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17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA

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

Case No. C94 2307 CW

**JOINT CASE STATUS STATEMENT**

Judge: Hon. Claudia Wilken

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

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

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

#### 7 1. Plaintiffs’ Statement

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

#### 18 a. COVID-19 Vaccinations

19 COVID-19 has sickened and killed many who live and work in California prisons.  
 20 To date, over 49,420 incarcerated people have been infected by the novel coronavirus, and  
 21 at least 227 have died. And over 17,000 CDCR and CCHCS staff have been infected, and  
 22 at least 28 have died. Although safe and effective vaccines have been widely available to  
 23 staff in all prisons since January 2021, only about half have chosen to be vaccinated. At  
 24 some prisons, the rate of vaccinated staff remains much lower. For example, only 24% of  
 25 all staff (including healthcare staff) at High Desert State Prison are fully vaccinated.  
 26 Correctional officers have the lowest statewide vaccination rate among all job

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

1 classifications at 36%. The remainder continue to work in direct physical proximity to  
 2 incarcerated people, including those who are immunocompromised, and expose them to an  
 3 unacceptably high risk of serious harm and death. This is particularly dangerous for the  
 4 many *Armstrong* class members who, because of their disabilities and/or serious medical  
 5 conditions, must come in frequent, direct contact with staff, including to perform physical  
 6 hygiene and to move safely about the prison.

7 It takes only one infected staff person to seed an outbreak and/or cause a large-scale  
 8 shutdown of prison operations. And we have seen over the past sixteen months how  
 9 programming restrictions and modifications have a disproportionate impact on people with  
 10 disabilities who need access to disability accommodations. And many of the new staff  
 11 infections have been identified as variants, which may have greater transmissibility.  
 12 Defendants should follow the lead of school districts, universities, and other employers in  
 13 California that already require that staff be vaccinated against COVID-19, in an effort to  
 14 mitigate the prison system’s proven role as “disease multipliers” and “epidemiological  
 15 pumps.” See Eric Reinhart & Daniel L. Chen, *Carceral-Community Epidemiology,*  
 16 *Structural Racism, and COVID-19 Disparities*, Proceedings of the Nat’l Academy of  
 17 Sciences, Vol. 118 (May 2021); see also **Exhibit A**, June 14, 2021, Letter from Donald  
 18 Specter & Rita Lomio, Plaintiffs’ Counsel, J. Clark Kelso, Receiver.

19 **b. Safe, Accessible Housing of *Armstrong* Class Members**

20 As of July 9, 2021, 248 *Armstrong* class members remained housed in areas not  
 21 designated for their disabilities, including 89 class members awaiting transfer to a mainline  
 22 facility from a reception center. An additional 48 people were not housed in compliance  
 23 with a lower bunk and/or lower tier housing restriction. These numbers are roughly the  
 24 same or higher than they were when the Court Expert issued his report on June 2, 2021. At  
 25 that time, the Court Expert found: “These numbers have been fairly consistent over many  
 26 months, and the Court Expert remains concerned that the needs of these class members are  
 27 not being appropriately or expeditiously met.” Doc. 3277 at 4. As Defendants concede  
 28 below, on April 26, 2021, California Correctional Healthcare Services defined “necessary”

1 movement to include the transfer of *Armstrong* class members to safe and accessible  
2 placements in designated and mainline institutions, yet more than two months later,  
3 Defendants have made little progress in expediting the transfer of these hundreds of class  
4 members, many of whom have been housed out-of-placement for many months. While  
5 Defendants say they have been working diligently on expediting these transfers, the fact  
6 remains that the number of class members housed inaccessibly by Defendants remains  
7 essentially unchanged, even though there have been no pandemic-related restrictions on  
8 the movement of class members on the Expedited Transfer List since April 26, 2021. It  
9 therefore appears Defendants **still** are not prioritizing movement of people with  
10 disabilities, even though there has been for quite some time substantial movement between  
11 institutions, and even though the Court Expert has repeatedly noted, including as far back  
12 as February 1, 2021, that this is an issue of concern that should be addressed soon. *See*  
13 *Doc. 32101 at 8; see also Doc. 3266 at 3.*

14 That, unfortunately, illustrates the continued lack of attention paid by Defendants to  
15 people with disabilities during the pandemic. Indeed, in advance of the Court Expert's  
16 final report, Defendants agreed to provide information and draft directives by dates certain,  
17 including related to non-architectural accommodations, lower/lower housing restrictions,  
18 use of administrative segregation, the ADA worker program, and effective communication  
19 of housing offers. Defendants' long delay in providing information related to non-  
20 architectural accommodations already violated the Court's September 8, 2020 order, which  
21 Defendants apparently had chosen to simply ignore. *See, e.g., Doc. 3277 at 4 (citing*  
22 *Doc. 3072 at ¶ 6).* Nonetheless, after the Court Expert filed his final report, Defendants  
23 informed Plaintiffs that they needed more time, including to draft a memorandum that  
24 Defendants previously had represented to Plaintiffs and the Court Expert had already been  
25 drafted and was under review of the DAI Directorate. These issues have been waiting to  
26 be resolved for months and, in some cases, over a year. Defendants must commit to end  
27 discrimination against people with disabilities during the pandemic, abide by the Court's  
28 orders, enact clear and comprehensive policies, and put meaningful oversight mechanisms

1 in place to ensure proper implementation.

## 2 **2. Defendants' Statement**

3 In concert with the Receiver, who is responsible for medical care and infectious  
4 disease control within the prisons, Defendants have worked tirelessly to provide a  
5 comprehensive and proactive response to the unprecedented challenges caused by the  
6 global pandemic to ensure that class members are accommodated and to ensure the safety  
7 and security of all incarcerated people, whether class members or not. Over the past year,  
8 Defendants have dedicated resources to addressing the COVID-19 pandemic and providing  
9 timely information to address Plaintiffs' concerns to obviate the need for judicial  
10 intervention and maximize invaluable resources. Although the number of active cases of  
11 COVID-19 have dropped dramatically since the December 2020 peak, Defendants  
12 continue to make significant and comprehensive efforts to contain and minimize the effects  
13 of an unprecedented, global pandemic on the people housed in its institutions, staff, and  
14 visitors by continuing with a robust vaccination process, maintaining a stringent testing  
15 process, enforcing appropriate mitigation measures, working with Plaintiffs to address  
16 individual concerns, and many other proactive efforts.

17 Plaintiffs' criticisms, that "Defendants must commit to end discrimination against  
18 people with disabilities during the pandemic, abide by the Court's orders, enact clear and  
19 comprehensive policies, and put meaningful oversight mechanisms in place," fail to  
20 capture the tremendous amount of collaborative work completed by Defendants and the  
21 stakeholders over the last year. Throughout the pandemic, Defendants have worked  
22 diligently to meet their obligations under the Court's July 20, 2020 order (ECF No. 3015)  
23 to ensure compliance and to keep the Court Expert and Plaintiffs informed. As part of  
24 these efforts, Defendants conduct a statewide daily count to confirm that class members  
25 are provided safe, accessible housing and to provide a daily snapshot of class members'  
26 housing status. Further, Defendants provide a weekly update to Plaintiffs and the Court  
27 Expert to verify that the institutions have adequately designated isolation and quarantine  
28 space that comports with the Court Expert's methodology. Moreover, Defendants have

1 worked hard to create or modify policy and procedure during the pandemic to address the  
2 concerns raised by Plaintiffs and have issued comprehensive written direction to the field  
3 outlining requirements and expectations. One such directive is the November 5, 2020  
4 directive mandating that staff interview class members within twenty-four hours of being  
5 placed in non-designated or non-traditional housing areas and complete a 128B checklist.  
6 Once completed, the 128B checklist is forwarded to CDCR's CAMU and produced to  
7 Plaintiffs' counsel on a rolling basis. The 128B checklist is a five-page document that  
8 addresses the class member's DPP code, necessary DME, cell/bed area, toilets, sinks, paths  
9 of travel, recreation, non-architectural accommodations, accommodations provided to the  
10 inmate, and even includes questions to the staff-member interviewer. These questions  
11 posed to the staff-member interviewer are meant to ensure the inmate is appropriately  
12 accommodated, familiar with the Form 1824 process, able to alert staff to future needs, and  
13 to encourage the inmate to request accommodations. Defendants have also provided  
14 specific instruction to the institutions about their obligations under these various directives  
15 in multiple statewide meetings with ADA Coordinators and CAMU Correctional  
16 Counselor IIs to ensure compliance and that information is timely provided to Plaintiffs.

17 Plaintiffs' statement that "Defendants still are not prioritizing movement of people  
18 with disabilities," is not accurate. Further, Defendants continue to address the Court's  
19 expert's concerns noted in his June 2, 2021 report about "appropriately" or "expeditiously"  
20 meeting class-member needs. Earlier this year on April 26, 2021, California Correctional  
21 Healthcare Services (CCHCS) issued new guidance on necessary movement, which  
22 included transfers of people with disabilities impacting placement. Recently, on June 22,  
23 2021, CCHCS issued its updated guidance regarding COVID screening and testing when  
24 moving inmate/patients. These updated guidelines continue to prioritize class members,  
25 by permitting "necessary movement," a definition that includes "the transfer of people  
26 with disabilities impacting placement (including DPP and DDP individuals)." Under these  
27 guidelines, Defendants are able to address Plaintiffs' concerns for those class members  
28 who remained on the Expedited Transfer List because of pandemic-induced transfer

1 restrictions. Defendants have been diligently working to remove them from the Expedited  
2 Transfer List by transferring them to designated housing, but movement between the  
3 facilities is essentially a finite resource. CDCR must also facilitate transfers for many  
4 other people, including class members returning from county jails and *Coleman* and *Clark*  
5 class members. As a result, CDCR has prioritized those with the most significant  
6 disabilities or who are unable to be accommodated at their current institution. And in  
7 some cases, to ensure these individuals are moved quickly, CDCR has arranged special  
8 transports when needed. Meanwhile, a robust system of monitoring and reporting created  
9 with Plaintiffs remains in place. These policies require institutions to meet with class  
10 members in non-designated placements biweekly to verify and document that they were  
11 being accommodated. This documentation is provided to Plaintiffs on a rolling basis along  
12 with weekly reporting on class members on the Expedited Transfer List and Housing  
13 Restriction Compliance Reports.

14 Plaintiffs raise concerns about the staff-vaccination rates and urge CDCR to  
15 mandate that all staff receive vaccinations to provide further protection to class members.  
16 CDCR is mindful of Plaintiffs' concerns, but notes that this particular issue is more  
17 appropriately addressed in *Plata*, where it is currently being subjected to robust discussion  
18 between the parties and stakeholders and where the Receiver has announced that he has  
19 retained Munger, Tolles, & Olson, LLP, to provide guidance to him on this issue.  
20 Notwithstanding Plaintiffs' concerns it must be noted that the vast majority of class  
21 members are vaccinated. As of July 2, 2021, more 87% of the DPP population has been  
22 fully vaccinated.

23 Plaintiffs' characterization that Defendants have somehow over promised and under  
24 delivered on certain pending issues, in hopes of securing a positive report from the Court  
25 Expert, is simply not true. As Plaintiffs are well aware, Defendants have worked tirelessly  
26 to address pandemic-related issues including non-architectural accommodations,  
27 lower/lower housing restrictions, use of administrative segregation, the ADA-worker  
28 program, effective-communication housing offers, and others. As Defendants have done

1 over the course of this pandemic, Defendants will continue to collaborate with Plaintiffs on  
2 these issues to address their concerns and to ensure the safe and accessible housing of class  
3 members.

4 Despite Plaintiffs' critiques, Plaintiffs know, and the record shows, that CDCR has  
5 been one of the most proactive correctional systems in the country in battling an insidious  
6 virus the likes of which have not been seen in over a century. Defendants will continue to  
7 be transparent and collaborate with the Court Expert, Plaintiffs' counsel, and other  
8 stakeholders as they work to protect the inmates under their charge and the staff dedicating  
9 themselves to this duty for the duration of this pandemic.

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

12 **1. Plaintiffs' Statement**

13 In response to evidence of widespread abuse, assaults and retaliation against  
14 incarcerated people with disabilities who request accommodations and face discrimination,  
15 on September 8, 2020, the Court issued orders finding remedial efforts were necessary in  
16 order to "prevent further violations of the ARP and class members' ADA rights at RJD."  
17 Doc. 3059 at 42. On March 11, 2021, the Court issued further orders finding remedial  
18 efforts were necessary to prevent ongoing violations of the ADA and ARP at five  
19 additional prisons – Substance Abuse Treatment Facility and State Prison Corcoran  
20 ("SATF"), California State Prison Corcoran ("COR"), California State Prison Los Angeles  
21 County ("LAC"), California Institute for Women ("CIW"), and Kern Valley State Prison  
22 ("KVSP"). *See* Doc. 3217.

23 The parties agreed on portions of a Remedial Plan for RJD and on January 20,  
24 2021, the Court agreed with Plaintiffs' Objections and ordered Defendants to issue a  
25 revised partial plan for RJD. Doc. 3192. Provisions of the Remedial Plan including body-  
26 worn cameras, Audio Visual Surveillance Systems ("AVSS"), additional staffing, and  
27 enhanced training have been implemented at RJD and Plaintiffs are closely monitoring the  
28 RJD Remedial Plan roll out. The parties have also agreed on portions of a Remedial Plan



1 covering the five additional prisons. Doc. 3275. Pursuant to the Five Prisons Remedial  
2 Plan, body-worn cameras will be implemented at all prisons by the end of July and AVSS  
3 will be implemented by October 1, 2021, at LAC, by November 1, 2021, at COR, and by  
4 December 1, 2021, at SATF, KVSP and CIW. Thirty-eight additional sergeants will be  
5 hired at the five prisons by August 23, 2021, and training will be completed by October 25,  
6 2021. *Id.*

7 The parties have agreed to combine negotiations regarding outstanding items and to  
8 take additional time settling disputes regarding the staff misconduct investigation and  
9 disciplinary remedies, the early warning system, and changes to pepper-spray policies  
10 which will be applicable statewide. *See* Doc. 3275.

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

14 Plaintiffs continue to raise significant disability-related staff misconduct concerns  
15 throughout the state, including violent assaults, false RVRs, and retaliation for reporting  
16 misconduct or requesting accommodations, including during the COVID-19 pandemic.  
17 *See Exhibit B* (internal exhibits omitted), June 10, 2021, Letter from Penny Godbold to  
18 Tamiya Davis regarding disability related misconduct at Correctional Training Facility  
19 (“CTF”). Most recently, Plaintiffs provided evidence of class member declarants receiving  
20 retaliatory and false RVRs as a result of their participation in the litigation and their  
21 ongoing efforts to hold staff accountable. *See Exhibit C* (internal exhibits omitted),  
22 June 10, 2021, Letter from Penny Godbold to Jenn Neill and Tamiya Davis, CDCR Office  
23 of Legal Affairs. Plaintiffs have requested that Defendants take specific action to remedy  
24 problems and remain concerned that, as long as staff members are permitted to issue  
25 retaliatory RVRs to incarcerated people who report staff misconduct, it will result in a  
26 chilling effect that could undermine the very efforts to implement court ordered reforms  
27 the parties are working towards. Plaintiffs await Defendants’ response.

28 Finally, during a monitoring tour of SATF in May 2021, Plaintiffs observed that

1 staff had created an unwelcoming and intimidating environment that discouraged people  
2 from asking for help, including by posting large pro-law enforcement flags and a  
3 handmade sign making fun of incarcerated people. This is especially concerning in light  
4 of the recent killings of multiple class members and allegations raised by Plaintiffs’  
5 counsel regarding the disregard for the safety and lives of incarcerated people at that  
6 prison. *See* Doc. 3266 at 15. The provisions in the Court’s previous orders will have a  
7 substantial impact on the culture of institutions, but Defendants must continue to work to  
8 address widespread problems at all institutions.

## 9 **2. Defendants’ Statement**

10 Defendants take all allegations of staff misconduct seriously and are committed to  
11 investigating and taking appropriate remedial action where warranted. Although  
12 Defendants dispute many of Plaintiffs’ allegations, Defendants continue to diligently work  
13 with Plaintiffs concerning their staff misconduct allegations at Richard J. Donovan (RJD),  
14 California State Prison, Los Angeles County (LAC), Kern Valley State Prison (KVSP),  
15 California State Prison – Corcoran (COR), Substance Abuse Treatment Facility (SATF),  
16 and California Institute for Women (CIW).

17 In compliance with the Court’s September 8, 2020 order, and notwithstanding  
18 pending appellate review, Defendants have engaged in numerous substantive meet-and-  
19 confer sessions with Plaintiffs and the Court’s Expert to develop a comprehensive and  
20 effective remedial plan to achieve compliance with the ADA and Armstrong Remedial  
21 Plan. During the meet-and-confer sessions that have been ongoing for the last ten months,  
22 the parties have identified disputed elements of the remedial plan, shared information  
23 related to positions taken concerning the plan, and sought to resolve areas of disagreement.  
24 Over the course of the last year, Defendants have provided Plaintiffs with extensive written  
25 policies related to the remedial plan and presented third-party tutorials or informational  
26 sessions concerning officer training, the operation and placement of fixed surveillance  
27 cameras, staff investigation process, employee discipline, components of a computerized  
28 early-warning system, and other aspects of the remedial plan. As noted above, the parties

1 agreed to take additional time to negotiate the portion of the plan that concerns staff  
2 misconduct investigation, disciplinary remedies, pepper-spray policy, and the early-  
3 warning system. (ECF No. 3178.) Further, much of the work completed in accordance  
4 with the RJD Remedial Plan is applicable to the Court’s March 11, 2021 order that  
5 mandates Defendants implement remedial measures to achieve compliance with the  
6 Armstrong Remedial Plan and the ADA at five institutions including LAC, SATF, KVSP,  
7 CIW, and COR.

