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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 COVID-19 continues to spread throughout California prisons. To date, 51,520
 9 people incarcerated in California prisons have been infected with the novel coronavirus. In
 10 the last month alone, six people incarcerated in CDCR have died of COVID-19, bringing
 11 the total to 242 people who have died after being infected while in prison in California. Of
 12 those approximately half were *Armstrong* class members.

13 During a monitoring tour of Wasco State Prison in October 2021, Plaintiffs’ counsel
 14 received reports from multiple wheelchair-using class members that they were being
 15 escorted for showers into COVID quarantine and isolation units housing people known to
 16 have active COVID-19, or to have been exposed to COVID-19. This information was also
 17 shared with Plaintiffs’ counsel in *Plata v. Newsom*, who separately raised the issue with
 18 CDCR and CCHCS. Defendants confirmed that Wasco State Prison had been exposing
 19 these class members to COVID-19 because they lacked ADA accessible showers in the
 20 class members’ housing units. CDCR halted this unsafe practice on October 14, 2021,
 21 after Plaintiffs brought it to their attention. *See Plata Joint Case Management Statement*
 22 (Oct. 26, 2021), Doc. 3717, at 12-15. While Plaintiffs appreciate the swift response, it is
 23 alarming that this blatant disability discrimination was occurring 18 months into the
 24 pandemic, and that the failure was only identified and corrected as a result of Plaintiffs’
 25 monitoring efforts.

26
 27 _____
 28 ¹ Statements are joint unless otherwise delineated as either *Plaintiffs’ Statement* or
Defendants’ Statement.

1 In the midst of continued outbreaks and a rising death count in California prisons,
2 Defendants continue to resist vaccination efforts that would better protect *Armstrong* class
3 members. On September 27, 2021, the Court in *Plata v. Newsom* ordered mandatory
4 vaccinations for staff working in CDCR prisons. *See* Doc. 3684, Order re: Mandatory
5 Vaccinations, *Plata v. Newsom*, No. 01-01351-JST. In its order, the Court held that
6 Defendants’ failure to require staff vaccinations—especially in light of the abysmally low
7 staff vaccination rates at many prisons—violates the Eighth Amendment. *See id.* at 18.
8 The Court found that staff are the primary vectors of the virus in prisons, and those who
9 are unvaccinated present a significant risk of harm because they frequently come into close
10 contact with “elderly, chronically ill, critically ill, medically fragile, and disabled patients,”
11 many of whom are *Armstrong* class members. *Id.* at 17. Despite the ongoing risk of
12 serious illness or death to people in its custody, Defendants have failed to protect the
13 “vulnerable population that resides in CDCR’s facilities.” *Id.* at 18. But, instead of
14 developing a robust plan to vaccinate its staff, Defendants promptly appealed the Court’s
15 order. *See* Doc. 3693, Defendants’ Notice of Appeal, *Plata v. Newsom*, No. 01-01351-JST
16 (Oct. 12, 2021).

17 Defendants have not yet been able to resolve the backlog of *Armstrong* class
18 members who have been awaiting expedited transfer to accessible housing in mainline
19 institutions, nearly nine months after the Court Expert noted his “concern” with the large
20 number of people inappropriately housed because of their disabilities. *See* Doc. 3201
21 (Feb. 1, 2021) at 8. The parties and the Court Expert met on August 31, 2021, to discuss
22 how Defendants’ plan to expedite the transfer of the 168 class members with impacting
23 placement disability codes who, as a result of the halting of transfers between prisons
24 during the pandemic, were housed inaccessibly at non-designated institutions in violation
25 of the ARP (this number does not include class members on the expedited transfer list
26 awaiting transfer from a reception center to a mainline designated institution). At this
27 meeting, Defendants acknowledged that the number of inappropriately housed class
28 members was still rising even though the California Correctional Health Care Services

1 (“CCHCS”) defined such transfers as “necessary” on April 27, 2021, and represented that
2 this was due, in part, to the lack of sufficient available accessible beds at mainline
3 institutions, as institutions were filling those beds with individuals who did not require
4 accessible housing placements, and did not have enough space to move those individuals
5 to other housing locations. Defendants represented that they were addressing the problem
6 by changing their policy so that individuals without disabilities could be transferred,
7 despite the continuing restrictions on transfers between prisons during the pandemic, in
8 order to make space for *Armstrong* class members awaiting transfer to accessible beds.

9 The parties and the Court Expert met again on September 15 and October 26, 2021,
10 to see whether Defendants policy change impacted transfers. Unfortunately, Defendants’
11 data shows there was merely a one-time decrease in the total number of class members on
12 the expedited transfer list—that number decreased from 174 to 143 in the first two weeks
13 of September 2021. However, the number of class members on the list has stabilized at an
14 unacceptably high number of mis-housed class members—hovering between 141 and 131
15 class members who are inappropriately housed—during each subsequent week. Since
16 October 15, 2021, there have been at least 135 mis-housed class members with impacting
17 placement codes every week. Despite Defendants’ representations below, there has been
18 no downward “trend.” In fact, the number of mis-housed class members has increased
19 each week since the parties’ October 26 meeting with the Court Expert. As of
20 November 5, 2021—the most recent data available to Plaintiffs—141 class members with
21 impacting placement codes are housed inaccessibly at non-designated institutions in
22 violation of the ARP, exactly the same number as on September 24, 2021. It is troubling
23 that Defendants appear to be downplaying the seriousness of the problem by insisting on
24 the existence of a purported “downward trend” in the number of mis-housed class
25 members that is not discernable from their own data.

26 If additional steps are not taken to expedite transfers more quickly, Plaintiffs fear
27 that Defendants will create a “new normal” where more than 100 class members are mis-
28 housed at non-designated institutions at any given time, a significantly higher number than

1 the pre-pandemic levels, when (according to Defendants) there were only several dozen
2 class members mis-housed statewide. The parties have agreed to discuss the most up-to-
3 date data and what else can be done to remedy the problem during the all-parties meeting
4 on November 18, 2021.

5 **2. Defendants' Statement**

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

20 Plaintiffs raise concerns about the staff-vaccination rates and continue to urge
21 CDCR to mandate that all staff receive vaccinations to provide further protection to class
22 members. CDCR is mindful of Plaintiffs' concerns, but notes that this particular issue is
23 currently being, and more appropriately, addressed in *Plata v. Newsom*. Notwithstanding
24 Plaintiffs' concerns, it must be noted that the vast majority of class members are
25 vaccinated. As of October 15, 2021, 91% of the DPP population has been fully
26 vaccinated.

27 Plaintiffs' statement that Defendants "have not yet been able to resolve the backlog
28 of *Armstrong* class members who have been awaiting expedited transfer to accessible

1 housing in mainline institutions, nearly nine months after the Court Expert noted his
2 ‘concern,’” is misleading and seemingly dismisses Defendants’ collaborative efforts during
3 the unprecedented global pandemic. Defendants continue to address the Court Expert’s
4 concerns noted in his June 2, 2021 report about “appropriately” or “expeditiously” meeting
5 class-member needs and continue to invite Plaintiffs’ participation in addressing these
6 issues. But Plaintiffs’ characterization that a quick fix exists or that CDCR has failed to
7 act is wrong. Earlier this year on April 26, 2021, California Correctional Healthcare
8 Services (CCHCS) issued new guidance on necessary movement, which included transfers
9 of people with disabilities impacting placement. On June 22, 2021, CCHCS issued its
10 updated guidance regarding COVID-19 screening and testing when moving
11 inmate/patients. These updated guidelines continue to prioritize class members, by
12 permitting “necessary movement,” a definition that includes “the transfer of people with
13 disabilities impacting placement (including DPP and DDP individuals).” Under these
14 guidelines, Defendants are able to address Plaintiffs’ concerns for those class members
15 who remained on the Expedited Transfer List because of pandemic-induced transfer
16 restrictions. Defendants have been diligently working to remove them from the Expedited
17 Transfer List by transferring them to designated housing, but movement between the
18 facilities is essentially a finite resource. CDCR must also facilitate transfers for many
19 other people, including class members returning from county jails and *Coleman* and *Clark*
20 class members. As a result, CDCR has prioritized movement for those with the most
21 significant disabilities. CDCR staff also regularly interview class members in non-
22 designated institutions to ensure they are being accommodated and CDCR has
23 implemented robust reporting requirements to Plaintiffs’ counsel and the Court’s Expert on
24 these individuals. Moreover, when a class member cannot be accommodated at an
25 institution, CDCR has arranged special transports to ensure that they are housed
26 accessibly. Notwithstanding these efforts, designated institutions had become impacted
27 with the number of incarcerated people, many of whom were non-class members, assigned
28 to lower-tier and lower-bunk housing that ultimately slowed the process to move class

1 members from the Expedited Transfer List. Staff needed to transfer the non-class
2 members to a non-designated institution to free up the lower-tier and lower-bunk housing
3 at designated institutions, but such moves had not been considered essential. Through
4 coordinated efforts, however, staff has now received approval to move these non-class
5 members from Substance Abuse Treatment Facility (SATF), California Medical Facility
6 (CMF), California Health Care Facility (CHCF), R.J. Donovan (RJD), and other
7 designated institutions to non-designated institutions to free up lower-tier and lower-bunk
8 housing at the designated institutions so that class members can be transferred
9 expeditiously to the designated institutions.

10 Recently, Defendants provided Plaintiffs with more detailed and individualized data
11 about the class members occupying the expedited transfer list including tracking the
12 movement of individual class members on and off the list over a twelve-week period. This
13 detailed report provides data on various metrics including the number of class members on
14 the list; the new class members on the list; the number of class members transferred the
15 same week that they appeared on the list; the total transfers per week; the percentage of
16 transfers from the previous week; and other information. Defendants provided an updated
17 report in advance of the parties' October 26, 2021 meeting, provided additional
18 information at the meeting, and agreed to provide information in response to Plaintiffs'
19 questions in anticipation of the November 18, 2021 all-parties meeting. The data
20 demonstrates that the number of class members on the expedited transfer list continues to
21 trend down. While Plaintiffs characterize this progress as slow, that assessment discounts
22 the fact that there is actually substantial turnover of class members on the list. For
23 example, from October 1 to 8, 2021, the total number of non-reception center class
24 members decreased from 136 to 130—but there were actually 21 transfers, which were
25 offset by 15 new class members that were added to the list.

26 Defendants also note that a robust system of monitoring and reporting created with
27 Plaintiffs over the course of the pandemic remains in place. These policies require
28 institutions to meet with class members in non-designated placements biweekly to verify

1 and document that they are being accommodated. This documentation is provided to
2 Plaintiffs on a rolling basis along with weekly reporting on class members on the
3 Expedited Transfer List and Housing Restriction Compliance Reports.

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

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

12 **1. Plaintiffs' Statement**

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

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

24 After over a year of negotiations, the parties reached agreement on the vast majority
25 of provisions included in Defendants' RJD and Five Prisons Remedial Plans ("Plans").
26 Doc. 3336. The Plans were filed with the Court on October 29, 2021. *See* Doc. 3336-1,
27 Exs. A, B. Plaintiffs' counsel filed objections to two provisions of the Plans—the lengthy
28 timeline proposed by Defendants for conducting staff misconduct investigations and the

1 lack of clarity regarding the Post-Investigation Review Panel contemplated by the Plans.
2 Doc. 3336. Defendants filed their response to Plaintiffs' objections on November 12,
3 2021. Doc. 3339. Plaintiffs' reply is due on November 19, 2021. Final resolution of these
4 disputes is still pending. Notwithstanding disputes, certain provisions of both Remedial
5 Plans have been implemented including body-worn cameras which became operational at
6 RJD in January 2021. Audio Visual Surveillance Systems ("AVSS"), additional sergeants
7 on the yards, and enhanced training have been implemented at RJD. Plaintiffs are closely
8 monitoring the RJD Remedial Plan roll out, which the Court Expert discussed in his report
9 of June 30, 2021, Doc. 3290. The Court Expert's report found that the BWC remedy is
10 making a difference in reducing staff misconduct against people with disabilities and
11 improving relations between class members and staff. Pursuant to the Five Prisons
12 Remedial Plan, Doc. 3275, AVSS was implemented by October 1, 2021, at LAC, by
13 November 1, 2021, at COR, and will be implemented by December 1, 2021, at SATF,
14 KVSP and CIW. Body-worn cameras were fully deployed in July 2021 at SATF, KVSP,
15 CIW, and COR; and in August 2021 at LAC. Thirty-eight additional sergeants have been
16 hired at the five prisons, and training of the sergeants and, Defendants reported that all
17 custody and health care staff received training by October 25, 2021.

