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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 JOHN ARMSTRONG, et al.,

14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, et al.,

17 Defendants.
18

Case No. CV 94-2307 CW

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

19 **I. Introduction**

20 Since the Court Expert’s last report in February 2021, there have been marked
21 improvements in the infection and vaccination rates within CDCR. At the end of January 2021,
22 there were nearly 900 active cases across the system; currently there are 72. Even that number
23 is anomalous – until a recent outbreak at SOL, the number of cases had been in the single digits
24 for months. In February, the Court Expert reported that over 10,000 incarcerated individuals
25 had received at least one dose of a vaccine; now over 67,500 – nearly 70% of the population –
26 are fully vaccinated. Although the pandemic appears to be on the retreat within CDCR, the
27 parties have continued to work diligently to protect the needs of class members.
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1 **II. Adequacy of pandemic response plans for *Armstrong* class members (¶¶ 1-2)¹**

2 The Court Expert’s previous reports have outlined the two methodologies employed to
3 determine whether the quarantine and isolation beds set aside at a given institution are adequate
4 to the needs of class members. Currently, there are sufficient DPW and lower/lower isolation
5 and quarantine beds at each institution under the methodology that the parties have agreed
6 should apply to that institution. Despite the waning of the pandemic in CDCR institutions, to
7 date the number of beds set aside remains unchanged. Should the total number of isolation and
8 quarantine beds be reduced, the parties will meet and confer regarding whether and how the
9 Court Expert’s methodology should be applied to the new bed allocations.

10 Previous reports have discussed concerns about the availability of single cells with solid
11 (rather than barred) doors, which the parties agree is the safest place to quarantine.
12 Specifically, Plaintiffs contended that class members were not receiving equal access to this
13 preferable quarantine space at several institutions. Plaintiffs’ concerns about those specific
14 institutions have been addressed, the parties are currently not aware of similar problems arising
15 at any institution. Should CDCR decide, with guidance from the Receiver, to reduce the
16 number of single-cell, closed-door quarantine units, CDCR has agreed to consult with Plaintiffs,
17 and the Court Expert if necessary, to ensure that the reduction will not disproportionately affect
18 class members.

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

20 The parties agree that the requirement that CDCR provide notice within 72 hours if it
21 “designate[s] substitute or additional quarantine and isolation space at any institution” has been
22 satisfied through the November 5, 2020, directive entitled “Tracking of Isolation/Quarantine
23 Units for *Armstrong* Class Members.”

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27 ¹ As in previous reports, the sections below correspond to the numbered paragraphs in the
28 Court’s September 9 order (Dkt. 3072), in which the Court set forth the categories of information
on which the Court expert was to provide updates.

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

2 The Court ordered Defendant to “develop a reliable process . . . to ensure that adequate
3 accessible quarantine and isolation space is set-aside in advance of *Armstrong* class members
4 transferring into the institution, and in response to any changes in disability codes or movement
5 within an institution.” Dkt. 3072, ¶ 4. The Court Expert’s previous report described Plaintiffs’
6 concerns that intake centers lacked sufficient accessible space for post-transfer quarantine,
7 which could cause delays in transferring class members between facilities or from county jails
8 to CDCR institutions. Defendants have since implemented changes recommended by Plaintiffs,
9 including the provision of weekly updates on the number of beds set aside for pre- and post-
10 transfer quarantine at each institution. To enable the parties to predict and address class
11 member housing needs, Defendants are also in the process of gathering information from
12 county facilities on the number of individuals with disability-related housing needs who are
13 awaiting transfer to CDCR. Finally, CDCR and CCHCS are evaluating whether to eliminate
14 mandatory post-transfer quarantine of fully vaccinated individuals, which would reduce the
15 demand for these spaces and decrease the likelihood of transfer delays. Should disputes arise
16 concerning the adjustment of set-aside space, the parties have agreed to raise them with the
17 Court Expert.

18 **V. Architectural and non-architectural modifications (¶¶ 5-7 and 10-15)**

19 As described in previous reports, the parties have implemented a process to identify any
20 architectural modifications that are required to accommodate class member needs, to document
21 those modifications as they are made, and to meet and confer regarding the adequacy of the
22 modifications. That process continues to prove effective. After receiving input from Plaintiffs,
23 CDCR plans to issue a directive requiring its institutions to maintain existing architectural
24 modifications in the event of a future outbreak.