8         In a short period of time, significant progress has been made with components of  
9 the remedial plans that concern increased staffing, body-worn cameras, fixed camera  
10 installation (AVSS), document production, and other remedies. (ECF Nos. 3177, 3183.)  
11 For example, increased staffing at RJD was deployed in December 2020 and the thirty-  
12 eight additional sergeants, as noted above, will be in place by August 23, 2021, at LAC,  
13 SATF, KVSP, CIW, and COR. AVSS deployment is on track and will be completed by  
14 the end of the year. AVSS was deployed at RJD on April 5, 2021, and the parties have  
15 agreed that AVSS will be deployed at LAC by October 1, 2021, at COR by November 1,  
16 2021, and at SATF, CIW, and KVSP by December 1, 2021. Body-worn cameras were  
17 fully deployed on January 19, 2021 at RJD; and will be deployed at LAC, SATF, KVSP,  
18 CIW, and COR by July 30, 2021. In May 2021, the parties and the Court Expert received  
19 a demonstration of the AVSS and the body-worn cameras deployed at RJD, including the  
20 body-worn cameras’ extensive ability to capture video and audio interactions between staff  
21 and inmates. All who attended the demonstration, including Plaintiffs’ counsel, were  
22 impressed by the camera technology and encouraged by the anticipated positive impact on  
23 staff and inmate relations. On June 30, 2021, the Court’s expert filed his first quarterly  
24 report and, while noting the ongoing negotiations and additional work to be done,  
25 described the fixed-camera and body-worn camera technology deployed at RJD as “quite  
26 impressive.” (ECF No. 3290.) The quarterly report conveys that the use of body-worn  
27 cameras appears to have had a positive impact on relations between staff and inmates at  
28 RJD and concludes that “on the whole, RJD appears to be adhering to the operations plan

1 for use of cameras and retention of footage.” *Id.*

2 Defendants believe that the significant work and commitments made to date serve  
3 to address Plaintiffs’ concerns that “violations of the ADA and ARP found thus far at six  
4 prisons exist system wide,” and that class members suffer “violent assaults, false RVRs,  
5 and retaliation for reporting misconduct or for requesting accommodations.” During the  
6 extensive negotiations, Defendants have agreed that important pieces of the remedial plans  
7 will apply statewide. For example, once the pepper-spray and staff-misconduct  
8 investigation and discipline processes are finalized as part of the Court-ordered remedial  
9 plans, these policies will be expanded to all institutions statewide. To further demonstrate  
10 that Defendants take seriously all allegations of staff misconduct which includes false  
11 RVRs and retaliation for requesting accommodations, CDCR has agreed to effect further  
12 unprecedented change statewide. As revealed in the May Revision of the State’s budget,  
13 in addition to implementing AVSS (fixed cameras) at the five institutions required by the  
14 *Armstrong* orders, CDCR requested to install, in fiscal year 2021-2022, AVSS at four  
15 additional institutions—namely, Salinas Valley State Prison (SVSP), California State  
16 Prison – Sacramento (CSP-SAC), California Correctional Institution (CCI), and Mule  
17 Creek State Prison (MCSP). In the following three fiscal years, CDCR currently plans to  
18 install AVSS at nine to ten institutions per fiscal year, over the next three fiscal years, until  
19 AVSS has been installed at all institutions. By the end of this fiscal year (June 2022) there  
20 will be fixed-cameras, or funding for such if not fully installed, at approximately thirteen,  
21 or 37%, of the thirty-five CDCR institutions. This includes RJD, LAC, SATF, KVSP,  
22 COR, CIW, SVSP, CSP-SAC, CCI, MCSP, and the three other institutions with fixed  
23 cameras already installed (High Desert State Prison, California Health Care Facility, and  
24 the Central California Women’s Facility). Based on recent data, this means that  
25 approximately 57% of the DPP population will be housed in an institution with fix-camera  
26 coverage, or funding for such.<sup>2</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> Based on data released June 24, 2021, there are approximately 10,196 people with a DPP  
(footnote continued)

1 Finally, CDCR takes seriously all allegations of wrongdoing against class members  
 2 and is reviewing class-members' recent allegations of staff misconduct at CTF and SATF,  
 3 as noted above by Plaintiffs. Recently, in fact, management from CAMU and CCHCS  
 4 went to SATF to address the issues raised by Plaintiffs. These allegations, and those at  
 5 CTF, are subject to review in accordance with current CDCR policy and CDCR will take  
 6 appropriate action to protect class members and hold staff accountable, including  
 7 appropriate discipline, if warranted.

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

10 **1. Plaintiffs' Statement**

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

17 Prior to the pandemic, Plaintiffs identified a number of program access barriers for  
 18 people with disabilities, including Defendants' failure to provide real-time captioning for  
 19 deaf class members who do not know sign language, assistive technology and skills  
 20 training for blind class members, and accommodations for people with learning  
 21 disabilities. Little or no progress has been made on those issues. And pandemic-related  
 22 restrictions created new barriers, as in-person instruction was suspended and class  
 23 members had severely limited or no access to sign language interpreters and auxiliary aids  
 24 located only in law libraries, such as text-to-speech software and electronic magnification,  
 25 to help them understand the written assignments that had replaced in-person instruction.

26 \_\_\_\_\_  
 27 code housed in a CDCR institution and approximately 5,823 are housed in the thirteen  
 28 prisons: RJD (915), LAC (416), SATF (782), KVSP (201), COR (264), CIW (133), SVSP  
 (344), CSP-SAC (115), CCI (89), MCSP (924), HDSP (186), CHCF (1232), and CCWF  
 (222).

1 As a result, a number of *Armstrong* class members with communication disabilities,  
2 including those who are blind, Deaf, and have learning disabilities, have struggled to  
3 successfully complete written educational assignments during the pandemic.<sup>3</sup> That may  
4 cause them to receive fewer credits—and therefore to serve longer sentences—than their  
5 peers because they are unable to access to the significant milestone and education credit  
6 awards that Defendants expect will result from people’s successful completion of  
7 independent written assignments during the pandemic. Plaintiffs are awaiting further  
8 information from Defendants to determine how best to evaluate and remedy this problem.

## 9 **2. Defendants’ Statement**

10 Defendants continue to be committed to allocating the resources and staff necessary  
11 to evaluate and provide accommodations to ensure equal access to rehabilitative  
12 programming, services, and activities to people with disabilities. Plaintiffs’  
13 characterization that “little or no progress has been made on those” program-access  
14 barriers identified by Plaintiffs before the pandemic fails to recognize the unprecedented  
15 challenges the global pandemic actually presented. During this unprecedented global  
16 event, DRP made every effort to ensure that people with disabilities could participate in  
17 education and rehabilitative programs and successfully complete their work assignments.  
18 Because in-person classes were suspended, educational packets were distributed and  
19 resources were provided to people with disabilities to assist them. Notwithstanding the  
20 obstacles presented by the global pandemic, Defendants sought to provide these resources,  
21 including sign language interpretation, assistive devices, and auxiliary aids, whenever  
22 possible to provide disabled people with learning opportunities and to prepare them for  
23 credit-earning opportunities. In fact, as early as August 2020, DRP developed schedules to  
24 provide DPV class members access to the assistive devices in the library in small groups  
25 by housing units.

26 \_\_\_\_\_  
27 <sup>3</sup> In response, Defendants below again make reference to DPP teachers and braille  
28 accommodations are inadequate to address these widespread barriers to equal access. *See*  
Doc. 3266 at 20-21.

1           Despite the many obstacles faced during the pandemic, Defendants continued with  
2 their efforts to develop different ways to provide training to inmates with disabilities  
3 regarding the various accommodation tools, including the Job Access With Speech  
4 (JAWS) screen reader for the Lexis Nexis law library database, that are available for use  
5 by vision-impaired incarcerated people. Although initially delayed by the pandemic, staff  
6 training for JAWS utilization was completed and CDCR upgraded the ADA computers to  
7 support JAWS, and other technologies, to make these new technologies accessible to the  
8 class members who need them. JAWS is available at designated institutions, including the  
9 online JAWS application, Microsoft Word, and Windows Ease of Access Narrator and  
10 Magnifier features.

11           Now that pandemic-related restrictions are lifting, library staff are developing a  
12 schedule to train all class members on all assistive devices and library resources. During  
13 the pandemic, Defendants continued to provide braille and audio books from the Library of  
14 Congress' Braille and Talking Books Program (BTBP) for the small number of class  
15 members who required it. Although Defendants have not yet been able to secure onsite  
16 Braille instruction, Defendants continue to provide access to the Hadley School for the  
17 Blind, a member of the Council of Schools and Services for the Blind, correspondence  
18 Braille course, and did so during the pandemic. DPV inmate-students have the opportunity  
19 to receive additional tutoring support from DPP teachers at designated institutions and a  
20 Student Study Team (SST) to develop an Individually Tailored Education Plan (ITEP) that  
21 includes short and long-term goals for reading, language arts, math, behavior, assessment  
22 data, and accommodations. These may include access to large print educational materials,  
23 usage of electronic magnifiers, oversize monitors, various screen readers in education  
24 classrooms, and testing accommodations.

25           Defendants are mindful of Plaintiffs' concerns that some class members with  
26 communication and learning disabilities were not able to complete their independent  
27 written assignments because of pandemic-related restrictions causing them to receive  
28 fewer credits than their peers without disabilities. Plaintiffs have requested additional

1 information and Defendants are gathering available information to share with them so that  
2 a meaningful discussion between the stakeholders may take place. It is important to note,  
3 however, that many incarcerated people with disabilities receive credits for mental-health  
4 programs that their peers without disabilities do not receive.

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

6 **1. Plaintiffs' Statement**

7 The parties formed a workgroup to address the many inequities facing D/deaf and  
8 hard-of-hearing people in California prisons. Much of the work was suspended due to the  
9 pandemic. Although the parties have re-started regular meetings, Defendants—and in  
10 particular the Division of Rehabilitative Programs—appear to have made no measurable  
11 progress in addressing serious and long-standing barriers to program access. Defendants  
12 have not provided timely information and do not appear committed to collaboratively  
13 resolving these issues.

14 Plaintiffs currently are evaluating legal options related to the following issues:

15 **Failure to provide real-time captioning.** “Real-time captioning (also known as  
16 computer-assisted real-time transcription, or CART) is a service...in which a transcriber  
17 types what is being said at a meeting or event into a computer that projects the words onto  
18 a screen. This service, which can be provided onsite or remotely, is particularly useful for  
19 people who are deaf or have hearing loss but do not use sign language.” U.S. Dep’t of  
20 Justice, ADA Requirements: Effective Communication (Jan. 2014), [https://www.ada.gov/  
21 effectivecomm.htm](https://www.ada.gov/effectivecomm.htm). Late-deafened people in California prisons who do not know sign  
22 language overwhelmingly report feelings of isolation in prison due to their disability and  
23 have, **for decades**, been unable to fully participate in programs and therefore earn credits  
24 to reduce their sentences and/or learn skills to improve the likelihood of successful reentry  
25 into the community. Plaintiffs for years have demanded that Defendants provide CART  
26 services. *See, e.g.*, Doc. 2936 at 45-53, 65-76. Defendants have not done so. Instead,  
27 Defendants have delayed matters by giving incomplete and contradictory information  
28 about whether, when, and how CART will be provided. For example, Plaintiffs’ counsel



1 have spent months seeking basic details regarding the status of Defendants’ efforts to  
2 “request[] quotes” for a CART provider. Defendants have yet to provide this information.

3 Defendants also do not understand why CART is necessary. Defendants below  
4 suggest that CART can be replaced by sign language interpretation, blue-tooth speaker  
5 systems, or a DPP teacher. But CART is needed by those who do **not** know sign language  
6 and who, because they are deaf, will not benefit from a speaker system. And DPP  
7 teachers—currently available at only six of the 35 institutions—are no substitute. They do  
8 not provide access to the primary instructor, lesson, or class discussions. At best, they  
9 provide only an abbreviated summary of a lesson plan after the fact. And they perform no  
10 role in supporting or replacing rehabilitative, religious, mental health, and other  
11 programming. For those who do not hear well enough to understand speech, CART is the  
12 only accommodation that provides contemporaneous access to the **same** information that  
13 others receive, as opposed to delayed access to a portion of it.

14 **Failure to provide FM systems or equivalent.** An FM system is an assistive  
15 listening device that works in conjunction with hearing aids to improve the quality of the  
16 sound the listener hears by reducing or eliminating background noise and focusing  
17 auditory attention on the primary speaker. It is widely used among adults in the  
18 community for individuals who hear well enough to understand speech, with sufficient  
19 amplification. Defendants have represented that only two types of hearing aids are  
20 available in California prisons and that neither is compatible with an FM system. They  
21 have offered no solution for those people who cannot fully participate in education and  
22 rehabilitative programming because they cannot hear sufficiently with their hearing aids  
23 alone due to background noises or other disruptions.

24 Defendants below claim that they “provide class members with hearing aids that are  
25 far superior to the outmoded FM system.” That is false. Based on Plaintiffs’ consultation  
26 with experts in the field and our own research, it appears that the two models of hearing  
27 aids provided to people in California prisons represent the lowest level of hearing  
28 technology and in fact may no longer be offered to the general public; lack a basic feature

1 (telecoil) that would make them to be compatible with other devices, such as telephones  
2 and FM systems; and will not accommodate all people with hearing loss. That is  
3 confirmed by widespread class member reports that their hearing aids are inadequate and  
4 do not provide them equal access to programs, services, and activities; they are able to hear  
5 only “bits and pieces” of what people are saying. Put differently, equally effective or  
6 superior accommodations to FM systems may exist, but Defendants simply do not offer  
7 them.

8 Defendants also fundamentally misunderstand which class members may require  
9 FM systems. Defendants below write that “there are only approximately twenty-five DPH  
10 students in total, who participate in education courses statewide.” That is misleading for at  
11 least two reasons. First, hearing aids and FM systems are meant for class members  
12 designated DNH, of whom there are **over 2,850 statewide**.<sup>4</sup> Second, Defendants focus  
13 only on people currently assigned to education, but many others may require disability  
14 accommodations to access other programs, services, and activities, including rehabilitative  
15 and mental health programming and disciplinary proceedings.

16 **Failure to protect Deaf people from serious harm and death.** As explained  
17 previously, Defendants have failed to take modest steps to ensure the safety of Deaf people  
18 and provide them a clear and confidential way to report safety concerns in sign language.  
19 *See, e.g.*, Doc. 3191 at 26-28. Defendants have not meaningfully engaged with Plaintiffs  
20 on these issues and do not appear to appreciate the urgency of this matter, even after a  
21 Deaf person was brutally bludgeoned to death last year soon after unsuccessfully pleading  
22 with staff for help (and not provide a sign language interpreter), and even after institution  
23 staff posted public comments rejoicing in the killing. *See* Doc. 3266 at 74-79. In fact,  
24 Defendants have been unable to produce any evidence that Plaintiffs’ allegations were in  
25 fact investigated even after months of repeated requests for information.

26  
27 <sup>4</sup> “DNH” refers to people who are hard of hearing and use an assistive device, such as a  
28 hearing aid. “DPH” refers to people who instead require written notes, sign language, or lip reading.

1           **Sign language interpretation at off-site medical encounters.** Defendants have  
2 represented that they are working on a comprehensive policy and training program to  
3 ensure sign language interpretation during off-site medical encounters, which has been a  
4 longstanding problem. Plaintiffs are committed to working with Defendants to ensure that  
5 a meaningful policy is implemented without further delay.

## 6           **2. Defendants' Statement**

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

12           Defendants dispute that they have provided Plaintiffs' with "incomplete and  
13 contradictory information about whether, when, and how CART will be provided." OCE  
14 has repeatedly advised Plaintiffs that in response to their request for CART, real-time  
15 captioning for hearing-impaired class members, OCE explored the option of amending the  
16 current contract with the vendor for Video Remote Interpreting (VRI), but this is not  
17 possible due to rules related to the contracting and bidding-process. Once, however, the  
18 contract expires on June 30, 2022, OCE will seek to add this service to the next contract in  
19 accordance with the applicable process. Nonetheless, now that funding has been approved,  
20 OCE continues to request quotes to add this feature for the current fiscal year. Meanwhile,  
21 program access is further provided through written materials and notes in education  
22 programs. Further, as noted above, DPH inmate-students have the opportunity to receive  
23 additional tutoring support from DPP teachers at designated institutions, which may  
24 include a Student Study Team (SST) to develop an Individually Tailored Education Plan  
25 (ITEP), access to SLI, in person and/or remotely, or blue-tooth speaker systems to  
26 participate in classroom discussions or for amplification.

27           Sign-language interpretation at off-site encounters is taken seriously and any  
28 contracted medical provider who does not provide sign language interpretation during off-

1 site medical appointments elicits a swift response from Defendants to ensure the service is  
2 provided. In fact, CDCR ensures these services are provided through its contracts with  
3 third-party providers. It is a contractual obligation that hospitals provide a Sign Language  
4 Interpreter (SLI) for all hearing-impaired inmate patients whose primary method of  
5 communication is American Sign Language. Should the hospital not be able to provide the  
6 appropriate accommodations, they are required to contact the sending institution so that the  
7 sending institution can provide the appropriate accommodation by providing either Video  
8 Remote Interpretation or the services of a contracted sign-language interpreter. Outside  
9 hospitals are made aware of each patient's medical disability and what accommodations  
10 are needed for communication with that patient. For offsite specialty clinics that do not  
11 provide SLI, the offsite health care schedulers are trained to contact the onsite SLI before  
12 the appointment to provide an interpreter for the appointment. CCHCS has advised  
13 Plaintiffs that it is developing potential alternatives to solely relying on external providers  
14 to ensure interpreters are present for off-site encounters. To further ensure that these  
15 services are provided, Defendants have put together a working group to address contract  
16 language for off-site encounters, policies and regulations, and an escalation process for  
17 when an off-site provider fails to provide SLI. Recently, Defendants produced to Plaintiffs  
18 a draft flow-chart to provide effective communication for those requiring a SLI during off-  
19 site healthcare encounters and Defendants continue to work on revising the HC DOM to  
20 further address this issue.

