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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 ISSUES¹

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

7 1. Plaintiffs’ Statement

8 Eighteen months after the World Health Organization declared a pandemic,
 9 COVID-19 continues to sicken and kill people across the world. Prisons in particular have
 10 proven time and time again to be extraordinarily dangerous environments, serving as viral
 11 multipliers and disease incubators. In fact, “[i]ncarcerated persons are five times as likely
 12 to be infected in outbreaks and nearly three times more likely to die.” Doc. 3638, Report
 13 of J. Clark Kelso, Receiver, *Plata v. Newsom*, No. 01-01351-JST at 6 (N.D. Cal. Aug. 4,
 14 2021) (“Report of Receiver J. Clark Kelso”). To date, over 49,677 people incarcerated in
 15 California prisons have been infected by the novel coronavirus, and at least 235 have died.
 16 Those numbers continue to grow.

17 The pandemic “has had a devastating and disproportionate impact on people with
 18 disabilities.” U.S. Dep’t of Justice, Statement by the Principal Deputy Assistant Attorney
 19 General for Civil Rights Leading a Coordinated Civil Rights Response to Coronavirus
 20 (COVID-19) (Apr. 2, 2021). This certainly has been true in the California prison system,
 21 where people with disabilities have been five times more likely to die than their able-
 22 bodied peers. People with disabilities also have been housed in unsafe and less safe areas
 23 because of their disabilities, and have been denied equal access to the most basic of
 24 programs, services, and activities during the pandemic, including the ability to
 25 communicate with loved ones, to use an accessible toilet or shower, and to safely transfer
 26 between a bed and wheelchair.

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

1 **a. COVID-19 Vaccinations**

2 There can be no question that “mandatory COVID-19 vaccination for institutional
3 staff is necessary to provide adequate health protection for incarcerated persons.” *See*
4 Report of Receiver J. Clark Kelso at 5. “There is no other equally effective method.” *Id.*
5 at 10. Once a COVID-19 infection has been introduced into a prison it is virtually
6 impossible to contain, and staff are indisputably a primary vector for the virus. *Id.* at 5.

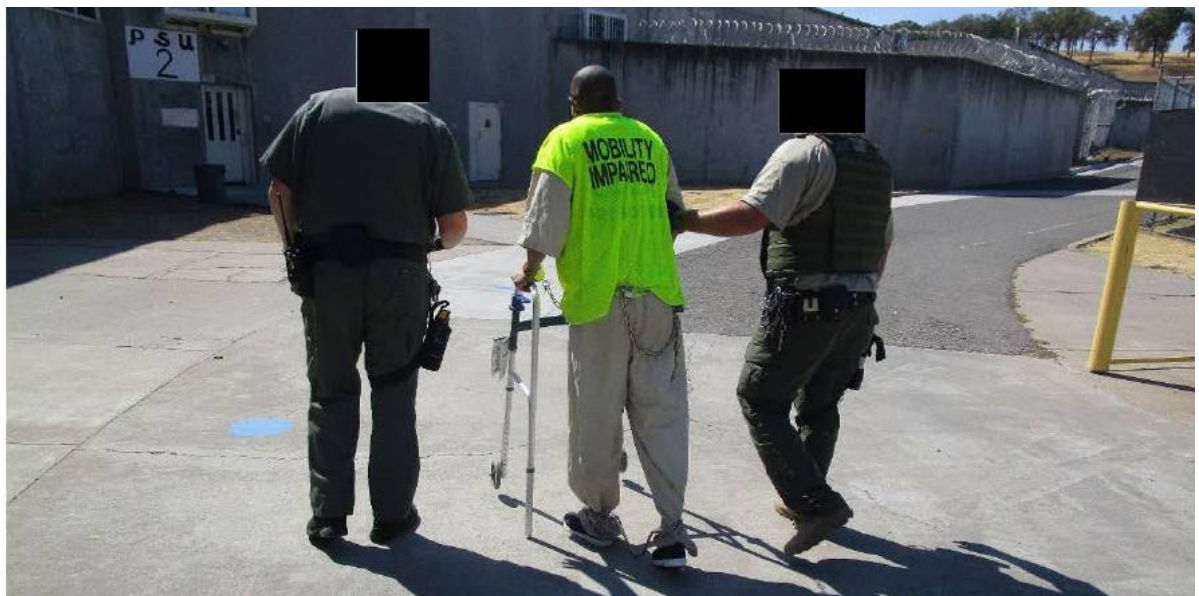
7 Although safe and effective vaccines have been widely available to staff since
8 January 2021, and although over 18,000 CDCR and CCHCS staff already have been
9 infected, and at least 29 have died, staff vaccination rates remain “unacceptably low,”
10 particularly among correctional officers. *See* Report of Receiver J. Clark Kelso at 26.
11 Defendants have refused to require staff vaccination, however, notwithstanding the
12 Receiver’s detailed report, filed on August 4, 2021, explaining that “[d]elaying a
13 mandatory vaccination policy until the next wave is upon us will not produce results until
14 it is too late.” *See id.* at 26.

15 It appears that this urgent public health issue has become a political one. The
16 California Correctional Peace Officers Association (“CCPOA”) has stated that it will fight
17 a vaccination mandate through “‘all the tools at its disposal,’ including legal appeals and
18 labor negotiations.” *See* Wes Venteicher, California Correctional Officers Union to Fight
19 New COVID-19 Mandate, Memo Says, Sacramento Bee (Aug. 10, 2021). On Friday,
20 August 6, 2021, the California Public Health Officer ordered that workers in health care
21 facilities be vaccinated. That weekend, an “FAQ” was added that said, inexplicably, that
22 state prisons are **not** covered by the order. *See* Cal. Dep’t of Public Health, Public Health
23 Order Questions & Answers: Health Care Worker Vaccine Requirement (Aug. 7, 2021).

24 On August 19, 2021, the State issued a watered-down version of the mandate for its
25 prisons. That order applies only to a small subset of workers in certain healthcare settings.
26 There is no public health basis for limiting mandatory vaccines to those workers. First,
27 over 15,000 highly vulnerable patients, including many people with disabilities, are housed
28 outside designated healthcare settings. Second, even in designated settings, the order

1 covers only “regularly assigned” workers. That ignores operational constraints and
2 realities in the day-to-day management of the California Department of Corrections and
3 Rehabilitation, where staff often are reassigned to different posts, including in healthcare
4 areas. Finally, the order fails entirely to address the core public health basis for the
5 Receiver’s recommendation—limiting the flow of the virus into the prisons as a whole.

6 As the Court in *Plata v. Newsom* decides whether to order that institution staff be
7 vaccinated, people with disabilities remain at unacceptable risk of serious harm and death.
8 Already, an 81-year-old, fully vaccinated, full-time wheelchair user has died from
9 COVID-19 complications. And many other *Armstrong* class members, because of their
10 disabilities and/or serious medical conditions, must come in frequent, prolonged, and direct
11 contact with staff, including to move safely about the prison. Indeed, in July 2021, during
12 a monitoring tour at California State Prison, Sacramento (“CSP-SAC”), we saw staff
13 escorting, in close proximity, elderly people with disabilities in and outside the housing
14 units (photograph below). Yet, only 39% of custody staff at CSP-SAC are fully or
15 partially vaccinated. Defendants must take swift action and exhibit real leadership to
16 protect the health and safety of *Armstrong* class members who must come in close contact
17 with unvaccinated staff in order to receive disability assistance.



1 **b. Safe, accessible housing of *Armstrong* class members**

2 As of August 6, 2021, 254 *Armstrong* class members remained housed in areas not
3 designated for their disabilities, including 96 class members awaiting transfer to a mainline
4 facility from a reception center—**an increase in both numbers from the last joint case**
5 **status statement.** *See* Doc. 3296 at 3. That the number is rising and not falling even after
6 the California Correctional Healthcare Services in April 2021 defined such transfers as
7 “necessary” and even after the Court Expert repeatedly, and since at least February 1,
8 2021, has expressed concern “that the needs of these class members are not being
9 appropriately or expeditiously met,” shows how Defendants continue to dismiss their legal
10 obligations. *See* Doc. 3201 at 8; Doc. 3277 at 4. *Armstrong* class members, and their
11 disability needs, continue to remain an afterthought.

12 During meetings on August 9 and August 31, 2021, Defendants could not even
13 provide a timeline for when those class members would be expeditiously transferred and
14 appropriately housed. Similarly, during the August 9 meeting, Defendants, two months
15 after receiving comments from Plaintiffs, could not state when the long-delayed draft
16 memorandum on what to do when someone is not housed in accordance with a lower tier
17 and/or lower bunk housing restriction would be finalized and implemented. The lack of
18 clear guidance to the field over this last year and a half has resulted in real harm to our
19 clients; class members have been inaccessibly housed, issued and found guilty of
20 retaliatory and discriminatory RVRs that extend terms of imprisonment, and pressured to
21 give up disability accommodations. And at least 25 people remained housed in violation
22 of a lower/lower housing restriction. Finally, as Plaintiffs have returned to limited on-site
23 touring, we have discovered that Defendants’ reports regarding compliance with the non-
24 architectural accommodations requirements in the Court’s September 9, 2020 order at both
25 SATF and SAC have been false. Those institutions reported maintaining certain non-
26 architectural accommodations for class members in isolation or quarantine units, yet, when
27 Plaintiffs’ counsel visited those units, the accommodations were not available, and some
28 staff interviewed were not even aware of their obligation to provide those

1 accommodations.

2 Defendants must commit to end discrimination against people with disabilities
3 during the pandemic, abide by the Court's orders, enact clear and comprehensive policies,
4 and put meaningful oversight mechanisms in place to ensure proper implementation.

5 **2. Defendants' Statement**

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

21 Plaintiffs raise concerns about the staff-vaccination rates and urge CDCR to
22 mandate that all staff receive vaccinations to provide further protection to class members.
23 CDCR is mindful of Plaintiffs' concerns, but notes that this particular issue is currently
24 being, and more appropriately, addressed in *Plata*. Notwithstanding Plaintiffs' concerns, it
25 must be noted that the vast majority of class members are vaccinated. As of August 20,
26 2021, 90% of the DPP population has been fully vaccinated.

27 Plaintiffs' criticisms that "Defendants must commit to ending discrimination against
28 people with disabilities during the pandemic, abide by the Court's orders, enact clear and

1 comprehensive policies, and put meaningful oversight mechanisms in place,” fail to
2 capture the tremendous amount of collaborative work completed by Defendants and the
3 stakeholders over the last, nearly, eighteen months. Throughout the pandemic, Defendants
4 have worked diligently to meet their obligations under the Court’s July 20, 2020 order
5 (ECF No. 3015) to ensure compliance and to keep the Court Expert and Plaintiffs
6 informed. As part of these efforts, Defendants conduct a statewide daily count to confirm
7 that class members are provided safe, accessible housing and to provide a daily snapshot of
8 class members’ housing status. Further, Defendants provide a weekly update to Plaintiffs
9 and the Court Expert to verify that the institutions have adequately designated isolation
10 and quarantine space that comports with the Court Expert’s methodology. Moreover,
11 Defendants have worked hard to create or modify policy and procedure during the
12 pandemic to address the concerns raised by Plaintiffs and have issued comprehensive
13 written direction to the field outlining requirements and expectations. One such directive
14 is the November 5, 2020 directive mandating that staff interview class members within
15 twenty-four hours of being placed in non-designated or non-traditional housing areas and
16 complete a 128B checklist. Once completed, the 128B checklist is forwarded to CDCR’s
17 CAMU and produced to Plaintiffs’ counsel on a rolling basis. The 128B checklist is a
18 five-page document that addresses the class member’s DPP code, necessary DME, cell/bed
19 area, toilets, sinks, paths of travel, recreation, non-architectural accommodations,
20 accommodations provided to the inmate, and even includes questions to the staff-member
21 interviewer. These questions posed to the staff-member interviewer are meant to ensure
22 the inmate is appropriately accommodated, familiar with the Form 1824 process, able to
23 alert staff to future needs, and to encourage the inmate to request accommodations.
24 Defendants have also provided specific instruction to the institutions about their
25 obligations under these various directives in multiple statewide meetings with ADA
26 Coordinators and CAMU Correctional Counselor IIs to ensure compliance and that
27 information is timely provided to Plaintiffs.

28 Plaintiffs’ statement that “Defendants continue to dismiss their legal obligations,” is

1 not accurate. Defendants continue to address the Court’s expert’s concerns noted in his
2 June 2, 2021 report about “appropriately” or “expeditiously” meeting class-member needs.
3 Earlier this year on April 26, 2021, California Correctional Healthcare Services (CCHCS)
4 issued new guidance on necessary movement, which included transfers of people with
5 disabilities impacting placement. On June 22, 2021, CCHCS issued its updated guidance
6 regarding COVID-19 screening and testing when moving inmate/patients. These updated
7 guidelines continue to prioritize class members, by permitting “necessary movement,” a
8 definition that includes “the transfer of people with disabilities impacting placement
9 (including DPP and DDP individuals).” Under these guidelines, Defendants are able to
10 address Plaintiffs’ concerns for those class members who remained on the Expedited
11 Transfer List because of pandemic-induced transfer restrictions. Defendants have been
12 diligently working to remove them from the Expedited Transfer List by transferring them
13 to designated housing, but movement between the facilities is essentially a finite resource.
14 CDCR must also facilitate transfers for many other people, including class members
15 returning from county jails and *Coleman* and *Clark* class members. As a result, CDCR has
16 prioritized those with the most significant disabilities or who are unable to be
17 accommodated at their current institution. And in some cases, to ensure these individuals
18 are moved quickly, CDCR has arranged special transports when needed. Notwithstanding
19 these efforts, designated institutions had become impacted with the number of incarcerated
20 people, many of whom were non-class members, assigned to lower-tier and lower-bunk
21 housing that ultimately slowed the process to move class members from the Expedited
22 Transfer List. Staff needed to transfer the non-class members to a non-designated
23 institution to free up the lower-tier and lower-bunk housing at designated institutions, but
24 such moves had not been considered essential. Through coordinated efforts, however,
25 staff has now received approval to move these non-class members from SATF, CMF,
26 CHCF, RJD, and other designated institutions to non-designated institutions to free up
27 lower-tier and lower-bunk housing at the designated institutions so that class members can
28 be transferred expeditiously to the designated institutions. There had been numerous beds

1 decommissioned at CIM due to the COVID-19 capacity requirements. As those capacity
 2 requirements are no longer in effect, those beds are being recommissioned and will be
 3 made available for DPP class members. Meanwhile, a robust system of monitoring and
 4 reporting created with Plaintiffs remains in place. These policies require institutions to
 5 meet with class members in non-designated placements biweekly to verify and document
 6 that they are being accommodated. This documentation is provided to Plaintiffs on a
 7 rolling basis along with weekly reporting on class members on the Expedited Transfer List
 8 and Housing Restriction Compliance Reports. Further, Defendants dispute Plaintiffs’
 9 allegation that reports regarding compliance with the non-architectural accommodations
 10 requirements at SATF and SAC “have been false.” Nonetheless, Defendants will conduct
 11 an internal audit of the institutions’ weekly non-architectural accommodations
 12 spreadsheets to ensure accuracy and compliance with the Court’s orders and the January
 13 2021 memorandum in response to Plaintiffs’ concerns following their spot-check of the
 14 non-architectural accommodations in isolation or quarantine units at SATF and SAC.

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

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

23 **1. Plaintiffs’ Statement**

24 **a. RJD and Five Prisons Orders**

25 In response to evidence of widespread abuse, assaults and retaliation against
 26 incarcerated people on the basis of their disabilities who request accommodations and face
 27 discrimination, on September 8, 2020, the Court issued orders finding remedial efforts
 28 were necessary in order to “prevent further violations of the ARP and class members’

1 ADA rights at RJD.” Doc. 3059 at 42. On March 11, 2021, the Court issued further
2 orders finding remedial efforts were necessary to prevent ongoing violations of the ADA
3 and ARP at five additional prisons – Substance Abuse Treatment Facility and State Prison
4 Corcoran (“SATF”), California State Prison Corcoran (“COR”), California State Prison
5 Los Angeles County (“LAC”), California Institute for Women (“CIW”), and Kern Valley
6 State Prison (“KVSP”). *See* Doc. 3217.

7 The parties agreed on portions of a Remedial Plan for RJD. On January 20, 2021,
8 the Court agreed with Plaintiffs’ Objections and ordered Defendants to issue a revised
9 partial plan for RJD. Doc. 3192. CDCR issued the revised partial RJD Remedial Plan on
10 January 27, 2021. The parties have also agreed on portions of a Remedial Plan covering
11 the five additional prisons. Doc. 3275. Certain provisions of both Remedial Plans have
12 been implemented including body-worn cameras which became operational at RJD in
13 January 2021. Audio Visual Surveillance Systems (“AVSS”), additional sergeants on the
14 yards , and enhanced training have been implemented at RJD. Plaintiffs are closely
15 monitoring the RJD Remedial Plan roll out, which the Court Expert discussed in his report
16 of June 30, 2021, Doc. 3290. The Court Expert’s report found that the BWC remedy is
17 making a difference in reducing staff misconduct against people with disabilities and
18 improving relations between class members and staff. Pursuant to the Five Prisons
19 Remedial Plan, Doc. 3275, AVSS will be implemented by October 1, 2021, at LAC, by
20 November 1, 2021, at COR, and by December 1, 2021, at SATF, KVSP and CIW. Thirty-
21 eight additional sergeants will be hired at the five prisons by August 23, 2021, and training
22 of the sergeants and other prison staff will be completed by October 25, 2021. *Id.*

23 The parties have agreed to combine negotiations regarding outstanding items and to
24 take additional time settling disputes regarding the staff misconduct investigation and
25 disciplinary remedies, the early warning system, and changes to pepper-spray policies,
26 which will be applicable statewide. *See* Doc. 3275. Meetings between the parties
27 supervised by the Court expert have been occurring approximately weekly since October
28 9, 2020 and will continue well into October 2021.

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

4 **b. False, Retaliatory and Discriminatory RVRs**

5 Despite significant progress made towards court-ordered improvements to the staff
6 misconduct investigation and disciplinary system, Defendants have taken no steps to
7 address the endemic use of false and retaliatory Rules Violation Reports (RVRs) by staff to
8 cover up disability-related misconduct and/or to retaliate against class members who report
9 misconduct. *See* Doc. 3296 at 9. The same biased review that plagues the staff inquiry
10 and investigation processes also denies class members due process in disciplinary hearings,
11 resulting in longer terms of imprisonment, denials of privileges, housing at higher
12 classification levels, and an unwillingness to report future misconduct or request disability-
13 related help.

14 As in the staff complaint context, reviewers discount or ignore the testimony of
15 incarcerated people during disciplinary hearings. *Compare Exhibit A*, Letter from
16 Gabriela Pelsinger & Rita Lomio to Tamiya Davis & Nick Weber regarding retaliatory and
17 false RVRs issued to *Armstrong* and *Coleman* class member at CSP-SAC at 11-14 (July 9,
18 2021) (Exhibits B-H omitted), *with* Office of the Inspector General, Sentinel Case, No 21-
19 01 at 8, 9 (June 3, 2021) (“What we find most troubling, however, is the conclusion that
20 there was ‘no evidence’ to prove staff members [committed misconduct]. This is not true.
21 The incarcerated person who submitted the letter spelled out 19 specific incidents of staff
22 members [committing misconduct]. ***That is evidence. ... The statements of the other***
23 ***incarcerated persons are also evidence.***” (red color, bold, and italics in original)).

24 In one case, an elderly wheelchair user who requires a weekly provision of diapers
25 and wipes to accommodate his incontinence was issued an RVR by a Psych Tech after she
26 refused to provide him with his diapers during pill call and after she, according to the class
27 member, yelled at him and called him a “retard” for requesting diapers on the wrong day.
28 Although the institution later found that the Psych Tech had violated policy, and although

1 four incarcerated witnesses corroborated the class member's account, he nonetheless was
2 found guilty of the serious offense of "Disrespect w/Potential for Violence/Disruption."
3 That RVR constitutes the only "evidence" of violent behavior in the last eighteen years for
4 that class member, who entered CDCR custody as a teenager and has been incarcerated
5 almost four decades, and may have devastating consequences for his chances of parole.
6 *See Exhibit B*, Letter from Tania Amarillas & Rita Lomio to Tamiya Davis & Bruce
7 Beland (Aug. 14, 2021) (exhibits omitted).

8 These are not isolated occurrences. Plaintiffs' counsel requested that Defendants
9 re-review 89 allegations of false and retaliatory RVRs raised in class member declarations
10 in light of evidence, including corroborating witness statements and medical evidence that
11 was not considered during the adjudication of the RVRs. *See Exhibit C*, Letter from Tom
12 Nolan to Jennifer Neill, Tamiya Davis and Sundeep Thind (Sept. 24, 2020) (exhibits
13 omitted). In response, Defendants upheld the finding of guilt in the vast majority of cases
14 with no explanation for why the sworn statements of class members and corroborating
15 witnesses had no impact on the preponderance of evidence standard in those cases. *See*
16 *Exhibit D*, Letter from Penny Godbold to Jennifer Neill, Tamiya Davis, and Sundeep
17 Thind, regarding retaliatory and false RVRs issued to *Armstrong* and *Coleman* class
18 members (Aug. 18, 2021) (exhibits omitted).

19 Plaintiffs have outlined specific and comprehensive remedies necessary to address
20 the failure of the RVR process to uphold the due process rights of class members, detect
21 staff misconduct, and hold responsible staff accountable. *See* Doc. 3296, Exhibit B.
22 Plaintiffs await a response from Defendants regarding whether they agree to discuss
23 remedies to the RVR process during the course of staff misconduct negotiations or whether
24 additional court intervention is necessary.

25 In addition, Plaintiffs have found evidence of blatant disability discrimination in the
26 RVR adjudications themselves. For example, one class member at CSP-SAC was found
27 guilty of the serious offense of failing to attend an appointment based on what was
28 described as his "partial admission of guilt by stating he needed a wheelchair to get to his

1 appointment and one was not provided to him.” And a Deaf class member at SATF was
2 found guilty of a serious offense based on what Senior Hearing Officer called an
3 inadvertent admission but what was actually a misinterpretation of what the class member
4 had attempted to communicate in American Sign Language. *See Exhibit E*, Letter from
5 Skye Lovett & Rita Lomio to Tamiya Davis regarding sign language interpretation during
6 RVR hearings (May 17, 2021) (exhibits omitted).

7 Plaintiffs request that Defendants acknowledge the serious problem of false,
8 retaliatory and discriminatory RVRs and agree to implement remedies.

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 Institution 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 nearly a year, the
22 parties have identified disputed elements of the remedial plan, shared information related
23 to positions taken concerning the plan, and sought to resolve areas of disagreement. Over
24 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 similar 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, training, and other remedies. (ECF Nos. 3177,
11 3183.) For example, increased staffing at RJD was deployed in December 2020 and, as of
12 August 23, 2021, thirty-eight additional sergeants were in place at LAC, SATF, KVSP,
13 CIW, and COR. AVSS deployment is on track and will be completed by the end of the
14 year. AVSS was deployed at RJD on April 5, 2021, and the parties have agreed that AVSS
15 will be deployed at LAC by October 1, 2021, at COR by November 1, 2021, and at SATF,
16 CIW, and KVSP by December 1, 2021. Body-worn cameras were fully deployed in
17 January 2021 at RJD; in July 2021 at SATF, KVSP, CIW, and COR; and in August 2021
18 at LAC. In May 2021, the parties and the Court Expert received a demonstration of the
19 AVSS and the body-worn cameras deployed at RJD, including the body-worn cameras’
20 extensive ability to capture video and audio interactions between staff and inmates. All
21 who attended the demonstration, including Plaintiffs’ counsel, were impressed by the
22 camera technology and encouraged by the anticipated positive impact on staff and inmate
23 relations. On June 30, 2021, the Court’s expert filed his first quarterly report and, while
24 noting the ongoing negotiations and additional work to be done, described the fixed-
25 camera and body-worn camera technology deployed at RJD as “quite impressive.” (ECF
26 No. 3290.) The quarterly report conveys that the use of body-worn cameras appears to
27 have had a positive impact on relations between staff and inmates at RJD and concludes
28 that “on the whole, RJD appears to be adhering to the operations plan for use of cameras

1 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 alleged “endemic use of false and retaliatory Rules
5 Violations Reports;” thereby, eliminating any need for “additional court intervention” on
6 these issues. During the extensive negotiations, Defendants have agreed that important
7 pieces of the remedial plans will apply statewide. For example, once the pepper-spray and
8 staff-misconduct investigation and discipline processes are finalized as part of the Court-
9 ordered remedial plans, these policies will be expanded to all institutions statewide. To
10 further demonstrate that Defendants take seriously all allegations of staff misconduct,
11 which includes false RVRs and retaliation for requesting accommodations, CDCR has
12 agreed to effect further unprecedented change statewide. As revealed in the May Revision
13 of the State’s budget, in addition to implementing AVSS (fixed cameras) at the five
14 institutions required by the *Armstrong* orders, CDCR requested to install, in fiscal year
15 2021-2022, AVSS at four additional institutions—namely, Salinas Valley State Prison
16 (SVSP), California State Prison – Sacramento (CSP-SAC), California Correctional
17 Institution (CCI), and Mule Creek State Prison (MCSP). Moreover, CDCR currently plans
18 to install AVSS at nine to ten institutions per fiscal year, over the next three fiscal years,
19 until AVSS has been installed at all institutions. By the end of this fiscal year (June 2022)
20 there will be fixed-cameras, or funding for such if not fully installed, at approximately
21 thirteen, or 37%, of the thirty-five CDCR institutions. This includes RJD, LAC, SATF,
22 KVSP, COR, CIW, SVSP, CSP-SAC, CCI, MCSP, and the three other institutions with
23 fixed cameras already installed (High Desert State Prison, California Health Care Facility,
24 and 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 fixed-
26 camera coverage, or funding for such.

27 CDCR takes seriously Plaintiffs’ allegations of “blatant disability discrimination”
28 during the adjudication of Rules Violation Reports, as alleged above and alleged to have

1 occurred at CSP-SAC and SATF. It should be noted, however, that the Rules Violation
2 Reports against the class member at CSP-SAC and the class member at SATF (as
3 referenced in Plaintiffs August 14, 2021 letter) have been dismissed. Such allegations are
4 subject to review in accordance with current CDCR policy and CDCR will take
5 appropriate action, if warranted following internal review.

6 **C. Accommodations for Deaf and Hard-of-Hearing Class Members**

7 **1. Plaintiffs' Statement**

8 Defendants continue to drag their feet and show a lack of basic understanding of the
9 needs of the many deaf and hard-of-hearing class members in their custody.

10 **Hearing aids.** The only two models of hearing aids provided to people in
11 California prisons represent the lowest level of hearing technology and in fact may no
12 longer be offered to the general public; lack a basic feature (telecoil) that would make
13 them be compatible with other devices, such as telephones and FM systems; introduce
14 background noise that makes speech difficult to discern; and will not accommodate all
15 people with hearing loss. Defendants' failure to ensure that thousands of hard-of-hearing
16 class members have access to a hearing aid that works for them is a fundamental violation
17 of the ADA and ARP.

18 **Failure to provide real-time captioning.** "Real-time captioning (also known as
19 computer-assisted real-time transcription, or CART) is a service...in which a transcriber
20 types what is being said at a meeting or event into a computer that projects the words onto
21 a screen. This service, which can be provided onsite or remotely, is particularly useful for
22 people who are deaf or have hearing loss but do not use sign language." U.S. Dep't of
23 Justice, ADA Requirements: Effective Communication (Jan. 2014), [https://www.ada.gov/
24 effectivecomm.htm](https://www.ada.gov/effectivecomm.htm). Deaf and hard of hearing people in California prisons who do not
25 know sign language have, **for decades**, been unable to fully participate in programs and
26 therefore earn credits to reduce their sentences and/or learn skills to improve the likelihood
27 of successful reentry into the community. Plaintiffs for years have demanded that
28 Defendants provide CART services. *See, e.g.*, Doc. 2936 at 45-53, 65-76. Defendants

1 have responded with delays and excuses. Most recently, Defendants claimed that they
2 would pilot CART at **one** “educational setting” at CMF, and compare it to Microsoft Ease
3 of Access at CCWF. That makes no sense. Speech to text dictation is not the same thing
4 as real-time captioning. Further, while CCWF has a number of hard of hearing class
5 members, the institution does not have any non-signing deaf class members (the primary
6 population for CART). It seems that Defendants simply are stalling and stubbornly
7 refusing to provide CART to those that need it to access programs, services, and activities.
8 However, Plaintiffs are pleased to see that Defendants intend to allow hard of hearing class
9 members to try to the service, in addition to deaf individuals, and to include individuals
10 who may currently having sign language as their primary method of communication.

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

21 **Discriminatory RVRs and lack of due process during disciplinary hearings.**
22 Defendants have failed to address discrimination against Deaf signers in the disciplinary
23 process. One Deaf class member, for example, was punished for attempting to
24 communicate—through gestures, because she cannot speak or hear—that housing officers
25 failed to provide effective communication of announcements. *See Exhibit F*, Letter from
26 Tovah Ackerman to Tamiya Davis (Aug. 6, 2021) (attachments omitted). And, as noted
27 above, another Deaf person was found guilty based on a misinterpretation during the
28 disciplinary hearing from ASL to English. *See Exhibit E, supra*. Defendants must ensure

1 that physical disabilities are considered during the disciplinary review process, that team
2 interpreters are providing during disciplinary hearings to ensure accuracy, and that
3 disciplinary hearings conducted in sign language are videorecorded to allow review later in
4 the event a concern is raised about the accuracy of interpretation.

5 **2. Defendants' Statement**

6 Defendants dispute Plaintiffs' allegation that Defendants have failed to "ensure that
7 thousands of hard-of-hearing class members have access to a hearing aid that works for
8 them," because it is inaccurate. Plaintiffs' allegation is based on a relatively small number
9 of isolated complaints and fails to account for the vast amount of class members who
10 utilize effective hearing aids provided to them by Defendants without complaint.
11 Plaintiffs' contention that the hearing aids provided to class members are somehow
12 inadequate because they are not FM-compatible is misleading and does not mean that the
13 provision of such aids fails to comply with the ADA or the ARP.

14 Defendants will launch a proof-of-concept (POC) program in September to evaluate
15 three different captioning programs for the deaf and hard-of-hearing population. The
16 Office of Correctional Education (OCE) will utilize CART in an educational setting at
17 CMF and will utilize Microsoft Ease of Access features at CCWF, which includes a real -
18 time speech-to-text function for students who would benefit from that accommodation.²
19 At a third institution, DAI will utilize Microsoft Teams real-time captioning program
20 during due-process encounters at San Quentin. While using these captioning programs,
21 staff will ensure that the captioning is visible to all participants, including the OCE
22 educators and the hearing officers during committee hearings, to enable each speaker to
23 identify captioning failures and allow for real-time corrections or adjustments throughout
24 the session. This POC program will implement a variety of controls to ensure that each
25 captioning program is fairly and appropriately evaluated. Further, staff will be instructed

26 _____
27 ² The Microsoft Windows Ease of Access features include Magnifier, Narrator, On-Screen
28 Keyboard, and Windows Speech Recognition – that is the feature to be used. Further,
CCWF has three DPH and eleven DNH class members, while CMF has seventeen DPH
class members. Seven of these class members require ASL.

1 to articulate clearly and slowly and to refrain from using acronyms. During the POC
2 program, Defendants intend to survey staff and incarcerated people for information
3 concerning the merits of each captioning program to use in the evaluation of each
4 captioning program. Defendants anticipate launching the POC program in September and
5 running it program for 120 days. At the end of the POC period, Defendants will assess the
6 information gathered and determine which captioning program is best suited for a
7 particular setting.

8 Defendants disagree with Plaintiffs' contention that Defendants have failed to
9 "ensure the safety of Deaf people and provide them a clear and confidential way to report
10 safety concerns in sign language," and "fail to appreciate the urgency of this matter."
11 Defendants have worked hard to meet their obligations to these class members through
12 orientation pamphlets and videos, by providing ASL-capable ADA-workers where
13 available, mental-health services, ADA Coordinator outreach, and other services.
14 Defendants have made significant strides in providing Deaf and hard-of-hearing class
15 members who require sign language interpretation with further access to an increasing
16 number of programs, services, and activities. Plaintiffs contend that "staff posted public
17 comments rejoicing in the killing" of a class member, but such behavior is not condoned or
18 tolerated by Defendants and is subject to internal review in accordance with existing
19 policy. Defendants remain committed to ensuring that these class members' concerns
20 related to healthcare, safety, and recreation are appropriately accommodated.

21 Plaintiffs' allegation that Defendants "have failed to address discrimination against
22 Deaf signers in the disciplinary process is meritless. In accordance with existing policy,
23 Defendants already provide the reasonable accommodations for incarcerated people with
24 disabilities during the disciplinary review process.