18 Defendants have also begun production of documents in compliance with court
19 orders. Defendants have now made three quarterly productions in compliance with the
20 RJD Remedial Plan and Five Prisons Remedial Plan. The parties continue to meet and
21 confer to ensure that all required documents are produced. Defendants have not raised any
22 privilege objections to producing any of the documents.

23 Despite progress on reforms, Plaintiffs' counsel continue to receive reports of
24 serious staff misconduct at prisons currently covered by court orders. In response to
25 concerns over the deaths of five class members, allegations of blatant disability discrimina-
26 tion and denial of ADA accommodations by staff, and reports of retaliatory RVRs issued
27 by certain health care staff members, the Court ordered Court Expert, Ed Swanson, to
28 conduct an investigation and to produce a report regarding staff misconduct allegations at

1 SATF and Defendants' response. Doc. 3338. Mr. Swanson is ordered to coordinate with
2 the Receiver in *Plata* and the Special Master in *Coleman v. Newsom*, Case No. 90-cv-
3 00520, and keep the Receiver and the Special Master and their staff informed of the status
4 of the investigation and of his findings. *Id.*

5 Notwithstanding commitments made by Defendants to undertake significant
6 reforms to the staff misconduct investigation process, which Plaintiffs' counsel
7 acknowledge have not yet been implemented, Plaintiffs remain concerned about ongoing
8 evidence of problems regarding staff misconduct investigations including persistent bias
9 against incarcerated people, incomplete investigations, and improper disciplinary decision-
10 making by Hiring Authorities. *See* September 14, 2021, letter from Penny Godbold to
11 Jenn Neill and Tamiya Davis, attached hereto as **Exhibit A**. Related to ongoing concerns
12 regarding the competency of Defendants' investigations into allegations of staff
13 misconduct, Plaintiffs' counsel have reported allegations from multiple class member
14 declarants regarding interviews conducted or attempted by CDCR investigative staff
15 without required notice to Plaintiffs' counsel pursuant to the August 6, 2020 Stipulation
16 and Order Prohibiting Retaliation in Prisons Subject to the Statewide Motion, Dkt. 3034
17 ("Statewide Anti-retaliation Order"). *See* November 3, 2021, Letter from Penny Godbold
18 to Gannon Johnson, attached hereto as **Exhibit B**. Evidence of persistent investigation
19 problems is alarming one year after the Court ordered reforms to investigations and two
20 and a half years after such problems were identified by the OIG. (*See* Doc. 2922-1, Ex
21 GG, Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of
22 Staff Misconduct)

23 CDCR is a statewide system. Plaintiffs assert that violations of the ADA and ARP
24 found thus far at six prisons exist system wide. Since the Court's orders, Plaintiffs'
25 counsel have shared declarations from 36 *Armstrong* and *Coleman* class members
26 reporting serious staff misconduct at nine prisons not currently covered by the Court's
27 orders. Doc. 3336-1 ¶ 14. Nearly one-third of those declarations pertain to serious staff
28 misconduct raised at CSP-SAC. *Id.* In addition, since the issuance of the Court's

1 March 11, 2021 orders, Plaintiffs’ counsel has sent Defendants many letters regarding
2 serious and ongoing staff misconduct against people with disabilities at CSP-SAC. *See*,
3 *e.g.*, Doc. 3266 at 5-6 & Exs. B-C; Dkt. 3266, Ex. C; Doc. 3322, Ex. A & Ex. E. Recent
4 news articles describe similar reports of misconduct following the recent deaths of two
5 staff members who were employees at CSP-SAC and were reported to have suffered
6 retaliation for reporting misconduct by fellow officers. Doc. 3336-1 Exs. H-I. Further, a
7 news article reported that the Federal Bureau of Investigation is reportedly investigating
8 correctional officers who have been accused of conspiring with incarcerated people in the
9 2019 deaths of two prisoners at CSP-SAC. *Id.* Ex. I. Most recently, on November 10,
10 2021 Plaintiffs’ counsel reported disability-related retaliation experienced by a class
11 member and RJD witness who was subsequently labeled a “snitch” by staff at Salinas
12 Valley State Prison and who reported ongoing harassment and denial of disability
13 accommodations at the hands of staff. *See* Letter from Penny Godbold to Tamiya Davis
14 and Nick Weber attached hereto as **Exhibit C (exhibits omitted)**.

15 Plaintiffs continue to share additional declarations of staff misconduct occurring at
16 multiple prisons beyond the six prisons covered by existing court orders.

17 Plaintiffs are committed to bringing such evidence before the Court until all class
18 members are protected.

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

20 Despite significant progress made towards court-ordered improvements to the staff
21 misconduct investigation and disciplinary system, Defendants have failed to take
22 significant steps to address the endemic use of false and retaliatory Rules Violation
23 Reports (RVRs) by staff to cover up disability-related misconduct and/or to retaliate
24 against class members who report misconduct. *See* Doc. 3296 at 9. The same biased
25 review that plagues the staff inquiry and investigation processes also denies class members
26 due process in disciplinary hearings, resulting in longer terms of imprisonment, denials of
27 privileges, housing at higher classification levels, and an unwillingness to report future
28 misconduct or request disability-related help.

1 As in the staff complaint context, reviewers discount or ignore the testimony of
2 incarcerated people during disciplinary hearings. *See* Ex. A Dkt. 3322. Reviewers fail to
3 discover evidence that staff have issued reports that appear plagiarized or otherwise
4 replicate conduct and charges that are improbably attributed to multiple people at the same
5 time. Doc. 3296 at Ex. C. Reviewers also fail to identify cases where the conduct charged
6 is the result of staff failing to accommodate someone's disability. Doc. 3322 at pp. 11-
7 12 & Ex. E.

8 Plaintiffs have outlined specific and comprehensive remedies necessary to address
9 the failure of the RVR process to uphold the due process rights of class members, detect
10 staff misconduct, and hold responsible staff accountable. *See* Doc. 3296, Exhibit B.
11 Defendants have agreed to discuss and attempt to resolve problems with the RVR process
12 after the close of negotiations regarding the RJD Remedial Plan at the end of October. The
13 parties are planning to begin discussions the week of December 6, 2021.

14 Plaintiffs are hopeful that the parties can agree to resolve problems and that
15 additional court intervention will not be necessary.

16 **2. Defendants' Statement**

17 Defendants take all allegations of staff misconduct seriously and are committed to
18 investigating and taking appropriate remedial action where warranted. Although
19 Defendants disputed many of Plaintiffs' allegations, Defendants worked diligently with
20 Plaintiffs concerning their staff misconduct allegations at RJD, California State Prison, Los
21 Angeles County (LAC), Kern Valley State Prison (KVSP), California State Prison –
22 Corcoran (COR), SATF, and California Institution for Women (CIW).

23 In compliance with the Court's September 8, 2020 order, and notwithstanding
24 pending appellate review, Defendants have engaged in a year-long series of substantive
25 meet-and-confer sessions with Plaintiffs and the Court's Expert to develop a
26 comprehensive and effective remedial plan. During the meet-and-confer sessions, the
27 parties have identified disputed elements of the remedial plans, shared information related
28 to positions taken concerning the plan, and resolved nearly all areas of disagreement. Over

1 the course of the last year, Defendants have provided Plaintiffs with extensive written
2 policies related to the remedial plan and presented third-party tutorials or informational
3 sessions concerning officer training, the operation and placement of fixed surveillance
4 cameras, staff investigation process, employee discipline, components of a computerized
5 early-warning system, and other aspects of the remedial plans.

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

28 Defendants believe that the significant work and commitments made to date serve

1 to address Plaintiffs’ concerns that “violations of the ADA and ARP found thus far at six
2 prisons exist system wide,” and alleged “endemic use of false and retaliatory Rules
3 Violations Reports;” thereby, eliminating any need for “additional court intervention” on
4 these issues. During the extensive negotiations, Defendants have agreed that important
5 pieces of the remedial plans will apply statewide, even though the Court did not order such
6 widespread implementation. For example, the pepper-spray and staff-misconduct
7 investigation and discipline processes finalized as part of the Court-ordered remedial plans,
8 will be simultaneously expanded to all institutions statewide. To further demonstrate that
9 Defendants take seriously all allegations of staff misconduct, which includes alleged false
10 RVRs and retaliation for requesting accommodations, CDCR has agreed to effect further
11 unprecedented change statewide. As revealed in the May Revision of the State’s budget,
12 in addition to implementing AVSS (fixed cameras) at the five institutions required by the
13 *Armstrong* orders, CDCR requested to install, in fiscal year 2021-2022, AVSS at four
14 additional institutions—namely, Salinas Valley State Prison (SVSP), California State
15 Prison – Sacramento (CSP-SAC), California Correctional Institution (CCI), and Mule
16 Creek State Prison (MCSP). Moreover, CDCR currently plans to install AVSS at nine to
17 ten institutions per fiscal year, over the next three fiscal years, until AVSS has been
18 installed at all institutions. By the end of this fiscal year (June 2022) there will be fixed-
19 cameras, or funding for such if not fully installed, at approximately thirteen, or 38%, of the
20 thirty-four CDCR institutions. This includes RJD, LAC, SATF, KVSP, COR, CIW,
21 SVSP, CSP-SAC, CCI, MCSP, and the three other institutions with fixed cameras already
22 installed (High Desert, CHCF, and the Central California Women’s Facility (CCWF)).
23 Based on recent data, this means that approximately 57% of the DPP population will be
24 housed in an institution with fixed-camera coverage, or funding for such.

25 Defendants will, to the extent that they are requested to or are able to, facilitate the
26 Court Expert’s investigation of enumerated issues at SATF as ordered by the Court to do
27 so. Defendants note that different components of the issues identified by the Court have
28 previously been addressed by Defendants and Defendants have shared appropriate

1 information with Plaintiffs concerning various class members. Defendants further note
2 that some of the issues identified by the Court arose before the Court's March 11, 2021
3 order. As noted above, fixed-camera deployment at SATF continues to be scheduled for
4 December 1, 2021. Finally, Plaintiffs cite to various news articles in support of allegations
5 of staff-misconduct at CSP-SAC, but these articles do not assert staff misconduct against
6 class members directly. Moreover, these sources are uncorroborated, contain multiple
7 layers of hearsay, and are, therefore, not appropriately included in this joint statement.
8 Nonetheless, Defendants take all allegations of staff misconduct seriously as further
9 demonstrated by CDCR's planned deployment of fixed-cameras at CSP-SAC by the end of
10 this fiscal year.

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

12 **1. Plaintiffs' Statement**

13 Although the parties have formed a workgroup to address the provision of
14 accommodations for Deaf and hard-of-hearing class members, limited progress has been
15 made thus far.