21 Plaintiffs' characterization that Defendants have failed to properly accommodate  
22 deaf class members because Defendants have not provided them with an FM-system  
23 compatible device is inaccurate. Defendants provide class members with hearing aids that  
24 are far superior to the outmoded FM system. Plaintiffs' contention that class members  
25 "cannot fully participate in education and rehabilitative programming" because they cannot  
26 hear sufficiently is also inaccurate. It is important to note that classroom size is limited to  
27 eighteen inmates and that there are only approximately twenty-five DPH students, in total,  
28 who participate in education courses statewide. Hence, the class size enables the

1 classroom instructors to respond to the needs of the class members as they arise during the  
2 course of classroom instruction to enable their full participation.

3 Defendants disagree with Plaintiffs' contention that Defendants have failed to  
4 "ensure the safety of Deaf people and provide them a clear and confidential way to report  
5 safety concerns in sign language," and "fail to appreciate the urgency of this matter."  
6 Defendants have worked hard to meet their obligations to these class members through  
7 orientation pamphlets and videos, by providing ASL-capable ADA-workers where  
8 available, mental-health services, ADA Coordinator outreach, and other services.  
9 Defendants have made significant strides in providing Deaf and hard-of-hearing class  
10 members who require sign language interpretation with further access to an increasing  
11 number of programs, services, and activities. Moreover, Defendants remain committed to  
12 ensuring that these class members' concerns related to healthcare, safety, and recreation  
13 are appropriately accommodated. Defendants remain committed to addressing these  
14 concerns raised by Plaintiffs and believe that collaborative efforts between the parties will  
15 result in effective measures to ensure that this group of class members are able to  
16 confidentially report safety concerns.

## 17 **E. Accommodations for Blind and Low-Vision Class Members**

### 18 **1. Plaintiffs' Statement**

19 The parties also formed a workgroup to address issues facing blind and low-vision  
20 class members. The workgroup began regular meetings in December 2020, and covers,  
21 among other things, documentation of methods of effective communication, orientation  
22 and mobility training, audio description, electronic submission of forms, text-to-speech  
23 software, accommodations assessments and skills training, braille literacy, accessibility of  
24 mental health groups, accessibility of tablet program (including training), and access to  
25 magnifiers of different magnification levels.

26 As noted previously, during the pandemic, the parties worked collaboratively to  
27 develop interim measures to ensure that blind and low-vision class members are properly  
28 situated to new living environments. Unfortunately, Plaintiffs have identified serious

1 flaws in its implementation. The parties have agreed to work together to address these  
2 issues. The parties also are working collaboratively to ensure that blind and low-vision  
3 people promptly receive appropriately sized and tipped canes.

4 Plaintiffs, however, have not been able to gain any traction on a system to provide  
5 large-print, braille, and audio versions of written materials. Defendants currently have no  
6 system in place to document class members' individual need for accessible versions of  
7 documents, including disciplinary paperwork and medical information, and have no  
8 reliable system to produce and provide accessible versions. *See Exhibit D*, March 15,  
9 2021, Letter from Jacob Hutt, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal  
10 Affairs. This issue may require court intervention.

## 11 **2. Defendants' Statement**

12 Defendants have put forth significant resources and effort to ensure that blind and  
13 low-vision class members are appropriately accommodated. As noted above, Defendants  
14 participate in frequent working groups to gain further insight from Plaintiffs about the  
15 needs and concerns of these class members. For example, during the pandemic and in  
16 response to increased movement, the parties worked to develop interim measures to ensure  
17 that blind and low-vision class members are properly situated to new living environments.  
18 As agreed to by the parties, this included a comprehensive memorandum and training  
19 materials for the ADA coordinator, or their designated staff, who would be situating these  
20 class members to review, followed by a thorough checklist of necessary areas and items to  
21 orient the class members to. The orientation is conducted within 24 hours of a class  
22 members' placement into a new housing environment, and includes a guided walkthrough  
23 of the unit to facilitate independent and safe navigation by the class member. The class  
24 member is oriented to housing areas, toilets/showers, officers' stations, dayrooms, exits  
25 (both emergency and ingress/egress), dining halls, and phones, to name but a few. Further,  
26 the orientation requires staff to introduce class members to ADA workers (if they are  
27 available in the housing unit, meaning it is not being utilized for isolation or quarantine  
28 purposes), or staff who will be available to assist the class member when requested.

1 Defendants disagree with Plaintiffs’ characterization that there are “serious flaws in its  
2 implementation,” but have, nonetheless, worked with Plaintiffs to address their concerns  
3 and agreed to continue collaborating on this issue through small working groups specific to  
4 orientation needs. Defendants continuously reach out to staff to ensure that the  
5 orientations are timely and effective, based on the process put into place. The parties  
6 continue to discuss its implementation, whether improvement to the system is needed  
7 under current circumstances, and whether to offer such orientations to blind and low-vision  
8 class members after the pandemic.

9 Defendants disagree with Plaintiffs that some issues concerning blind and low-  
10 vision class members “may require court intervention.” Defendants will continue to meet  
11 and confer with Plaintiffs concerning the provision of large-print, braille, or audio versions  
12 of written materials and their contention that there is no system to document class  
13 members’ individual need for accessible versions of documents.

#### 14 **F. Problems Regarding Access to Assignments for Class Members**

15 With regard to the broader problem of equal access to job and program assignments  
16 for people with disabilities, the parties convened a small work group to address Plaintiffs’  
17 concerns, as documented in multiple tour reports and letters. *See* Doc. 2680, at 13-14.  
18 The parties agreed to exchange program assignment data on a quarterly basis. Plaintiffs  
19 contend that the data continues to show disparities in assignments for people with  
20 disabilities. The parties agree to work cooperatively toward ensuring equal access in  
21 program assignments for people with disabilities but these conversations were initially put  
22 on hold during the pandemic. The parties have been meeting in recent months to discuss  
23 credit earning for class members and other incarcerated individuals with disabilities, and to  
24 discuss the assignment process, in order to better understand ongoing disparities in credit  
25 earning under Proposition 57 for people with disabilities, as well as related disparities in  
26 the program access assignment data. These meetings have taken place on February 19,  
27 2021, April 22, 2021, May 5, 2021, and June 4, 2021.

28

1 **G. Effective Communication for Parolees Who Are Deaf**

2 Despite assertions that DAPO is providing additional oversight regarding the  
3 supervision of class members who are Deaf or hard of hearing, Plaintiffs continue to  
4 identify problems with Defendants' provision of effective communication to parolees.

5 The parties remain in disagreement about the use of civilian in-person sign language  
6 interpreters during non-due process parole field encounters presenting safety and security  
7 issues. Plaintiffs remain concerned about the provision of EC through VRI due to the  
8 unreliability of the technology and about the ongoing confusion between VRS and VRI.  
9 Meanwhile, Defendants will continue to address Plaintiffs' concerns related to the proper  
10 use of VRI and have allocated increased resources in this area. For example, DAPO  
11 purchased and implemented the use of VRI tablets, high-speed connectivity, and an  
12 expanded SLI contract provider to increase VRI capabilities. DAPO provided additional  
13 training and instructions for staff supervising SLI parolees enable the proper use of this  
14 technology.

15 **H. Statewide Durable Medical Equipment Reconciliation and Accuracy of  
16 Disability Tracking Information**

17 Following Defendants' statewide durable-medical-equipment ("DME")  
18 reconciliation in early January 2019 that revealed 7,346 class members were missing one  
19 or more items of DME and that 2,349 class members' DME records had errors, CCHCS  
20 implemented the DME Discrepancy Report Tool in January 2020. Plaintiffs remain  
21 concerned that there is no plan to confirm, moving forward, that class members actually  
22 have their required DME as indicated in the system. This is a necessary step in the prison  
23 environment where DME can be easily lost during transfer, damaged or taken.

24 Defendants acknowledged a problem with some class members who utilize DME  
25 but who have not been assigned any disability code and have distributed training materials  
26 to CDCR clinicians about how to assign the proper codes. The parties will work  
27 collaboratively to ensure proper identification of DPP codes and to reach a sustainable  
28 resolution for DME reconciliation in the future.



1 **I. Parole Planning and Working with Class Members Preparing for Release**

2 **1. Plaintiffs' Statement**

3 CDCR and DAPO fail to ensure that parolees with severe and impacting placement  
4 disabilities are accommodated during the process of transitioning to parole. Class  
5 members do not consistently receive adequate planning for parole and adequate  
6 transitional housing, transportation, benefits application assistance, assistance obtaining  
7 identification cards, and other transitional services that are critical for these individuals and  
8 that help them succeed on parole. *See* Doc. 2680 at 11-12; Doc. 2655 at 11-13. As a  
9 result, class members needlessly struggle to comply with parole conditions and to  
10 transition to life outside of prison. For example, class members with significant  
11 disabilities struggle to make it to parole encounters. Some class members are placed in  
12 inaccessible CDCR and DAPO funded transitional housing programs. Deaf class members  
13 in these programs are not provided with sign language interpretation services for mandated  
14 substance abuse groups and are not provided interpreters for other DAPO-mandated  
15 programs. Class members with intellectual disabilities struggle to remember and  
16 understand parole compliance requirements. Each of these class members requires  
17 additional accommodations, including supportive services, to ensure their success on  
18 parole. Although DAPO has the ability to provide cash advances and vouchers for food  
19 and shelter to newly paroling individuals who are struggling and at risk for hunger and  
20 homelessness, the provision of these services is entirely at the discretion of the parole  
21 agent and there is no apparent system for ensuring access to class members who need it  
22 most.

23 In a May 4, 2021, letter to Defendants, supported by fourteen class member  
24 declarations, Plaintiffs established that Defendants are discriminating against parolees with  
25 disabilities by failing to provide them with the minimum supports necessary for them to  
26 succeed on parole, by failing to adequately prepare them for parole, and by failing to  
27 ensure adequate accommodations and fully accessible CDCR-funded transitional housing  
28 programs are available to class members. *See* Doc. 3266, Ex. F. Plaintiffs demanded that

1 Defendants take immediate steps to address their systemic failure to accommodate  
2 parolees with disabilities by providing the minimum supports necessary for them to  
3 succeed on parole, and by adopting other remedial measures to prevent discrimination  
4 against parolees with disabilities. *Id.* Plaintiffs also object to the many transitional  
5 housing programs listed in DAPO's directory of transitional housing programs that  
6 explicitly exclude people with hearing, mobility, vision, and/or mental health disabilities  
7 from their programs.

8         The parties are actively engaged in negotiations, and plan to meet approximately  
9 every two weeks to address the systemic deficiencies in Defendants transition-to-parole  
10 and parole programs that deny parolees with disabilities an equivalent opportunity to  
11 successfully reintegrate into the community as parolees without disabilities. The parties  
12 have met on June 1, June 17, and July 2, 2021 to discuss Plaintiffs' requests, and plan to  
13 meet again on July 26, 2021. During these meetings, Defendants stated that they would  
14 consider implementation of baseline support services and greater structure and oversight  
15 over the parole process to ensure the specific needs of parolees with disabilities are  
16 considered in conjunction with parole support, prior to leaving prison. Defendants also  
17 agreed to work with Plaintiffs to ensure that CDCR funded programs do not have  
18 categorical restrictions on providing services to people with certain disabilities.  
19 Defendants agreed to internally discuss Plaintiffs' request for Headquarters level review of  
20 all cases where a parolee with a disability is revoked multiple times in a year to determine  
21 whether the disability, and failure to accommodate, was a factor in the revocation. The  
22 parties are also discussing mandating that individuals with certain disabilities and/or who  
23 require certain assistive devices or medical devices be provided housing due to the risks to  
24 them from being homeless, and ensuring that all individuals are evaluated by medical staff  
25 prior to their release to assess whether they should be prioritized for transitional housing  
26 because of their disabilities. Among other remedial measures, the parties are also  
27 discussing Plaintiffs' proposal that parolees be provided a 90-day supply of medications so  
28 they do not run out before parolees are able to get their Cal-ID cards and MediCal, both of

1 which are generally needed to obtain medication renewals in the community.

2 Plaintiffs are committed to working with Defendants to achieve a durable remedy to  
3 ensure they are able to meet their legal obligations under the ADA and the Armstrong  
4 Remedial Plans by operating their transition-to-parole and parole programs in a manner  
5 that no longer systemically discriminates against parolees with disabilities.

6 Related to parole for life prisoners with disabilities, Defendants shared a detailed  
7 memo that has been approved by CDCR stakeholders and that will provide for an  
8 expanded role for CDCR counselors in helping life prisoners prepare for Board hearings  
9 and eventual parole. While Plaintiffs very much welcome the new memo and process for  
10 correctional counselors to assist in preparing parole plans for certain class members, that  
11 process will only provide assistance to life term prisoners and will not reach the vast  
12 majority of parolees with disabilities in need of services, discussed above.

## 13 **2. Defendants' Statement**

14 Defendants dispute Plaintiffs' allegation that CDCR and DAPO fail to ensure that  
15 parolees with severe and placement-impacting disabilities are accommodated during the  
16 transition-to-parole process. Similarly, Defendants dispute Plaintiffs' assertion that their  
17 May 4, 2021 letter "established" discrimination against parolees with disabilities by failing  
18 to provide minimum support while on parole, and preparation for parole, or equal access to  
19 CDCR-funded transitional housing programs. Despite the parties' differences, Defendants  
20 have taken a proactive approach. The parties have agreed to meet and confer  
21 approximately every two weeks and have already met on June 1, June 17, and July 2. It is  
22 important to note that the issues raised by Plaintiffs concerning parole-related services  
23 requires the coordination between, and contribution of, several divisions including, DAPO,  
24 DRP, OCE, DAI, and CCHCS to engage in informed discussion and a negotiated  
25 resolution.

26 Defendants take a comprehensive approach to provide people with disabilities with  
27 adequate pre-parole planning so that the successful completion of parole is equally  
28 accessible to them. As part of the pre-release process, staff complete an assessment for

1 each inmate who is paroling, whether or not that inmate has a disability, which identifies  
2 their individual needs. Once those needs are determined, the staff and inmate/parolee  
3 work collaboratively to complete a case plan identifying community-based programs that  
4 receive federal, state, or other local funding to provide housing and other services to  
5 disabled citizens. Before the pandemic, in a February 20, 2020 letter, Defendants detailed  
6 the additional assistance that correctional counselors provide to prepare life-term prisoners  
7 with disabilities for parole, prior to their BPH hearings. Counselors are directed to discuss  
8 different sources of support upon release with life-term prisoners including family,  
9 housing, employment, financial, or community-based programs, and counselors are to  
10 assist with the completion of a template letter that the class member can use to send to  
11 potential sources of support. On this issue, Defendants' responses to Plaintiffs' transition-  
12 to-parole advocacy letters consistently demonstrate that pre-parole services are regularly  
13 and adequately provided to class members, but that class members are not always reporting  
14 information accurately to Plaintiffs. The additional assistance provided by the counselors  
15 serves to inform class members, and facilitate their access to, the pre-parole services  
16 available to them. Counselors receive a memo that details their additional responsibilities  
17 with respect to class members in the release planning process.

18 Further, Plaintiffs periodically send advocacy letters concerning parolee housing  
19 that demonstrate no nexus between their allegations and Defendants' compliance with the  
20 ADA, the ARP, or this Court's orders. To the extent that Plaintiffs advocate for housing  
21 for every parolee with a disability, Defendants are not obligated to do so. CDCR is not  
22 required to fund and secure housing for every parolee with a disability, nor does applicable  
23 law require it to create and fund new programs. The law requires that the programs and  
24 benefits Defendants offer, such as assistance in direct placements for housing or  
25 community-based programs, be administered in a manner that provides equal access.  
26 CDCR's pre-parole practices are consistent with the law. CDCR has programs in place to  
27 assist with transportation and locating housing upon release, but it does not guarantee or  
28 provide housing for everyone. Nonetheless, as part of the on-going meetings related to

1 Plaintiffs' May 4 letter, CDCR informed Plaintiffs on June 17, that by the end of the third  
2 quarter of this calendar year, they will have completed a review of their community-  
3 contracted programs to ensure that there are no improper restrictions to housing people  
4 with hearing, vision, mobility, or mental-health disabilities, as Plaintiffs have alleged.  
5 Also on June 17, CDCR advised Plaintiffs that DRP is amenable to housing class members  
6 who have a disability that necessitates DRP-funded housing for at least ninety days post-  
7 parole, while they are awaiting approval for SSI-funded housing arrangements. CDCR  
8 informed Plaintiffs that a yet-to-be-determined evaluation of the parolee, prior to their  
9 release from the institution, will likely be required to determine if their disability  
10 necessitates such housing. This is a result, in part, because Defendants have significantly  
11 increased the re-entry-housing capacity of available bed space by accessing further funding  
12 to meet the increased need for additional bed space. Further, DRP will continue to work  
13 on an educational video to inform providers of the needs of parolees with disabilities who  
14 are participating in their programs.

15         Despite Plaintiffs' complaints about transition-to-parole services, it must be noted  
16 that notwithstanding the enormous pandemic-related challenges, Defendants have been  
17 successful in providing transition-to-parole services to the unprecedented number of  
18 parolees who have been discharged from CDCR institutions. CDCR has released  
19 thousands of inmates since March 2020 to address the impact of the COVID-19 pandemic  
20 and Defendants worked tirelessly to provide transition-to-parole services to those people in  
21 a very short period of time. Indeed, the vast majority of those paroling had submitted  
22 applications for Medi-Cal or Supplemental Security Income (SSI) benefits before paroling,  
23 and those who have not submitted applications had generally not done so because they are  
24 not eligible due to availability of other insurance. While parolees may not receive benefits  
25 immediately upon being paroled, necessitating additional follow-up to receive benefits,  
26 nearly all such applications have been completed. Parolees do, however, receive a 30-day  
27 supply of medications and their prescribed DME, upon release to cover the interim period  
28 that may exist between their parole date and the start of their benefits. As noted above, the

1 issues raised by Plaintiffs in their May 4 letter necessitate the coordination and  
2 participation of several divisions and stakeholders. Defendants look forward to continued  
3 collaboration with Plaintiffs to address their concerns without Court intervention.