25 **D. Accommodations for Blind and Low-Vision Class Members**

26 **1. Plaintiffs' Statement**

27 The parties formed a workgroup to address issues facing blind and low-vision class
28 members. The workgroup covers, among other things, documentation of methods of

1 effective communication, orientation and mobility training, audio description, electronic
2 submission of forms, text-to-speech software, accommodations assessments and skills
3 training, braille literacy, accessibility of mental health groups, accessibility of tablet
4 program (including training), and access to magnifiers of different magnification levels.

5 As noted previously, during the pandemic, the parties worked collaboratively to
6 develop interim measures to ensure that blind and low-vision class members are properly
7 situated to new living environments, but Plaintiffs identified serious flaws in its
8 implementation. Defendants contest the existence of such flaws in this statement, but still
9 have not contested any of the specific examples of these flaws that Plaintiffs set forth in a
10 detailed letter to Defendants on June 1, 2021, such as widespread failure to provide
11 required orientations and complete required documentation, failure to provide the
12 orientations in a timely fashion, and failure to train staff on when and how to conduct
13 blind/low-vision orientations. *See* Letter from Jacob Hutt, Plaintiffs' Counsel, to Andrea
14 Moon, Office of the Attorney General, Re: Continuing Problems with Implementation of
15 CDCR's January 14th Memorandum on Blind and Low-vision Orientations at 2-6 (June 1,
16 2021). The parties have resumed discussions on this subject with the goal of creating a
17 post-pandemic system to provide comprehensive orientations to blind and low-vision class
18 members. At the parties' first resumed meeting, Defendants informed Plaintiffs that
19 Defendants will be soliciting feedback from DPV-designated prisons regarding how to
20 ensure that blind and low-vision people are promptly and effectively situated to new living
21 environments, and how to modify or expand the January 14th memorandum accordingly.
22 The parties also are working together on a memorandum that will ensure that blind and
23 low-vision people receive appropriately sized and tipped canes upon request, and that they
24 are promptly provided with effective training from Certified Orientation Mobility
25 Specialists on how to use these canes.

26 As Plaintiffs noted in the last Statement, Defendants still lack a system to provide
27 large-print, braille, and audio versions of written materials to blind and low-vision class
28 members. *See* Doc. 3296 at 22. The ADA and ARP require that Defendants effectively

1 communicate written materials to blind and low-vision class members. *See, e.g.*, 28 C.F.R.
2 § 35.160(a), (b)(1); ARP §§ II.E.1 & IV.I.2.a. To satisfy this obligation, Defendants must
3 provide written materials to blind and low-vision plaintiffs in formats that they can review
4 and reference independently. *Id.* § 35.160(b)(2) (“to be effective, auxiliary aids and
5 services must be provided in accessible formats, in a timely manner, and in such a way as
6 to protect the privacy and independence of the individual with a disability”). To comply
7 with these requirements, Defendants must provide class members with written materials in
8 accessible formats, including large print, Braille, and audio. *See Am. Council of the Blind*
9 *v. Astrue*, No. C-05-04696 WHA, 2009 WL 3400686, at *7 (N.D. Cal. 2009) (ordering
10 Social Security Administration to provide blind beneficiaries with notices in braille or
11 Microsoft Word format on CD-ROMs); *Jordan v. Greater Dayton Premier Mgmt.*, 9 F.
12 Supp. 3d 847, 859 (S.D. Ohio 2014) (issuing preliminary injunction requiring housing
13 authority to provide correspondence to blind Section 8 participant in accessible audio
14 recording format and explaining that a “visually-impaired individual does not have an
15 equal opportunity to participate in, and enjoy the benefits of, the Voucher Program, unless
16 all communication affecting continued participation in the program is provided in an
17 accessible format”). Defendants state only that they “are exploring a variety of options to
18 provide large-print or braille versions of written materials including contracting with third-
19 party vendors,” and have given Plaintiffs this same, vague response when asked repeatedly
20 for information on what specific steps Defendants are taking to remedy this ADA violation.

21 For months, Plaintiffs have repeatedly requested information from Defendants on
22 what measures are currently in place to provide written information in these accessible
23 formats, yet Defendants have provided no written response.

24 The roll out of GTL touchscreen tablets with accessibility features is a welcome
25 development, but for several reasons, the tablets do not and will not obviate the need for
26 Defendants to provide materials to blind and low-vision class members in accessible
27 formats. First, the tablets are not yet available to most blind and low-vision class
28 members. Second, Defendants have yet to demonstrate to Plaintiffs that they have a plan

1 to effectively address a host of logistical issues that they must overcome for the tablets to
2 become a tool that blind and low-vision class members can use reliably to read and write,
3 such as training class members on how to use the tablets, distributing all institution
4 documents through tablets, and ensuring that all institution documents distributed through
5 tablets are compatible with accessibility software such as screen reading and screen
6 magnification software. Third, even if Defendants can effectively address these issues, the
7 tablets will not be an effective way to read and write for some class members, such as class
8 members who need Braille³ and class members who are both blind or low-vision and who
9 also have a hearing disability that impairs their ability to hear the tablet's screen reading
10 software read documents aloud or mobility disabilities that prevent class members from
11 operating a tablet independently.

12 If Defendants do not respond to Plaintiffs' repeated requests for information on this
13 subject and take action, Court intervention will be necessary.

14 **2. Defendants' Statement**

15 Defendants have put forth significant resources and effort to ensure that blind and
16 low-vision class members are appropriately accommodated. As noted above, Defendants
17 participate in frequent working groups to gain further insight from Plaintiffs about the
18 needs and concerns of these class members. For example, during the pandemic and in
19 response to increased movement within institutions, the parties worked to develop interim
20 measures to ensure that blind and low-vision class members are properly situated to new
21 living environments. As agreed to by the parties, this included a comprehensive
22 memorandum and training materials for the ADA coordinator, or their designated staff,
23 who would be situating these class members to review, followed by a thorough checklist of
24 necessary areas and items to orient the class members to. The orientation is to be

25
26 ³ Electronic Braille displays exist, but Defendants have not indicated whether GTL's
27 tablets support output on electronic refreshable Braille displays. Even if the Tablets
28 support Braille output, Defendants would need to purchase electronic refreshable Braille
displays to provide class members with Braille output through the tablets, and Defendants
have provided no indication that they will do this.

1 conducted within 24 hours of a class members' placement into a new housing
2 environment, and includes a guided walkthrough of the unit to facilitate independent and
3 safe navigation by the class member. The class member is oriented to housing areas,
4 toilets/showers, officers' stations, dayrooms, exits (both emergency and ingress/egress),
5 dining halls, and phones, to name but a few. Further, the orientation requires staff to
6 introduce class members to ADA workers (if they are available in the housing unit,
7 meaning it is not being utilized for isolation or quarantine purposes), or staff who will be
8 available to assist the class member when requested. Defendants disagree with Plaintiffs'
9 characterization that there are "serious flaws in its implementation," but have, nonetheless,
10 worked with Plaintiffs to address their concerns and agreed to continue collaborating on
11 this issue through small working groups specific to orientation needs. Defendants
12 continuously reach out to staff to ensure that the orientations are timely and effective,
13 based on the process put into place. The parties continue to discuss its implementation,
14 whether improvement to the system is needed under current circumstances, and when and
15 how to offer such orientations to blind and low-vision class members after the pandemic.
16 Defendants also disagree with the contention that individual examples of purportedly
17 deficient or delayed orientations demonstrate "widespread" failures in either the
18 implementation, provision, or training associated with these orientations. In ongoing
19 conversations with Plaintiffs on this issue, Defendants have shared reconciliation efforts
20 that have been conducted from Headquarters to ensure that all DPV class members are
21 offered an orientation when they are moved to a new housing environment, and that any
22 other inmate with a vision impairment who is not designated as DPV is provided an
23 orientation upon request. As Plaintiffs are aware, this process was implemented in the
24 middle of the COVID-19 pandemic on a very short schedule. Notwithstanding these
25 challenges, Defendants have worked collaboratively with Plaintiffs to identify areas of
26 concern, ensure individuals who should receive orientations are properly introduced to
27 their new living environments, and otherwise meet class members' needs. Defendants
28 have continued to engage collaboratively with Plaintiffs to identify opportunities for

1 improved processes, and the parties will be meeting to further discuss orientations on
2 October 1, 2021.

3 Defendants disagree with Plaintiffs that some issues concerning blind and low-
4 vision class members necessitate the Court's intervention. As more fully discussed in
5 recent workgroup-conferences, Defendants are exploring a variety of options to provide
6 large-print or braille versions of written materials including contracting with third-party
7 vendors. Further, Plaintiffs seemingly ignore CDCR's tablet program which recently
8 rolled out at VSP. These tablets include a host of accessible feature to accommodate class
9 members' needs and serve to address Plaintiffs' concerns. These tablets include a host of
10 assistive programs designed to facilitate access for class members. These features include,
11 but are not limited to, text enlargement, VRI capabilities, video calling, and text to speech.
12 CDCR is working with the contractor to enhance these capabilities to include voice to text,
13 increased recreational options for deaf and hard of hearing incarcerated people, different
14 formats for imparting information, and more. These tablets will eventually be provided to
15 all CDCR inmates free of charge. Defendants believe that this will be a substantial
16 positive development for both class members as well as the general CDCR population.
17 The Defendants will continue to meet and confer with Plaintiffs concerning the provision
18 of large-print, braille, or audio versions of written materials and their contention that there
19 is no system to document class members' individual need for accessible versions of
20 documents.

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

22 With regard to the broader problem of equal access to job and program assignments
23 for people with disabilities, the parties convened a small work group to address disability
24 discrimination against Plaintiffs, as documented in multiple tour reports and letters. *See*
25 *Doc. 2680*, at 13-14. The parties agreed to exchange program assignment data on a
26 quarterly basis. Plaintiffs contend that the data continues to show disparities in
27 assignments for people with disabilities. The parties agree to work cooperatively toward
28 ensuring equal access in program assignments for people with disabilities but these

1 conversations were initially put on hold during the pandemic.

2 The parties have been meeting in recent months to discuss credit earning for class
3 members and other incarcerated individuals with disabilities, and to discuss the assignment
4 process, in order to better understand ongoing disparities in credit earning under
5 Proposition 57 for people with disabilities, as well as related disparities in the program
6 access assignment data. The parties have agreed to combine these meetings moving
7 forward to ensure a thorough review of assignments for people with disabilities.

8 **F. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
9 **Disability Tracking Information**

10 Following Defendants' statewide durable medical equipment ("DME")
11 reconciliation in early January 2019 that revealed 7,346 class members were missing one
12 or more items of DME and that 2,349 class members' DME records had errors, CCHCS
13 implemented the DME Discrepancy Report Tool in January 2020. Given the problems
14 revealed by the one-time reconciliation, Plaintiffs object to the lack of any plan, moving
15 forward, to confirm that class members actually have their required DME. The ongoing
16 reconciliation of what records indicate a class member should have and what they actually
17 have is essential in prison where DME can be easily lost during transfer, damaged, or
18 taken. Defendants, however, dispute Plaintiffs' contention that Defendants lack a plan for
19 reconciliation of DME. Currently CCHCS is developing a sustainable system and process
20 to determine the physical verification and condition of prescribed DME annually. A
21 workgroup has been created and is working on details for a system that will ensure all
22 *Armstrong* class members have their DME reconciled at least annually. Next steps will
23 determine project implementation and identifying an institution for piloting this system
24 before rolling it out state-wide.

25 Relatedly, Defendants acknowledged problems with identification of some class
26 members who utilize DME but who have not been assigned any disability code.
27 Defendants distributed training materials to health care providers regarding how to assign
28 the proper disability codes. Plaintiffs are concerned that training alone has not proven

1 sufficient to alleviate problems. For example, as of July 14, 2021, at a single prison
2 (SATF), 24 people were identified as having hearing aids, but no corresponding disability
3 code; over a hundred people were identified as having a cane, walker, and/or wheelchair,
4 but no corresponding mobility code; and 20 people were identified as having a vision
5 disability vest, but no corresponding vision code. Plaintiffs remain concerned that
6 Defendants are failing to identify and appropriately track people with disabilities.
7 Defendants' disability tracking system also fails to identify and track class members with
8 upper extremity disabilities. Plaintiffs requested that Defendants create a new disability
9 code for this population. *See Exhibit G*, Letter from Patrick Booth to Tamiya Davis &
10 Sean Lodholz (Mar. 2, 2021). Defendants declined, stating that such a code was
11 unnecessary ("a new DPP code will not provide any further operational advantages"), and
12 claimed that they already track accommodations for that population. *See Exhibit H*,
13 Memorandum from Tammy Foss to Patrick Booth (June 14, 2021). But when Plaintiffs
14 requested a list of all people with upper extremity disabilities, Defendants were unable to
15 produce one and were unable to say when they might be able to do so. In the face of clear
16 evidence that Defendants are failing to identify and accommodate people with upper
17 extremity mobility disabilities, the "operational advantages" are clear – without a system
18 for identifying and tracking these class members, Defendants will continue to violate the
19 ADA and ARP. *See Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 271 (D.D.C.
20 2015) (rejecting defendant's argument that the existing "hodgepodge of whatever aids are
21 in the prison's possession" and are randomly provided to class members are adequate).
22 Defendants dispute that they are failing to accommodate people with upper-extremity
23 mobility disabilities in violation of the ADA or the ARP.

24 **G. Parole Planning and Working with Class Members Preparing for Release**

25 **1. Plaintiffs' Statement**

26 CDCR and DAPO fail to ensure that parolees with severe and impacting placement
27 disabilities are accommodated during the process of transitioning to parole. Class
28

1 members do not consistently receive adequate planning for parole and adequate transi-
2 tional housing, transportation, benefits application assistance, assistance obtaining identifi-
3 cation cards, and other transitional services that are critical for these individuals to succeed
4 on parole. *See* Doc. 2680 at 11-12; Doc. 2655 at 11-13. As a result, class members need-
5 lessly struggle to comply with parole conditions and to transition to life outside of prison.

6 In a May 4, 2021, letter to Defendants, supported by fourteen class member
7 declarations, Plaintiffs established that Defendants are discriminating against parolees with
8 disabilities by failing to provide them with the minimum supports necessary for them to
9 succeed on parole, by failing to adequately prepare them for parole, and by failing to
10 ensure adequate accommodations and fully accessible CDCR-funded transitional housing
11 programs are available to class members. *See* Doc. 3266, Ex. F. Plaintiffs demanded that
12 Defendants take immediate steps to address their systemic failure to accommodate
13 parolees with disabilities by providing the minimum supports necessary for them to
14 succeed on parole, and by adopting other remedial measures to prevent discrimination
15 against parolees with disabilities. *Id.* Plaintiffs also object to the many transitional
16 housing programs listed in DAPO's directory of transitional housing programs that
17 explicitly exclude people with hearing, mobility, vision, and/or mental health disabilities
18 from their programs.

19 The parties are actively engaged in negotiations, and are meeting approximately
20 every two weeks to address the systemic deficiencies in Defendants transition-to-parole
21 and parole programs that deny parolees with disabilities an equivalent opportunity to
22 successfully reintegrate into the community as parolees without disabilities. The parties
23 have agreed in principle to drafting a revised parole remedial plan or a new parole
24 remedial plan section that will cover the new policies, procedures and supports for parolees
25 with disabilities as they transition to parole that are now being negotiated, assuming the
26 parties are able to reach agreement on which of such procedures, policies and supports are
27 required by the ADA. During the parties' August 11 and September 2, 2021 meetings,
28 Defendants renewed their commitment to ensure baseline support services and greater

1 structure and oversight over the parole process by assessing all who are paroling to
2 determine who needs to be prioritized for transitional housing based on disability and related
3 medical needs. Defendants also agreed to work with Plaintiffs to ensure that CDCR
4 funded programs do not have categorical restrictions on providing services to people with
5 certain disabilities and are provided education on their obligations to provide reasonable
6 accommodations for parolees with disabilities by October 1, 2021. Defendants are also in
7 the process of developing a transportation policy with a goal of ensuring transportation to
8 all parolees released from prisons and county jails. Defendants agreed to provide a
9 memorandum to health care providers to ensure that staff provide all information necessary
10 to ensure SSI and other benefits for class members can be approved as soon as possible
11 after someone is released and to ensure that information sharing is not a barrier to the
12 benefits process. Among other remedial measures, the parties continue to discuss
13 Plaintiffs' proposal that parolees be provided a 90-day supply of medications so they do
14 not run out before parolees are able to get their Cal-ID cards and MediCal, both of which
15 are generally needed to obtain medication renewals in the community.

16 Plaintiffs are committed to working with Defendants to achieve a durable remedy to
17 ensure they are able to meet their legal obligations under the ADA and the *Armstrong*
18 Remedial Plans by operating their transition-to-parole and parole programs in a manner
19 that no longer systemically discriminates against parolees with disabilities. The parties
20 will next meet on September 27, 2021, and are committed to meeting approximately every
21 two weeks to discuss remedies.

22 **2. Defendants' Statement**

23 Defendants dispute Plaintiffs' allegation that CDCR and DAPO fail to ensure that
24 parolees with severe and placement-impacting disabilities are accommodated during the
25 transition-to-parole process. Similarly, Defendants dispute Plaintiffs' assertion that their
26 May 4, 2021 letter "established" discrimination against parolees with disabilities by failing
27 to provide minimum support while on parole, and preparation for parole, or equal access to
28 CDCR-funded transitional housing programs.

1 Defendants take a comprehensive approach to provide people with disabilities with
2 adequate pre-parole planning so that the successful completion of parole is equally
3 accessible to them. As part of the pre-release process, staff complete an assessment for
4 each inmate who is paroling, whether or not that inmate has a disability, which identifies
5 their individual needs. Once those needs are determined, the staff and inmate/parolee
6 work collaboratively to complete a case plan identifying community-based programs that
7 receive federal, state, or other local funding to provide housing and other services to
8 disabled citizens.

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

23 Despite the parties' differences, Defendants have taken a proactive approach and
24 have made significant progress on several issues. The parties have agreed to meet and
25 confer approximately every two weeks and have already met on June 1, June 17, July 2,
26 August 11, and September 2. It is important to note that the issues raised by Plaintiffs
27 concerning parole-related services requires the coordination between, and contribution of,
28 several divisions including, DAPO, DRP, OCE, DAI, and CCHCS to engage in informed

1 discussion and a negotiated resolution.

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

16 As noted above, DAPO is finalizing a transportation policy for parole agents to
17 provide transportation to inmates discharging to parole who do not have transportation
18 from family, a community resource, or otherwise. The parole agents will transport these
19 individuals to their community placement or county of parole. In addition, DAPO is
20 working on a notification process with the county jails whereby the jail will inform DAPO
21 when parolees in their custody will be released to allow agents to pick them up from the
22 county jail. Finally, Defendants continue to work on responses to other issues raised in
23 Plaintiffs' May 4 letter that have not yet been fully resolved. Defendants look forward to
24 continued collaboration with Plaintiffs to address their concerns without Court
25 intervention.

26 **H. Joint Monitoring Tool**

27 The parties remain committed to developing a strong and effective joint monitoring
28 tool. The parties had planned to test the tool out at different types of prisons beginning in

1 April 2020, and to meet after each audit to discuss if and how the tool should be updated or
2 revised based on issues identified during each audit. Those plans, unfortunately, have been
3 delayed by the COVID-19 pandemic. The parties have conducted off-site document
4 reviews for multiple institutions but agree that audits are incomplete without the ability to
5 interview class members and staff. On-site audits resumed with a tour of CIM in June
6 2021 and CMC in August 2021 and will continue, COVID-19 permitting, monthly through
7 the end of the year (e.g., CCWF is scheduled for the week of September 27.)

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

14 **I. ADA Structural Barriers and Master Planning Process**

15 Prior to the pandemic, construction continued at several of the designated
16 institutions with former CAMU Manager Mike Knowles overseeing the process and
17 reporting on construction progress and anticipated timeframes in monthly reports produced
18 to Plaintiffs. At the start of the pandemic, construction was suspended due to COVID-19,
19 with the exception of two projects at California Institution for Women and California State
20 Prison, Sacramento. Construction resumed statewide in June 2020 and any significant
21 issues impacting construction are noted in the Monthly Construction Report that is
22 provided to Plaintiffs.

23 The parties agreed to a flexible, collaborative approach in which they would meet
24 regularly to discuss different institutions and be joined by local ADA staff with close
25 knowledge of the institutions. The parties also plan to tour institutions together to resolve
26 outstanding issues and address Plaintiffs concerns collaboratively. The Court Expert
27 agreed to accompany the parties on these tours. In light of serious public health issues
28 presented by the global COVID-19 pandemic, these tours have been suspended; however,

1 the parties met on April 21, 2021, to restart this Master Planning process. We hope to
2 resume a regular schedule of tours and meetings as the prisons open up once the pandemic
3 recedes. The parties met to discuss Master Planning improvements planned for Valley
4 State Prison (VSP) on August 30, 2021. The parties will schedule joint tours at VSP and
5 LAC to discuss Master Planning issues once programming at the prisons is fully up and
6 running as the prisons emerge from COVID-19 related restrictions. Because accessible
7 programming space is a key concern for plaintiffs, these tours cannot occur until
8 programming has returned to normal.

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

16 **J. Investigation of County Jails**

17 Plaintiffs continue to assert that a pattern and practice of denying disability
18 accommodations to class members exists at multiple jails but especially the Los Angeles
19 County Jails. *See* Doc. 2680 at 22-24; Doc. 2786 at 26-27; July 28, 2021, Letter from
20 Penny Godbold to Tamiya Davis and Nicholas Myer regarding class member in San Diego
21 County Jail without required accommodations attached as **Exhibit I**; June 7 and July 8,
22 2021 letters from Ben Bien-Kahn to Tamiya Davis and Nicholas Myer regarding class
23 member at Trinity County Jail unable to shower due to lack of accommodations, attached
24 hereto as **Exhibits J and K**, respectively. Defendants disagree with Plaintiffs' assertions
25 and have been meeting with county counsel for a number of counties in an effort to
26 improve relations, information sharing, and ADA compliance at the jails. Unfortunately,
27 Plaintiffs contend, these conversations alone are not enough. For example, Plaintiffs
28 recently learned that two years after being told that Los Angeles County Jail would begin

1 allowing the use of canes in their facilities, the jail never implemented the new policy and
2 canes have never been permitted or provided. Subsequent to this information sharing,
3 Defendants spoke with Los Angeles County Counsel staff to better understand this issue.
4 Defendants were informed that medical staff at the Los Angeles county jails are ordering
5 canes when requested as part of a medical evaluation of the county jail inmate, that the
6 provision of canes is occurring, and that canes and crutches are provided to county jail
7 inmates pursuant to their individual condition and ambulation needs. Plaintiffs contend
8 that while improved communication with the counties is a welcome idea, greater oversight
9 over the provision of required accommodations to Armstrong class members in county
10 jails is necessary.

11 Defendants will again be speaking with Los Angeles County Counsel staff in
12 November 2021, and will continue to keep Plaintiffs informed regarding any effects
13 COVID-19 may have on the county jails and DAPO's response to this unprecedented
14 public health crisis.

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Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/Penny Godbold

Penny Godbold

Attorneys for Plaintiffs

DATED: September 15, 2021

ROB BONTA

Attorney General of the State of California

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FILER'S ATTESTATION

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

DATED: September 15, 2021

/s/Penny Godbold
Penny Godbold

EXHIBIT A



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VIA EMAIL ONLY

July 9, 2021

Ms. Tamiya Davis
Mr. Nick Weber
CDCR Office of Legal Affairs

Armstrong v. Newsom; Coleman v. Newsom
RE: Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member
Inaccessibly Housed at CSP-SAC

Dear Ms. Davis and Mr. Weber:

We write again regarding relentless discrimination and retaliation against people with disabilities at California State Prison, Sacramento (CSP-SAC). We previously raised urgent concerns with the inaccessible and unsafe housing of █████ █████ █████ a 53-year-old class member with significant disability, medical, and mental health needs. In particular, we informed Defendants on April 21, 2021, that Mr. █████ had been housed in an unsafe, inaccessible location at CSP-SAC for a month.¹

Mr. █████ had a no-stairs restriction and was a significant fall risk due to his physical and mental disabilities. *See* Outpatient Progress Note (Apr. 8, 2021) (“[f]all risk due to musculoskeletal (R knee arthroplasty and XR showed knee effusion), and on multiple mental health medications . . . may be contributing to deficits in concentration, alertness, and vigilance and frequent fall.”). In fact, Mr. █████ fell while attempting to walk down the stairs in his housing unit on April 2, 2021. Afterwards, healthcare staff noted that he should “avoid[] stairs due to ambulatory condition requiring [sic] use of FWW.” *See* SOAPE (Apr. 2, 2021). Nonetheless, Mr. █████ remained housed in an area at CSP-SAC where he had to descend a set of stairs to leave his tier and access any other part of the prison, including the dayroom, telephones, yard, medication line, medical clinics, and mental health treatment centers.

¹ *See* Letter from Jordan Payne & Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, █████ █████ █████ CSP-SAC (Apr. 21, 2021).

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Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 2



CSP-SAC HOUSING UNIT STAIRS²

Defendants did not notify Plaintiffs, the Court Expert, or the Receiver of Mr. [REDACTED] unsafe and inaccessible housing, in violation of the Court's July 20, 2020 order. After Plaintiffs raised the issue, the parties met and conferred on April 23 and 27, 2021. During those meetings, Ms. Davis explained that Mr. [REDACTED] had been mistakenly transferred to CSP-SAC after he was discharged from the CMF PIP, in violation of his no-stairs restriction. Ms. Davis said that the institution sent the CDCR 128-Bs to the wrong email address and, as a result, headquarters did not see the first CDCR 128-B for Mr. [REDACTED]. Ms. Davis said that if headquarters had seen it, Defendants likely would have taken action to address his inaccessible housing. Ms. Davis explained that Defendants nonetheless believed that Mr. [REDACTED] was accessibly housed because 128-Bs had been completed and because the accommodation documented (assistance from staff and ADA workers) was adequate.

We expressed our strong disagreement that ADA worker and staff assistance were adequate accommodations for Mr. [REDACTED] situation, based on the plain language of the operative directive and on our experience with CSP-SAC's persistent failure to accommodate people with disabilities, including previously reported concerns with the ADA worker program and staff during the pandemic. *See* Connie Gipson, Director, Division of Adult Institutions, Procedures for Reviewing and Reporting Housing for Armstrong Class Members During COVID-19 at 2 (Nov. 5, 2020) ("A class member is not in accessible housing if the housing prevents or diminishes their access to programs, services, or activities, **or prevents them from functioning independently**. Programs, services, and activities include functions like . . . **moving around the housing unit** and yard Similarly, placing class members in housing that prevents them from accessing medical services because of their disability (such as an **inability to climb stairs** to an appointment), violates the Court's order." (emphasis added)).

² This photograph was taken in Building C3, which has the same architectural layout (including placement of the staircase) as the section of A8 where Mr. [REDACTED] was housed.

As explained in this letter, our fears that Mr. [REDACTED] disability was not in fact accommodated at CSP-SAC were well-founded. First, the institution failed to properly use the 128-B process to identify and address disability access concerns. As a result, Mr. [REDACTED] was left isolated and restricted to a filthy cell, without access to one-on-one mental health counseling or the ability to call his mother, resulting in suicidality. Second, custody staff tormented and retaliated against Mr. [REDACTED] when he did ask for help by verbally assaulting him, issuing false and retaliatory RVRs, and, apparently, cutting the tongue and straps of orthotic shoes before giving them to him.

In support of this letter, we attach a sworn declaration from Mr. [REDACTED]. *See Exhibit A.* Consistent with other declarations produced by Plaintiffs’ counsel, any communications with Mr. [REDACTED] about the content of the declaration must be made through Plaintiffs’ counsel or with Plaintiffs’ counsel present. *See Cal. Rule of Professional Conduct 4.2.* We also request that the allegations be investigated by the Office of Internal Affairs.

* * * * *

A.	Defendants Repeatedly Failed to Provide Mr. [REDACTED] Disability Accommodations and Accessible Housing at CSP-SAC	4
1.	ADA Staff Failed to Identify and Address Inaccessible and Unsafe Housing on March 22, 2021	4
2.	ADA Staff Failed to Identify and Address Inaccessible and Unsafe Housing on April 2, 2021	5
3.	ADA Staff Failed to Identify and Address Inaccessible and Unsafe Housing on April 16, 2021	6
4.	Mr. [REDACTED] Experienced Disruptions in Mental Health Care and Suicidality Due to Inaccessible Housing	7
5.	Mr. [REDACTED] Was Isolated and Unable to Call His Mom Due to Inaccessible Housing	8
6.	Mr. [REDACTED] Cell Was Filthy Because Custody Staff Refused to Help Clean	9
B.	Staff Retaliated Against Mr. [REDACTED] for Asking for Disability-Related Help	9
1.	Staff Refused to Give Mr. [REDACTED] His DME	9
2.	Staff Issued a False RVR Because Mr. [REDACTED] Asked for Help	11
3.	Staff Intentionally Destroyed Mr. [REDACTED] DME	14
4.	Staff Issued Mr. [REDACTED] Another False and Discriminatory RVR.....	14

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 4

A. DEFENDANTS REPEATEDLY FAILED TO PROVIDE MR. [REDACTED] DISABILITY ACCOMMODATIONS AND ACCESSIBLE HOUSING AT CSP-SAC.

Mr. [REDACTED] transferred to CSP-SAC on March 20, 2021. As Defendants later admitted, that transfer was in error—he should not have been housed at CSP-SAC because he had a no-stairs restriction and, later, a DPM code. To address situations where people are housed in areas not designated for their disabilities during the pandemic, the parties created a system in which institutions must complete detailed CDCR 128-B checklists for every class member who is mishoused. As his housing at CSP-SAC was not designated for his disability, ADA staff interviewed Mr. [REDACTED] and completed CDCR 128-Bs for him on March 22, April 2, and April 16, 2021. Unfortunately, it appears that the 128-B process failed to ensure that Mr. [REDACTED] received the accommodations that he needed in order to be safely and accessibly housed.

1. ADA Staff Failed to Identify and Address Inaccessible and Unsafe Housing on March 22, 2021.

According to a 128-B checklist chrono produced by Defendants, CAMU CCII M. Burcham interviewed Mr. [REDACTED] about his disability needs on March 22, 2021, two days after he arrived at CSP-SAC. *See Exhibit B.* The 128-B process, however, failed to identify and address Mr. [REDACTED] disability needs.

First, the 128-B erroneously states that Mr. [REDACTED] had all of his DME in his possession. Mr. [REDACTED] reported that when he arrived at CSP-SAC, he in fact did not have his orthopedic shoes or two pairs of glasses, as those appliances were stored in his property, which was being held at R&R. *See Exhibit A ¶ 20.* Mr. [REDACTED] reported that he had a difficult time walking without his orthopedic shoes, and that he had to wear a pair of tennis shoes instead. He explained that because of his degenerative spondylosis and arthritis, he needs orthopedic shoes with Velcro straps to walk safely; he has difficulty putting on and tying the shoelaces of his tennis shoes. Mr. [REDACTED] reported that while he was at CSP-SAC and did not have access to his orthopedic shoes, he tripped over the shoelaces of the tennis shoes and fell in his cell several times. CCII Burcham failed to accurately document the DME that Mr. [REDACTED] actually had in his possession, as well as what would be done to provide Mr. [REDACTED] with the DME he was missing.

Second, the 128-B states that Mr. [REDACTED] was experiencing several problems accessing the physical plant of his cell, building, and yard, but fails to provide any accommodations. More specifically, the 128-B states that Mr. [REDACTED] is not able to navigate his cell/bed area without difficulty, is not able to navigate the stairs in his living area without difficulty, and is not able to navigate the path of travel to available recreation spaces without difficulty. Notwithstanding these significant disability-related access problems, CCII Burcham did not document what accommodations, if any, would be provided to Mr. [REDACTED] to help render the housing

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 5

assignment accessible to him. The information captured in this 128-B shows that Mr. [REDACTED] was inaccessibly housed and that no accommodations were provided to him.

Third, the ADA staff and warden failed to identify that Mr. [REDACTED] was inaccessibly housed during the required daily review of all 128-B checklists. And Defendants failed to report Mr. [REDACTED] inaccessible housing to Plaintiffs' counsel, the Court Expert, and the Receiver, in violation of the Court's order and Defendants' implementing memorandum. *See* Order, Doc. 3015 at 2-3 (July 20, 2020) ("If . . . Defendants temporarily are not able to house an *Armstrong* class member in safe, accessible housing, Defendants shall: . . . within 24 hours, provide notice to Plaintiffs, the Court Expert, and the Receiver, and confer with the Court Expert and representatives for Plaintiffs and the Receiver as soon as possible"); Connie Gipson, Director, Division of Adult Institutions, Procedures for Reviewing and Reporting Housing for *Armstrong* Class Members During COVID-19 at 4 (Nov. 5, 2020) ("Each day, the Warden or Designee at each institution is required to review all 128b checklists completed that day . . . to answer two questions: (1) Are all *Armstrong* class members safely housed? (2) Are all *Armstrong* class members in non-designated or non-traditional housing, including isolation or quarantine units, accessible housed?").