16 Despite continuing reports that the hearing aids issued by CDCR fail to
17 accommodate class members' disabilities due to poor quality and construction, Defendants
18 refuse to consider alternative models. Functioning hearing aids are necessary to ensure
19 *Armstrong* class members have equal access to prison programs and services. Multiple
20 class members throughout California report that the current hearing aids provided by
21 CDCR are of such poor sound quality they actually amplify background noise making it
22 especially difficult for class members to hear in the prison environment where sound
23 reverberates off concrete and metal surfaces. Defendants must provide hearing aid options
24 that actually accommodate hard-of-hearing class members. Plaintiffs dispute Defendants'
25 assertion that the vast amount of class members do not have complaints about their hearing
26 aids. Concerns regarding the quality of hearing aids from multiple different class members
27 have been reported in fifteen different monitoring tour reports and post-tour action lists
28

1 from nine different institutions in the last three years.² The problem is widespread.

2 Plaintiffs continue to receive reports that Deaf class members are not provided with
3 sign language interpreters during off-site medical encounters. Defendants have proposed a
4 new process. Plaintiffs are hopeful that the changes contemplated by Defendants will
5 resolve problems but remain concerned that the process does not go far enough to ensure
6 interpreters during emergencies. The institution should call ahead to inform the hospital of
7 the imminent need for a sign language interpreter during an incoming emergency from the
8 prison to provide enough time to secure an interpreter, rather than relying solely on EMTs,
9 who are dealing with the provision of emergency medical care, to communicate that need.
10 Plaintiffs await Defendants' response regarding whether suggested improvements will be
11 incorporated.

12 Defendants continue to drag their feet on addressing discrimination against Deaf
13 signers in the disciplinary process. Although Defendants claim they "already provide the
14 reasonable accommodations for incarcerated people with disabilities during the
15 disciplinary review process," *see* Doc. 3322 at 18, existing accommodations do not ensure
16 the accuracy of communication by Deaf signers during this process. *See* Doc. 3322 at
17 Ex. E (letter detailing a misinterpretation during a disciplinary hearing that resulted in a
18 Deaf class member being found guilty). Defendants reported that, to improve accuracy of
19 interpretation, they are considering either the use of two interpreters during hearings, or
20 video-recording disciplinary hearings to allow later review. However, they have not
21 committed to providing either accommodation, nor provided a timeframe for
22 implementation.

23 Plaintiffs are encouraged that Defendants are starting a pilot program for real-time
24

25 ² *See* October 2018 CMF Tour Report; July 2019 FOL Tour Report; November 2019 CMF
26 Tour Report; April 2020 MCSP Tour Report; May-June 2020 RJD DPH Report; July 2020
27 CHCF Tour Report; September 2020 MCSP Tour Report; November 2020 NKSP Tour
28 Report; Nov-Dec 2020 SQ Tour Report; February 2021 CHCF Tour Report; February
2021 RJD DPH Tour Report; March 2021 KVSP Tour Action Item List for March 11,
2021; April 2021 NKSP Tour Report; September 2021 RJD Tour Report; October 2021
COR Action Item List for October 19, 2021.

1 captioning (also known as CART). Defendants must expand this important program to all
2 class members during educational and due process encounters because multiple Deaf and
3 hard-of-hearing class members not involved in the pilot remain unable to effectively
4 communicate and to access prison programs because they do not understand sign language.
5 CART would provide that required access, as Plaintiffs' counsel have requested for years.
6 *See, e.g.*, Doc. 2936 at 45-53, 65-76. Plaintiffs also remain concerned that alternative pilot
7 programs proposed by Defendants—Microsoft Ease of Access speech-to-text and
8 Microsoft Teams automatic captioning—will not provide the level of accuracy that CART
9 provides.³ Plaintiffs urge Defendants to urgently provide CART to all class members to
10 ensure access to programs, services and activities.

11 **2. Defendants' Statement**

12 Defendants dispute Plaintiffs' allegation that "limited progress has been made"
13 concerning the provision of accommodations to class members. The parties' workgroup
14 met again on October 22, and discussed a wide array of topics, including the provision of
15 sign-language interpreters in peer tutoring, accessibility of ASL television, voice and
16 hearing carry over (VCO/HCO) technology for TTY phones, and planned deployment of
17 tablets. Further, Defendants launched a proof-of-concept (POC) program in September
18 2021 to evaluate three different captioning programs for the deaf and hard-of-hearing
19 population. The Office of Correctional Education (OCE) will utilize CART in an
20 educational setting at CMF and will utilize Microsoft Ease of Access features at CCWF,
21 which includes a real -time speech-to-text function for students who would benefit from
22 that accommodation. At a third institution, CDCR will utilize Microsoft Teams real-time
23 captioning program during due-process encounters at San Quentin. While using these
24 captioning programs, staff will ensure that the captioning is visible to all participants,
25

26 ³ Unlike the other two technologies proposed by Defendants, in which a computer
27 automatically generates captions, CART uses a human "transcriber [who] types what is
28 being said at a meeting or event into a computer that projects the words onto a screen."
U.S. Dep't of Justice, ADA Requirements: Effective Communication (Jan. 2014),
<https://www.ada.gov/effectivecomm.htm>.

1 including the OCE educators and the hearing officers during committee hearings, to enable
2 each speaker to identify captioning failures and allow for real-time corrections or
3 adjustments throughout the session. This POC program will implement a variety of
4 controls to ensure that each captioning program is fairly and appropriately evaluated.
5 Further, staff has been instructed to speak clearly and slowly and to refrain from using
6 acronyms. During the POC program, Defendants will survey staff and incarcerated people
7 for information concerning the merits of each captioning program to use in the evaluation
8 of each captioning program. Defendants' POC program will run 120 days from its launch.
9 At the end of the POC period, Defendants will assess the information gathered and
10 determine which captioning program is best suited for a particular setting.

11 Plaintiffs continued complaints that hearing aids provided to class members are of poor
12 quality and fail to accommodate their needs are based on a relatively small number of
13 isolated complaints and fail to account for the vast amount of class members who utilize
14 effective hearing aids provided to them by Defendants without complaint. Medical
15 Executives from CCHCS tested out the Flame 250 hearing aid that the vendor shipped to
16 them. This model (Flame 250) amplifies sound as expected and is comfortable to wear.
17 Per the vendor, this model is used worldwide and in government-funded programs
18 including CDCR. In furtherance of CDCR's commitment to ensure class members are
19 appropriately accommodated, Defendants are currently assessing whether, in specific
20 instances, pocket-talkers are an appropriate accommodation in conjunction with hearing
21 aids. Some patients request pocket talkers in lieu of or in addition to hearing aids. In
22 reality, hearing aids are superior to pocket talkers in regards to sound amplification. There
23 should be no instance where a pocket talker is necessary in addition to a hearing aid. If one
24 has issues with background noise, rather than adding a pocket talker, they should be re-

25 Defendants continue to confer with Plaintiffs to ensure that current procedures
26 address their concerns that some Deaf class members may not have been provided with
27 sign-language interpreters during off-site medical encounters despite third-party medical
28 providers being obligated to do so not only by their CDCR contract, but also under their

1 independent obligation to comply with the ADA. Beginning October 11, 2021 through
2 October 21, 2021, Captains from Field Operations conducted onsite training with
3 appropriate staff at the nine (9) institutions (CCWF, CHCF, CIM, CMF, LAC, NKSP,
4 RJD, SATF, and SQ) that house class members who require SLI as their primary method
5 of communication. This training was based on the flow charts created for scheduled off-
6 site medical appointments, emergency transports and hospitalization of Deaf class
7 members to outside medical facilities. Defendants' new process will be continually
8 monitored to ensure that sign-language interpretation is appropriately provided to those
9 Deaf class members when receiving off-site regularly scheduled or emergent care from a
10 third-party medical provider. Deviation from this requirement by off-site third-party
11 medical providers will be addressed by each institution's Chief Medical Executive with the
12 off-site medical facility's administration.

13 Plaintiffs' allegation that Defendants "continue to drag their feet" addressing
14 alleged discrimination against Deaf signers in the disciplinary process is meritless. In
15 accordance with existing policy, Defendants already provide the reasonable
16 accommodations for incarcerated people with disabilities during the disciplinary review
17 process. As noted above, Defendants continue to discuss internally the current system in
18 light of Plaintiffs' concerns and determine if additional remedies are appropriate.
19 Defendants will continue to provide timely updates to Plaintiffs.

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

21 **1. Plaintiffs' Statement**

22 The parties formed a workgroup to address issues facing blind and low-vision class
23 members. The workgroup covers, among other things, documentation of methods of
24 effective communication, accessible formats for written information, orientation and
25 mobility training, text-to-speech software, accommodations assessments and skills
26 training, braille literacy, accessibility of mental health groups, availability of white canes,
27 accessibility of tablet program (including training), and access to magnifiers of different
28 magnification levels.

1 The subject of low-vision class members’ access to electronic video magnifiers for
2 reading and writing purposes has been a primary focus of the parties in recent months.
3 Handheld and desktop video magnifiers—which, compared to the sheet magnifiers
4 referenced by Defendants, are more powerful, contain variable magnification, enable the
5 user to select a level of brightness, contrast, and different color on the display screen that
6 accommodates the user’s needs, and sometimes include text-to-speech software—are a
7 crucial accommodation for DPV class members who cannot read and write without these
8 auxiliary aids. Plaintiffs have repeatedly expressed to Defendants that by making these
9 magnifiers available only in the law libraries and education classrooms—and at limited
10 hours in these locations—Defendants leave DPV class members without reasonable
11 accommodations for reading and writing. Unfortunately, Defendants still have made no
12 progress on making these magnifiers available outside these restricted locations, and
13 continue to suggest that placing these magnifiers in the housing units would pose a security
14 concern. After repeated inquiry from Plaintiffs, Defendants have presented no evidence of
15 such a security concern, let alone one significant enough to justify denying DPV class
16 members a critical accommodation for reading and writing. Defendants state that there is
17 “ample access” to auxiliary aids at CMF and SATF, but these prisons impose the same
18 restrictions on auxiliary aid access as described above and as we have previously explained
19 to Defendants. *See, e.g.*, CMF AMT Report at 11-12 (July 2021); SATF DPV AMT Report
20 at 15 (Oct. 2019-Feb. 2020).

21 The parties also continue to collaborate on the provision of white tapping canes for
22 blind and low-vision class members including through development of memorandum that
23 will ensure appropriately sized and tipped canes upon request, and training on how to use
24 the canes from Certified Orientation Mobility Specialists. Defendants have represented
25 this memorandum is reportedly in the process of being finalized.

26 The parties are also working together to improve orientation for blind and low-
27 vision class members who are transferred to new living environments. The focus is to
28 ensure that designated staff are effectively trained on conducting such orientations.

1 Plaintiffs remain deeply concerned that Defendants still lack a system to provide
 2 large-print, audio, and braille versions of written materials to blind and low-vision class
 3 members. *See* Doc. 3296 at 22; Doc. 3322 at 19-21.⁴ For months, Plaintiffs have
 4 repeatedly requested information from Defendants on what measures are currently in place
 5 to provide written information in these accessible formats, yet Defendants have provided
 6 no written response besides informing Plaintiffs that they “provide the class members with
 7 a hand-held magnifier and access to the library where the auxiliary aids exist,” and that
 8 “staff or ADA inmate workers can read the responses to the class members.” Plaintiffs are
 9 not aware of any progress that Defendants have made on this issue since the last Joint Case
 10 Status Statement.

