices and library
22 resources. Further, Defendants have continued to provide braille and audio books from the
23 Library of Congress Braille and Talking Books Program (BTBP) for the small number of
24 class members who may require it. Defendants have not yet been able to secure onsite
25 Braille instruction due to the credentialing requirements. CDCR does, however, provide
26 access to the Hadley School of the Blind, a member of the Council of Schools and Services
27 for the Blind, correspondence Braille course. Defendants will continue to pursue this
28 highly specialized programming. Defendants take seriously that qualified patrons with a

visual impairment do not have access to braille books from the Braille and Talking Books Program simply by submitting a completed Talking Book Program application and will work with Plaintiffs to remove any unnecessary barriers to accessing this program. In the meantime, DPV inmate-students have the opportunity to receive additional tutoring support from DPP teachers at designated institutions and a Student Study Team (SST) to develop an Individually Tailored Education Plan (ITEP) that includes short and long-term goals for reading, language arts, math, behavior, assessment data, and accommodations. These may include access to large print educational materials, usage of electronic magnifiers, oversize monitors, various screen readers in education classroom, and testing accommodations. Although Plaintiffs contend that these DPP teachers are only available at 6 institutions, it is important to note that approximately 76% of the 284 DPV inmates statewide are housed at 7 institutions, including CHCF.

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

1. Plaintiffs' Statement

Notwithstanding monthly meetings between the parties to address issues facing D/deaf and hard-of-hearing class members, Defendants—and in particular the Division of Rehabilitative Programs—appear to have made no measurable progress in addressing serious and long-standing barriers to program access.

First, Defendants do not provide real-time captioning to deaf class members who do not know sign language and who cannot hear what is being said in a classroom or self-help group setting. "Real-time captioning (also known as computer-assisted real-time transcription, or CART) is a service … in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided onsite or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language." U.S. Dep't of Justice, ADA Requirements: Effective Communication (Jan. 2014), https://www.ada.gov/effectivecomm.htm. Late-deafened people in California prisons who do not know sign language overwhelmingly report feelings of isolation in prison due to their disability and

have, **for decades**, been unable to fully participate in programs and therefore earn credits to reduce their sentences and/or learn skills to improve the likelihood of successful reentry into the community. Plaintiffs for years have demanded that Defendants provide CART services. *See, e.g.*, Doc. 2936 at 45-53, 65-76. Defendants have not done so.

Defendants reported on March 24, 2021, that they had begun the bidding process for CART services and, if they are able to get all the information together, CART should be available in the prisons starting July 2021. If that does not happen, Plaintiffs intend to seek a court order.

Second, Plaintiffs were alarmed to learn on March 24, 2021, that Defendants will **not** provide sign language interpretation for—and therefore Deaf class members will be excluded from—tutoring programs, including the new Peer Literacy Mentorship Program ("PLMP"). This denies program access on the basis of a disability to the very population that most needs literacy and educational support. *See, e.g.*, John W. Adams & Pamela S. Rohring, Handbook to Service the Deaf and Hard of Hearing: A Bridge to Accessibility 125 (2004) ("[R]eading and writing become a lifelong struggle for many deaf people."); Michele LaVigne & McCay Vernon, An Interpreter Isn't Enough: Deafness, Language, and Due Process, 2003 Wis. L. Rev. 843, 854 (2003) ("Thirty percent of deaf students leave school functionally illiterate, i.e., they read at grade level 2.8 or below."). And Defendants have failed to identify any alternative.

Indeed, Plaintiffs have demanded for over two years that Defendants take concrete action to address the learning needs of Deaf students. *See, e.g.*, Doc. 2874 at 30-43. Many Deaf class members report that they do not understand their classes or the accompanying written materials and that, specifically, they do not understand vocabulary or key concepts central to the class. Even non-academic classes, such as self-help and mental health programs, rely on students grasping concepts such as "insight" and "empathy." These words have no direct translation into American Sign Language ("ASL"). Therefore, the students require much more extensive explanation to understand and to be able to grapple with these concepts at the level necessary for them to achieve any level of rehabilitation or

success before the Board of Parole Hearings. Deafness can affect cognition, such that Deaf students require a more concrete and visually oriented explanation with more repetition to obtain the same understanding as their peers. Many sign language-using Deaf and hard-of-hearing individuals became deaf before they fully acquired their first language, and nearly every Deaf or hard-of-hearing person (over 90%) grows up in a family that does not know sign language. In this environment, they do not begin learning language until they reach school, around five or six years old. The population in CDCR is no different.

This delay in acquiring a first language affects learning by (1) making it more difficult to understand information presented in any language, including sign language; (2) making it more difficult to remember and synthesize information; and (3) making it more difficult to understand "abstract" concepts that cannot be concretely and visually demonstrated. Consequently, Deaf students with a language delay cannot learn at the same pace as their peers, even with language access. They need more repetition to remember and synthesize, and they need information explained at a more basic level to understand the abstract concepts.

Defendants have failed to take any meaningful action to address lack of equal opportunity for Deaf class members, including by providing instruction by an instructor fluent in ASL, and discussions between the parties appear to have stalled. Plaintiffs will continue to try to engage Defendants on this issue through monthly workgroup meetings and also are evaluating what other next steps to take.

Third, Plaintiffs have been unable to obtain clear information about whether and why CDCR-issued hearing aids are incompatible with FM systems, which would allow hard-of-hearing class members to fully participate in education and rehabilitative programming. Plaintiffs will continue to meet and confer with Defendants about this issue.

Finally, Plaintiffs remain concerned, as explained in previous Joint Case Status Statements, *see, e.g.*, Doc. 3191 at 26-28, by Defendants' failure to adequately ensure the

safety of Deaf people who are transferred to a new housing location and have no clear or confidential way to report safety concerns, as well as Defendants' continued failure to ensure that Deaf class members are in fact provided sign language interpreters during off-site medical encounters—a problem that was well-documented before the pandemic and that has continued during the pandemic. *See, e.g.*, Doc. 3153 at 86-90. If these issues cannot be resolved soon, Plaintiffs likely will bring them to the Court for resolution.

2. Defendants' Statement

Defendants dispute Plaintiffs' assertion that Defendants "appear to have made no measurable progress in addressing serious and long-standing barriers to program access" because it fails to acknowledge the unprecedented challenges presented by the ongoing international health crisis and dismisses all of CDCR's efforts and resources put forth to nonetheless provide access to CDCR's programs.

In response to Plaintiffs' request for CART, real-time captioning for hearing-impaired class members, Defendants explored the option of amending the current contract with the current vendor for Video Remote Interpreting (VRI), but this is not possible due to rules related to the contracting and bidding-process. Once, however, the contract expires on June 30, 2022, Defendants will seek to add this service to the next contract in accordance with the applicable process. Nonetheless, Defendants continue to request quotes to add this feature for the next fiscal year beginning July 1, 2021. Meanwhile, teachers are able to provide written materials and notes in education programs. Further, DPH inmate-students have the opportunity to receive additional tutoring support from DPP teachers at designated institutions, which may include a Student Study Team (SST) to develop an Individually Tailored Education Plan (ITEP), access to SLI, in person and/or remote, or blue-tooth speaker systems to participate in classroom discussions or for amplification. CDCR does not test for learning disabilities.

Plaintiffs' assertion that "Deaf class members will be excluded from tutoring programs" is wrong. Defendants are committed to ensuring that Deaf and hard-of-hearing class members who require sign language interpretation are provided equal access to

programs, services, activities, and assignments and believe that they can resolve any issue with Plaintiffs concerning this class-member group through collaborative efforts, thereby avoiding judicial intervention. Defendants have taken proactive steps to provide these class members with access to a variety of programs.

As explained to Plaintiffs numerous times, CDCR is in the process of implementing its Peer Literacy Mentorship Program (PLMP). Defendants are developing an operational procedure to provide access to required accommodations. The purpose of this program is to increase literacy by providing tutoring services to inmates who are not assigned to regular academic programs. Per the Governor's budget, all institutions have received a PLMP teacher position. This is part of a new initiative to provide flexible mentoring for students who have barriers to attending educational programs in a traditional classroom setting but are available on nights and weekends, in dayrooms, etc. Peer mentors work with up to twenty students and receive sentencing credits and pay. Mentees also earn credits. Hiring for PLMP teachers and mentors began last year. DRP/OCE conducted training on October 15, 2020, for staff working with DPP population, including DPV/DNV, DPH/DNH, and LD. This training is being provided to assist with *Armstrong* Remedial Plan compliance and included lessons on assistive devices. Furthermore, 18 inmates at RJD achieved a Certificate of Proficiency for an ASL course offered by Southwestern Community College. CDCR is working on expanding the program to other locations as available. Inmates with these types of specialized skills, including bilingual proficiency, are actively recruited to work as Peer Mentors. In summary, Defendants will continue to work with Plaintiffs to ensure that incarcerated people with disabilities have equal access to rehabilitative programming, services, and activities.

As previously reported, Defendants have created a unique state-run television channel dedicated to ASL at designated institutions, which includes Daily Moth content and, potentially, an on-demand video library at these institutions. In fact, to date, all nine institutions housing D/deaf class members have one DRP television channel reconfigured to show ASL-based content on an established schedule during morning, afternoon and

evening. The new channel features daily news shows, mandated departmental videos from the Secretary, pertinent health care related information and other programming with rehabilitative content. As to the state-run channels, Defendants are in the process of finalizing ASL inserts, including programming, that addresses PREA information. Additionally, PREA information has been included in the orientation video, for inmates who require ASL. Defendants continue to work toward adding more content with ASL interpretation and have added up to eleven such videos, with staff working to add even more.

Plaintiffs' contention that Defendants failed to ensure that sign language interpretation is provided to class members during off-site medical appointments is inaccurate. In fact, CDCR ensures these services are provided through its contracts with third-party providers. It is a contractual obligation that hospitals provide a Sign Language Interpreter (SLI) for all hearing-impaired inmate patients whose primary method of communication is American Sign Language. Should the hospital not be able to provide the appropriate accommodations, they are required to contact the sending institution so that staff can provide the appropriate accommodation. Outside hospitals are made aware of each patient's medical disability and what accommodations are needed for communication with that patient. For offsite specialty clinics that do not provide SLI, the offsite health care schedulers are trained to contact the onsite SLI before the appointment to provide an interpreter for the appointment. CCHCS has reported that it has been developing potential alternatives to solely relying on external providers to ensure interpreters are present for off-site encounters. Defendants have put together a working group to address contract language for off-site encounters, policies and regulations, and an escalation process for when an off-site provider fails to provide SLI. Defendants informed Plaintiffs that this issue is taken seriously and that any contracted medical provider who does not provide sign language interpretation during off-site medical appointments elicits a swift response from Defendants to ensure the service is provided.

Defendants disagree with Plaintiffs' contention that Defendants have failed to

"ensure the safety of Deaf people who are transferred to a new housing location and have no clear or confidential way to report safety concerns." Defendants have worked hard to meet their obligations to these class members through orientation pamphlets and videos, by providing ASL-capable ADA-workers where available, mental-health services, ADA Coordinator outreach, and other services. Defendants have made significant strides in providing Deaf and hard-of-hearing class members who require sign language interpretation with access to an increasing number programs, services, and activities. Moreover, Defendants remain committed to ensuring that these class members' concerns related to healthcare, safety, and recreation are appropriately accommodated. Defendants are committed to addressing these concerns raised by Plaintiffs and believe that collaborative efforts between the parties will result in effective measures to ensure that this group of class members are able to confidentially report safety concerns.

E. Problems Regarding Access to Assignments for Class Members

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

F. Effective Communication for Parolees Who Are Deaf

Despite assertions that DAPO is providing additional oversight regarding the supervision of class members who are Deaf or hard of hearing, Plaintiffs continue to identify problems with Defendants' provision of effective communication to parolees including: failures to provide adequate sign language interpretation during initial interviews and other due process encounters; inappropriate use of written notes to communicate with DPH parolees who cannot communicate effectively in writing; failures

to use VRI properly and technological issues with VRI; and confusion regarding the distinction between VRI and VRS, causing likely violations of federal law. *See* Ex. E to Doc. 3190. Defendants have not yet responded, but Defendants are committed to addressing Plaintiffs' concerns related to effective communication with people who are Deaf.

The parties remain in disagreement about the use of civilian in-person sign language interpreters during non-due process parole field encounters presenting safety and security issues. Plaintiffs remain concerned about the provision of EC through VRI due to the unreliability of the technology and about the ongoing confusion between VRS and VRI in the field, despite Defendants' claims that the problem was with one encounter and one staff member, but will continue to monitor the use of VRI. Meanwhile, Defendants will continue to address Plaintiffs' concerns related to the proper use of VRI and has allocated increased resources in this area. For example, DAPO purchased and implemented the use of VRI tablets, high-speed connectivity, and an expanded SLI contract provider to increase VRI capabilities. DAPO provided additional training and instructions for staff supervising SLI parolees enable the proper use of this technology.

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

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

Plaintiffs also remain concerned about how frequently they encounter *Armstrong*

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

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

1. Plaintiffs' Statement

CDCR and DAPO fail to ensure that parolees with severe and impacting placement disabilities are accommodated during the process of transitioning to parole. Class members do not consistently receive adequate planning for parole and adequate transitional housing, transportation, benefits application assistance, assistance obtaining identification cards, and other transitional services that are critical for these individuals and that help them succeed on parole. *See* Doc. 2680 at 11-12; Doc. 2655 at 11-13. As a result, class members needlessly struggle to comply with parole conditions and to transition to life outside of prison. For example, when they leave prison, many class members who have significant disabilities do not have transportation in place and struggle to get to their parole location on inaccessible public transit. Some parolees leave prison without all of their Durable Medical Equipment. Many parolees struggle with inaccessible CDCR and DAPO funded transitional housing programs. Deaf class members in these program are not provided with sign language interpretation services for mandated substance abuse groups and are not provided interpreters for other DAPO-mandated community programs. Blind and mobility impaired individuals find that many of the programs that are purportedly accessible are not in fact accessible, resulting in falls and injuries from inaccessible housing, and forcing some parolees to leave the programs.

CDCR also fails to prepare class members who are deaf or blind or developmentally

1 disabled to live independently on parole, for example, by training parolees who go blind in
2 prison on how to use a tapping cane, how to use a guide dog, how to read braille, and how
3 to access help in the community, or by training prisoners who go deaf in prison in how to
4 use American Sign Language. CDCR and DAPO also fail to help link paroling class
5 members with disabilities to local independent living and paratransit organizations in the
6 communities where they parole. Although DAPO in theory has a system for providing
7 cash advances and vouchers for food and shelter to newly paroling individuals struggling
8 and at risk for hunger and homelessness, this system is rarely used.

9 Parolees who have developmental disabilities and have difficulty, as a result of their
10 disabilities, remembering to charge their device, and parolees who are homeless with a
11 mobility disability and have difficulty getting from place to place often struggle to charge
12 their GPS devices, and will receive a parole violation if the charge runs out on their device.
13 During a December 14, 2020 meeting, plaintiffs learned that DAPO has multiple transition
14 to parole resources (including battery packs that can be issued to people who have
15 difficulty charging GPS devices) and that these support services are allocated to parolees,
16 as needed, at the discretion of the parole agent. Plaintiffs' counsel have almost never
17 encountered class members who have been issued a GPS battery pack, despite hearing
18 reports from multiple homeless parolees with disabilities who have, over the years,
19 reported great difficulty finding locations to charge GPS devices, and Defendants reported
20 in a recent meeting that these might only be available for use in a natural disaster. A
21 parolee in a wheelchair or otherwise with a serious mobility disability who is homeless and
22 required to charge a GPS device daily is not similarly situated, for example, to other
23 parolees with GPS devices.

24 On May 4, 2021, Plaintiffs sent a letter to Defendants, supported by fourteen class
25 member declarations, establishing that Defendants are operating their transition to parole
26 and parole services in a manner that discriminates against parolees with disabilities by
27 failing to provide them with the minimum supports necessary for them to succeed on
28 parole, including through inadequate transition to parole services, failure to provide

accessible transitional housing and transportation, and failure to accommodate parolees' disabilities regarding their ability to comply with parole conditions. *See* **Exhibit F**, Letter from Gay Grunfeld, Plaintiffs' Counsel, to Tamiya Davis and Nicholas Meyer, CDCR Office of Legal Affairs (May 4, 2021) (with Exhibit A only). Defendants have been on notice for years that their systemic failure to provide basic support services and other reasonable accommodations to parolees with disabilities is denying them an equal opportunity to succeed on parole, in violation of the ADA and the *Armstrong* Remedial Plans, but thus far have responded primarily with indifference and unsupported blanket assertions that Plaintiffs' urgent requests to accommodate class members on parole "show no nexus" to the ADA. Defendants cannot continue to ignore that parolees with disabilities are not similarly situated to parolees without disabilities, and that they are legally obligated to provide "meaningful access" to the benefits of their parole programs, services and activities for parolees with disabilities so that they have the equivalent opportunity to succeed on parole as parolees without disabilities. See Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th Cir. 2001).

Plaintiffs have demanded that Defendants take immediate steps to address their systemic failure to accommodate parolees with disabilities by providing the minimum supports necessary for them to succeed on parole, and by adopting other remedial measures to prevent discrimination against parolees with disabilities. *See* **Exhibit F** at Exhibit A (Plaintiffs' List of Minimum Standards and Remedial Measures Required to Protect the ADA Rights of Parolees With Disabilities). In the May 4, 2021 letter, Plaintiffs requested that the parties begin a series of meetings targeted at correcting these longstanding problems.

Defendants claim they are not required to provide support services to all parolees, and that providing baseline support services for parolees with disabilities who require such reasonable accommodations during their transition to parole would discriminate against parolees without disabilities. This reverse discrimination argument is not well founded, and ignores Defendants' obligations under the ADA and the *Armstrong* Remedial Plans.

See McGary v. City of Portland, 386 F.3d 1259, 1267 (9th Cir. 2004) ("The purpose of the ADA's reasonable accommodation requirement is to guard against the facade of 'equal treatment' when particular accommodations are necessary to level the playing field."). Additional supportive services, such as automatically providing a GPS battery pack to such class members, is required to reasonably accommodate parolees with disabilities who are more likely to fail on parole and be re-incarcerated without accommodations. *See Dunlap v. Ass'n of Bay Area Gov'ts*, 996 F. Supp. 962, 965 (N.D. Cal. 1998) ("[T]he ADA not only protects against disparate treatment, it also creates an affirmative duty in some circumstances to provide special, preferred treatment, or 'reasonable accommodation.'"); *see also Olmstead v. L.C. ex rel. Zimring,* 527 U.S. 581, 597-603 (1999) (concluding that "undue institutionalization qualifies as discrimination 'by reason of . . . disability'" under Title II of the ADA). In another case, DAPO has provided a GPS device that vibrates when it is running low on batteries to a parolee with partial paraplegia who cannot feel the vibrations, resulting in parole violations that might have been averted by a GPS device that beeps when the battery is running low to remind the parolees to charge the device.

Plaintiffs also object to the many transitional housing programs listed in DAPO's directory of transitional housing programs that explicitly exclude people with hearing, mobility, vision, and/or mental health disabilities from their programs. Defendants are directly responsible for this disability discrimination by their contractors. 28 C.F.R. § 35.130(b)(1),(b)(3)-(5) (prohibiting disability discrimination done "directly or through contractual, licensing, or other arrangements"); *see also Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1074 (9th Cir. 2010) (Defendants "cannot shirk their obligations to plaintiffs under federal law by housing them in facilities operated by third-part[ies]"). Many programs directly administered by the CDCR's Division of Rehabilitative Programs have similar exclusions based on disability. Although Defendants agreed to make changes in how CDCR-funded programs report their accessibility to CDCR, and to develop a training video and resource manual for new CDCR-funded transitional housing providers, these planned resources have been in the works for more than 15 months, and Defendants

1 have not addressed the disability-based exclusions by 95% of CDCR-funded programs that
2 provide transitional housing and other services to parolees, in violation of the ADA. *See*
3 **Exhibit F** at pp. 11-12.

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

23 Recently, Defendants have shared some data about rates of parole for life prisoners
24 with disabilities, and have shared a detailed memo that has been approved by CDCR
25 stakeholders and that will provide for an expanded role for CDCR counselors in helping
26 life prisoners prepare for Board hearings and eventual parole. The parties met in early
27 January and again in mid-March about the new memo and resource documents relating to
28 this plan. Plaintiffs provided several rounds of comments on these materials, and

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Defendants expect to finalize and implement the plan in the near future. While Plaintiffs very much welcome the new memo and process for correctional counselors to assist in preparing parole plans for certain class members, that process, once finalized and implemented, will only provide assistance to life term prisoners who are going to the Board of Parole Hearings for parole consideration, along with determinately sentenced individuals whose sentences are reviewed by the BPH under the Non-Violent Parole Process, the Elder Parole Process, and the Youth Parole Process. Most parolees will not benefit from this new process.

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

2. Defendants' Statement

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

In a February 20, 2020 letter, Defendants detailed the additional assistance that correctional counselors provide to prepare inmates with disabilities for release on parole. Specifically, that letter informed Plaintiffs that counselors are directed to discuss different sources of support upon release including family, housing, employment, financial, or community-based programs, and counselors are to help the inmate fill out a template letter to send to potential sources of support. The waiting lists Plaintiffs refer to are for

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

11 Nonetheless, Plaintiffs' counsel continues to send advocacy letters that demonstrate
12 no nexus between their allegations and Defendants' compliance with the ADA,
13 Rehabilitation Act, the Remedial Plan, or this Court's orders. Rather, the letters argue that
14 CDCR is obligated to provide housing for every inmate who is disabled and paroling.
15 However, the law does not require Defendants to fund and secure housing for every
16 disabled inmate who is paroling, nor does it require CDCR to create and fund new
17 programs. The law requires that the programs and benefits Defendants offer, such as
18 assistance in direct placements for housing or community-based programs, be provided in
19 a manner that treats all parolees equally. CDCR's pre-parole practices are consistent with
20 the law. CDCR has programs in place to assist with transportation and locating housing
21 upon release, but it does not guarantee or provide housing for everyone. To create an
22 obligation to secure housing for all class members would be discriminatory toward non-
23 class members and would create a new obligation for disabled persons that is not provided
24 to all parolees. The ADA does not require the creation of new programs solely for
25 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 COVID-
28 19 pandemic. Defendants have provided transition-to-parole services to those thousands of

people in a short period of time. Indeed, Plaintiffs were informed on a July 23, 2020 phone call that the vast majority of paroling inmates have submitted applications for Medi-Cal or Supplemental Security Income (SSI) benefits before paroling, and that those who have not submitted applications have generally not done so because they are not eligible due to availability of other insurance. While parolees may not be receiving benefits immediately upon being paroled and additional follow-up may be necessary to receive benefits, nearly all of the applications have been completed. With respect to Cal-ID, Defendants anticipate that upcoming legislation will address Plaintiffs' concerns.

Under current law, only individuals who have renewed a California ID in the preceding ten years are eligible to renew a Cal-ID. If a parolee was eligible to renew, Defendants assisted with that process before parole. If a parolee was not eligible to renew, that individual was required to visit the DMV in person, which could not be done before release despite Defendants' best efforts. Following extensive efforts, the Division of Rehabilitative Programs introduced legislation to remedy this barrier to parolees. Under the new legislation, inmates who have been incarcerated for more than ten years will be permitted to obtain a Cal-ID before leaving prison without an updated photograph of themselves. Additionally, CDCR has secured funding and internal approval to bring a DMV-approved device into the institutions to photograph and finger-print inmates before release. CDCR is awaiting DMV approval before implementing this process.

Defendants received Plaintiffs' counsel's May 4, 2021 letter, and despite the parties' differences, including the threshold dispute as to whether Plaintiffs' complaints seek to again expand this class action's scope, Defendants have taken a proactive approach and proposed that the parties begin meeting and conferring on June 1. Additionally, on May 14, Defendants began providing documents addressing the issues raised in the May 4 letter to facilitate informed discussion and ensure that the parties' June 1 and future meetings are productive as possible and contribute to a negotiated resolution. Plaintiffs' repeated litigation threats will not resolve this dispute.