2. ADA Staff Failed to Identify and Address Inaccessible and Unsafe Housing on April 2, 2021.

On April 2, 2021, Mr. [REDACTED] fell while attempting to walk down the stairs in the dayroom of his housing unit. Later that day, the ADA Coordinator, AW Rojas, interviewed Mr. [REDACTED] about his disability needs and completed a 128-B checklist chrono. *See Exhibit C*. Mr. [REDACTED] reported to Plaintiffs' counsel that during this interview he told AW Rojas about a fall that had occurred the first week he was at CSP-SAC, which happened because of a seizure and caused his lip to bleed, and about his fall earlier that day. *See Exhibit A* at ¶ 11; MHPC Progress Note (Mar. 30, 2021) ("Was also provided with a 7362 as he expressed wanting to be seen by medical staff for his reported seizure."). After Mr. [REDACTED] told AW Rojas about the April 2 fall on the dayroom stairs, she told him that there was an ADA worker who lived in his building, A8, who could help him get up and down the stairs. *See Exhibit A* at ¶ 11. Mr. [REDACTED] then told AW Rojas that the housing unit officers did not let ADA workers into his section of the building, section B.³ *Id.* Mr. [REDACTED] reported that AW Rojas then told him that staff should help

³ At that time, section B was a designated quarantine unit. ADA workers were prohibited from working in quarantine units. *See* Letter from Gabriela Pelsinger & Rita Lomio, Prison Law Office, to Gannon Johnson, CDCR Office of Legal Affairs, ADA Worker Program at California State Prison, Sacramento at 4 (Jan. 29, 2021) ("We are deeply concerned that the ADAC was not familiar with the clear directive, implemented more than five months ago, that staff assist class members in quarantine units, not ADA workers.").

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 6

him navigate the unit. *Id.* He told AW Rojas that he had actually asked housing unit officers for help navigating the stairs several times since arriving to CSP-SAC, but that the officers had refused to help him. *Id.* AW Rojas responded by telling Mr. [REDACTED] to keep asking for help and to try asking a different officer. *Id.*

The 128-B does not include this information. It merely states that Mr. [REDACTED] told AW Rojas that he had fallen on the stairs earlier that day, and that she responded by “remind[ing] [Mr. [REDACTED] the officers could assist him and he need to ask for assistance.” **It appears that AW Rojas did nothing to address the urgent safety and access issues of Mr. [REDACTED] housing placement. She failed to document and respond to the allegation that housing unit officers refused to help him safely navigate his housing unit, even after he had fallen.**

The 128-B also states that Mr. [REDACTED] is not able to independently move about the living area and that he is not able to navigate the stairs in his living area without difficulty. The 128-B contains questions about whether a class member is able to independently move about any available recreational spaces (including the path of travel to the recreational spaces) and whether a class member is able to navigate to program and service areas. AW Rojas answered these questions with “N/A,” and added annotations that state, respectively (and confusingly), “no yard – quarantine & orientation” and “quarantine/orientation just ended.” AW Rojas failed to document what accommodations would be provided to Mr. [REDACTED] to allow him to navigate his living area, recreational spaces, and program areas, now that his quarantine and orientation periods had ended. Regardless, as explained earlier, Mr. [REDACTED] would have needed to traverse the stairs in his housing unit to access any recreational and program areas, including healthcare areas.

The information captured in this 128-B shows that Mr. [REDACTED] was unsafely and inaccessibly housed. Again, the warden failed to identify these problems during the required daily review of all 128-B checklists. And Defendants failed to report Mr. [REDACTED] inaccessible and unsafe housing to Plaintiffs’ counsel, the Court Expert, and the Receiver.

3. ADA Staff Failed to Identify and Address Inaccessible and Unsafe Housing on April 16, 2021.

AW Rojas completed a third 128-B checklist chrono for Mr. [REDACTED] on April 16, 2021. *See Exhibit D.* The chrono documents that Mr. [REDACTED] is not able to navigate his cell and bed area without difficulty, noting that it is “hard [for him] to get up no ADA bar” and “hard to get up from toilet no grab bar.” **AW Rojas failed to document what accommodations would be provided to address these problems.**

The 128-B also includes Mr. [REDACTED] report that he was receiving “no assistance with navigating the stairs and no yard.” This was at least the second time that Mr. [REDACTED] reported to

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 7

AW Rojas that he was not receiving assistance to navigate the inaccessible unit. AW Rojas documented the following response, “I again reminded [REDACTED] staff can assist him during and gave him the name of the ADA worker, which he can now utilize since he was no longer on quarantine. [REDACTED] said ‘Okay thank you.’” **It does not appear that AW Rojas took any action to address Mr. [REDACTED] reports that staff continued to refuse to provide him with the assistance he needed to navigate the unit.**

It also appears that the information AW Rojas provided about ADA workers was incorrect. ADA workers were (and are) prohibited from working in housing units designated for isolation and quarantine, and staff within those housing unit are responsible for providing disability assistance instead. *See* Connie Gipson, Director, Division of Adult Institutions, Americans with Disabilities Act Worker Program for Duration of COVID-19 Pandemic at 2 (Aug. 14, 2020). At the time of the April 16 interview, and for the entirety of the time that he was at CSP-SAC, Mr. [REDACTED] was housed in A8-119, a cell in A8, section B, which was, and remains, a designated quarantine unit. *See* SAC Daily Isolation-Quarantine Unit Spreadsheet 4-16-21. In fact, the 128-B states that AW Rojas told Mr. [REDACTED] that “he just came off quarantine on Tuesday, 4/13/21, and remained in A8 C section [sic] **due to their [sic] being no beds available in the EOP blocks.**” *See* Exhibit D at 5 (emphasis added).

4. **Mr. [REDACTED] Experienced Disruptions in Mental Health Care and Suicidality Due to Inaccessible Housing.**

The institution’s failure to identify and address this dangerous and inaccessible housing had significant consequences. Mr. [REDACTED] remained at CSP-SAC for over a month, until Plaintiffs’ counsel intervened. He reported that he had significant difficulties accessing prison services throughout his time at CSP-SAC. Mr. [REDACTED] reported significant difficulties accessing meaningful mental health treatment while at CSP-SAC. Mr. [REDACTED] was at the EOP level of care while at CSP-SAC, and had only very recently been discharged from the PIP at CMF. His mental health conditions include borderline personality disorder and PTSD, and he was prescribed several psychiatric medications, including haloperidol, venlafaxine, buspirone, and clozapine. He was not provided the mental health care that he needed while at CSP-SAC. On March 24, shortly after arriving at the institution, he was prevented from attending a confidential one-on-one counseling session with his assigned clinician. *See* Form 7362 (Mar. 24, 2021) (“I had a ducat for 1 on 1 this morning at 10:00 AM with Gomez and I wasn’t seen I’m stressed out with anxiety I’m ADA and I shouldn’t even be here in SAC with stairs I have a walker.”). When he was finally seen by the clinician five days later, he was seen cell-side, in a non-confidential setting. During that session, he reported his disability concerns to his clinician, who noted, “Pt also highlighted that because he is mobility impaired, he will have difficulties getting going to his appointments.” *See* MHPC Progress Note (Mar. 29, 2021). The clinician documented the plan for Mr. [REDACTED] mental health treatment as follows: “Pt will be seen weekly, **in the treatment center...** Consult

with custody staff on weekly basis to monitor significant decompensation in mental status and to monitor Patient's coping abilities." *Id.* (emphasis added).

Mr. ██████ reports, and his medical records confirm, that he was never able to see his clinician for confidential sessions in the treatment center at CSP-SAC. On one occasion, he received a ducat for a one-on-one counseling appointment with Ms. Gomez in the treatment center, but on the day of the appointment, Ms. Gomez came to his cell door and told him that a floor officer in the unit had told her that the officers did not have time to help Mr. ██████ get to the treatment center, so she had to speak with him cell-front instead. *See* Exhibit A at ¶ 13. Mr. ██████ reported that because he was never provided with a confidential setting in which to speak to his clinician, he never felt comfortable discussing his mental health and challenges. Mr. ██████ also reported that even though he received multiple ducats for mental health groups during his time at CSP-SAC, he was never able to attend mental health groups, which were held in the treatment center, because the housing unit officers did not allow people in A8, B section out of their cells to attend groups. *See* Therapeutic Intervention/Group Progress Note (Apr. 5, 2021) ("No show"); Therapeutic Intervention/Group Progress Note (Apr. 12, 2021) ("No show"); Therapeutic Intervention/Group Progress Note (Apr. 19, 2021) ("No show"). Mr. ██████ reported that he eventually experienced a "breakdown" and had thoughts of killing himself while at CSP-SAC because of the lack of meaningful mental health care. *See* Exhibit A at ¶ 13.

5. Mr. ██████ Was Isolated and Unable to Call His Mom Due to Inaccessible Housing.

In order to use the telephone in the dayroom, Mr. ██████ had to traverse the staircase between the cell tier and the dayroom. *See* Exhibit A at ¶ 12. He needed help from another person to reduce his risk of harm, as his disability prevents him from being able to safely go up and down stairs on his own. Because Mr. ██████ was housed in A8, B section, a designated quarantine unit, the entire time that he was at CSP-SAC, there were no ADA workers in the unit to help him up and down the stairs, and it was staff's responsibility to provide disability assistance instead. *See* Connie Gipson, Director, Division of Adult Institutions, Americans with Disabilities Act Worker Program for Duration of COVID-19 Pandemic (Aug. 14, 2020). However, as noted above, Mr. ██████ reported that housing unit staff refused to help him go up and down the stairs. He reported that he asked the regular tower officer for help getting down the stairs to use the telephone during his first week at CSP-SAC, but the officer replied that she was too busy to assist him. *See* Exhibit A at ¶ 12. Another incarcerated person who was housed in the unit offered to help Mr. ██████ down the stairs to use the telephone to call his mother. *Id.* Mr. ██████ explained that the incarcerated person would hold onto him and brace him, to make sure that he did not fall, while going down the stairs. He explained that he still felt unsafe going down the stairs this way, but that he did it anyway because it was very important for him to be able to speak with his mother, who is his main source of emotional support. *Id.* ("My mom is my

everything, she's my rock, especially as I don't have any other family."). With that person's assistance, Mr. [REDACTED] was able to make it to the telephone to call his mother, but only twice. *Id.*

6. Mr. [REDACTED] Cell Was Filthy Because Custody Staff Refused to Help Clean.

Mr. [REDACTED] also reported that staff largely refused to help him clean his cell. *See* Exhibit A at ¶ 14. Because of his disability, he has a very hard time bending down and cannot put a lot of pressure on his knees, which makes it difficult for him to clean his cell, especially under the bed. *Id.* He explained that his cell became very dirty while he was at CSP-SAC, and that he asked several different staff members for assistance cleaning his cell. *Id.* One officer agreed to sweep his cell for him one night, but other than that, staff refused to assist him. *Id.* Mr. [REDACTED] reported that he asked a regular female officer from the unit, as well as the officers who pass out meals, for help cleaning his cell. He reported that the officers said that they did not have time to help him at the moment and might help him later, but that they never did. *Id.*

B. STAFF RETALIATED AGAINST MR. [REDACTED] FOR ASKING FOR DISABILITY-RELATED HELP.

1. Staff Refused to Give Mr. [REDACTED] His DME.

The 128-B chrono that AW Rojas completed on April 2, 2021, states that Mr. [REDACTED] was missing his "shoes & glasses aphakia." *See* Exhibit C at 1. As Mr. [REDACTED] explains:

It is hard for me to bend over and tie shoelaces, because of the arthritis in my hands, and also because it is hard to bend down because of the degenerative spondylosis in my back. Because it is so hard to bend over, I normally tie the laces very loosely before putting my feet in the shoes, and then put them on while sitting down. This creates problems because sometimes, my tennis shoes get untied and it's hard for me to re-tie them. I fell several times in my cell because my Fila tennis shoes became untied. This is why the Velcro on my orthopedic shoes is useful.

Exhibit A at ¶ 24.

AW Rojas specified that Mr. [REDACTED] "immediately stated to me he needed his property":

I told [REDACTED] the block officers told me the property officer was at the door and had to respond to an alarm which is why the property was not issued. [REDACTED] said one pair of his glasses and his therapeutic shoes were in his property. I asked why they were not given to him at the time of transport. [REDACTED] stated because I was

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 10

a PIP discharge. Upon arrival to SAC [REDACTED] was placed on orientation status which is the reason he was not issued his property, in addition he was placed on a 14 day quarantine. I asked [REDACTED] if he informed block officers his DME was in his property and he had not done so. During our interview the property officer returned to the block and I talked to him about [REDACTED] [sic] DME and told him to ensure [REDACTED] was issued his DME today. The Officer stated he would do so. I called the block to inquire on the status of [REDACTED] DME being issued and [REDACTED] informed the officer he did not receive his DME. I will follow up with the property officer on Monday, 4/5/21.⁴

Exhibit C at 5.

Mr. [REDACTED] reported that after AW Rojas exited the housing unit, the property officer, whose name sounds like “Gebhart,” told him, “You’re not going to get your property.” See Exhibit A at ¶ 17. The property officer told him to return to his cell, aggressively pounded on Mr. [REDACTED] cell door, and told housing unit staff to “shut 119” (Mr. [REDACTED] cell). Later that day, Mr. [REDACTED] submitted a CDCR 602, reporting Officer Gebhart’s failure to provide him with his missing prescription eyeglasses and orthopedic shoes, as well as the officer’s aggressive and discriminatory conduct. See **Exhibit E**, Log No. 104899. The response to the 602, dated June 3, 2021, states only that Mr. [REDACTED] claim is still under inquiry or investigation, and that this response will be the only response. *Id.*

On April 5, another officer from R&R, Officer Sandu, came to the housing unit to speak to Mr. [REDACTED] neighbor on the tier, [REDACTED] [REDACTED] [REDACTED] about Mr. [REDACTED] property. See Exhibit A at ¶ 20. After Officer Sandu spoke to Mr. [REDACTED] Mr. [REDACTED] asked Officer Sandu if the officer could also get him his orthopedic shoes and glasses. *Id.* Officer Sandu told him that she would look into the issue and update him the following day. *Id.*

On the morning of April 6, 2021, Officer Strickland assisted with morning medication distribution in A8, B section. See Exhibit A at ¶ 21. When Officer Strickland passed by Mr. [REDACTED] cell, Mr. [REDACTED] asked the officer if, after he finished with medication distribution, Officer Strickland could call R&R to speak to Officer Sandu about getting his orthopedic shoes. *Id.* Officer Strickland said that he would not do that, and that he would bring Mr. [REDACTED] a Form 22 instead. *Id.* Mr. [REDACTED] told the officer to forget about the request and returned to his bed. *Id.* Officer Strickland then told him that if he had an attitude, he should go to

⁴ It is not clear whether AW Rojas in fact followed up with the property officer on April 5. Mr. [REDACTED] did not receive his DME that day, or in the days that followed.

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 11

Officer Strickland's building once he was off orientation because he "got something" for him. *Id.* Mr. ██████ understood this to be a threat. *Id.* Officer Strickland also called Mr. ██████ an "old man" and a "punk," but Mr. ██████ ignored these comments: "I was trying to stay calm and not get any write-ups, because I wanted to get out of CSP-SAC as quickly as I could." *Id.*

2. Staff Issued a False RVR Because Mr. ██████ Asked for Help.

Soon after, Mr. ██████ was issued an RVR for threatening an officer, a serious offense. *See Exhibit F*, RVR Log No. 7076214. The RVR, authored by Officer Strickland, states that on the morning of April 6, Mr. ██████ asked the officer to go down to the office and call the property officer, and that Officer Strickland told him that he would get him a CDCR Form 22 instead. The RVR then alleges that Mr. ██████ became agitated and told Officer Strickland to "walk down there and call her." The RVR alleges that Officer Strickland then told Mr. ██████ that he would not be able to do that, and that Mr. ██████ responded that Officer Strickland, "needed to stop being such a bitch." Officer Strickland alleges that Mr. ██████ also told him, "you are lucky that I am in this cell," "when I come out later, I'm going to fuck you up bitch," and "I am gonna get you motherfucker." Officer Strickland alleges that, "[d]ue to inmate ██████ Assaultive history, and fearing for my safety and wellbeing of my partners, we egressed from the B section and continued with the morning medication pass." Mr. ██████ disputes the statements that Officer Strickland attributed to him, and asserts he never threatened or used disrespectful language towards Officer Strickland. *See Exhibit A* at ¶¶ 21-22.

On April 16, Mr. ██████ met with Officer Bivin, the Investigative Employee (IE) for this RVR. *See Exhibit F*. According to the RVR Supplemental Documentation, Mr. ██████ provided the following statement regarding the allegations in the RVR:

"I am an A.D.A. Prisoner who is permanatly [sic] ground floor only and use a walker. Also I'm epileptic and wear a head helmet permanatly [sic]. I'm on orientation section. Officer C. Strickland and I have never had any encounters, nor have I ever seen Officer Strickland before in my life. On this day I requested and respectfully asked Officer Strickland after he was completed the medication program if he would please call R-N-R Officer Sandu concerning A.D.A. appliances because I had spoken to Officer Sandu the day before and she told me should would come back and speak with me. Officer C. Strickland for unknown reasons became irritated by request stating "I don't work that way "don't ask me nothing. And I went and sat on my bed and Officer C. Strickland say very loud "Come to my building. I got something for you." As you read this false R.V.R. by Officer C. Strickland you can clearly take note this Officer C. Strickland states "Due to ██████ assaultive history and fearing for my safety and my partners wellbeing we egressed from B-Sections. My past is just that my past. I am absolutely not receiving a fair shake here. This Officer C. Strickland straight up wrote a false R.V.R. and because of my past history with Officer C. Strickland read my C-file. He knows he can get away with it. I absolutely did not threaten Officer C. Strickland."

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 12

Mr. [REDACTED] also provided Officer Bivin with a list of questions to ask his neighbors on the tier at the time of the alleged violation. Mr. [REDACTED] provided the names of three witnesses: [REDACTED], [REDACTED], and [REDACTED]. Mr. [REDACTED] refused to participate in the IE investigation, but Mr. [REDACTED] and Mr. [REDACTED] participated. On the date of the incident, Mr. [REDACTED] was housed in A8-[REDACTED], Mr. [REDACTED] was housed in A8-1[REDACTED], and Mr. [REDACTED] had been housed in between them, in A8-[REDACTED].

Mr. [REDACTED] and Mr. [REDACTED] both corroborated Mr. [REDACTED] account. Both heard Mr. [REDACTED] ask Officer Strickland to call R&R to ask about his property and orthopedic shoes after the officer finished pill call. Neither, at any time, heard Mr. [REDACTED] say to Officer Strickland, "Stop being such a bitch", "You are lucky I'm in this cell, when I come out later I'm going to fuck you up bitch," or "I am gonna get you mother fucker." Neither heard Officer Strickland tell Mr. [REDACTED] that "you're going to receive a CDCR 115." Mr. [REDACTED] heard Officer Strickland threaten Mr. [REDACTED] saying, "Come to my building. I got something for you." Mr. [REDACTED] heard Officer Strickland say, "When you get off orientation, come to my building."

Inmate [REDACTED] had the following written question(s) for inmate [REDACTED] ([REDACTED]) regarding the alleged incident:

Q1: "Did you hear [REDACTED] ask Officer C. Strickland after he was done doing pill call. Would he please call R- N-R and find out if they found his property with his orthopedic medical shoes?"

A1: "Yes."

Q2: "Did you hear at any time [REDACTED] say to Officer C. Strickland "Stop being such a bitch?"

A2: "No."

Q3: "Did you at any time hear [REDACTED] say "You are luck I'M in this cell, when I come out later I'm going to fuck you up bitch?"

A3: "No."

Q4: "Did you at time [sic] hear [REDACTED] say "I am gonna get you Mother Fucker?"

A4: "No."

Q5: "Did you hear at any time Officer C. Strickland say to [REDACTED] by speaking slow and simple English your [sic] going to receiving [sic] a C.D.C.R. #115?"

A5: "No."

Q6: "Did Officer C. Strickland say to [REDACTED] in a threatening manner "Come to my building. I got something for you?"

A6: "Yes."

Inmate [REDACTED] had the following written question(s) for inmate [REDACTED] ([REDACTED]) regarding the alleged incident:

Q1: "Did you hear [REDACTED] ask Officer C. Strickland after he was done doing pill call. Would he please call R- N-R and find out if they found his property with his orthopedic medical shoes?"

A1: "Yes."

Q2: "Did you hear at any time [REDACTED] say to Officer C. Strickland "Stop being such a bitch?"

A2: "No."

Q3: "Did you at any time hear [REDACTED] say "You are lucky I'M in this cell, when I come out later I'm going to fuck you up bitch?"

A3: "No."

Q4: "Did you at time [sic] hear [REDACTED] say "I am gonna get you Mother Fucker?"

A4: "No."

Q5: "Did you hear at any time Officer C. Strickland say to [REDACTED] by speaking slow and simple English your [sic] going to receiving [sic] a C.D.C.R. #115"

A5: "No."

Q6: "Did Officer C. Strickland say to [REDACTED] in a threatening manner "Come to my building. I got something for you?"

A6: "I heard him say when you get off orientation come to my building."

The RVR hearing was conducted on May 7, 2021, at CHCF. Mr. [REDACTED] reported that no one discussed the witness testimony from Mr. [REDACTED] and Mr. [REDACTED] during hearing, who were unable to participate because the hearing was conducted at CHCF. *See Exhibit A at ¶ 27.*

Mr. [REDACTED] was found guilty of the RVR, and the sanctions included the loss of thirty-one days of credit, seven days' loss of dayroom privileges, and one day loss of phone privileges. The RVR was also referred to classification committee for a SHU term assessment. On June 1, 2021, the Chief Disciplinary Officer (CDO), AW J. Weinholdt, affirmed the hearing results, upholding the determination that Mr. [REDACTED] was guilty of the charges. The Disciplinary Hearing Results state that the Senior Hearing Officer (SHO), Lt. R. Yopez, reviewed Officer Bivin's IE Report and took all information into consideration. However, the documentation from the hearing also asserts that the only evidence that the SHO considered was the written report authored by the reporting employee, Officer Strickland.

We are disturbed that the institution simply discounted or ignored the testimony of incarcerated people. That appears to be all too common in California prisons. *See Office of the Inspector General, Sentinel Case, No 21-01 at 8, 9 (June 3, 2021)* ("What we find most troubling,

however, is the conclusion that there was ‘no evidence’ to prove staff members [committed misconduct]. This is not true. The incarcerated person who submitted the letter spelled out 19 specific incidents of staff members [committing misconduct]. ***That is evidence. . . . The statements of the other incarcerated persons are also evidence.***” (bold, italics, and red formatting in original)); *see also Mann v. Failey*, 578 F. App’x 267, 272 n.2 (4th Cir. 2014) (“An inmate has little control of his situation and movement, and few means of establishing facts, other than recounting evidence himself” (quotation marks and brackets omitted)).

3. Staff Intentionally Destroyed Mr. ██████████ DME.

Later in the day on April 6, following Mr. ██████████ exchange with Officer Strickland, a staff member whose identity he is not sure of opened the food slot of his cell and threw a pair of orthopedic shoes into his cell. *See Exhibit A* at ¶ 23. The tongues of the shoes had been cut off and the shoes’ Velcro straps also had been cut off. *Id.* It looked like the tongues and straps had been cut off with a razor or a knife. *Id.* Mr. ██████████ said that when staff gave him these shoes, it “made me feel angry, scared and intimidated. It made me feel worthless. I couldn’t eat dinner that night because of how bad this made me feel.” *Id.*

The next day, Mr. ██████████ submitted a CDCR GA-22 to AW Rojas, reporting that he had been given a damaged pair of orthopedic shoes and that he was still missing a box of his property. *See Exhibit G.* He reported the specific damage that had been done to the shoes and asked to see the AW. Mr. ██████████ did not receive AW Rojas’s written response to the GA-22 for several weeks. Sometime after he turned in the GA-22, CCII Burcham asked him if he had received his orthopedic shoes yet. *See Exhibit A* at ¶ 26. Mr. ██████████ showed CCII Burcham the damaged shoes that he had been given and told the CCII that he did not know how the damage had occurred. *Id.* A few days prior to Mr. ██████████ April 23 transfer to CHCF, CCII Burcham returned to ask Mr. ██████████ what size shoe he wore and, later that same day, provided Mr. ██████████ with a new pair of orthopedic shoes. *Id.* Mr. ██████████ reported that CCII Burcham took the damaged shoes in exchange for the new pair. *Id.*

4. Staff Issued Mr. ██████████ Another False and Discriminatory RVR.

On April 23, 2021, Officer R. Guffee issued Mr. ██████████ an RVR for failure to respond to notices. *See Exhibit H*, RVR Log No. 7081463. In the RVR, Officer Guffee alleges that Mr. ██████████ “refused his ducat” to a 0900 dental appointment and “refused to report to the A Facility clinic to sign the refusal.” Officer Guffee also alleges that Mr. ██████████ purportedly becoming “verbally abusive” after being ordered to be handcuffed and for “demand[ing]” that the officer “carr[y] his walker down the stairs.”

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 15

As has become all too common at CSP-SAC, Mr. [REDACTED] version of events differs dramatically. Mr. [REDACTED] reported that on April 23, Officer Guffee and an African-American officer whose name he does not know came to his housing unit to escort him to his 9:00 am ducat for a dental appointment. *See* Exhibit A at ¶ 30. He saw Officer Guffee getting waist restraints from staff in the unit tower. *Id.* He explained to the African-American officer and to Officer Guffee that he did not need to be escorted in waist restraints because he had already been cleared from orientation status, and that he was afraid of falling because of his disability. *Id.* Both officers then went to talk to the housing unit staff to verify whether Mr. [REDACTED] needed to be escorted in restraints. *Id.* After a few minutes, the officers returned to his cell and said that he had been correct about the restraints, and his cell door was opened. *Id.* He then used his walker to walk across the first tier to the top of the stairs that lead down to the dayroom and exit. *Id.* He asked the officers to help him down the stairs and explained to them that because he had a disability, he would have a hard time with them. *Id.* Neither of the officers physically helped him get down the stairs. *Id.* He had to leave his walker at the top of the stairs and then proceeded to walk down the stairs very slowly and carefully on his own, holding on to the rail and going one step at a time, which was painful and did not feel safe. *Id.*

Mr. [REDACTED] reported that when he made it down the staircase to the dayroom, he asked the officers if they could please get his walker for him, as the walker was still at the top of the stairs and out of his reach. *See* Exhibit A at ¶ 31. The African-American officer carried the walker down the stairs, while Officer Guffee told Mr. [REDACTED] in a loud and aggressive tone, “We don’t get paid for that shit.” *Id.* Mr. [REDACTED] asked Officer Guffee why he was yelling at him, and the officer responded, “You started this fucking shit, punk,” and continued to swear at him. *Id.* Mr. [REDACTED] reported that he then told the officer, “Hey man, why are you being so aggressive? I’m not going to go [to the dentist appointment], I’m cool.” *Id.*

Mr. [REDACTED] said this because Officer Guffee, who is over six feet tall, was frightening him, and he was afraid that Officer Guffee might physically harm him during the escort to the dental appointment. *See* Exhibit A at ¶ 31. Mr. [REDACTED] has PTSD from past experiences of correctional officer abuse, including an event in February 2017 when an officer at CSP-Los Angeles County beat him and broke his ribs. *Id.* Even though he wanted to attend his dental appointment, which he had requested because of a painful toothache, Mr. [REDACTED] reported that he was too afraid of Officer Guffee to risk spending more time with him while under escort.⁵ *Id.*

⁵ In September 2016, a correctional officer at CSP-SAC killed a 65-year old incarcerated man while escorting him by yanking the incarcerated man’s legs out under him while he was handcuffed, causing him to fall forward and his head and torso to hit the concrete floor. *See* U.S. Dep’t of Justice, Former Correctional Officer Charged with Civil Rights Violations for Assaulting Inmates (Nov. 19, 2020), <https://www.justice.gov/usao-edca/pr/former-correctional-officer-charged-civil-rights-violations-assaulting-inmates>;

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 16

After Mr. ██████ said he was not going to go to the ducat, the two officers began to walk out of the dayroom. *See* Exhibit A at ¶ 32. Mr. ██████ asked the officers if they could get his walker for him, but they ignored his request and continued exiting the unit. *Id.* Mr. ██████ describes what happened next:

I stood up, using the table for support, walked painfully to my walker, pushed my walker over to the stairs, sat down on the second stair, and crawled up one step at a time while pulling the walker up with me. After I had crawled to the top of the stairs, I used the middle bar of the railing around the dayroom to get up to one knee, and then used the top bar to pull myself up to a standing position. It was hard to pull my walker up the stairs because of the arthritis in my hands. I then used my walker to walk back to my cell. I think the tower officer might have been watching me as I was crawling, because as soon as I got into my cell, my cell door closed behind me. No staff person offered to help me up the stairs, or to carry my walker up the stairs.

Id. Mr. ██████ transferred to an OHU unit at CHCF later that day.

On April 30, 2021, while at CHCF, Mr. ██████ received a copy of the RVR issued by Officer Guffee for refusing the dental ducat on April 23. Because the RVR was counseling-only, there was no hearing.

* * * * *

CSP-SAC is a deeply troubled institution. It is a place that has long allowed its staff to torment, beat, and abuse people with disabilities with impunity.⁶ Officers use false RVRs to cover

Plea Agreement, *United States v. Aurich*, Case No. 2:20-CR-02190WBS, Doc. 16 at A-1 (E.D. Cal. Jan. 19, 2021) (CSP-SAC officer assigned to A7 admitting that she “knowingly falsified and made a false entry in a record or document, to wit, a California Department of Corrections and Rehabilitation Crime/Incident Report” in an attempt to “impede, obstruct, or influence the investigation” concerning a fellow officer’s unlawful use of force).

⁶ *See, e.g.*, Letter from Jessica Winter, Rosen Bien Galvan & Grunfeld LLP, to Nick Weber and Tamiya Davis, CDCR Office of Legal Affairs, Urgent Retaliation and Safety Concerns for ██████ (Feb. 11, 2021) (reporting that “officers in the PSU have engaged in a concerted and organized effort to retaliate against and harass Mr. ██████ for his reporting staff misconduct,” including assaulting Mr. ██████ locking Mr. ██████ in a holding cage and wrapping the holding cage in plastic so that he would be unable to breathe, planting contraband in Mr. ██████ cell, and issuing inappropriate RVRs); Letter

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 17

up their own misconduct.⁷ Officers beat people when they think they are out of view.⁸ They post a sign (wrongly) identifying an elderly man as a sex offender, putting his life at risk in a prison with

from Rana Anabtawi, Prison Law Office, to Clark Kelso, Receiver, *Plata* Site Visit, February 25-27, 2020, and March 11, 2020 (Mar. 17, 2020) (“Prisoners report that much of the custodial staff is indifferent to their needs, disengaged from their work, and unnecessarily aggressive. Ultimately, the combination of all these elements results in a toxic work environment for staff and a desperate living environment for those confined there.”); Letter from Amber Norris & Rita Lomio, Prison Law Office, to Russa Boyd, CDCR Office of Legal Affairs, *Allegations of Staff Misconduct at California State Prison, Sacramento* (Mar. 27, 2019) (reporting excessive use of force, harassment and verbal abuse, failure to ensure access to appointments, tampering with mail); July 2018 CSP-SAC Staff Misconduct Report at 1-7 (“This report once again documents allegations of staff misconduct, including staff’s inappropriate use of force, failure to protect vulnerable people, harassment and intimidation, and inappropriate responses to medical and mental health concerns.”); December 2017 CSP-SAC Tour Report at 8-14 (reporting excessive use of force, verbal abuse, improper removal or destruction of Durable Medical Equipment, failure to honor disability chronos, failure to protect vulnerable people, and interference with the tour interview process); May 2017 CSP-SAC Tour Report at 9-13 (“monitors also received serious reports of staff misconduct indicating continued staff training and accountability measures are necessary”); Letter from Margot Mendelson & Don Specter, Plaintiffs’ Counsel, to Patrick McKinney, CDCR Office of Legal Affairs, *Allegations of Serious Staff Misconduct and Excessive Force in the CSP-SAC PSU* (Sept. 28, 2016) (“We are profoundly concerned about these allegations of serious abuse, many of which involve prisoners who are both *Armstrong* and *Coleman* class members.”); July 2016 CSP-SAC Supplemental Report Regarding Allegations of Staff Misconduct in A-2 at 1-5 (“[W]e received multiple, highly consistent reports of excessive force and verbal abuse by custody staff in the PSU on Facility A. . . . Every one of the nine prisoners we talked to about these matters reported that they had witnessed third watch officers in A-2 use excessive force and/or taunt mentally ill prisoners.”).