4 **J. Joint Monitoring Tool**

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

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

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

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

25 The parties agreed to a flexible, collaborative approach in which they would meet  
26 regularly to discuss different institutions and be joined by local ADA staff with close  
27 knowledge of the institutions. The parties also plan to tour institutions together to resolve  
28 outstanding issues and address Plaintiffs concerns collaboratively. The Court Expert

1 agreed to accompany the parties on these tours. In light of serious public health issues  
2 presented by the global COVID-19 pandemic, these tours have been suspended; however,  
3 the parties met on April 21, 2021, to restart this Master Planning process and the process  
4 should return to a regular schedule of tours and meetings as the prisons open up once the  
5 pandemic recedes. The parties are currently planning tours of LAC and VSP to review  
6 planned Master Plan improvement at those facilities.

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

#### 14 **L. Investigation of County Jails**

15 Plaintiffs continue to assert that a pattern and practice of denying disability  
16 accommodations to class members exists at multiple jails but especially the Los Angeles  
17 County Jails. *See* Doc. 2680 at 22-24; Doc. 2786 at 26-27. Defendants disagree with  
18 Plaintiffs' assertions and have been meeting with county counsel for a number of counties  
19 in an effort to improve relations, information sharing, and ADA compliance at the jails.  
20 Unfortunately, Plaintiffs contend, these conversations alone are not enough. For example,  
21 Plaintiffs recently learned that two years after being told that Los Angeles County Jail  
22 would begin allowing the use of canes in their facilities, the jail never implemented the  
23 new policy and canes have never been permitted or provided. Plaintiffs contend that while  
24 improved communication with the counties is a welcome idea, greater oversight over the  
25 provision of required accommodations to Armstrong class members in county jails is  
26 necessary.

27 ///

28 ///

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

4  
5 Respectfully submitted,  
6 DATED: July 15, 2021 ROSEN BIEN GALVAN & GRUNFELD LLP  
7 By: /s/ Penny Godbold  
8 Penny Godbold

9 Attorneys for Plaintiffs

10  
11 DATED: July 15, 2021 ROB BONTA  
12 Attorney General of the State of California  
13 By: /s/ Trace O. Maiorino  
14 Trace O. Maiorino  
15 Deputy Attorney General

16 Attorneys for Defendants

17  
18 **FILER’S ATTESTATION**

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

22  
23 DATED: July 15, 2021 /s/ Penny Godbold  
24 Penny Godbold



# **EXHIBIT A**



**PRISON LAW OFFICE**  
General Delivery, San Quentin, CA 94964  
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Alison Hardy  
Sophie Hart  
Jacob Hutt  
Rita Lomio  
Margot Mendelson

VIA EMAIL ONLY

June 14, 2021

J. Clark Kelso  
Receiver

RE: COVID-19 Staff Vaccination Mandate

Dear Clark:

We write in response to your May 21 request for our view on “on the legality of, pros and cons of, and evidentiary basis for or against requiring CDCR staff – both health care and custody” to be vaccinated.

Over the last fifteen months, more than 69,000 people who live and work in California prisons have been infected by the novel coronavirus, at least 250 have died, and an untold number are suffering and will continue to suffer debilitating, long-term effects from the disease. Staff remain the primary vector for COVID-19 infections in the prison system, where four prisons are experiencing outbreaks. Although safe and effective vaccines have been widely available to staff in all prisons since January 2021, only about half have chosen to be vaccinated. The remainder continue to work in direct physical proximity to incarcerated people and each other and expose them to an unacceptably high risk of serious harm and death. At some prisons, the number of staff who are unvaccinated is shockingly high; at High Desert State Prison, for example, 75% of staff are unvaccinated.

To protect the incarcerated population as well as the staff, including the many who are immunocompromised and the many incarcerated individuals who, because of their disabilities or medical conditions, must come in frequent, direct contact with staff, you must direct that all staff who work in the prisons be vaccinated immediately, subject to the usual exemptions and accommodations required under state and federal law.

The public health basis and the life-saving benefits of such action are beyond dispute.<sup>1</sup> That is why employers, including at least 43 California colleges and universities, large healthcare

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<sup>1</sup> See, e.g., Eric Reinhart & Daniel L. Chen, *Carceral-Community Epidemiology, Structural Racism, and COVID-19 Disparities*, Proceedings of the Nat’l Academy of Sciences, Vol. 118 (May 2021) (“[Carceral] facilities function as disease incubators, providing sites for easy viral and bacterial replication with a ready supply of tightly packed bodies that are rendered even more vulnerable by inadequate healthcare, poor living conditions, and

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providers, meat-packing plants, the Prison Law Office, and other law firms, already have required, or very soon will require, that employees be vaccinated.<sup>2</sup>

Some employers may have the luxury of waiting to enact a vaccination mandate. You do not. There are no telework, social distancing, or other strategies that alone or in combination adequately reduce the substantial risk of serious harm and death to the almost 100,000 people confined in state prisons, not to mention the over 65,000 staff who work in the prisons and live in the outside community. The essential work of CCHCS and CDCR institution staff to operate the prison and run programming simply cannot be done over Zoom.

There is no time to monitor “trends.” Delay cannot be justified based on current, relatively low case counts. By the time the virus strikes again, it will be too late, as we have seen time and time again during the pandemic. And there is evidence throughout the world that the virus will strike again. Moscow is now on lockdown and the United Kingdom has postponed its reopening because of new outbreaks of a more contagious variant. Pockets of infection have been discovered in California, including Marin County. It takes only one infected staff person to seed an outbreak and/or cause a large-scale shutdown of prison operations. Indeed, many of the new staff infections have been identified as variants, which may have higher transmissibility. You cannot vaccinate yourself out of an active outbreak; the virus spreads too rapidly, and the prisons

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<sup>2</sup> associated comorbidities”); CDC, COVID-19 Vaccine FAQs in Correctional and Detention Centers (June 1, 2021) (“Outbreaks in correctional and detention facilities are often challenging to control” and may “lead to community transmission outside of the facility”). This includes the Los Angeles Unified School District, Sunrise Senior Living, University of Pennsylvania Health System, Houston Methodist Hospital, Boys & Girls Clubs of the SF Peninsula, California College of the Arts, California Lutheran University, California Polytechnic State University (San Luis Obispo and Pomona), California State University (Bakersfield, Chico, Fresno, Fullerton, Long Beach, Los Angeles, Northridge, Sacramento, San Bernardino, San Marcos, Maritime Academy, Channel Islands, Dominguez Hills, East Bay, Monterey Bay, Stanislaus), Harvey Mudd College, Humboldt State University, Samuel Merritt University, San Diego State University, San Francisco State University, San Jose State University, Sonoma State University, Southwestern College, Stanford University, University of California (Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz), University of La Verne, University of San Francisco, University of Southern California, Whittier College, JB USA Holdings, Inc. (meat packing), Lastique International Corp. (plastics distributor), Davis Wright Tremaine LLP, and Sanford Heisler Sharp LLP. Other employers require new hires to be vaccinated, including United Airlines, Delta Airlines, employees of the Doña Ana Detention Center, and senior living operators ALG Senior, Altria Senior Living, Civitas Senior Living, and Juniper Communities, Silverado.

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function as “disease multipliers” and “epidemiological pumps.”<sup>3</sup> As you stated earlier this year, if the coronavirus were building its ideal home, it would build a prison. Firm leadership and swift action are urgently needed.

### EFFICACY OF INCENTIVES AND VOLUNTARY VACCINATION PROGRAMS

The CCPOA asks, “*at this point in time,*” that this matter be delayed indefinitely and counsels that “[m]ore time” be given to wait and see if over 30,400 staff will change their minds.<sup>4</sup> But we cannot continue to inch along under a danger of this magnitude. We are long past the wait-and-see-and-hope-for-the-best approach. There are no data-driven guideposts or projections for whether or when incentives will result in full staff vaccination. Indeed, no metrics for efficacy have ever been offered. The data we do have, both in CDCR and in the larger community, however, indicates that a voluntary program will not achieve the full vaccination needed.

Put simply, measures to encourage voluntary vaccination have not increased staff vaccinations on the scale, or with the speed, necessary to protect our clients or the surrounding communities. Incentives of some form have been in place since December 2020. Even with them, vaccination rates remain low. Between May 14 and June 4, 2021, the number of institution staff who received a first dose of a vaccine went up by only 2%.<sup>5</sup> Assuming that rate remains constant, which is doubtful as remaining unvaccinated staff likely are more resistant to being vaccinated, all staff at High Desert will have received a first dose of the vaccine by **July 2023**, over two years from now.<sup>6</sup> At CHCF and CMF, which have close to the highest rates of partially or fully vaccinated staff (63% and 62%, respectively), it would take until **July 2022**. And this does not address whether staff will voluntarily keep up to date on any necessary booster shots.

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<sup>3</sup> See Eric Reinhart & Daniel L. Chen, *Carceral-Community Epidemiology, Structural Racism, and COVID-19 Disparities*, Proceedings of the Nat’l Academy of Sciences, Vol. 118 (May 2021); see also Eric Reinhart & Daniel L. Chen, *Incarceration and Its Disseminations: COVID-19 Pandemic Lessons From Chicago’s Cook County Jail*, Health Affairs Vol. 39, No. 8 (June 2020) (“Existing conditions in jails and penitentiaries make infection control particularly difficult, putting inmates at unconscionable and perhaps unconstitutional risk.”).

<sup>4</sup> See ECF 3591 at 4 (emphasis in original).

<sup>5</sup> See Email from Suzanne Benavidez, Special Assistant to Director Joseph Bick, M.D., California Correctional Health Care Services, PLO Covid Data Summary for 06/04/21 (June 4, 2021).

<sup>6</sup> This is calculated based on the staff vaccination rates set forth in CDCR’s online Vaccination Tracker as of June 10, 2021. It does not include people who were vaccinated by a community healthcare provider and did not report their vaccination status.

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The mitigation efforts cited by the CCPOA have been in place for months. This includes CCPOA's admirable public service videos, released in January 2021; supplemental paid sick leave, enacted by the legislature in March 2021; COVID Mitigation Advocacy Program, finalized in April 2021; temporary relief from routine COVID-19 testing, in effect in May and June 2021; and additional vaccine clinics at each institution, in effect in May 2021.<sup>7</sup>

The CCPOA's only new suggestions, one-time bonuses and counseling from a medical professional, likely would not result in the number of staff vaccinations needed without needless delay and, in any event, could be done in tandem with a mandatory program.<sup>8</sup> Extensive information on the safety and efficacy of the vaccines from medical professionals has been widely available, and staff would be offered individual consultations under a mandatory vaccination program.<sup>9</sup> And, on May 18, 2021, all staff were informed of cash prizes that people who have been vaccinated, or who sign a declination form, are eligible for.<sup>10</sup> This is in addition to the state's \$116.5 million Vax for the Win program, "which includes \$50 incentive cards to newly vaccinated residents and cash prize drawings for all who have received at least one dose."<sup>11</sup>

The low efficacy of incentives to date is not unexpected. Medical researchers believe that "[i]ncentives alone are unlikely to deliver the population immunity that will end the pandemic."<sup>12</sup> As a result, they recommend that "organizations that take care of patients," such as prisons, "mandate Covid vaccination for their employees":

No intervention strategy is more effective than requiring vaccination, and our institution, Penn Medicine, recently announced that all health

<sup>7</sup> See ECF 3591 at 2, 5-6.

<sup>8</sup> See ECF 3591 at 8-9.

<sup>9</sup> See, e.g., ECF 3539, Joint CMC Statement at 4-5 (Jan. 26, 2021) (Defendants' Position); ECF 3548, Joint CMC Statement at 5-6 (Feb. 12, 2021) (Defendants' Position).

<sup>10</sup> See Email from CDCR CCHCS COVID-19, Vaccine rewards program (May 18, 2021). Bonuses, unfortunately, may have unintended consequences. This is because "booster shots will probably be required down the line," and "[o]ffering incentives now may set a costly and undesirable precedent, causing people to expect—and wait for—an incentive the next time around." See Kevin G. Volpp & Carolyn C. Cannuscio, Incentives for Immunity—Strategies for Increasing Covid-19 Vaccine Uptake, *New England Journal of Medicine* (May 26, 2021).

<sup>11</sup> Office of Governor Newsom, Governor Newsom Draws First 15 Winners in California's Vax for the Win Giveaway (June 4, 2021), <https://www.gov.ca.gov/2021/06/04/governor-newsom-draws-first-15-winners-in-californias-vax-for-the-win-giveaway/>.

<sup>12</sup> Kevin G. Volpp & Carolyn C. Cannuscio, Incentives for Immunity—Strategies for Increasing Covid-19 Vaccine Uptake, *New England Journal of Medicine* (May 26, 2021).

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system employees will be required to be vaccinated. U.S. health care workers are declining Covid-19 vaccination at alarming rates. In one nursing home, although 90% of the residents had been vaccinated, only half of the employees had followed suit; one of the unvaccinated employees infected multiple residents, and one vaccinated and two unvaccinated residents died. Such preventable lapses in safety should be unacceptable to anyone in the health care profession. Vaccination mandates in schools and workplaces—**especially in high-contact settings such as meat-packing plants and prisons**—could substantially reduce the future toll of Covid-19 in the United States.<sup>13</sup>

That recommendation is consistent with studies of influenza vaccination strategies, which have found mandatory vaccination programs to be “more effective at increasing coverage levels than any voluntary strategy.”<sup>14</sup> “The best available evidence suggests that even when health care organizations implement aggressive, labor-intensive voluntary influenza vaccination programs for their employees, they are rarely able to achieve vaccination rates higher than 70%.”<sup>15</sup>

One study found that years of “extensive publicity, incentives and educational programs” at a large healthcare organization with approximately 26,000 employees resulted in an influenza vaccination rate below the target goal of 80%.<sup>16</sup> After influenza vaccination was made a condition of employment for all employees, 98.4% were vaccinated.<sup>17</sup> An additional 0.35% received a

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<sup>13</sup> *Id.* (emphasis added).

<sup>14</sup> See Alexandra M. Stewart & Marisa A. Cox, *State Law and Influenza Vaccination of Health Care Personnel, Vaccine*, Vol. 31, 827-832, 829-830 (2013) (“Health care employers have adopted various strategies to encourage HCP to voluntarily receive influenza vaccination. However, these measures have failed to achieve 90% coverage levels. As a result, beginning in 2004, medical care facilities and local health departments began to require designated HCP to receive influenza vaccination as a condition of employment. Today, hundreds of facilities throughout the country have developed and implemented similar policies. Mandatory vaccination programs have been endorsed by professional and nonprofit, state health, and public health entities. These programs have been more effective at increasing coverage levels than any voluntary strategy, with some health systems reporting coverage levels up to 99.3%.” (internal footnotes omitted)).

<sup>15</sup> Abigale L. Ottenberg *et al.*, *Vaccinating Health Care Workers Against Influenza*, *Am. J. of Public Health*, Vol. 101, 212-16, 212-13 (Feb. 2011).

<sup>16</sup> Hilary M. Babcock *et al.*, *Mandatory Influenza Vaccination of Health Care Workers*, *Clinical Infectious Diseases*, Vol. 50, 459-464, 460 (Feb. 2010).

<sup>17</sup> *Id.* at 460-62.

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religious exemption, 1.24% received a medical exemption, and only eight people, or 0.03% of staff, were terminated for noncompliance.<sup>18</sup>

The study results are consistent with CCPOA's belief that "few employees not near retirement will resign" if COVID-19 vaccines are mandated.<sup>19</sup> It also is consistent with the experience of Houston Methodist Hospital, which required that its employees be vaccinated against COVID-19 by June 7, 2021. Only about 0.7% (or 178) of the over 26,000 employees have been suspended for failure to comply with the policy.<sup>20</sup>

### LEGAL BASIS AND REQUIRED EXEMPTIONS AND ACCOMMODATIONS

A staff vaccination mandate is well supported by state and federal law. The recent decision of the Superior Court for the County of Alameda in *Kiel v. The Regents of the University of California*, No. HG20-072843 (Super. Ct. Dec. 4, 2020), is instructive. There, the Court considered the lawfulness of an Executive Order issued by the President of the University of California conditioning access to University property on flu vaccination.<sup>21</sup> The Court denied plaintiffs' motion for a preliminary injunction.<sup>22</sup> The Court observed that the U.S. Supreme Court held over a century ago in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), "that a state's mandatory vaccination statute was a lawful exercise of the state's police power to protect the public health and safety."<sup>23</sup> And, "[s]ince *Jacobson*, courts have repeatedly cited *Jacobson* and upheld mandatory vaccination laws over challenges predicated on the First Amendment, the Equal Protection Clause, the Due Process Clause, the Fourth Amendment, education rights, parental rights, and privacy rights."<sup>24</sup> In fact, the Court noted that it "is unaware of any case in which a court has struck down a mandatory immunization imposed as a condition . . . of access to property for the purpose of employment."<sup>25</sup>

The same analysis applies here. In fact, the goal of the Executive Order considered in *Kiel* is almost identical to the one that would animate a COVID-19 vaccination mandate in California prisons: "to reduce the likelihood of severe disease . . . and in turn reduce the likelihood that our

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<sup>18</sup> *Id.* at 461.

<sup>19</sup> *See* ECF 3591 at 12.

<sup>20</sup> Bill Chappell, *The Clock's Ticking for 178 Hospital Workers Suspended for Not Getting Vaccinated*, NPR (June 10, 2021).

<sup>21</sup> *Kiel v. The Regents of the Univ. of Cal.*, No. HG20-072843 at 2 (Super. Ct. Dec. 4, 2020).

<sup>22</sup> *Id.* at 7-8.

<sup>23</sup> *Id.* at 8.