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

2 The parties convened a workgroup to address issues facing blind and low-vision
3 class members. *See* Doc. 2786 at 20; Doc. 2910 at 29-41. The workgroup first met in
4 January 2020. Issues for discussion included documentation of methods of effective
5 communication, orientation and mobility training, audio description, electronic submission
6 of forms, text-to-speech software, accommodations assessments and skills training, braille
7 literacy, accessibility of mental health groups, and access to magnifiers of different
8 magnification levels. After a pandemic-related delay, the workgroup began its regular
9 monthly meetings in December 2020.

10 Among other things, Plaintiffs have noted that, although the *Armstrong* Remedial
11 Plan requires provision of large-print, braille, and audio versions of written materials as
12 necessary, Defendants currently have no system in place to document class members'
13 individual need for accessible versions of documents, including disciplinary paperwork
14 and medical information, and have no reliable system to produce and provide accessible
15 versions. The parties will continue to meet and confer in an attempt to address the
16 concerns identified by Plaintiffs.

17 In addition, the parties are working together to ensure that blind and low-vision
18 class members can receive white canes upon request; that tablets, which soon will be rolled
19 out in all CDCR prisons, will be accessible to blind and low-vision class members; and
20 that prisons properly implement and provide training on computer screen reading software.
21 The parties also are discussing concerns with the DPV code definition and how to ensure
22 that class members with monocular vision receive appropriate accommodations

23 Finally, as noted in previous Statements, in response to increased movement of
24 incarcerated people during the pandemic, the parties worked collaboratively to develop
25 interim measures to ensure that blind and low-vision class members are properly situated
26 to new living environments. ADA Coordinators or their designees now are required to
27 offer and provide, within 24 hours of a blind or low-vision class member's arrival to a new
28 housing unit, a guided walkthrough of the unit to help the class member safely and

independently navigate their new environment. The parties are discussing gaps in implementation identified by Plaintiffs, how to make sure such orientations are offered to blind and low-vision class members after the pandemic, and whether any improvements to the existing system are warranted.

J. Joint Monitoring Tool

The parties remain committed to developing a strong joint monitoring tool. The parties had planned to test the tool out at different types of prisons beginning in April 2020, and to meet after each audit to discuss if and how the tool should be updated or revised based on issues identified during each audit. Those plans, unfortunately, have been delayed by the COVID-19 pandemic. The parties have conducted off-site document reviews for multiple institutions but agree that audits are incomplete without the ability to interview class members and staff. On-site audits will resume at CIM in June 2021.

The parties met with the Court Expert on February 8-9, 2021, to resolve previously identified substantive areas that will require the development of new policies and additional tool questions. The parties have a list of action items including policies that must be drafted and agreed on and audit tool questions that must be updated to reflect changes in policies. The parties will continue to work collaboratively on these issues.

K. ADA Structural Barriers and Master Planning Process

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

The parties agreed to a flexible, collaborative approach in which they would meet regularly to discuss different institutions and be joined by local ADA staff with close knowledge of the institutions. The parties also plan to tour institutions together to resolve

outstanding issues and address Plaintiffs concerns collaboratively. The Court Expert agreed to accompany the parties on these tours. In light of serious public health issues presented by the global COVID-19 pandemic, these tours have been suspended; however, the parties met on April 21, 2021, to restart this Master Planning process and the process should return to a regular schedule of tours and meetings as the prisons open up once the pandemic recedes.

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

L. Investigation of County Jails

Plaintiffs continue to assert that a pattern and practice of denying disability accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA accommodations at Kern County, San Bernardino, Orange, and Fresno County jails. *See* Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions and have been meeting with county counsel for a number of counties in an effort to improve relations and information sharing and ADA compliance at the jails. Unfortunately, these conversations have largely been put on hold due to the pandemic. While improved communication with the counties is a welcome idea, Plaintiffs believe that Defendants will likely need to do more than communicate with counties to ensure accommodations for class members in county jails.

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

Respectfully submitted,

DATED: May 17, 2021

ROSEN BIEN GALVAN & GRUNFELD LLP

By: */s/Penny Godbold*
Penny Godbold

Attorneys for Plaintiffs

DATED: May 17, 2021

ROB BONTA
Attorney General of the State of California

By: */s/Trace O. Maiorino*
Trace O. Maiorino
Deputy Attorney General

Attorneys for Defendants

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: May 17, 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
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

April 8, 2021

Mr. Alexander Powell
CDCR Office of Legal Affairs

RE: *Armstrong v. Newsom*: Operation of the CDCR 1824 Process at the California Substance Abuse Treatment Facility and State Prison, Corcoran

Dear Mr. Powell:

As you know, we observed a meeting of the Reasonable Accommodation Panel ("RAP") at the California Substance Abuse Treatment Facility and State Prison, Corcoran ("SATF"), on August 26, 2020, and reviewed RAP responses issued several months before then. We discussed our concerns with you, Assistant Deputy Director Fouch, and institution staff on September 29.

In particular, we explained that the RAP at SATF seemed to be conducted in a hurried and uninformed manner and did not squarely address requests for disability accommodations. Instead, far too often, we saw the RAP rely on outdated, irrelevant, and secondhand information in an attempt to discredit people with disabilities. As a result, the institution was not properly responding to individual disability accommodation needs and also was failing to identify and correct systemic issues. Unfortunately, when we attended a RAP meeting again in December, we observed many of the same problems.

We appreciate the open discussion with Defendants to date, and the stated commitment by both institution and headquarters staff to improve training for RAP members. Such training will need to be ongoing and multi-faceted, and Defendants already have begun to develop such training through the RAP LMS e-learning module. We are grateful for these pending and planned efforts. In this letter, we provide a few representative examples of our concerns in the hope that they may aid training efforts at both the institution and statewide level.

Before doing so, however, we note that in addition to increased and improved training and oversight, **Defendants should designate an SSA position in the SATF ADA office to help manage the volume of appeals, ensure that disability-specific expertise guides appeal processing at all levels, and ensure that all deadlines are met**. This is critical. The institution likely will not be able to reliably meet substantive and procedural CDCR 1824 processing requirements—and the requirements of the Americans with Disabilities Act more generally—without that additional resource allocation.

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I. DEFENDANTS SHOULD DESIGNATE AN SSA POSITION IN THE SATF ADA OFFICE. 2

II. DEFENDANTS MUST PROMPTLY IMPLEMENT A MEANINGFUL TRAINING SYSTEM AT SATF FOR PERMANENT AND INTERIM RAP MEMBERS 3

III. THE INSTITUTION FAILS TO APPROPRIATELY RESPOND TO CDCR 1824S. 5

A. Denial of Accommodations Based on Rote Reference to "Policy and Procedure" ... 5

B. Denial of Accommodations Based on Custody Staff Opinions 7

C. Denial of Accommodations Based on the COVID-19 Pandemic............................ 10

D. Inadequate Disability Verification Process 11

E. Inappropriate Language in RAP Responses Dissuading Class Members From Accessing the CDCR 1824 Process 12

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I. DEFENDANTS SHOULD DESIGNATE AN SSA POSITION IN THE SATF ADA OFFICE.

SATF has one of the largest *Armstrong* populations, particularly of those with significant, impacting-placement disabilities. It also is one of the most complicated institutions; it houses class members who are Level II, III, and IV; who are housed on SNY, GP, and NDPF yards; and who are part of the EOP and/or DDP. It has one of the largest, if not the largest, populations of *Armstrong* class members who, because of their communication disabilities, are unable to independently access the written appeals process and therefore require more assistance from appeals staff to identify and address their concerns.

Unsurprisingly, given the complexity and magnitude of the *Armstrong* population at SATF, the institution processes a large volume of appeals and ADA grievances. In addition, the institution has been the repeated focus of enforcement litigation in this case due to its failure to provide disability accommodations. The poor RAP responses last year have negatively affected the institution's ability to comply with the *Armstrong* Remedial Plan and has resulted in at least fifty advocacy emails and letters in 2020 alone, more than any other institution. Many involved instances where the class member already had attempted, unsuccessfully, to request the disability accommodation through the CDCR 1824 process—sometimes multiple times.

Currently, with existing staffing, the institution is unable to meet requisite deadlines. Of the 65 RAP written responses for CDCR 1824s submitted in May 2020 that were produced by Defendants, only 10 (or 15%) were issued within 30 calendar days of receipt.[1] Put differently, **the vast majority of RAP responses at SATF (85%) were untimely**. Of those, it took the institution, on average, **over 28 days** to issue the written response after the RAP had made its decision during a RAP meeting.

Much of the burden falls on the AGPA. When we asked her last year about the frequent missed deadlines, she acknowledged that workloads did not always allow her and others in her office sufficient time to meet the requirements of the CDCR 1824 process and that they instead had to "reprioritize," **each day**, appeals raising PREA, use of force, and safety concerns over disability-related appeals. She and other appeals staff should not have to do that. Designating an SSA position would address these concerns, ensure that someone with expertise in ADA issues oversees the process and ensures the correct information is gathered and responses are timely issued, and allow existing appeals staff to focus on other important matters.

II. DEFENDANTS MUST PROMPTLY IMPLEMENT A MEANINGFUL TRAINING SYSTEM AT SATF FOR PERMANENT AND INTERIM RAP MEMBERS.

The CDCR 1824 process is the foundation of the Disability Placement Program and of Defendants' compliance with the Americans with Disabilities Act and *Armstrong* Remedial Plan. *See* ARP § IV.I.23.a; 28 C.F.R. § 35.107(b) (requiring "prompt and equitable resolution of" disability-related complaints). For far too long, Defendants have lacked a formal training system for RAP members. The ADA Coordinator at SATF in August 2020 had been on the job for four months and reported that he had not received any formal training prior to assuming the role, and that no one reviews or provides feedback on his RAP responses (unless he were to affirmatively request such review and feedback). The ADA Coordinator role is a difficult and complex one, and

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[1] The Inmate/Parolee Appeals Tracking System – I & II: Compliance Report produced in advance of last year's tour stated that none of the 727 RAP responses issued between December 17, 2019, and June 15, 2020, were untimely. But we could find no relationship between the "Completed" date listed in the Report and the date the written response was in fact issued (as stamped next to "Date sent to inmate:" on each RAP response). *See* CDCR 1824 Desk Reference Manual at 9 (rev. Oct. 2017) ("Responses to an inmate's CDCR 1824 must be completed within thirty (30) calendar days of receipt. . . . The review period ends on the date the response is sent to the inmate."). There also were a handful of errors in the date a CDCR 1824 was listed as received and when a response was due on the Compliance Report. **We request an explanation regarding who is responsible for inputting information into the Compliance Report, why the Report is inaccurate, and what will be done to correct that problem in the future.**

the lack of appropriate training has been a barrier at SATF to a properly functioning disability accommodation system. In September 2020, we provided comments on the RAP LMS Training Module. *See* Letter from Patrick Booth, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Plaintiffs' Comments on the Reasonable Accommodation Panel LMS Training Module (Sep. 7, 2020). We hope that module is updated and implemented soon.

We note again that the module should be viewed as one part of a comprehensive and ongoing effort to improve and support the RAP process. The module should be combined with observation of well-run RAP meetings and review of and feedback regarding RAP responses by knowledgeable persons, particularly when there are changes in ADA and appeals staff at an institution. (SATF had three different ADA Coordinators in 2020 alone.) We observed the RAP meeting on August 26, 2020, and found discussion to be rushed and perfunctory and the ADA Coordinator largely absent from facilitating discussion. In most cases, fewer than 60 seconds were spent discussing individual CDCR 1824s—in one case, discussion of a request for disability accommodations lasted only twelve seconds. This resulted in failure to fully consider, evaluate, and identify disability accommodation issues at the institution.

For example, the RAP reviewed a request from a monolingual Spanish speaker with a TABE of 01.9. *See* Log No. SATF-D-20-3680. With the assistance of another person, the class member submitted a CDCR 1824 that said: "I can't hear right I need my hearing aids. I've been waiting for about two months. No responce [sic] and no hearing aids given to me." He expressed concern for his safety without hearing aids and noted that he can "barely speak English." Discussion of the request during the RAP meeting lasted 60 seconds, most of which was reciting what was written in the CDCR 1824. The ADA Coordinator then attempted to dismiss the request because the class member did not have hearing aids listed in SOMS. Another RAP member responded that when the class member turned them in as broken, they were removed from his receipt, and that he would be added to the waiting list for audiology appointments, which had been suspended during the pandemic. That concluded discussion of the CDCR 1824. The RAP did not inquire whether without his hearing aids, the class member was having difficulty accessing programs, services, and activities; did not investigate the class member's reported safety concerns; and did not discuss any alternatives or interim accommodations, including a pocket talker or informing housing officers of the need to ensure effective communication. In fact, the Interim Accommodation Procedure/Interview Worksheet was not completed at all.

Plaintiffs' counsel later interviewed the class member. He reported that because of his disability and limited English proficiency, he has difficulty communicating with staff. He reported that he often misses announcements, including announcements to "get down" during alarms. He reported concerns that he might be hurt by an officer due to his inability to hear commands. The RAP failed entirely to uncover and address those problems.

Finally, we note that some of the most troubling RAP responses were issued when the regular ADA Coordinator was on leave, and another Associate Warden was filling in. We were informed that one Associate Warden was not provided any training about the CDCR 1824 process prior to substituting for the ADA Coordinator in the RAP, which unsurprisingly led to seriously deficient RAP responses. *See, e.g.*, Email from Sara Norman, Plaintiffs' Counsel, to Adam Fouch, Assistant Deputy Director, Division of Adult Institutions, Terrible RAP Response to SATF DDP (Jan. 22, 2020); Email from Sara Norman, Plaintiffs' Counsel, to Kelly Mitchell, Assistant Deputy Director, Division of Adult Institutions, RAP Response from SATF (Nov. 15, 2019).[2]

Please explain what training and oversight system will be put in place at SATF to ensure that the CDCR 1824 process is running appropriately, including when there are new RAP members and when the ADA Coordinator or other regular RAP member is on leave.

III. THE INSTITUTION FAILS TO APPROPRIATELY RESPOND TO CDCR 1824S.

A. Denial of Accommodations Based on Rote Reference to "Policy and Procedure"

In a number of cases, the RAP denied a request for a disability accommodation based on a general and undefined reference to "policy and procedure." Such cursory denials fail the basic purpose of the RAP: to provide reasonable modifications to policy or procedure in light of a person's disability. *See* 28 C.F.R. § 35.130(b)(7) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability."); ARP § II.F ("The Department shall provide reasonable accommodations or modifications for known physical or mental disabilities").

First, in some cases, the RAP simply was wrong; there was no such policy and procedure. For example, the RAP denied one CDCR 1824 on the following grounds: "Per policy and procedure, a Sign Language Interpreter (SLI) is not required for Non-Due Process communication." Log No. SATF-D-20-2950. Both local operating procedure and court orders, however, require sign language interpretation for certain non-due process communications. *See, e.g.*, LOP 497, Sign Language Interpretation Services (rev. Apr. 2019); Order, Doc. 2345 (June 4, 2013); Order, Doc. 1045 (Jan. 18, 2007). This CDCR 1824 provides another example of why an experienced SSA should be assigned to the ADA office. In this case, the AGPA directed a correctional sergeant to gather more information about the request, but erroneously limited the scope of the interview as "to ensure he was not denied a SLI Interpreter for a Due Process issue"—the incorrect legal standard. *See* 128-B Closure Chrono (May 8, 2020).

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[2] We identified these RAP responses during our pre-tour document review and routed them to co-counsel in *Clark v. Newsom*.

Second, in other cases, we do not know whether there was in fact a "policy and procedure" regarding the general subject matter but, regardless, the RAP failed to consider whether a reasonable modification should be made in light of a person's disability. For example, a blind class member requested an emery board to file his nails because he could not "safely cut/clip [his] nails." *See* Log No. SATF-B-20-2798. On the Disability Verification Process Worksheet, medical staff wrote: "Patient is DPV, will benefit from the requested accommodation." Nonetheless, the RAP denied the request: "According to policy and procedure, emery boards are not authorized for your designation." The RAP did not identify the relevant policy or procedure. Only after Plaintiffs' counsel requested an explanation was the blind class member provided an emery board.

Third, the RAP also has identified the relevant policy but failed to recognize that it was inconsistent with the *Armstrong* Remedial Plan and Americans with Disabilities Act. In particular, a wheelchair user designated DPO requested a standing count accommodation. *See* Log No. SATF-G-19-7543. The RAP denied the request because OP 403 stated: "Inmates designated as **DPW** shall be allowed to sit on their bunk, or in their assigned wheelchair next to the bed." This is inconsistent with the plain terms of the *Armstrong* Remedial Plan and the ADA's mandate that reasonable accommodations be considered on a case-by-case basis. ARP § IV.I.6.

Fourth, the RAP also has both misstated the relevant policy or procedure and also failed to consider a modification to it. For example, at least two class members with mobility disabilities filed CDCR 1824s regarding access to the ADA tables in the dining hall. *See* Log Nos. SATF-G-20-2760 and 20-SATF-G-2829. The RAP denied both for the same reason: "The ADA tables that are located in the dining hall are meant for DPW designated inmates. You are being appropriately accommodated for your designation." But the relevant procedure does not by its plain language limit ADA tables to people with DPW codes; instead, it states that "wheelchair inmates," which presumably also includes people with DPO codes and people temporarily issued wheelchairs, have access to such tables and does not necessarily limit access to others. *See* LOP 203, General Population and Sensitive Needs Yard Feeding Procedures at 7 (rev. May 2020). And there is no indication that the RAP made any effort to understand why and whether non-wheelchair users might also require access to these areas, including difficulty navigating through crowded conditions to the non-ADA tables, not enough ADA workers, or not having a nearby area to store DME, including walkers. As a result, the RAP did not address the class member's concerns, either through ensuring their access to ADA tables or taking other action, such as ensuring a clear and open path of travel to other tables.

Finally, in some cases, the RAP failed to understand that existing policy and procedure resulted in discrimination against people with disabilities. For example, a wheelchair user reported that "when the phone sign-ups are called, everyone runs to get in line," but because his "wheelchair has to be pushed out of my cell," "the time slots I need to sign up for are already gone, & I get no call that day." *See* Log No. SATF-F-20-02761. The RAP response states that

"[a]n inquiry was conducted to verify the phone sign-up procedure" and that "[c]ustody staff stated that inmates are instructed via the Public Address System (PAS) within the housing unit when phone sign-ups are going to take place. Inmates are instructed to go to the officer podium with their ID and can sign up for one call slot at a time." The RAP response failed to understand that, in practice, this procedure discriminates against those people who, because of their disabilities, cannot get to the podium as quickly as their able-bodied peers.

In short, reference to undefined "policy and procedure" appeared to be little more than a perfunctory manner to dismiss valid class member requests for reasonable accommodations.

B. Denial of Accommodations Based on Custody Staff Opinions

Next, we were particularly concerned to see denials of accommodations based on lay custody staff opinions. It is well-established that "the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective." U.S. Dep't of Justice, Title II Technical Assistance Manual § II-7.1100; *see also* Cal. Code Regs. tit. 15, § 3483(g) ("A claimant or witness shall be interviewed if departmental staff responsible for reviewing a claim determine it would assist in resolving the claim.").

This was a particular problem in the Interim Accommodation Process (IAP). Interim accommodations "must be provided . . . when an inmate raises issues that, if true, would subject the inmate to a substantial risk of injury or other serious harm . . . ." *See* CDCR Form 1824 Reasonable Accommodation Request Process, Desk Reference Manual 2 (rev. Oct. 2017) (hereafter "1824 Desk Reference Manual").

For example, a class member reported that he cannot see and was unable to safely work in the kitchen. *See* Log. No. SATF-A-20-02643. The AGPA did not interview the class member about their disability and safety needs. Instead, the AGPA interviewed a sergeant. The IAP worksheet says only: "talked w/ staff supervising i/m to accommodate s, also spoke w 's' expectations to continue to work, and talk w/ supervisor of accommodations." There is no information about what, if any, accommodations were made. The class member reported to us that none in fact were provided, and he continued to be directed to push carts, which requires use of both hands and prevents him from using his white cane to safely navigate his surroundings, and often was near hot liquids, which he could not see, putting him at risk of scalding himself. *See* *Colwell v. Bannister*, 763 F.3d 1060, 1067 (9th Cir. 2014) (finding that vision disability can cause physical injury in the prison work environment where plaintiff "ran his hand through a sewing machine on two occasions while working in the prison mattress factory," "ran into a concrete lock, splitting open his forehead," and "bumps into other inmates who are not good-natured about such encounters, triggering fights on two occasions"). The RAP apparently conducted no further fact finding or analysis before issuing its denial, although its decision purported to be in

"consultation with the appropriate experts," instead directing the class member to file a CDCR 22 or speak with his counselor. It was not until Plaintiffs' counsel intervened over seven months later that the class member was referred to medical and subsequently reassigned.

In addition, a hard-of-hearing class member submitted a CDCR 1824, stating that he "cannot hear the intercom or when there [are] alarms and I'm being told to get down." *See* Log No. SATF-G-20-2688. The institution properly recognized that this may cause injury or other serious harm and completed the Interim Accommodation Procedure/Interview Worksheet. However, only two officers (and not the class member) were interviewed, and the interviewer noted, based on those interviews, "staff has had no issues with him" and "I/m is accessing programs." On that basis alone, the institution determined that an interim accommodation—including potentially informing all staff in the housing unit of the need to ensure effective communication of alarms and "get down" directions—was not required.

And someone with no DPP code submitted a CDCR 1824 requesting evaluation for inclusion in the DPP due to his limited mobility, including an inability to get up from the ground. *See* Log No. SATF-A-20-2466. Although the institution properly recognized that this may cause injury or other serious harm and completed the Interim Accommodation Procedure/Interview Worksheet, the AGPA interviewed only an officer and noted: "I/m accessing program services activities. Ambulating with a cane." The interview therefore was incomplete; there is no reference to the person's ability to get up and down from the ground during alarms, which may have necessitated issuance of a disability vest. And, again, it is unclear why the AGPA felt it appropriate to base her decision entirely to an officer's lay opinion.

Finally, a blind class member requested replacement headphones for his talking books player. The RAP response states, "You must present and submit your current headphones in order to receive a new pair. On 9/30/2020, staff spoke with you and tried to have you relinquish your headphones for exchange. You refused to surrender your headphones." *See* Log. No. SATF-B-20-03782. The class member, however, reported to Plaintiffs' counsel that he asked when the new headphones would arrive and whether they would be compatible with his talking books player. He reported that staff did not know the answers, so he declined to hand over his only headphones, which he needs to use his talking books player, which, due to pandemic program modifications and his blindness, is one of the few ways he has to pass the time. Again, it was only after Plaintiffs' counsel intervened that the problem was addressed.

We continued to see the same problems with the Interim Accommodation Process in the CDCR 1824s discussed during the RAP meeting on December 2, 2020. As can be seen by the examples on the next page, the AGPA (or designee) simply interviewed an officer; included talismanic and perfunctory language on the IAP worksheet about "access to programs, services, and activities"; and denied an interim accommodation.