⁷ See, e.g., Letter from Jessica Winter, Rosen Bien Galvan & Grunfeld LLP, to Tamiya Davis and Nick Weber, CDCR Office of Legal Affairs, *Staff Misconduct and Falsified RVRs against EOP Class Members at CSP-Sacramento* (Jun. 9, 2021) (reporting three incidents of excessive use of force, falsified RVRs and retaliation against EOP class members, “which represent only a fraction of the deep rooted issues with the disciplinary process and brutal culture at SAC”); Letter from Ernie Galvan and Penny Godbold, Rosen Bien Galvan & Grunfeld LLP, to Tamiya Davis and Nick Weber, CDCR Office of Legal Affairs, *Holding Staff Accountable for Issuing Retaliatory and False RVRs Against Class Member Declarant [REDACTED]* (Apr. 14, 2021) (reporting that “custody staff at SAC have subjected him to unnecessary force, labelled him a ‘snitch,’ and issued

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 18

unacceptably high rates of violence and homicides among the incarcerated population.⁹ They lie and claim people have “refused” medical and mental health care when in fact they did no such thing.¹⁰ And a member of the Investigative Services Unit at CSP-SAC recently died of an overdose after suffering relentless harassment from his colleagues.¹¹

Mr. [REDACTED] experience during the month he was housed at CSP-SAC is emblematic of these widespread problems. He was denied the most basic assistance for his disability, confined to his cell, forced to fall down and crawl up stairs, and, for his trouble, threatened by staff and issued

him multiple false rule violation reports in retaliation for his participation in the Statewide Motion and ongoing efforts to hold staff accountable for misconduct”); Letter from Gabriela Pelsinger & Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], Discriminatory and False RVRs (Mar. 26, 2021) (reporting that class members were issued and found guilty of fabricated RVRs due to the institution’s own failure to provide safe, accessible housing, and that “the institution’s response to an issue of disability noncompliance was to intimidate, threaten, and punish Mr. [REDACTED] for the apparent offense of requiring accessible housing”).

8 See Office of the Inspector General, Sentinel Case, No 20-04 at 2 (Aug. 19, 2020) (“The person himself made no perceptible movements other than continuing to walk forward before the second officer moved toward him. As the three men passed through the gate, the officers pushed the person behind a tarp and took him to the ground. Although the tarp partially obstructed the camera’s view, it is clear from the recording that once they were on the ground, the first officer struck the incarcerated person with his left fist at least 13 times in rapid succession. The first officer stopped striking the person, but approximately 16 seconds later, he appeared to strike a final blow with an elbow or forearm. The third officer then closed the gate, cutting off any further view of the area.”).

9 See Email from Don Specter, Prison Law Office, to Kathy Allison, CDCR Office of Legal Affairs, Poster of Mr. [REDACTED] [REDACTED], CSP-SAC, with Image of “Herbert the Pervert” (June 3, 2019) (forwarding email from Rita Lomio: “attached please find a PDF of the poster that Mr. [REDACTED] a 61-year-old *Armstrong* and *Coleman* class member housed on B yard at CSP-SAC, reports that officers keep placing on his cell door. The image is of ‘Herbert the Pervert,’ a Family Guy character who is attracted to young boys”).

10 See, e.g., Letter from Amber Norris & Rita Lomio, Prison Law Office, to Russa Boyd, CDCR Office of Legal Affairs, Allegations of Staff Misconduct at California State Prison, Sacramento (Mar. 27, 2019); Corrective Action Plan, CSP Sacramento: A-PSU, B-PSU & EOP ASU at Item 21 (Apr. 21, 2017); Achieving a Constitutional Level of Medical Care in California’s Prisons: Fortieth Tri-Annual Report of the Federal Receiver for September 1-December 31, 2018 (Feb. 1, 2019).

11 See Wes Venteicher, Exclusive: Correctional Officer’s Death Exposes Hazing, Toxic Culture at California Prison, *The Sacramento Bee* (Apr. 15, 2021).

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 19

false RVRs. ADA and supervisory staff made no effort to intervene and protect Mr. [REDACTED]. Staff evidenced no professionalism, compassion, or respect, and instead exhibited only cruelty and vindictiveness. Defendants have taken no steps to address the flagrant abuses. This raises real concerns as to whether people with disabilities can continue to be housed at CSP-SAC.

We request the following:

1. Please explain what will be done to ensure that all people with disabilities are treated with respect and compassion at CSP-SAC and provided all appropriate disability accommodations. If that cannot be done, please explain when and how people with disabilities will be transferred out of CSP-SAC.
2. Please add all allegations in this letter and the supporting declaration to the non-compliance log, including those related to staff's unprofessional and abusive conduct, failure to provide disability accommodations and assistance, failure of ADA staff to properly complete CDCR 128-Bs, issuance of false RVRs, failure to provide DME, and intentional destruction of orthopedic shoes, and take all appropriate disciplinary, corrective, and other action. We request that the Office of Internal Affairs investigate these allegations.
3. Please rescind and void both RVRs issued to Mr. [REDACTED] while at CSP-SAC.
4. Please preserve and produce the following video footage, if it exists:

Institution	Date of Incident	Time Range Requested	Location Requested	Officer Involved	Evidence Requested
CSP-SAC	April 2, 2021	11:00 am-11:40 am	Dayroom stairs, B Section of A8	N/A	Audio/video surveillance footage
CSP-SAC	April 6, 2021	7:30 am-8:10 am	Tier outside Cell A8-119	Officer Strickland	Audio/video surveillance footage
CSP-SAC	April 23, 2021	9:00 am-9:40 am	Dayroom, B Section of A8	Officer Guffee	Audio/video surveillance footage

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 20

5. Please explain why the 128-B process repeatedly failed to identify and address Mr. [REDACTED] unsafe and inaccessible housing placement, why the Court's July 2020 order was not complied with, and what will be done to prevent that from happening again.
6. Please explain why Mr. [REDACTED] was housed in a designated quarantine unit for the entirety of the time he was at CSP-SAC, even though his quarantine period apparently ended on April 13, 2021. Please explain whether CSP-SAC at any time during the pandemic had a shortage of lower tier, lower bunk beds for any subset of the population, including people designated EOP.
7. Please explain why custody staff did not allow Mr. [REDACTED] to attend mental health treatment groups while he was housed in A8, B section, even after his quarantine period ended. When Mr. [REDACTED] was housed in A8 B section, was the entire unit set aside to house people on precautionary post-transfer quarantine? If the entire unit was set aside for class members on current quarantine, why did Mr. [REDACTED] continue to receive ducats for mental health programming? If the entire unit was not set aside for quarantine, why did custody officers refuse across-the-board to allow class members to attend mental health programming? Why was Mr. [REDACTED] not allowed to attend mental health programming even after he was individually released from quarantine?

Thank you for your immediate attention to this matter.

Sincerely yours,



Gabriela Pelsinger
Investigator



Rita Lomio
Staff Attorney

cc: Mr. [REDACTED] (redacted)
Ed Swanson, Court Expert
Co-counsel

Ms. Tamiya Davis and Mr. Nick Weber
Retaliatory and False RVRs Issued to *Armstrong* and *Coleman* Class Member at CSP-SAC
July 9, 2021
Page 21

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Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jillian Hernandez, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Robin
Hart, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Tammy Foss, Jason
Anderson, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis,
Olga Dobrynina, Dawn Stevens, Alexandria Tonis, Gently Armedo, Dawn Stevens,
Jimmy Ly, Jay Powell (CCHCS)
Adriano Hrvatin, Sean Lodholz, Namrata Kotwani, Anthony Tartaglio, Trace Maiorino,
Andrea Moon (OAG)

Index of Exhibits

- Exhibit A – Declaration of █████ █████
- Exhibit B – 128-B Checklist Chrono (Mar. 22, 2021)
- Exhibit C – 128-B Checklist Chrono (Apr. 2, 2021)
- Exhibit D – 128-B Checklist Chrono (Apr. 16, 2021)
- Exhibit E – CDCR 602 Log No. 104899, and Response
- Exhibit F – RVR Log No. 7076214
- Exhibit G – CDCR GA-22 (Apr. 7, 2021)
- Exhibit H – RVR Log No. 7081463

EXHIBIT A

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DECLARATION OF [REDACTED]

I, [REDACTED] declare:

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

2. My California Department of Corrections and Rehabilitation (“CDCR”) number is [REDACTED]. I am currently housed at California Health Care Facility (“CHCF”) on Facility C in Building 3. I am 53 years old. I have been in prison for 30 years, since June 1991.

3. I am an *Armstrong* class member. I have a disability that makes it hard to walk. I am classified by CDCR as “DPM,” which means my disability impacts where I can be housed. I walk very slowly, and I can’t speed walk or run. My right leg is very weak, and I can’t squat. I can’t walk up and down stairs safely and independently and my legs are unstable. I also have neuropathy, which causes my feet and legs to feel numb, and like needles are stabbing me all the time. Because of my disability, I have specific housing restrictions, including that I cannot be housed anywhere with stairs and that I need special transportation with a lift so I do not have to climb into a vehicle. I use a four-wheeled walker, orthotic shoes, foot orthoses, and knee braces to get around safely. I also have aphakia and have a hard time seeing clearly. I use three different kinds of glasses: reading glasses, glasses for seeing far-away that I wear while I’m walking around, and glasses for seeing up close that I use when I watch TV.

4. During the time I was at California State Prison, Sacramento (“CSP-SAC”), I had the same disabilities and limitations, and was prescribed the same accommodations.

5. I am also a *Coleman* class member. I am at the EOP level of care. I suffer from borderline personality disorder and poor impulse control. I have PTSD and I am very

1 fearful because of the physical and mental abuse I've suffered in prison from custody staff.
2 Officers have previously punched me in the face and broken my ribs. The psychiatric
3 medications I take include haloperidol, venlafaxine (Effexor), buspirone, and clozapine.
4 Sometimes I can't deal with the pain in my life, and hurt myself because it's too much. I
5 cut myself in the spring of 2021 and had to get 9 stitches.
6

7 6. During the time I was at CSP-SAC, my mental health issues were similar to the
8 issues I experience today.
9

10 7. I have a number of serious medical conditions, including epilepsy, psoriatic
11 arthritis, and degenerative spondylosis. I also wear a helmet because I have seizures. I am
12 currently at the OHU level of care.

13 8. During the time I was at CSP-SAC, my medical issues were similar to the issues I
14 experience today.
15

16 9. I was housed at CSP-SAC for about one month, beginning on or around March 22,
17 2021. I was transferred out of CSP-SAC on or around April 23, 2021, after the Prison Law
18 Office sent a letter on my behalf to CDCR attorneys on April 21, 2021, raising concerns
19 about whether I was in accessible housing.
20

21 10. During my time at CSP-SAC, I was housed in A Yard, 8 Building, B Section, Cell
22 [REDACTED] I was in that cell for the entire time I was at CSP-SAC. In that building, there were
23 five stairs that I needed to go up and down to travel from the cell to the dayroom, where
24 the phones were, and then to the rest of the prison, including the recreational yard and
25 medical building. Because of my disabilities, I cannot walk down stairs safely or
26 independently and doctors therefore issued me a no-stairs restriction, which I had when I
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28

1 was transferred to CSP-SAC.

2 11. During my time at CSP-SAC, I spoke to the ADA Coordinator, AW Rojas, about
3 three times. On April 2, 2021, AW Rojas interviewed me. I told her that I had a seizure
4 about a week after I arrived at CSP-SAC and that I had fallen in my cell, which made my
5 lip bleed. I also told her that I had fallen while trying to use the stairs earlier that day. AW
6 Rojas told me that she had heard about my fall. She also told me that there was an ADA
7 worker that lived in the building who could help me use the stairs. I told her that the
8 officers don't let the ADA workers into my section of the building. She said that staff
9 should help me. I told her that I had asked staff for help several times and that they had
10 refused to help me go up and down the stairs. AW Rojas responded that I should keep
11 asking staff for help, and that I should ask a different staff member.
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15 12. At CSP-SAC, I needed to use the stairs to be able to use the phone in the dayroom. I
16 relied on the help of my neighbor, Mr. [REDACTED], to get down the stairs so that I
17 could use the phone to call my mom. Mr. [REDACTED] helped me by holding onto me and bracing
18 me, to make sure that I did not fall forwards or backwards, while going down the stairs. I
19 still felt unsafe going down the stairs and was lucky that I did not fall. I did it anyway
20 because it was important for me to talk to my mom. My mom is my everything, she's my
21 rock, especially as I don't have any other family. I usually take every opportunity to talk to
22 my mom. On a normal basis, I speak with her several times a week. I call my mom every
23 time that I have a free phone call available. Even though speaking to my mom is very
24 important to me, I only spoke to her twice while I was at CSP-SAC, when Mr. [REDACTED] was
25 allowed to help me use the stairs. The reason I only spoke to her twice was because I was
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1 scared I would fall if I went up and down the stairs by myself, which I would have had to
2 do because staff never offered to help me down the stairs to use the phone. People in my
3 unit were offered use of the phone daily, but I only actually spoke to my mother twice
4 because I couldn't get help using the stairs. Sometime during my first week at CSP-SAC, I
5 asked the regular tower officer for help getting down the stairs to use the phone, and she
6 said that they were busy.
7

8 13. At CSP-SAC, staff also denied me access to mental health treatment by housing me
9 in a cell where I had to go up and down stairs to receive treatment. I was given ducats for
10 mental health groups that said that the groups happened in the treatment center. I was
11 never able to go to these sessions because officers weren't letting any of the people in A8
12 B section out of the unit for groups. After I had been at CSP-SAC for a little while, my
13 clinician, Ms. Gomez, was talking to my neighbor, and she stopped to talk to me in front of
14 my cell. She told me that she would see me tomorrow, and asked if I could come down to
15 the treatment center for a confidential appointment. I said that I would like to go to the
16 treatment center. I got a ducat that night for a one-on-one counseling appointment in the
17 treatment center. The next day, Ms. Gomez came to my cell door and said that a floor
18 officer had told her that the officers didn't have time to help me get to the treatment center,
19 so she had to speak with me at my cell door instead. All of my mental health sessions with
20 my clinician at CSP-SAC were in front of my cell, in a non-confidential setting, and for
21 very short periods of time. I feel like I never got to really speak with my clinician about
22 my problems because I did not have privacy. I was not able to get the mental health care
23 that I needed at CSP-SAC. I eventually had a breakdown and felt like I could not breathe
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1 in there. After I had been at CSP-SAC for a couple of weeks, I felt suicidal and like I
2 wanted to cut myself because I was overwhelmed and felt like I was going insane.

3
4 14. My disability makes it very hard for me to put pressure on my knees and bend
5 down. I can't bend down to clean under the bed, and it is difficult to clean my cell.

6 Because I wasn't able to clean my cell on my own, it got very dirty. My cell became so
7 dirty that one night, an older officer kindly swept my cell. Other than that one time, I was
8 unable to get assistance cleaning my cell from staff, even though I asked for help many
9 times. I asked a regular female officer from the unit to help me clean my cell, and I also
10 asked officers who were passing out meals. These officers told me that they didn't have
11 time to help me now and might help me later, but never did.

12
13 15. During my time at CSP-SAC, there were many times that I needed help, including
14 getting down the stairs to use the phone and cleaning my cell, but I didn't ask for it
15 because I was afraid of what would happen to me. After I received a 115 from Officer
16 Strickland, I stopped asking staff for help.

17
18 16. I received two false RVRs for rule violations while I was at CSP-SAC.

19
20 17. On April 2, 2021, AW Rojas came to interview me about the accommodations I
21 needed at CSP-SAC. I told her that I needed to get my property, including my glasses for
22 aphakia and my orthotic shoes. During the interview, the property officer, an officer whose
23 last name sounds like "Gebhart," came to the unit and AW Rojas told him to make sure
24 that I got my DME that day. The officer said he would. After Ms. Rojas left the building,
25 the officer told me, "You're not going to get your property." He told this to me at the top
26 of the stairs by my cell. He told me to go back to my cell and aggressively pounded my
27
28

1 cell door. He called to the tower officer to, “shut [REDACTED], shut [REDACTED]” I filed a 602 staff
2 complaint about this incident with the property officer. During the first week of June 2021,
3 while I was at CHCF, Lt. M. Frazier came to talk to me about this 602. The response that I
4 received says that my complaint is still being reviewed.
5

6 18. Later on April 2, 2021, a housing unit officer came and asked me if I had gotten my
7 DME. I don’t remember the name of this officer, but he was an African American officer
8 who worked in the unit about two days a week. I told him that I still had not gotten my
9 DME.
10

11 19. On April 3, Officer Murillo brought me three boxes of my property, even though I
12 had transferred to CSP-SAC with five boxes of property. The property Officer Murillo
13 brought me did not include my orthopedic shoes and my two pairs of glasses. Other
14 property was also missing, including personal photos of family members. I told the officer
15 that two boxes of my property were missing, and he told me to file a 602.
16

17 20. On April 5, 2021, Officer Sandu from R&R came to the tier to talk to my neighbor,
18 Mr. [REDACTED] about his property. I talked to Officer Sandu about getting me my property,
19 including my orthopedic shoes. I only had my reading glasses, but I needed my two other
20 glasses. Officer Sandu said that she would look into the issue and come back the following
21 day to let me know about the status of that missing property.
22

23 21. On April 6, 2021, I was in my cell. I said good morning to Officer Strickland, who
24 was doing morning medication pass. I had not spoken to this officer before. I respectfully
25 asked Officer Strickland if, after he finished morning medication, he could call R&R to
26 speak to Officer Sandu about my orthopedic shoes. Officer Strickland told me that he did
27
28

1 not work that way and said he could bring me a Form 22. I tried to explain that I had just
2 spoken to Officer Sandu yesterday about my missing property. He told me that I wasn't
3 hearing him and that he did not work like that. I then went to sit on my bed and told
4 Officer Strickland to "forget about it." He then told me, "Oh, you're a tough guy" and told
5 me to come to his building after I get off orientation because he "got something" for me,
6 which I understood to be a roundabout way of threatening me. Officer Strickland said
7 other things to me, like calling me an old man and a punk, but I ignored these comments. I
8 was trying to stay calm and not get any write-ups, because I wanted to get out of CSP-SAC
9 as quickly as I could. Then Officer Strickland and the nurse that was distributing
10 medications walked away.

11
12
13 22. I don't remember the exact date but I later got an RVR under my door. The log
14 number was 7076214 and it was for threatening staff. The RVR stated that I threatened
15 Officer Strickland, a serious offense. The RVR stated that I told Officer Strickland that he
16 "Needed to stop being such a Bitch" and that I also told Officer Strickland, "You are lucky
17 that I am in this cell," "When I come out later, I'm going to fuck you up bitch," and "I am
18 gonna get you motherfucker." This is not true. I did not make these threatening statements
19 or use this disrespectful language. I have never threatened Officer Strickland.

20
21
22 23. Later in the day on April 6, an officer who I do not know opened my food slot, said,
23 "are these your shoes?" and threw a pair of orthopedic shoes into my cell through the slot.
24 I am not sure whether they were my old orthopedic shoes, or whether they were different
25 shoes. The tongues of both shoes and the velcro straps had been cut off. I don't know who
26 did this to the orthopedic shoes. It looked like they had been cut off with a razor or a knife.
27
28

1 I do not have razor blades in my possession and could not have done this to my shoes. The
2 last time that I had my orthopedic shoes, they had the tongues and velcro straps attached.
3 Staff giving me these destroyed shoes in this way made me feel angry, scared and
4 intimidated. It made me feel worthless. I couldn't eat dinner that night because of how bad
5 this made me feel.
6

7 24. It was difficult to move around without my orthopedic shoes. During this time, I
8 wore my Fila tennis shoes from Walkenhorst's, which have shoelaces. It is hard for me to
9 bend over and tie shoelaces, because of the arthritis in my hands, and also because it is
10 hard to bend down because of the degenerative spondylosis in my back. Because it is so
11 hard to bend over, I normally tie the laces very loosely before putting my feet in the shoes,
12 and then put them on while sitting down. This creates problems because sometimes, my
13 tennis shoes get untied and it's hard for me to re-tie them. I fell several times in my cell
14 because my Fila tennis shoes became untied. This is why the velcro on my orthopedic
15 shoes is useful.
16
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18 25. On April 7, I sent a Form GA-22 to AW Rojas explaining that I had been given a
19 pair of damaged shoes. I wrote about how an officer had brought me a pair of shoes that
20 had had the tongues and velcro straps cut off. I also wrote that I was still missing a box of
21 my property and that I needed to see AW Rojas. I did not get AW Rojas's written response
22 to the GA-22 until the last week that I was at CSP-SAC.
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25 26. Sometime after I turned in the GA-22, I don't remember exactly when, the CCII
26 who works with AW Rojas asked me if I had gotten my orthopedic shoes yet. I showed
27 him the damaged shoes that I'd been given. The CCII asked me what happened and I
28

1 explained that I didn't know what had happened to the shoes. I asked the CCII for a new
2 pair of shoes, but the CCII did not say whether he would get me new shoes. Sometime
3 after that, the CCII came back and asked me what size shoes I wear. That same day, he
4 brought me new orthopedic shoes. This happened a few days before I transferred to CHCF.
5 The CCII took the destroyed shoes in exchange for the new orthopedic shoes. The
6 destroyed orthopedic shoes had been so damaged that I had not been able to wear them at
7 all.
8

9
10 27. On April 16, I met with Officer Bivin, the investigative employee for the RVR I had
11 gotten from Officer Strickland. I gave Officer Bivin my written statement about the RVR,
12 where I explained that the RVR was false. I also gave Officer Bivin a list of questions to
13 ask my neighbors, Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED]
14 because they witnessed what happened between me and Officer Strickland. Officer Bivin
15 said that he was going to go ask my neighbors the questions that I gave him. After I arrived
16 at CHCF, an officer brought me the investigative report for this RVR. The report says that
17 Mr. [REDACTED] refused to participate, but that Mr. [REDACTED] and Mr. [REDACTED] both said that they
18 never heard me threaten Officer Strickland.
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21 28. Sometime after that, after I had transferred to CHCF and after I was off orientation
22 status, I had a hearing for the RVR. The hearing was at CHCF, so the witnesses from CSP-
23 SAC did not participate. During my hearing, no one spoke about the witness testimony
24 from Mr. [REDACTED] and Mr. [REDACTED]. The hearing officer found me guilty of the RVR. After the
25 officer said I was guilty, I asked him how he could find me guilty when there were two
26 witnesses who said that I had not done what Officer Strickland said I did. The hearing
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28

1 officer responded that it was because of Officer Strickland's report. The sanctions I
2 received for this RVR included losing phone calls. As a result of receiving this RVR, I
3 could not call my mother on Mother's Day. This made me feel really sad and like I was
4 being continuously punished for this false RVR. It really hurt that I could not speak with
5 my mom. Beyond the sanctions I received, it also felt very painful to be punished for
6 something I did not do. I have not yet filed a 602 about this RVR because I am dealing
7 with other legal work right now.
8

9
10 29. I received a second false RVR as a result of an incident on April 23, 2021.

11 30. I received a ducat for a dental appointment for 9:00 am on April 23, 2021 for some
12 kind of check-up. I had requested the appointment because I had a toothache. On that date,
13 an African-American officer whose name I do not know came to my cell to escort me to
14 my appointment. I could see his partner, Officer Guffee, who was also in B section,
15 reaching up to get waist restraints from the tower. I told the African-American officer that
16 I did not need waist restraints because I had been cleared from orientation. Then Officer
17 Guffee came over to my cell, and I explained to both officers that I did not need waist
18 restraints, and that I was afraid of falling because I had a disability, and then they both
19 went to verify what I had told them about my waist restraints. The officers were gone for a
20 few minutes and then came back to my cell and told me that I was right about the
21 restraints. The African-American officer walked over to the stairs, my cell door opened,
22 and I used my walker to walk to the top of the stairs. I told the officers that I was ADA and
23 it was going to be hard for me to get down the stairs, and asked them to help me. The
24 African-American officer came over, stood by the stairs, and put his arms out, maybe so
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1 that he could help me if I fell, but he did not physically assist me down the stairs. I placed
2 my walker right by the top of the stairs, I grabbed the stair rails and walked down very
3 slowly and carefully, one step at a time. I used the railing, looked down at my feet, and
4 moved slowly to prevent falling. I walked down the stairs myself. I did not feel safe, and it
5 hurt to go down the stairs like that, but I did not have any other choice.

7 31. Then, I sat at the table in the dayroom. I asked the officers if they could please get
8 my walker for me. The African-American officer brought my walker down the stairs.

9 ~~Meanwhile,~~ Officer Guffee said, "We don't get paid for that shit" in an aggressive tone. ^{Meanwhile,}
10 said, "Officer, why are you yelling at me like that?" He said, "You ~~started this shit, you~~
11 ~~started this fucking shit, punk~~" and started swearing at me. He yelled so loud that it felt
12 like the whole building could hear. I said, "Hey man, ~~you're acting too aggressive, I'm not~~
13 ~~going to go, I'm cool.~~" I was afraid to go with the officers to my dental appointment, ^{Why are you being so aggressive?}
14 because Officer Guffee was yelling at me and he was much bigger than me, around 6'4". I
15 felt very scared when Officer Guffee became so aggressive with me, because I was afraid
16 that he would physically hurt me. While he was yelling at me, he pointed at me and took a
17 step towards me, which felt very threatening. I have been assaulted by custody staff in the
18 past. For example, in February 2017, an officer at California State Prison, Los Angeles
19 County, beat me and broke several of my ribs. Because of this, I was afraid to go with
20 Officer Guffee. Even though I continued to experience a painful toothache and wanted to
21 see the dentist, I was still too scared of the officer hurting me to risk going with him to the
22 dental appointment.
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27 32. When the two officers were walking away from the dayroom, I asked if they could
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get my walker and help me up the stairs [REDACTED]
1 ~~get my walker from the bottom of the stairs and bring it to the dayroom table where I was~~
2 ~~sitting~~, but they ignored me and kept on walking. I stood up, using the table for support,
3 walked painfully to my walker, pushed my walker over to the stairs, sat down on the
4 second stair, and crawled up one step at a time while pulling the walker up with me. After I
5 had crawled to the top of the stairs, I used the middle bar of the railing around the dayroom
6 to get up to one knee, and then used the top bar to pull myself up to a standing position. It
7 was hard to pull my walker up the stairs because of the arthritis in my hands. I then used
8 my walker to walk back to my cell. I think the tower officer might have been watching me
9 as I was crawling, because as soon as I got into my cell, my cell door closed behind me.
10
11 No staff person offered to help me up the stairs, or to carry my walker up the stairs.
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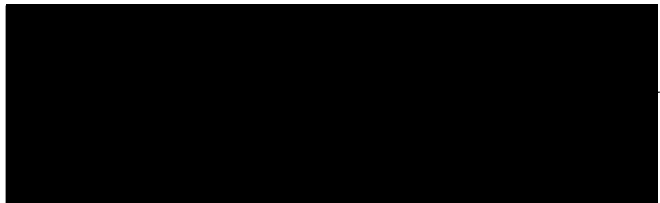
13 33. To my surprise, on April 30, 2021, I received an RVR for this April 23, 2021
14 interaction. The log number is 7081463 and the RVR is for failure to respond to notices. I
15 received this RVR after I had already been transferred to CHCF. I was in shock when I
16 read it. I was so scared and intimidated by Officer Guffee that I will remember his words,
17 “I don’t get paid for that shit” and “You started this fucking shit, punk” for the rest of my
18 life. According to the RVR, Officer Guffee wrote that I was “verbally abusive” to him and
19 that I called him a “punk.” That is not true. I did not say anything to him that was
20 disrespectful. This RVR is counseling level only, so I did not get a hearing to tell my side
21 of the story.
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23

24 34. After I received the RVR from Officer Guffee, I filed a medical 602 about all the
25 problems I had at CSP-SAC, including that I did not want to refuse my dental ducat. In
26 that medical 602, I reported what Officer Guffee said to me, how aggressive he was to me,
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1 and that I was terrified. I felt like I needed to write this up so someone could hear my
2 voice. I have not gotten a response to this medical 602.

3 35. I am fearful because of the false information in the two RVRs that I got at CSP-
4 SAC, that other officers will now believe that I am a violent, aggressive person, and will
5 treat me badly because of it. I am fearful that they will read my record and believe that I
6 am violent towards staff. I am not like that. I am afraid of cops. I cannot defend myself.
7 Sometimes I won't come out of my cell if I feel threatened by staff or believe that they are
8 talking about me. I rarely come out of my cell because of these fears, and have missed
9 many mental health treatment groups. This has affected me long-term. It has made me very
10 cautious about my surroundings and made me feel like I don't know who I can trust and
11 who I cannot trust.
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16 I declare under penalty of perjury under the laws of the United States of America
17 that the foregoing is true and correct, and that this declaration is executed at Stockton,
18 California, this 1st day of July, 2021.

19  A large black rectangular redaction box covering the signature area.

20
21
22 DATED: July 1, 2021
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EXHIBIT B



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VIA EMAIL ONLY

August 14, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

Mr. Bruce Beland
CCHCS Office of Legal Affairs

RE: *Armstrong v. Newsom*: Urgent Request to Dismiss RVR Issued by Healthcare Staff at SATF to Elderly Class Member Requesting Incontinence Supplies

Dear Ms. Davis and Mr. Beland:

As you know, we have serious concerns about the professionalism of healthcare staff at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). Our clients report that healthcare staff ridicule, taunt, and yell at them and that healthcare staff also issue, or threaten to issue, RVRs against their patients. They report that healthcare staff regularly deny requests for disability accommodations, including incontinence supplies and hearing aid batteries.

We appreciate the stated commitment of headquarters staff, the Regional Healthcare Executive, and the SATF CEO to addressing these issues. During our meeting yesterday, headquarters and institution staff said that healthcare staff should not issue RVRs and that they were not aware of any RVRs issued by healthcare staff. They asked that we bring any such RVRs to their attention. We are writing now to provide one example. [REDACTED] an elderly wheelchair user who requires a weekly provision of diapers and wipes to accommodate his incontinence, was issued an RVR by a Psych Tech after she refused to provide him with his diapers during pill call and after she, according to Mr. [REDACTED] called him a “retard” for requesting diapers on the wrong day. Although the staff complaint process later found that the Psych Tech had violated policy, and although incarcerated witnesses corroborated Mr. [REDACTED] account, he nonetheless was found guilty of the serious offense of “Disrespect w/Potential for Violence/Disruption.”

We ask that you dismiss this RVR immediately. The RVR has had devastating consequences for Mr. [REDACTED] who has been incarcerated since 1983 (over 37 years) and who has worked very hard to better himself in prison and participate in the MAT program. He has a parole hearing in less than three weeks—his first in over nine years. The Comprehensive Risk Assessment states that he is a moderate risk for violence. **The only evidence of violent behavior in the last eighteen years, however, is the RVR issued by the Psych Tech.**

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Ms. Tamiya Davis & Mr. Bruce Beland

Re: Urgent Request to Dismiss RVR Issued to [REDACTED] [REDACTED]

August 14, 2021

Page 2

- **SEPTEMBER 24, 2020**

Mr. [REDACTED] requested his weekly incontinence supplies on Thursday, September 24, 2020. He had last received them on Thursday, September 17, 2020, and before that on Thursday, September 10, 2020. *See* 7536 DME Supply Receipt (Sept. 10, 2020); 7536 DME Supply Receipt (Sept. 17, 2020). At that time, he was housed in F3 due to COVID-19 restrictions. *See* MHPC Consult Routine Progress Note (Sept. 16, 2020) (“He had a recent move from E yard [Level III] due to a points change to F1 [Level II]. However due to quarantine and being a lower, lower he moved to an EOP building.”).

The substitute nurse informed him that they did not have the supplies available and that he should request them the following day during pill call.

- **SEPTEMBER 25, 2020**

As instructed, on Friday, September 25, Mr. [REDACTED] requested his weekly incontinence supplies from Psych Tech Jennifer Leon, who was conducting pill call in the building. According to Mr. [REDACTED] Psych Tech Leon immediately attempted to dismiss his request, telling him that it was Friday and that supplies are distributed on Thursdays, not Fridays. Mr. [REDACTED] acknowledged that that was the regular procedure, explained what had happened the day before, and explained that he had been instructed to request his supplies that day. Psych Tech Leon became angry with him and said, in a harsh tone, “What, are you retarded? I said supplies are given out on Thursdays, not Fridays.” Mr. [REDACTED] who was hurt and upset from that comment, asked that she not call him retarded and that she instead give him his incontinence supplies. Psych Tech Leon then yelled at Mr. [REDACTED] repeating that supplies are given out on Thursdays. Mr. [REDACTED] decided to remove himself from the situation, turned to leave, and said to the person in line behind him, “She’s a fucking witch.”