<sup>24</sup> *Id.* at 9 (collecting cases, including *Zucht v. King*, 260 U.S. 174, 175-77 (1922) ("it is within the police power of a state to provide for compulsory vaccination")).

<sup>25</sup> *Id.* at 14.

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health system will be overwhelmed (in more in [sic] than just hospital bed capacity).”<sup>26</sup> The Court also found that the evidence “amply supports that requiring flu vaccination is more likely to reduce transmission of the flu on UC property than proceeding under looser rules,” including mask-wearing—something that certainly is true of existing COVID-19 vaccinations.<sup>27</sup>

That the vaccines are authorized by the FDA for emergency use under 21 U.S.C. § 360bbb-3 does not change the analysis. Indeed, a federal court recently rejected a legal challenge on that basis and upheld Houston Methodist Hospital’s COVID-19 vaccination policy, noting that “Methodist is trying to do their business of saving lives without giving them the COVID-19 virus. It is a choice made to keep staff, patients, and their families safer.”<sup>28</sup> The California Department of Public Health has recognized that “COVID-19 vaccines have gone through extensive clinical trials and the most intensive safety review in U.S. history,” and are “highly effective” at preventing serious illness from COVID-19.<sup>29</sup>

As with the Executive Order reviewed in *Kiel*, the COVID-19 vaccination mandate should be subject to medical exemptions and religious and disability accommodations required under state and federal law. That is consistent with recent guidance from the U.S. Equal Employment Opportunity Commission (EEOC).<sup>30</sup> The CCPOA attempts to make a straightforward mandate

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<sup>26</sup> *Id.* at 12.

<sup>27</sup> *Id.* at 11. Indeed, over four months ago, Defendants represented that they would reevaluate their position on a vaccination mandate based, among other things, on “the outcome of ongoing scientific studies regarding how effectively the vaccine reduces not just viral infection, but viral transmission.” ECF 3548, Joint CMC Statement at 5 (Feb. 12, 2021). The Centers for Disease Control and Prevention now recognize that “[a] growing body of evidence indicates that people fully vaccinated with an mRNA vaccine (Pfizer-BioNTech and Moderna) are less likely to have asymptomatic infection or to transmit SARS-CoV-2 to others.” CDC, Science Brief: COVID-19 Vaccines and Vaccination (May 27, 2021).

<sup>28</sup> *Bridges v. Houston Methodist Hospital*, No. H-21-1774 at 2-4 (S.D. Tex. June 12, 2021) (rejecting argument that “no one can be mandated to receive ‘unapproved’ medicines in emergencies, and . . . no currently-available vaccines have been fully approved by the Food and Drug Administration”).

<sup>29</sup> Cal. Dep’t of Public Health, Vaccinate All 58, Let’s Get to Immunity (last visited June 11, 2021), <https://www.vaccinateall58.com/>.

<sup>30</sup> EEOC, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (May 28, 2021), <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (“The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other EEO considerations”). State law imposes similar requirements. *See California for All, Vaccines* (June 11, 2021),



J. Clark Kelso, Receiver  
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unpalatable by grafting unnecessary and time-consuming bureaucratic measures to it in the name of implementing antidiscrimination laws.<sup>31</sup> But that is nothing more than scare tactics. The state already has processes in place to evaluate requests for accommodations and exemptions under the same state and federal laws. Those existing processes can be used here.

Finally, the suggestion, as CCPOA has made and others may, to delay a needed mandate for “several months” of bargaining also is misplaced.<sup>32</sup> As the CCPOA acknowledges, “[t]he Dills Act permits the State to act first and bargain later in a bona fide emergency.”<sup>33</sup> The COVID-19 pandemic certainly qualifies as “an act of God, natural disaster, or other emergency or calamity affecting the state, and which is beyond the control of the employer or recognized employee organization” under both state and federal law.<sup>34</sup> In any event, the prospect of drawn-out negotiations militates in favor of quick action, not further delay.

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<https://covid19.ca.gov/vaccines/> (“**May an employer require COVID-19 vaccination for all employees entering the workplace?** Yes, if certain requirements are met. Under the ADA, an employer may require all employees to meet a qualification standard that is job-related and consistent with business necessity, such as a safety-related standard requiring COVID-19 vaccination. However, if a particular employee cannot meet such a safety-related qualification standard because of a disability, the employer may not require compliance for that employee unless the employer can demonstrate that the individual would pose a ‘direct threat’ to the health or safety of the employee or others in the workplace.” (citing to EEOC, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws)).

<sup>31</sup> ECF 3591 at 12-14.

<sup>32</sup> *Id.* at 11.

<sup>33</sup> *Id.* at 12 (citing Gov’t Code § 3516.5 (“In cases of emergency when the employer determines that a law, rule, resolution, or regulation must be adopted immediately without prior notice . . . the administrative officials . . . shall provide such notice and opportunity to meet and confer in good faith at the earliest practical time following the adoption of such law, rule, resolution, or regulation.”)).

<sup>34</sup> Gov’t Code § 3523(d); *see, e.g.*, Exec. Dep’t, State of California, Proclamation of a State of Emergency (Mar. 4, 2020); U.S. Dep’t of Health & Human Services, Office of the secretary, Determination of Public Health Emergency (Feb. 7, 2020) (“[P]ursuant to section 564 of the FD&C Act, I determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves a novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019-nCoV).”); FDA, Emergency Use Authorization for Vaccines Explained (Nov. 20, 2020), <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained> (“FDA recognizes the gravity of the current public health emergency and the importance of

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In our view, the Eighth Amendment, requires you “to take adequate steps to curb the spread of disease within the prison system.”<sup>35</sup> As the last year and a quarter has demonstrated the vaccine is the most effective and safe way to prevent the spread of infection and to mitigate disease caused by COVID-19 in prisons. We do not now know whether those who live and work in CDCR will be assaulted by another surge, perhaps caused by a more infectious variant. What we do know for a fact is that mandating the vaccine for staff will help enormously in reducing the risk of further disease and death.<sup>36</sup> Therefore, we urge you to adopt a policy requiring all staff to be vaccinated absent medical exemptions and the need for religious and disability accommodations.

If you would like to discuss this issue or need any further information, we expect that you will let us know.

Sincerely,

/s/

Donald Specter  
Rita Lomio

cc: Counsel in *Plata, Armstrong, Coleman, and Clark*  
*Armstrong* Court Expert  
*Coleman* Special Master  
Counsel for CCPOA

---

facilitating availability, as soon as possible, of vaccines to prevent COVID-19—vaccines that the public will trust and have confidence in receiving.”).

<sup>35</sup> *Coleman v. Newsom*, 455 F. Supp. 3d 926, 932 (E.D. Cal./N.D. Cal. 2020). “Indeed, disease control is one of the areas in which the *Plata* court previously concluded that Defendants fell short.” *Id.*

<sup>36</sup> *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate’s current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.”)

# **EXHIBIT B**



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June 10, 2021

VIA ELECTRONIC MAIL ONLY

Tamiya Davis  
CDCR Office of Legal Affairs  
[Tamiya.Davis@cdcr.ca.gov](mailto:Tamiya.Davis@cdcr.ca.gov)

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

Re: *Armstrong v. Newsom*: Advocacy Letter for [REDACTED] DLT,  
DNH, re: Staff Misconduct at CTF  
Our File No. 0581-03

Dear Tamiya:

We write on behalf of [REDACTED], DLT, DNH, with concerning allegations of disability related staff misconduct at Correctional Training Facility (“CTF”) regarding Correctional Officer I. Perez-Pantoja (“Perez”). Mr. [REDACTED] reported that Officer Perez intentionally broke his hearing aid and issued him a retaliatory rule violation report (“RVR”) because he assisted other incarcerated people with staff misconduct complaints.

Mr. [REDACTED] helps other incarcerated people with their 602 and 1824 administrative appeals, CDCR and court-related paperwork, and reported that he has a reputation at CTF for being a “jailhouse lawyer”. Mr. [REDACTED] reports that he typically helps people with low TABE scores, development disabilities, and learning disabilities. Not coincidentally, multiple people have requested Mr. [REDACTED] help with complaints against a single officer – Officer Perez.

Over the past nine months, Mr. [REDACTED] has worked to help people who were victims of the July 20, 2020 raid at CTF, an incident involving multiple allegations of disability related staff misconduct previously raised by Plaintiffs’ counsel. See Letter from P. Godbold to T. Davis (Jan. 15, 2021). Although Mr. [REDACTED] was not directly involved in the raid, he witnessed many people in cells around him being roughly pulled out of their beds, put in choke holds, and dragged down the stairs in the early morning of

**PRIVILEGED AND CONFIDENTIAL**

Tamiya Davis  
June 10, 2021  
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July 20, 2020. As you are aware, Officer Perez was one of the officers accused of misconduct during the raid, according to multiple witnesses. *See* Declaration of [REDACTED] (shared in Jan. 15, 2021 Letter); Declaration of [REDACTED] (shared in Jan. 15, 2021 Letter).

Mr. [REDACTED] also recently helped [REDACTED] with his complaint against Officer Perez for an April 21, 2018 excessive use of force and false RVR incident. [REDACTED] name was included in the complaint filed on March 19, 2020. *See* Complaint, Dkt. 1, *Joseph Rael v. I. Perez Pantoja et al.*, 20-cv-1932-LHK (N.D. Cal. 2020). The case settled on March 19, 2021. *See* Civil Docket, 20-cv-1932-LHK (N.D. Cal. 2020).

Before *Rael v. Pantoja et al.* was referred for settlement conference in March 2021, Officer Perez reportedly retaliated against Mr. [REDACTED] for helping Mr. [REDACTED] file staff misconduct complaints against him. According to Mr. [REDACTED] on October 5, 2020, at approximately 9:30 a.m., Mr. [REDACTED] was released for yard on Facility C. On his way out to the yard, he noticed Officer Owens sitting in an office in G-Wing and stopped to ask him a question. When Officer Perez observed the interaction, he stopped Mr. [REDACTED] and ordered him to get onto the wall. Although Mr. [REDACTED] reportedly complied, Officer Perez snatched his hearing aid out of his right ear and proceeded to search Mr. [REDACTED]. During the search, Officer Perez accused Mr. [REDACTED] blaming him for “all the prison generated lawsuits!” Mr. [REDACTED] reported that, after the search had concluded, Officer Perez returned his hearing aid which was broken and missing the batteries. Following that incident, Mr. [REDACTED] was issued an RVR by Officer Perez for “Delaying a Peace Officer.” We were notified that Mr. [REDACTED] sworn account of the events of this day were sent to Warden Koenig by counsel on October 25, 2020. *See* Declaration of [REDACTED] attached hereto as **Exhibit A**.

Mr. [REDACTED] was without working hearing aids for nearly five months after this incident. As a result, Mr. [REDACTED] reported that he missed multiple unlocks because he could not hear announcements, causing him to miss yard, dayroom, laundry, and access to other programs, services and activities. He also reported that he heard ringing in his right ear and that the imbalance in hearing triggered migraines. He reported that correctional staff never came to his cell to give him personal notifications of unlocks despite his hearing disability. On February 25, 2021, Mr. [REDACTED] was finally issued new, working hearing aids.

On October 24, 2020, Mr. [REDACTED] filed a 602 complaining about the October 5 incident. This 602 was denied on December 8, 2020. *See* 602 Log Number

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000000052483, attached hereto as **Exhibit B**. Mr. ██████ believes that Officer Perez broke his hearing aid and issued him a false RVR in retaliation for helping other incarcerated people with their legal paperwork. Mr. ██████ reported that Officer Owens agreed to come to the hearing for this RVR, but he was not called. During the RVR hearing, Mr. ██████ asked again for Officer Owens to come to the hearing, but the Hearing Officer denied his request, telling him, “I’m going to find you guilty because Perez wrote it.” When he was found guilty of this RVR, Mr. ██████ received 60 days credit loss. On January 23, 2021, Mr. ██████ filed another 602 regarding due process violations in the hearing. This 602 was also denied on March 1, 2021. Mr. ██████ appealed this response to the final level in a third 602 dated March 17, 2021. *See* 602 Log Number 000000081506, attached hereto as **Exhibit C**.

Despite the fact that the staff misconduct process will be changing pursuant to current Court-ordered negotiations with Defendants, Plaintiffs’ are nevertheless extremely concerned that Mr. ██████ 602 staff misconduct complaint alleging an unprofessional and retaliatory search resulting in an RVR was not referred to AIMS as a staff misconduct complaint under Defendants’ current process. Plaintiffs’ counsel have previously written to Defendants with concerns of serious allegations of staff misconduct that were improperly handled under AIMS since the regulations were put into effect on April 1, 2020. *See* Letter from P. Godbold to T. Davis & J. Hood (Aug. 20, 2020). Despite this, and multiple assertions by Defendants that they take misconduct allegations seriously, they are repeatedly mishandled. Even though Mr. ██████ allegations – that Officer Perez falsified a report, subjected him to an unprofessional search removing and breaking his hearing aid, all in retaliation for complaining about staff misconduct – should have been routed to AIMS pursuant to regulation, they were instead characterized as “supervisory review.” *See* Cal. Code Regs. tit. 15 § 3484(d). The response to this 602 was incomplete in that it failed to address several claims raised by Mr. ██████ including: 1) whether Officer Perez acted in an unprofessional manner; 2) whether Officer Perez broke Mr. ██████ hearing aid; and 3) whether Officer Perez acted in bad faith in issuing the RVR, irrespective of the veracity of the events described in the RVR.

In addition, Mr. ██████ central allegation – that Officer Perez had issued him a false RVR – went completely unaddressed in CDCR’s responses to his grievances. That issue was first screened out because: “RVR is not finalized, you must wait until you receive your decision response.” *See* Ex. B. When Mr. ██████ filed another 602 challenging the retaliatory RVR after it was decided, this time explaining that he was not permitted to present his witnesses and his defense in his case, the RVR was denied based solely on a review of RVR paperwork, stating that the witnesses were deemed “irrelevant.” *See* Ex. C. Despite his many attempts to raise and initiate an investigation

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into the reportedly false and retaliatory RVR – including before, during, and after his hearing – CDCR has completely failed to investigate these serious allegations.

This represents a serious failure on the part of CTF to investigate ongoing staff misconduct. This case also demonstrates yet another example of the failure of the RVR process to ensure that alleged acts of misconduct committed in that process – namely the issuance of false and retaliatory RVRs – are identified and investigated.

Officer Perez is the subject of multiple allegations of staff misconduct. *See* Declaration of [REDACTED] (shared in Jan. 15, 2021 Letter); Declaration of [REDACTED] (shared in Jan. 15, 2021 Letter); Complaint, Dkt. 1, *Joseph Rael v. I. Perez Pantoja et al.*, 20-cv-1932-LHK (N.D. Cal. 2020). He is accused of the very same behavior described in this letter—issuing false and retaliatory RVRs against incarcerated people who file staff complaints—in three federal lawsuits. *See* Complaint, Dkt. 1, *Joseph Rael v. I. Perez Pantoja et al.*, 20-cv-1932-LHK (N.D. Cal. 2020); Complaint, Dkt. 1, *Glenn Johnson, et al. v. Perez-Pantoja, et al.*, 20-cv-04798-JST (N.D. Cal. 2020); Complaint, Dkt. 1, *Glenn Johnson v. Perez-Pantoja*, 18-cv-05421-JST (N.D. Cal. 2018). Despite being on notice of significant harm caused by this officer, CDCR continues to employ Officer Perez in a capacity where he continues to come into contact with incarcerated people.

**In light of these allegations, Plaintiffs demand that Defendants promptly investigate this incident of disability-related staff misconduct and take necessary steps to discipline Officer Perez.**

The evidence referenced in this letter establishes a reasonable belief that misconduct occurred as alleged in this letter, which necessitates referral to OIA under CDCR’s current system of investigating allegations of misconduct. When appropriate, OIA must also initiate criminal investigations into the misconduct alleged here, with the goal of referring the matter to a prosecuting agency. As with all allegations of staff misconduct, these incidents should not be investigated in a vacuum; Officer Perez’s alleged acts of misconduct spanning multiple events and involving several complainants should be investigated in concert with each other. These allegations must also be investigated in the context of evidence set forth by Plaintiffs’ counsel in litigation demonstrating that staff continue to weaponize the RVR process to retaliate against staff misconduct complainants.

Officer Perez should be re-directed to a position in which he is not permitted to have contact with incarcerated people during the pendency of the investigation into the

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above matters. Allowing Officer Perez to remain assigned to his regular posts during the pendency of the investigation would not only expose class members to substantial risk of additional misconduct at the hands of this problematic officer; it would also compromise the integrity of the investigation by enabling Officer Perez to intimidate, harass, and retaliate by issuing false RVRs against witnesses to his misconduct.

Following the review of the false and retaliatory RVR described above, CDCR should take any appropriate action to rescind the RVR, remove all attendant effects of the RVR (i.e., loss of credits, or program restrictions), and purge Mr. [REDACTED] custody file of any references to such RVR, while retaining records in his file to memorialize that the class member had been assessed a false and retaliatory RVR by Officer Perez.

We look forward to your prompt response.

Sincerely,

ROSEN BIEN  
GALVAN & GRUNFELD LLP

*/s/ Penny Godbold*

Penny Godbold  
By: Of Counsel

ENCL: Exhibits A-C

PG:hg

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# **EXHIBIT C**



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VIA ELECTRONIC MAIL ONLY

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Re: *Armstrong v. Newsom*: Holding Staff Accountable for Issuing False, Retaliatory, and Discriminatory RVRs Against People with Disabilities  
Our File No. 0581-03

Dear Jenn and Tamiya:

As you are aware, the Court in *Armstrong* found that Defendants' failure to investigate and hold staff accountable for misconduct violated the Americans with Disabilities Act ("ADA") and the *Armstrong* Remedial Plan ("ARP"). See Order Granting in Part Motion to Modify Remedial Orders and Injunction, Dkt. 3059 ("RJD Order"), at 35-43; Order Granting in Part Motion for Permanent Injunction, Dkt. 3217 ("Five Prisons Order"), at 36-45. The Court also found that widespread retaliation by staff against people with disabilities for reporting staff misconduct violated the ADA and had a significant chilling effect on the reporting of staff misconduct and individual's willingness to seek accommodations. See RJD Order at 60-62; Five Prisons Order at 62-64 (staff members who intimidate, threaten or coerce class members into giving up their right to file requests for ADA accommodations or grievances violate the ARP and the ADA).