25 Regarding non-architectural modifications, CDCR has implemented a weekly
26 information-gathering process pursuant to which class members are interviewed to determine
27 whether they have access to necessary modifications in isolation, quarantine, and non-
28 traditional housing areas and whether institutions are equipped with necessary equipment.

1 Although Plaintiffs agree in principle that this process is a good one, they have raised concerns
2 about its implementation at specific institutions, including SATF. Among those concerns is
3 SATF's repeated failure to provide trapeze bars despite CDCR's issuance of a system-wide
4 directive on that specific issue in March. Defendants have agreed to investigate Plaintiffs'
5 concerns and to issue a "written explanation for the delay" in providing these accommodations
6 as required by the Court. Dkt 3072, ¶ 6.

7 As noted in the Court Expert's last report, CDCR disseminated a memorandum in
8 January 2021 entitled "Situating Blind and Low-Vision Individuals to New Living
9 Environments" that addresses non-architectural needs of DPV class members. Plaintiffs
10 participated in the drafting of that memorandum but, as with the weekly surveys described
11 above, have concerns about its implementation. Specifically, Plaintiffs have found that some
12 staff members are apparently not familiar with the requirement that blind and low-vision class
13 members must be given orientations when moving to a new housing space and that other staff
14 members are conducting inadequate or poorly documented orientations. The parties have
15 agreed to assemble a workgroup to address these concerns and to ensure that institutions
16 continue providing the necessary orientations even after the pandemic.

17 **VI. Housing of *Armstrong* class members, including rehousing of displaced class**
18 **members (¶¶ 16, 18)**

19 As described in previous reports, CDCR has implemented procedures to ensure that
20 class members are appropriately housed and that they receive necessary accommodations in the
21 event they are placed in nontraditional housing (such as gyms and chapels) or in areas that are
22 not designated for their DPP code. As of the most recent reporting date, there are 244
23 individuals in housing that does not meet their DPP codes and 33 not housed in accordance with
24 their lower/lower designations. These numbers have been fairly consistent over many months,
25 and the Court Expert remains concerned that the needs of these class members are not being
26 appropriately or expeditiously met.

27 Defendants report that they are working to remedy the housing of these individuals as
28 quickly as possible, starting with DPW class members. With respect to lower/lower

1 designations, Plaintiffs have alerted CDCR to particular cases at various institutions where class
2 members have been inappropriately housed, and Defendants are working on draft directives that
3 will explain to institutions how to go about relocating mis-housed individuals. The parties will
4 seek assistance of the Court Expert with this process as required. Finally, the parties
5 collaborated on a “Non-Traditional and Staging Area Housing Guidance and Checklist” to
6 address concerns regarding inaccessible or unsanitary conditions in certain areas, and they will
7 continue to monitor whether this guidance proves effective in the event that such spaces are
8 again needed to house people displaced by the pandemic.

9 CDCR’s directive also requires that class members not be placed in more restrictive
10 housing or in administrative segregation solely because there is no other accessible housing
11 available. Plaintiffs have raised concerns that, while institutions appear to be complying with
12 this directive for inter-facility transfers, there have been instances where class members were
13 inappropriately placed in administrative segregation following intra-facility transfers.
14 Defendants are working on revised directives that will address this and other related issues and
15 will seek Plaintiffs’ input.

16 **VII. Other matters**

17 On July 20, 2020, the Court ordered defendants to “develop and implement a plan to
18 ensure that the ADA worker program can safely and effectively function without undue risk of
19 transmission of COVID-19.” Dkt. 3015, 1. In previous reports, the Court Expert has addressed
20 the ADA worker program because, while it is not within the scope of matters on which the
21 Court Expert is required to report, it implicates safe housing for class members. As described
22 in the Court Expert’s last report, Plaintiffs have raised concerns about inadequate
23 implementation of the ADA worker program at SVSP and CSP. The parties are working
24 together to draft new guidance to address the shortcomings identified by Plaintiffs.

25 **VIII. Conclusion**

26 The Court Expert commends both parties for the collaborative and productive work they
27 have done to address the needs of class members during the COVID-19 pandemic. While there
28 remain issues to be remedied, the Court Expert believes that the processes implemented by the