Psych Tech Leon entered a Progress Note in the electronic medical record at 5:12 pm entitled, “Verbal Aggression.” In it, she wrote: “While giving medication to pt., pt. asked about DME this writer educate him that dme supplies are handed out on Thursday and asked if there was a reason he didn’t get them yesterday.” She then set forth a version of events very different from Mr. [REDACTED] in which she claimed that he became “instantly belligerent” and that he misheard her and that she did not call him “retarded.” Psych Tech Leon instead claimed that she had “said it would have to be uncharted and recharted.”

The medical record confirms that Mr. [REDACTED] did not receive his incontinence supplies on September 25.

Ms. Tamiya Davis & Mr. Bruce Beland

Re: Urgent Request to Dismiss RVR Issued to [REDACTED] [REDACTED]

August 14, 2021

Page 3

- **SEPTEMBER 26, 2020**

Mr. [REDACTED] received his incontinence supplies on Saturday, September 26, from a different Psych Tech.

Durable Medical Equipment and Supply Receipt

7536 Descriptions 1: Incontinence Supplies

7536 Quantity 1: 18

7536 Comments 1a: Large Briefs

7536 Descriptions 2: Incontinence Supplies

7536 Quantity 2: 5

7536 Comments 2a: underpads (chux)

7536 Descriptions 3: Other DME/Supplies

7536 Quantity 3: 10

7536 Make 3: wound care supplies

7536 Comments 3a: 1x3 bandaids

7536 Descriptions 4: Incontinence Supplies

7536 Quantity 4: 2

7536 Comments 4a: packages of wetwipes

7536 Date of 7221: 9/26/2020 PDT

7536 Section C: Received DME/Medical Supply

7536 Patient Signature: X

7536 Patient Signature Date: 9/26/2020 PDT

7536 Issuing Staff Signature: X

7536 Issuing Staff Date: 9/26/2020 PDT

7536 Witness Name: X

7536 Witness Signature: X

[REDACTED] Psych Tech - 9/26/2020 8:01 PDT

- **SEPTEMBER 28, 2020**

On September 28, Mr. [REDACTED] filed a 602-HC, reporting that Psych Tech Leon refused to issue him his incontinence supplies, had become “agitated,” and had called him a “retard”:

On 9/25/20 I asked Nurse Leon for my medical supplies because they were not issued to me on Thursday, 9/24/20. Nurse Leon said, ‘No, you get supplies on Thursdays.’ I can not make medical issue me supplies, I can only ask. After becoming agitated, Nurse Leon said I was retarded, supplies are Thursdays, it is Friday. I told her to do her job and issue my supplies. She did not. I wear diapers.

See **Exhibit A**, Log No. SATF SC 20000064.

Ms. Tamiya Davis & Mr. Bruce Beland

Re: Urgent Request to Dismiss RVR Issued to [REDACTED] [REDACTED]

August 14, 2021

Page 4

- **SEPTEMBER 29, 2020**

On September 29, Mr. [REDACTED] was served a copy of a Rules Violation Report issued by Psych Tech Leon for the serious offense of “Disrespect w/Potential for Violence/Disruption.” Psych Tech Leon repeated the claims she made in her note in his medical record, and added that he “stated ‘Fuck you bitch’, and walked away.” See **Exhibit B**, RVR Log No. 7032758.

- **OCTOBER 11, 2020**

Mr. [REDACTED] was found guilty of the RVR on October 11, 2020. The Senior Hearing Officer noted that two officers “partially corroborated” Psych Tech Leon’s report, although both officers testified that they did not approach the pill call window until the end of the altercation, after Psych Tech Leon “began yelling” and Mr. [REDACTED] used profanity.

The Senior Hearing Officer discounted the testimony of four incarcerated witnesses. All four witnesses corroborated Mr. [REDACTED] account. They testified that Psych Tech Leon yelled at Mr. [REDACTED] called him a “retard” within earshot of other incarcerated people, and that instead of escalating the abusive encounter, Mr. [REDACTED] chose to walk away and report the incident to custody staff.

[REDACTED]
Q3. Did you hear I/M [REDACTED] raise his voice or yell at Psyche [sic] Tech Leon?

A3. Not to my knowledge. But when he turned around, he walked away and said, “Fucking witch.”

Q4. When Psych Tech Leon continued yelling at I/M [REDACTED] what did he do?

A4. **Walked away.** Kind of stormed away I guess you could say.

Q5. Were you next in line behind I/M [REDACTED] at the time of the incident in question?

A5. I was one inmate behind, on the red line, right by the water fountains.

Q6. Did I/M [REDACTED] say anything to you when he turned from the window?

A6. I believe he called her a witch or something like that, but **I was laughing because she called him a retard out the window.**

[REDACTED]
Q1. At 4 o’clock meds on Friday, September 25, did you hear Psych Tech Leon yell at I/M [REDACTED]

A1. She called him a retard.

Q2. What exactly did you hear?

A2. **All I heard was, “No you retard!”**

Q3. Did you hear I/M [REDACTED] rise his voice or yell at Psyche [sic] Tech Leon?

A3. No, **he just said don’t call me a retard.**

Q4. When Psych Tech Leon continued yelling at I/M [REDACTED] what did he do?

A4. **He just walked away. Well, and he told the cop did he hear that.**

Ms. Tamiya Davis & Mr. Bruce Beland

Re: Urgent Request to Dismiss RVR Issued to [REDACTED] [REDACTED]

August 14, 2021

Page 5

<p>[REDACTED]</p> <p>Q1. At 4'oclock meds on Friday, September 25, did you hear Psych Tech Leon yell at I/M [REDACTED]</p> <p>A1. I heard her yelling.</p> <p>Q2. What exactly did you hear?</p> <p>A2. I couldn't make it out because I was about four people back.</p> <p>Q3. Did you hear I/M [REDACTED] raise his voice or yell at Psyche [sic] Tech Leon?</p> <p>A3. I seen him get angry but no cuss words.</p> <p>Q4. When Psych Tech Leon continued yelling at I/M [REDACTED] what did he do?</p> <p>A4. I seen him walk away afterword [sic]. And then after that, I just didn't pay any attention.</p>	<p>[REDACTED]</p> <p>Q1. At 4'oclock meds on Friday, September 25, did you hear Psych Tech Leon yell at I/M [REDACTED]</p> <p>A1. I'm here at the water fountain getting water and I hear her yelling at him about supplies. But I didn't hear him saying anything bad. No bad name or bitch or something like that.</p> <p>Q2. What exactly did you hear?</p> <p>A2. I didn't hear nothing from her because I'm close to him.</p> <p>A3. Did you hear I/M [REDACTED] raise his voice or yell at Psyche [sic] Tech Leon?</p> <p>A3. He talked with her like normal, but never yelling or calling her a bad name. He is always nice.</p> <p>Q4. When Psych Tech Leon continued yelling at I/M [REDACTED] what did he do?</p> <p>A4. I see him walking away and maybe talk to the police. There was the short police officer right there and he told him what was going on.</p>
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The Senior Hearing Officer “questioned the credibility of some of the witness statements due to the SHO finding it is hard to believe inmates not directly next to the window or next to I/M [REDACTED] could have accurately heard what they testified to hearing due to the amount of activity during medication passes and the noise levels.” That ignores evidence in the record and appears to be a poor attempt to discredit the testimony of incarcerated people. Two of the witnesses explained that they were in close proximity to the events. Mr. [REDACTED] testified that he was “one inmate behind, on the red line, right by the water fountains.” Mr. [REDACTED] testified that he was “here at the water fountain getting water” and “close to [Mr. [REDACTED]].” The Senior Hearing Officer did not ask Mr. [REDACTED] where he was in relation to Mr. [REDACTED] and Psych Tech Leon during the events in question. And Mr. [REDACTED] made clear the limits of his account because of his location, stating that he could not make out the exact words that Psych Tech Leon was yelling “because I was about four people back.”

- **JANUARY 28, 2021**

The Institutional Level Response to Mr. [REDACTED] 602-HC, dated January 28, 2021, **concluded that Psych Tech Leon violated CDCR policy.** See Exhibit A at 2. It is not clear whether the institution investigated Psych Tech Leon’s failure to issue incontinence supplies, her belligerence and offensive language, or both. The Institutional Level Response states only that

Ms. Tamiya Davis & Mr. Bruce Beland

Re: Urgent Request to Dismiss RVR Issued to [REDACTED] [REDACTED]

August 14, 2021

Page 6

Mr. [REDACTED] “stated nursing staff refused to give you Durable Medical Equipment (DME) supplies.” *Id.* at 1.

• **JUNE 14, 2021**

In advance of Mr. [REDACTED] scheduled parole hearing on September 2, 2021, FAD psychologist Richard Kendall completed a BPH Comprehensive Risk Assessment (“CRA”), which was approved on June 14, 2021. The CRA concludes that Mr. [REDACTED] represents a “Moderate risk for violence.” The only “evidence” of any violent behavior **in the last eighteen years**, however, was the RVR issued by Psych Tech Leon.

1. History of Violence: Mr. [REDACTED] has a history of violent behavior in the community and in CDCR. Therefore, this risk factor is currently relevant. His history of violence includes the following:
 - Mr. [REDACTED] began engaging in acts of violence as a child. He was known to display violent and destructive behavior at home, in school, and in the community. When angry or frustrated he would primarily punch walls and destroy inanimate objects.
 - Life Crime: Murder 2nd
 - RVR’s related to Violence:
 - Disrespect with Potential of Violence (2020)
 - Threatening Staff (2003)

Mr. [REDACTED] has been incarcerated for over 37 years, since 1983, when he was nineteen years old. He has worked very hard to better himself while in prison, including through the MAT program, and to prepare himself for the chance of parole. *See, e.g.*, MAT PCP Consultation Note (Aug. 12, 2021) (“He has not relapsed, and he has been sober since January. Every day he practices the serenity prayer, meditates, and works on the 12 steps. He is focused on his goal of preparing for his parole hearing. He practices thought blocking and avoids being around those that are using. He also has an informal NA group with other sober inmates from his housing unit, and they are very supportive of each other. He is also using the ISUDT workbooks. He is on the waiting list for ISUDT and AA, there has been a delay in starting up due to Covid. He has good sober support from other inmates and his family.”).

Psych Tech Leon may not have meant to hurt Mr. [REDACTED] parole chances, but there can be no question that her RVR has had and will have a devastating effect. *See, e.g., In re Lawrence*, 44 Cal. 4th 1181, 1205 (2008) (holding that “the fundamental consideration in parole decisions” is “an inmate’s *current* dangerousness”) (emphasis in original); *In re Hare*, 189 Cal. App. 4th 1278, 1294 (2010) (finding petitioner to be a “strong candidate for release on parole” but affirming, under the deferential standard of review, the Governor’s reversal of a parole based on a six-year-old RVR).

Ms. Tamiya Davis & Mr. Bruce Beland

Re: Urgent Request to Dismiss RVR Issued to [REDACTED] [REDACTED]

August 14, 2021

Page 7

We request the following:

1. Please immediately dismiss RVR Log No. 7032758 in the interests of justice.
2. Please explain what allegations were investigated in response to 602-HC Log No. SATF SC 20000064. Did the institution investigate Psych Tech Leon's alleged belligerence and offensive language? If not, why not? Were the allegations entered on the *Armstrong* accountability log? If so, please explain where we can find them. If they were not logged, please explain why.
3. Please produce all RVRs issued by Psych Tech Leon to *Armstrong* class members in the last two years.
4. Please produce copies of all guidance and direction provided to healthcare staff at SATF regarding issuance of RVRs against patients.

Thank you for your prompt attention to this matter.

Sincerely yours,

/s/ Tania Amarillas
Tania Amarillas
Investigator

/s/ Rita Lomio
Rita Lomio
Staff Attorney

cc: Mr. [REDACTED]
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Robert Gaultney, Saundra Alvarez, Tabitha Bradford, John Dovey, Robin Hart, Jason Williams, Kelly Allen, Cathy Jefferson, Tammy Foss, Jason Anderson, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Armedo, Dawn Stevens, Jimmy Ly, Jay Powell (CCHCS)
Adriano Hrvatin, Sean Lodholz, Trace Maiorino, Andrea Moon, Mark Jackson, Eric Chang (OAG)

EXHIBIT C



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September 24, 2020

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<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
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Re: *Coleman v. Newsom*: Plaintiffs' Concerns about the Issuance of False and Retaliatory Rule Violation Reports Against Class Members
Our File No. 0489-03

Dear OLA Coleman Team:

We write regarding CDCR's pattern of issuing false and retaliatory rule violation reports ("RVRs") against *Coleman* class members (as well as class members in *Armstrong* and other cases).

As you are likely aware, the Office of the Inspector General ("OIG") has documented and condemned this practice twice in recent reports. In addition, documents produced by Defendants in discovery related to Plaintiffs' pending staff misconduct motions in *Armstrong* corroborate the OIG's findings.

A third source of evidence of this practice is the declarations from *Armstrong* and *Coleman* class members Plaintiffs have shared with Defendants as part of the pending *Armstrong* staff misconduct motions. In those declarations, we have provided dozens of examples that show it is a routine practice for CDCR employees to assault, abuse, and retaliate against *Coleman* and *Armstrong* class members and then issue false and retaliatory RVRs to those they victimize. This practice serves the dual purpose of discrediting victims and discouraging future reporting of similar misconduct. These false RVRs are sometimes followed up by false referrals to local district attorneys for criminal prosecution. Those referrals can result in additional criminal charges and extended prison sentences, on top of the punishments meted out in the RVR process.

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 2

In these cases, RVR write-ups are followed by one-sided disciplinary hearings where class member testimony is routinely discounted, even when it is supported by documentary evidence and/or multiple witnesses. This bias against evidence from incarcerated individuals appears to exist at all levels in the CDCR and even seems to be shared by some sections of OLA itself. *See* OIG Sentinel Report No. 20-01, January 10, 2020 (attached hereto as **Exhibit A**) (“The OIG is concerned that the department attorneys’ actions suggest an apparent bias and hostility against inmate testimony and evidence provided by inmates, and set a dangerous precedent in which widespread officer misconduct, which in some cases cannot be proven by any means other than evidence or testimony provided by inmates, will go undiscovered and unpunished. The OIG believes that evidence concerning staff misconduct provided by an inmate and subsequent testimony proffered in a legal proceeding should not be disregarded, based simply on the fact that it came from an inmate.”).

Not surprisingly, these RVR hearings almost always result in “guilty” findings that seriously harm class members in myriad ways, including resulting in raised custody levels, punitive SHU terms in units likely to cause mental health decompensation, significantly reduced chances for parole for life prisoners, and additional time served due to loss of good time credits for incarcerated individuals serving fixed terms. The punishments can be very severe. For example, *Coleman* class member Mr. [REDACTED] [REDACTED] lost 360 days of credit and is reportedly serving a four-year SHU term for battery with a deadly weapon after he allegedly threw his walker at officers during a cell extraction allegedly done for mental health reasons. *See Exhibit B*, attached hereto. These false guilty findings occur even when the evidence available tends to undermine staff’s version of events and corroborate the version told by incarcerated people. Hearing officers are frequently incompetent and biased against class members. Parallel staff misconduct investigations demonstrate the same bias against class member testimony and evidence. In most cases, it is [REDACTED] as Inspector General Roy Wesley said in testimony to the State Senate regarding the staff complaint process, that “the process appears entirely driven by the purpose to exonerate staff.” *See* March 4, 2019 State Assembly Budget Subcommittee at 1:53:53.

This pattern and practice violates the Constitution and basic due process requirements, as well as the *Coleman* Program Guide and associated Court-approved *Coleman* RVR policies. The time has come for Defendants to take swift action to put an end to this practice. We request that Defendants develop a plan to address the problems outlined in and illustrated by the examples this letter.

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 3

1. On Multiple Occasions, the OIG Has Found that CDCR Officers Issue False RVRs to Victims of Staff Misconduct

Attached hereto as **Exhibit C** is OIG Sentinel Case Number 20-04, issued on August 19, 2020. The case is titled, “The Department Made an Egregious Error in Judgment and Relied on Poor Legal Advice When It Did Not Sustain Dishonesty Allegations and Dismiss Two Officers in a Use-of-Force Case.”

This disturbing Sentinel Case recounts a November 21, 2018 incident in which two officers at California State Prison – Sacramento (“SAC”) used unreasonable force on a *Coleman* class member, [REDACTED], who was subsequently found guilty of battery on a peace officer. Ex. C, at 1-2. Video surveillance footage of the incident, produced to Plaintiffs’ counsel in *Armstrong*, clearly shows staff escort Mr. [REDACTED] through an obstructed gate, signal non-verbally to one another, and then throw Mr. [REDACTED] to the ground, punching and hitting him for approximately one minute while he lay on the ground with his hands cuffed behind his back and showing no signs of resistance in any way. There does not appear to be any justification for the initial use of force against Mr. [REDACTED] nor the multiple punches and kicks he suffered while compliant and restrained on the ground.

In response to this video, the Warden of SAC requested an Office of Internal Affairs (“OIA”) investigation into the incident, given the evident discrepancy between officers’ reports and the video surveillance footage. *Id.* at 2. After an investigation was conducted by OIA, the Warden elected to sustain the allegations that both officers had used unreasonable force. *Id.* at 3. The OIG reports that attorneys for CDCR opposed the Warden’s disciplinary conclusions, escalating the case through the executive review process multiple times, which is “exceedingly rare” in the view of the OIG. *Id.* at 4. During the executive review process, the OIG found that three CDCR attorneys made arguments that were not supported by the facts of the case or the law. *Id.*

Ultimately, the undersecretary of CDCR elected to sustain the allegations regarding the unreasonable use of force, but did not sustain the dishonesty allegations even when the OIG found that there was a preponderance of evidence supporting the allegation that the officers had been “dishonest in their reports and interview.” *Id.* at 5. Despite finding that the officers had used unreasonable force against the *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.” *Id.* at 5. Both officers continue to work as peace officers for the CDCR. *Id.*

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 4

We demand that the RVR against Mr. [REDACTED] be reviewed and rescinded immediately, and that all attendant effects of the RVR, including, for example, any credit forfeiture or increase in security points, be promptly reversed.

Attached hereto as **Exhibit D** is an excerpt from the June 2020 Complaint Intake and Field Inquiries Report issued by the OIG on June 2, 2020. The report chronicles a June 2018 incident in which an incarcerated individual was issued an RVR that was later contradicted by video surveillance evidence. Ex. D, at 53-55. While the person's RVR was ultimately reduced to a counselling chrono, CDCR executive staff declined the OIG's recommendation to refer the dishonest staff member to OIA because the executive staff "did not believe the officer was 'blatantly dishonest,'" when reporting facts that proved to be inaccurate based on the video surveillance evidence. *Id.* at 55.

Even though the RVR was rescinded after it was proved false, the incarcerated person was still issued a counselling chrono that remains in their file to this day. This is a blatant due process violation, and one that inflicts substantial harm on incarcerated people. As the OIG notes, "because a counseling chrono documents an inmate's actions the department considers misconduct, it can still reflect poorly on the inmate's suitability for parole during future parole hearings." *Id.* In our experience, such counseling chronos are often given great weight by the BPH and can be the sole grounds for a denial of parole to a lifer.

We ask that the counseling chrono against this individual be dismissed.

Unfortunately, these horrendously unjust outcomes seem to be commonplace within CDCR, although how common is not measurable, given that many such incidents are not caught on camera and therefore are not subject even to the ineffective and biased CDCR investigations and disciplinary processes that resulted in these cases.

2. Documents Produced by Defendants in the Staff Misconduct Proceedings Tell the Same Story: Custody Staff Abuse *Coleman* Class Members, and then Issue False RVRs

Documents produced by Defendants in *Armstrong* and *Coleman* provide further evidence that class members are commonly issued false and retaliatory RVRs *even after* officers involved in the incident underlying the RVR are found to have been intentionally dishonest in their reporting of the incident.

In one such case, *Coleman* class member [REDACTED] ([REDACTED]) reported being kicked in the head twice by an officer at RJD. A psychologist who observed the incident submitted an incident report stating that, at the time the officer kicked the

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 5

incarcerated person in the head twice with “extreme force,” the incarcerated person was not resisting and compliant on the floor. *See Exhibit E*, attached hereto. The incarcerated person complained about the excessive use of force and, in turn, was charged and found guilty of an RVR for assaulting an officer during the incident.

The hearing officer adopted the assaulting officer’s version of events—that the officer slipped on discharged pepper spray, causing him to accidentally strike the incarcerated person with his foot—notwithstanding the psychologist’s report to the contrary and the fact that other correctional officer witnesses did not corroborate the assaulting officer’s story. *See* Letter from P. Godbold to N. Weber, October 4, 2019, **Exhibit F**, attached hereto. Although the officer was ultimately terminated for his unnecessary use of force and dishonesty, Mr. [REDACTED] RVR was not rescinded. *See* Letter from U. Stuter to P. Godbold, December 26, 2019 and CDCR 402 dated May 2, 2019, **Exhibit G** and **Exhibit H**, attached hereto.

We demand that the RVR given to Mr. [REDACTED] be reviewed and rescinded immediately, and that all attendant effects of the RVR, including for example, any credit forfeiture or increase in security points, be promptly reversed.

In another case, *Coleman* class member [REDACTED] [REDACTED] [REDACTED]) reported that he was thrown out of his walker by RJD staff without justification. In their incident reports, three staff members claimed that Mr. [REDACTED] threw himself out of his walker and attempted to assault staff. *See Exhibit I*, attached hereto. Mr. [REDACTED] was charged with and found guilty of a serious RVR for obstructing staff. *See Exhibit J*, attached hereto. Video surveillance evidence clearly contradicted the version of events offered by reporting staff and corroborated Mr. [REDACTED] allegation that he was thrown from his walker by staff without justification. (We have a copy of the video and can make it available upon request.) All three staff members involved in the incident were terminated for dishonesty and failure to report the use of force, among other allegations. *See Exhibit K*, attached hereto. Despite this, Defendants have produced no documentation that the RVR issued to Mr. [REDACTED] was rescinded after it was found that all three of the officers’ reports and statements about the incident had been intentionally dishonest.

Please provide documentation that Mr. [REDACTED] RVR has been rescinded, or else please make sure that it is rescinded now. Please also ensure that all attendant effects of the RVR are reversed, including any resulting credit forfeiture or increase in security points. Note that Mr. [REDACTED] is now out of prison, but we would still like the RVRs removed from his file, as it will affect his custody score if he is ever returned to prison, and it could have other potential adverse consequences.

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 6

3. Plaintiffs' Counsel Has Already Provided Defendants with Overwhelming Evidence of these Practices

In Plaintiffs' Motions to Stop Defendants from Assaulting, Abusing and Retaliating against People with Disabilities, filed on February 28, 2020 and June 3, 2020, Plaintiffs' counsel in *Armstrong* has created a substantial record of false and retaliatory RVRs issued to *Coleman* and *Armstrong* class members, usually in the wake of an unnecessary or excessive use of force by staff.

All such class member declarations have been shared with Defendants in *Coleman* as well as *Armstrong*. In total, Plaintiffs' counsel has brought evidence that 76 *Coleman* and *Armstrong* class members have suffered false and retaliatory RVRs at the hands of Defendants' staff; attached as **Appendix A** is a table listing those class members, the institution at which the violations allegedly took place, the violations with which they were charged, and the date of the alleged violations. In what follows, Plaintiffs' counsel outlines a few additional particularly egregious instances where staff issued RVRs to class member declarants at RJD, LAC, and COR in order to discredit their allegations of serious staff misconduct, retaliate against them as victims of misconduct, and punish class members for their mental illness.

RJD

Recently, the *Armstrong* Court issued a Preliminary Injunction ordering the transfer of two *Coleman* class members from RJD due to retaliation. *See* Dkt. 3026. In its Order Granting in Part Plaintiffs' Motion for Preliminary Injunction, the *Armstrong* Court found that *Armstrong* and *Coleman* class member [REDACTED] ([REDACTED]) was assaulted by staff at RJD on June 17, 2020 in retaliation for his participation as a declarant in the RJD Motion. Mr. [REDACTED] was also issued two false RVRs in connection with the incident, one for battery on a peace officer, and another for possession of alcohol.

Even though the Court found Mr. [REDACTED] version of what happened on June 17, 2020 more credible than CDCR's, Defendants found Mr. [REDACTED] guilty of the false RVR in a rushed and unfair proceeding. *See Armstrong* ECF No. 3025, at 14, 16 ("The Court finds the description of the June 17 incident in the declarations of Inmates 2, 1, and 3 to be credible," and "Defendants' description of the June 17 incident lacks credibility.").

Mr. [REDACTED] was denied the opportunity to present the Court's findings at his RVR hearing, was not allowed to question the reporting employees, and was not allowed to bring any witnesses on his behalf. *See Armstrong* ECF No. 3052-1, Ex. A. As a result,

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 7

Mr. ██████ was subjected to a 120 days of credit loss and 10 days of confinement to his quarters after the senior hearing officer elected to mitigate the suspension of privileges in light of Mr. ██████ mental health factors. Mr. ██████ was also deprived of access to a paid job for a year as a result of the guilty finding. Most importantly, this RVR would have substantially reduced the likelihood of Mr. ██████ being found suitable for parole at his scheduled hearing in January 2021. Only after filing multiple briefs about this issue in *Armstrong* did CDCR drop both of Mr. ██████ RVRs.

Very recently, *Coleman* class member ██████ ██████ (██████) was excessively pepper-sprayed without any justification by staff at RJD on August 21, 2020, who then issued a false and retaliatory RVR. See Supplemental Declaration of ██████ ██████ (“Suppl. ██████ Decl.”), shared with Defendants on September 1, 2020, ¶¶ 6-19. Although Mr. ██████ has not yet received his final RVR paperwork, his medical records indicate that he has been charged with battery on a peace officer. See **Exhibit L**, attached hereto (RVR MH Assessment Note, August 30, 2020). The records further indicate that officers claim that Mr. ██████ “punched the cell-front window causing it to break and send glass fragments onto the officer’s face.” *Id.* Immediately following the incident, Mr. ██████ was examined by multiple medical professionals. Suppl. ██████ Decl. ¶¶ 17-18. In these evaluations, medical staff did not document any injuries to either of his hands consistent with his having punched a glass window. See, e.g., **Exhibit M**, attached hereto (August 21, 2020 clinical note [“no signs of physical wounds, no swelling, no bleeding, no obvious bruises...”]). Mr. ██████ RVR has not yet been heard.

LAC

Staff at LAC frequently assault class members in the throes of mental health decompensation and crisis, and then issue false RVRs to the victims of their misconduct. Custody staff also routinely ignore class members’ requests for assistance during medical and mental health emergencies, demean them after suicide attempts, and issue them punitive RVRs for behavior strongly influenced by severe mental illness.

On March 21, 2020, *Coleman* class member ██████ ██████ (██████) was subjected to an unnecessary emergency cell extraction while he was experiencing mental health crisis. See Declaration of ██████ ██████ shared with Defendants on May 22, 2020, ¶¶ 14-21. After Mr. ██████ requested to speak with a clinician about his ongoing suicidal ideation, officers falsely claimed that he was unresponsive, rushed into his cell, and assaulted him so badly that he was hospitalized. *Id.* ¶¶ 17-19. Mr. ██████ was issued and found guilty of a false RVR for battery on a peace officer in connection with the extraction. *Id.* ¶¶ 25-27. During the RVR hearing, he was denied the opportunity to

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 8

present witnesses or question the reporting employees. *Id.* As a result, he suffered a loss of privileges and a loss of 120 days of credit. *Id.*

In another shocking case, *Coleman* class member ██████████ (██████████) was assaulted by staff at LAC on April 15, 2020 while in handcuffs after he protested being housed with an incarcerated person who had tested positive for COVID-19. *See* Declaration of ██████████ (██████████ Decl.), shared with Defendants on August 28, 2020, ¶¶ 8-20. Mr. ██████████ was also charged with an RVR for battery on a peace officer after officers claimed that Mr. ██████████ grabbed, punched, and resisted them. *Id.*, ¶ 29. When Mr. ██████████ RVR was heard on May 13, 2020, Mr. ██████████ pointed out that the officers' version of events lacked credibility; for example, he was accused of punching officers even though his hands were cuffed behind his back for the entirety of the incident. *Id.* ¶¶ 30-35. In response, the Hearing Officer stated that the serious deficiencies identified in the official report were "simple errors officers tend to make in the heat of battle." *Id.* ¶ 35. The hearing officer found him guilty of the RVR and issued him a 121-day loss of credit, 60-day loss of canteen, phone privileges, yard, and dayroom, and a 21-month SHU-term (which was later rescinded due to mental health considerations). *Id.* We ask that Mr. ██████████ RVR be reviewed and reversed, and that all attendant effects be reversed.

COR

At COR, the issuance of patently false RVRs to severely mentally ill class members is an everyday occurrence. Class members are subjected to lengthy losses of privileges and placements in dangerous segregated housing that render them much more likely to suffer serious mental health decompensation. These false RVRs are also often referred to and prosecuted by the District Attorney, resulting in substantial collateral harm to *Coleman* class members.

On May 30, 2020, *Coleman* class member ██████████ ██████████ was assaulted by staff and issued a false RVR in response to his expressing suicidality to staff. *See* Declaration of ██████████ ██████████ shared with Defendants on September 4, 2020, ¶¶ 11-20. After custody staff encouraged him to kill himself, Mr. ██████████ was thrown to the ground and beaten into unconsciousness. *Id.* ¶¶ 13-15. Mr. ██████████ was then charged with and found guilty of a false RVR for delaying staff. *Id.* ¶ 25. He was denied the opportunity to call any witnesses during the hearing. *Id.* ¶ 26. A 90-day credit loss was imposed as a result of the false RVR. *Id.* ¶ 25. We ask that Mr. ██████████ RVR be thrown out, and that all attendant effects be reversed, not only because the RVR was false, but also because it was issued in connection with an effort to seek help with feelings of suicidality.

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 9

Coleman class member ██████████ ██████████ ██████████) was assaulted by staff on December 16, 2019 after staff made racist remarks toward Mr. ██████████ and refused to let him out of his cell to shower. *See* Declaration of ██████████ ██████████ shared with Defendants on September 1, 2020, ¶¶ 6-18. Mr. ██████████ suffered a concussion, a fracture in his hand, a dislocated and nerve-damaged thumb, and an unspecified jaw injury. *Id.* ¶¶ 24-30. Mr. ██████████ received an RVR for battery on a peace officer in connection with this incident. *Id.* ¶ 31. In an incredible story that parallels that of Mr. ██████████ discussed above, officers claimed that Mr. ██████████ injuries were caused by him *accidentally slipping on pepper-spray*. *Id.* At his classification committee meeting, staff told Mr. ██████████ that he was guilty of the RVR before it had been heard and disposed of. *Id.* ¶ 32. Mr. ██████████ false RVR was referred to the District Attorney for possible criminal prosecution, and it is still pending as of the date of his declaration. *Id.* ¶ 32. He is also facing an eight-month SHU-term. *Id.* We ask that this false RVR and all attendant effects be reversed immediately.

Coleman class member ██████████ ██████████ ██████████) received two RVRs after he was assaulted by staff at COR in June 2019 and May 2020. *See* Declaration of ██████████ ██████████ shared with Defendants on August 28, 2020, ¶ 17. The first RVR – which Mr. ██████████ incurred after being beaten by staff in June 2019 in retaliation for reporting misconduct to the CDCR Ombudsman – was criminally prosecuted by the District Attorney. *Id.* COR referred the second RVR to the District Attorney, and it is still pending as of the date of his declaration. *Id.* We ask that the false RVRs and all attendant effects be reversed immediately.

On May 10, 2019, *Coleman* and *Armstrong* class member ██████████ ██████████ (██████████) was thrown to the ground and beaten after he protested that he could not attend yard because his assistive device was broken at the time. *See Exhibit N*, attached hereto (medical notes documenting his injuries, and the fact that his walker is broken). Mr. ██████████ reports that officers suggested that they could tape the walker or that Mr. ██████████ could sit on the ground outside. When Mr. ██████████ refused, the officers assaulted him and issued him a false RVR for “Assault on a Peace Officer by means not likely to cause GBI.” He was found guilty and sentenced to a 12-month SHU term, despite the fact that the clinician doing his RVR mental health assessment determined that he posed “some risk of decompensation” in a SHU setting. *See* Mr. ██████████ RVR MHA Note, **Exhibit O**, attached hereto. We ask that this false RVR and all of the attendant effects be reversed.

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 10

4. This Pattern and Practice Harms Class Members

The harm that results from the issuance of false and retaliatory RVRs against class members is substantial and multifaceted.

First, the points added to class members' classification scores as a result of false RVRs puts class members at risk and jeopardizes institutional safety and security. Because class members who receive false RVRs are housed in more restrictive facilities than necessary, they are more likely to be subjected to unnecessary victimization and modifications of program that affect their mental health symptoms. This practice runs counter to the stated goals of the CDCR classification system, to: "provide[] a standard evaluation for placement of inmates *at the least restrictive institution*, commensurate with their custodial requirements." DOM § 62010.5 (emphasis added).