11 Defendants refer to the tablet program—which has still not been implemented at
 12 any prison with a significant blind and low-vision population—as a solution to this issue,
 13 but have not provided Plaintiffs with any information about plans to make CDCR-
 14 produced written materials (such as RAP responses and BPH hearing transcripts)
 15 accessible to DPV class members on these tablets. Plaintiffs would welcome efforts by
 16 Defendants to utilize the tablets as a means of addressing this problem. Defendants must
 17 also explore providing written materials in audio format—besides large print and braille—
 18 for those DPV class members who are blind and do not read braille. Finally, Defendants
 19 state that they “continue[] to research” the availability of contractors to produce CDCR-
 20 completed forms in large print and braille; yet Plaintiffs raised this issue over eight months
 21 ago in a letter to Defendants, and in July 2021 even facilitated a conversation between
 22 Defendants and a specific contractor capable of fulfilling this need. Plaintiffs are troubled
 23 by the lack of progress on this issue.

24
 25
 26 ⁴ Defendants also still lack a system to document DPV class members’ individual needs for
 27 accessible formats. Defendants refer to this as Plaintiffs’ “contention,” but have confirmed
 28 in the blind/low-vision workgroup that there is no current statewide system in place to
 identify and track what sort of format—large-print, braille, audio recording, etc.—a DPV
 class member needs to receive effective communication of written information.

1 **2. Defendants' Statement**

2 Defendants have put forth significant resources and effort to ensure that blind and
3 low-vision class members are appropriately accommodated. Defendants access numerous
4 sources of information to continuously understand class members' needs. Additionally,
5 Defendants participate in frequent working groups, most recently on October 21), to gain
6 further insight from Plaintiffs about the needs and concerns of these class members. For
7 example, during the pandemic and in response to increased movement within institutions,
8 the parties worked to develop interim measures to ensure that blind and low-vision class
9 members are properly situated to new living environments. As agreed to by the parties,
10 this included a comprehensive memorandum and training materials for the ADA
11 coordinator, or their designated staff, who would be situating these class members to
12 review, followed by a thorough checklist of necessary areas and items to orient the class
13 members to. The orientation is to be conducted within 24 hours of a class members'
14 placement into a new housing environment, and includes a guided walkthrough of the unit
15 to facilitate independent and safe navigation by the class member. The class member is
16 oriented to housing areas, toilets/showers, officers' stations, dayrooms, exits (both
17 emergency and ingress/egress), dining halls, and phones. Further, the orientation requires
18 staff to introduce class members to ADA workers (if they are available in the housing unit,
19 meaning it is not being utilized for isolation or quarantine purposes), or staff who will be
20 available to assist the class member when requested. Defendants continuously reach out to
21 staff to ensure that the orientations are timely and effective, based on the process put into
22 place. The parties continue to discuss its implementation, whether improvement to the
23 system is needed under current circumstances, and when and how to offer such
24 orientations to blind and low-vision class members after the pandemic.

25 As more fully discussed in recent workgroup-conferences, Defendants are exploring
26 a variety of options to provide large-print or braille versions of written materials including
27 contracting with third-party vendors. CDCR continues to research the is availability of
28 contractors who can produce CDCR-completed forms in large print and braille. It should

1 be noted, however, that there are currently three class members who can read braille.
2 During recent interviews, each confirm they did not want to receive written documents in
3 braille and that their accomoatoin needs were curenlty being met. CDCR, however,
4 continues to accomodate low-vision class members with access to Auxillary aids,
5 handheld magnifiers, staff and ADA workers who read documents aloud to class members.
6 Nonetheless, Defendants will continue to meet and confer with Plaintiffs concerning the
7 provision of large-print, braille, or audio versions of written materials and their contention
8 that there is no system to document class members' individual need for accessible versions
9 of documents. Plaintiffs, however, seemingly ignore CDCR's tablet program which
10 recently rolled out at Valley State Prison. These tablets include a host of accessible
11 features to accommodate class members' needs and serve to address Plaintiffs' concerns.
12 These tablets include a variety of assistive programs designed to facilitate access for class
13 members. These features include, but are not limited to, text enlargement, VRI capabilities,
14 video calling, and text to speech. CDCR is working with the contractor to enhance these
15 capabilities to include voice to text, increased recreational options for incarcerated people,
16 different formats for imparting information, and more. These tablets will eventually be
17 provided to all CDCR inmates free of charge. Defendants believe that this will be a
18 substantial positive development for both class members as well as the general CDCR
19 population.

20 CAMU is currently reviewing the Amigo Handheld Magnifiers to determine if this
21 device is a viable option for unsupervised in-cell use by low-vision class members, but this
22 is not a pilot program. Currently, low-vision class members have more access to the
23 libraries then non-class members. Auxiliary aids are available for low-vision class mem-
24 bers to use. CAMU and OCE staff continue to survey the institutions with the large num-
25 bers of low-vision class members to ensure there are no barriers to accessing the libraries
26 or auxiliary aids. Recently, CAMU interviewed staff and low-vision class members at
27 CMF and SATF revealing ample access to the Auxiliary Aids. In addition, the handheld
28 sheet magnifiers are available and provided to all low-vision class members upon request.

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

2 With regard to the broader problem of equal access to job and program assignments
3 for people with disabilities, the parties convened a small work group to address disability
4 discrimination against Plaintiffs, as documented in multiple tour reports and letters. *See*
5 Doc. 2680, at 13-14. The parties agreed to exchange program assignment data on a
6 quarterly basis. Plaintiffs contend that the data continues to show disparities in
7 assignments for people with disabilities. The parties agree to work cooperatively toward
8 ensuring equal access in program assignments for people with disabilities but these
9 conversations were initially put on hold during the pandemic.

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

16 **F. Statewide Durable Medical Equipment Reconciliation and Accuracy of
17 Disability Tracking Information**

18 Following Defendants' statewide durable medical equipment ("DME")
19 reconciliation in early January 2019 that revealed 7,346 class members were missing one
20 or more items of DME and that 2,349 class members' DME records had errors, CCHCS
21 implemented the DME Discrepancy Report Tool in January 2020. Defendants have agreed
22 to a process to ensure reconciliation of what records indicate a class member should have
23 and what they actually have. During the September 23, 2021, meeting between the parties,
24 Defendants, stated that they are developing sustainable system to reconcile DME annually.
25 According to Defendants their system will ensure that everyone who has not had a medical
26 encounter in the last nine months will be flagged by their electronic system. An analyst
27 will ducaat the class members and reconcile their DME. If they require a medical
28 evaluation, potentially for a different type of DME than is currently documented in the

1 system, the analyst will submit a Form 7362 to request evaluation. Defendants are also
2 developing a check-box for health care providers to confirm, during any health care
3 encounter, that they have conducted a reconciliation of DME during the encounter.
4 Plaintiffs are hopeful this process will be adopted soon and that it will eliminate ongoing
5 problems with lost, stolen, broken or otherwise missing DME throughout the state.

6 Relatedly, Defendants acknowledged problems with identification of some class
7 members who utilize DME but who have not been assigned any disability code.
8 Defendants distributed training materials to health care providers regarding how to assign
9 the proper disability codes. Plaintiffs are concerned that training alone has not proven
10 sufficient to alleviate problems. Plaintiffs have requested a similar reconciliation process
11 be employed by Defendants to remedy this problem and are awaiting Defendants'
12 response. A workgroup has been established to develop a tracking system for identifying
13 class members who have not had their DME reconciled in the last nine months. Details of
14 the work flow and the electronic tracking system are being developed and once completed,
15 this process will be piloted in one of the facilities at an institution before implementation
16 CDCR-wide.

17 Defendants' disability tracking system also fails to identify and track class members
18 with upper extremity disabilities. Plaintiffs requested that Defendants create a new
19 disability code for this population. *See* Dkt. 3322 at Ex. G, Ex. H. CCHCS does have a
20 system to identify upper-extremity disabilities and on September 28, 2021, shared a report
21 with Plaintiffs that showed all patients with upper-extremity disability and
22 accommodations report. Defendants dispute that they are failing to accommodate people
23 with upper-extremity 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 on parole and during the transition to parole. Class
28 members do not consistently receive adequate planning for parole and adequate

1 transitional housing, transportation, benefits application assistance, assistance obtaining
2 identification cards, and other transitional services that are critical for these individuals to
3 succeed on parole. *See* Doc. 2680 at 11-12; Doc. 2655 at 11-13. As a result, class
4 members needlessly struggle to comply with parole conditions and to transition to life
5 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 three to four weeks to address the systemic deficiencies in Defendants transition-to-
21 parole and parole programs that deny parolees with disabilities an equivalent opportunity
22 to 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.

26 Through these negotiations, Defendants have represented that they are committed to
27 developing a process by which CCHCS will assess all who are paroling to determine who
28 needs to be prioritized for transitional housing based on disability and related medical needs,

1 and that they will work with Plaintiffs to create and implement this process. Defendants
2 also agreed to work with Plaintiffs to ensure that CDCR-funded transitional housing
3 programs no longer have categorical restrictions on providing services to people with
4 disabilities, and are provided education on their obligations to provide reasonable
5 accommodations for parolees with disabilities by October 1, 2021. Although Plaintiffs
6 were disappointed that Defendants have been unable to meet this timeframe, we remain
7 committed to working with CDCR to remove these unlawful restrictions, and to help
8 provide the necessary education on reasonable accommodations so that parolees with
9 disabilities will no longer face disability discrimination from CDCR contractors.

10 Below, Defendants incorrectly state that they reported to Plaintiffs that they have
11 completed their internal review of CDCR-funded programs to ensure there are no longer
12 any improper disability-based restrictions. This is untrue. While Plaintiffs have been
13 urging Defendants to move more quickly to address the longstanding disability
14 discrimination against parolees with disabilities by CDCR contractors, at the parties' most
15 recent meeting, on November 2, 2021, Defendants were still unable to commit to any
16 timeframe to doing so. We urge Defendants to finally begin taking the necessary steps so
17 that these disability-based exclusions can be removed by the end of the year. Defendants
18 have not yet followed through on this commitment.

19 Defendants also agreed to make disability grievances available to class members
20 living in CDCR-funded transitional housing programs, and to include ADA compliance in
21 its annual inspections of these programs, which is necessary to identify and correct
22 violations of the ADA and the ARP by CDCR contractors. Defendants report that they are
23 in the process of developing a transportation policy with a goal of ensuring accessible
24 transportation to all parolees released from prisons and county jails. Defendants also
25 agreed to provide a memorandum to health care providers so that information sharing
26 between CCHCS and the Social Security Administration will no longer be a barrier to the
27 benefits application process for releasing individuals, and to add requirements for the
28 timely completion of benefits applications for class members by CDCR-contracted benefits

1 workers, so that applications for MediCal, Supplemental Security Income (“SSI”), and
2 other benefits are more likely to be approved before individuals are released from CDCR
3 where possible, or as soon as possible after release. Although Defendants have made a
4 number of promising representations about what they will do in the future, to date,
5 Defendants have not yet followed through on any of these commitments.

6 Among other remedial measures, the parties continue to discuss Plaintiffs’
7 proposals regarding how to ensure parolees’ disabilities are taken into account when
8 determining the consequences for alleged parole violations—including how parole
9 caseloads could potentially be modified for parolees who require increased case
10 management support and reasonable accommodations due to their disabilities—and
11 Plaintiffs’ recommendation that parolees be provided a 90-day supply of medications so
12 they do not run out before they are able to get their Cal-ID cards and MediCal, both of
13 which are generally needed to obtain medication renewals in the community.