Log No.	Summary of CDCR 1824	IAP Worksheet
B-20-04019	Severe pain in shoulder, back, hips, wrists, hand, and left knee, making it difficult to sit or stand for long periods of time and to write. Requests air cushion, back brace, and to be put on "medical disable status."	CCII interviewed an officer. The Interviewer Notes state in full: "States I/m is accessing all programs. Uses caregiver assistance." No interim accommodation provided.
C-20-04022	At times has difficulty bending and twisting, with significant pain from pressure on lower back. "It is not always a problem but when I am having a hard time I do not think I could prone out during an alarm if an officer told me to. I also have weakness in my wrist that makes it hard to get down because I can't put pressure on my hand." Requests mobility vest to alert officers to his disability during alarms, walker, back brace, and wrist brace.	AGPA interviewed a control booth officer. The Interviewer Notes state in full: "I/m is accessing program services activities & programs [sic]. Ambulating without assistance. Informed to use 7362 for mobility issues, may use ADA worker for assistance." No discussion of mobility vest for alarms (where ADA worker would not help). No interim accommodation provided.
D-20-04024	Has bad hips, ankles, and at times problems with gout, which makes it difficult and painful to walk up stairs. "I'm going to fall one of these days." Requests to be housed on the bottom tier.	AGPA interviewed an officer. The Interviewer Notes state in full: "I/m is accessing programs services & activities. Informed -s- to complete a 7362." No discussion of ability to walk up stairs. No interim accommodation provided.
D-20-04025	Has epilepsy/seizure disorder, his knees are "giving out," and is "permanently wheelchair bound." Is having difficulty accessing showers and changing clothes because "hands are locking up constantly daily." Has problems seeing out of both eyes. Requests a higher level of care and transfer to another facility because his disabilities are not being accommodated.	AGPA interviewed an officer. The Interviewer Notes state in full: "I/m is accessing showers program, services, and activities." No interim accommodation provided.

A dedicated SSA in the ADA office would help address these serious problems with the Interim Accommodation Process, which currently is handled by the AGPA and, when she is out of the office, other members of the appeals office. This would ensure that the relevant staff person has appropriate subject matter expertise and time to spend on this important process, which is meant to address "substantial risk of injury or other serious harm while the CDCR 1824 is being processed." *See* 1824 Desk Reference Manual at 2.

C. Denial of Accommodations Based on the COVID-19 Pandemic

We also are concerned by the institution's lack of thoughtful or creative thinking in response to reported disability-related barriers during the pandemic. The ADA and *Armstrong* Remedial Plan are not suspended during the pandemic. *See* Order, Doc. 3015 (July 20, 2020) (requiring "safe, accessible" housing of *Armstrong* class members during the pandemic); Order, Doc. 3072 (Sept. 9, 2020) ("Defendants must ensure that class members in quarantine and isolation have the same access to whatever programming, recreation, and outside communication is available to other people in quarantine and isolation."); *see generally* U.S. Dep't of Justice, Statement by the Principal Deputy Assistant Attorney General for Civil Rights Leading a Coordinator Civil Rights Response to Coronavirus (COVID-19) (Apr. 2, 2021) ("Ensure equal access for people with disabilities and avoid disability discrimination. COVID-19 has had a devastating and disproportionate impact on people with disabilities. Governments, health care providers, and long-term care facilities must comply with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504).").

Interim accommodations are particularly important during the pandemic, when medical encounters have been suspended or substantially restricted. Almost every RAP response we reviewed that required a specialty consult was simply deferred until these services can resume, with no indication that an interim accommodation was considered or provided. For example, as noted above, someone with no DPP code requested evaluation for inclusion in the DPP due to his limited mobility, including an inability to get up from the ground. *See* Log No. SATF-A-20-2466. The RAP wrote, "The DVP states that due to current restrictions regarding Coronavirus (COVID-19) precautions, all non-emergent evaluations/appointments are postponed until further notice or until new directives are received." (The RAP does not acknowledge that the DVP also stated: "Patient has a cane but no DPP code. He should be evaluated for DPP status.") We are concerned that no interim accommodation, including a disability vest, was considered or provided.

And one class member reported that he had a hearing disability, knows sign language, and was denied access to an accessible phone because it was not located in his building. *See* Log No. SATF-B-20-02105. The RAP denied the request on the grounds that "inmates are restricted to their housing units only, due to Coronavirus (COVID-19) pandemic." The institution altogether failed to identify that the class members was experiencing discrimination based on his disability and required equal access to telephone services. The issue was resolved only after Plaintiffs' counsel (and the Court Expert) intervened. *See* Memorandum, COVID-19 Non-Architectural Accommodations for Americans with Disabilities Act Class Members 2 (Jan. 16, 2021); Court Expert Report and Recommendation, Doc. 3048 at 6 (Aug. 19, 2020); Letters from Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (July 2 and 9, 2020).

Similarly, several class members submitted CDCR 1824s reporting that their access to auxiliary aids in the law library had been barred during the pandemic. For example, a class member designated DPV wrote that he "need[s] access to ADA Equipment (at Fac 'E' Library) to read + write." *See* Log No. SATF-E-20-02297. The RAP denied the request: "the Library is closed due to the Coronavirus (COVID-19). Inmates are restricted from libraries and equipment therein." The RAP further noted that the Education Department "plans on reestablishing library use for those with priority legal user status, exercising proper social distancing and personal protective equipment measures." There is no mention, however, of reestablishing library use for class members who require the auxiliary aids as an accommodation for their disabilities. The problem was not addressed for months and, again, only after Plaintiffs' counsel repeatedly raised concerns.[3] *See* Memorandum, Access to Auxiliary Devices in Libraries for Inmates with Vision Impairment Impacting Placement During COVID- 19 Pandemic (Aug. 13, 2020); Memorandum, COVID-19 Non-Architectural Accommodations for Americans with Disabilities Act Class Members 2 (Jan. 16, 2021) ("The Americans with Disabilities Act Coordinator (ADAC), or their designee, should make all reasonable efforts to allow access to items that are in the library and can consider bringing equipment to the housing unit, or other area, to allow such access.").

The institution should have recognized its obligations to ensure equal access to people with disabilities during the pandemic and sought guidance from headquarters as necessary. Instead, class members were denied access to essential accommodations for months.

D. Inadequate Disability Verification Process

We also continue to see errors in the Disability Verification Process ("DVP"). First, the RAP improperly denied requests based on stale medical encounters. *See, e.g.*, Log No. SATF-D-20-02686 (RAP response issued on June 1, 2020, denying request based on evaluation on January 13); 1824 Desk Reference Manual at 9 ("A new in-person medical evaluation of the claimed disability should be completed if . . . the prior evaluation is more than three months old.").

Second, the RAP improperly denied requests based on medical encounters that did not squarely address the issue. *See* Patrick Booth, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Plaintiffs' Comments on the Reasonable Accommodation Panel LMS Training Module 8 (Sep. 7, 2020) ("One common error that we see at a number of prisons is reliance on a

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[3] *See, e.g.*, Letter from Rita Lomio and Megan Lynch, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (Apr. 23, 2020); Letter from Rita Lomio and Megan Lynch, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (May 8, 2020); Letter from Rita Lomio and Skye Lovett, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (May 22, 2020); Email from Tania Amarillas, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (Jun. 23, 2020).

DVP within 3 months that does not really have anything to do with, much less squarely address, the requested accommodation.”). For example, a person requested a back brace or cane and reported difficulty walking up stairs and lifting heavy objects. *See* Log No. SATF-Z-20-02355. The RAP denied the request based only on a health care encounter two days after the person fell off the top bunk, because the RN noted “no bruising or redness was present, and your range of motion was normal.” That evaluation, however, was conducted in response to a 7362 reporting pain after the fall off of the top bunk. There was no indication in the medical record that a provider evaluated his disability and considered the request for a back brace or cane under either the medical necessity or reasonable accommodation standard.

Third, in some instances, the DVP was not completed. For example, a class member reported inability to stand or walk for long periods of time and requested a cane. *See* SATF-F-20-01340. The RAP improperly directed the class member “to submit a 7362 to medical requesting an evaluation of your feet.” An evaluation should have been conducted in response to the CDCR 1824 and the RAP should have given a final response as to the request for a reasonable accommodation; the class member should not have been directed to a different process. *See* 1824 Desk Reference Manual at 9. The RAP further asserted: “Custody staff has also been interviewed regarding your request. Custody has indicated you have been ambulating without assistance and accessing programs, services, and activities safely.” Again, it is entirely inappropriate for the institution to delay medical evaluations and/or deny disability accommodation requests based on lay observations of custody staff. *See* Patrick Booth, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Plaintiffs’ Comments on the Reasonable Accommodation Panel LMS Training Module 5 (Sep. 7, 2020) (“too often, staff do not interview the incarcerated person and instead rely on incomplete or unreliable information from staff”).

E. Inappropriate Language in RAP Responses Dissuading Class Members From Accessing the CDCR 1824 Process

Finally, RAP responses often contained confusing and inappropriate language suggesting that, in the future, people should not request disability accommodations or report disability discrimination through the CDCR 1824 process. In particular, RAP responses stated, “You are encouraged to utilize the appropriate avenues to address issues,” and then listed one or multiple different avenues, including the 602, 7362, or 22 processes. That improperly misinforms class members about, and discourages them from using, the CDCR 1824 process.

For example, a deaf class member who does not use sign language requested to be alerted to program changes with laundry services, noting “Dph needs to be notified if change in program-was not notified.” *See* Log No. SATF-G-20-3695. During the RAP meeting, the RAP recited the class member’s request, noted it would be placed on the non-compliance log, and tabled the matter for two weeks. That discussion took 40 seconds. There was no discussion of whether and

how the class member would receive effective communication of changes to laundry schedules, which are announced over the intercom. The RAP's written response then improperly suggested to the class member that he should not use the CDCR 1824 process to report failure to provide effective communication and resulting denial of access to programs, services, and activities, stating: "You are encouraged to utilize the appropriate avenues to address issues. To address issues with program schedules, you are encourage [sic] to submit a GA-22 to the facility supervisory staff."

In addition, a wheelchair user reported that tiles were missing in the ADA shower and, as a result, he fell and injured his right thumb. *See* Log No. SATF-F-20-02826. He requested, among other things, that the shower floor be fixed. The RAP response concluded: "You are encouraged to utilize the appropriate avenues to address requests or concerns." In this case, the RAP did not identify what, in its view, the "appropriate avenues" were.

* * * * *

Please explain what will be done to address the concerns outlined in this letter.

We also are concerned that poor RAP responses—some of which, as noted above, affirmatively discourage people from reporting problems through the CDCR 1824 process—may have resulted in *Armstrong* class members ceasing to request disability accommodations or report disability discrimination via a CDCR 1824. In fact, in the past two months, class members at SATF have written to tell us that they have little faith in the 1824 process:

"Oftentimes staff find every other excuse for denying an appeal and do not address the subject directly."
"This process [the 1824 process] does not work because instead of trying to do what's best for the disabilities they look for every way to deny the requested accommodation, until a court is involved."
"They simply lie or ignore the situation for some detail they want to address. This situation is laughably bad at SATF. I'm getting used to being ignored, frustrated, and unsupported."
"It [the 1824 process] is nothing more than a rubber stamp process."
"They base their decision on the minimal info from medical."

Please explain what will be done to address this problem and ensure that class members feel comfortable submitting CDCR 1824s to request disability accommodations or report disability discrimination.

We look forward to working with you and ADA staff at SATF on this important matter.

Sincerely yours,

Rita Lomio
Staff Attorney

Tania Amarillas
Investigator

cc: 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, 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, Alexandrea Tonis, Gently Armedo, Dawn Stevens, Jimmy Ly, Jay Powell (CCHCS)
Adriano Hrvatin, Sean Lodholz, Namrata Kotwani, Anthony Tartaglio, Trace Maiorino, Andrea Moon (OAG)

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

March 26, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
[redacted] [redacted] CSP-SAC

Dear Ms. Davis:

We write again with serious concerns about punitive action taken against people with disabilities at California State Prison, Sacramento (CSP-SAC), due to the institution's own and continued failure to provide accessible housing during the pandemic. We previously wrote to you about [redacted] [redacted] [redacted] who was issued an RVR after the institution failed for months to offer him appropriate lower bunk housing. *See* Letter from Gabriela Pelsinger & Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs (Mar. 3, 2021).

We now write regarding [redacted] who also was issued an RVR after his name, like Mr. [redacted] appeared on the Housing Restriction Compliance Report because he was not housed in a lower bunk. As explained in this letter, after speaking with Mr. [redacted] and reviewing the relevant RVR paperwork, it appears that both his and Mr. [redacted] RVRs were falsified. We demand a full and immediate investigation and swift corrective action.

In early December 2020, Mr. [redacted] was housed in C6-[redacted]U, notwithstanding the fact that he had a lower bunk chrono. On December 15, 2020, Plaintiffs informed Defendants that thirteen people at CSP-SAC were housed not in compliance with lower tier/lower bunk housing restrictions. *See* Email from Amber Norris, Prison Law Office, to Sean Lodholz, Office of the Attorney General, Armstrong | concerns re lower/lower housing at CSP-SAC (Dec. 15, 2020). This information was based on a Housing Restriction Compliance Report dated December 11, 2020. Mr. [redacted] was on that list. Plaintiffs asked if CSP-SAC did not have enough lower tier/lower bunk housing to accommodate people with those housing restrictions and, if so, what would be done to address the shortage of accessible housing. *See id.*; *see also* Order, Doc. 3015 (July 20, 2020) (requiring safe, accessible housing of class members during the pandemic). We have not yet received a response to this email, **101 days later**.

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During staff interviews in January 2021, we learned that the institution had issued RVRs to at least two people for refusing to move to a lower bunk after their names appeared on Housing Restriction Compliance Reports. The institution subsequently produced RVR paperwork for Mr. [REDACTED] and Mr. [REDACTED] Mr. [REDACTED] as you may recall, disputed the contents of the RVR and staff's representation that he had refused to attend the hearing where he was found guilty.

Upon reviewing the two RVRs, we were disturbed to see that the supporting evidence appeared to be simply copied and pasted in—with staff alleging that both Mr. [REDACTED] and Mr. [REDACTED] somehow had made identical, detailed statements in response to being asked to move to different housing. As shown below, Sergeant [REDACTED], who was the Reporting Employee for both RVRs, alleged that on the morning of December 16, 2020, both Mr. [REDACTED] and Mr. [REDACTED] separately stated, "Man, I already told your cops earlier that I'm not moving. You can't just expect me to live with just anyone. I'm not moving."

RVR LOG NO. 7051583, ISSUED TO [REDACTED]

EVIDENCE

The following evidence was used to support the findings:

AVSS Available: No

AVSS Impact:

Comments:

The preponderance of evidence submitted at the hearing substantiates the charge. This evidence included:

1.)The Reporting Employee Sergeant [REDACTED] states in part:

I explained to [REDACTED], per SOMS, he is currently assigned to FC6-[REDACTED]U and needed to immediately rehouse into a lower bunk assigned bed. [REDACTED] stated, "Man, I already told your cops earlier that I'm not moving. You can't just expect me to live with just anyone. I'm not moving." I gave [REDACTED] a direct order to accept a cellmate. [REDACTED] stated, "No."

RVR LOG NO. 7051585, ISSUED TO [REDACTED]

EVIDENCE

The following evidence was used to support the findings:

AVSS Available: No

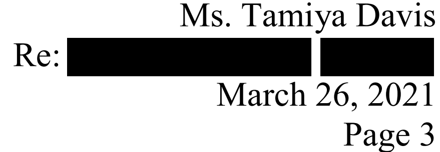
AVSS Impact:

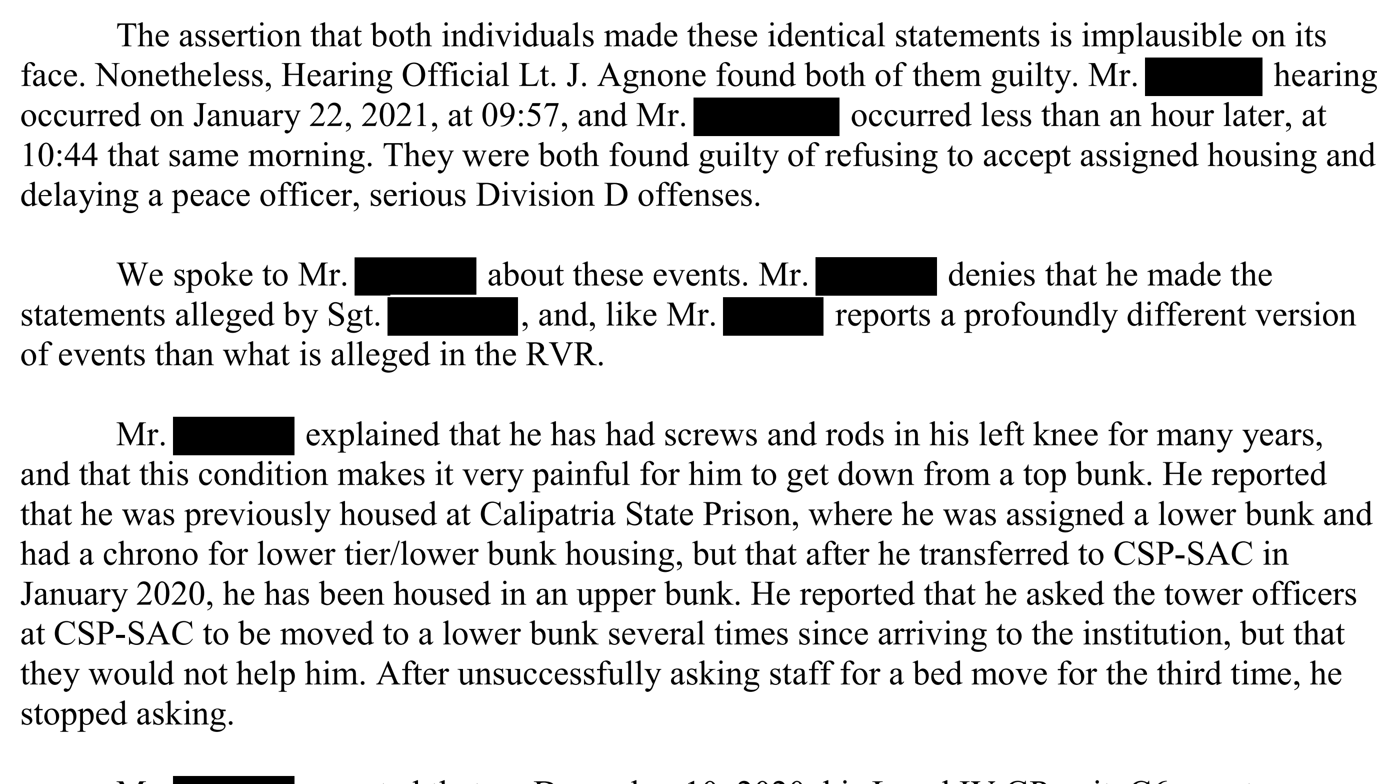
Comments:

The preponderance of evidence submitted at the hearing substantiates the charge. This evidence included:

1. The Reporting Employee, Sergeant [REDACTED] stated in part.

I explained to [REDACTED], per SOMS, he is currently assigned to FC6-[REDACTED]U and needed to immediately rehouse into a lower bunk assigned bed. [REDACTED] stated, "Man, I already told your cops earlier that I'm not moving. You can't just expect me to live with just anyone. I'm not moving."





The assertion that both individuals made these identical statements is implausible on its face. Nonetheless, Hearing Official Lt. J. Agnone found both of them guilty. Mr. [redacted] hearing occurred on January 22, 2021, at 09:57, and Mr. [redacted] occurred less than an hour later, at 10:44 that same morning. They were both found guilty of refusing to accept assigned housing and delaying a peace officer, serious Division D offenses.

We spoke to Mr. [redacted] about these events. Mr. [redacted] denies that he made the statements alleged by Sgt. [redacted], and, like Mr. [redacted] reports a profoundly different version of events than what is alleged in the RVR.

Mr. [redacted] explained that he has had screws and rods in his left knee for many years, and that this condition makes it very painful for him to get down from a top bunk. He reported that he was previously housed at Calipatria State Prison, where he was assigned a lower bunk and had a chrono for lower tier/lower bunk housing, but that after he transferred to CSP-SAC in January 2020, he has been housed in an upper bunk. He reported that he asked the tower officers at CSP-SAC to be moved to a lower bunk several times since arriving to the institution, but that they would not help him. After unsuccessfully asking staff for a bed move for the third time, he stopped asking.

Mr. [redacted] reported that on December 10, 2020, his Level IV GP unit, C6, went on quarantine. A few days later, a floor housing unit officer from C6 (whose name he does not recall) came to talk to him about his housing. The officer said that Mr. [redacted] had a lower tier/lower bunk chrono and that he needed to find himself a lower tier/lower bunk bed in the unit to move to. The officer also told Mr. [redacted] to fill out a medical slip to have the chrono removed. Mr. [redacted] reported that the officer did not at any point ask him whether he was safe or okay in his current housing assignment, nor did the officer ask him whether he would need any accommodations while he would continue to be housed in an upper bunk.

Mr. [redacted] explained that for the next several days, he attempted to find a lower tier/lower bunk bed in the unit where he might be able to move. Even though C6 was on quarantine, housing unit officers let him out of his cell during shower time to talk to other people in the unit, and he attempted to persuade other incarcerated people to allow him to move into their cell and take the lower bunk. Mr. [redacted] reported that the people that he spoke to were not comfortable with taking a new cellmate during the COVID-19 pandemic, especially as the unit was in the middle of quarantine, and that they did not want to give up their own lower bunks. He reported that he was unable to find himself a lower tier/lower bunk. Mr. [redacted] also stated that he turned in a 7362 requesting the removal of his lower bunk chrono because the officer had directed him to do so.

Mr. [REDACTED] reported that on or around the morning of December 16, 2020, housing unit officers in C6 asked him if he had found a compatible cellmate that he could move in with. Mr. [REDACTED] stated that he explained to the officers that while he had talked to everyone on the first tier of the unit, nobody was willing to voluntarily accept him as a cellmate. According to Mr. [REDACTED] the officers then told him to cuff up and said that they would be moving him to "the hole." The officers told him, "We have an audit and we have to get you guys out of the system for those bunks." The officers also told him that they were writing him up. He explained that he was then moved to the cage in front of the watch office on C yard, where he remained for approximately thirty minutes. Staff then moved him to a holding cell, where he reports that he remained from around 8:45 in the morning to 2:30 or 3:00 in the afternoon. Then he was sent back to his original cell. (Mr. [REDACTED] medical records appear to corroborate these events. A note from RN Balo from 8:40 in the morning on December 16 states, "I/P NOT IN THE CELL PER CO IN THE HALL." There is also an ASU pre-placement note that documents a December 16 assessment conducted by RN Ozcan.) **Mr. [REDACTED] reported that at no time did staff provide him with the opportunity to move to a lower bunk in a different cell.**

On January 5, 2021, Mr. [REDACTED] was seen by P&S Kumar for a blood pressure log review and to update his chronos. The provider's notes say that Mr. [REDACTED] "stated he does not want lower bunk or lower tier chrono." The provider updated Mr. [REDACTED] 7410 to remove his lower tier and lower bunk housing restrictions. However, Mr. [REDACTED] reported to Plaintiffs' counsel that he only agreed to remove the chrono because of pressure from custody. He stated that because of the pain he experiences getting down from the top bunk, he would actually prefer to have the lower bunk chrono and to be housed in a lower bunk.

On January 22, 2021, CSP-SAC conducted a disciplinary hearing for Mr. [REDACTED] RVR. Mr. [REDACTED] reported that during the hearing, he had requested that the other residents of the C6 bottom tier be called as witnesses. He explained that he had asked to call those witnesses because they could attest that he had asked them if they would be willing to accept him as a cellmate on the lower bunk. Mr. [REDACTED] explained that he had hoped to demonstrate to the hearing officer that he had followed his housing officer's instructions and attempted to find a new housing assignment for himself. However, Mr. [REDACTED] reported that he was not permitted to call any witnesses during the RVR hearing. The disciplinary hearing results fail to document Mr. [REDACTED] request for witnesses. He was found guilty of refusing to accept assigned housing and delaying a peace officer, and sanctioned with 30 days of credit loss and a 30-day loss of phone privileges. On February 3, 2021, CDO S. Richmond affirmed the hearing results and chose not to mitigate the sanctions. (For the same alleged conduct, Mr. [REDACTED] inexplicably received 90 days loss of credit and privileges.)