The issuance of false RVRs also undermines CDCR's efforts to promote rehabilitative programming. Class members with serious RVRs incurred in the past twelve months are unable to participate in many desirable and beneficial programs and activities offered by CDCR. And for the many class members issued lengthy sentences in segregated housing after being found guilty of a falsified RVR, access to programming is virtually non-existent.

These harms are compounded by the fact that *Coleman* class members sentenced to a segregated housing term or a loss of privileges after being found guilty of an RVR are at an acute risk of mental health decompensation due to the restrictive housing setting. Segregation can also cause class members to act out and get in further trouble, and it is also characterized by significantly higher suicide rates for class members than elsewhere. *See Coleman v. Brown*, 28 F. Supp. 3d 1068, 1095 (E.D. Cal. 2014) ("placement of seriously mentally ill inmates in California's segregated housing units can and does cause serious psychological harm, including decompensation, exacerbation of mental illness, inducement of psychosis, and increased risk of suicide"); *see also* Special Master Expert Fourth Re-Audit and Update of Suicide Prevention Practices in CDCR, Sept. 23, 2020, ECF No. 6879-1, at 46 (noting one-third of all suicides occurred in segregation units in past four years).

Class members punished for false RVRs are also denied the right to earn credits and deprived of already-earned credits that might expedite their release. For example, the recent Positive Programming Credits launched by Secretary Diaz on July 9, 2020 provides 12 weeks of credit to all persons incarcerated in CDCR except for those found guilty of a serious RVR between March 1, 2020 and June 5, 2020. Mr. [REDACTED] for example, was denied these credits due to the false and retaliatory RVR issued to him.

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 11

Similarly, the Milestone Credits earned by EOP class members who participate in mental health programming are often forfeited after class members are found guilty of a false RVR. *See* Cal. Code Regs. tit. 15 § 3323.

Most importantly, the presence of a false RVR in an individual's custody file substantially reduces the likelihood that the Board of Parole Hearings ("BPH") will find that individual is suitable for parole. Regardless of whether an incarcerated person is found guilty of a RVR or given a counseling chrono, any disciplinary record has a significant negative impact on the outcome of the BPH hearing. Recent disciplinary write-ups of either type are so harmful to a prisoner's chances for release that it is common for attorneys representing prisoners who have been found guilty of an RVR or received a counseling chrono in the year before the hearing to move to postpone the BPH hearing for at least another year. In all of the hearings observed or hearing transcripts reviewed over the past ten years, Plaintiffs' counsel cannot recall a single case where a prisoner received a counseling chrono or an RVR within the year preceding the hearing and was granted parole.

5. These Practices Violate the Constitution, the Program Guide, and the Coleman Court's Orders

Defendants' actions and inactions have directly impeded class members' basic Fourteenth Amendment due process rights, including, for example, their abilities to have fair RVR hearings. *See, e.g., Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974) (requiring adequate notice of and opportunity to present a meaningful defense in disciplinary proceedings); *Armstrong v. Davis*, 275 F.3d 849, 865 (9th Cir. 2001); *Ashker v. Newsom*, No. 09-CV-05796-CW (RMI), 2019 WL 330461, *13 (N.D. Cal. Jan. 25, 2019) (knowing reliance on fabricated evidence in RVR hearing violates due process). As we have also shown, *Coleman* class members are routinely denied access to witnesses or other exculpatory evidence during RVR hearings. Staff frequently decide that class members are guilty of the alleged conduct before the matter has been heard and in spite of compelling evidence that the reporting employees' version of events is not credible.

The pattern and practices documented in this letter also violate the Program Guide and the RVR policies developed by Defendants in response to findings by the Special Master and orders issued by the *Coleman* Court.

In his 27th Round Monitoring Report, the Special Master found multiple deficiencies with CDCR's implementation of its disciplinary policies, ranging from a lack of adequate training to poor adherence to the alternate documentation policy. Special Master's 27th Round Monitoring Report, ECF No. 5779 at 106-15 (Feb. 13, 2018) ["27th

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 12

Round Report”]. **Of 19,983 RVRs the Special Master team reviewed, CDCR only documented one in an alternate manner. *Id.* at 111-13.** The Special Master found additional monitoring was necessary to “work with CDCR to address the deficiencies.” *Id.* at 115. The Special Master’s 2018 Inpatient Monitoring Report raised similar concerns, finding that “mental health assessments did not reflect consideration of mental health factors where patients were found guilty,” “notable credit forfeitures were imposed,” and many RVR mental health assessments were not “timely completed and returned by mental health.” Special Master’s Report on Inpatient Programs, ECF No. 5894 at 67-70 (Aug. 30, 2018).

CDCR’s implementation of its disciplinary policies remain deficient. The misconduct discussed in the class member declarations violates the safeguards ordered by the *Coleman* court that are intended to protect the rights of mentally ill patients in the RVR process, as implemented in § 3317.2 of Title 15 of the California Code of Regulations. The fact that class members are routinely issued RVRs as a result of cell extractions and in retaliation for expressing or acting upon suicidal ideation violates the *Coleman* Court’s May 4, 2015 Order regarding CDCR’s Implementation of Policies and Procedures on RVRs. *See* ECF No. 5305. Despite evidence that many of the incidents discussed in the class member declarations were strongly influenced by severe mental illness, there is no evidence that Defendants have chosen to review and document the incidents in any of the declarations through the alternate process outlined in § 3317.1 rather than the standard RVR process.

6. Conclusion

The evidence outlined above demonstrates a pattern of CDCR employees issuing RVRs to *Coleman* class members in order to discredit allegations of staff misconduct, retaliate against those who report misconduct, and punish class members for their mental illness. Class members are substantially harmed by the frequent issuance of false and retaliatory RVRs, which violates the Constitution, the Program Guide, and the Orders of the *Coleman* Court.

Defendants must take steps to rectify the harm suffered by *Coleman* class members. Please immediately review the allegations contained in the class member declarations listed in **Appendix A**, review the associated RVRs of which these class members were found guilty, and, in light of the evidence offered in the declarations and any other relevant information, immediately rescind the RVRs and expunge them from the class members’ custody files. Please also reverse all attendant effects of these RVRs.

PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 13

Defendants also must take immediate steps to address this pattern and practice to minimize its effects on the entire *Coleman* class.

We look forward to your responses to these important concerns.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Thomas Nolan

Thomas Nolan

By: Of Counsel

TN:JRG

Enclosures

cc: Coleman Special Master Team

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PRIVILEGED AND CONFIDENTIAL

CDCR OLA Legal Team

September 24, 2020

Page 14

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Name of Coleman and/or Armstrong Class Member	CDCR Number	Facility at which Violation Allegedly Occurred	Alleged Violation	Date of Violation
		RJD	Assault on Staff	November 8, 2017
		RJD	1)Participation in a Riot 2) Delay of an Officer in performance of duties	1)On or around October 30, 2018 2) May 9, 2020
		RJD	Delaying a Peace Officer	September 1, 2019
		RJD	Battery on a Peace Officer	May 7, 2018
		RJD	Participation in a Riot	May 21, 2016
		RJD	Battery on Peace Officer	October 2, 2018
		RJD	Disrespect	July 27, 2019
		RJD	Fighting	August 5, 2019
		RJD	Refusal to Accept Assigned Housing; Behavior that Could Lead to Violence	June 7, 2018
		RJD	Delaying a Peace Officer	May 30, 2019
		RJD	Resisting a Peace Officer	On or around November 18, 2018
		RJD	Battery on a Peace Officer	July 1, 2019
		RJD	Obstructing a Peace Officer	September 6, 2019
		RJD	Battery on a Peace Officer	April 23, 2019
		RJD	Resisting a Peace Officer	December 21, 2019
		RJD	Battery on a Peace Officer	July 14, 2019
		RJD	Assault on Staff	On or around August 21, 2018
		LAC	Resisting Staff	August 26, 2019
		LAC	Assault on Staff causing GBI	September 8, 2019

	LAC	Assault on Staff	On or around November 1, 2019
	LAC	Behavior that Could Lead to Violence	March 6, 2020
	LAC	Disobeying an Order	December 9, 2018
	LAC	Battery on a Peace Officer	On or around September 22, 2017
	LAC	1) Refusing to House 2) Behavior that Could Lead to Violence 3) Battery on a Peace Officer	1) November 30, 2018 2) August 1, 2019 3) November 8, 2019
	LAC	Resisting Staff	June 13, 2019
	LAC	Resisting Staff	July 25, 2018
	LAC	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) November 20, 2019 2) July 7, 2020
	LAC	Resisting Staff	June 29, 2018
	LAC	Battery on a Peace Officer	December 20, 2019
	LAC	Resisting Staff	November 9, 2019
	LAC	Behavior that Could Lead to Violence	January 13, 2020r
	LAC	Battery on a Peace Officer	June 27, 2019
	RJD	Battery on a Peace Officer	March 31, 2020
	RJD	Refusing to House; Threatening Staff	April 23, 2020
	LAC	Battery on a Peace Officer	December 15, 2019
	LAC	Assault on a Peace Officer	April 12, 2019
	LAC	Battery on a Peace Officer	August 23, 2018
	LAC	Battery on a Peace Officer	April 11, 2020
	LAC	Battery on a Peace Officer	April 14, 2020

SATF	Assault on a Peace Officer not likely to cause GBI; Possession of Dangerous Contraband	April 4, 2020
COR	Possession of a Weapon; Assault on a Peace Officer not likely to cause GBI	September 3, 2019
LAC	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) March 21, 2020 2) April 2, 2020
CCI	Assault on a Peace Officer by Means not Likely to Cause GBI	December 23, 2019
CCI	Resisting Staff	February 18, 2020
COR	Battery on a Peace Officer	April 7, 2020
RJD	Assault on a Peace Officer Likely to Produce GBI	April 18, 2020
KVSP	Battery on a Peace Officer	August 27, 2019
KVSP	1) Fighting 2) Battery on a Peace Officer	1) August 27, 2019 2) September 16, 2019
LAC	Resisting Staff	December 1, 2018
LAC	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) June 20, 2018 2) August 7, 2019
LAC	1) Battery on a Peace Officer 2) Resisting a Peace Officer	1) June 13, 2017 2) July 1, 2017
RJD	1) Battery on a Peace Officer	1) June 17, 2020
KVSP	1) Fighting 2) Threatening Staff	1) August 27, 2019 2) September 16, 2019
RJD	1) Destroying Property	April or May 2020
LAC	Battery on a Peace Officer	October 1, 2019
CMF	Battery on a Peace Officer	November 27, 2019
COR	Assault on a Peace Officer by Means Not Likely to Cause GBI	September 24, 2019

	LAC	Battery on a Peace Officer	February 16, 2019
	LAC	Battery on a Peace Officer	April 15, 2020
	COR	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) June 17, 2019 2) May 25, 2020
	COR	Resisting a Peace Officer	April 5, 2019
	COR	Delaying a Peace Officer	May 1, 2019
	COR	Battery on a Peace Officer	May 4, 2020
	COR	Assault on a Peace Officer by Means Not Likely to Cause GBI	December 16, 2019
	KVSP, LAC, SAC	1) Assault on a Peace Officer by Means Not Likely to Cause GBI 2) Battery on a Peace Officer 3) Resisting a Peace Officer	1) April 2, 2019 2) July 24, 2019 2) March 9, 2020
	LAC	Assault on a Peace Officer by Means Not Likely to Cause GBI	July 14, 2019
	LAC	Threatening a Peace Officer	April 27, 2020
	KVSP	1) Indecent Exposure 2) Mutual Combat	1) July 22, 2019 2) August 27, 2019
	KVSP	Battery on a Peace Officer	June 6, 2019
	COR	Delaying a Peace Officer	May 30, 2020
	LAC	Resisting Staff	July 4, 2019
	KVSP	Assault and Battery with a Deadly Weapon	March 27, 2020
	COR	Fighting	October 2, 2019
	KVSP	Battery on a Peace Officer	February 27, 2020
	MCSP	Delaying a Peace Officer	August 27, 2020
	KVSP	Behavior Which Could Lead to Violence	June 6, 2020

EXHIBIT D



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August 18, 2021

VIA ELECTRONIC MAIL ONLY

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Re: *Armstrong v. Newsom; Coleman v. Newsom*: Plaintiffs' Response to July 8, 2021 Letter Regarding False and Retaliatory Rule Violation Reports Issued to Class Member Declarants
Our File Nos. 0581-03, 0489-03

Dear Jenn, Tamiya, and Sundeep:

Plaintiffs' counsel in *Armstrong* and *Coleman* write in response to Defendants' July 8, 2021 letter regarding Defendants' review of Rule Violation Reports ("RVRs") issued to class members who submitted declarations in support of the *Armstrong* staff misconduct litigation. Defendants conducted this review in response to Plaintiffs' September 24, 2020 letter, which set forth substantial evidence of a pattern of false and retaliatory RVRs issued against *Coleman* and *Armstrong* class members. *See* Letter from T. Nolan to N. Weber & M. Bentz (Sept. 24, 2020). In the September 24, 2020 letter, Plaintiffs demanded that Defendants review each of the RVRs listed in Appendix A and take action to rescind the RVRs.¹

¹ Plaintiffs also requested that Defendants take immediate steps to modify their policies and practices to address the epidemic of false and retaliatory RVRs issued against people with disabilities in CDCR. Plaintiffs submitted additional advocacy letters, including a June 10, 2021 letter, presenting additional evidence of systemic

PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 2

Of the 89 RVRs listed in Appendix A of the September 24, 2020 Letter, Defendants elected to not disturb the prior guilty findings in 67 cases (75%). In only 22 cases did Defendants take any action favorable to the incarcerated person. Defendants rescinded 17 RVRs and reheard 5 (of which, 2 resulted in not guilty findings, 2 resulted in guilty findings, and 1 is pending referral for prosecution).

Below, Plaintiffs discuss fourteen cases for which Defendants, in the July 8, 2021 letter, refused to rescind or rehear the RVRs.² In each of these cases, Defendants' review (as described in the July 8, 2021 letter) was inadequate. Defendants failed to explain how the RVRs should stand in the face of exculpatory evidence, including documented injuries, witness statements, and gross inadequacies in the reports from officers. And in a number of cases, Defendants' review mischaracterized the relevant evidence. The inadequacy of Defendants' review in this limited set of cases calls into question the adequacy of Defendants' review in all cases contained in Plaintiffs' September 24, 2020 letter. Defendants must re-review each of these cases. The new review must take into account all available evidence, including evidence presented by Plaintiffs in *Armstrong*. If Defendants do not agree to rescind these RVRs, Defendants must explain why, notwithstanding the exculpatory evidence, Defendants concluded that staff had established the RVR violation by a preponderance of the evidence.

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problems regarding false and retaliatory RVR's, as well as the shortcomings of the current process to detect and remedy such problems, and proposing specific remedies to fix the RVR process. *See* Letter from P. Godbold to J. Neill and T. Davis (June 10, 2021); *see also* Letter from R. Lomio to T. Davis & B. Beland (Aug. 14, 2021). We appreciate the prompt rescission of the RVR issued to class member [REDACTED] for requesting a diaper on "the wrong day." *See* Email from J. Neill to G. Grunfeld & R. Lomio (Aug. 17, 2021). CDCR's prompt action on that RVR should be emulated elsewhere.

² Plaintiffs have not reviewed all 67 cases where Defendants refused to take action. Plaintiffs reviewed the 14 discussed in detail here because of Plaintiffs' familiarity with the cases and obvious problems with Defendants' reviews. Plaintiffs reserve the right to raise similar concerns regarding other RVRs that Defendants refused to rescind or rehear.

PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 3

1. Defendants Misreport and Mischaracterize Exculpatory Evidence

In the following cases, CDCR's response, upholding the guilty finding, is based on information from the record that is simply wrong, mischaracterized, or lacks credibility based on evidence presented by Plaintiffs' counsel.

A. ██████████), March 31, 2020 – Battery on a Peace Officer

Mr. ██████████ testified that officers lied in the RVR incident reports, that he did not batter officers, and that the RVR and incident reports were used to cover up serious injuries he received as a result of unnecessary and excessive force. *See* Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 23, ¶¶ 9-13. At least two class members, ██████████) and ██████████), corroborate Mr. ██████████ account of events and declare that Mr. ██████████ did not batter staff. *Id.*, Ex. 14, ¶¶ 5-7; Ex. 19, ¶¶ 5-7.

In spite of this evidence, Defendants assert: *Based on the evidence utilized to conduct the investigation, it appears that Mr. ██████████ actions were met with staff using appropriate use of force to curtail the extent of injuries that staff would have sustained. There was no report of broken bones/loss of consciousness to Mr. ██████████ (emphasis added). This RVR was reissued and it was reheard on May 21, 2020. Mr. ██████████ was found guilty of this rules violation based on a preponderance of evidence.*

Defendants' statement of the evidence in this case is simply wrong. There is undisputed evidence that Mr. ██████████ suffered *broken bones* as a result of force used against him. *See Exhibit A* (section of incident report, with highlights added, noting fracture sustained in use of force). Mr. ██████████ declares, and his medical records confirm, that he suffered multiple fractures as a result of the use of force against him on March 31, 2020. *See* Mar. 31, 2020 Outside Hospital Records; Apr. 6, 2020 XR Foot Right-3 VWS; Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 23, ¶ 12. Defendants' assertion to the contrary calls into question the adequacy of their review of this case. There is also no indication in Defendants' response that exculpatory witness testimony was considered during their review or during the re-hearing of this case.

That Mr. ██████████ RVR was reissued and reheard without consideration of this exculpatory evidence, even after Plaintiffs brought the evidence to light, only underscores the need for Headquarters-level oversight of the adjudication of serious RVRs. Plaintiffs request a second rehearing of Mr. ██████████ RVR, with full consideration of sworn witness statements and medically-verified serious bodily injuries sustained in this case.

PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 4

B. [REDACTED], December 20, 2019 – Battery on a Peace Officer

Mr. [REDACTED] testified that the RVR he received was false, that multiple officers initiated excessive force against him, and that he received an RVR for defending himself in the process. *See* Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 43, ¶¶ 8, 13. Mr. [REDACTED] account of events is corroborated by multiple witnesses including [REDACTED], [REDACTED], and [REDACTED]. *See* Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 30, ¶¶ 27-30; Ex. 36, ¶¶ 31-32; Ex. 45, ¶¶ 29-30. Witness testimony from four incarcerated people who were interviewed during subsequent investigation further undermines the version of events reported in the RVR. *See* Schwartz Statewide Reply Decl., Dkt. 3106-5, ¶¶ 271, 277.

In spite of this evidence, Defendants assert: *No policy violations were identified, all due process requirements were met for the RVR, and Mr. [REDACTED] guilty finding was established by a preponderance of evidence. Additionally, the CDCR 7219 Medical Report of Injury or Unusual Occurrence form that was completed for Mr. [REDACTED] shows he sustained no injuries (emphasis added). However, the CDCR 7219 Medical Report of Injury and Unusual Occurrence completed for the two staff members involved in the incident showed injuries that were consistent with being struck by Mr. [REDACTED]*

In fact, Mr. [REDACTED] declares, and his medical records confirm, that he suffered multiple fractures as a result of staff's use of force, including a finger fracture, a radial head fracture, a coronoid fracture, and a rib fracture. *See* Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 43, ¶¶ 8, 11; Dec. 21, 2019 Outside Hospital Records; Dec. 30, 2019 XR Elbow Right-3 VWS, XR Hand Left-3 VWS, XR Ribs Left-2 VWS W/ Chest 1 VW. Moreover, Defendants' report that Mr. [REDACTED] Form 7219 did not document injuries is false; the Form 7219 documented swelling and abrasions. *See Exhibit B*. Regardless, Defendants' reliance on the Form 7219 is disingenuous in the face of undisputed evidence from an outside hospital of serious injuries in this case. The Form 7219 is not always an accurate representation of injuries sustained in use of force incidents, and Plaintiffs have raised multiple reports of misconduct by health care staff failing to accurately document reported injuries on 7219 Forms and incarcerated people too afraid of retaliation to report their injuries to medical staff. *See, e.g.*, Letter from G. Grunfeld to M. Lopes, J. Kelson, & D. Toche (July 27, 2020); Freedman RJD Decl., *Armstrong* Dkt. 2921-3 & 2921-4, Ex. 27, ¶¶ 11, 15; Ex. 49, ¶¶ 14, 19; Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 41, ¶¶ 21, 24; Grunfeld Statewide Reply Decl., *Armstrong* Dkt. 3108-1, Ex. 6, ¶¶ 14, 20; Ex. 11, ¶¶ 10-11. Defendants' response also fails to address the substantial discrepancy between Mr. [REDACTED] documented

PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 5

injuries and the degree of force reported by staff. *See* Schwartz Statewide Reply Decl., Dkt. 3106-5, ¶ 280.

Defendants' response appears to fail to consider exculpatory witness testimony from several incarcerated people and documented serious bodily injuries sustained in the use of force. Again, Plaintiffs request reconsideration of this RVR with full consideration of all exculpatory evidence.

C. ██████████), June 13, 2019 – Resisting Staff

After review, Defendants assert: *Mr. ██████████ CDCR 7219 medical Report of Injury or Unusual Occurrence form shows that he had a cut on his chin and no other injuries. Mr. ██████████ requested several inmate witnesses, who all testified at his hearing, but none of these inmate witnesses corroborated Mr. ██████████ testimony. A preponderance of evidence established that Mr. ██████████ was guilty of actively resisting staff while being transported from a temporary holding module to his building.*

Defendants neglect that witness testimony from six incarcerated people, gathered during the subsequent investigation, undermines the version of events reported in the RVR. *See* Schwartz Statewide Reply Decl., Dkt. 3106-5, ¶ 207. Moreover, the RVR is further undermined by material inconsistencies between incident reports and staff testimony. *Id.*, ¶¶ 215, 220. In his review of the investigation, Mr. Schwartz opined that “[t]he correct conclusion in this case, based on ample evidence, is that two staff used excessive force on Mr. ██████████ in order to retaliate for his verbal statements to them and then they and two other staff failed to report the unnecessary and excessive force and wrote false reports and then provided false information during interviews with an OIA investigator.” *Id.*, ¶ 221.

Defendants' response, characterizing Mr. ██████████ injuries as merely a cut on his chin, downplays the fact that his laceration actually required several sutures to close. Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 49, ¶ 17; June 13, 2019 ED Note. Moreover, Mr. ██████████ declares that he suffered a greater range of injuries than the injuries documented on the Form 7219, including a black eye and substantial swelling on his head. *See* Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 49, ¶ 17. Taken together, these injuries undermine the version of events presented by staff in the RVR.

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PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 6

Defendants' response completely disregards exculpatory evidence in the following additional cases:

- [REDACTED], **August 27, 2019**: Defendants' response states that all due process requirements were met and that Mr. [REDACTED] was found guilty based on a preponderance of the evidence. However, this response ignores the testimony of multiple incarcerated witnesses. At the RVR hearing, two incarcerated people corroborated Mr. [REDACTED] allegations. *Id.*, Ex. 53, ¶ 31. Defendants also appear to fail to consider exculpatory testimony from witness [REDACTED]. *Id.*, Ex. 37, ¶ 28. In a subsequent investigation, several witnesses provided additional testimony that challenged the veracity of this RVR. *See* Schwartz Statewide Reply Decl., Dkt. 3106-5, ¶ 179.
- [REDACTED], **November 18, 2018**: Defendants' response fails to explain why a preponderance of the evidence supports guilt in light of exculpatory witness testimony from class members [REDACTED], [REDACTED], and [REDACTED]. *See* Freedman RJD Decl., *Armstrong* Dkt. 2922-3 & 2922-4, Ex. 11, ¶¶ 24-26; Ex. 16, ¶ 15; Ex. 54, ¶¶ 20-22.
- [REDACTED], **December 9, 2018**: Defendants' response fails to explain why a preponderance of the evidence supports guilt in light of material inconsistencies in officers' statements about the incident. *See* Schwartz Statewide Reply Decl., Dkt. 3106-5, ¶¶ 235-236. Defendants' response also neglects exculpatory witness testimony provided by six incarcerated people during that same investigation. *Id.*, ¶ 244.
- [REDACTED], **May 4, 2020**: Defendants' response fails to explain why a preponderance of the evidence supports guilt in light of exculpatory witness testimony from class members [REDACTED] and [REDACTED]. *See* Grunfeld Statewide Reply Decl., *Armstrong* Dkt. 3108-1, Ex. 23, ¶¶ 17-23; Ex. 36, ¶¶ 14-21.
- [REDACTED] & [REDACTED], **August 27, 2019**: Defendants' response fails to explain why a preponderance of the evidence supports guilt in light of exculpatory witness testimony that Mr. [REDACTED] and Mr. [REDACTED] provide for each other, as well as exculpatory testimony from a third class member, [REDACTED]. *Id.*, Ex. 56, ¶¶ 8-9; Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 60, ¶¶ 8-9; Ex. 61, ¶¶ 18-21.

PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 7

Even though all three class members were involved in the August 27, 2019 incident, and all three class members subsequently provided exculpatory testimony that is internally consistent, Defendants elected to rescind the RVR assessed against Mr. [REDACTED] but not those assessed against Mr. [REDACTED] and Mr. [REDACTED].

For each RVR, Defendants must explain how a preponderance of the evidence supports a guilty finding in the face of exculpatory testimony from multiple corroborating incarcerated witnesses, as well as staff reports that are not credible.

2. Defendants Fail to Reconcile Evidence Suggesting That Staff’s Use of Force Was Unnecessary or Excessive

In the following cases, Defendants’ response omits material facts about serious injuries suffered by class members during the incidents in question. Properly considered, these injuries tend to support class members’ reports that the force used against them was unnecessary or excessive and, in turn, undermine Defendants’ assertion that a preponderance of the evidence supports class members’ guilt.

- [REDACTED], **April 18, 2020**: Mr. [REDACTED] declares that he did not threaten staff, clench his hands into fists (as reported in the RVR), or otherwise behave in a manner that justified the use of force against him. *See* Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 20, ¶¶ 9-12. Mr. [REDACTED] suffered a fracture as a result of staff’s use of unnecessary force. *Id.*, ¶¶ 17-19.
- [REDACTED], **December 16, 2019**: Mr. [REDACTED] declares that staff did not issue any commands or orders before assaulting him; instead, they “just beat [him] up.” *See* Grunfeld Statewide Reply Decl., *Armstrong* Dkt. 3108-1, Ex. 24, ¶ 12. Mr. [REDACTED] suffered a fracture and permanent nerve damage as a result of staff’s use of unnecessary force. *Id.*, ¶¶ 24, 28-30.
- [REDACTED], **September 24, 2019**: Mr. [REDACTED] declares that he did not lunge toward or strike staff, as alleged in the RVR. *Id.*, Ex. 33, ¶¶ 11-15, 21. Mr. [REDACTED] suffered a fracture and deviated septum as a result of staff’s use of unnecessary force. *Id.*, Ex. 33, ¶¶ 18-19.
- [REDACTED], **April 12, 2019**: Mr. [REDACTED] declares that staff used force against him while he was compliant, with his hands in the air. *See*

PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 8

Freedman Statewide Decl., *Armstrong* Dkt. 2947-5, Ex. 41, ¶ 16. Mr. ██████ suffered fractures and head trauma as a result of staff's use of unnecessary force. *Id.*, ¶¶ 24-25.

- ██████), **September 3, 2019**: Mr. ██████ declares that staff used force against him while he was restrained in waist and ankle chains. *Id.*, Ex. 59, ¶¶ 12-13. Mr. ██████ suffered a fracture as a result of staff's use of unnecessary force. *Id.*, ¶ 18.
- ██████), **August 27, 2019**: Mr. ██████ declares that he did not swing his cane at staff nor resist staff, as alleged in the RVR. *Id.*, Ex. 61, ¶ 22. Mr. ██████ suffered a fracture as a result of staff's unnecessary use of force. *Id.*, ¶ 21.

For each RVR, Defendants must reconcile all available facts and evidence, including documented serious bodily injuries sustained by class members. Defendants must explain why a preponderance of the evidence supports guilt in light of the serious bodily injuries sustained by class members at the hands of staff.

Conclusion

Our limited analysis of Defendants' responses demonstrates that Defendants have failed to conduct meaningful reviews in many cases. In the cases discussed above, Defendants failed to provide sufficient justification for their conclusion that guilty findings should stand in the face of exculpatory evidence raised by Plaintiffs' counsel and available to Defendants. Defendants' responses were inaccurate and incomplete, calling into question Defendants' responses to the other RVRs about which CDCR also refused to take action and which were not discussed in this letter.

For the cases included in Plaintiffs' September 24, 2020 letter (excluding those RVRs that were subsequently rescinded), Plaintiffs request that Defendants conduct a thorough review considering *all* available evidence and explaining the basis for upholding guilty findings in light of all available evidence; it is not sufficient to defer to the Hearing Officer's decision, as Defendants appeared to do in their July 8, 2021 response, because improper adjudication by biased Hearing Officers is part of the very problem that Plaintiffs seek to remedy. Plaintiffs' advocacy over the last few months have shown many examples of poor and biased decision-making exhibited by Hearing Officers. *See, e.g.*, Letter from P. Godbold to J. Neill and T. Davis (June 10, 2021) at 3 (Hearing Officer finding class members guilty of substantively identical RVRs). In fact, a review of RVR Hearing Officer training materials revealed that bias is currently

PRIVILEGED AND CONFIDENTIAL

Jennifer Neill, et al.

August 18, 2021

Page 9

intrinsic to the process. *See* Letter from C. Trapani & P. Godbold to M. Bentz & T. Davis (July 26, 2021) at 3-6. Changes are necessary.

Plaintiffs await Defendants' response to this and our June 10, 2021 letter and hope the parties can agree to discuss long over-due reforms necessary for the RVR process to identify and remedy false and retaliatory RVRs. If Defendants take staff misconduct seriously, reforms to the RVR process must be part of the solution.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold
Of Counsel

PG:JRG

Enclosures

cc: Ed Swanson

August Gugelmann

Adriano Hrvatin

Trace Maiorino

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EXHIBIT E



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VIA EMAIL ONLY

May 17, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

Armstrong Advocacy Letter
RE: Sign Language Interpretation During RVR Hearings and Allegations
of Retaliation Against Deaf Class Member at SATF

Dear Ms. Davis:

We write regarding ██████████ a 47-year-old Deaf class member currently housed at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). Mr. ██████████ primary form of communication is sign language. He was found guilty of a Rule Violation Report (“RVR”) in January 2021, on the basis of a single sentence he reports was misinterpreted from American Sign Language (“ASL”) into English. He lost time credits, pay, and privileges, and is now facing transfer from his Level III yard to a Level IV institution hundreds of miles from his family in Bakersfield and Tulare County, California.

As explained in this letter, SATF and other institutions that house people whose primary form of communication is sign language must update their local operating procedures to require use of interpreter teams during due process encounters like RVR hearings, and also should implement a system to determine whether additional accommodations, such as real-time captioning or intermediary interpreters, are appropriate on a case-by-case basis. In addition, RVR hearings conducted in sign language should be videotaped to ensure that there is a clear and accurate record in the event there later is a dispute as to what the deaf person said and/or was told. These protections are consistent with those we have requested during parole hearing and with best practices for legal proceedings more broadly. *See Attachment A*, Letter from Rita Lomio, Plaintiffs’ Counsel, to Joanna Hood, Office of the Attorney General, and Jessica Blonien, Board of Parole Hearings, Sign Language Interpreters and Parole Hearings (Nov. 13, 2019).

RVR HEARING AND FINDING OF GUILT BASED ON ASL-ENGLISH INTERPRETATION

Mr. ██████████ was issued an RVR on January 7, 2021, for possession of alcohol. At the hearing on January 28, the Senior Hearing Officer found Mr. ██████████ guilty based on “the evidence provided, the witness interview and Inmate ██████████ partial admission.” *See Attachment B*,

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Ms. Tamiya Davis
Re: Sign Language Interpretation During RVR Hearings
May 17, 2021
Page 2

Disciplinary Hearing Results, Log No. 7054770 (Jan. 28, 2021). The focus of this letter is on the purported “partial admission.”¹

According to the RVR hearing documents, Mr. [REDACTED] “inadvertently admitted to knowing there was a bottle of alcohol inside his cell when he stated the following: ‘This is bullshit, you are busting me for a bottle of alcohol when a few cells down from me I know guys who have five gallon buckets of it.’” Plaintiffs’ counsel interviewed Mr. [REDACTED] with a team of sign language interpreters to discuss this comment. Mr. [REDACTED] explained that the English version of the statement documented and relied on by the Senior Hearing Officer was a misinterpretation of what he had said in ASL during the RVR hearing. He reported that he said:

That is bullshit. I never had alcohol. A few people next to me in other cells, they’re making gallons of it, I see it, and you’ve never given them a 115. . . You’re taking it very seriously, and they have five gallons of wine they’re making in other cells. Which is more serious? If I had a soda pop bottle-size compared to theirs. If I had it, but I had no alcohol. And you let them go, or you ask them to dump it out. You don’t care about five gallons of wine, compared to a few ounces? If I had it, you’re favoring me.