14 Plaintiffs are committed to working with Defendants to achieve a durable remedy to
15 ensure they are able to meet their legal obligations under the ADA and the *Armstrong*
16 Remedial Plans by operating their transition-to-parole and parole programs in a manner
17 that no longer systemically discriminates against parolees with disabilities. The parties
18 will next meet on December 6, 2021. The detailed agenda of issues being considered,
19 including at the most recent meeting on November 2, 2021, is attached hereto as

20 **Exhibit D.**

21 **2. Defendants’ Statement**

22 Defendants dispute Plaintiffs’ allegation that CDCR and DAPO fail to ensure that
23 parolees with severe and placement-impacting disabilities are accommodated during the
24 transition-to-parole process. Similarly, Defendants dispute Plaintiffs’ assertion that their
25 May 4, 2021 letter “established” discrimination against parolees with disabilities by failing
26 to provide minimum support while on parole, and preparation for parole, or equal access to
27 CDCR-funded transitional housing programs. As outlined below, Defendants have worked
28 continuously to effectuate multiple changes in the pre-parole planning process, belying

1 Plaintiffs' assertion that there has been no "follow through" on the commitments made
2 during the parties meet and confers.

3 Defendants take a comprehensive approach to provide people with disabilities with
4 adequate pre-parole planning so that the successful completion of parole is equally
5 accessible to them. As part of the pre-release process, staff complete an assessment for
6 each inmate who is paroling, whether or not that inmate has a disability, to identify their
7 individual needs. Once those needs are determined, the staff and inmate/parolee work
8 collaboratively to complete a case plan identifying community-based programs that receive
9 federal, state, or other local funding to provide housing and other services to disabled
10 citizens. Notwithstanding other accommodations, such as prescribed medications, DME,
11 or other supportive services. It must be noted that notwithstanding the enormous
12 pandemic-related challenges, Defendants have been successful in providing transition-to-
13 parole services to the unprecedented number of parolees who have been discharged from
14 CDCR institutions. CDCR has released thousands of inmates since March 2020 to address
15 the impact of the COVID-19 pandemic and Defendants worked tirelessly to provide
16 transition-to-parole services to those people in a very short period of time.

17 As part of the on-going meetings related to Plaintiffs' May 4 letter, CDCR informed
18 Plaintiffs that they have completed an internal review of their community-contracted
19 programs, as new rate sheets have been submitted by the programs to DRP, to ensure that
20 there are no improper restrictions to housing people with hearing, vision, mobility, or
21 mental-health disabilities, as Plaintiffs have alleged. CDCR is also in the process of
22 finalizing talking points that will be discussed with the community-contracted programs,
23 after receiving input and suggestions from Plaintiffs' counsel, to educate them on disability
24 accommodations for parolees who may be housed there. CDCR informed Plaintiffs that a
25 yet-to-be-determined evaluation of the parolee, before their release from the institution,
26 will likely be required to determine if their disability necessitates limited, short-term,
27 housing while they are awaiting approval for SSI-funded housing arrangements. This is a
28 result, in part, because Defendants have temporarily significantly increased the re-entry-

1 housing capacity of available bed space by accessing further funding to meet the increased
2 need for additional bed space up and until end of the current fiscal year. DRP will
3 continue to work on an educational video to inform providers of the needs of parolees with
4 disabilities who are participating in their programs.

5 During the October 14 meeting, DAPO informed Plaintiffs of recent efforts to
6 ensure that parolees' benefits applications are completed before the parolees are released
7 from prison. DAPO intends to amend the TCMP contracts to ensure that benefits
8 applications for Medi-Cal will be submitted at 90-days before release.

9 Also, as part of the current social worker and parole agent role, they provide post-
10 release guidance to parolees and referrals to the services that they may need while on
11 parole to address treatment, program, and supportive needs. In support, Behavioral Health
12 Reintegration (BHR) will hire 30-40 licensed social workers to fill current vacancies held
13 due to hiring restrictions and while negotiating a revised duty statement with their labor
14 negotiation. The revised social worker duty statement increases their case management
15 approach to identify and provide supportive services to address urgent and basic needs
16 presented by parolees. This focus includes identifying community resources or services
17 and referring or linking the parolees they serve to them. The anticipated TCMP contract
18 changes should substantially minimize the number of parolees with disabilities being
19 released without a completed Medi-Cal application.

20 Moreover, recently approved legislation concerning inmates obtaining Cal-ID cards
21 before release should also facilitate parolees' timely reintegration. On October 7, 2021
22 Senate Bill 629 was chaptered by the Secretary of State, and under Governor Newsom's
23 approval. CDCR and DMV are obligated to provide eligible inmates with valid
24 identification cards before release and requires CDCR to assist inmates with obtaining
25 necessary information or documents that may be held by other agencies, such as birth
26 certificates or social security numbers.⁵ This should increase the number of parolees

27 _____
28 ⁵ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB629
(footnote continued)

1 released with Cal ID cards and ameliorate some of the alleged difficulties parolees face
2 when released without a Cal ID card as raised by Plaintiffs in their May 4, 2021 letter.

3 As noted above, DAPO is finalizing a transportation policy for parole agents to
4 provide transportation to inmates discharging to parole who do not have transportation
5 from family, a community resource, or otherwise. The parole agents will transport these
6 individuals to their community placement or county of parole. In addition, DAPO is
7 working on a notification process with the county jails whereby the jail will inform DAPO
8 when parolees in their custody will be released to allow agents to pick them up from the
9 county jail. Further, Defendants are finalizing a comprehensive policy addressing the
10 release of parolees who require DME or prescription medications. Finally, Defendants
11 continue to work on responses to other issues raised in Plaintiffs' May 4 letter that have
12 not yet been fully resolved. Defendants look forward to continued collaboration with
13 Plaintiffs to address their concerns without Court intervention.

14 **H. Joint Monitoring Tool**

15 The parties remain committed to developing a strong and effective joint monitoring
16 tool. The parties had planned to test the tool out at different types of prisons beginning in
17 April 2020. Those plans, unfortunately, were delayed by the COVID-19 pandemic. The
18 parties have conducted off-site document reviews for multiple institutions but agree that
19 audits are incomplete without the ability to interview class members and staff. On-site
20 audits resumed with a tour of CIM in June 2021 and CMC in August 2021 and CCWF in
21 September 2021. This process continues to be impacted by the pandemic and the parties
22 have agreed to cancel the in-person portion of the November 2021 tour of NKSP due to an
23 outbreak at that facility.

24 The parties met on September 16, 2021, to discuss a path forward regarding
25 outstanding policy issues that must be resolved to effectively audit. The parties agreed to
26 convene multiple separate workgroups to tackle these outstanding issues. The parties also

27 _____
28 (last visited 10/23/21).

1 plan to meet during the second week of November to resolve problems with the audit
2 questions that have been identified during recent tours.

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

4 Before the pandemic, construction continued at several of the designated
5 institutions with former CAMU Manager Mike Knowles overseeing the process and
6 reporting on construction progress and anticipated timeframes in monthly reports produced
7 to Plaintiffs. At the start of the pandemic, construction was suspended due to COVID-19,
8 with the exception of two projects at California Institution for Women and California State
9 Prison, Sacramento. Construction resumed statewide in June 2020 and any significant
10 issues impacting construction are noted in the Monthly Construction Report that is
11 provided to Plaintiffs.

12 The parties agreed to a flexible, collaborative approach in which they would meet
13 regularly to discuss different institutions and be joined by local ADA staff with close
14 knowledge of the institutions. The parties also plan to tour institutions together to resolve
15 outstanding issues and address Plaintiffs concerns collaboratively. The Court Expert
16 agreed to accompany the parties on these tours. In light of serious public health issues
17 presented by the global COVID-19 pandemic, these tours have been suspended; however,
18 the parties met on April 21, 2021, to restart this Master Planning process. We hope to
19 resume a regular schedule of tours and meetings as the prisons open up once the pandemic
20 recedes. The parties met to discuss Master Planning improvements planned for VSP on
21 August 30, 2021. The parties will schedule joint tours at VSP and LAC to discuss Master
22 Planning issues once programming at the prisons is fully up and running as the prisons
23 emerge from COVID-19 related restrictions. Because accessible programming space is a
24 key concern for Plaintiffs, these tours cannot occur until programming has returned to
25 normal.

26 In addition, Defendants are in the process of auditing whether program
27 modifications referenced in the Master Plan have been memorialized in local operating
28 procedures at each institution. Defendants have agreed to provide copies of local operating

1 procedures implementing the program modifications to plaintiffs as soon as they are
2 finalized.

3 One area of dispute between the parties concerns whether Defendants are required
4 to make emergency exits fully accessible to prisoners with impacting placement mobility
5 and vision disabilities in units where those individuals are housed. Defendants insist they
6 are not required to do so, but Plaintiffs disagree and are concerned about the adequacy of
7 emergency evacuation plans for individuals with disabilities, especially given reports of
8 recent fires where class members were not evaluated and where fire alarms did not work.
9 *See* November 1, 2021, letter from Penny Godbold to Tamiya Davis, attached hereto as
10 **Exhibit E**. Plaintiffs await a response from Defendants and are hopeful the parties can
11 resolve these disputes. Defendants take seriously Plaintiffs' safety concerns raised in their
12 letter and continue to give those concerns much internal consideration and evaluation in an
13 effort to identify and resolve disagreement between the parties.

14 **J. Investigation of County Jails**

15 Plaintiffs continue to assert that a pattern and practice of denying disability
16 accommodations to class members exists at multiple jails but especially the Los Angeles
17 County Jails. *See* Doc. 2680 at 22-24; Doc. 2786 at 26-27; July 28, 2021; Doc. 3322 at
18 Exs. I, J, K. Defendants disagree with Plaintiffs' assertions and have been meeting with
19 county counsel for a number of counties in an effort to improve relations, information
20 sharing, and ADA compliance at the jails. Unfortunately, Plaintiffs contend, these
21 conversations alone are not enough as evidenced by the longstanding failure of Los
22 Angeles County Jail to implement their policy to allow and provide canes to detainees.
23 Defendants reported that Los Angeles County plans to roll their four-year old policy out as
24 a "pilot" in the coming months. Plaintiffs may conduct additional discovery to ensure
25 ADA compliance for *Armstrong* class members housed in LACJ.

26 Defendants maintain that they will continue speaking to county jails in an effort to
27 ensure compliance with the ADA. In fact, Defendants met with County Counsel on
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1 November 3, 2021 and have another meeting scheduled for February 16, 2022.

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Respectfully submitted,
ROSEN BIEN GALVAN & GRUNFELD LLP

DATED: November 15, 2021

By: /s/ Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

Attorneys for Plaintiffs

DATED: November 15, 2021

ROB BONTA
Attorney General of the State of California

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

Attorneys for Defendants

FILER'S ATTESTATION

As required by Local Rule 5-1, I, Gay Crosthwait Grunfeld, 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: November 15, 2021

/s/ Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

EXHIBIT A



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September 14, 2021

VIA ELECTRONIC MAIL ONLY

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

Re: *Armstrong v. Newsom*: Plaintiffs' Review of Q2 2021 Investigative and
Disciplinary Documents Produced by Defendants
Our File No. 0581-03

Dear Jenn and Tamiya:

We write regarding inquiries and investigations conducted by the Declarant Allegation Review Team (“DART”) and the Office of Internal Affairs (“OIA”), which were produced in Q2 2021 pursuant to Section IV of the R.J. Donovan Correctional Facility (“RJD”) Remedial Plan (“RJD Remedial Plan”) and Section V of the Five Prisons Remedial Plan.

In summary, the Q2 2021 DART and OIA cases suffered from the very problems that the Court’s orders identified and sought to remedy: persistent bias against incarcerated people, incomplete investigations, and improper disciplinary decision-making by Hiring Authorities. *See* Dkt. 3059 (“RJD Order”) at 35-37; Dkt. 3217 (“Five Prisons Order”) at 48-50.