The parties are currently negotiating significant changes to the staff misconduct investigation and disciplinary process, which include anti-retaliation protections, aimed at remedying the violations identified in the *Armstrong* Court orders. As these remedies take shape, false, retaliatory, and discriminatory Rule Violation Reports ("RVRs") issued

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to class members remain a significant barrier to reform. The RVR process is unfair and biased against incarcerated people, fails to detect and investigate false or retaliatory RVRs, is used by officers to cover up their own misconduct, and fails to hold responsible staff members accountable for serious acts of misconduct which, in some cases, warrant termination or criminal prosecution. *See* Penal Code § 118.1 (prohibiting peace officers from filing knowingly-false reports regarding the commission or investigation of a crime with their law enforcement agency, punishable by incarceration in county jail for up to one year, or in prison for up to three years); *see also* Employee Disciplinary Matrix (“Matrix”), Department Operations Manual, § 33030.19, categories B(4), B(5), E(3), and E(7) (several of which carry a base penalty of termination). Plaintiffs acknowledge that improvements to the staff misconduct investigation process and the widespread installation of cameras, especially body-worn cameras, may reduce the incidence of false and retaliatory RVRs issued against people with disabilities. Nevertheless, the current RVR process will continue to undermine Court-ordered efforts to remedy staff misconduct related ADA violations unless CDCR agrees to reform it.

Plaintiffs hope to incorporate the RVR process into our existing and ongoing negotiations regarding other reforms. Plaintiffs are open to having a conversation about how best to accomplish this.

**I. Staff’s Abuse of the RVR Process Threatens the Integrity of the Entire Staff Misconduct Accountability System**

In declarations attached hereto, *Armstrong* and *Coleman* class members declare that they were issued false or retaliatory RVRs at several institutions after complaining about staff misconduct. Their reports are corroborated by custody documents, documents from the electronic health record system, and witness testimony. These false and retaliatory RVRs demonstrate a number of serious problems with the RVR process that must be remedied to ensure compliance with the ADA and *Armstrong* Court orders. In response to the false RVRs listed below, Plaintiffs request that Defendants take immediate action to investigate allegations of staff misconduct, as set forth in detail in **Appendix A**.

- The *Armstrong* Court specifically credited reports of false and retaliatory RVRs issued against class members, finding Mr. [REDACTED] and Ms. [REDACTED] reports that Mr. [REDACTED] had been issued a false and retaliatory RVR more credible than representations made by Defendants’ employees during the July 2020 retaliation litigation. *See* Order Granting in Part Motion for a Preliminary Injunction (“PI Order”), Dkt. 3025, at 14, 18-19 (“the Court finds the description of the June 17

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incident in the declarations of [Plaintiffs' witnesses] to be credible" and "the Court finds that Defendants' description of the June 17 incident...lacks credibility"). Despite the Court's finding that the RVR in this case was false and retaliatory, there is no indication that CDCR took any action to hold these staff members accountable nor compensate Mr. [REDACTED] for harm suffered as a result of the false and retaliatory RVR. Moreover, CDCR agreed to rescind this false and retaliatory RVR only under pressure of further litigation from Plaintiffs' counsel.

- *Armstrong* and *Coleman* class members [REDACTED] [REDACTED] ([REDACTED] and [REDACTED] [REDACTED] (H59962) were issued false and retaliatory RVRs for exhibitionism ("IEX") by Officer Veytia. See Declaration of [REDACTED] [REDACTED] attached hereto as **Exhibit A**; Declaration of [REDACTED] [REDACTED] attached hereto as **Exhibit B**. They report this occurred in response to Mr. [REDACTED] assisting Mr. [REDACTED] with staff misconduct complaints. See Ex. A, ¶ 16; Ex. B, ¶ 16. The "Circumstances of Violation" sections of the two RVRs, which describe the purported conduct that gave rise to the RVRs, are *identical* in substance. See RVR Log Nos. 7052177 & 7052179, attached hereto as **Exhibit C**. Despite the improbability that two men, in two different cells, acted in precisely the same ways (i.e., same alleged mannerisms, same alleged position) at the exact same time, there is no indication that any of the overlapping staff members involved in the RVR process (e.g., reviewer Sergeant Cervantes and classifier Captain Amador) flagged these two RVRs issued by the same officer as suspicious, though both class members alleged the reports were false and were evidence of retaliatory misconduct. See Ex. A, ¶ 16; Ex. B, ¶ 16. Neither Mr. [REDACTED] nor Mr. [REDACTED] were allowed to present the exculpatory evidence of the substantively identical and suspicious RVR reports and both were found guilty. See Ex. A, ¶ 20; Ex. B, ¶ 20.
- *Armstrong* and *Coleman* class member declarant [REDACTED] [REDACTED] ([REDACTED] has been subjected to a barrage of false and retaliatory RVRs issued by staff in response to her participation in Plaintiffs' staff misconduct litigation and her ongoing efforts to hold staff accountable for misconduct. See Declaration of [REDACTED] [REDACTED] attached hereto as **Exhibit D**. Ms. [REDACTED] has received at least six retaliatory RVRs in the past ten months at Mule Creek State Prison ("MCSP"). See RVR Log Nos. 7022197R1, 7023212, 7034336, 7037310, 7041801, & 7060805, attached hereto as **Exhibit E**. Her reports are corroborated by two declarations from witnesses at MCSP. See Declaration of [REDACTED] [REDACTED] attached hereto as **Exhibit F**; Declaration of [REDACTED] [REDACTED] attached hereto as **Exhibit G**. In addition to these false RVRs, staff have engaged in a campaign

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of harassment and abuse directed at Ms. ██████ including: labelling her a “snitch” and a confidential informant; publicly blaming her for the loss of services, programs and activities in an attempt to pit other incarcerated people against her; and actively recruiting incarcerated people to manufacture false charges against Ms. ██████ in order to punish her. *See generally* Ex. D; Ex. F, ¶¶ 10-13. After Mr. ██████ refused an officer’s request to plant evidence on and make false reports about Ms. ██████ Mr. ██████ too was publicly called a “snitch” and a “confidential informant” by staff. *See* Ex. F, ¶ 17; *see also* MHPC Note (Nov. 25, 2020) (“IP reports that an officer called him a ‘confidential informant outline’ (sic) which he feels could put him at risk for being assaulted”), attached hereto as **Exhibit H**.

- Class member declarant ██████ (██████) was subjected to a torrent of false and retaliatory RVRs in a manner similar to the campaign of retaliation against Ms. ██████ at MCSP. *See* Declaration of ██████ attached hereto as **Exhibit I**. After Mr. ██████ filed a complaint about Officers Simpson and Inman intentionally closing his hand in his cell door and calling him a snitch, these officers and other staff issued him three false and retaliatory RVRs. *See generally* Ex. I. In one instance, Mr. ██████ was accused of delaying Officer Inman when he failed to refuse his food tray. *Id.*, ¶¶ 22-25. Even though the RVR itself does not describe any delay—and so the facts of the RVR, even if assumed to be true, cannot support the charge—and another incarcerated person testified that Mr. ██████ had given him his food tray on the day in question, Mr. ██████ was found guilty in a biased and unfair hearing in which exculpatory evidence was ignored. *See* Letter from E. Galvan & P. Godbold to T. Davis & N. Weber (Apr. 14, 2021), attached hereto as **Exhibit J** (exhibits omitted), at 3-4. In a second instance, a Hearing Officer found that an RVR issued to Mr. ██████ contained “no evidence...” of the charge attributed to him. *Id.* at 4-5. In the third instance, Mr. ██████ was found guilty of disobeying Officer Simpson’s orders in spite of exonerating witness testimony and documented injuries that were inconsistent with the version of events presented in the RVR. *Id.* at 5-6.
- *Coleman* class members ██████ ██████ (██████ ██████ ██████) (██████) and ██████ ██████ (██████) were all assaulted by staff at California State Prison – Sacramento (“SAC”) during the last week of January 2021. *See* Letter from J. Winter to T. Davis & N. Weber (June 9, 2021). Staff subsequently issued these class members RVRs that: a) failed to explain the extent of injuries sustained in the incidents, all of which constituted great bodily injury (“GBI”)

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and b) evinced commonalities that suggest that the RVRs were written in concert or otherwise, that staff were coached in their reporting of the incidents. *Id.* at 10-12. In one instance, both Officer Avila and Officer Saeturn, in their reports about different incidents that occurred on different days, both misspelled “strength,” reporting that they “utilized physical strengths” (emphasis added) against Mr. ██████ and Mr. ██████ respectively. *Id.* The RVRs issued to these class members overlap in other, seemingly non-random ways; in fact, roughly half of the operative language regarding the incidents is identical. *Id.* These considerations, combined with injuries sustained by class members that were inconsistent with the type and degree of force reported, raise serious doubts about the veracity of these three RVRs and suggest that officers issued the RVRs to cover up their assaults of Mr. ██████ Mr. ██████ and Mr. ██████

- During a recent *Armstrong* monitoring tour, supervisory staff at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”) admitted to serious problems with the RVR process. In one case, a Captain stated that he “of course” has identified false RVRs, including as recently as two weeks prior to Plaintiffs’ tour, when an officer submitted a baseless RVR against a person considered to be difficult. The Captain reported that no disciplinary action was taken against the officer. In another case, a Sergeant at SATF responsible for adjudicating RVRs stated that custody officers are sworn police officers and therefore do not lie; as a result, he reported, he will always believe their version of events over that presented by incarcerated people. Plaintiffs have received multiple complaints about false, retaliatory, and discriminatory RVRs at SATF and are in the process of collecting those reports to provide to Defendants.
- In several reports, the Officer of the Inspector General (“OIG”) has found that CDCR has failed to remedy the harms caused by the statewide pattern and practice of false and retaliatory RVRs issued against class members. In one case, despite finding that staff had used unreasonable force against a *Coleman* class member, the class member was “left with an unjust guilty finding resulting from the first officer falsely accusing him of battery during this use-of-force incident.” *See* Sentinel Case No. 20-04 (Aug. 19, 2020) at 5. In another case monitored by the OIG, CDCR declined to refer an officer for investigation when video surveillance evidence contradicted the false RVR he submitted; despite being proven false, that RVR was only reduced to a counseling chrono, which remains in the incarcerated person’s file to this day. *See* June 2020 Complaint Intake and Field Inquiries Report (June 2, 2021) at 53-55. Lastly, in contrast to CDCR’s

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assertion that they take all allegations of staff misconduct seriously, the OIG has found that, when it comes to allegations of false and retaliatory RVRs, CDCR chose to exempt such allegations from the Allegation Inquiry Management Section (“AIMS”) despite “having no reasonable justification for doing so.” *See* Special Review (Feb. 16, 2021) at 3. Although AIMS will be eliminated under the parties’ agreements, Plaintiffs remain deeply concerned at the lack of attention CDCR has paid to the problem of false and retaliatory RVRs.

Plaintiffs’ counsel have raised similar reports, documenting clear cases of false and retaliatory RVRs issued against class members at multiple institutions. *See* Letter from G. Pelsinger & R. Lomio to T. Davis (Mar. 26, 2021); Letter from G. Pelsinger & R. Lomio to T. Davis (Mar. 3, 2021); Letter from T. Nolan to N. Weber and M. Bentz (Sept. 24, 2020). Dozens of declarations filed in support of Plaintiffs’ litigation provide further evidence of the scope and severity of this problem. *See* Letter from T. Nolan to N. Weber and M. Bentz (Sept. 24, 2020).

Defendants can no longer remain complacent in the face of serious staff misconduct in the RVR process. Currently, staff risk little when they issue false, retaliatory, or discriminatory RVRs. At most, cases that display problems are dismissed at adjudication, without officers being referred for investigation and discipline. In stark contrast, incarcerated people have much to lose the moment they are accused of misconduct by an RVR. When officers submit false RVRs against incarcerated people, they uproot them from their cells, cause them to be placed in restrictive administrative segregation units, which are detrimental to mental health for days or months, while CDCR adjudicates the RVR, cause their property to often be lost or destroyed, and disrupt their rehabilitative programming. Class members found guilty of false RVRs—usually in hearings that are rushed, unfair, and contrary to basic due process principles—suffer additional serious harm, including: 1) denials of parole by the Board of Parole Hearings, resulting in unfair and unnecessary continued incarceration; 2) increases in security level, resulting in placement in more restrictive and dangerous housing and programming; 3) denial of access to credit-earning opportunities; 4) loss of already-earned credits; 5) loss of access to rehabilitative programming; and 5) loss of privileges, including visiting and telephone privileges. *Id.*

The current RVR process lacks appropriate safeguards and should be remedied to ensure that staff: 1) identify potentially false RVRs; 2) afford class members due process in hearings; and 3) are investigated and, if warranted, disciplined for this serious type of misconduct. Toward that end, Plaintiffs propose the following remedies for the parties’ consideration.

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**1. Headquarters-level Adjudication of RVRs**

RVRs issued to people with disabilities should be adjudicated outside of institutions by staff members who are unbiased and unconnected to the staff and incarcerated people involved. There is significant evidence of bias in the adjudication of RVRs discussed in the class member declarations and other evidence presented by Plaintiffs' counsel. Class members ██████████ ██████████ and ██████████ ██████████ were not allowed to present evidence that Officer Veytia had issued *substantively identical* RVRs to each class member. Ex. A, ¶ 20; Ex. B, ¶ 20. Questions raised by class member ██████████ ██████████ that were clearly relevant to the accusations against her were deemed irrelevant by the Hearing Officer. See Ex. D, ¶ 25; see also Ex. E, at 40-41, 48 (RVR Supplemental, Log No. 7037310) (questions about whether Ms. ██████████ had engaged in coercion deemed irrelevant when she was charged with coercing incarcerated people to manufacture false allegations). Class member declarant ██████████ ██████████ requested a clinician present at his RVR hearing, but the hearing was held on a weekend when that clinician was not working. See Ex. I, ¶ 23. These are just a few of examples of class members who were issued guilty findings without CDCR considering potentially exculpatory evidence.

The extreme bias occurring during the institutional adjudication of RVRs not only results in inappropriate findings of guilt, but also ensures that evidence of staff misconduct remains undetected and uninvestigated, as evidenced by the declarations of Mr. ██████████ and Mr. ██████████. Mr. ██████████ and Mr. ██████████ were issued false RVRs for IEX that were virtually identical, which somehow went undetected. See Exhibit A, ¶ 16; Ex. B, ¶ 6; Ex. C; see also Letter from G. Pelsinger & R. Lomio to T. Davis (Mar. 26, 2021) (reporting identical RVRs issued to class members at SAC). This failure to detect plagiarism, verbatim reports, and inconsistent officer statements parallels the findings of *Armstrong* expert Jeffery Schwartz regarding biased and incompetent investigations performed by staff at the prison where the incident occurred. See Schwartz Decl., Dkt. 2947-9, ¶ 224-264.

Just as the parties have agreed that institutional staff should not be charged with investigating allegations of staff misconduct arising at the prison where they work, those same staff should not be charged with adjudicating RVRs brought by their friends and colleagues against class members they too may have a history with.

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**2. Mandatory Consideration of Audio-Video Evidence**

Plaintiffs propose that, by policy, for all RVRs where the accused has pled “not guilty,” the Hearing Officer must review and consider any available audio-video evidence before adjudicating the RVR. Under current policy, that evidence is only considered if the staff member issuing the RVR requests it. *See* Cal. Code Regs. tit. 15 § 3315. The parties have negotiated changes to policy to allow incarcerated people to also present audio-video evidence in their defense upon request. This policy is meaningless, however, unless each class member is given notice of their right to review and present any available audio-video evidence in their defense during the RVR process. To ensure that such evidence is taken into consideration during the process, Hearing Officers should be required by policy to view any available audio-video evidence and document whether such evidence is consistent with the employee’s report. If, after reviewing the audio-video evidence, the Hearing Officer believes that the RVR is inconsistent with the audio-video evidence, Hearing Officers must also be obligated to report and take action on such inconsistency.

**3. Mandatory Recording of RVR Hearings**

Plaintiffs propose that, by policy, all RVR hearings be video-recorded to create a record of statements made by the parties involved, evidence considered by the Hearing Officer, and any due process violations that occurred in the process. Under current practice, the only record from RVR hearings is a cursory written summary generated by the Hearing Officer. Recording the adjudication hearing is necessary to ensure that Hearing Officers are comprehensively and fairly reviewing all available evidence when adjudicating RVRs, as well as to ensure that class members’ due process rights are respected.<sup>1</sup>

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<sup>1</sup> This is particularly true for people with communication disabilities. In one recent example, a Deaf signer filed a staff complaint alleging that he was denied witnesses during his RVR hearing. In response, his 602 was disapproved based on a Lieutenant’s statement that, “I utilized a sign language interpreter for the hearing. From what I can recall, [REDACTED] never directly requested any witness to his hearing.” *See* Letter from S. Lovett & R. Lomio to T. Davis (May 17, 2021), Attachment C, attached hereto as **Exhibit K**.