We are profoundly concerned and disturbed by Mr. [REDACTED] experiences at CSP-SAC. It is, of course, inappropriate for staff to direct an incarcerated person to find himself accessible

housing entirely on his own under any circumstances, but it is particularly alarming for staff to do so within a quarantined unit during a pandemic. It is unacceptable that, when CSP-SAC was alerted to the fact that an individual in its care was housed in a location that was unsafe and inaccessible, the institution did not offer him accessible housing but instead pressured him to relinquish a documented disability accommodation and then punished him. It appears that the institution's response to an issue of disability noncompliance was to intimidate, threaten, and punish Mr. [redacted] for the apparent offense of requiring accessible housing.

As we explained previously, we asked the CSP-SAC ADA Coordinator in January 2021 why it was necessary to issue an RVR in these situations. She responded, "Because they will not come off the [Housing Restriction Compliance] report until the doctor removes their chrono. We will continually be non-compliant, that person will keep coming up on that report as housed inappropriately." *See* Letter from Gabriela Pelsinger & Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, [redacted] CSP-SAC at 3 (Mar. 3, 2021). Again, we reiterate our strong objection to this practice at CSP-SAC, particularly in light of the information outlined in this letter.

Please conduct a comprehensive review of how the institution handled the issues set forth in this letter and report on your findings. Please place all allegations on the accountability log. Please dismiss the RVR that was issued to Mr. [redacted] on December 16, 2020.

Given the seriousness of these allegations, we will be reaching out separately to request to meet and confer about these issues. We ask that Defendants be prepared to explain whether any other institution also used CSP-SAC's punitive and discriminatory approach to clearing their Housing Restriction Compliance Report and what corrective action has been or will be taken.

Thank you for your immediate attention to this matter.

Sincerely yours,

Gabriela Pelsinger
Investigator

Rita Lomio
Staff Attorney

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, 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, Alexandrea Tonis, Gently Armedo, Dawn Stevens, Jimmy Ly, Jay Powell (CCHCS)
Adriano 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
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

March 3, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
[REDACTED] CSP-SAC

Dear Ms. Davis:

We write regarding [REDACTED] an *Armstrong* class member who has experienced disability-based discrimination at California State Prison, Sacramento (CSP-SAC), during the pandemic. Since December 15, 2020, Plaintiffs twice informed Defendants that Mr. [REDACTED] was in inaccessible housing because he was not provided a lower bunk, as confirmed by multiple Housing Restriction Compliance Reports. Defendants did not respond to our emails and, apparently because Mr. [REDACTED] at the time did not have a DPP code, the institution did not complete a CDCR 128-B for him. (Mr. [REDACTED] has since been assigned a DPP code of DNM.)

We were alarmed to learn during the recent *Armstrong* monitoring tour of CSP-SAC that, in the meantime, the institution issued and found Mr. [REDACTED] guilty of an RVR for refusing to move to a lower bunk in a different cell. Mr. [REDACTED] informed us that he declined to move because he was offered a lower bunk only in a cell with someone with an incompatible security threat group (STG) affiliation—a particular concern at an institution with, as described by the *Plata* court experts, a "violent and unstable culture." *See* Doc. 3163, Joint Case Status Conference Statement, *Plata v. Newsom*, No. 01-1351 JST at 6 (N.D. Cal. Oct. 29, 2019). For the reasons set forth below, we ask that the RVR be dismissed and that Defendants conduct a comprehensive review of how CSP-SAC handled this housing noncompliance issue.

In early December 2020, Mr. [REDACTED] was housed in C6-[REDACTED]U at CSP-SAC, despite having a lower bunk chrono. On December 15, 2020, Plaintiffs' counsel sent an email reporting that Mr. [REDACTED] was inappropriately housed in an upper bunk and had been on the Housing Restriction Compliance Report since at least November 17, 2020. *See* Email from Amber Norris, Armstrong | concerns re lower/lower housing at CSP-SAC, (Dec. 15, 2020). We requested that Mr. [REDACTED] be moved to a lower bunk and evaluated for a DNM code. *See* Order, Doc. 3015 (July 20, 2020) (requiring safe, accessible housing of class members during the pandemic).

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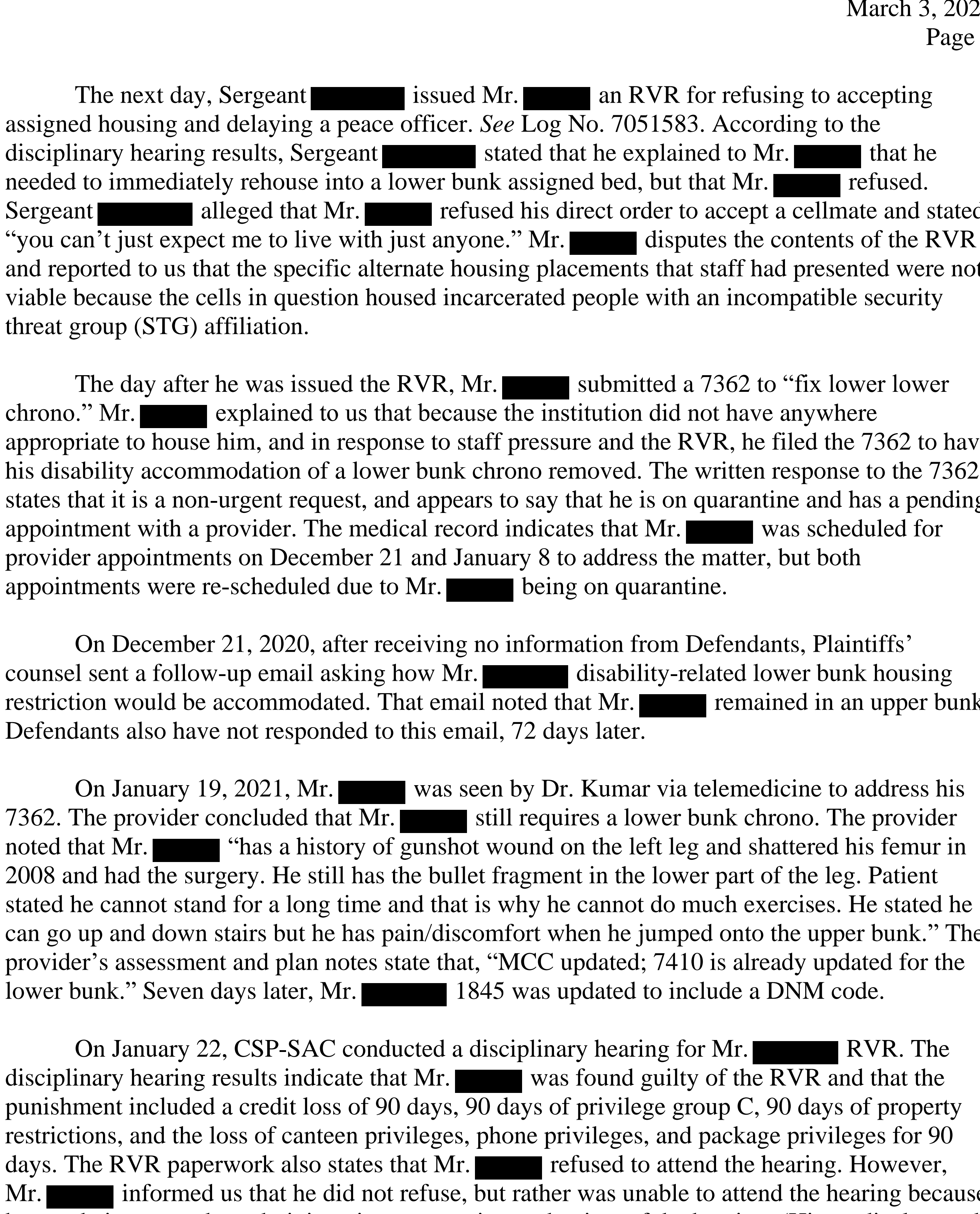

The next day, Sergeant ████ issued Mr. ████ an RVR for refusing to accepting assigned housing and delaying a peace officer. *See* Log No. 7051583. According to the disciplinary hearing results, Sergeant ████ stated that he explained to Mr. ████ that he needed to immediately rehouse into a lower bunk assigned bed, but that Mr. ████ refused. Sergeant ████ alleged that Mr. ████ refused his direct order to accept a cellmate and stated, "you can't just expect me to live with just anyone." Mr. ████ disputes the contents of the RVR and reported to us that the specific alternate housing placements that staff had presented were not viable because the cells in question housed incarcerated people with an incompatible security threat group (STG) affiliation.

The day after he was issued the RVR, Mr. ████ submitted a 7362 to "fix lower lower chrono." Mr. ████ explained to us that because the institution did not have anywhere appropriate to house him, and in response to staff pressure and the RVR, he filed the 7362 to have his disability accommodation of a lower bunk chrono removed. The written response to the 7362 states that it is a non-urgent request, and appears to say that he is on quarantine and has a pending appointment with a provider. The medical record indicates that Mr. ████ was scheduled for provider appointments on December 21 and January 8 to address the matter, but both appointments were re-scheduled due to Mr. ████ being on quarantine.

On December 21, 2020, after receiving no information from Defendants, Plaintiffs' counsel sent a follow-up email asking how Mr. ████ disability-related lower bunk housing restriction would be accommodated. That email noted that Mr. ████ remained in an upper bunk. Defendants also have not responded to this email, 72 days later.

On January 19, 2021, Mr. ████ was seen by Dr. Kumar via telemedicine to address his 7362. The provider concluded that Mr. ████ still requires a lower bunk chrono. The provider noted that Mr. ████ "has a history of gunshot wound on the left leg and shattered his femur in 2008 and had the surgery. He still has the bullet fragment in the lower part of the leg. Patient stated he cannot stand for a long time and that is why he cannot do much exercises. He stated he can go up and down stairs but he has pain/discomfort when he jumped onto the upper bunk." The provider's assessment and plan notes state that, "MCC updated; 7410 is already updated for the lower bunk." Seven days later, Mr. ████ 1845 was updated to include a DNM code.

On January 22, CSP-SAC conducted a disciplinary hearing for Mr. ████ RVR. The disciplinary hearing results indicate that Mr. ████ was found guilty of the RVR and that the punishment included a credit loss of 90 days, 90 days of privilege group C, 90 days of property restrictions, and the loss of canteen privileges, phone privileges, and package privileges for 90 days. The RVR paperwork also states that Mr. ████ refused to attend the hearing. However, Mr. ████ informed us that he did not refuse, but rather was unable to attend the hearing because he was being moved to administrative segregation at the time of the hearing. (His medical record

appears to confirm his reports. There is an ASU pre-placement note documenting a January 22 assessment conducted by RN Kopi. That note does not explain why Mr. [redacted] was being moved to restrictive housing.) As you know, false "refusals" have been a pervasive and longstanding problem at CSP-SAC, and have been previously reported and investigated through *Plata* and *Armstrong*. We are deeply concerned that this practice may be continuing and ask that this allegation be investigated immediately.

Mr. [redacted] medical records indicate that he remained in restrictive housing in the STRH, Z1-A-104, at least until February 5, 2021, if not longer. He is presently housed in B2-[redacted]L, but it is not clear when he was moved out of restrictive housing. His medical records also do not explain why Mr. [redacted] was moved to restrictive housing in the first place, including whether it was related to his need for accessible housing. Mr. [redacted] reported that he is dissatisfied with his housing on Facility B because the facility lacks the jobs and programming opportunities that were available to him on Facility C, without which he will be unable to earn an earlier parole date.

During the *Armstrong* monitoring tour in January 2021, Plaintiffs' counsel spoke to ADA Coordinator Rojas about Mr. [redacted] situation and the institution's mechanisms for ensuring that people are appropriately housed in compliance with lower tier/lower bunk housing restrictions. Ms. Rojas explained that she reviews the Housing Restriction Compliance Reports and asks custody staff to move anyone with a lower bunk/lower tier restriction who is not appropriately housed. She explained that if a person refuses to move, they are issued an RVR, even if the person says they no longer need the housing disability accommodation. She explained that staff then refer people who refused bed moves to a medical provider for an evaluation to determine if they still require lower/lower restrictions. When asked why it is necessary to issue an RVR in these situations, Ms. Rojas stated, "because they will not come off the [Housing Restriction Compliance] report until the doctor removes their chrono. We will continually be non-compliant, that person will keep coming up on that report as housed inappropriately." We strongly object to this practice, both in general and as applied to Mr. [redacted] in light of the information outlined in this letter. It singles out and discriminates against people with disabilities and represents an inappropriate use of punitive measures.

We request the following:

1. Please conduct a comprehensive review of how the institution handled the issues set forth in this letter and report on your findings. Please place all allegations on the accountability log.

2. Please explain why Mr. [redacted] was moved to restrictive housing and explain how long he was housed there. Please explain why Mr. [redacted] is now housed on Facility B. Please provide all related documentation.

3. Please dismiss the RVR that was issued to Mr. [redacted] on December 16, 2020.

4. Please dismiss any and all additional RVRs, including counseling chronos, that were issued in response to people appearing on the Housing Restriction Compliance Reports and declining to move. Please provide a list of all such RVRs, copies of all RVR paperwork, and documentation establishing that they were dismissed.

5. Please investigate and report on whether any other institution also used CSP-SAC's punitive and discriminatory approach to clearing their Housing Restriction Compliance Report and explain what corrective action has been or will be taken.

6. Please provide all direction issued to the institutions regarding how to address Housing Restriction Compliance Reports.

Thank you for your prompt attention to this matter.

Sincerely,

Gabriela Pelsinger

Gabriela Pelsinger
Investigator

Rita Lomio
Staff Attorney

cc: Mr. [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, Landon Bravo, Laurie Hoogland (DAI)
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EXHIBIT D

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

BY EMAIL ONLY

May 13, 2021

Bruce Beland
CCHCS Office of Legal Affairs

Tamiya Davis
CDCR Office of Legal Affairs

Re: *Armstrong v. Newsom*
Defendants' Failure to Protect People with Disabilities After Multiple Class Member Homicides at SATF

Dear Mr. Beland and Ms. Davis:

Over the last two years, seven incarcerated people have been murdered on the Level II and IV yards of the California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF). Five were *Armstrong* class members, and four were over 62 years of age, including an elderly man with incontinence who is believed to have been killed by his cellmate just days ago.

Earlier this year, the Court found credible class members' testimony regarding a culture at SATF "of staff targeting inmates with disabilities and other vulnerable inmates for mistreatment, abuse, retaliation, and other improper behavior," and ordered remedial action. *See* Order, Doc. 3217 at 40 (Mar. 11, 2021). Nonetheless, just last week, people who identified themselves as employed at SATF posted hateful public comments celebrating the murders of *Armstrong* class members who had underlying sex offense convictions. And, during interviews with our clients over the past few weeks, we continue to receive reports that staff at SATF, particularly those assigned to SNY yards, ridicule and harass class members because of their disabilities, disclose information about their underlying convictions, spread other rumors that put class member lives in danger, and do not take class member safety concerns seriously. One class member reported that after he told an officer that he had witnessed someone assault a wheelchair user, the officer responded, "I don't give a fuck." Many class members have refused to let us disclose reports of serious staff misconduct, even anonymously, because they are terrified of how staff will respond.

These are real and urgent concerns. Seventy-eight percent of the over 800 class members at SATF are housed on SNY or NDPF/EOP yards. Many are elderly, have significant and isolating disabilities, and have underlying sex offense convictions. This puts them at significant risk of harm from both staff and incarcerated people. *See* Order, Doc. 3217 at 61 (Mar. 11, 2021) (finding that "staff target inmates with disabilities and other vulnerable inmates for

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mistreatment"); Office of the Inspector General, Special Review: High Desert State Prison at 20 (Dec. 2015) ("The dangers associated with an inmate's paperwork and R suffix are all too real.").

As explained in this letter, Defendants must take immediate action to protect *Armstrong* class members at SATF, including through swift and meaningful disciplinary action, improved staff training, and a system to review class member homicides and other significant events to identify whether any policy or procedure revisions should be made to protect class members.

________ . . . ________

I. *ARMSTRONG* CLASS MEMBER HOMICIDES AT SATF, 2019 - PRESENT 2

II. HATEFUL PUBLIC COMMENTS APPARENTLY BY SATF MEDICAL STAFF CELEBRATING DEATHS OF *ARMSTRONG* CLASS MEMBERS 3

III. DEFENDANTS' FAILURE TO CONDUCT A COMPREHENSIVE REVIEW AND TAKE ACTION TO PROTECT *ARMSTRONG* CLASS MEMBERS 6

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I. *ARMSTRONG* CLASS MEMBER HOMICIDES AT SATF, 2019 - PRESENT

In 2019, a 72-year-old, hard-of-hearing class member who used a walker "was found on the floor covered in blood from waist to head, and laying supine in a puddle of blood." Progress Note – Nurse (Sept. 3, 2019). We heard from multiple people that the class member made repeated requests for help from staff before his death, expressing his fear and anxiety over living in the Level II dorm on Facility G and dealing with other incarcerated people, including the person with whom he lived and who now is charged with his murder, and that staff did not help.

In 2020, two class members—a 62-year-old, full-time wheelchair user and a 48-year-old Deaf man—were bludgeoned to death on another Level II yard by someone who lived in their dorm. The person who confessed to the killings said that he had wanted to be transferred from the dorm, had told staff that he would attack someone if he was not, and, when staff ignored him, had targeted two vulnerable people with disabilities who had underlying sex offense convictions. We heard from multiple people that, on the day of his death, the Deaf class member tried to ask housing officers and a counselor for help and protection from the person now suspected of his murder, and that staff did not help or call a sign language interpreter.

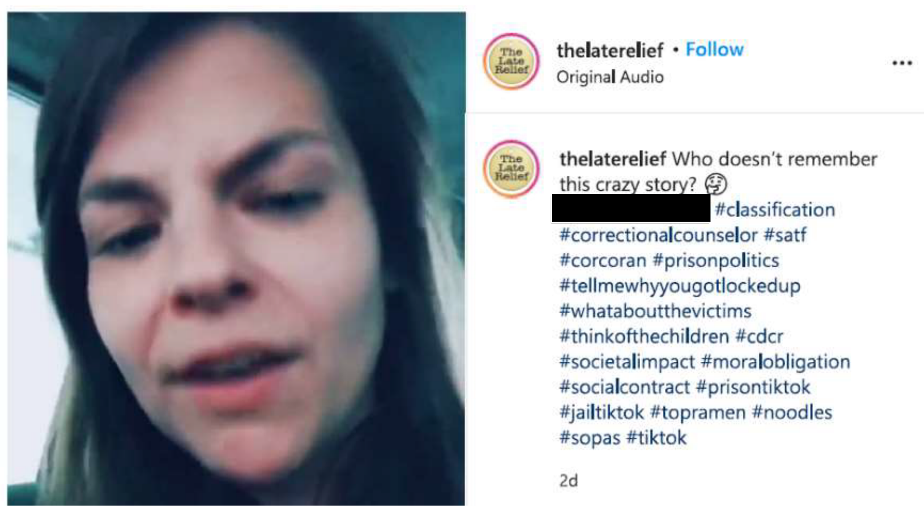
Also in 2020, a 64-year-old class member with no DPP code but with documented disability-related Durable Medical Equipment and housing restrictions died after sustaining multiple stab wounds to his body and face after he was assaulted by two incarcerated people.

And, last Thursday, a 67-year-old, hard-of-hearing wheelchair user with incontinence was found dead in his cell in a puddle of blood. *See* Progress Note – Nurse (May 6, 2021). The death is being investigated as a homicide; the class member's 37-year-old cellmate has been identified as a suspect. The class member had an underlying sex offense conviction.

II. HATEFUL PUBLIC COMMENTS APPARENTLY BY SATF MEDICAL STAFF CELEBRATING DEATHS OF *ARMSTRONG* CLASS MEMBERS

Notwithstanding the Court's order two months ago finding staff mistreatment of people with disabilities and ordering increased staff accountability, it appears that staff at SATF continue to disregard the safety of class members. In fact, two people who identify themselves as employed at SATF posted public comments last week rejoicing in the fact that two *Armstrong* class members had been bludgeoned to death. Last week, The Late Relief, an Instagram account with over 17,000 followers, re-posted a video on Instagram of a prominent TikTok user talking about how she donated money to [REDACTED], who is accused of murdering two *Armstrong* class members at SATF last year ("I just hope [Mr. [REDACTED]] is eating top-notch ramen"). The deceased class members, as noted above, both had underlying sex offense convictions.

The Late Relief added the following annotation: "Who doesn't remember this crazy story? [REDACTED] #classification #correctionalcounselor #satf #corcoran #prisonpolitics #tellmewhyyougotlockedup #whataboutthevictims #thinkofthechildren #cdcr #societalimpact #moralobligation #socialcontract #prisontiktok #jailtiktok #topramen #noodles #sopas #tiktok."



Several people who appear to work at SATF posted public comments to this post.

First, someone with the username wrote: "Was there when it happened. Epic." When questioned whether she worked at SATF and said he did not recognize her, she responded: "ummm I think I know where I work. Been there for 3 years :)"

Was there when it happened. Epic.
2d 14 likes Reply

Hide replies

I was off that day 😞😞😞
2d 1 like Reply

I don't think you work at satf do you? I don't recognize you.
1d Reply

darn it!
1d 1 like Reply

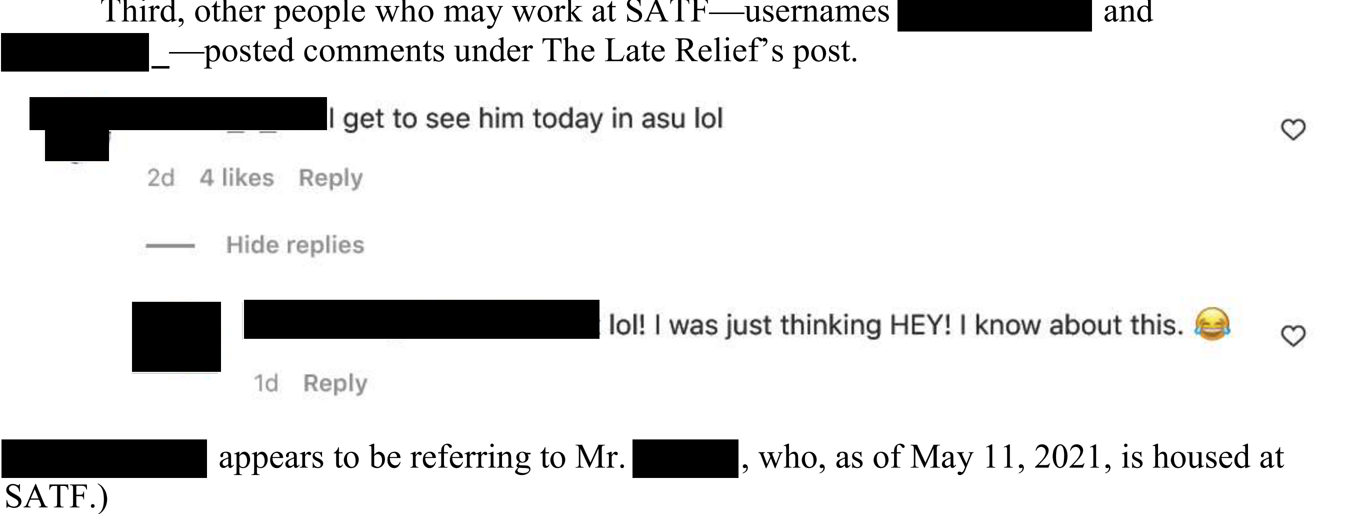
ummm I think I know where I work. Been there for 3 years :)
1d 1 like Reply

We believe may be , an who responded to the scene and who has worked at SATF since . *See* "). It is not clear what was "epic" about the event; according to the medical record, responding staff found the Deaf class member's "skull open and separated visible brain matter." *See* First Medical Responder (Jan. 16, 2020).

Second, as seen in the above screenshot, someone with the username responded to 's post with "I was off that day," followed by three sad face emojis. And responded, "@ darn it!" also wrote, "He's the SATF Batman. The hero we needed but not the one we deserve."