Plaintiffs recognize that the parties are currently negotiating over reforms to the investigation and discipline process intended to eliminate these problems. Those reforms center on investigations being removed from institutions, with OIA investigators conducting all or most of CDCR’s investigations into staff misconduct. However, Plaintiffs’ review of the Q2 2021 cases reveals that these problems exist in recent investigations conducted by OIA staff—the very same staff who will be conducting investigations under the new system. The effectiveness of the reforms contemplated by the parties largely hinge on the quality of the work of individual actors working within

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the new system. The existence of serious problems with investigations and disciplinary decision-making of those staff, who will be responsible for investigation and disciplinary decision-making under the new system, underscores the importance of the parties' negotiations regarding bias and training.

Despite ongoing negotiations, the time for change is now. A year after the Court ordered sweeping changes to the accountability system, it is clear that Defendants have not set expectations regarding the responsibility of staff to conduct thorough and unbiased investigations, and are not adopting measures (even if only interim) to identify poor quality investigative/disciplinary decision-making and provide additional training and accountability for investigators who need it. As outlined below, the cases reveal:

- **OIA DART investigators, who are the same people who will investigate staff misconduct under the new system, are conducting biased and incomplete investigations;**
- **OIA illogically divided up related allegations and assigned them to different investigators who failed to share material evidence across cases;**
- **Hiring Authorities failed to exercise sound discretion and issue discipline when warranted by the evidence;**
- **OIA supervisory staff, Hiring Authorities, and other reviewing entities failed to identify problems in investigations and disciplinary decision-making.**

If the outcomes of investigations and disciplinary processes do not change, the result will be lipstick on a pig—a different process that produces the same incompetent and biased results as the current system, which will fall far short of the Court's mandate. *See* Dkt. 3060 (“RJD Injunction”), ¶ 5.c; Dkt. 3218 (“Five Prisons Injunction”), ¶ 5.c.

DART Exonerated Staff in Virtually All Cases

The Q2 2021 production includes 112 cases reviewed by DART, 107 of which had not previously been investigated by OIA. A detailed breakdown of how DART disposed of the 112 cases is attached hereto as **Appendix A**. Of those 107 cases (84 of which were

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closed in the Q2 2021 production), staff were found to have committed misconduct in only **two instances**.¹

This outcome is incredible. The declarations were detailed, vetted by Plaintiffs' counsel, often supported by witnesses and medical records, consistent with findings by Defendants' 2018 Strike Team and related follow-up interviews, and found credible by the Court. Nonetheless, Defendants fully exonerated their officers in more than 97% of the cases.² The results of these investigations, standing alone, indicate that the investigations were biased and incomplete and that Hiring Authorities poorly exercised their discretion.

In all but one of the 112 cases, there was no indication that the Hiring Authority questioned the inadequacy of the investigations, sending them back to OIA for any additional information that might be needed in order to determine whether staff misconduct occurred. Supervisors at each step of the review, and especially Hiring Authorities, must question the standard of work completed during each investigation and carefully determine whether or not each investigation was adequate and contained enough factual basis for disciplinary determinations.

In addition to serious problems regarding investigations, in both cases where staff were found to have committed misconduct—including one case where staff admitted to the endangerment of the class member, an action that may have eventually led to his death—corrective action, not adverse action, resulted.

Persistent Incompetence and Bias in DART Investigations

Many DART inquiries suffered from the same failures—including incompleteness, unreasonableness, a total lack of curiosity and willingness to resolve discrepancies, and clear bias in favor of staff—that Jeffrey Schwartz found in his review

¹ Misconduct was found in OIA Case S-RJD-189-21-A, which was connected to three DART cases: D001-A02-224-2021, D012U-A01-005-20, D002-A01-236-21. Corrective action was ordered in an additional DART case: D033-A04-257-21.

² This shockingly high exoneration rate is worse than the 97% exoneration rate found during the OIG's 2019 review of SVSP inquiries and comes long after the Court ordered sweeping changes to CDCR's investigative and disciplinary system. *See* Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct (Jan. 2019).

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of local and OIA cases from RJD and LAC. *See generally* Schwartz Statewide Decl., Dkt. 2947-9; Schwartz Statewide Reply Decl., 3106-5. This result is especially discouraging given that Defendants are aware of the scrutiny and litigation surrounding these cases.

- D005-A02-157-21 and D005-A09-164-21 involved class member-declarant report that staff used excessive force on on April 5, 2018. Both cases were closed without further action, in large part because the OIA Central Intake Panel (“CIP”) had already rejected the case (S-RJD-142-19-R). The purposed of the DART should have been to take another look at the case, in light of additional evidence from Mr. declaration, to determine what happened, and not to merely rubber stamp its prior closure. DART’s preemptory closure of the case ignored the fact that Mr. allegations were supported by three eyewitnesses interviewed during the initial, institution-level inquiry—as well as a fourth eyewitness identified in the DART inquiries—and medical evidence. *See* Schwartz Statewide Decl., Dkt. 2947-9, ¶ 240. By relying on the faulty findings of the CIP, and dismissing credible corroborating witness accounts, these DART investigations reflect a continuation of the bias that led to the case’s initial rejection. As Mr. Schwartz opined with respect to this case, “It is cases like this that lead to my conclusion that OIA is either so biased against inmates or so incompetent, or both, that OIA is not a realistic alternative to institution-level investigations and cannot be relied upon without additional oversight for fair or thorough investigations of inmate complaints, grievances or appeals.” *See* Schwartz Statewide Decl., Dkt. 2947-9, ¶ 246.
- D005-A03-158-21 involved class member-declarant report that staff failed to intervene in a fight between incarcerated people on August 25, 2018 and subsequently attempted to cover up the fight by kicking dirt over a pool of blood. The victim of the fight, , confirmed in his DART interview that he was assaulted, that he suffered documented injuries, including a fracture to his ankle, and that staff failed to intervene to stop the assault. A second witness confirmed in his DART interview that staff failed to intervene and kicked dirt over the pool of blood. Officers and both failed to submit a report about the assault, and during the DART inquiry, denied that the assault occurred. Despite the corroborating witness and medical evidence supporting Mr. report—as well as evidence showing that officers failed to report the incident and later lied about it in the inquiry—the investigation was closed with no further action.

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- D008-A01-264-21 involved class member-declarant report that staff orchestrated an assault against him on March 17, 2019. Without conducting any investigative follow-up, the inquiry was closed with no further action because an institutional inquiry had already been conducted in March 2019. In that inquiry, three officers deny that an incident occurred on March 17, 2019. This testimony is obviously inconsistent with the fact that Mr. suffered several fractures in relation to this incident. In a display of both bias and incompetence, the institutional inquiry does not attempt to explain these injuries, nor explore why Mr. 's door was opened by staff just as the assault occurred. In failing to correct these errors, the DART inquiry reflects a continuation of the bias and incompetence evident in institutional investigations.

The cases highlighted above are only a few examples of incomplete and biased investigations conducted by DART. Additional examples are attached hereto in **Appendix B**. These cases demonstrate that OIA supervisory staff, and ultimately the Hiring Authority, failed to ensure that investigations were complete and unbiased. These decision-makers should have identified that additional work was needed and sent them back to DART. The new system must address the rubber-stamping of biased and incomplete investigations by OIA supervisory staff and Hiring Authorities.

DART Failed to Share Information Across Cases, Resulting in Biased and Incomprehensive Investigations

Plaintiffs discovered that reports of staff misconduct that were connected—either because they involved a continuing course of misconduct or because they alleged the same type of misconduct committed by the same officer—were split up by OIA/DART and then assigned to different investigators. DART investigators then routinely failed to share material information across these connected cases. As a consequence, DART investigators failed to connect corroborating witness statements about the same incidents or the same types of misconduct committed by serial bad actors, and failed to make consider information relevant to the credibility of witnesses.

- D078-A02-145-21, investigated by Lieutenant , involved class member-declarant report that Officer closed a cell door on him on multiple occasions. D14-A05-140-20, investigated by Lieutenant , and D064-A02-259-21, investigated by Special Agent , involved the same reports—that Officer intentionally closed cell doors on incarcerated people with disabilities—and resulted in

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OIA Case S-RJD-239-21-P. That these cases involved enough evidence to warrant a full OIA investigation lends credence to Mr. reports. Because investigators failed to share information across cases, Mr. credible report of the same misconduct by the same officer was closed without further action instead of being integrated into the ongoing OIA case or referred to OIA as a new case.³

- D004-A01-227-2021, investigated by Special Agent , involved declarant report that, on July 20, 2020, three incarcerated people—Mr. y, Mr. , and Mr. threatened him to stop filing declarations against staff. The case was closed without further action. In a separate case involving Mr. D004-A03-229-2021, investigated by Special Agents and , investigators relied in part on the DART testimony of Mr. a witness whose credibility had been questioned in the case above, due to his alleged affiliation with staff. Had DART investigators connected information about Mr. credibility to this case, testimony given by Mr. would have been accorded skepticism, which did not happen here.

In other cases, DART investigators responsible for multiple cases failed to synthesize evidence across their own cases, resulting in incomprehensive investigations:

- D005-A13-168-21 and D005-A21-176-21, both investigated by Special Agent , involved a continuing course of misconduct and retaliation reported by class member-declarant The first case concerns threats made by staff in 2018 in retaliation for Mr. reporting staff misconduct. The second case involves the assault of Mr. orchestrated by staff at a later time but in direct connection to Mr. reporting staff misconduct in the original case. Although these events are separated in time, the events are one continuing course of misconduct and should have been investigated together. Because they were split, however, corroborating witness testimony gathered from the first

³ Allegations that Officer intentionally closes people in cell doors have been raised numerous times by multiple different class members over the years and none of these consistent and credible allegations appear to have been connected to one another during the investigation. *See, e.g.*, Letter from P. Godbold to T. Davis & J. Hood (Nov. 19, 2020).

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case—including testimony that staff commonly called incarcerated people “snitches” and orchestrated assaults against serial complainants—was not considered in the second investigation.

The case files suggest that DART investigators’ failure to share information across cases is a manifestation of their bias against incarcerated people. DART investigators demonstrated their ability to share information across cases, but only when such information was used to undermine the credibility of a staff misconduct declarant:

- In D032-A02-183-21, Special Agent [redacted] referred to witness interviews in a different case assigned to him, D032-A02-184-21, to discredit Mr. [redacted] a witness in the instant case. Without conducting additional investigative work, he relied on the prior discreditation to dismiss Mr. [redacted] reports. However, the prior discreditation appears unreliable and, at the very least, should have been questioned.⁴

Because cases were illogically split and divided among different investigators, some class members were interviewed many times⁵ by multiple different investigators each asking the same questions about overlapping and related incidents. Plaintiffs’ counsel observed multiple DART interviews involving class members who were frustrated and suspicious about why different people from CDCR were questioning them multiple times about the same incidents. Some class members began to feel harassed by the process and started to refuse to answer questions. This practice must be stopped.

Any reforms to the system must ensure that cases are appropriately connected. Screening analysts must be able to relate claims to ongoing and completed investigations and be able to search OIA’s case records for alleged incidents matching certain case

⁴ In the prior case, Special Agent [redacted] found that “[Mr.] [redacted] provided information that could not be verified and his witnesses made statements questioning his reliability.” *See* D032-A02-184-21. Those witnesses corroborated the series of events described by Mr. [redacted] though some witnesses disagreed that the force used by staff was excessive. Thus, there was a dispute of the degree of force, not a material dispute of fact such that his statements should have been deemed not reliable and he should be discredited as a witness in multiple cases.

⁵ For example, class member-declarant [redacted] was interviewed on three separate occasions in February and March of 2021 about his declarations, even though his reports of staff misconduct all relate to the June 2020 incident involving Mr. [redacted] and the course of retaliation that resulted in subsequent weeks.