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#### **4. Mandatory ADA Diversion Process to Eliminate Blatant Disability Discrimination**

Plaintiffs have identified examples of blatant disability discrimination in the RVR process. In one recent case, an *Armstrong* class member who is identified as requiring a wheelchair received multiple RVRs at SATF when he failed to stand up for standing count due to his disability. *See* Letter from R. Lomio to T. Davis (Nov. 5, 2020). Similarly, in violation of the ARP and the ADA, staff issued Ms. [REDACTED] with an RVR merely for asserting her right to wear her sunglasses inside, an accommodation that had been afforded to her pursuant to the long-standing reasonable accommodation practices in this case. *See* Ex. D, ¶ 33-35; Ex. E at 75 (RVR Log No. 7060805). That staff routinely issue class members RVRs when they are unable to perform their assignment duties because of their disabilities is a longstanding issue in this case. *See, e.g.*, Oct. 2020 RJD Monitoring Tour Report (Nov. 14, 2020) § IV.E (detailing systemic pattern of discriminatory RVRs issued to class members at RJD in assignment context); Letter from S. Lovett & R. Lomio to T. Davis (May 31, 2021). These examples evince blatant disability discrimination in the RVR process, and results in an escalating spiral of harm incurred to class members—including the loss of credits, program opportunities, and placement in more and more restrictive settings—solely on account of class members’ disabilities, in violation of the ADA. *See Olmstead v. L.C. ex rel Zimring*, 527 U.S. 581, 597 (1999); 42 U.S.C. § 12132; 42 U.S.C. § 12101; 28 C.F.R. § 35.130(d); *Padilla v. Beard*, 2014 WL 6059218 at \*9 (E.D. Cal. 2014).

Although the RVR process has been modified pursuant to orders in *Coleman* to prevent this type of discrimination from occurring, the *Coleman* process has failed to prevent class members from being disciplined repeatedly for acts that are clearly connected to their underlying disability or mental health diagnosis. *See* Letter from C. Trapani to N. Weber et al. (Feb. 2, 2021); 2018 Program Guide, *Coleman* ECF No. 5864-1 at 262 (requiring clinicians to recommend documenting behavior in alternative manner when patient’s behavior was “strongly influenced by symptoms of a mental illness”); Cal. Code Regs. tit. 15 § 3317 (same). People with disabilities should not be punished for behavior that stems from their disabilities nor for asserting their right to disability accommodations.

The *Coleman* remedy includes diversion from the disciplinary process in cases where the conduct at issue is strongly influenced by mental health symptoms. Cal. Code Regs. tit. 15 §§ 3317(d); 3317.1. These rules allows for alternative means of documenting the behavior to keep the incarcerated person out of the disciplinary process. There is no evidence that Defendants are complying with these rules; there is also

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currently no analogous remedy to protect *Armstrong* class members from winding up in the disciplinary process for acts directly related to their disability or staff's failure to accommodate their disability. Instead, the cases discussed above demonstrate the opposite: that Defendants tolerate a culture in which RVRs are issued as a means by which staff can express their hostility toward incarcerated persons because of their disabilities and to retaliate when incarcerated persons complain about staff misconduct.

Plaintiffs would like to discuss changing to the RVR process to strengthen and extend the diversionary processes under Title 15 §§ 3317(d) and 3317.1 to require alternatives to RVRs and/or to require higher-level authorization to use the RVR process against class members when an alternative is available.

**5. Enforce Strict Time Limits for Adjudication of RVRs**

CDCR policy requires that RVRs be heard within 30 days of receipt of written notice of the charge unless, among other things, exceptional circumstances exist. *See* Penal Code § 2932(c); Cal. Code Regs. tit. 15 § 3320(b). Such time limits are necessary to prevent class members from languishing for weeks or months in administrative segregation pending the adjudication of their RVR, especially if they did not commit the violation attributed to them. Plaintiffs are concerned, based on reports of class members who remain in segregation for months pending adjudication of their RVR, that time limits are not being enforced or monitored. Plaintiffs would like to discuss options for ensuring swift adjudication of RVRs, especially where there is allegation that the charges are false or retaliatory.

**6. Ensure Retention of RVR Documents Providing Evidence of Disability-related Misconduct and Retaliation in the RVR Process**

In previous correspondence, Plaintiffs expressed concern about Defendants' record-keeping practices around RVRs and an apparent practice whereby Defendants purge RVR documentation from class members' custody files after the RVR is adjudicated favorably to the class member (i.e., not guilty or dismissed). *See* Letter from P. Godbold to T. Davis & N. Weber (Apr. 30, 2021). Retention of these documents is critical for Plaintiffs' monitoring and for holding staff accountable for issuing false and retaliatory RVRs. We renew our request for information about Defendants' record-keeping practices, including answers to the following questions:

1. Are class members notified when an RVR is dismissed "for any reason," as required by policy?

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2. When an RVR is dismissed “for any reason,” what happens to the RVR and any associated documentation (e.g., Supplemental, Disciplinary Hearing Results, Mental Health Assessment, etc.)? Are any copies of the RVR and associated documents preserved, and if so, where are they preserved and for how long are they preserved? Are any documents memorializing the decision to dismiss, as well as the reasoning behind that decision, preserved?
3. When an RVR is dismissed for “any reason,” who ensures that the RVR is expunged from the person’s custody file?
4. Does CDCR maintain any records or logs memorializing changes made to the disciplinary section of custody files (e.g., when changes were made, who made changes, why changes were made, etc.)?
5. When an RVR is dismissed for “any reason,” does that trigger a review of the dismissed RVR to determine whether staff committed misconduct (dishonesty or retaliation, for example) in issuing the dismissed RVR?
- 7. Ensure Allegations of Staff Misconduct Are Not Dependent on the Adjudication of the RVR**

Currently class members who attempt to challenge their segregation placement based on a false RVR are told they must wait until the RVR is adjudicated. Indeed, by regulation, class members may not grieve any “pending” decisions, which CDCR construes to include allegedly false and retaliatory RVRs that have not yet been adjudicated. *See* Cal. Code Regs. tit. 15 § 3487(a)(2). In practice, this regulation means that allegations of false and retaliatory RVRs may be screened-out, with no investigative follow-up conducted, solely because the RVR has not been adjudicated. *See* 602 Log No. 52483 and Response, attached hereto as **Exhibit L** (rejecting allegation of falsified RVR because “RVR is not finalized, you must wait until you receive your decision response”). In the meantime, class members wait months in segregation without any consideration of their allegations. During that time, their access to exculpatory witnesses and evidence is severely limited, making it difficult for them to mount a credible defense to the charges against them and to collect further evidence of staff misconduct violations. Policy must ensure that any allegation that an RVR is false, retaliatory, or discriminatory be

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investigated by OIA pursuant to the new system for staff misconduct investigations, even if the RVR has not yet been adjudicated.

Moreover, in cases where class members are found guilty of a false or retaliatory RVR, and they submit a staff misconduct complaint after adjudication challenging the RVR, their complaint is summarily denied: because of the guilty finding, CDCR deems their allegation of staff misconduct unfounded. *See* 602 Log No. 81605 and Response, attached hereto as **Exhibit M** (denying 602 alleging false RVR and due process violations based on hearing documentation alone, with no further investigation). This chicken and egg problem will never be resolved under the existing unfair and biased process, which almost always results in guilty findings and fails to detect misconduct even when compelling evidence exists. Allegations of staff misconduct must be considered distinctly from the guilt or innocence of the class member in the RVR process.

**8. Mandatory Staff Misconduct Review of Serious RVRs**

Plaintiffs propose that, by policy, CDCR take steps to determine, when a serious RVR is issued, whether that RVR is alleged to involve false or retaliatory conduct on the part of the issuing staff member. If so, this allegation should be investigated alongside the adjudication of the RVR to ensure that all relevant evidence is preserved and considered in both processes. Currently, a staff misconduct complaint must be filed to trigger that review. However, there is no incentive for class members to complain about those RVRs which present the best evidence of staff misconduct: RVRs in which a Hearing Officer determined there was insufficient evidence of guilt or which have been dismissed in the “interest of justice.” Submitting a complaint after the RVR has been dismissed carries a significant risk of further retaliation and harassment for little benefit. We should expect, then, that class members will rarely pursue complaints about these RVRs and, in turn, that investigations into these RVRs will often not be triggered and will not be comprehensive. *See* Attachment C to [REDACTED] Grievance, attached hereto as **Exhibit N** (inadequate investigation into staff member who submitted false RVR after class member said that allegation “was taken care of” since RVR had been dismissed). Changes to the process must be made to ensure that staff misconduct investigations are triggered in cases where the best evidence of such misconduct exists, even if the class member does not pursue the claim because their RVR has been dismissed.

Plaintiffs believe that a similar process should occur for all class members found not guilty of serious RVRs. Whenever a Hearing Officer enters a not guilty finding for a

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class member accused of a serious RVR, CDCR must take steps to evaluate whether the staff member violated policy or otherwise acted in bad faith in issuing the RVR. If there is an indication that the RVR itself was false, retaliatory, or otherwise issued in bad faith, CDCR must investigate the alleged misconduct by the reporting employee and hold them accountable if warranted. Furthermore, CDCR must train Hearing Officers that they have an obligation to report RVRs that they believe are false and can be subject to discipline themselves if they fail to do so.

**9. Mandatory Retaliation Review for Staff Misconduct Complainants**

Plaintiffs propose that, by policy, CDCR conduct closer reviews of RVRs incurred by staff misconduct class member complainants if certain criteria are met. For example, for class members who have filed staff misconduct complaints, a mandatory retaliation review should be conducted if the class member has received multiple RVRs in the six months following the complaint. The onslaught of RVRs issued to Ms. ██████ demonstrates that this practice—the issuance of an excessive number of outright false, or otherwise trivial, and retaliatory RVRs—is one way that staff are able to retaliate against class member for complaining about staff misconduct with impunity. This is also true of the three false and retaliatory RVRs issues to Mr. ██████ after he filed two staff complaints. Any pattern of multiple RVRs issued to a class member complainant in a short timeframe must receive special attention and investigation.

By the same token, CDCR should be aware of whether certain officers are responsible for multiple write-ups against certain class members. Again, in the case of Ms. ██████ three of the six RVRs were issued by the same officer, Officer Arellano. One officer issuing multiple RVRs against a specific class member should trigger a review of the RVRs to determine whether they were issued in retaliation.

**II. Conclusion**

The problems endemic to the RVR process have resulted in a failure to investigate allegations of and hold staff members accountable for serious misconduct, including cases that present criminal misconduct or carry the potential for termination.

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Plaintiffs look forward to discussing these proposals and continuing to work with Defendants to hold officers accountable for serious misconduct against incarcerated people with disabilities.

Sincerely,

ROSEN BIEN  
GALVAN & GRUNFELD LLP

*/s/ Penny Godbold*

By: Penny Godbold

PG:JRG

Appendix & Enclosures

cc: Ed Swanson

August Gugelmann

*Coleman* Special Master

Adriano Hrvatin

Trace Maiorino

Sean Lodholz

Andrea Moon

Namrata Kotwani

Damon McClain

Roman Silberfield

Paul Mello

Samantha Wolff

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# **EXHIBIT D**





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VIA EMAIL ONLY

March 15, 2021

Ms. Tamiya Davis  
CDCR Office of Legal Affairs

RE: Effective Communication of Written Information for Blind and Low-Vision Individuals

Dear Ms. Davis:

I write regarding Defendants' obligation to ensure that blind and low-vision individuals incarcerated in CDCR prisons receive effective communication of written information.<sup>1</sup> This letter gives an overview of this issue, describes the three main formats (large-print, audio, and braille) that should be used to communicate this information to individuals who cannot read regular-print text, offers initial proposals regarding how these accessible formats should be produced and provided to these individuals; asks several follow-up questions for Defendants, and provides an appendix setting forth a non-exhaustive list of the types of written information that Defendants must effectively communicate to blind and low-vision people. We hope this letter will help guide Working Group discussions.

## I. Overview

As we stated at the initiation of this working group over a year ago, Defendants must identify the ways in which each blind or low-vision individual in CDCR custody can receive effective communication of written information, and ensure that every institution can deliver this such information in these ways. *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Topics for Blind/Low Vision Working Group (Dec. 12, 2019) ("Defendants should document what reading accommodations blind and low vision class members prefer, including braille, large print (of various font sizes), and audio formats, and should provide materials in the appropriate format."). Blind and low-vision individuals must be permitted to review written information as effectively as their sighted peers, whether via regular- or large-print text,<sup>2</sup> audio recording, or braille. *See* ARP §§ II.E.1 & IV.I.2.a.

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<sup>1</sup> The Blind/Low-Vision Working Group is separately addressing effective communication of non-written visual information, including through audio description of television programming.

<sup>2</sup> These decisions must be made on an individual basis, and cannot be based on DPP code alone. For example, some individuals classified DPV—including those with impaired limited peripheral visual function and a narrowed central field—may prefer regular-print text and would not benefit from large-print text, audio recordings, or braille. *See* Letter from Rita Lomio to Tamiya Davis (Dec. 12, 2019) (describing class members whose impaired peripheral visual function gives them a form of tunnel vision, and makes large-print text less readable).

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As a result, Defendants must ensure that each institution has a reliable system to provide written information to blind and low-vision individuals in accessible formats. *See* ARP § IV.I.2.a (noting, in “WRITTEN MATERIALS” section, that “[e]ach institution/facility shall ensure that accommodations” including large print, “audiotapes and Braille are provided when necessary”).

CDCR must maximize the independence of these individuals by providing written information in alternative formats that blind and low-vision individuals can review, study, and reference at any time, in the same way regular-text written materials can be reviewed by their sighted peers at any time. *See, e.g., Am. Council of Blind v. Astrue*, No. C-05-04696 WHA, 2009 WL 3400686, at \*7 (N.D. Cal. Oct. 20, 2009) (“Having someone read over the telephone does not compare to being able to absorb the information independently in order to study it, review it, and comprehend at one’s own speed and mode of ‘reading.’ . . . Everyone who receives an important notice needs to be able to store it and retrieve it for later use. The blind and visually impaired need to do so as well.”). Put differently, an incarcerated person’s ability to review written information cannot be dependent on whether they have access to auxiliary aids, *see, e.g.,* HDSP Tour Report, Attach. D ¶ 4 (Jan. 2020) (noting that due to limited library access, low-vision class member has to choose between using auxiliary aids to conduct legal work or for personal matters, including reading and writing letters to his family); whether there is room in an existing general budget to create those formats, *see, e.g.,* SATF DPV Tour Report at 30 (April-June 2019) (Community Resource Manager reporting that he cannot provide written material in accessible formats “because his annual budget for printing material is only \$115”); whether a staff member has the time to provide an accommodation, *see, e.g., id.* at 24 (low-vision class member reporting that his counselor said he did not have time to provide forms in large print); or whether another person is willing to read written material aloud to them, *see, e.g., id.* at 14 (noting need for blind class member to maintain privacy of written materials, including related to his conviction and any rule violations); CHCF AMT Tour Report at 4 (July 2019) (blind class member reporting that ADA workers have refused to help with reading and writing); SVSP AMT Tour Report at 3 (May 2019) (blind class member reporting that ADA workers and staff will not help him read and fill out forms). It is critical that CDCR maximize the independence of these individuals by providing written information in alternative formats that blind and low vision individuals can take with them to their cells, in the same way that regular-text written materials can be taken with sighted individuals to their cells and referenced later.

In particular, Defendants must develop a system to (1) identify and document an individual’s primary and secondary method for reviewing written information and (2) provide written information in the appropriate accessible format.

The first issue—how to *identify and document* the appropriate accessible format for a given class member—should be coordinated with the pending discussions related to effective communication documentation as a general matter, which have been spun out from the joint audit policy disputes negotiations and which implicate other disabilities (including deaf and hard-of-hearing class members), to ensure consistency. We note that in the outside community, institutions solicit and record preferences from people to ensure that written material is provided in accessible formats.

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The screenshot shows a web form under the heading "GENERAL DOCUMENTS". The question is "How would you like to receive documents for all general accounts?". Below the question is an information icon and a note: "To change your delivery option to 'Online' or 'Screen Reader Compatible and Online' you first need to read and agree to USAA's [Electronic Delivery Consent](#)." Below this, the form is for "Annual Report to Members" and has five radio button options: "Online" (selected), "Paper", "Large Print and Paper", "Braille and Paper", and "Screen Reader Compatible and Online".

Similarly, we occasionally have seen staff attempt to repurpose the existing effective communication documentation system to indicate necessary accessible formats for written information, although this is rare and not consistent between or within prisons. For example:

The screenshot shows a form titled "Methods of Communication" with a dark blue header. The form contains the following text: "SLI: No", "Primary Method: Large Print Material", "Secondary Method: Use Full Page Magnifier", and "Interview Date: 12/11/2019 00:00".

(ADA/Effective Communication Patient Summary for Marvin Harris, D99649, DPV)

This system should draw on or mirror how primary and secondary methods of communication are identified and documented for deaf and hard of hearing people. **Plaintiffs wish to begin discussion of how to identify the appropriate accessible format for blind or low-vision class members, such as through interviews of DPV- and DNV-designated individuals, at the next meeting of the Blind/Low-Vision Working Group.**

Separate from the issue of *identifying* the methods in which an individual can receive effective communication of written information, the focus of this letter is on the second issue listed above. That is, this letter lays out specific types of accessible formats that must be available within the California prison system—large-print, audio recording, and braille; seeks to provide structure for a system to ensure that institutions are able to produce or procure accessible formats for blind and low-vision class members; solicits further information from Defendants to help inform discussions; and provides a non-exhaustive list of the types of information that must be produced in accessible formats for these individuals. **Plaintiffs ask that Defendants, without delay, supplement the list provided in the Appendix with other instances of written information that are regularly provided to incarcerated individuals in CDCR custody.**

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## II. Accessible formats for blind and low-vision individuals

The following are the three main accessible formats in which written information must be made available to blind and low-vision class members who cannot read regular- or small-print text.