He's the SATF Batman. The hero we needed but not the one we deserve
2d 13 likes Reply

Third, other people who may work at SATF—usernames [redacted] and [redacted]_—posted comments under The Late Relief's post.



[redacted] appears to be referring to Mr. [redacted], who, as of May 11, 2021, is housed at SATF.)

These public comments apparently from medical and custody staff are abhorrent and unprofessional. They provide a disturbing window into the mindset of the staff assigned to protect and care for *Armstrong* class members at SATF, and are entirely consistent with our class members' reports that some medical staff belittle, ridicule, and taunt them. The comments also implicate concerns we raised previously regarding accountability of healthcare staff and whether adequate channels and support are available to allow and require clinical staff to safely report any misconduct that they observe. *See* Letter from Gay Grunfeld, Plaintiffs' Counsel, to J. Clark Kelso, Receiver, *et al.*, Plaintiffs' Staff Misconduct Motions in *Armstrong*, and the Duty of Mental Health and Medical Staff to Report Violence Against People with Disabilities at 5 (July 27, 2020). (We have not received a response to this letter over nine months later.)

Defendants must immediately investigate and discipline all staff who posted comments celebrating the deaths of *Armstrong* class members. The comments are inflammatory, jeopardize the safety and security of the prison, and place incarcerated people, particularly those with underlying sex offense convictions, at great risk of serious harm or death. These comments constitute multiple violations of the CDCR Disciplinary Matrix, including but not limited to discourtesy toward inmates; endangering self, fellow employees, and inmates; disruptive, offensive, or vulgar conduct which causes embarrassment to the Department; failure to observe and perform within the scope of training; and intentional failure to intervene or attempt to stop misconduct by another employee. *See* DOM § 33030.19; Gov't Code § 19572(t) ("Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.").

Staff who rejoice in the murder of their patients should be terminated. If not terminated they should be reassigned to positions where they do not come in contact with patients.

In addition, SATF must immediately re-train all custody, healthcare, and other staff that unprofessional conduct on- or off-duty (including on social media) and disregard for patient lives will not be tolerated, that they must report on- and off-duty misconduct by their colleagues, and that they must take safety concerns seriously. This conduct would not be tolerated in any professional workplace, and it should not be tolerated in CDCR.

III. DEFENDANTS' FAILURE TO CONDUCT A COMPREHENSIVE REVIEW AND TAKE ACTION TO PROTECT *ARMSTRONG* CLASS MEMBERS

Defendants have made no meaningful effort to address the urgent problems at SATF and to protect *Armstrong* class members. Plaintiffs' reports of staff retaliation against two class members on the Level IV SNY yard for requesting disability-related help and staff attempts to incite other incarcerated people against them have been pending response for over 245 and 323 days.[1] Even when we do receive a response to an advocacy letter, Defendants fail to address—or even mention—allegations that officers put a class member's life at risk by disclosing the underlying conviction offense and spreading rumors around the incarcerated population.[2]

Plaintiffs' attempts to propose modest policy changes to protect class members have gained no traction and have been met largely with indifference. During a meeting on March 11, 2021, Defendants conceded that the only investigation into the gruesome killing of a Deaf class member and a full-time wheelchair user is a criminal homicide investigation by an outside agency, and that CDCR had no role in scoping that review and had not otherwise directed a review of the events leading up to the homicides to identify areas for improvement or action.

In the absence of independent action by Defendants, Plaintiffs conducted a narrow review of the murder of the Deaf class member last year and, in September 2020, proposed corrective actions, including related to the housing of Deaf class members upon transfer to a new yard and effective communication when a Deaf class member raises safety concerns. *See* **Attachment A**.

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1 *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (June 22, 2020); Letter from Rita Lomio & Skye Lovett, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs (Sept. 8, 2020).

2 *See, e.g.*, Letter from Rita Lomio & Skye Lovett, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, at 2 n.1 (Aug. 25, 2020) (noting that class member "has heard from others that officers share information and spread rumors about his underlying conviction" and that, as a result, he does not go to yard); Letter from Skye Lovett & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, at 3 n.2 (May 22, 2020) (same); Letter from Gannon E. Johnson, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs' Counsel (May 10, 2021).

Defendants' response was woefully inadequate. *See* **Attachment B**. As a result, we scheduled a meet and confer. Although Plaintiffs provided an agenda with a list of detailed questions a month in advance of the meeting, CDCR officials were entirely unprepared to discuss the issues and, when pressed for further information, made statements that contradicted and undermined what they had written in their letter. A summary appears in **Attachment C**. Furthermore, although Defendants claimed that they had opened an investigation into staff's failure to call a sign language interpreter after the Deaf class member raised safety concerns immediately before he was bludgeoned to death, Plaintiffs found no evidence of that on the non-compliance logs.

Defendants' inaction in the face of ongoing deaths of class members at SATF must end. Many of our clients at SATF quite reasonably have given up on reporting safety concerns and staff misconduct because they do not think anything will be done to help them and they believe that instead they will be retaliated against through unprofessional cell searches, false RVRs, and/or disclosure of underlying convictions or other information that could lead to assaults by incarcerated people. Even those who do allow us to disclose their name say things like, "If I get killed in here because of it, make sure this never happens to anyone else."

We request the following:

1. **Defendants must revise the Disciplinary Matrix. Currently, the base penalty for "endangering inmates" is a 1-2-day unpaid suspension, and the maximum penalty is a 5% salary reduction for up to a year or suspension without pay for up to 12 work days. That is not proportional to the serious harm and death that our class members may suffer as a result of staff's actions, particularly in spreading rumors about class members.**[3]

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[3] *See* Letter from Michael Freedman, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, and Joanna B. Hood, Office of the Attorney General, Objections to Defendants' Proposed Revisions to the Employee Discipline Matrix at 3 (Nov. 12, 2020) ("Plaintiffs requested that the base penalty should be increased to 9 if there is an intent to endanger an incarcerated person. Plaintiffs also proposed that there could be two categories for this violation—one for intentional endangerment that should result in termination and one for negligent endangerment that could carry a lower penalty in the 3-6 range. Defendants' refusal to make changes to this provision is unacceptable. If endangering an incarcerated person is punished less severely than taking home a box of pens, Defendants will never solve the problems at RJD or its other facilities."); Office of the Inspector General, Special Review: High Desert State Prison 20 (Dec. 2015) ("In May 2013, on an SNY facility (not HDSP), an officer discovered an inmate lying unresponsive on the floor of his cell with a sheet pulled over him and a classification document resting on top of the sheet. There was a ligature around the inmate's neck, wound tight by a

2. **Defendants must develop a system to review significant events resulting in serious harm to *Armstrong* class members to determine all contributing factors and whether there should be any disciplinary action or policy or procedure revisions, including related to provision of disability accommodations or other protections for vulnerable people with disabilities.**

3. **Defendants must develop a plan to protect *Armstrong* class members at SATF, including a review of its classification system, the housing of vulnerable people with disabilities, and provision of single cell status.**

4. **Defendants must reconsider and re-issue their response to Plaintiffs' recommendations following the killing of *Armstrong* class members at SATF in January 2020, addressing the issues outlined in Attachment C. Defendants also must respond to our repeated requests for information regarding any investigations into staff's failure to provide a sign language interpreter in the hours before the Deaf class member's death after he unsuccessfully attempted to communicate his well-founded safety concerns to staff.**

Thank you for your immediate attention to this matter.

Sincerely yours,

/s Tovah Ackerman
Tovah Ackerman
Investigator

/s Rita Lomio
Rita Lomio
Staff Attorney

cc: Ed Swanson, Court Expert
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Gannon Johnson, Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jilian Hernandez, Dawn Lorey, Laurie Hoogland (DAI)

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connected State-issued cup, and blood near his head. The classification document found on the deceased inmate noted that his commitment offense was for lewd and lascivious acts with a child under 14 years of age.").

Robert Gaultney, Saundra Alvarez, Tabitha Bradford, Tammy Foss, John Dovey, Robin Hart, Joseph (Jason) Williams, Amy Padilla, Jason Anderson, Vimal Singh, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis, Dawn Stevens, Alexandrea Tonis, Jimmy Ly, Jay Powell, Gently Armedo, Joshua (Jay) Leon Guerrero (CCHCS)
Adriano Hrvatin, Trace Maiorino, Sean Lodholz, Anthony Tartaglio, Namrata Kotwani, Andrea Moon (OAG)

EXHIBIT E

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

Ernest Galvan
Email: egalvan@rbgg.com

April 14, 2021

PRIVILEGED AND CONFIDENTIAL

SUBJECT TO PROTECTIVE ORDERS

VIA ELECTRONIC MAIL ONLY

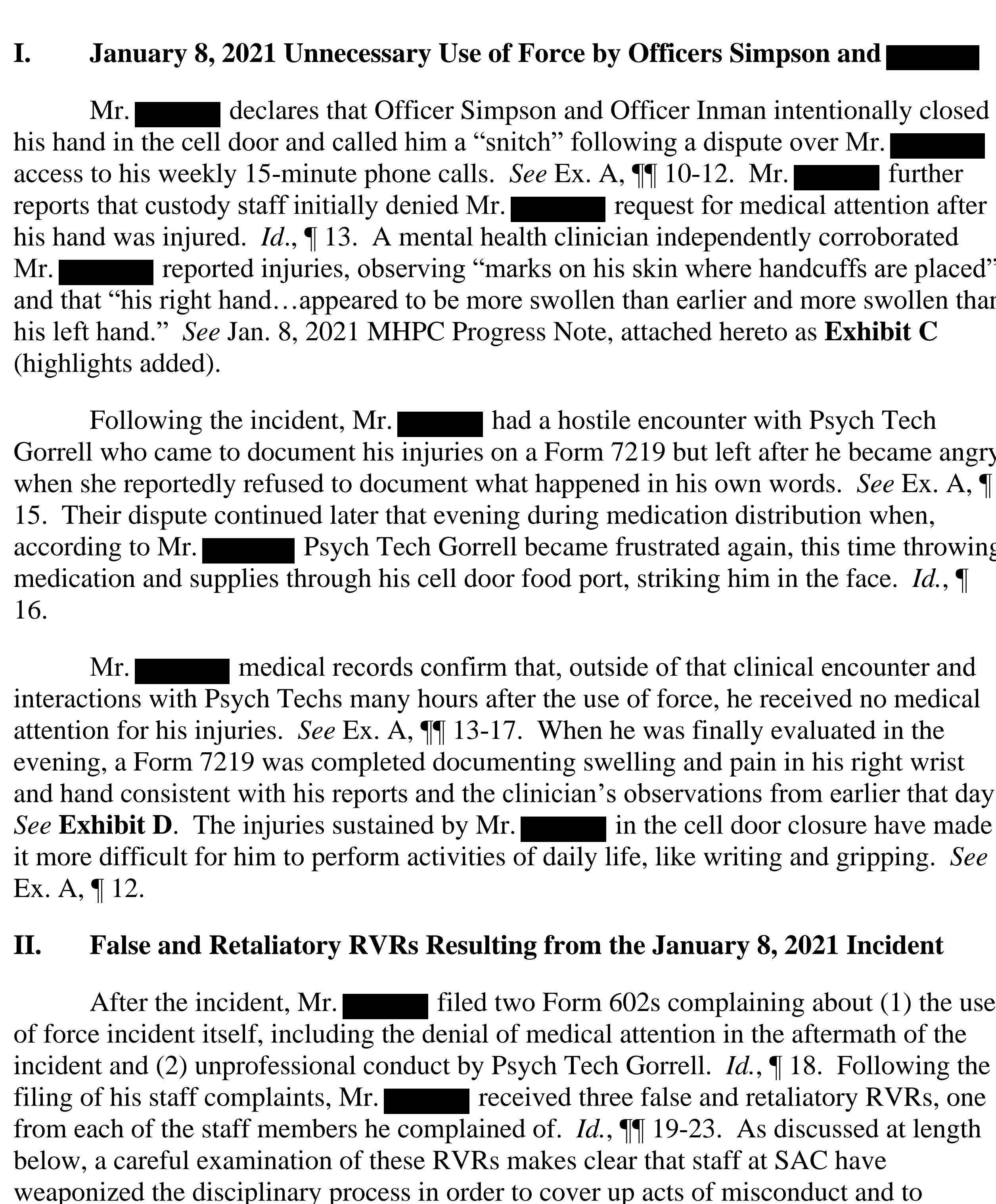
Tamiya Davis
Nick Weber
CDCR Office of Legal Affairs
Tamiya.Davis@cdcr.ca.gov
Nicholas.Weber@cdcr.ca.gov

Re: *Armstrong v. Newsom; Coleman v. Newsom*: Holding Staff Accountable for Issuing Retaliatory and False RVRs Against Class Member Declarant ██████ (█████)
Our File Nos. 0581-03; 0489-03

Dear Tamiya and Nick:

I write regarding *Armstrong* and *Coleman* class member ██████ (█████ currently housed at California State Prison – Sacramento ("SAC"). Mr. ████ submitted a declaration in support of Plaintiffs' Statewide Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People with Disabilities. *See* Grunfeld Statewide Reply Decl., Dkt. 3109-1, Ex. 69.

Since having signed his declaration on September 18, 2020, Mr. ████ reports that custody staff at SAC have subjected him to unnecessary force, labelled him a "snitch," and issued him multiple false rule violation reports ("RVRs") in retaliation for his participation in the Statewide Motion and ongoing efforts to hold staff accountable for misconduct. Most recently, Mr. ████ was subjected to an unprofessional search of his cell and confiscation of his property in retaliation for communicating with Plaintiffs' counsel. These reports, which are contained in Mr. ████ supplemental declaration attached hereto as **Exhibit A**, are further corroborated by documents included in Mr. ████ medical file, attached to this letter, and by the witness declaration of ███ ███ attached hereto as **Exhibit B.**



I. January 8, 2021 Unnecessary Use of Force by Officers Simpson and ███

Mr. ███ declares that Officer Simpson and Officer Inman intentionally closed his hand in the cell door and called him a "snitch" following a dispute over Mr. ███ access to his weekly 15-minute phone calls. *See* Ex. A, ¶¶ 10-12. Mr. ███ further reports that custody staff initially denied Mr. ███ request for medical attention after his hand was injured. *Id.*, ¶ 13. A mental health clinician independently corroborated Mr. ███ reported injuries, observing "marks on his skin where handcuffs are placed" and that "his right hand…appeared to be more swollen than earlier and more swollen than his left hand." *See* Jan. 8, 2021 MHPC Progress Note, attached hereto as **Exhibit C** (highlights added).

Following the incident, Mr. ███ had a hostile encounter with Psych Tech Gorrell who came to document his injuries on a Form 7219 but left after he became angry when she reportedly refused to document what happened in his own words. *See* Ex. A, ¶ 15. Their dispute continued later that evening during medication distribution when, according to Mr. ███ Psych Tech Gorrell became frustrated again, this time throwing medication and supplies through his cell door food port, striking him in the face. *Id.*, ¶ 16.

Mr. ███ medical records confirm that, outside of that clinical encounter and interactions with Psych Techs many hours after the use of force, he received no medical attention for his injuries. *See* Ex. A, ¶¶ 13-17. When he was finally evaluated in the evening, a Form 7219 was completed documenting swelling and pain in his right wrist and hand consistent with his reports and the clinician's observations from earlier that day. *See* **Exhibit D**. The injuries sustained by Mr. ███ in the cell door closure have made it more difficult for him to perform activities of daily life, like writing and gripping. *See* Ex. A, ¶ 12.

II. False and Retaliatory RVRs Resulting from the January 8, 2021 Incident

After the incident, Mr. ███ filed two Form 602s complaining about (1) the use of force incident itself, including the denial of medical attention in the aftermath of the incident and (2) unprofessional conduct by Psych Tech Gorrell. *Id.*, ¶ 18. Following the filing of his staff complaints, Mr. ███ received three false and retaliatory RVRs, one from each of the staff members he complained of. *Id.*, ¶¶ 19-23. As discussed at length below, a careful examination of these RVRs makes clear that staff at SAC have weaponized the disciplinary process in order to cover up acts of misconduct and to discourage reporting by punishing class members who file staff misconduct complaints.

A. RVR Log No. 7056055 Dated January 14, 2021

Officer Inman, one of the officers involved in the use of force against Mr. ████ and the subject of his 602 complaint, issued Mr. ████ an RVR on January 14, 2021, two days after the staff misconduct complaint and five days after the alleged conduct giving rise to the RVR occurred. *Id.*, ¶¶ 22-23. This trivial, false, and retaliatory RVR alleges that Mr. ████ delayed Officer Inman in the performance of his duties on January 9, 2021 by "refus[ing] to give his food trays up" during breakfast. *See* **Exhibit E** at 1 (highlights added).

However, as described in his declaration, and corroborated by his neighbor and by documents completed by clinical staff, Mr. ████ does not accept breakfast trays; instead, he customarily gives his breakfast to his neighbor, Mr. ████ *See* Ex. A, ¶ 22; Ex. B, ¶ 5; Ex. E at 2. This fact was raised during the RVR process; when questioned by Mr. ████ investigative employee, Mr. ████ affirmed that, on January 9, 2021, Mr. ████ had given his food tray to Mr. ████ *See* Ex. E at 2; Ex. B, ¶¶ 5-8. Mr. ████ further declares that, during the months he has lived next door to Mr. ████ he has never observed Mr. ████ accept a food tray. Ex. B, ¶ 5. This testimony directly contradicts Officer Inman's version of events.

During the hearing, Mr. ████ attempted to call mental health clinician Ms. Jebanathan as a witness in order to corroborate the claim that Mr. ████ customarily refused his breakfast food trays. *See* Ex. A, ¶ 23; Ex. E at 6-7. Indeed, a review of Mr. ████ medical file reveals that, on multiple occasions, Ms. Jebanathan had documented that Mr. ████ customarily refused breakfast trays. *See*, *e.g.*, Jan. 25, 2021 MHPC Note ("Custody…has reported that he does not accept his breakfast tray") However, the Hearing Officer denied his request to call Ms. Jebanathan as a witness, finding that the witness had "no relevant or additional information." Ex. E at 7.

In finding Mr. ████ guilty of the RVR, the Hearing Officer did not address statements made by Mr. ████ or documents from Mr. ████ medical file that directly contradict the version of events presented in the RVR. But even assuming the truth of the RVR, the facts alleged in the body of the RVR do not support a guilty finding in this case. Mr. ████ was found guilty of delaying an officer in the performance of his duties, for which he was assessed a 90-day loss of credits. *See* Ex. E at 8-9. The Hearing Officer held that "████ [sic] actions caused a *significant delay* in program…" *Id.* (emphasis added). However, nowhere in the RVR does Officer Inman explicitly allege that he was delayed in the performance of his duties, much less "significantly delay[ed]." Ex. E at 1. The RVR indicates that, after Officer Inman requested and Mr. ████ refused to return the tray, Officer Inman "continued [his] duties with no further incident."

Id. Officer Inman did not document any time lost due to the alleged delay, nor provide any other indication of any delay in this case. *Id.* The facts alleged, even if true, therefore cannot support a finding of guilt in this case.

The trivial nature of the allegation combined with the suspicious timing of the issuance is enough to call in to question the veracity of this RVR. That Mr. [redacted] was found guilty in the face of exculpatory evidence and facts that do not support a finding of guilt even if true is enough to call in to question the entire disciplinary process.

B. RVR Log No. 7055081 Dated January 8, 2021

The RVR issued by Psych Tech Gorrell alleged that Mr. [redacted] was disrespectful when he "attempted to intimidate," "verbally abus[ed]," and attempted to "staff split by belittling" Psych Tech Gorrell. *See* **Exhibit F** at 1 (highlights added). In contrast, Mr. [redacted] characterized the interaction as a verbal disagreement over whether or not Psych Tech Gorrell was compliant with policy related to administration of the Form 7219. Ex. A, ¶ 15.

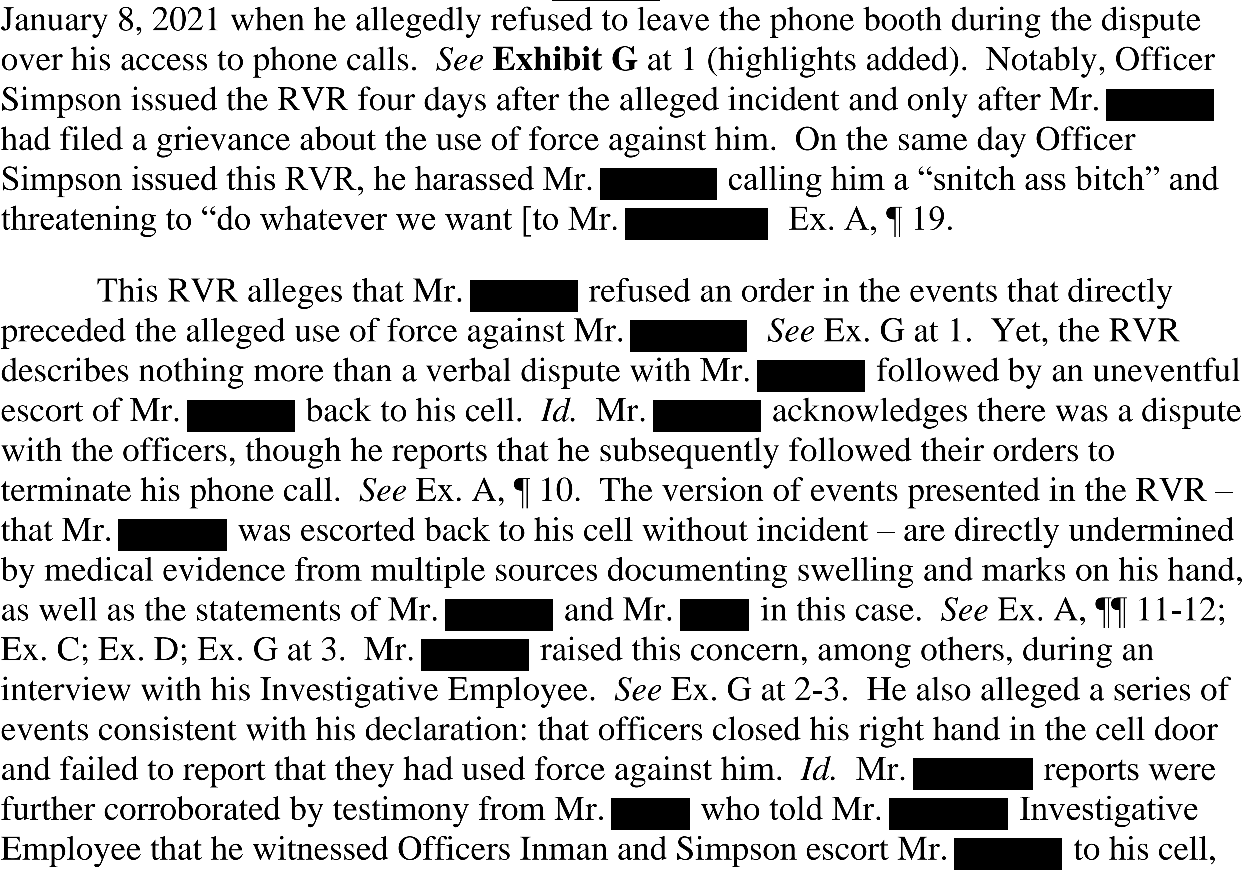
The Hearing Officer credited Mr. [redacted] characterization of the dispute, finding that: "There is no evidence within the CDCR 115 that shows any disrespect. The author did not describe with any detail what the specific disrespect was." Ex. F at 6-7. Despite this, the Hearing Officer elected to find Mr. [redacted] guilty of the conduct alleged in the RVR, but decided to reduce the RVR to a "counselling [sic] chrono." *Id.*

Again, as was even acknowledged by Hearing Officer in this case, the facts alleged here do not support a guilty finding. And yet again, despite the fact that the charge was reduced, Mr. [redacted] was nevertheless found "guilty" of a rules violation when he attempted to hold staff accountable for violating policy. That the allegations cannot even facially support a finding of "disrespect" raises at least some suspicion that the intent of the RVR was retaliatory or punitive in nature.