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parameters.⁶ If a related match is found, all such complaints should be investigated by the same investigator or team of investigators. Even if cases do not appear related, the system must allow investigators to later discover and share material evidence, including witness testimony and concerns about witness credibility, across cases. Witnesses must not be questioned multiple times by different investigators about the same incidents, thus generating fear of participation in the staff misconduct investigation system.

OIA Cases Produced in Q2 2021 Are No Better Than DART Cases

Plaintiffs also reviewed three additional OIA investigations in the Q2 2021 production that were unrelated to DART or the class member declarations: S-LAC-161-21-RNM (LAC 161-21), S-LAC-349-20-A (LAC 095-20), and S-CIW-169-20-C (CIW-I-20-006). These cases suffered from the same problems discussed above.

S-LAC-349-20-A involved allegations that Sergeant [REDACTED] and Officer [REDACTED] failed to report and address safety concerns raised by class member [REDACTED] at LAC, resulting in an altercation between Mr. [REDACTED] and his enemy on March 22, 2020. Even though both officers admitted that they failed to document Mr. [REDACTED] safety concerns as required by policy, the Hiring Authority elected not to discipline staff, instead issuing only a Letter of Instruction (“LOI”) to Sergeant [REDACTED] and finding that Officer [REDACTED] had not committed misconduct. The Hiring Authority should have imposed disciplinary action against Sergeant [REDACTED] in light of the consequences of his misconduct. Moreover, additional charges, like endangerment (D.2), applied to his conduct but were not considered by the Hiring Authority.⁷

⁶ For example, the system needs to be able to connect both: 1) general allegations that Officer [REDACTED] has engaged in a pattern of intentionally closing cell doors on people over a prolonged and unspecified period of time, and 2) allegations regarding a specific use of force incident, which may involve related complaints from the victim and one or more witnesses.

⁷ It is worth noting that there is no indication that the findings of the staff misconduct investigation fed back into the RVR process in this case. Given the Hiring Authority’s finding that Sergeant [REDACTED] violated policy in failing to document Mr. [REDACTED] safety concerns, the RVR issued to Mr. [REDACTED] related to the March 22, 2020 altercation should have been voided because the altercation was the direct result of Sergeant [REDACTED]’s failure to take seriously Mr. [REDACTED] safety concerns. This case underscores the need for Defendants to reform the RVR process to ensure that incarcerated people are

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S-CIW-169-20-D involved allegations that Mechanic engaged in sexual misconduct with an incarcerated person and smuggled contraband into CIW for that person and others. The Hiring Authority sustained all of the allegations against Mechanic and terminated him, though Mechanic resigned under unfavorable circumstances prior to the completion of the OIA investigation.

Although the outcome in this case was reasonable, the OIA criminal investigation was shockingly incomplete. The victim of the misconduct reported that an officer, Officer , witnessed sexual activity between her and Mechanic on at least one occasion, but the OIA investigation did not conduct any further investigation into this allegation. The victim further reported that Officer and a “few other staff members,” including a staff member named and a terminated staff member named , knew about her and Mechanic ’s relationship, but OIA did not follow-up on these reports. Despite OIA’s failure to investigate this serious misconduct, the Hiring Authority found that the investigation was sufficient.

Evidence of Problematic Hiring Authority Decision-making

In one of the only two DART cases where the Hiring Authority found that misconduct occurred, the Hiring Authority’s decision-making was poor and biased, resulting in no disciplinary action for a staff member who admitted to misconduct which endangered a class member and may have ultimately been a factor in his murder.

D033-A04-257-21 involved deceased class member-declarant ’s claim that Officer called Mr. a “homosexual,” “a child molester,” and issued a contract for an incarcerated person to assault Mr. . One incarcerated person confirmed in a DART interview that Officer had told him that Mr. was a “homosexual and child molester.”

In her DART interview, Officer admitted that she called Mr. a “faggot” in response to him holding hands with another incarcerated person. In response, the Hiring Authority elected to only impose corrective action on Officer . This result is shocking. Officer ’s admission, combined with the incarcerated person’s testimony, demonstrates that Officer violated multiple sections of the Employee Disciplinary Matrix, including: D1 (discourtesy), D2

made whole after being issued RVRs that constitute or are the result of staff misconduct. See Letter from P. Godbold to J. Neill & T. Davis (June 10, 2021).

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(endangering), D9 (improper transmittal of confidential information), D15 (insults pertaining to sexual orientation), D16 (harassment based on sexual orientation), and D17 (sexual harassment). Given the seriousness of the misconduct to which she admitted, Officer [redacted] should have been subjected to disciplinary action, not a slap on the wrist. This is especially true considering that Officer [redacted]'s misconduct may have been a factor in the murder of Mr. [redacted].

Dozens of the 112 DART cases remain under investigation by OIA or DART. Plaintiffs intend to report further on Hiring Authority decision-making when additional OIA-referred DART cases are produced by Defendants.

DART Investigators Make Recommendations About Whether or Not Evidence Supports Finding of Misconduct

Each of the 112 DART inquiries concludes with the investigator's summary of the evidence gathered and recommendation as to whether the evidence gathered supports a reasonable belief that the misconduct occurred. This practice undermines Defendants' position, taken throughout negotiations with Plaintiffs, that investigators cannot offer conclusions about whether the misconduct they are investigating occurred. Plaintiffs once again urge Defendants to implement the Court Expert's recommendation that, in every investigation report, the investigator include a summary of the available evidence and a recommended finding regarding whether misconduct occurred.

DART Investigations Were Exceptionally Delayed

For the vast majority of the declarations investigated in the 112 DART cases produced in Q2 2021, Plaintiffs first placed Defendants on notice of the declarations in January and February of 2020. Despite that, many of the DART inquiries were not completed until well after January 2021. *See, e.g.*, D001-A02-261-21 (misconduct first reported in letter from Plaintiffs' counsel dated October 23, 2019, declaration shared on February 4, 2020, DART case assigned on March 29, 2021, case closed by Hiring Authority on June 14, 2021); D008-A01-264-21 (misconduct first reported in letter from Plaintiffs' counsel dated July 17, 2019, declaration shared on January 13, 2020, DART case assigned on March 29, 2021, case closed by Hiring Authority on May 12, 2021); D032-A02-184-21 & D032-A02-184-21 (declaration shared on January 13, 2020, cases assigned on January 27, 2021, cases closed by Hiring Authority on June 21, 2021); D041-A03-249-21 (declaration shared on January 13, 2020, case assigned on March 29, 2021, case closed by Hiring Authority on June 17, 2021); D041-A04-250-21 (declaration

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shared on January 13, 2020, cases assigned on March 29, 2021, cases closed by Hiring Authority on May 12, 2021).

Exceptional investigative delays affected even the simplest of cases. *See, e.g.*, D71A-A02-143-21 (11 month delay for allegation that officer called incarcerated person a “stupid ass”: declaration shared on May 14, 2020, case assigned on January 21, 2021, case closed by Hiring Authority on April 22, 2021); D81-A05-090-20 (14 month delay for verbal discourtesy allegation: declaration shared on January 13, 2020, case assigned on August 17, 2020, case closed by Hiring Authority on April 21, 2021).

In most of these cases, as well as many additional cases, DART investigators concluded their investigations well after the statute of limitations had expired. By statute, to impose adverse action against an employee, Defendants must complete misconduct investigations within one year of discovery of the alleged misconduct unless the alleged misconduct is also the subject of a criminal investigation or prosecution. *See* Gov’t. Code § 3304(d)(1). Thus, even if the Hiring Authority had found misconduct in these and other cases where Defendants delayed initiating and completing investigations, CDCR could not have imposed disciplinary action on the staff involved.

The unreasonable investigative delays exhibited in the DART cases underscore the need to impose swift deadlines for initiating and completing investigations conducted in the new system. These deadlines are critical not only to ensure that CDCR does not exceed the statute of limitations, as was the case in many of the DART inquiries, but also to ensure that discipline is imposed swiftly in order to maximize its impact on staff behavior.

Defendants must impose strict time-limits on investigations, consistent with the Court Expert’s proposal that investigations be completed within 60 and 120 days of discovery, depending on the complexity of the investigation and the rank of the investigator, with extensions permitted through a formal extension request procedure involving supervisory staff at OIA. *See* Email from E. Swanson to M. Freedman, et al. (Apr. 23, 2021). If Defendants do not adopt the Court Expert’s proposal, Plaintiffs intend to object.

Missing Q2 2021 Quarterly Interview Documents

Lastly, the Q2 2021 Production did not include any documents related to quarterly interviews conducted at the six prisons. As you are aware, both the RJD and Five Prisons Remedial Plans require that CDCR conduct quarterly interviews (of *Armstrong* class

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members at RJD and of “disabled inmates” at the Five Prisons), produce a written report summarizing the findings of the interviews, log any violations of the ARP and ADA alleged in the interviews, and if necessary, create and monitor a Corrective Action Plan (“CAP”) following the analysis of the interviews. *See* RJD Remedial Plan § II; Five Prisons Remedial Plan § II.A. CDCR is required to produce the interview documentation, any resulting CAP, and the written summary report within 45 days of the conclusion of the interviews. Please provide us the dates on which quarterly interviews were conducted for each of the six prisons, and specify the anticipated production date for documents associated with these interviews.

Conclusion

Defendants must address the deficiencies discussed in this letter as the parties continue to work to build a new staff misconduct investigative and disciplinary system. Although structural reforms will help reduce incompetence and bias to a certain degree, the effectiveness of the system turns on the performance of individual actors involved at each stage of the process—from initial routing, to investigation, all the way through to Hiring Authority disposition and representation before the State Personnel Board. The cases discussed above suggest that many of these actors currently lack the competence to perform their important duties. Plaintiffs hope that the parties will focus on the findings

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set forth in this letter as we begin to consider and negotiate over the Court Expert's bias and training proposal.

We look forward to discussing these concerns further at an upcoming meet and confer.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold

PG:JRG

Appendices

cc: Ed Swanson
August Gugelmann
Patricia Ferguson
Gannon Johnson
Chor Thao
Adriano Hrvatin
Trace Maiorino
Andrea Moon
Sean Lodholz
Eric Chang
Mark Jackson
Roy Wesley
Co-counsel

Appendix A
Plaintiffs' Review of Q2 2021 Investigative and Disciplinary Documents
Overview of 112 DART Cases

Of the 112 DART inquiry files included in the production, the Hiring Authority at RJD found that misconduct did not occur in 80 cases (71.4%). The remaining 32 cases were disposed as follows¹:

1. **Five cases²** related to four matters that had previously been referred to the Office of Internal Affairs ("OIA"): S-RJD-49-19-A, S-RJD-086-19-A, S-RJD-146-17-A, and S-RJD-1537-19-D. Defendants already produced documents associated with S-RJD-049-19-A and S-RJD-086-19-A in response to Plaintiffs' discovery requests in 2020. Documents associated with S-RJD-146-17-A and S-RJD-1537-19-D have not previously been produced by Defendants and were not included in the Q2 2021 Production. **If more than thirty days has passed since the adverse action determination in each of those three cases, please produce them immediately to Plaintiffs' counsel pursuant to the RJD Remedial Plan.** See RJD Remedial Plan § IV.
2. **Five cases³** related to the ongoing OIA investigation (S-RJD-287-19-A/C) and Federal Bureau of Investigation ("FBI") investigation (282-A-SV-3285365-) into the incidents involving Mr. and Mr. .
3. **Ten cases resulted in new OIA investigations being opened, broken down as follows. Two cases⁴** resulted in a new OIA investigation, **S-RJD-239-21-P**. **Five cases⁵** resulted in a second new OIA investigation, **S-RJD-135-21-P**. Documents associated with these cases were not included in the production. **Please provide an update on the status of these two cases. If more than thirty days has passed since the adverse action determination in these cases, please produce any associated documents immediately to Plaintiffs' counsel pursuant to the RJD Remedial Plan.** See RJD Remedial Plan § IV. Lastly, **three cases⁶** resulted

¹ **Many of the DART inquiries produced for Q2 2021 were incomplete. Requests for additional information and documentation are underlined and bolded in this appendix.**

² D39-A02-187-21, D004-A02-154-21, D005-A17-172-21, D81-A04-089-20, D021-A01-216-21

³ D063-A02-252-21, D14-A03-138-20, D14-A04-139-20, D063-A01-251-21, D064-A01-258-21

⁴ D064-A02-259-21, D063-A03-253-21

⁵ D11D-A01-244-21, D11D-A02-245-21, D012-A01-212-21, D013-A01-213-21, D033-A03-256-21

⁶ D001-A02-224-2021, D012U-A01-005-20, D002-A01-236-21

Appendix A
Plaintiffs' Review of Q2 2021 Investigative and Disciplinary Documents
Overview of 112 DART Cases

in a third new OIA investigation, **S-RJD-189-21-P**. Documents associated with this case were included in the production. The Hiring Authority found that staff had violated policy in this case and issued corrective action.