Properly interpreted into English, this statement is not a “partial admission.” However, it appears that interpretation into English during the RVR hearing (at least as recorded by the Senior Hearing Officer) lost all appropriate nuance and the critical word—“if.”

This is not surprising. *See Michele LaVigne & McCay Vernon, An Interpreter Isn’t Enough: Deafness, Language, and Due Process, 2003 Wis. L. Rev. 843, 858 (2003)* (“Hypotheticals present another common problem. This can be especially problematic for deaf persons in the courtroom. The meaning of a phrase or sentence set off by ‘if’ or marked with more subtlety by use of the subjunctive, is often missed and can lead to miscommunication.”).

¹ The “evidence provided” appears to be the RVR author’s description of finding alcohol in a bottle in a cell shared by Mr. [REDACTED] and Mr. [REDACTED] which the author emptied into a sink in the dayroom. The “witness interview” apparently refers to the brief questioning of the RVR author as to whether the alcohol belonged to Mr. [REDACTED] or Mr. [REDACTED]. The RVR author testified that Mr. [REDACTED] “came down to the officers office and stated the alcohol was his.” The witness interview therefore suggests that Mr. [REDACTED] cellmate at the time admitted to housing unit officers that the alcohol belonged to him, and not to Mr. [REDACTED]. There is no documentation of other evidence that the alcohol belonged to Mr. [REDACTED] and not to Mr. [REDACTED] except the “partial admission” that appears to have resulted from inaccurate interpretation, as explained in this letter.

Ms. Tamiya Davis
Re: Sign Language Interpretation During RVR Hearings
May 17, 2021
Page 3

ASL is a unique and independent language. It is “not a manual representation of English, with individual signs corresponding to English words.” John W. Adams & Pamela S. Rohring, *Handbook to Service the Deaf and Hard of Hearing: A Bridge to Accessibility* 76 (2004). ASL has its own syntax and has a much smaller vocabulary than English, and signing intensity, speed, emphasis, and facial expressions are vital for understanding different meanings of similar words or ideas. *See* Michele LaVigne & McCay Vernon, *An Interpreter Isn’t Enough: Deafness, Language, and Due Process*, 2003 Wis. L. Rev. 843, 876 (2003). As a result, interpreters must make creative decisions regarding how best to convey a deaf signer’s meaning from ASL to English. This process can result in errors, as well as in inaccuracies in interpretation that impact the understanding and perception of the non-signing listener. Due process encounters like Mr. █████ RVR hearing “involve judging the credibility of those who testify . . . An error in interpretation—or an incorrectly expressed nuance—can result in a misunderstanding that could be fatal to an entire case.” George Castelle, *Misunderstanding, Wrongful Convictions, and Deaf People*, in Ceil Lucas, ed., *Language and the Law in Deaf Communities* 168-175, 173 (2003).

Team interpretation is the industry standard for exactly this reason. It serves as a “quality control mechanism. . . Team interpreters are necessary for the purposes of turn-taking to reduce mental fatigue, reducing the potential for errors in the interpretation, monitoring the accuracy of the interpretation, assisting with note-taking, and monitoring the environment and logistics of the setting while the interpreting is produced.” Nat’l Consortium of Interpreter Education Centers, *Best Practices: American Sign Language and English Interpretation within Court and Legal Settings* 18-19 (Mar. 2009) (internal quotation marks and citation omitted). This is particularly true in legal settings, where “[u]nrecognized errors in legal interpreting constitute a risk, both to the deaf party and the administration of justice.” *Id.*; *see also* Registry of Interpreters for the Deaf, *Standard Practice Paper: Team Interpreting* (2007) (“At a minimum, two interpreters are typically required for most legal assignments.”).

Of course, a team of two interpreters may not always be sufficient to meet the widely diverse communication needs of all deaf class members. Some deaf and hard-of-hearing people have grown up with limited or no access to any language, which has life-long consequences for their ability to understand and communicate in standard sign language.² Deaf people with intellectual disabilities often struggle to learn sign language, and if they do, “the ultimate

² *See, e.g.*, Michele LaVigne & McCay Vernon, *An Interpreter Isn’t Enough: Deafness, Language, and Due Process*, 2003 Wis. L. Rev. 843, 867 (2003) (“Experts in the field of deafness estimate that up to fifteen percent of the profoundly deaf population have been so deprived of language that they would be categorized as having minimal language skills or minimal language competency. These people may have picked up individual words or signs, but they have developed little or no language base.” (internal alterations removed)).

Ms. Tamiya Davis
Re: Sign Language Interpretation During RVR Hearings
May 17, 2021
Page 4

proficiency levels are often low compared to the ones attained by deaf children without intellectual disabilities.”³ Foreign-born deaf people may communicate using the sign language of their native country, which will be completely different from ASL. And deaf people with limited or no vision communicate using a form of sign language (a visual language) that has been adapted for their needs.⁴ To ensure that an interpreter is qualified and sufficiently able to provide effective interpretation, Defendants must ensure that the correct type of interpreters are provided for due process encounters.⁵ Intermediary and tactile interpreters have specialized training and extensive knowledge of deafness and Deaf culture which is best-suited to people who have limited communication skills, use idiosyncratic non-standard signs or gestures, use a foreign sign language, or are deaf-blind or deaf with limited vision.⁶

Mr. [REDACTED] also noted that he and other deaf individuals who can read some English would benefit from real-time captioning at due process encounters, in addition to an interpreter team.

³ See Harry Knoors & Mathijs P. J. Vervloed, Educational Programming for Deaf Children with Multiple Disabilities, Oxford Handbook of Deaf Studies, Language, and Education 18 (2011).

⁴ See Am. Ass’n of the Deaf-Blind, How Do Deaf-Blind People Communicate?, available at http://www.aadb.org/factsheets/db_communications.html (last updated Feb. 11, 2009).

⁵ See Nat’l Consortium of Interpreter Education Centers, Best Practices: American Sign Language and English Interpretation within Court and Legal Settings 26 (Mar. 2009) (“Most court, legal, and law enforcement personnel are unaware of the communication diversity that exists among deaf people. As a result, when courts, attorneys, and law enforcement personnel attempt to hire legal interpreter or request legal interpreters from a referral service, little information is known about how the deaf person communicates. . . . Many factors can have a profound effect on whether or not an interpreter is qualified and sufficiently able to provide an accurate, meaningful, and effective interpretation for a deaf individual or party involved in a court case or legal matter. Just because an interpreter is nationally certified and may have experience interpreting in court and legal settings does not ensure that the interpreter will be successful interpreting for a specific deaf individual.”).

⁶ See Registry of Interpreters for the Deaf, Standard Practice Paper: Use of a Certified Deaf Interpreter 1 (1997); see also Am. Bar Ass’n, Court Access for Individuals Who Are Deaf and Hard of Hearing 16 (2017) (certified deaf interpreters may be appropriate where the deaf person has “delayed language acquisition, minimal or limited communication skills, mental health conditions, substance abuse, learning disabilities, developmental disabilities, cognitive impairments, blindness or limited vision, or limited education”).

Ms. Tamiya Davis
Re: Sign Language Interpretation During RVR Hearings
May 17, 2021
Page 5

Real-time captioning provides a written transcription of spoken language (either on a computer screen or overhead projector). Had Mr. [REDACTED] been able to read a real-time transcription of how the interpreter voiced his comments, he could have interjected to clarify that he was not admitting fault—he was simply posing a hypothetical. Other deaf people, of course, do not have the same level of English literacy as Mr. [REDACTED]. For that reason, hearing officers should be directed not to rely on the sort of “gotcha” reasoning used against Mr. [REDACTED] instead, if they believe a deaf person has admitted fault, they should probe further to ensure that there is no misunderstanding as to what is being said.

Finally, while these remedies will help protect deaf class members during due process encounters, there still remains a risk of error in interpretation. For this reason, Defendants must also video record RVR hearings for people who communicate through sign language.⁷ *See* Michele LaVigne & McCay Vernon, *An Interpreter Isn’t Enough: Deafness, Language, and Due Process* 2003 Wis. L. Rev. 843, 923 (2003); Nat’l Consortium of Interpreter Education Centers, *Best Practices: American Sign Language and English Interpretation within Court and Legal Settings* 22 (Mar. 2009) (“Creating a visual recording through the use of VHS or digital technology is the only way to preserve a statement made by a deaf person using sign language. Without a record of the deaf person’s statement, the interpretation of the deaf person’s statement is all that remains. Although legal interpreters take precautions to reduce the potential risk of error in an interpretation that risk does persist. Capturing the original statement of the deaf person on video is essential for preserving any evidence for a legal challenge that might arise during a court or legal proceeding.”). Video recording must be done with two cameras, one of which documents the deaf participant, and the other of which documents the interpreters. The camera angle and frame must show the entirety of the signer’s body from the waist up, including approximately six inches of space above their head, and extending approximately twelve inches on either side of their body. In addition, the camera must pick up all the auditory statements by both hearing officers and the interpreter.

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⁷ Although Mr. [REDACTED] appealed his RVR, he did not do so on the grounds of the misinterpretation of the purported admission because, among other things, he reasonably believed that the argument was too nuanced and there was no documentation or other evidence in his favor because there was no video record of his ASL statement. *See Attachment C*, Log No. 88931.

Ms. Tamiya Davis
Re: Sign Language Interpretation During RVR Hearings
May 17, 2021
Page 6

As a result, SATF and other institutions that house people whose primary form of communication is sign language should update their local operating procedures as follows:

- 1. All due process encounters conducted in sign language, including RVR hearings, should involve team interpretation;**
- 2. Institutions must consider whether additional accommodations, such as real-time captioning or intermediary interpreters, are appropriate;**
- 3. Senior Hearing Officers should be trained on the complexity of interpretation between ASL and English and must take extra care to ensure the accuracy of interpretation, particularly when people appear to be admitting fault; and**
- 4. RVR hearings conducted in sign language should be videotaped.**

In addition, please review and dismiss Mr. [REDACTED] RVR.

ALLEGATIONS OF RETALIATION FOR REQUESTING DISABILITY ACCOMMODATION

Mr. [REDACTED] believes that he received the RVR in retaliation for requesting disability-related help. In particular, Mr. [REDACTED] reported that on January 6, the day before the RVR was authored, he was assigned a cellmate (Mr. [REDACTED] who knew very little English, such that he and Mr. [REDACTED] could not write notes to each other, and Mr. [REDACTED] could not read his speech; the two were limited to communicating through gesture and guesswork alone. Mr. [REDACTED] reported that he had previously made numerous requests to be re-housed with Mr. [REDACTED] his former cellmate, upon return from quarantine for COVID-19. He and Mr. [REDACTED] had been housed together for several years, during which time Mr. [REDACTED] had learned some sign language and often acted as an informal interpreter for Mr. [REDACTED]. Mr. [REDACTED] reported that, based on mutual incompatibility due to disability-related language barriers, he and Mr. [REDACTED] approached Officer Torres, the author of the RVR, on January 6, to ask for cell moves. Mr. [REDACTED] reported that Officer Torres failed to ensure effective communication either through written notes or an interpreter, and denied Mr. [REDACTED] request for Mr. [REDACTED] to act as an interpreter. Mr. [REDACTED] believed that she threatened him with disciplinary action because she used a gesture indicating “handcuffs.” She did not call an interpreter or attempt to communicate in writing.⁸ Rather than risk misinterpretation or further

⁸ We have long been concerned about the failure of housing officers to effectively communicate with deaf class members at SATF. Section § VI.D.10 of OP 497 currently provides: “For other general communication with DPH-SLI inmates, custody staff may use the secondary method of communication if appropriate. If there are concerns regarding effective communication, custody staff should call (1) the ADA office to schedule a certified SLI or (2) the Inmate Sign Language Aide, as appropriate.”

Ms. Tamiya Davis
Re: Sign Language Interpretation During RVR Hearings
May 17, 2021
Page 7

escalation, Mr. [REDACTED] and his cellmate chose to walk away and renew their request to officers on Third Watch. Third Watch officers agreed to move Mr. [REDACTED] to a different cell, and assigned Mr. [REDACTED] to Mr. [REDACTED] cell.

Mr. [REDACTED] reported that Officer Torres searched his cell the following morning when he was gone from the building. Several items were taken, but he did not receive a cell search receipt. Mr. [REDACTED] reported immediately suspecting that the search was retaliatory: “I knew it was retaliation. I knew something was going to happen. I made [Second Watch officers] look bad.” Later that day, Officer Torres came to Mr. [REDACTED] cell and briefly placed a piece of paper up against the window, which stated that he and Mr. [REDACTED] had both received an RVR. Mr. [REDACTED] reported that Mr. [REDACTED] called out to get her attention, but that she walked away with the paperwork abruptly and did not respond. Mr. [REDACTED] and Mr. [REDACTED] did not learn that they had been charged with possession of alcohol until the following day, when Mr. [REDACTED] had a mental health assessment.

Mr. [REDACTED] reported that over the next week, three different officers warned him to “lay low” and avoid Officer Torres because she was upset over their interaction. He reported that as a result of his encounters with Officer Torres, he was unlikely to report any concerns to any member of custody staff while she was working. “I don’t want to take the chance with her anymore,” he said. “She’s threatening. . . I believe she is biased against Deaf.” Another Deaf class member, who asked to remain anonymous due to fear of retaliation, reported that he witnessed these events and also perceived them to be retaliatory, and that Deaf class members in the building are “not safe with Torres,” because she is “looking to target the Deaf.” The class member also reported avoiding Officer Torres when possible, and even withdrawing a disability-related request related to his communication needs after witnessing Officer Torres’s treatment of Mr. [REDACTED]. He added that he has, by reading their speech, witnessed officers gossiping about Mr. [REDACTED] and is concerned that they were spreading rumors about Mr. [REDACTED] underlying conviction.⁹

As the Court in *Armstrong* has found, fear of retaliation results in *Armstrong* class members’ reluctance to request reasonable accommodations for their disabilities. *See, e.g.*, Doc. 3059, Order Granting in Part Motion to Modify Remedial Orders and Injunctions 62 (Sept. 8, 2020); Doc. 3217, Order Granting in Part Motion to Modify Remedial Orders and Injunctions 15-16 (Mar. 11, 2021) (finding a “staff culture” at SATF and four other prisons “to target inmates with disabilities for mistreatment, abuse, retaliation, and other improper behavior”). We are concerned that these events are part of a broader pattern of housing officers failing to ensure effective communication, which “has profound implications for Deaf class

⁹ The seriousness of this allegation cannot be overstated. Of the five *Armstrong* class members killed at SATF in the last two years, at least three had underlying sex offense convictions. One of them was deaf.

Ms. Tamiya Davis
 Re: Sign Language Interpretation During RVR Hearings
 May 17, 2021
 Page 8

members' willingness to approach officers with concerns and requests for accommodation." Letter from Tania Amarillas, Rita Lomio, and Skye Lovett, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Overview of Issues Raised by Deaf and Hard-of-Hearing Class Members at SATF (Mar. 18, 2021).

Mr. [REDACTED] filed a CDCR 1824 on January 14, 2021, reporting the events that preceded the RVR, as described above. *See Attachment D*, Log No. SATF-E-21-0064. He alleged that "C/O Torres targetted [sic] and harrassed [sic] me because of the bed moves, my disability issues, and for reporting that C/O Torres have not provided me with the help I need." The Reasonable Accommodation Panel initiated a non-compliance inquiry and determined that "your allegations are not confirmed": "During third watch, on the day in question, you received a bed move accommodation. There is no evidence that you were targeted for requesting a bed move due to your disability."¹⁰

ALTS: Case Number	Date of Discovery	Allegation Description
ALTS-00022182	1/21/2021	Inmate [REDACTED] alleges, on 1/7/2021, he was targeted because he requested a bed move related to his disability issues and for reporting an Officer for not providing him assistance with his disability.

We request the following:

- 1. Please place the allegations set forth above on the non-compliance log, if they have not already been entered and investigated.**
- 2. Please provide additional training to Officer Torres on effective communication with deaf class members.**
- 3. Please explain the cellmate assignment process at SATF, including whether and how someone's disability and language needs are taken into account.**

In addition, pursuant to the Order Modifying the January 18, 2007 Injunction, "Defendants shall investigate all allegations of employee non-compliance, regardless of whether the allegation includes the name of the employee(s). . . If Plaintiffs' counsel has a good faith disagreement with

¹⁰ The RAP response references Interim Accommodation Process ("IAP") and Disability Verification Process ("DVP") worksheets. However, when Plaintiffs requested these worksheets, the Office of Legal Affairs responded that "No IAP's or DVP's located in ERMS." Email from Alexander Powell, CDCR Office of Legal Affairs, [REDACTED] DOCS All Pages (Apr. 14, 2021).

Ms. Tamiya Davis
Re: Sign Language Interpretation During RVR Hearings
May 17, 2021
Page 9

the result of a particular investigation, they may request a copy of the written report and it shall be produced. In such instances, Plaintiffs' counsel shall have the right to review all written documents utilized in making the determination set forth in the report." *See* Doc. 2479, Order Modifying the January 18, 2007 Injunction, at 2 (Dec. 29, 2014). Plaintiffs have a good faith disagreement with the results of the non-compliance review initiated by Mr. [REDACTED] 1824. **Pursuant to the Accountability Order, we request that copies of all written reports be produced within fifteen days.**

Thank you for your prompt attention to these matters. We look forward to your response.

Sincerely yours,



Skye Lovett
Litigation Assistant



Rita Lomio
Staff Attorney

cc: Mr. [REDACTED] (redacted)
Ed Swanson, Court Expert
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Gannon Johnson, Amber Lopez,
Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chantel Quint, Jillian Hernandez, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, Tammy Foss, John
Dovey, Robin Hart, Joseph (Jason) Williams, Amy Padilla, Jason Anderson, Joseph
Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis, Olga Dobrynina,
Dawn Stevens, Alexandra Tonis, Jimmy Ly, Jay Powell, Gently Arnedo (CCHCS)
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EXHIBIT F



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BY EMAIL ONLY

August 6, 2021

Tamiya Davis
CDCR Office of Legal Affairs

Re: *Armstrong v. Newsom*
Discriminatory RVRs and Threats for Reporting Staff Misconduct
Issued to Deaf Class Member at San Quentin State Prison

Dear Ms. Davis:

I write in regard to [REDACTED] [REDACTED] who is designated DPH and DPS. Ms. [REDACTED] who is housed at San Quentin State Prison, communicates using sign language. San Quentin's persistent failure to comply with the requirements of the *Armstrong* Remedial Plan (ARP) regarding effective communication of announcements has resulted in Ms. [REDACTED] being threatened with RVRs for reporting staff noncompliance, being confined to her bed area, potentially serving a longer term of incarceration, and being impeded from using the CDCR 1824 process.

In particular, in June 2021, Ms. [REDACTED] was issued two RVRs that appear discriminatory on their face and appear to punish Ms. [REDACTED] for attempting to communicate with staff and other incarcerated people, including to report staff failure to provide effective communication of announcements. Ms. [REDACTED] then attempted to report staff noncompliance through the CDCR 1824 process. Instead of adding her allegations to the non-compliance log, investigating them, and taking swift corrective action, the institution forced Ms. [REDACTED] to withdraw the 1824s or face disciplinary action. For the reasons outlined in this letter, please dismiss the RVRs and retrain San Quentin staff about Deaf culture, effective communication, and accountability requirements.

I. SAN QUENTIN'S LONGSTANDING FAILURE TO PROVIDE EFFECTIVE COMMUNICATION OF ANNOUNCEMENTS

The *Armstrong* Remedial Plan outlines clear requirements for the effective communication of announcements to people with hearing disabilities. As relevant here, the ARP provides:

Each institution/facility (DPP designated institutions, nondesignated institutions and reception centers) shall ensure that effective communication is made with inmates who have hearing impairments impacting placement regarding public address announcements and

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Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 2

reporting instructions, including those regarding visiting, yard release and recall, count, lock-up, unlock, etc.

All verbal announcements in housing units where inmates with hearing impairments impacting placement shall be done on the public address system (if applicable) and by **flicking the unit lights on and off several times alerting hearing impaired inmates that an announcement is imminent.**

The verbal announcements may be effectively communicated via written messages on a chalkboard or by personal notification, etc.

ARP § IV.I.2(b) (emphasis added).

Unfortunately, soon after Deaf class members were transferred to San Quentin in February 2020, they reported that staff do not comply with these requirements. *See, e.g.*, Email from Megan Lynch, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs (May 8, 2020) (“Deaf class members report that newly assigned officers in Building 5 (H Unit) are not utilizing whiteboards for announcements and that large whiteboards were removed from the building. One Deaf class member said that he is ‘really confused and stressed out with what is really going on without announcements in ASL or whiteboards to notify us.’”).

During our *Armstrong* monitoring tour in November/December 2020, we continued to receive complaints about this issue. In our written report, which we sent to Defendants on April 13, 2021, we wrote, among other things:

Deaf class members in both North Block and H-Unit reported that they did not receive effective communication of announcements. Announcements occur throughout the day for important daily activities like pill call, count, yard time, mail distribution, and medical appointments. Staff typically make announcements over the intercom but, because of their disabilities, deaf class members cannot hear this critical information. . . .

██████████ ██████████ North Block, reported that she has missed pill call at least four or five times when her cellmate was at work and officers did not notify her that a pill call announcement had been made over the intercom.

November/December 2020 San Quentin Tour Report at 14.

Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 3

In response, Defendants stated, “Unit staff will activate the unit green light in H-Unit dormitories to alert DPH class members for announcements.” Defendants’ Response to November/December 2020 San Quentin Tour Report at 17 (July 29, 2021). Defendants also explained that “[p]ersonal messages can be written on hand held white boards, e.g. medical or counseling appointments.” *Id.* at 17. Defendants attached two memoranda issued by the institution in May and June 2021 regarding notifications and communication with the Deaf population and documentation that housing officers in H-Unit were trained on these requirements on May 27, 2021. Nonetheless, as explained below, the problem continued.

II. HOUSING OFFICERS’ FAILURE TO PROVIDE EFFECTIVE COMMUNICATION OF ANNOUNCEMENTS ON JUNE 12, 2021, AND ISSUANCE OF RVR TO DEAF CLASS MEMBER

Ms. ██████ reports that even after we issued the tour report, officers continuously failed to flash the lights to notify Deaf and hard of hearing people of announcements. Ms. ██████ transferred from North Block to H-Unit around December 31, 2020. She also reported, as other Deaf class members had during our November/December 2020 tour, that housing officers do not always write on a dry erase board what the announcement is about. She reported this to a captain, to the ADAC, and to the warden, all of whom told her that they had warned housing officers to flash the lights when making announcements. Notwithstanding Ms. ██████ repeated efforts, the problem continued. Ms. ██████ reported that, in the past six months, she has been late for chow twice, has missed two groups sessions, and has been threatened with RVRs for being late to or missing pill line, all because officers neglected to flash the lights.

On June 12, 2021, housing officers once again failed to flash the lights to let Deaf and hard of hearing class members know that officers had made the announcement for pill line. One of Ms. ██████ friends, who is hard of hearing, did not hear the announcement because he was sleeping and did not have his hearing aids in. Ms. ██████ then attempted to explain the housing officers that they needed to flash the lights to provide effective communication. Because of her hearing and speech disabilities, and because there is no sign language interpreter in the unit, she did so by gesturing to the light that they were supposed to flicker when they made an announcement.

Unfortunately, as is all too common when Deaf people attempt to communicate with law enforcement officers, Ms. ██████ gestures were misread as aggressive. *See* Kelly McAnnany, Aditi Kothekar Shah, *With Their Own Hands: A Community Lawyering Approach to Improving Law Enforcement Practices in the Deaf Community*, 45 Val. U. L. Rev. 875, 878 (2011) (“officers may mistake D/deaf individuals’ actions or use of sign language for aggressive behavior”); *see also* Dave Orrick, *Deaf Man Cleared of Assault*, Chicago Daily Herald (Sept. 10, 2003) (reporting that jury cleared Deaf man of all charges after he tried “to communicate and the

Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 4

police mistook a sign language phrase for an aggressive move” and “subdued him with pepper spray, cuffed him, and booked him for assault and resisting arrest”).

Two days later, Officer Riley issued an RVR to Ms. [REDACTED] for the serious offense of “behavior which could lead to violence.” See **Attachment A**, Log No. 7095360. Officer Riley wrote:

On Saturday June 12,2021 at approximately 0605 hours while working position 222112, Dorm 1, Floor 2, I was watching the dorm 1 pill window when Inmate [REDACTED] [REDACTED] [REDACTED] began making loud sharp noises and angrily flinging their arms wildly in the air, looking towards the desk officers and sharply pointing her index finger in the direction of me and other officers at the podium. Inmate [REDACTED] began walking towards us while exhibiting the look of someone who was clearly angry. Inmate [REDACTED] was pointing at the ADA strobe light while continuously making overly loud and aggressive noises regarding another ADA inmate getting their insulin at the pill window. Inmate [REDACTED] was exhibiting behavior that could lead to violence by waking up other inmates who were still sleeping and disrupting the inmates who were standing at the medication pill line at 0605 hours. Inmate [REDACTED] has previously been counseled about her emotional outbursts and how it affects the other inmates who reside in the dorm.

This account shows a lack of appreciation for Ms. [REDACTED] disabilities and communication needs. First, the officer faulted Ms. [REDACTED] for “making loud sharp noises.” But Ms. [REDACTED] is deaf and reports that she does not know the volume of the noises she makes, because she cannot hear them. In fact, she said that people have told her in the past that she is loud, but she has no way of knowing or modulating her volume. See Tine Tjørnhøj-Thomsen and Hans Henrik Philipsen, *Hearing Loss as a Social Problem: A Study of Hearing-impaired Spouses and Their Hearing Partners*, *The Hearing Review* (Feb. 12, 2019) (“In most social situations and speech events in a Euro-American context, speaking too loud violates the cultural rules for conversations, indicating that the person may be ill-mannered, intoxicated, aggressive, mentally disturbed or lacking self-control. . . . [H]earing-impaired persons run the risk of appear to be brash because they are not always aware of how loud their own voices are.”).

Second, Ms. [REDACTED] was attempting to communicate, without the benefit of speech, that the officers should have flickered the light to inform people with hearing disabilities that an important announcement had been made, so they would not miss pill call. She did this in the only way she could, given her disabilities – by gesturing to the officers and then to the ADA light. “[H]earing

Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 5

individuals often mistake ASL facial expressions as expressions of emotion.” *See* George Castelle, *Misunderstanding, Wrongful Convictions, and Deaf People*, in Ceil Lucas, ed., *Language and the Law in Deaf Communities* 168-175, 172 (2003); *see also* Deirdre M. Smith, *Confronting Silence: The Constitution, Deaf Criminal Defendants, and the Right to Interpretation During Trial*, 46 Me. L. Rev. 87, 101 (1994) (“American society often regards ‘exaggerated’ gesturing or facial expressions as ‘vulgar,’ whereas the opposite is true in deaf culture.”). That appears to have happened here, with Ms. ██████ attempt to directly inform staff of their obligations under the ARP and Americans with Disabilities Act being misread as “behavior which could lead to violence.”

* * * * *

We have requested the final RVR paperwork for this RVR, but Defendants have told us it is not yet available. Nonetheless, Ms. ██████ informed us that she lost 30 days of yard time, five days of dayroom, and 30 days of credit. She reported that she is so afraid of receiving another RVR, and serving a longer sentence because of it, that she often does not leave her bed except for ducated appointments.

Please review and dismiss the RVR. Please also explain how San Quentin will ensure that housing officers are flashing the lights and ensuring effective communication for every announcement in any unit that houses Deaf or hard of hearing individuals consistent with the ARP, especially considering that additional training and reprimands from superiors has not solved the problem.

III. MS. ██████ UNSUCCESSFUL ATTEMPTS TO REPORT STAFF’S CONTINUED FAILURE TO PROVIDE EFFECTIVE COMMUNICATION OF ANNOUNCEMENTS THROUGH THE CDCR 1824 PROCESS

After her attempts to directly raise her concerns with effective communication with housing officers, Ms. ██████ attempted to report the problem through the CDCR 1824 process. She began to document each instance of noncompliance with the ARP in an 1824. Between June 30 and July 6, 2021, Ms. ██████ attempted to file at least seventeen CDCR 1824s about the problem. *See Attachment B.*

Date	Summary of CDCR 1824
6/30/21	CO Lara did not flash the lights for medication.
7/1/21	CO did not flash the lights for medication at 5:10 PM.
7/2/21	CO did not flash the lights for medication at 10:55 AM.

Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 6

7/2/21	CO did not flash the lights for medication at 5:55 PM.
7/2/21	CO did not flash the lights for medication at 8:00 PM.
7/2/21	CO did not flash the lights for count at 9:30 PM. CO did not use flashlight to alert client of announcement. CO did not write on whiteboard what the announcement was for.
7/3/21	CO did not use flash light to alert client of count at 4:30 AM.
7/3/21	First Watch CO did not flash the lights for medication.
7/4/21	CO did not use flashlight to notify client of count time at 12:30 AM. Client was planning to go to the rest room and did not know it was count time.
7/4/21	CO did not flash the lights for medication at 6:00 AM.
7/4/21	CO William did not flash the lights for a “man down” alarm at 6:45 AM.
7/5/21	CO did not flash the lights for medical open line at 6:00 AM. CO also did not flash the lights for dayroom at 6:45 AM.
7/6/21	COs Lara and Riley did not flash the lights for medication at 6:00 AM.
7/6/21	COs Lara and Riley did not flash the lights for dayroom at 6:45 AM.
7/6/21	COs Lara and Riley did not check up on client’s program at 12:00. The COs did not see the list for yard group. COs also did not flash the lights for group at 12:30.
7/6/21	COs did not flash the lights for medication at 8:00 PM.
Undated	COs Riley and Lara did not flash the lights for dayroom.

The proper response would have been to immediately add these allegations to the non-compliance log, investigate them, provide a written response to Ms. [REDACTED] and in the interim, speak with housing officers to ensure they knew their effective communication responsibilities. *See* Order, ECF 2479 at 3 (Dec. 29, 2014) (“Defendants shall investigate all allegations of employee non-compliance, regardless of whether the allegation includes the name of the employee(s). Investigations shall be initiated within ten business days of receiving notice of such allegations and shall be completed as promptly as possible.”); Order, ECF 3059 at 33 (Sept. 8, 2020) (finding that Defendants’ failure to log allegations of “denials of reasonable accommodations required by the ARP and ADA . . . constitutes a violation of the [court’s 2007]

Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 7

Order”); CDCR 1824 Desk Reference Manual at 25 (rev. Oct. 2017) (“All CDCR 1824s will receive a substantive response.”). This is particularly important to track repeated instances of non-compliance and to identify particular officers and locations in need of additional supervision and training.* *See* Injunction (Jan. 18, 2007) (“Defendants shall refer individuals with repeated instances of non-compliance to the Office of Internal Affairs for investigation and discipline, if appropriate.”).

Instead, the institution simply ignored the reports of violations of the ARP, **refused to accept the allegations, and threatened Ms. [REDACTED] with disciplinary action.** In particular, Ms. [REDACTED] said that an AW who identified himself as the Acting ADA Coordinator met with her, in a public location where they could be overheard by other incarcerated people, and returned all seventeen CDCR 1824s to her, unlogged and unaddressed. The AW said he would accept only three CDCR 1824s on the issue, and that if she did not withdraw the other CDCR 1824s, she would receive another RVR and it would hurt her ability to parole soon. Ms. [REDACTED] who is close to being released, agreed under that pressure to withdraw her CDCR 1824s. She was embarrassed and humiliated by this public conversation where officers and other incarcerated people could hear what was being said. She left the meeting in tears.

Ms. [REDACTED] reports that she has not filed an 1824 since this meeting. She is scared that if she does, she will be retaliated against with an RVR. This is unacceptable. Not only has this humiliating conversation had a chilling effect on Ms. [REDACTED] future advocacy for her disability rights, it has prevented her from adequately documenting (and the institution from finally resolving) this longstanding problem’s frequency and pervasiveness throughout all watches.

* * * * *

Ms. [REDACTED] has now attempted to remedy repeated violations of the ARP through all proper channels for at least half a year. She has attempted to communicate directly with the officers, she has informed the supervisory staff, and she has tried to document the problem through CDCR 1824s. At every stage she has met resistance, threats, and punishment.

Please accept all 1824s attached here as Attachment B, enter them on the non-compliance log, and respond to them through the RAP process. We also request that the ADA Coordinator or other senior institution staff have a private discussion with Ms. [REDACTED] to inform her that she will never be retaliated against or threatened for reporting disability discrimination through the proper channels and that she may resume submitting CDCR

* Officer Lara is listed in the May 27, 2021 training documentation as having received training on effective communication with Deaf and hard of hearing class members. Officers Riley and Williams are not listed.

Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 8

1824s without fear of reprisal. Please explain what will be done to prevent what happened to Ms. [REDACTED] from happening again and how the institution will comply, going forward, with the Court's accountability orders.