This is further supported by concerning statements made by Psych Tech Gorrell who, in the body of the RVR, accused Mr. [redacted] of attempting to "split staff" when he complained about her to another staff member. Ex. F at 1. This accusation is telling because it reflects a problematic staff culture operative in CDCR, where staff view complaints made by incarcerated people as an attempt to pit staff against each other. In reality, incarcerated people have a right to, and in fact have no other option to effectuate their rights, but to report staff wrongdoing to other staff members. That such an act is presumed malicious by staff and actively discouraged though retaliatory RVRs is precisely the problem. Incarcerated people are well within their rights to accuse staff of

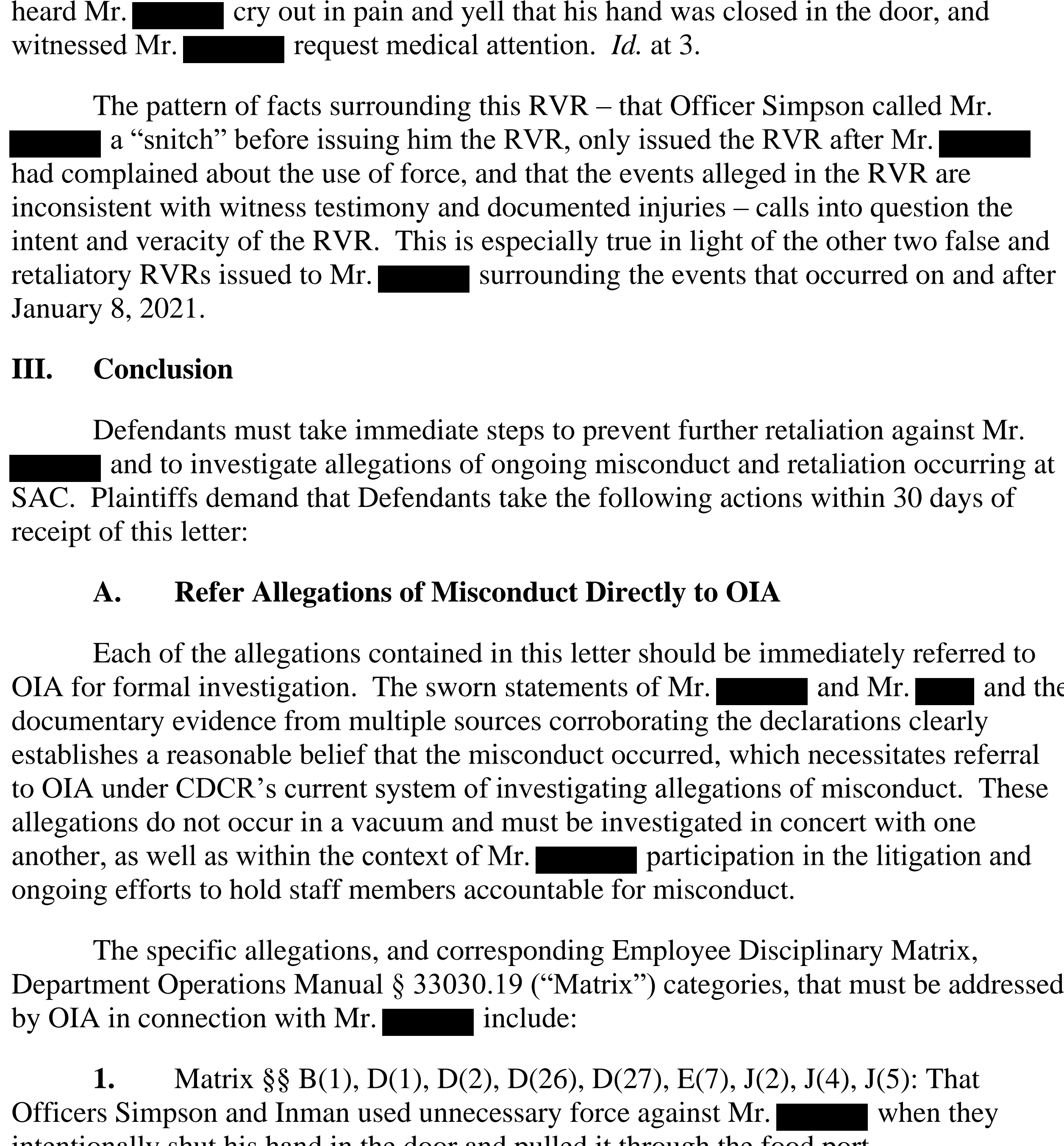
failing to perform their jobs in accordance with policy and to express their intent to complain of such conduct; this type of conduct is protected by the First Amendment and cannot be the basis for disciplinary action, including a counseling chrono. *See Brodheim v. Cry* (9th Cir. 2009) 584 F.3d 1262, 1269; *Valandingham v. Bojorquez* (9th Cir. 1989) 866 F.2d 1135, 1138; *Entler v. Gregoire* (9th Cir. 2017) 872 F.3d. 031 (prison officials may not retaliate for person's threats to sue or bring criminal charges); see also *Gomez v. Vernon* (2001) 255 F.3d 1118 9 (upholding sanctions and injunction where prison officials had custom of retaliating against person who exercised right of access to courts). In contrast, in a healthy correctional system – one where mental health and medical staff "take an advocacy stance about the safety" of incarcerated people – staff would welcome complaints made against them as an opportunity to improve their conduct and become better employees. Vail Statewide Reply Decl., Dkt. 3106-7, ¶ 231.

C. RVR Log No. 7055573 Dated January 12, 2021



Officer Simpson also issued Mr. an RVR for disobeying an order on January 8, 2021 when he allegedly refused to leave the phone booth during the dispute over his access to phone calls. *See* **Exhibit G** at 1 (highlights added). Notably, Officer Simpson issued the RVR four days after the alleged incident and only after Mr. had filed a grievance about the use of force against him. On the same day Officer Simpson issued this RVR, he harassed Mr. calling him a "snitch ass bitch" and threatening to "do whatever we want [to Mr. Ex. A, ¶ 19.

This RVR alleges that Mr. refused an order in the events that directly preceded the alleged use of force against Mr. *See* Ex. G at 1. Yet, the RVR describes nothing more than a verbal dispute with Mr. followed by an uneventful escort of Mr. back to his cell. *Id.* Mr. acknowledges there was a dispute with the officers, though he reports that he subsequently followed their orders to terminate his phone call. *See* Ex. A, ¶ 10. The version of events presented in the RVR – that Mr. was escorted back to his cell without incident – are directly undermined by medical evidence from multiple sources documenting swelling and marks on his hand, as well as the statements of Mr. and Mr. in this case. *See* Ex. A, ¶¶ 11-12; Ex. C; Ex. D; Ex. G at 3. Mr. raised this concern, among others, during an interview with his Investigative Employee. *See* Ex. G at 2-3. He also alleged a series of events consistent with his declaration: that officers closed his right hand in the cell door and failed to report that they had used force against him. *Id.* Mr. reports were further corroborated by testimony from Mr. who told Mr. Investigative Employee that he witnessed Officers Inman and Simpson escort Mr. to his cell,



heard Mr. ______ cry out in pain and yell that his hand was closed in the door, and witnessed Mr. ______ request medical attention. *Id.* at 3.

The pattern of facts surrounding this RVR – that Officer Simpson called Mr. ______ a “snitch” before issuing him the RVR, only issued the RVR after Mr. ______ had complained about the use of force, and that the events alleged in the RVR are inconsistent with witness testimony and documented injuries – calls into question the intent and veracity of the RVR. This is especially true in light of the other two false and retaliatory RVRs issued to Mr. ______ surrounding the events that occurred on and after January 8, 2021.

III. Conclusion

Defendants must take immediate steps to prevent further retaliation against Mr. ______ and to investigate allegations of ongoing misconduct and retaliation occurring at SAC. Plaintiffs demand that Defendants take the following actions within 30 days of receipt of this letter:

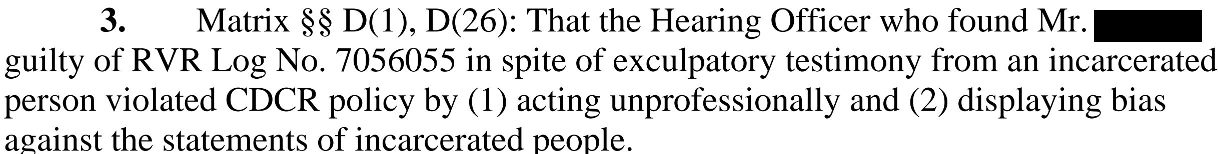
A. Refer Allegations of Misconduct Directly to OIA

Each of the allegations contained in this letter should be immediately referred to OIA for formal investigation. The sworn statements of Mr. ______ and Mr. ______ and the documentary evidence from multiple sources corroborating the declarations clearly establishes a reasonable belief that the misconduct occurred, which necessitates referral to OIA under CDCR’s current system of investigating allegations of misconduct. These allegations do not occur in a vacuum and must be investigated in concert with one another, as well as within the context of Mr. ______ participation in the litigation and ongoing efforts to hold staff members accountable for misconduct.

The specific allegations, and corresponding Employee Disciplinary Matrix, Department Operations Manual § 33030.19 (“Matrix”) categories, that must be addressed by OIA in connection with Mr. ______ include:

1. Matrix §§ B(1), D(1), D(2), D(26), D(27), E(7), J(2), J(4), J(5): That Officers Simpson and Inman used unnecessary force against Mr. ______ when they intentionally shut his hand in the door and pulled it through the food port.

2. Matrix §§ B(4), D(26), E(7): That Officer Inman issued a false and retaliatory RVR: Log No. 7056055.



3. Matrix §§ D(1), D(26): That the Hearing Officer who found Mr. ██████ guilty of RVR Log No. 7056055 in spite of exculpatory testimony from an incarcerated person violated CDCR policy by (1) acting unprofessionally and (2) displaying bias against the statements of incarcerated people.

4. Matrix §§ B(4), D(1), D(26), E(7): That PT Gorrell thew medication at Mr. ██████ and issued a false and retaliatory RVR: Log No. 7055081.

5. Matrix §§ D(1), D(26): That the Hearing Officer who found Mr. ██████ guilty of RVR Log No. 7055081, despite finding that there was no evidence to support the allegation, violated CDCR policy and acted unprofessionally.

6. Matrix §§ B(4), D(26), E(7): That Officer Simpson called Mr. ██████ a "snitch" and issued a false and retaliatory RVR, Log No. 7055573.

B. Redirect Staff Pending Investigation

Officers Simpson and Inman should be re-directed to positions in which they are not permitted to have contact with incarcerated people during the pendency of the investigation into the above matters. Allowing Officers Simpson and Officer Inman to remain assigned to their standard posts during the pendency of the investigation would not only expose Mr. ██████ and other incarcerated people to substantial risk of additional misconduct at the hands of these problem officers; it would also compromise the integrity of the investigation by enabling these officers to intimidate, harass, and retaliate against witnesses to their misconduct.

C. Rescind RVRs

Following the review of the three RVRs discussed in this letter, CDCR should take any appropriate action to rescind the RVRs, remove all attendant effects of the RVRs (i.e., loss of credits or program access), and purge Mr. ██████ custody file of any references to such RVRs, while retaining records in his file to memorialize that Mr. ██████ had been assessed three false and retaliatory RVRs.

D. Expedite the Transfer of Mr. ██████

Mr. ██████ reports that the ongoing harassment and retaliation by staff has rendered him petrified of custody staff; he does not feel comfortable leaving his cell, eating state food, or engaging in any programming. *See* Ex. A, ¶ 27; *see also* Mar. 11, 2021 MHPC Note ("IP reported that he did not want to leave his cell due to fear of retaliation…"). According to his mental health treatment plan, he has been housed in

segregation for well over a year, and he is currently awaiting transfer. *See* Mar. 23, 2021 MH Master Treatment Plan. CDCR should expedite Mr. ██████ transfer from the Short Term Restricted Housing Unit (Z-Unit) at SAC, where he has languished for over a year, to a non-segregation unit at some institution other than SAC.

E. Accountability for False Reports and RVRs

Lastly, CDCR must take immediate steps to rectify ongoing problems with the disciplinary process for incarcerated people. The evidence cited above, as well as evidence in numerous declarations filed by incarcerated people in the *Armstrong* staff misconduct litigation, in letters from Plaintiffs' counsel in *Coleman*, in the reports of the Office of the Inspector General, and in a recent March 26, 2021 advocacy letter by the Prison Law Office strongly suggests that staff members use the RVR process to issue false disciplinary reports against incarcerated people who report staff misconduct or otherwise attempt to effectuate their rights in prison. *See* Mar. 26, 2021 Letter from G. Pelsinger & R. Lomio to T. Davis; Sept. 24, 2020 Letter from T. Nolan to N. Weber & M. Bentz, attached hereto without exhibits as **Exhibit H**. This practice violates the anti-retaliation and anti-interference provisions of the Americans with Disabilities Act, as well as the Court's orders in *Armstrong*. *See* Order Granting in Part Motion for Permanent Injunction, Dkt. 3217, at 62-64. The district court just found, among other issues, due process violations in the disciplinary system for incarcerated people. *See generally* Order Extending the Settlement Agreement, Dkt. 1440, *Ashker v. Newsom*, Case No. 4:09-cv-05796-CW. The current disciplinary system should, but has failed to, detect this problem. As a result, staff members accused of falsifying documents and retaliating against incarcerated people who file staff misconduct complaints are not being held accountable.

The time to rectify this serious and ongoing problem is now, while the parties are in the process of negotiating systemwide changes to the staff misconduct and disciplinary process. Without a meaningful overhaul of the disciplinary process for incarcerated people – including eliminating bias against incarcerated people and witnesses involved in the process, identifying potentially false and retaliatory RVR reports, and holding officers

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accountable for submitting such reports – staff will continue to use this process as a means to intimidate and discourage the reporting of misconduct and to retaliate against those who do come forward to report. Plaintiffs' counsel has asserted that the disciplinary process should be taken out of the hands of institution staff entirely. We hope that Defendants are giving serious consideration to this proposal and we look forward to discussing this idea further during future meetings.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Ernest Galvan

/s/ Penny Godbold

By: Ernest Galvan &
Penny Godbold

EG/PG:JRG
Enclosures
cc: Roy Wesley
Diana Toche
Clark Kelso
Coleman Special Master Team
Ed Swanson
August Gugelmann
Adriano Hrvatin
Trace Maiorino
Robert ("Trey") Perkins
Anthony Tartaglio
Sean Lodholz
Andrea Moon
Namrata Kotwani
Elise Thorn
Bruce Beland
Damon McClain
Roman Silberfield
Paul Mello
Samantha Wolff
Glen Danas
Lucas Hennes
Jennifer Neill
Patricia Ferguson
Gannon Johnson
Melissa Bentz
Dillon Hockerson
Carrie Stafford
Sundeep Thind
Armstrong and *Coleman* Co-Counsel

EXHIBIT F

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

Gay Crosthwait Grunfeld
Email: ggrunfeld@rbgg.com

May 4, 2021

PRIVILEGED AND CONFIDENTIAL

SUBJECT TO PROTECTIVE ORDERS

VIA E-MAIL AND U.S. MAIL

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

Re: *Armstrong v. Newsom*: Plaintiffs' Demand for Remedial Measures to Address Discrimination Against Parolees with Disabilities
Our File No. 0581-09

Dear Tamiya and Nick:

The California Department of Corrections and Rehabilitation ("CDCR"), including its Division of Adult Parole Operations ("DAPO") and its Division of Rehabilitative Programs ("DRP"), must take immediate steps to address their systemic failure to accommodate parolees with disabilities by providing the minimum supports necessary for them to succeed on parole, and by adopting other remedial measures to prevent discrimination against parolees with disabilities. Defendants' failure to provide these services and protections violates the Americans with Disabilities Act ("ADA"), and the *Armstrong* Remedial Plans. Plaintiffs request that we begin a series of meetings targeted at correcting these longstanding problems. The minimum standards and remedial measures that Defendants must implement to protect our clients' rights are listed in **Exhibit A** to this letter.

To illustrate the scope of the violations, Plaintiffs' counsel are uploading to you via ShareFile 14 declarations from class members on parole who are struggling with a lack of basic supportive services and inadequate parole preparation and planning. Defendants must investigate the declarants' allegations and include them in the *Armstrong* accountability logs. Per regulation, these declarations should also be subject

to AIMS inquiries. However, I am informed that DAPO has decided not to implement AIMS.

Pursuant to the prohibition on communications with a represented party, neither Defendants nor Defendants' counsel may communicate with the declarants or class members referenced in the declarations regarding the allegations in the declarations. *See* California Rule of Professional Conduct 4.2. Any communications with the declarants or class members referenced in the declarations about the content of the declarations must be made through Plaintiffs' counsel or with Plaintiffs' counsel present.

The declarations are subject to the protective orders in this case and shall be kept confidential. Due to credible fears of retaliation, we expect that Defendants will limit access to the declarations to only those individuals necessary to respond to and investigate the allegations. *See* Order For Additional Remedial Measures (Sept. 8, 2020), ECF No. 3060, at 6, ¶ 6 ("Defendants shall include in the Court-ordered accountability log any allegations of violations of class members' rights under the ADA's anti-retaliation and anti-interference provisions"); *see also* Order Granting in Part Motion to Modify Remedial Orders and Injunctions (Sept. 8, 2020), ECF No. 3059, at 63 (discussing retaliation and accountability).

I. Defendants Are Discriminating Against Parolees with Disabilities and Impeding Their Full Re-Entry Into Society.

As of the first quarter of 2021, there were at least 11,929 *Armstrong* class members on parole, not counting class members with only mental health disabilities. *See* February 2021 Quarterly Parolee Addresses List. Of these parolees, 758 were classified as DPW; 1,023 were classified as DPO; 1,845 were classified as DPM; 318 were classified as DPV; 144 were classified as DPH; and 2,093 were classified as either DD1, DD2, or DD3. *Id*.

Countless more—by one estimate, approximately 44 percent of all parolees—have a mental health disability. *See* Houser, K.A., Vîlcică, E.R., Saum, C.A. & Hiller, M.L., "Mental Health Risk Factors and Parole Decisions: Does Inmate Mental Health Status Affect Who Gets Released," Int'l J. Envl. Research & Public Health 16, no.16:2950 (2019), https://doi.org/10.3390/ijerph16162950. The *Armstrong* Remedial Plan ("ARP") covers class members with mental health disabilities, as illustrated by the inclusion of the Parole Outpatient Clinic as part of the original remedy in this case, *see* ARP § IV.S.8, and as supported by the Court's recent staff misconduct order. *See* Order Granting in Part Motion to Modify Remedial Orders and Injunctions (Mar. 11, 2021), ECF No. 3217, at 15:2-4.

The transition from prison to parole is fraught with danger for all parolees, but especially those with disabilities. A seminal Washington State study found that during the first two weeks after release from prison, parolees were nearly 13 times more likely to die than other state residents. *See* Binswanger, I.A., Stern, M.F., *et al.*, "Release from Prison — A High Risk of Death for Former Inmates," New England Journal of Medicine 2007: 356:157-65. Longitudinal studies of people released from prison show that "being released homeless or marginally housed" puts parolees "in almost immediate risk of failure, especially with regard to revocation for noncompliance and readmission to prison for a new offense." Lutze, F.E., Rosky, J.W. & Hamilton, Z.K., "Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State's Reentry Housing Program for High Risk Offenders," Criminal Justice and Behavior 41 (Dec. 4, 2019): 471-91, at 484. Once someone is jailed on a parole violation, their risk of homelessness increases further, creating a downward spiral of housing instability. *See* Herbert, C.W., Morenoff, J.D. & Harding, D.J., "Homelessness and Housing Insecurity among Former Prisoners," Russell Sage Foundation Journal of the Social Sciences 1(2): 44-79, at 74.

Given these scholarly findings and the lack of foundational supportive services provided by CDCR for parolees, it is not surprising that the most recent January 2020 CDCR Recidivism Report found an overall CDCR three-year recidivism rate of 46.5% for offenders released in 2015. *See* January 2020 CDCR Office of Research, "Recidivism Report for Offenders Released from the CDCR in 2015," at vi.

Against this background of parolees struggling to gain a footing in the community, our clients with disabilities face significant extra hurdles that CDCR must act to eliminate. Class members are expressly excluded from numerous CDCR-funded transitional housing and parole programs. Those that do manage to get accepted into a CDCR-funded program often find the program is inaccessible, and when they try to complain, there is no formal ADA grievance process in place and 1824 forms are not available to them, ensuring there is no accountability.[1] Oftentimes class members are forced to leave CDCR-funded programs because of their inaccessibility. Moreover, there is no system to track and ensure parolees with disabilities in these programs have necessary accommodations and are not discriminated against. Parolees with mobility disabilities who are

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[1] Although Defendants agreed to make changes in how new Specialized Treatment for Optimized Programming ("STOP") programs report their accessibility to CDCR, and to develop a training video and resource manual for CDCR's new STOP subcontractors, these planned resources have been in the works for more than 15 months, and they do not address disability discrimination by 869 *current* CDCR-funded contractors. The discriminatory exclusions of parolees with disabilities from many current CDCR-funded programs continue unabated.

homeless and/or have leg paralysis or nerve damage, and parolees with developmental, cognitive/intellectual, and mental health disabilities, are routinely denied commonsense accommodations they need to keep their GPS devices charged and avoid reincarceration. Benefits planning is often neglected or done incorrectly, resulting in denial of benefits, homelessness, and/or harmful delays in getting benefits. Critical identification cards, needed for everything from renting a hotel room to starting Medi-Cal benefits and paying for medications, are not ready for many parolees when they leave prison. During the period while parolees with disabilities wait for their benefits to start, CDCR fails to provide them with a basic floor of financial support for short-term housing, short-term food assistance, transportation assistance, and job training.

The failure to provide these services makes it much more likely people with disabilities will fail on parole and be reincarcerated, and have their parole terms extended again and again. *See* CDCR Adult Institutions, Programs, and Parole Operations Manual (2020) § 81010.9 ("Time during which parole is revoked extends the parole period automatically by the amount of days served in custody for the violation.").

CDCR also fails to provide class members with services and information while still in prison to prepare them to live independently in the community, such as benefits planning, information about paratransit agencies and independent living organizations in their parole locations, and training in skills to help them live independently, such as sign language, Braille, and the use of tapping canes. These support services and resources are critical for people with disabilities to have an equal opportunity to access the benefits of parole and avoid reincarceration.

All of these problems have also been exacerbated by the pandemic, which has made being homeless on parole life-threatening.

II. Defendants Are Required to Administer Parole and Transition to Parole Programs in a Manner that Provides Reasonable Accommodations to People with Disabilities and Prevents Disability Discrimination.

Defendants are obligated under the ADA and the *Armstrong* Remedial Plans to operate their transition to parole and parole programs in a non-discriminatory manner, by providing parolees with disabilities with reasonable accommodations, including through the provision of basic support services, so that they receive an equivalent opportunity as parolees without disabilities to succeed on parole, transition to life in the community, and avoid reincarceration. *See* 42 U.S.C. § 12132; ARP, Parole Field Operations at 1; *Armstrong* Board of Parole Remedial Plan ("ARP II") § I.

Defendants are required by state law to provide assistance with the transition between imprisonment and successful discharge from parole, including by providing support services and programming to parolees. *See* Cal. Penal Code § 3000(a)(1); *see also In re Palmer*, 479 P.3d 782, 793-94 (Cal. 2021) (explaining that "parole's primary objective is, through the provision of supervision and counseling, to assist in the parolee's transition from imprisonment to discharge and reintegration into society," and that the services California must provide to parolees include "medical and psychological treatment, drug and alcohol dependency services, job counseling, and programs that enable the parolee to obtain a general equivalency certificate" (internal quotation marks omitted)). Parole and transition to parole services are thus clearly programs, services or activities under the ADA, and "the plain language of the ADA extends its anti-discrimination guarantees to the parole context." *Thompson v. Davis*, 295 F.3d 890, 898 (9th Cir. 2002) (per curiam). CDCR is required to provide meaningful access to these programs, services and activities to parolees with disabilities, including through additional supportive services and other reasonable accommodations to ensure they receive equivalent access to the benefits of parole as parolees without disabilities. *See* 28 C.F.R. § 35.130(b).