### A. Large print

Many blind and low-vision individuals are able to read written information that is provided in large print, which is required by the ADA and *Armstrong* Remedial Plan. ARP § II.E.1. Unfortunately, at present we are unaware of any system that Defendants have for ensuring that individuals who require large-print text receive written documentation in large print. We are glad that Defendants appear to be taking steps to deploy additional electronic video magnifiers, such as DaVinci and Merlin machines, at select prisons, but this will not serve as a substitute for providing large-print written information to blind and low-vision individuals as a matter of course. Blind and low-vision individuals will not be receiving equal access to written information if they are able to review such information only at limited times of the day, at select locations, and when no other low-vision individual is already using a desired magnifier. *See* CMF AMT Tour Report at 2 (Aug. 2020) (noting that blind class member could not access auxiliary aids because library had been closed); SATF DPV Tour Report at 21 (April-June 2019) (describing a DPV class member's inability to read materials "independently in his cell" because magnifiers were located elsewhere). Furthermore, when blind or low-vision individuals review documents with sensitive information on them, electronic magnifiers may prominently display this information so that others can see what the individual is reading, as we have previously reported. *See* SATF DPV Tour Report at 17, 19, and 32 (June-Sept. 2018); SATF DPV Tour Report at 19 (April-June 2019). Plaintiffs look forward to the addition of these magnifiers at certain CDCR prisons, but Defendants must ensure that all prisons have structures in place to produce large-print documentation for individuals who rely on this accommodation.

It is crucial that in developing large-print materials for low-vision individuals, Defendants follow specific guidelines. "Large print," in this context, does not mean using a copy machine to zoom in on and reproduce text from an already-printed document or simply enlarging the text of a document on Microsoft Word before printing a document.<sup>3</sup> In the context of producing written materials for low-vision individuals, large print has a meaning that reflects the specific needs of low-vision people. This more detailed meaning of "large print" has been laid out by several expert groups. *See* Best Practices and Guidelines for Large Print Documents Used by the Low Vision Community, Council of Citizens with Low Vision International, American Council of the Blind (July 12, 2011), <https://acb.org/best-practices-and-guidelines-large-print-documents-used-low-vision-community-authored-council>; *see also* APH Guidelines for Print Document Design, American Printing House for the Blind, <https://www.aph.org/aph-guidelines-for-print-document-design/> (setting forth a "standard of optimal usability" for large-print text).

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<sup>3</sup> *See* Best Practices and Guidelines for Large Print Documents Used by the Low Vision Community, Council of Citizens with Low Vision International, American Council of the Blind (July 12, 2011), <https://acb.org/best-practices-and-guidelines-large-print-documents-used-low-vision-community-authored-council> ("Copy machines create fuzzy text, which is often on oversized pages, making the document cumbersome.").

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We recently corresponded with a representative from the American Council of the Blind, who distilled the foregoing guidance into the following principles for how to create large print documents:

- Typeface – sans serif fonts, such as Arial, Helvetica, and Verdana are preferred. The representative noted that for the Council’s magazine, “The ACB Braille Forum,” they use Verdana 20-point bold for text, 24-point bold for headlines, and 22-point bold for sub-headlines.
- Line spacing – 1.5-line spacing is preferred, as it gives readers the space between lines to clearly read each line.
- Modifications – Do not use italics or underlining; they are very hard for readers with vision disabilities to read.

**CDCR Headquarters should promptly draft and circulate a memorandum setting forth a standard based on these principles, as well as those cited above, for how written documentation should be provided in large-print to blind and low-vision individuals, and clarifying who specifically at Headquarters and/or each institution will be responsible for this process. Plaintiffs wish to review and provide comment on this memorandum prior to its circulation.**

### **B. Audio recording**

Some individuals—particularly blind people who do not know braille—require access to audio formats. We are not aware of any system in place to provide audio formats of written materials to people in California prisons. Instead, blind and low-vision people who are unable to read written information often are forced to ask other incarcerated people or staff to read to them, out loud, each time they want to know what any written information says—be it RVR paperwork, homework, a textbook, or appeal response. *See* CMF AMT Tour Report at 2 (Aug. 2020) (describing a class member who, due to his vision disability, “has to rely upon his cellmate for help reading”). This is not adequate for a number of reasons. First, and foremost, it contravenes the principle of independence that is fundamental to the ADA and governing regulations. *See* 28 CFR § 35.130(b)(1)(iii) & § 36.303(c)(ii); *see also Am. Council of Blind v. Astrue*, No. C-05-04696 WHA, 2009 WL 3400686, at \*7 (N.D. Cal. Oct. 20, 2009) (“Having someone read over the telephone does not compare to being able to absorb the information independently in order to study it, review it, and comprehend at one’s own speed and mode of ‘reading.’ . . . Everyone who receives an important notice needs to be able to store it and retrieve it for later use. The blind and visually impaired need to do so as well.”). Unlike possessing an audio file that one may review at one’s own pace, asking for someone to read a document out loud makes the requestor heavily dependent on another person. We have repeatedly have reported across the prison system that staff and ADA workers do not always provide assistance when requested.<sup>4</sup>

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<sup>4</sup> *See* CHCF AMT Tour Report at 6-7 (July 2020) (describing class members’ reports that “there were very few staff who were willing or able to help them, especially with reading and writing”); CMF AMT Tour Report at 2 (July 2020) (“[REDACTED] reported that he has had a difficult time finding somebody to help him read and write to accommodate his vision disability.”); *id.* at

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Second, blind and low-vision individuals should not be forced to give up their privacy to access written information, including information related to medical and mental health conditions, criminal convictions, parole preparation, and RVRs. *See, e.g.*, SATF DPV Tour Report at 10-11 (Oct. 2019 and Feb. 2020) (describing how a DPV class member’s reliance on other individuals to read him materials out loud “do[es] not allow him to maintain privacy of certain matters, including related to his case or any rule violations”). This not only contradicts another purpose of the ADA, which is to secure individuals with disabilities’ right to privacy, *see* 28 CFR § 36.303(c)(1)(ii), but also subjects blind and low-vision individuals to inferior treatment, giving them a diminished ability to review sensitive information in private in comparison with sighted incarcerated people, *see* 28 CFR § 35.130(a).

In short, requiring blind people to seek assistance from incarcerated people or staff each time they want to review information is inappropriate and no substitute for audio recordings. Defendants must implement a system to produce and provide audio recordings of written information to blind and low-vision individuals. *See* ARP § II.E.1 (listing “audiotaped texts” as an “[a]uxiliary aid”). As described in more detail below, *infra* Part II.D, some of these materials can be expeditiously recorded and made available to blind and low-vision individuals throughout CDCR due to their standardized format. For example, each institution could develop an audio recording of its orientation handbook and make this recording available upon request to blind and low-vision class members who cannot read. Other more individualized materials may require case-by-case translation into audio recording, which Defendants could produce either internally or externally through a contractor. *See* Braille, Text, and Other Media, LightHouse for the Blind and Visually Impaired (“The LightHouse offers Braille translation, audio recording, and large print production, including conversion to DAISY formats for audio.”), <https://lighthouse-sf.org/design/braille-accessible-media/>. **Plaintiffs wish to discuss these and other potential ways of providing written information via audio recording to blind and low-vision individuals with Defendants at the next Blind/Low-Vision Working Group meeting.**

### C. Braille

A very small handful of people in CDCR custody can read braille. *See* SATF AMT Tour Report at 14 (April-June 2019). Individuals who are able to read braille and for whom braille is their preferred format for receiving communication of written information should be provided materials in braille. *See* ARP § II.E.1. Given that the braille-reading population in CDCR custody is small, developing a plan to provide these individuals with materials in braille should not pose an undue financial or administrative burden to CDCR. Possible methods of providing written materials in braille may include contracting with an outside organization such as LightHouse, utilizing in-house braille transcription services through the Blind Project at CMF, and hiring full- or part-time employees to perform this service internally. **Plaintiffs**

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3-4 (describing blind and low-vision individuals’ difficulty in receiving ADA worker assistance in reading materials out loud to them); SATF DPV Tour Report at 21 (April-June 2019) (describing a DPV class member’s difficulty in “getting ADA workers to help him . . . read” because officers would not let ADA workers help him); *id.* (“██████████ reported that officers in the ASU do not assist him with reading.”).

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**wish to discuss these and other potential ways of providing braille materials to blind and low-vision individuals with Defendants at the next Blind/Low-Vision Working Group meeting.**

#### **D. Standardized vs. individualized Information**

For each of the three formats described above, the system that Defendants establish to provide written materials should take into account whether a given piece of information being communicated to a blind or low-vision person is based on a standardized document, an individualized document, or some combination of the two. Many of the materials described in the Appendix attached to this letter, such as orientation handbooks and copies of CDCR regulations, are standardized—that is, they will not need to be modified depending on who receives and/or reviews them. This should expedite making them available to blind and low-vision people in CDCR institutions. For example, independent of what any particular individual requires, a certain number of copies of institutional OPs could be immediately produced in large-print and in braille, as well as audio-recorded, and then made available in the law library. Neither how this information is provided, what is contained in the information, nor how it is provided will need updating based on an individual's circumstances. **Plaintiffs request that Defendants, without delay, identify standardized written information that is regularly provided and/or available to incarcerated people, such as from the sample list provided in the attached Appendix, that can be expeditiously produced in large print, audio recording, and braille.**

Other materials, such as certain educational documents and health records, might be wholly individualized, with institutions producing them on a case-by-case basis, not based on a preexisting template. Finally, other materials, such as RAP responses and RVRs, are more akin to a hybrid of standardized and individualized information. These sorts of materials include some standard language as well as some individualized language. For these hybrid materials, CDCR might retain standard templates of them in each of the forms described *supra* Part II.A-C, and would input individualized information into these templates on a case-by-case basis. For example, a standard large-print RVR template could be developed, and an individualized large-print RVR would be produced based on this template when an individual is accused of a rules violation. **For materials that are at least somewhat individualized, Defendants must develop a system for ensuring that when such materials are provided to blind and low-vision people who cannot read regular-print text, these materials are first directed, at each institution, to the proper channel for translating them into large print, audio recording, or braille. Plaintiffs wish to discuss how to develop this system at the next meeting of the Blind/Low-Vision Working Group.**

For certain individualized and hybridized information, situations may arise in which an institution is unable to timely provide the information to an individual via their preferred method of communication. To avoid prolonged delays in providing effective communication, Defendants should develop contingency plans to anticipate (1) what alternative, interim methods of communication they will utilize in such instances (for example, by documenting that an individual who most effectively comprehends materials via audio recording is also able to read—even if with some difficulty—large-print text), and (2) how to ensure that the appropriate method is provided as soon as possible (for example, by requiring that the

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appropriate method is provided within a certain amount of time, such as 24 hours). **Plaintiffs would like to discuss what kind of contingency plans Defendants will develop to address these potential delays.**

### **III. Questions and concerns**

In addition to the foregoing items that we have flagged for discussion at the next meeting of the Blind/Low-Vision Working Group, we have a series of questions that we hope Defendants are able to answer at the next meeting or shortly thereafter:

1. What existing, CDCR-wide processes facilitate the provision of written information in each of the three formats describe above, *supra* Part II.A-C? Is there any Headquarters-level guidance for how institutions should provide information in these formats?
2. How and when are large-print texts, audio recordings, and braille materials typically provided at CMF, CHCF, and SATF, the institutions with the largest numbers of DPV-designated individuals?<sup>5</sup>
3. What potential mechanisms for internally producing large-print text, audio recordings, and braille materials currently exist within CDCR? For example, could the Blind Project at CMF transcribe written information, as described above, into braille?
4. How do Defendants anticipate the comprehensive accommodations assessment intersecting with this effort to develop institutional systems of providing effective communication to blind and low-vision class members? Will this assessment identify what sort of effective communication methods an individual can utilize?

#### **In sum, in addition to answers to these questions, we request the following:**

1. That the parties discuss, at the next meeting of the Blind/Low-Vision Working Group and thereafter, implementing a CDCR-wide system for identifying, such as through screening interviews of DPV- and DNV-designated individuals, blind and low-vision individuals' primary and secondary methods for reviewing written information.
2. That Defendants, without delay, supplement the list provided in the Appendix below with other instances of written information that are regularly provided to incarcerated individuals in CDCR custody.
3. That Defendants, without delay, identify standardized written information that is regularly provided and/or available to incarcerated people, such as from the list provided in the Appendix below, that can be expeditiously produced in large print, audio recording, and braille.
4. That CDCR Headquarters promptly draft and circulate a memorandum to all CDCR prisons setting forth a standard based on the large-print principles set forth *supra* Part II.A for how written

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<sup>5</sup> As of the issuance of the February 2021 DPP Roster, there were 276 DPV-designated individuals and 223 DNV-designated individuals in CDCR custody. Most DPV individuals are housed at CHCF (55), CMF (52), or SATF (74), and a handful are housed at CIM (8), CCWF (9), HDSP (11), MCSP (12), RJD (16), and SVSP (1).



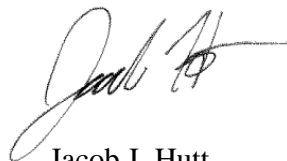
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documentation should be provided in large-print to blind and low-vision individuals. Plaintiffs wish to review and provide comment on this memorandum prior to its circulation.

5. That the parties discuss, at the next meeting of the Blind/Low-Vision Working Group and thereafter, how Defendants will systematically provide written information via large print, audio recording, and braille to blind and low-vision individuals. These discussions should address how Defendants will ensure that when individualized materials are provided to blind and low-vision people who cannot read regular-print text, they are first directed, at each institution, to the proper channel for translating them into large print, audio recording, or braille.
6. That the parties discuss, at the next meeting of the Blind/Low-Vision Working Group and thereafter, what contingency plans Defendants will develop to address potential delays in delivering information in accessible forms to blind and low-vision people.

We look forward to discussing these issues at our next meeting on March 18, 2021. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob J. Hutt", with a long horizontal flourish extending to the right.

Jacob J. Hutt

cc: Blind/Low Vision Working Group

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## APPENDIX

### Information that must be provided in accessible formats to blind and low-vision people

Below is a non-exhaustive list of categories of written information that Defendants regularly provide to incarcerated people, which should be provided to blind and low-vision individuals in braille, large print, and/or audio recording, depending on the individual's documented disability and preference.

- Administrative materials in the law libraries
  - CDCR regulations
  - Institutional operational procedures (OPs)
  - Department Operations Manual (DOM)
  - Armstrong Remedial Plan
- Orientation<sup>6</sup>
  - Institutional orientation handbooks
  - Informational materials regarding available accommodations for individuals with disabilities
- Disciplinary
  - Rules Violation Reports (RVRs)<sup>7</sup>
    - Notices of Referral for Criminal Prosecution
    - Reports of the Investigative Employee (IE)
    - Form CDCR 115-MH-A
  - Counseling Only Rules Violation Reports (128As)
  - CDCR 114-A Administrative Segregation Unit Placement Notice
- Unit Classification Committee (UCC), Facility Classification Committee (FCC), and Institution Classification Committee (ICC)
  - Form 128-G Classification Chrono
  - Initial Classification Score Sheet
  - CDCR Form 128-B2 Security Threat Group Validation/Rejection Review
  - CDCR Form 128-B3 Security Threat Group Identification Score Sheet
  - CDCR Form 128-B4 Evidence Disclosure and Interview Notification
  - CDCR Form 128-B5 Security Threat Group Validation Chrono
  - CDCR Form 1030 Confidential Information Disclosure Form
- Appeals and reasonable accommodation requests
  - Documentation related to the CDCR Form 22, 602, and 1824 processes

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<sup>6</sup> The parties agreed, during the last round of negotiations regarding joint audit policy disputes, to form a working group to address, among other things, effective communication of orientation materials. That working group will need to coordinate with the Blind/Low-Vision Working Group on cross-over issues.

<sup>7</sup> See SATF DPV Tour Report at 25 (April-June 2019) (report of blind class member that he cannot read the regular-print RVR paperwork that he is given and that he signed paperwork without knowing what it said).

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- CDCR Form 128-C2
- Educational materials<sup>8</sup>
  - Institutional educational materials
  - Written materials for self-help and rehabilitative groups and religious services
- Medical and mental health documentation
  - 1845 and 7410 documentation
  - Responses to CDCR Forms 7362 and 602HC
  - Information given by individual providers to patients<sup>9</sup>
  - CDCR Form 128-C3
  - Materials distributed or watched during recreational therapy groups
  - Standard COVID-19 information
  - Information related to requests for health care records, including CDCR Form 7385 Authorization for Release of Protected Health Information
  - Mental Health Services Delivery System Program Guide
- Program information, including Program Status Reports (PSRs), activity sign-ups, television schedules, IAC minutes, and other material posted on bulletin boards in-unit
- Ducats<sup>10</sup>
- BPH Hearing Preparation<sup>11</sup>
  - Notice of Rights
  - BPH Form 1073 copies
  - Olson Review Service Chronos
  - Chronos on Notice of Time and Date of BPH Hearings
  - Comprehensive Risk Assessments
  - Master Packet and Ten-Day Packet
  - NVPP Process Overview and Forms for Determinately Sentenced NVPP Individuals to Submit a Written Statement
  - Petitions to Advance Next Hearing
  - Notice of Appointed Attorney
- Parole

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<sup>8</sup> See SATF DPV Tour Report at 29 (April-June 2019) (blind class member reporting that he cannot complete written assignments for Alcoholics Anonymous and Getting Out by Going In (GOGI) because the print is too small for him to read).

<sup>9</sup> For example, a blind class member informed us that he was issued a Prisoner Diabetic Handbook, but cannot read it at all or refer to it when he has concerning symptoms due to his vision disability. See also SATF DPV Tour Report at 25 (April-June 2019) (“A class member on D yard reported that he has signed things he has not understood because they have not been provided in large enough print or were not read out loud to him. On the day of the interview, for example, he reported that he had signed a form related to his dental care that he had not read.”).

<sup>10</sup> See SATF DPV Tour Report at 25 (April-June 2019) (“[REDACTED] reported that whenever he receives a ducat, he cannot read it because the font size is too small.”)

<sup>11</sup> The parties will need to coordinate discussions of these materials with parallel discussions in *Armstrong II*.

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- BPH Hearing Transcript
- CDCR Form 1515 Notice of Conditions of Parole
- CDCR Form 1032 Notice of Time, Date, and Place of Computational Review Hearing
- CDCR Form 1033 Computation Review Hearing Decision
- Notice of a change in EPRD via an updated Legal Status Summary (LSS)