IV. ISSUANCE OF RVR TO MS. [REDACTED] FOR A HEARING PERSON'S ATTEMPT TO GET HER ATTENTION

On June 18, 2021, Ms. [REDACTED] received another RVR. *See Attachment C*, Log No. 7097414. This RVR, which was authorized by Lieutenant Tierney, accused Ms. [REDACTED] of "behavior which encourages illegal sexual acts," another serious offense. Lieutenant Tierney wrote, "I observed inmate [REDACTED] stand up and step closer towards inmate [REDACTED], as inmate [REDACTED] allowed inmate [REDACTED] to move closer to him as he remained seated. Inmate [REDACTED] placed his left hand on the small of inmate [REDACTED] back and began rubbing inmate [REDACTED] lower back area. Inmate [REDACTED] and inmate [REDACTED] appeared to be cuddling with one another."

Ms. [REDACTED] disputes this account. She asserts that there was nothing sexual about the touch. He was merely trying to gain her attention so she could help him with a written question related to baseball teams; he was sitting, and Ms. [REDACTED] was standing. Because Ms. [REDACTED] is Deaf, her friend got her attention through touch. In order to get her attention he put his hand on her lower back. When he did so, she sat back down and began to write back to him.

Touch and close proximity are integral parts of communicating with Deaf people. *See, e.g.,* Blaine Goss, *Hearing from the Deaf Culture*, Intercultural Communication Studies XII-2 (2003) ("Since touching is usually done with the hands and since manual communication is a dominant method of communication among the deaf, touching someone while you are interacting seems natural. . . . On the practical side, touching someone's arm before taking your turn is a way of indicating that you are about to say something. It is a floor-gaining tactic. . . . In short, touching behavior is acceptable and convenient in deaf interactions, especially when used to gain the floor."). We also are concerned that the RVR also may be an example of the sexualization of non-sexual behavior by trans women. *See, e.g.,* Gabriel Arkles, *Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention*, 18 *Temple L. Rev.* 515, 531, 545 (2009); Leonore F. Carpenter & R. Barrett Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof*, 24 *Wm. & Mary J. Women & L.* 5, 6 (2017).

* * * * *

We have requested the final RVR paperwork for this RVR, but Defendants have told us it is not yet available. **If the RVR has not yet been heard, please ensure that the SHO considers**

Ms. Tamiya Davis

Re: Discriminatory RVRs and Threats for Reporting Staff Misconduct at San Quentin

August 6, 2021

Page 9

Ms. [REDACTED] disability and communication needs. If she already has been found guilty, please re-issue and re-hear the RVR.

Thank you for your immediate attention to this matter.

Sincerely yours,

/s/ Tovah Ackerman

Tovah Ackerman

Investigator

cc: Ms. [REDACTED]
Ed Swanson, Court Expert
Co-counsel
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Gannon Johnson, Chor Thao, Erin Anderson, Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA) Lois Welch, Steven Faris (OACC)
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Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Robin Hart, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson, Tammy Foss, Jason Anderson, Joseph Edwards, Lynda Robinson, Barb Pires, Courtney Andrade, Miguel Solis, Olga Dobrynina, Dawn Stevens, Alexandria Tonis, Gently Armedo, Dawn Stevens, Jimmy Ly, Jay Powell (CCHCS) Adriano Hrvatin, Sean Lodholz, Namrata Kotwani, Anthony Tartaglio, Trace Maiorino, Andrea Moon (OAG)

EXHIBIT G



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VIA EMAIL ONLY

March 2, 2021

Tamiya Davis
CDCR Office of Legal Affairs

Sean Lodholz
Deputy Attorney General

RE: Plaintiffs' Proposal for Tracking People with Upper Extremity Mobility Disabilities

Dear Ms. Davis and Mr. Lodholz:

We write regarding people in CDCR custody with shoulder, elbow, arm, wrist, hand, or finger disabilities (herein "upper extremity disabilities"). Plaintiffs' counsel is concerned that CDCR does not currently have a system to identify people with upper extremity disabilities and document or track their disability needs. As a result, institutions statewide are failing to properly accommodate people with upper extremity disabilities.

Over the last year, Plaintiffs' counsel has sent a number of advocacy letters on behalf of class members whose upper extremity disabilities are not being properly accommodated. The letters describe a range of prison programs, services, and activities that these class members are unable to safely and independently access, including using the showers to bathe,¹ dressing and undressing,² brushing their teeth,³ completing college courses,⁴ writing to their families,⁵ and accessing the courts,⁶ among others.

¹ See Letter from S. Lovett & P. Booth, Plaintiffs' Counsel, to R. Boyd, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter, [REDACTED] SATF (Dec. 23, 2019); see also Letter from S. Lovett & P. Booth, Plaintiffs' Counsel, to A. Powell, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter, [REDACTED] SATF (Oct. 1, 2020) (second letter).

² See Letter from M. Brodheim & P. Booth, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter, [REDACTED], CCWF (Aug. 6, 2020).

³ See Letter from G. Pelsinger & P. Booth, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter, [REDACTED], SAC (Sept. 28, 2020).

⁴ See Letter from P. Booth, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter, [REDACTED], COR (Dec. 7, 2020).

⁵ See *id.*

⁶ See Letter from P. Booth, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal Affairs,

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Ms. Davis & Mr. Lodholz
 Re: Upper Extremity Disabilities
 March 2, 2021
 Page 2

Each of these letters described class members throughout the prison system who requested reasonable accommodations for their disabilities, but their requests were denied because CDCR failed to identify them as having a disability, and their disability needs went unmet. Despite our repeated advocacy letters describing CDCR's failure to accommodate to people with upper extremity disabilities on a statewide level, CDCR has not yet developed a system to consistently address this population's needs.

Therefore, we request that Defendants create a "UE" DPP code for this population. This code would be assigned to people who have permanent (*i.e.*, not expected to improve within six months) shoulder, elbow, arm, wrist, hand, or finger disabilities that affect one or more major life activities. This definition is consistent with the ADA and ARP definition of "disability." *See Armstrong Remedial Plan* § II (A-B). This code would not impact placement; that is, it would not have mandatory housing restrictions associated with it.

We request that the parties discuss this proposal at the next meet and confer on March 19, 2021.

* * * * *

As you know, both the Americans with Disabilities Act (ADA) and the *Armstrong Remedial Plan* (ARP) require CDCR to accommodate people with disabilities.⁷ The ADA defines disability as "[a] physical or mental impairment that substantially limits one or more of the major life activities." 28 C.F.R. § 35.108 (a)(1)(i). Examples of "major life activities" include, but are not limited to: "**Caring for oneself, performing manual tasks**, seeing, hearing, eating, sleeping, walking, standing, sitting, **reaching, lifting**, bending, speaking, breathing, learning, reading, concentrating, thinking, **writing**, communicating, interacting with others, and **working**." 28 C.F.R. § 35.108 (c)(1) (emphasis added).⁸ The ARP's definition of "disability" mirrors the ADA's definition. *See* ARP § II(A) (defining "Qualified Inmate/Parolee" as "one with a permanent physical or mental impairment which substantially limits the inmate/parolee's ability to perform a major life activity," then listing the "major life activities" included in

Armstrong Advocacy Letter, [REDACTED], COR (Nov. 3, 2020).

⁷ *See Penn. Dep't of Corrs. v. Yeskey*, 524 U.S. 206, 210 (1998) (holding that Title II of the ADA, prohibiting "public entity" from discriminating against "qualified individual with a disability" on account of that individual's disability, applied to people incarcerated in state prisons); *see also Armstrong Remedial Plan* § 1 ("No qualified inmate or parolee with a disability as defined in Title 42 of the United States Code, Section 12102 [the ADA] shall, because of that disability, be excluded from participation in or denied the benefits of services, programs, or activities of the Department or be subjected to discrimination.").

⁸ Under the ADA, "[t]he definition of 'disability' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA." 28 C.F.R. § 35.108 (a)(2)(i); *see also* 28 C.F.R. § 35.108 (c)(2)(i) ("In determining whether an impairment substantially limits a major life activity, the term major shall not be interpreted strictly to create a demanding standard.").

the federal regulations). Many people in CDCR custody have an upper extremity impairment that substantially limits their ability to perform one or more major life activities and, therefore, have a “disability” under both the ADA’s and the ARP’s definitions. The ADA and the ARP both require CDCR to reasonably accommodate the disability needs of this population.

CDCR currently uses the DPP code system, outlined in the ARP, to identify and track people with a range of disabilities, including ambulatory, vision, hearing, speech, and learning disabilities, as well as individuals requiring dialysis treatment. *See* ARP § II (C-D). The DPP system serves as a shorthand so that custody staff, healthcare staff, ADA staff, and CDCR headquarters are aware that a person has a disability and can approximate that person’s disability needs. At the time the ARP was entered, the parties’ primary concern was identifying disabilities that could affect housing placement. Since that time, the DPP code system has been revised to address current needs, including the creation of the DLT code and revision of the DNV definition. There is no DPP code for upper extremity disabilities, or what the ARP refers to as “permanent nonambulatory impairments.” *See id.* § II(D)(2) (stating that people with such disabilities “do not have a specific category code”). But, since the ARP was issued, Plaintiffs have identified a wide range of upper extremity impairments that might affect a person’s access to prison programs, services, or activities, beyond the overly narrow definition in the ARP focused on people with “an arm or hand prosthesis, or missing digits,” and institutions’ failure to accommodate them. *Id.*

As illustrated by our recent advocacy letters, CDCR lacks a comprehensive system to properly identify and accommodate people with upper extremity disabilities. In practice, the lack of a DPP code for such people means that those individuals are often not afforded the same protections offered to people with other disabilities. All levels of CDCR, as well as the California Correctional Health Care Services (CCHCS), rely on DPP codes to identify and assess individual and prison-wide needs. At the headquarters level, for example, Defendants planned their *Armstrong*-specific COVID-19 response based upon individuals’ DPP codes. Specifically, Defendants agreed to generate 128-Bs for certain class members displaced during the pandemic, including those incorrectly housed on an upper bunk. Defendants stated that “128bs will be completed for all class members with a DPP code or upper extremity issue.”⁹ But when Plaintiffs’ counsel asked Defendants how an institution will determine if a person has an upper extremity disability absent a DPP code, Defendants did not respond. Indeed, Defendants have no system to identify people with upper extremity disabilities, so those individuals have been excluded from the COVID-19 response plans intended to keep *Armstrong* class members safe.¹⁰

⁹ Email from Sean Lodholz, California Department of Justice, to Rita Lomio, Plaintiffs’ Counsel, *Armstrong – COVID-19 Weekly Reporting – 12.5.2020* (Dec. 9, 2020).

¹⁰ The lack of DPP code affects this group of class members in other pandemic-related contexts. Specifically, the memorandum addressing the provision of non-architectural accommodations to class members in isolation, quarantine, or nontraditional housing units requires the ADA Coordinators to interview a random subset of class members housed in those units about their disability needs. *See* Memorandum entitled, “COVID-19 Non-Architectural Accommodations for Americans With Disabilities Act Class Members,” (Jan. 15, 2021) at 3. But, because people with upper extremity disabilities do not have DPP codes, Defendants are unable to identify which of them are housed in relevant housing units to conduct an interview.

Ms. Davis & Mr. Lodholz
Re: Upper Extremity Disabilities
March 2, 2021
Page 4

And, more generally, there is no centralized report or tracking system to allow CDCR to survey class member needs and ensure that all appropriate disability accommodations are available within its prison system. *See Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 271 (D.D.C. 2015) (rejecting defendant's argument that it need only "provide a hodgepodge of whatever aids are in the prison's possession, thereby betting either that the inmate will remain silent or that he ultimately will be found to have needed no more than the auxiliary aids that the corrections facility randomly provided").

Likewise, at the institution level, staff are frequently failing to meet the needs of people with upper extremity disabilities. Although institution staff are required to provide reasonable accommodations to any person with a disability regardless of whether they have a DPP code, class members with upper extremity disabilities often report that staff members do not accommodate their disabilities. One reason for that is institution staff's reliance on DPP codes. In particular, custody staff use DPP codes to assess the level of disability need in a given unit and to determine which people in particular require disability accommodations. Custody staff in all housing units maintain an up-to-date roster of people with DPP codes in the unit. The roster orients staff to people with disabilities in the unit, their durable medical equipment (DME), and some of their access needs. But people with upper extremity disabilities, having no DPP code, do not appear on those rosters, so custody staff are not aware of those class members' needs and, in practice, have denied accommodations when requested. Staff, for example, might not know that a particular class member needs help carrying his food tray back to his cell, needs scribing assistance to complete CDCR paperwork, needs an ADA worker to clean his cell, or needs priority ADA shower access. Consequently, class members with upper extremity disabilities frequently report that they do not receive the help they need because staff either do not know to help them or do not believe the person has a disability that requires accommodating.

Without a tracking system, people with upper extremity disabilities are also less likely to receive requested disability accommodations through the CDCR Form 1824 process. Specifically, ADA staff at institutions often inappropriately deny class members' requests for disability accommodations because the person making the request does not have a DPP code. We have written to Defendants about ADA staff at several institutions denying reasonable accommodations to people with upper extremity disabilities on the basis that the person requesting the accommodation is not an "ADA inmate," or does not have a "verified disability," *i.e.* the person lacks a DPP code:

DECISION: Your appeal is **GRANTED**. **GRANTED** in that you may seek assistance when writing CDCR forms from assigned ADA workers or any staff member including law library staff. Your request to receive ADA assistance from staff or inmates when writing to the courts is **GRANTED**. However, ADA class members have priority use as you do not have a verified disability. If you are dissatisfied with this decision, you may appeal to Third Level by following the instructions on your appeal.

Letter from J. Payne & P. Booth, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter, [REDACTED], SATF (Oct. 21, 2020) (a second level response to

Mr. [REDACTED]'s appeal reiterating that his upper extremity disability makes writing legibly impossible, and that he needs "ADA assistance to write legal documents to courts, 602 appeals here at SATF.").

Similarly, when people are approved for or issued accommodations for their upper extremity disability, those accommodations are treated instead as personal property (and not as disability accommodations). Class members have reported that they are not permitted to bring their disability accommodations to particular housing units or even certain prisons, as the items are inappropriately subjected to property restrictions.¹¹ Additionally, many institutions require that class members purchase the accommodations themselves. For example, we have sent several advocacy letters on behalf of class members that requested typewriters to allow them to write independently (for participating in education classes, completing CDCR documents, accessing the courts, or writing letters to their attorneys or loved ones). In each of these instances, the institution (or OLA) responded that the accommodation will not be provided, but the class member can purchase it. *See, e.g.*, CDCR Response from Nicholas Meyer, CDCR Office of Legal Affairs, to Patrick Booth & Eva Amarillas-Diaz, Plaintiffs' Counsel, *Armstrong Advocacy Letter*, [REDACTED], HDSP (Feb. 21, 2021) ("Typewriters are available in the Law Library for inmates who need them. Mr. [REDACTED] may also purchase a personal typewriter.").

But, as we have repeatedly emphasized in our letters, requiring a person to purchase a disability accommodation is inappropriate. CDCR has an obligation to provide reasonable accommodations people with upper extremity disabilities. *See* ARP § II(F) (requiring CDCR to "provide reasonable accommodations or modifications for known physical or mental disabilities for qualified inmates/parolees."). Such accommodations must be provided at no cost. *See* 28 C.F.R. § 35.130 (f) ("A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part"). It appears, however, that Defendants often—and incorrectly—consider accommodations for upper extremity disabilities as personal property that should be purchased, and not as reasonable accommodations for people's disabilities.

In the absence of a statewide tracking system for people with upper extremity disabilities, some institutions have developed their own ad hoc system. The California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF), for example, has issued at least one individual chrono to a class member with an upper extremity disability, apparently in response to Plaintiffs' counsel raising concerns

¹¹ *See* Letter from C. Jackson, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal Affairs, *Armstrong Advocacy Letter*, [REDACTED], NKSP ("Mr. [REDACTED] also reports he does not have access to the typewriter he owns, which he needs to file requests, grievances, and legal paperwork. Due to the upper extremity disability that limits the use of his right hand, he has a very limited ability to write."). Other class members have similarly reported that when they have been transferred to restrictive housing units, which generally permit people to have fewer—and a limited selection of—property items, they have not been able to bring their typewriters or other upper extremity disability accommodations because the accommodations are not listed among their DME.

Ms. Davis & Mr. Lodholz
 Re: Upper Extremity Disabilities
 March 2, 2021
 Page 6

about whether that class member was being properly accommodated. The class member must present the chrono to staff before being approved for accommodations:

STATE OF CALIFORNIA

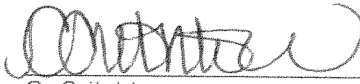
DEPARTMENT OF CORRECTIONS
CDC 128 B (8-87)

NAME and NUMBER

D5- [REDACTED]

Inmate [REDACTED] (D5- [REDACTED]), is recognized as having an upper mobility disability that impacts his ability to grasp and write. He should be allowed to utilize ADA Workers as needed. [REDACTED] should be allowed to purchase an Ergo Writer and a type writer to accommodate his disability.

11/3/2020



C. Critchlow
 ADA- Associate Warden
 CSATF-SP

Original: Central File

We appreciate the institution's attempt to fill a gap in identifying and documenting upper extremity disabilities. But that system is unsustainable, as even the institution acknowledges. In response to a recent advocacy letter, SATF identified the lack of a statewide upper extremity disability tracking system: "SATF acknowledges there is currently no uniform system to document access needs for people with upper extremity mobility disabilities, and this suggestion has been forwarded to CDCR Headquarters for further consideration." CDCR Response from Alexander Powell, CDCR Office of Legal Affairs, to Skye Lovett & Patrick Booth, Plaintiffs' Counsel, *Armstrong Advocacy Letter*, [REDACTED] SATF (Jan. 27, 2021). Other institutions do not even issue chronos documenting a person's upper extremity disability and instead have no system to identify or track the needs of this population.

* * * * *

As outlined above, CDCR does not have a robust system to identify, document, and track people with upper extremity disabilities and their disability needs, and the lack of such a system has resulted in disability discrimination. Therefore, Plaintiffs' counsel requests that CDCR create a DPP code for this category of disability that complies with the ADA and covers the range of disabilities that Plaintiffs' counsel have advocated about, including class members with radial nerve palsy,¹² carpal tunnel and Guyon's canal syndrome,¹³ and cervical radiculopathy,¹⁴ as well as a class member that had a stroke and

¹² See Letter from S. Lovett & P. Booth, Plaintiffs' Counsel, to A. Powell, CDCR Office of Legal Affairs, *Armstrong Advocacy Letter*, [REDACTED] SATF (Oct. 1, 2020) (second letter).

¹³ See Letter from G. Pelsinger & P. Booth, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal Affairs, *Armstrong Advocacy Letter*, [REDACTED], SAC (Sept. 28, 2020).

¹⁴ See Letter from J. Payne & P. Booth, Plaintiffs' Counsel, to T. Davis, CDCR Office of Legal

Ms. Davis & Mr. Lodholz
Re: Upper Extremity Disabilities
March 2, 2021
Page 7

no longer have use of his right arm.¹⁵ Each of these class members struggled to perform major life activities because of their disabilities and, as a result, were excluded from prison programs, services, or activities. The DPP code should be given to all people that have permanent (*i.e.*, not expected to improve within six months) shoulder, elbow, arm, wrist, hand, and/or finger disabilities that affect one or more major life activities.

We look forward to discussing this proposal at the next meet and confer. If you have any questions or concerns in the meantime, please do not hesitate to contact me.

Sincerely,



Patrick Booth
Legal Fellow

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

Affairs, *Armstrong* Advocacy Letter, [REDACTED], SATF (Oct. 21, 2020).

¹⁵ See Letter from Prison Law Office, Plaintiffs' Counsel, to T. Davis & A. Powell, CDCR Office of Legal Affairs, Mule Creek State Prison *Armstrong* Monitoring Tour Punch List (Sept. 22, 2020) [REDACTED], ... reports that his left arm is paralyzed as a result of a stroke, and he is missing his pointer finger and middle finger on his right hand. Mr. [REDACTED] has difficulty writing because of his upper extremity mobility impairment.”).

EXHIBIT H



CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES



MEMORANDUM

Date: June 14, 2021

To: PATRICK BOOTH, Prison Law Office

From:

TAMMY FOSS, Director
Corrections Services
California Correctional Health Care Services

Subject: ADDITION OF NEW DPP CODE – UPPER EXTREMITY DISABILITY ISSUES

California Correctional Health Care Services (CCHCS) is providing a response to your letter dated March 2, 2021, regarding the creation of a new Disability Placement Program (DPP) code for upper extremity disability issues.

CCHCS and the California Department of Corrections and Rehabilitation (CDCR) are in complete agreement that individuals with upper extremity disabilities, which limit a major life activity, require accommodation under the Americans with Disabilities Act (ADA). However, we are in disagreement that CCHCS and CDCR must create a new DPP code for upper extremity disability issues.

It is CDCR's and CCHCS' position that the addition of a new DPP code will not provide any further operational advantages in assuring the needs of inmates with upper extremity disabilities are met. Rather, our position is that inmates, who require any accommodation under the ADA, shall be accommodated, whether they have a DPP code or not. In fact, staff rely on the Strategic Offender Management System (SOMS) CHSS035C-DPP/Accommodation Summary screen to identify inmates who require accommodation under the ADA and for any other physical limitation.

The 1845/7410 power form in Electronic Health Record System (EHRS) is linked to SOMS noting the appropriate accommodation for staff to utilize. The addition of a new DDP code to this system will not provide any additional enhancements to this process.

In many of the particular inmates' issues cited in the individual advocacy letters attached to the March 2, 2021 letter, the DPP/Accommodations Summary provided sufficient information to allow for the appropriate accommodation. Examples include: special cuffing, lifting restrictions, lower bunk, utilization of a transport vehicle with a lift, no rooftop work, and the identification of Durable Medical Equipment (DME) associated with their upper mobility disability.

Again, the reliance on a DPP code is unnecessary; rather, the reliance on the identification of the accommodations required is what is important to inmate patients. CDCR and CCHCS continuously revisit the DPP/Accommodation Summary screen in the SOMS/Cerner systems to see if improvements can be

MEMORANDUM

Page 2 of 2

made to ensure all needed accommodations are included. For example as recently as recently as April 16, 2021, the 1845/7410 power form was updated to address accommodation issues. In the Non-Formulary Accommodation Section, a provider can select "LBO" and type Trapeze Bars in the free text field. Although future enhancements are forth coming, these changes reflect our ongoing efforts to improve accommodations for inmates with upper extremity disabilities without the necessity of a new DPP code. Individualized assessments of each inmate's needs are more important than a blanket DPP code assignment.

cc: Clark Kelso
Richard Kirkland
Diana Touch
Dr. J. Bick
Connie Gipson
CAMU
Jackie Clark
Dr. G. Song
Jackie Clark
Renee Kanan

EXHIBIT I



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Penny Godbold
Email: pgodbold@rbgg.com

July 28, 2021

VIA ELECTRONIC MAIL ONLY

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

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

Re: *Armstrong v. Newsom* Request Under Paragraph 5 of the April 11, 2012
Order: [REDACTED] (DPM)
Our File No. 0581-09

Dear Counsel:

Plaintiffs write pursuant to Paragraph 5 of the *Armstrong* Court's April 11, 2012 Order, as implemented by the June 21, 2012 County Jail Plan for Addressing *Armstrong* Class Members Housed in County Jails, as Ordered by the Federal District Court (the "County Jail Plan"), which requires a mechanism for "promptly addressing concerns raised by Plaintiffs' counsel regarding individual class members housed in county jails."

Below is a Paragraph 5 Request for an *Armstrong* class member housed by CDCR at San Diego County Jail: [REDACTED] (DPM)

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Tamiya Davis
 Nicholas Meyer
 July 28, 2021
 Page 2

Class Member Name	██████████
CDCR No.	██████████
County Jail	San Diego County – Central Jail
CDCR E-Notification	July 9, 2021
Description of Disability	Mr. ██████████ is designated as having a DPM mobility code, and the CDCR prescribed him a walker, cane, therapeutic shoes with orthotics, foot orthoses, wrist support brace, compression stockings and eyeglasses. Mr. ██████████ receives mental health care in the CDCR at the CCCMS level of care. His housing restrictions include ground floor, no stairs, bottom bunk, and special cuffing.
Need for Accommodation	<p>Mr. ██████████ reports that he is being denied access at the Jail to the assistive devices prescribed to him by the CDCR, which he needs to be able to ambulate safely and with less pain. Mr. ██████████ reports that he needs a cane and without this device he struggles to get in and out of bed, and is at risk of falling. Mr. ██████████ also reports that he is denied access to a walker, which he needs to travel greater distances at the Jail, including accessing the ADA shower facilities and when he must pick up his own food. Mr. ██████████ reports that during a recent previous stay at the Jail, he was denied access to a walker but provided a wheelchair to use around the Jail. Mr. ██████████ reports that he is only provided a loaner wheelchair when he is transported to court, and it is removed when he is returned to the Jail.</p> <p>Please provide Mr. ██████████ with a cane, and either a walker or wheelchair that he can keep with him and use to ambulate the Jail safely. Please also evaluate Mr. ██████████ for eyeglasses due to failing eyesight that is preventing him from reading and seeing at distances.</p>

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Tamiya Davis
Nicholas Meyer
July 28, 2021
Page 3

Pursuant to the *Armstrong* County Jail Plan, please investigate these issues and provide a response to us within 15 working days.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold
Of Counsel

PMG:ncw

cc: Alexander Powell
Patricia Ferguson
Gannon Johnson
Amber Lopez
Robin Stringer
OLA Armstrong
Chor Thao
Adriano Hrvatin
Trace Maiorino
Anthony Tartaglio
Namrata Kotwani
Andrea Moon
Sean Lodholz
Bruce Beland
Robert Gaultney
Saundra Alvarez
Tabitha Bradford

Tammy Foss
John Dovey
Robin Hart
CCHCS Accountability
Joseph Williams
Amy Padilla
Jason Anderson
Joseph Edwards
Lynda Robinson
Barb Pires
Courtney Andrade
Miguel Solis
Olga Dobrynina
Dawn Malone-Stevens
Alexandrea Tonis
Jimmy Ly

Jay Powell
Gently Armedo
Vimal Singh
Joshua (Jay) Leon Guerrero
Lacey Watson
Lois Welch
Steven Faris
Mark Cruise
Amenthia Tisdale
Rachelle Velasquez
Robert Wahl
John Carbone
Asvi Phuong
Prison Law Office
Michael Baranic, Sheriff's Office Legal
Will Brown, Sheriff's Office

EXHIBIT J



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Benjamin Bien-Kahn
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June 7, 2021

VIA ELECTRONIC MAIL ONLY

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

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Nicholas.Meyer@cdcr.ca.gov

Re: *Armstrong v. Newsom* Request Under Paragraph 5 of the April 11, 2012
Order: [REDACTED] (DLT)
Our File No. 0581-09

Dear Counsel:

Plaintiffs write pursuant to Paragraph 5 of the *Armstrong* Court's April 11, 2012 Order, as implemented by the June 21, 2012 County Jail Plan for Addressing *Armstrong* Class Members Housed in County Jails, as Ordered by the Federal District Court (the "County Jail Plan"), which requires a mechanism for "promptly addressing concerns raised by Plaintiffs' counsel regarding individual class members housed in county jails."

Below is a Paragraph 5 Request for an *Armstrong* class member housed by CDCR at Trinity County Jail: [REDACTED] (DLT).

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Tamiya Davis
 Nicholas Meyer
 June 7, 2021
 Page 2

Class Member Name	[REDACTED]
CDCR No.	[REDACTED]
County Jail	Trinity County Jail
CDCR E-Notification	May 25, 2021
Description of Disability	Mr. [REDACTED] who is “out-to-court” from North Kern State Prison, is designated as having a DLT mobility code. He also has an upper extremity disability due to a right arm amputation, and relies on a prosthetic arm. Mr. [REDACTED] receives mental health care in the CDCR at the CCCMS level of care. His housing restrictions include ground floor, limited stairs, lower-bottom bunk only; and special cuffing.
Need for Accommodation	<p>Mr. [REDACTED] reports an inability to shower safely at the Jail because of his disability, due to the requirement that the person taking the shower press a button every 90 seconds to keep the water on. With only one functioning arm, Mr. [REDACTED] reports that it is difficult and dangerous for him to struggle to keep the water flowing to adequately bathe himself. He is in danger of falling while in the shower, and also reports that he does not have access to a shower with grab bars or a shower seat that would enable him to bathe more safely and efficiently. Mr. [REDACTED] also reports difficulty with navigating his cell without grab bars for balance and safety.</p> <p>Please provide Mr. [REDACTED] access to a shower that does not require him to repeatedly press a button to receive water, and a shower with grab bars and a shower seat so he does not fall and hurt himself. We also request that Mr. [REDACTED] be evaluated for placement in an accessible cell with grab bars.</p>

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Tamiya Davis
Nicholas Meyer
June 7, 2021
Page 3

Pursuant to the *Armstrong* County Jail Plan, please investigate these issues and provide a response to us within 15 working days.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Benjamin Bien-Kahn

By: Benjamin Bien-Kahn

BBK:ncw

cc: Alexander Powell	Tabitha Bradford	Jimmy Ly
Patricia Ferguson	Tammy Foss	Jay Powell
Amber Lopez	John Dovey	Gently Armedo
Gannon Johnson	Robin Hart	Vimal Singh
Erin Anderson	CCHCS Accountability	Joshua Leon Guerrero
Robin Stringer	Joseph Williams	Lois Welch
OLA Armstrong	Amy Padilla	Steven Faris
Adriano Hrvatin	Jason Anderson	Mark Cruise
Namratra Kotwani	Joseph Edwards	Amenthia Tisdale
Andrea Moon	Lynda Robinson	Rachelle Velasquez
Sean Lodholz	Barb Pires	Robert Wahl
Anthony Tartaglio	Courtney Andrade	John Carbone
Trace Maiorino	Miguel Solis	Asvi Phuong
Bruce Beland	Olga Dobrynina	Prison Law Office
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EXHIBIT K



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July 8, 2021

VIA ELECTRONIC MAIL ONLY

**PRIVILEGED AND
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**SUBJECT TO
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Re: *Armstrong v. Newsom* – Follow-up Request Under Paragraph 5 of the April 11, 2012 Order for [REDACTED] [REDACTED] (DLT)
Our File No. 0581-09

Dear Counsel:

We write to follow up on our June 7, 2021 Paragraph 5 Request regarding [REDACTED] [REDACTED] (DLT), who has been out-to-court at Trinity County Jail (“the Jail”) from North Kern State Prison since May 25, 2021. On July 7, 2021, Mr. [REDACTED] reports that he continues to be unable to safely shower at the Jail because he does not have access to an accessible shower.

Mr. [REDACTED] has a mobility disability and an upper extremity disability due to a right arm amputation, and he relies on a prosthetic limb. Mr. [REDACTED] reports that with only one functioning arm, it is difficult and dangerous for him to use the non-ADA interrupted-waterflow shower at the Jail, as he struggles to keep the water on in order to adequately bathe himself. Mr. [REDACTED] also reports that he fears falling while in the shower due to the lack of grab bars or a shower seat that would enable him to bathe safely and more efficiently.

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Tamiya Davis
Nicholas Meyer
July 8, 2021
Page 2

Defendants' Response to our Paragraph 5 Request, dated June 28, 2021, states that the Division of Adult Parole Operations forwarded our concerns to the Jail, and that several attempts to contact the Trinity County Counsel have gone unanswered.

On July 7, we received a telephone call from Mr. [REDACTED] reporting that he still lacks access to an accessible shower, which is severely limiting his ability to bathe properly, and putting his safety at risk due to a possible fall. Mr. [REDACTED] reported that he has filed several internal County Jail grievances, in addition to submitting two CDCR 2275-CJ accommodation request forms to the Parole Litigation Management Unit, but has received no response to any of these requests.

Given that Mr. [REDACTED] remains in CDCR's custody, and is only being held temporarily at the Jail while he is out-to-court, we are concerned that Defendants have been unable to address this continuing denial of accommodations.

Please let us know what other steps that have been taken, or are being taken, to ensure that Mr. [REDACTED] will received the accommodations he requires to safely shower while the CDCR is housing him temporarily at the Jail as he attends court.

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Tamiya Davis
Nicholas Meyer
July 8, 2021
Page 3

Thank you for prompt attention to this important issue.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Benjamin Bien-Kahn

By: Benjamin Bien-Kahn

BBK:ncw

cc: Alexander Powell
Patricia Ferguson
Gannon Johnson
Amber Lopez
Robin Stringer
OLA Armstrong
Chor Thao
Adriano Hrvatin
Trace Maiorino
Anthony Tartaglio
Namrata Kotwani
Andrea Moon
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Miguel Solis
Olga Dobrynina
Dawn Malone-Stevens
Alexandrea Tonis
Jimmy Ly

Jay Powell
Gently Armedo
Vimal Singh
Joshua (Jay) Leon Guerrero
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