The integration mandate of Title II of the ADA, as set forth in its implementing regulations and *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), also requires Defendants to provide class members with sufficient supportive services so as to permit them to live independently and not cause them to be reincarcerated as a result of their disability-related needs. In the years since *Olmstead*, courts of appeals, including the Ninth Circuit, consistently have held that the integration mandate applies where a "challenged state action creates a serious risk of institutionalization." *See, e.g.*, *M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012); *Davis v. Shah*, 821 F.3d 231, 263 (2d. Cir. 2015); *Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013); *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 608 (7th Cir. 2004); *Fisher v. Oklahoma Health Care Auth*., 335 F.3d 1175, 1181 (10th Cir. 2003).

III. Defendants Are Failing to Meet Their Legal Obligations.

Despite these clear legal mandates, Defendants have fallen short by operating their transition to parole and parole programs in a manner that discriminates against individuals with disabilities. In response to Plaintiffs' repeated advocacy regarding these issues, Defendants contend that they are free to disregard the needs of parolees with disabilities on parole because they disregard the basic needs of all parolees—claiming that Plaintiffs' are seeking "special rights" for class members. For example, in the March 2021 Status Conference Statement, Defendants asserted that "to create an obligation to secure housing for all class members would be discriminatory toward non-class

members." Joint Case Status Statement (Mar. 15, 2021), ECF No. 3227, at 34:22-23. This dismissive reverse discrimination argument is not well founded.

First, Defendants already provide transition to parole services such as housing, transportation, cash and food vouchers that they are not often not using for class members or that exclude class members. Defendants assert the assistance they can offer parolees is limited, yet they have no clear guidelines for administering these valuable resources. Defendants state they are administered at the discretion of parole agents, but have not produced any information on what criteria (if any) are used to decide which parolees receive these services. The lack of criteria for administering limited parole resources has the "effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities," in blatant violation of the ADA and its implementing regulations. 28 C.F.R. § 35.130(b)(3).

Second, Defendants cannot continue to bury their head in the sand regarding their responsibility to provide accommodations to parolees with disabilities by asserting they are treating them exactly the same as other parolees. Title II of the ADA mandates "meaningful access" to programs, services and activities of public entities. *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (quoting *Alexander v. Choate*, 469 U.S. 287, 301-02 (1985)). **And meaningful access often requires that, as a practical matter, a public entity affirmatively provide additional support to individuals with disabilities.** *See McGary v. City of Portland*, 386 F.3d 1259, 1266-67 (9th Cir. 2004) ("A plaintiff need not allege either disparate treatment or disparate impact in order to state a reasonable accommodation claim," because "[t]he purpose of the ADA's reasonable accommodation requirement is to guard against the facade of 'equal treatment' when particular accommodations are necessary to level the playing field.").

Third, courts and the Civil Rights Division of the United States Department of Justice ("USDOJ") are increasingly requiring augmentation of parole resources in many jurisdictions around the country to prevent unnecessary reincarceration of parolees with disabilities. Just last month, the USDOJ found that Alameda County and the Santa Rita Jail were violating the ADA rights of mentally ill parolees by failing to provide the services needed to prevent re-incarceration. *See* April 22, 2021 U.S. Department of Justice Notice Regarding Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail and Report re Same (**Exhibit B**) at 8, 11-16 ("Deficiencies in the community-based service system … at times also contribute to the incarceration of people with mental health disabilities in Santa Rita Jail."). Among the remedies sought are: "permanent supported housing slots," *id*. at 42; "sufficient community-based services including case management, personal care services to assist with activities of daily living, and supported employment services," *id*. at 43; the provision of "transition and discharge planning, beginning upon [jail] admission, for prisoners with mental health

disabilities … to prevent needless psychiatric institutionalization," *id*.; and a system in the jail to ensure that "people with mental health disabilities can initiate and maintain connections with community-based services while incarcerated and transition seamlessly into such services upon release," *id*.

In December 2018, the USDOJ amended a prior settlement with Los Angeles County to require an "enhanced release planning process" at its jails, and to commission "an independent research or educational organization to perform an evidence-based assessment of release planning at the Jails." *See* December 10, 2018 Joint Stipulation to Dismiss Intervener's Claims and Order in *United States v. Los Angeles* (**Exhibit C**). The new agreement also required more intensive and individualized release planning that "will consider the need for housing," and include an "individualized assessment of the prisoner's needs" undertaken "in collaboration with the prisoner." *See* December 6, 2018 Joint Stipulation to Amend Paragraph 34 of the Joint Settlement Agreement in *United States v. Los Angeles* (**Exhibit D**). The agreement also requires assistance with benefit applications, transportation, medical services, mental health services and substance abuse treatment, and in establishing connections to family and community supports. *Id*. at 3-7.

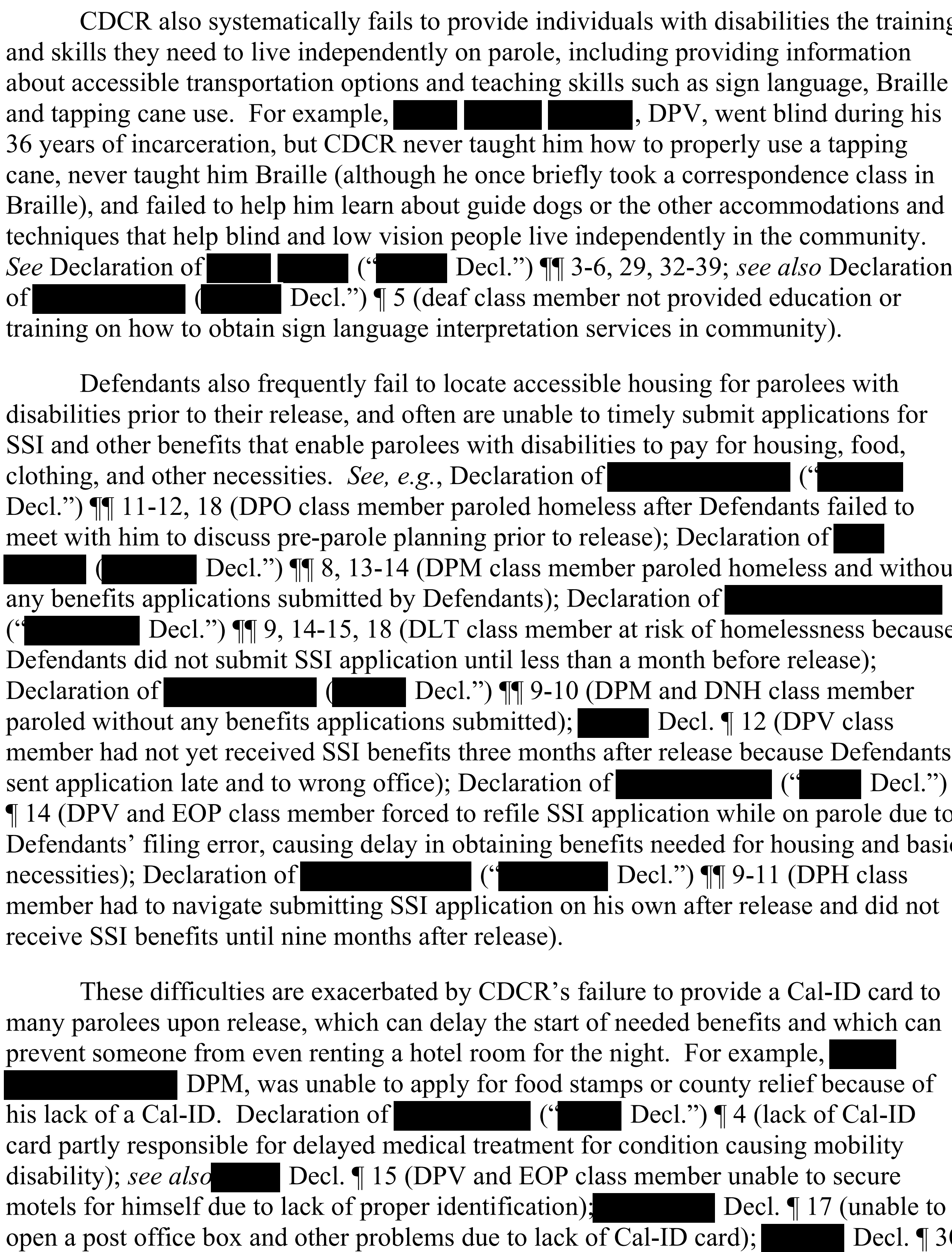
Despite this clear legal authority, the evidence summarized below shows that Defendants are systemically failing to provide support services and accommodations as needed to ensure accessible transition to parole services, and to prevent risk of reincarceration and facilitate transition to the community for parolees with disabilities.

IV. Defendants are Violating the Rights of Parolees with Disabilities.

A. Defendants' Inadequate Transition to Parole Services Cause Disproportionate Harm to Individuals with Disabilities.

Defendants' provision of parole planning services to incarcerated individuals prior to their release from prison—including transitional housing placements, benefits application assistance, transportation assistance, and other supportive services to link incarcerated individuals to community resources—discriminates against individuals with disabilities by making them disproportionately likely to fail on parole because of their disability-related needs. *See* 28 C.F.R. § § 35.130(b)(3). To benefit from parole in the same manner as people without disabilities, class members often require reasonable accommodations in the form of accessible transitional housing placements, transportation assistance, short term-financial assistance, and seamless access to Supplemental Security Income ("SSI"), Medi-Cal insurance, California identification cards ("Cal-ID"), and other benefits that are necessary to gain the stability to be successful on parole.

PRIVILEGED AND CONFIDENTIAL
Tamiya Davis, Nicholas Meyer
May 4, 2021
Page 8



CDCR also systematically fails to provide individuals with disabilities the training and skills they need to live independently on parole, including providing information about accessible transportation options and teaching skills such as sign language, Braille and tapping cane use. For example, , DPV, went blind during his 36 years of incarceration, but CDCR never taught him how to properly use a tapping cane, never taught him Braille (although he once briefly took a correspondence class in Braille), and failed to help him learn about guide dogs or the other accommodations and techniques that help blind and low vision people live independently in the community. *See* Declaration of (" Decl.") ¶¶ 3-6, 29, 32-39; *see also* Declaration of (Decl.") ¶ 5 (deaf class member not provided education or training on how to obtain sign language interpretation services in community).

Defendants also frequently fail to locate accessible housing for parolees with disabilities prior to their release, and often are unable to timely submit applications for SSI and other benefits that enable parolees with disabilities to pay for housing, food, clothing, and other necessities. *See, e.g.*, Declaration of (" Decl.") ¶¶ 11-12, 18 (DPO class member paroled homeless after Defendants failed to meet with him to discuss pre-parole planning prior to release); Declaration of (Decl.") ¶¶ 8, 13-14 (DPM class member paroled homeless and without any benefits applications submitted by Defendants); Declaration of (" Decl.") ¶¶ 9, 14-15, 18 (DLT class member at risk of homelessness because Defendants did not submit SSI application until less than a month before release); Declaration of (Decl.") ¶¶ 9-10 (DPM and DNH class member paroled without any benefits applications submitted); Decl. ¶ 12 (DPV class member had not yet received SSI benefits three months after release because Defendants sent application late and to wrong office); Declaration of (" Decl.") ¶ 14 (DPV and EOP class member forced to refile SSI application while on parole due to Defendants' filing error, causing delay in obtaining benefits needed for housing and basic necessities); Declaration of (" Decl.") ¶¶ 9-11 (DPH class member had to navigate submitting SSI application on his own after release and did not receive SSI benefits until nine months after release).

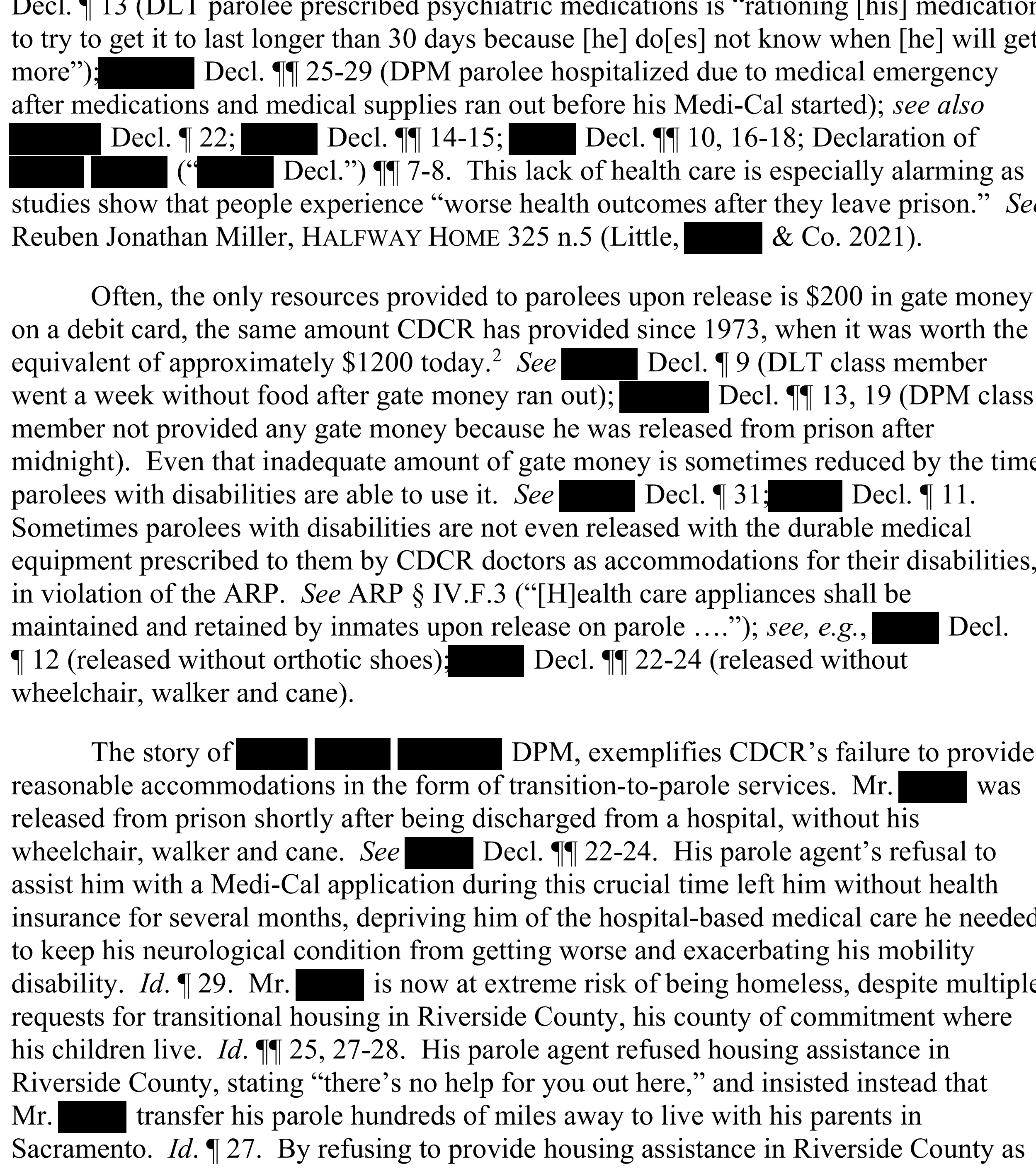
These difficulties are exacerbated by CDCR's failure to provide a Cal-ID card to many parolees upon release, which can delay the start of needed benefits and which can prevent someone from even renting a hotel room for the night. For example, DPM, was unable to apply for food stamps or county relief because of his lack of a Cal-ID. Declaration of (" Decl.") ¶ 4 (lack of Cal-ID card partly responsible for delayed medical treatment for condition causing mobility disability); *see also* Decl. ¶ 15 (DPV and EOP class member unable to secure motels for himself due to lack of proper identification); Decl. ¶ 17 (unable to open a post office box and other problems due to lack of Cal-ID card); Decl. ¶ 30

(took three months in community before finally got his Cal-ID card); [REDACTED] Decl. ¶ 8 (lack of Cal-ID responsible for delay in deaf class member's ability to get telephone that enables videophone and video relay services).

While being released from prison without housing causes difficulties for all parolees, homelessness causes disproportionate harm to class members, as living on the streets often exacerbates their disabilities by making it more difficult to obtain medications and other treatment that they need, and can make it almost impossible to comply with key conditions of parole, such as consistently keeping a GPS monitor charged, or attending mandatory meetings and appointments. For example, Defendants never met with [REDACTED], DPO, prior to his release, even though he submitted multiple Forms 22, an 1824, and an emergency 602 about his need for transitional housing. [REDACTED] Decl. ¶¶ 11, 14-15. Mr. [REDACTED] expects to be homeless on parole and fears how he "will do on the streets with [his] disabilities, including being in [his] wheelchair," and "do[es] not know where [he] will plug in [his] CPAP machine," which he requires to help him breathe while he sleeps. *Id.* ¶ 12; *see also* Declaration of [REDACTED] ("[REDACTED] Decl.") ¶¶ 5, 11, 18-27, 32 (DPM parolee's homelessness worsened his disability and contributed to repeated reincarcerations for failures to charge his GPS monitor).

Defendants also release many parolees with disabilities without any transportation plan for how they will reach the parole office from prison. [REDACTED] DPM, was required to travel from Corcoran to the parole office in Santa Rosa, nearly 300 miles away. [REDACTED] Decl. ¶ 7. Mr. [REDACTED] was dropped off at the train station by Defendants, and had to undertake an eight-hour "challenging journey" on a train and two buses; he was forced to stow his walker with the luggage, and had to "slowly and painfully climb up the stairs onto each bus and into [his] seat," and struggled to get to and from the bathroom. *Id.* Mr. [REDACTED] arrived at the parole office at nighttime: "It was dark. It was also raining. I did not have anything to eat. I only had a pair of shorts and a sweatshirt, so I was cold. I waited outside the parole office for it to open in the morning." *Id.* ¶ 8; *see also* [REDACTED] Decl. ¶¶ 13-14, 16 (DPM parolee who uses a walker dropped off at the train station in the middle of the night with no gate money or transportation voucher, and had to travel on multiple trains and a bus to get to the parole office). The failure to provide transportation assistance to these parolees with disabilities placed them at risk of reincarceration for failing to comply with reporting requirements.

Parolees are also provided with only a 30-day supply of medications upon release, including psychiatric medications required as accommodations for mental health disabilities. Because of this short-term supply, parolees are often at risk of running out of medications due to delays with setting up Medi-Cal prior to their release, and lack of assistance from parole agents in navigating access to health care. *See, e.g.*, [REDACTED]



Decl. ¶ 13 (DLT parolee prescribed psychiatric medications is "rationing [his] medication to try to get it to last longer than 30 days because [he] do[es] not know when [he] will get more"); █████ Decl. ¶¶ 25-29 (DPM parolee hospitalized due to medical emergency after medications and medical supplies ran out before his Medi-Cal started); *see also* █████ Decl. ¶ 22; █████ Decl. ¶¶ 14-15; █████ Decl. ¶¶ 10, 16-18; Declaration of █████ █████ ("█████ Decl.") ¶¶ 7-8. This lack of health care is especially alarming as studies show that people experience "worse health outcomes after they leave prison." *See* Reuben Jonathan Miller, HALFWAY HOME 325 n.5 (Little, █████ & Co. 2021).

Often, the only resources provided to parolees upon release is $200 in gate money on a debit card, the same amount CDCR has provided since 1973, when it was worth the equivalent of approximately $1200 today.[2] *See* █████ Decl. ¶ 9 (DLT class member went a week without food after gate money ran out); █████ Decl. ¶¶ 13, 19 (DPM class member not provided any gate money because he was released from prison after midnight). Even that inadequate amount of gate money is sometimes reduced by the time parolees with disabilities are able to use it. *See* █████ Decl. ¶ 31; █████ Decl. ¶ 11. Sometimes parolees with disabilities are not even released with the durable medical equipment prescribed to them by CDCR doctors as accommodations for their disabilities, in violation of the ARP. *See* ARP § IV.F.3 ("[H]ealth care appliances shall be maintained and retained by inmates upon release on parole …."); *see, e.g.*, █████ Decl. ¶ 12 (released without orthotic shoes); █████ Decl. ¶¶ 22-24 (released without wheelchair, walker and cane).

The story of █████ █████ █████ DPM, exemplifies CDCR's failure to provide reasonable accommodations in the form of transition-to-parole services. Mr. █████ was released from prison shortly after being discharged from a hospital, without his wheelchair, walker and cane. *See* █████ Decl. ¶¶ 22-24. His parole agent's refusal to assist him with a Medi-Cal application during this crucial time left him without health insurance for several months, depriving him of the hospital-based medical care he needed to keep his neurological condition from getting worse and exacerbating his mobility disability. *Id.* ¶ 29. Mr. █████ is now at extreme risk of being homeless, despite multiple requests for transitional housing in Riverside County, his county of commitment where his children live. *Id.* ¶¶ 25, 27-28. His parole agent refused housing assistance in Riverside County, stating "there's no help for you out here," and insisted instead that Mr. █████ transfer his parole hundreds of miles away to live with his parents in Sacramento. *Id.* ¶ 27. By refusing to provide housing assistance in Riverside County as

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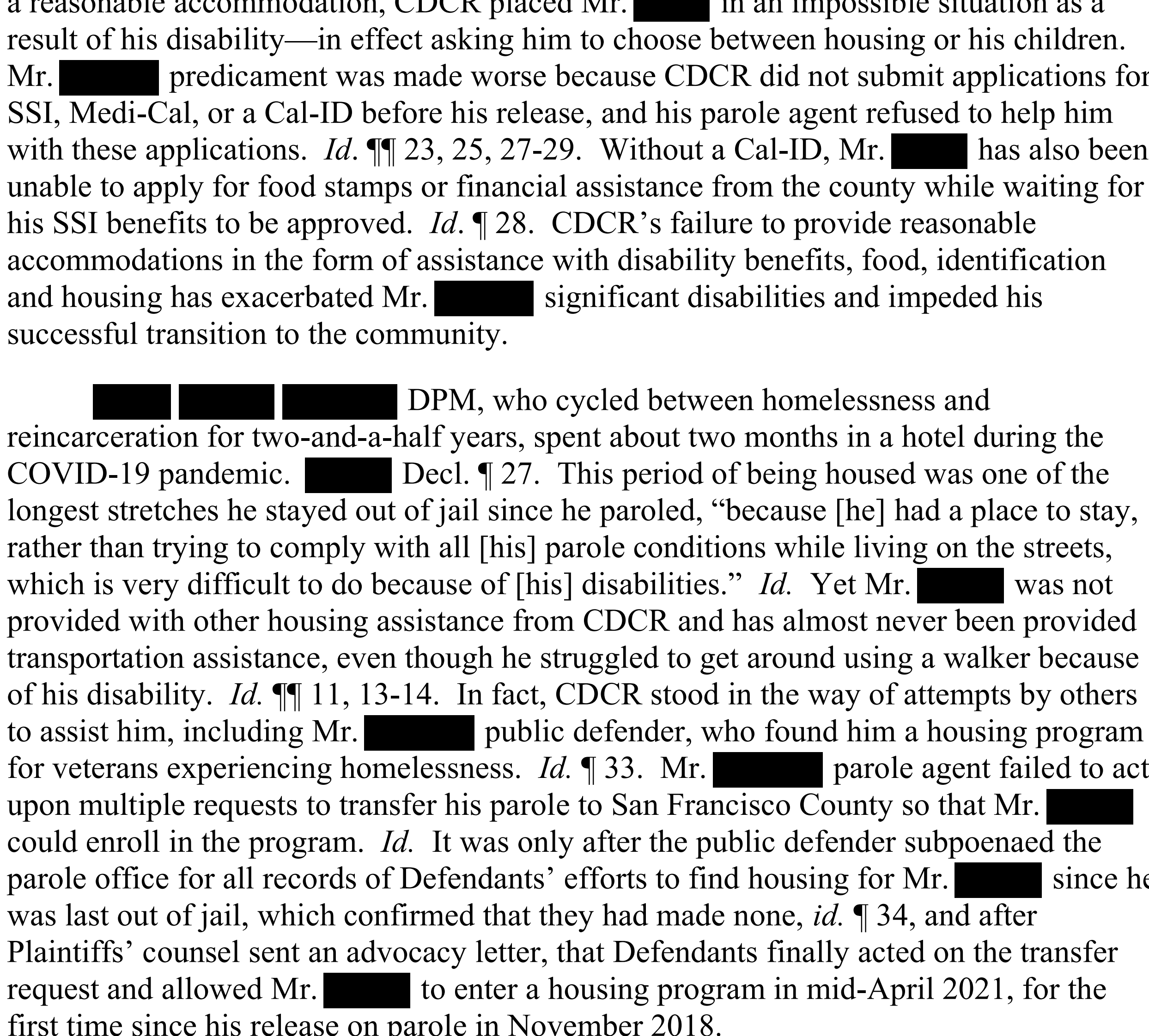
[2] Mia Armstrong & Nicole Lewis, "What Gate Money Can (And Cannot) Buy," The Marshall Project (Sept. 10, 2019), https://www.themarshallproject.org/2019/09/10/what-gate-money-can-and-cannot-buy.



a reasonable accommodation, CDCR placed Mr. in an impossible situation as a result of his disability—in effect asking him to choose between housing or his children. Mr. predicament was made worse because CDCR did not submit applications for SSI, Medi-Cal, or a Cal-ID before his release, and his parole agent refused to help him with these applications. *Id.* ¶¶ 23, 25, 27-29. Without a Cal-ID, Mr. has also been unable to apply for food stamps or financial assistance from the county while waiting for his SSI benefits to be approved. *Id.* ¶ 28. CDCR's failure to provide reasonable accommodations in the form of assistance with disability benefits, food, identification and housing has exacerbated Mr. significant disabilities and impeded his successful transition to the community.

DPM, who cycled between homelessness and reincarceration for two-and-a-half years, spent about two months in a hotel during the COVID-19 pandemic. Decl. ¶ 27. This period of being housed was one of the longest stretches he stayed out of jail since he paroled, "because [he] had a place to stay, rather than trying to comply with all [his] parole conditions while living on the streets, which is very difficult to do because of [his] disabilities." *Id.* Yet Mr. was not provided with other housing assistance from CDCR and has almost never been provided transportation assistance, even though he struggled to get around using a walker because of his disability. *Id.* ¶¶ 11, 13-14. In fact, CDCR stood in the way of attempts by others to assist him, including Mr. public defender, who found him a housing program for veterans experiencing homelessness. *Id.* ¶ 33. Mr. parole agent failed to act upon multiple requests to transfer his parole to San Francisco County so that Mr. could enroll in the program. *Id.* It was only after the public defender subpoenaed the parole office for all records of Defendants' efforts to find housing for Mr. since he was last out of jail, which confirmed that they had made none, *id.* ¶ 34, and after Plaintiffs' counsel sent an advocacy letter, that Defendants finally acted on the transfer request and allowed Mr. to enter a housing program in mid-April 2021, for the first time since his release on parole in November 2018.

B. Defendants Fail to Provide Accessible Transitional Housing and Transportation Accommodations to Parolees with Disabilities.

Defendants' failure to address express disability discrimination by contractors contributes to their inability to provide accessible transitional housing to many class members. Numerous STOP programs and other CDCR-funded transitional housing programs expressly exclude people with disabilities, in violation of the ADA. According to the March 19, 2021 STOP Community Directory, **827 out of 869 CDCR-funded programs (or 95%) expressly exclude people with at least one type of disability**. The directory reveals that 156 programs (or 18%) exclude people who are deaf or hard of hearing, 101 programs (or 12%) exclude people who are blind or have low vision, 112

programs (or 13%) exclude people with mobility disabilities, 195 programs (or 22%) exclude people with mental health disabilities, and 524 programs (or 60%) exclude people who use wheelchairs. *See* **Exhibit E** (March 19, 2021 CDCR and DAPO Funded Programs Community Directory). Given these discriminatory exclusions, it is unsurprising that so many parolees with disabilities are unable to secure transitional housing placements.

One consequence of Defendants' ad hoc, under-resourced and discriminatory approach to housing parolees with disabilities is that many of the accessible placements that are available are in residential drug treatment programs. These programs sometimes reject parolees with disabilities with no history of substance abuse or, alternatively, have strict rules and requirements. This puts parolees with disabilities in a Hobson's choice that other parolees do not face: either subject themselves to stringent requirements that are not relevant to their success on parole, or be denied any housing assistance from Defendants. *See, e.g.* [redacted] Decl. ¶ 7 (DLT class member declined placement into drug treatment program due to lack of history of substance abuse and fear of negative impact on mental health, and was offered no other housing options); [redacted] Decl. ¶ 12 (DLT class member with no history of substance abuse required to walk long distances to drug treatment program three days a week, which was very difficult due to his disability); [redacted] Decl. ¶ 35 (DPM class member forced to attend substance abuse programming at transitional housing program despite lack of history of substance abuse).

To make matters worse, many parole agents decline to provide housing vouchers to help with temporary housing while class members are on wait lists for accessible transitional housing placements and/or awaiting disability benefits so they can pay for their own housing. For example, [redacted], DLT, was temporarily staying in a hotel room rented for him by his wife and told his parole agent that he would soon be homeless until his SSI benefits started. [redacted] Decl. ¶¶ 14-15. The parole agent told Mr. [redacted] that there was "a long waiting list" for transitional housing, and refused to provide him with a hotel voucher "just for this time between [his] wife leaving and when [he] get[s] his SSI benefits." *Id.* ¶ 15. The agent instead suggested that Mr. [redacted] either go to a homeless shelter or have his wife "continue to pay for a hotel for [him] until her money runs out." *Id.* Parolees who depend on disability benefits for support should receive reasonable accommodations, including housing assistance, food vouchers and other support that DAPO has discretion to provide to all parolees, in order to help bridge the gap after release and before benefits or employment are secured.

When Defendants do provide transitional housing placements for class members, they often find that the CDCR-funded housing program is not accessible, putting them in danger and forcing some to leave the programs. [redacted], DPM, was placed into CDCR-funded housing that was inaccessible because all of the bedrooms

were upstairs, even though he is unable to climb stairs because of his mobility disability; Mr. [redacted] was forced to sleep on a couch downstairs or on a picnic table outside. *See* [redacted] Decl. ¶ 34; *see also* [redacted] Decl. ¶ 11 (DLT placed in STOP program that lacked accessible bathroom); [redacted] Decl. ¶¶ 10-15 (STOP program failed to provide sign language interpretation for deaf class member at many of his substance abuse group meetings).

[redacted], DPV, who is blind, was also placed in a CDCR-funded housing program that was not accessible to him, and the program staff provided him with no assistance in learning to navigate around the facility and the neighborhood in which it is located. [redacted] Decl. ¶¶ 16-18, 21-23, 36-44. As a result, he spent much of the first few months on parole alone in his room, unable and afraid to go outside. He declared:

> I often feel stuck in my room here at the GEO facility. No one comes to check on me or to offer to take me out. I spend a lot of time in my room and it can make me feel lonely and isolated. I only go outside when people who live here on my floor volunteer to take me out. Some weeks I have spent so much time in my room here that it feels like being in Administrative Segregation in a prison. I have told the staff here that more than 10 times. In some ways it is worse than an Administrative Segregation Unit, because in an Administrative Segregation Unit in the CDCR you would get outside more regularly, and you would not miss meals. I am free now and want the freedom to go outside and to live more independently. However, I am not being given the tools to do this, and I was not prepared in prison for what it would be like to be blind in the community.

Id. ¶ 40. When Mr. [redacted] complained to program staff about his need for assistance, they told him "we are not going to babysit you." *Id.* ¶ 18.

Parolees housed in inaccessible CDCR-funded programs are also not informed that they can file an 1824 grievance about it. As [redacted] a mobility impaired class member who left his STOP program after falling repeatedly in the shower and being denied a shower chair, declared:

> No one in the STOP program explained to me that there was a process available to file grievances about ADA issues. My parole officer also failed to explain to me that I could file an 1824 reasonable accommodation request regarding the accommodations I needed and was not receiving on parole and in the STOP program. I had no idea until now that I could file a grievance on parole, or that staff would be able to help me with that paperwork ….

█████ Decl. ¶ 15; *see also* █████ Decl. ¶ 26.

The fact that Defendants have hired contractors to provide some of the programs, services and activities they provide to parolees does not change their duty to administer those programs in a manner that does not violate the ADA. 28 C.F.R. § 35.130(b)(1), (b)(3)-(5) (prohibiting disability discrimination done "directly or through contractual, licensing, or other arrangements"); *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1074 (9th Cir. 2010) (state defendants "cannot shirk their obligations to plaintiffs under federal law by housing them in facilities operated by third-part[ies]").

Defendants also routinely fail to provide transportation accommodations to parolees with disabilities, in violation of the ADA and the ARP. *See* ARP, Parole Field Operations Section at 3; *id.* at 5 (providing that "DAPO will utilize cash assistance" to obtain transportation services for parolees with disabilities "when necessary"). Defendants rarely provide information about or assistance accessing paratransit services, and regularly fail to offer rides or public transit vouchers to parolees with disabilities who have difficulty getting to mandatory programs or appointments, or accessing community-based services because of their disabilities. *See, e.g.*, █████ Decl. ¶¶ 17, 40-41; ████████ Decl. ¶¶ 8, 19; █████ Decl. ¶¶ 25, 27-28; █████ Decl. ¶¶ 19, 21; █████ Decl. ¶¶ 12, 16; ████████ Decl. ¶ 10. J████ █████ ██████, DPW, who is 85 years old and uses a wheelchair and walker, has struggled greatly on parole due to Defendants refusal to provide him such transportation assistance. Declaration of █████ █████ ("█████ Decl.") ¶¶ 8-9. He was required to complete an arduous journey on two buses that could take up to two hours to report to his mandatory counseling meetings each week. *Id.* ¶¶ 8, 10-11. Mr. █████ once fell out of his wheelchair when returning from the bus stop, and laid on the side of the road in the dark in "terrible pain" as cars drove by because he "did not have the strength in [his] arms or legs" to get up, until someone eventually stopped to help him. *Id.* ¶ 13. On another occasion, he lost control and fell when rolling in his wheelchair down a hill to the bus stop, and tore his rotator cuff. *Id.* ¶ 14.

C. Defendants Fail to Accommodate Parolees' Disabilities Regarding Their Ability to Comply with Parole Conditions, Leading to Reincarceration Due to Failure to Accommodate Disabilities.

Defendants systemically fail to consider the impact of parolees' disabilities on their ability to comply with their conditions of parole. Parolees with developmental, cognitive/intellectual, and significant mental health disabilities often require reasonable accommodations in order to understand and comply with parole conditions, yet parole agents frequently fail to provide such accommodations and fail to take their disabilities into account when determining the consequences for parole violations. The story of █████ ██████ ██████ exemplifies this problem. Mr. ██████ has significant mental

health disabilities and a likely cognitive/intellectual disability. He has "the mind of a 10- or 12-year-old" and is living under his father's conservatorship in a board and care home for people with disabilities. Declaration of [redacted] [redacted] ("[redacted] Decl.") ¶¶ 2-3, 5-7. Since his parole term began in May 2018, Mr. [redacted] has been jailed at least eight times because of alleged violations of his GPS monitor requirement. *Id.* ¶ 12. Although his parole agents are aware that Mr. [redacted] disabilities make him struggle to wear his GPS monitor and keep it charged—he has even tried to cut off the GPS monitor in the presence of his parole officer—they have not taken his disability's effect on his ability to comply with these parole conditions into account. *Id.* ¶¶ 11-18. Instead, Defendants simply reincarcerate Mr. [redacted] on technical parole violations and make disparaging comments like, "let's see how long he can stay out [of jail] this time." *Id.* ¶ 24. Because of the revocations, Mr. [redacted] has spent the majority of his time on parole in jail, and his parole repeatedly has been extended. *Id.* ¶ 19; *see also* Declaration of [redacted] [redacted] ("[redacted] Decl.") ¶¶ 9-15 (DPW and EOP parolee with cognitive disability reincarcerated multiple times for failure to charge his GPS monitor, despite parole agent knowing he struggles to remember due to his disabilities).

Homeless parolees with mobility disabilities are also at greater risk of violating their parole conditions because they have difficulty getting around to find charging locations. [redacted] [redacted] [redacted] DPM, who has been homeless for most of his two-and-a-half years on parole and without transportation assistance from his parole agents, has been reincarcerated at least five times for failure to charge his GPS device. [redacted] Decl. ¶ 20. Mr. [redacted] struggles to find locations where he is allowed to charge his GPS device, a particularly difficult task given his significant mobility disability, which in turn has worsened from two years of living on the streets due to lack of housing assistance from Defendants. *Id.* ¶ 21-27. Mr. [redacted] disability, which includes nerve damage in his leg, also makes it hard for him to feel the GPS monitor's vibrations when its battery is running low. *Id.* ¶ 25. About two years into his parole term, in November 2020, Mr. [redacted] learned for the first time that DAPO can provide GPS monitors that provide audible low battery warnings, and filed an 1824 requesting one as an accommodation for his disability, but the 1824 was never answered. *Id.* ¶ 30; *see also* [redacted] Decl. ¶ 11 (DPW class member cannot feel vibrations on GPS monitor when battery is running low due to leg paralysis).

Plaintiffs acknowledge that Defendants are statutorily required to track certain parolees with GPS devices. But the ongoing use of antiquated GPS devices that must be charged at least twice a day for one hour each time defies logic.[3] In cases like these,

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[3] Plaintiffs' online research on GPS ankle monitors found devices that only need to be charged every 40 hours and that offer back up batteries the parolees can swap out. *See* SCRAM GPS Ankle Monitoring Description at http://www.scramsystems.com (noting

Defendants must provide a reasonable accommodation such as a tracking device that does not require a person with an intellectual disability to remember to charge the device frequently or that does not require a homeless parolee who uses a wheelchair or walker and has difficulty ambulating to find an accessible public location where they can plug in a device for about an hour twice a day during a pandemic. These devices, and the lack of charging accommodations, lead to repeated reincarcerations and, in turn, repeated extensions of class members' parole terms. *See* CDCR Departmental Operating Manual (2020) § 81010.9. For example, the DAPO accommodation summary for one parolee with a developmental disability shows that he has received approximately 15 parole violations since 2015. Our understanding is that parolees with disabilities are at significant risk of having their parole terms extended.

V. Defendants Must Take Immediate Steps to End the Revolving Door of Reincarcerating Parolees with Disabilities.

Defendants are well aware that their failure to provide basic support services and other reasonable accommodations is denying parolees with disabilities an equal opportunity to succeed on parole and transition to a successful free life in the community. In effect, Defendants' policies condemn many parolees with disabilities to an endless cycle of homelessness and reincarceration.

Since before October 2016, Plaintiffs have been notifying Defendants about the harms resulting from their failure to accommodate parolees with disabilities in letters regarding deficient overall policies, in frequent individual class member advocacy, and in status conference statements.[4] We have also written five reports about our video-tours of Regional STOP contractors' offices, with numerous questions and requests for production of documents in each report, and have received responses to none of them, and only a handful of documents. Before and after a February 25, 2021 meeting with Defendants about transition-to-parole policies, we requested a variety of documents and confirmation regarding the current status of various policies and procedures related to parole, but again we have not received a response to most of these requests. *See*

40-hour battery life, and a "50% reduction in battery alerts" [in video on the same page] and an on body charger that "enables clients to charge on the go"[brochure on same page].); Description of BO LOC8 GPS Monitor, available at https://bi.com/products-and-services/loc8-gps-monitoring-device-remote-location-technology/ (comes with easy to swap back up battery).

[4] *See, e.g.*, April 5, 2019 Letter from Thomas Nolan to Russa Boyd; July 14, 2017 Letter from Thomas Nolan to Russa Boyd; May 8, 2017 Letter from Thomas Nolan to Katie Riley; October 10, 2016 Letter from Gay Grunfeld to Wendy Locke.

February 23, 2021 Email from Thomas Nolan to Nicholas; March 5, 2021 Follow-Up Email from Thomas Nolan to Nicholas Meyer.

Thus far, Defendants have met Plaintiffs' urgent requests to accommodate class members on parole primarily with indifference. *See, e.g.*, Email from Nathalie Welch to Nicholas Meyer re: Advocacy for [redacted] at RJD (Mar. 8, 2021) (person with below-the-knee amputation who requires a wheelchair and CPAP machine received no pre-parole planning and will parole homeless) (no response to homelessness concern as of the date of this letter). When Defendants do respond, it is typically with blanket assertions that the failure to provide housing, transportation, benefit applications, and identification cards are not covered by the ARP or required by the ADA. *See, e.g.*, Letter from Nicholas F. Meyer to Michael Freedman re: Advocacy for [redacted] DPW at CHCF (Apr. 20, 2021) (asserting failure to secure housing and submit benefit applications "does not allege any violations of the *Armstrong* Remedial Plan or the ADA"); Letter from Nicholas F. Meyer to Ben Bien-Kahn re: Transition to Parole Advocacy re: [redacted] DPM (April 6, 2021) (same); Letter from Nicholas F. Meyer to Thomas Nolan re: Transition to Parole Survey re [redacted], [redacted] CHCF (April 2, 2021) (same); Joint Case Status Statement (Mar. 15, 2021), ECF No. 3227, at 33-33; *id.* at 34 (asserting plaintiffs' advocacy letters "demonstrate no nexus" to ADA).

However, as Plaintiffs have repeatedly explained, and as made clear by the class member declarations uploaded with this letter, parolees with disabilities are not similarly situated to other parolees. Federal law requires the provision of reasonable accommodations to ensure equal access to the benefits of parole programs, services and activities, including successful transition to the community to prevent reincarceration.

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Defendants must take immediate action to devise a reasonable plan to remedy these systemic violations of the ADA and the *Armstrong* Remedial Plans. We look forward to discussing these issues further with you at the May 19 All Parties meeting and in the weeks that follow.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:TN:cg
Enclosures
cc: *(via email only)*

Ed Swanson
Coleman Special Master Team
Kelly Mitchell
Elise Thorn
Melissa Bentz
Damon McClain
Namrata Kotwani
Lucas Hennes
Carrie Stafford
Suneep Thind
Nicholas Weber
Dillon Hockerson
Glenn Danas
Samantha Wolf
Adriano Hrvatin
Roy Wesley
Robin Hart
CCHCS Accountability
Joseph Williams
Amy Padilla
Jason Anderson
Alexandrea Tonis
Jimmy Ly
Jay Powell
Genty Armedo
Vimal Singh
Alexander Powell
Gannon Johnson
Patricia Ferguson
Amber Lopez
Robin Stringer
OLA Armstrong
Trace Maiorino
Sean Lodholz
Anthony Tatagllio
Andrea Moon
Tammy Foss
John Dovey
Joseph Edwards
Lynda Robinson
Barb Pires
Courtney Andrade
Miguel Solis
Olga Obrynina
Dawn Stevens
Joshua Guerrero
Mark Cruise
Amenthia Tisdale
Rachelle Velasquez
Robert Wahl
John Carbone
Asvi Phuong
Marvin Speed
Jason Williams
Brant Choate
Guillermo Viera Rosa
Armstrong Co-Counsel
Coleman Co-Counsel

EXHIBIT A

PRIVILEGED AND CONFIDENTIAL

SUBJECT TO PROTECTIVE ORDERS

Plaintiffs' List of Minimum Standards and Remedial Measures Required to Protect the ADA Rights of Parolees With Disabilities

Defendants must implement the following minimum standards and implement the following remedial measures to protect the ADA rights of parolees with disabilities:

- Require parole agents to provide a mandatory set of basic supportive services for parolees with disabilities when required as a reasonable accommodation for a disability so that the parolee has an equal opportunity to succeed on parole, including:
    - transitional housing;
    - transportation assistance;
    - temporary food support, hotel rental support, and transportation support when needed;
    - referrals to local paratransit agencies, local independent living organizations, and specialized medical clinics for individuals recently released from jails or prisons;
    - assistance purchasing canes, walkers, wheelchairs, hearing aids, tapping canes, glucometers, C-PAP machines, and other assistive devices and durable medical equipment when needed prior to establishing Medi-Cal to pay for such items, or when someone does not qualify for Medi-Cal and has no other health insurance;
    - battery packs for GPS devices for individuals who are homeless or have difficulty remembering to charge the device due to a disability, and provision of GPS devices with audible low battery warnings (rather than vibrations) for parolees with paralysis or nerve damage in their legs.
- Prepare people with disabilities to live independently on parole while they are still in prison. This includes giving people the opportunity to learn skills such as braille, sign language and tapping cane use prior to their release from prison, and orienting people who have been incarcerated long-term to phones and how to use accessibility features on phones.
- Require CDCR-funded programs and all other contractors with which Defendants have a relationship that provide housing and other supportive

services to parolees, to remove all blanket exclusions based on disability, including restrictions on serving people with physical, developmental, cognitive/intellectual, and mental health disabilities.

- Require all CDCR-funded programs to provide 1824 forms to class members along with envelopes to mail the forms to DRP if they need to be accommodated in their program.

- Require all CDCR-funded housing, services and treatment programs to post an updated *Armstrong* poster with the correct address and phone number for Plaintiffs' counsel, and a clear explanation of the 1824 process and their right to use that process to ask for accommodations in their transitional housing program.

- Require the six regional STOP contractors, as part of their current annual inspections of all STOP programs, to review the facilities for key ADA compliance issues, including the presence of the updated *Armstrong* poster, grab bars in showers, portable shower chairs when needed, and the availability of 1824 forms.

- Develop a notification and tracking system to inform STOP programs, and other DRP-funded transitional housing, service, and treatment programs of the disability-related needs of CDCR parolees, and to allow DAPO and Plaintiffs' counsel to track which class members are assigned to different STOP and DRP programs. This can be similar to the County Jail e-mail notification system but should also provide a SOMS Roster-like summary of all class members in STOP and other CDCR funded transitional housing and/or treatment programs.

- Mandate that parole agents and supervisors give due consideration of the impact of a parolee's disability on their failure to comply with a parole condition prior to determining the consequences for the alleged parole violation.

- In the case of anyone with a disability who is re-incarcerated for an alleged parole violation more than two times in a one-year period, mandate headquarters-level review to determine if the person's disability was a factor in the failure to comply with a parole condition and to determine how best to accommodate the person to provide them an equal opportunity for success on parole as a person without a disability.

- Create a system that provides incentives for parole agents to assist parolees with disabilities under their supervision to succeed in their transition to life and community and avoid reincarceration.

- Establish a new system of documentation at the time of parole to ensure that all parolees leave prison with all of their assistive devices.
- Provide parolees with a 90-day supply of their prescribed medications upon release, instead of just a 30-day supply, so they have sufficient time to get on Medi-Cal and connect with a doctor.
- Fix the Cal-ID system so that all incarcerated individuals receive a Cal-ID before they leave prison.
- Ensure that all parolees leave prison with applications for SSI, Medi-Cal and Veterans' benefits completed to the maximum extent possible, and when there are further steps that must be done in the community, provide parolees with clear instructions effectively communicated and written down on the next steps they need to take to get their benefits finalized and started once in the community.
- Enlarge the daily email notifications sent to county jails to include parolees who received mental health services while incarcerated at CDCR.