4. **Five cases⁷** resulted in OIA investigation(s), but the documents provided did not include the case number of the resulting OIA investigation. **Please provide the case numbers of all OIA cases associated with these DART inquiries. If more than thirty days has passed since the adverse action determination in these cases, please produce any associated documents immediately to Plaintiffs' counsel pursuant to the RJD Remedial Plan.**
5. **Five cases⁸** were integrated into existing DART inquiries, but such inquiries were not included in the production. **Please produce these inquiries immediately.**
6. **One case⁹** involved a request for further inquiry by the Hiring Authority, but the Q2 documents did not include any supplemental inquiry report completed in response to the Hiring Authority's request. **Please produce this supplemental inquiry immediately.**
7. **One case¹⁰** resulted in corrective action ordered by the Hiring Authority. Defendants did not produce any documents related to the corrective action imposed by the Hiring Authority. **Please produce such documents immediately.**

⁷ D001-A04-226-21, D002-A04-239-21, D014-A01-002-20, D14-A05-140-20, D82-A02-093-20

⁸ D005-A05-161-21 (integrated into D005-A10-165-21), D005-A14-169-21 (same), D005-A12-167-21 (same), D009-A04-180-21 (integrated into D010-A01-181-21), D041-A02-248-21 (same)

⁹ D002-A05-240-21

¹⁰ D033-A04-257-21

Appendix B
Plaintiffs' Review of Q2 2021 Investigative and Disciplinary Documents
Additional Cases Displaying Incompetence and Bias

- D005-A21-176-21 involved class member-declarant report that staff orchestrated an assault on him on February 12, 2019. An incarcerated witness confirmed Mr. report that his assailant had spoken with staff immediately before the assault. The assailant, provided incredible testimony during the inquiry, including that the assaulted Mr. because, six months prior, Mr. told Mr. that he was a “devil worshipper.” In spite of the assailant’s questionable motive and credible evidence corroborating Mr. claim that the assailant was in communication with staff directly before the assault, the inquiry was closed with no further action.
- D033-A02-255-21 involved deceased class member-declarant y’s claim that Officer threatened incarcerated people and killed an incarcerated person on July 17, 2018. No incarcerated people were interviewed; Officer , the only interviewee, denied the allegations. Instead of attempting to identify and interview incarcerated people and additional staff who may have witnessed or have knowledge of the serious allegation, the inquiry was closed without further action.
- D039-A01-186-21 involved class member-declarant claim that staff used unnecessary force on him on May 7, 2018. Two incarcerated witnesses corroborated Mr. report. Staff denied the reports. Despite the evidence supporting Mr. report, the inquiry was closed without further action.
- D039-A05-190-21 involved class member-declarant claim that Officer called him a “crippled [sic].” No incarcerated people were interviewed; Officer , the only interviewee, denied the allegations. Instead of attempting to interview incarcerated people and additional staff, they simply took the officer’s word over the sworn statement of the incarcerated witness and the inquiry was closed without further action.
- D004-A02-154-21 and D39-A02-187-21 involve credible and consistent reports from class member-declarants and respectively, that staff used unnecessary force on a class member in the midst of mental health crisis, by standing on his chest while he yelled that he could not breathe, resulting in his death in November 2018. Both of the cases were closed without further action because the Hiring Authority found that the cases had already been addressed in OIA Case S-RJD-049-19-A. As Mr. Schwartz explained, however, the OIA case does not address testimony from or Mr. moreover, the OIA case was scoped to exclude the use of force allegations. *See* Schwartz Statewide Decl., Dkt. 2947-9, ¶¶ 161, 166. As a result, the specific allegation in and Mr. reports—that staff caused the death of a suicidal incarcerated person—have never been investigated.

Appendix B
Plaintiffs' Review of Q2 2021 Investigative and Disciplinary Documents
Additional Cases Displaying Incompetence and Bias

- D81-A03-088-20 involved class member-declarant _____' report that staff distribute property to incarcerated people they favor and who carry out misconduct on behalf of staff. One witness confirmed that staff confiscate property and redistribute it to the building porters; that same person further stated that staff exhibit favoritism on the basis of race. Staff denied the allegations. Instead of attempting to interview additional incarcerated people, the inquiry was closed without further action.

EXHIBIT B



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November 3, 2021

VIA ELECTRONIC MAIL ONLY

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<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
--

Re: *Armstrong v. Newsom: Ex Parte* Interviews of Class Member Declarants
Our File No. 0489-03; 0581-03

Dear Gannon:

Thank you for arranging the Allegation Inquiry Management Section (“AIMS”) interview of *Armstrong* class member declarant) yesterday. As you are aware, at the outset of the interview, reported that she was interviewed on or around October 20, 2021 by Lieutenant Albins. She reported that Lieutenant Albins conveyed that the October 20, 2021 interview was approved by Office of Legal Affairs (“OLA”) and that Plaintiffs’ counsel had declined to participate in the interview. She also reported that Captain Dobie was either involved in or approved the interview. She was unable to confirm whether or not the interview was recorded.

further reported that the October 20, 2021 interview concerned the very same issues that were the subject of the November 2, 2021 interview, including reports of ongoing retaliation she experienced stemming from her participation in the *Armstrong* litigation and her ongoing efforts to report staff misconduct and retaliation at Mule Creek State Prison (“MCSP”). was reportedly contacted a week ago by the same lieutenant who again attempted to interview her, again without Plaintiffs’ counsel present. The second time, she declined.

We are extremely concerned. First and foremost, Lieutenant Albins’ *ex parte* interview of is a clear violation of the August 6, 2020 Stipulation and Order Prohibiting Retaliation in Prisons Subject to the Statewide Motion, Dkt. 3034 (“Statewide Anti-retaliation Order”). Defendants cannot “communicate with any of the Declarants regarding matters covered by their declarations or any alleged retaliation related to their

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Gannon Johnson
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Page 2

participation in the Motion without first providing notice to Plaintiffs' counsel and an opportunity for Plaintiffs' counsel to participate in any interview or communications." Statewide Anti-retaliation Order, ¶ 3. As confirmed yesterday, Plaintiffs did not receive notice of this interview before it occurred and did not decline to participate. We would have participated in the interview, as we have done on other occasions involving

It is especially concerning that the Office of Legal Affairs and the OIA/AIMS investigator assigned to interview [redacted] similarly had no knowledge of Lieutenant Albins' interview nor of any parallel investigation into [redacted] declaration allegations. As a result, [redacted] reported feeling further harassed and retaliated against as a result of the CDCR investigation process. Unfortunately, as she made clear yesterday, she declines to discuss her reports further until CDCR can clarify why she was interviewed previously for the same allegations, who authorized the prior interview if not OIA/AIMS, why CDCR failed to contact Plaintiffs' counsel and, most importantly, why Lieutenant Albins made false representations that Plaintiffs' counsel declined to participate. **We request a copy of any audio recording of the interview with Lt. Albins or an explanation as to why the interview was not recorded.**

The situation with [redacted] is alarming, and has also occurred in at least four other declarant cases that we are aware of:

- On or around October 22, 2021, a Lieutenant from Folsom State Prison interviewed [redacted]) about his declaration shared with Defendants on June 10, 2021 in support of [redacted] reports of ongoing retaliation for participation in the *Armstrong* litigation and ongoing effort to report staff misconduct. See Letter from P. Godbold to T. Davis & J. Neill (June 10, 2021). Mr. [redacted] reportedly requested to speak with Plaintiffs' counsel prior to the interview but, consistent with [redacted] account, the Lieutenant told him that the interview would proceed without Plaintiffs' counsel present. Plaintiffs' counsel were not notified about his interview. The interview occurred at a Sacramento County probation office.
- On February 18, 2021, personnel from AIMS interviewed [redacted]) about a 602 that he filed in January 2021 reporting retaliation for speaking with Plaintiffs' counsel about staff misconduct. Mr. [redacted] is a declarant and deponent. See Dkt. 3108-1, Ex. 28 & Dkt. 3169-4, Ex. 18. Plaintiffs' counsel were not notified of this interview beforehand. When Mr. [redacted] asked that Plaintiffs' counsel be present, he was told by the investigator

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that Plaintiffs' counsel was notified but declined to participate. We raised our concerns about this improper interview with Defendants on February 18, 2021 and again on February 23, 2021. Defendants responded that this incident occurred after Mr. [redacted]'s declaration, so the interview without us present did not violate the Statewide Anti-retaliation Order. In a February 23, 2021 email, however, Plaintiffs pointed out that "the 602 interview [Mr. [redacted]] participated in the morning of February 18 was indeed about 'retaliation related to [Mr. [redacted]]'s] participation in the Motion."

- On August 11, 2021, personnel from OIG and AIMS interviewed ([redacted]) about the January 25, 2021 use of force incident described in his declaration dated May 13, 2021. This declaration was shared with Defendants on June 9, 2021. *See* Letter from J. Winter to T. Davis & N. Weber (June 9, 2021). Plaintiffs' counsel were not notified of this interview beforehand. On August 18, 2021, we wrote to Defendants, requesting an investigation into why we were not informed of this interview, and requesting preservation and production of recordings of the interview. We have not received a response.
- On July 26, 2021, personnel from OIA and OIG interviewed ([redacted]) about the January 30, 2021 use of force incident described in his declaration dated May 13, 2021. This declaration was also shared with Defendants on June 9, 2021. *Id.* Plaintiffs' counsel were not notified of this interview beforehand. On August 10, 2021, we wrote to Defendants, requesting an investigation into why we were not informed of this interview, and requesting preservation and production of recordings of the interview. We have not received a response.

As you are aware, Plaintiffs' counsel also previously raised Defendants' failure to comply with their obligation to comply with the Statewide Anti-retaliation Order. *See* Letter from M. Freedman to P. Ferguson & A. Hrvatin (December 28, 2020), attached hereto as **Exhibit A**.

We demand that CDCR cease and desist from communicating with any staff misconduct declarants regarding matters covered by their declarations or any alleged retaliation related to their participation in Plaintiffs' Motions without first providing notice to Plaintiffs' counsel and an opportunity for Plaintiffs' counsel to observe. In addition, Plaintiffs demand that Defendants describe in writing the specific steps they will take to ensure that violations of the Statewide Anti-retaliation Order do not occur in the future.

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Page 4

Please investigate why these interviews occurred without notifying and providing Plaintiffs the opportunity to attend. In the case of Mr. _____, _____ and Mr. _____, please investigate the serious allegation that staff are misinforming declarants that Plaintiffs' counsel has been notified and has declined to participate in the interview. Please produce the audio/video recordings for any interviews conducted of declarants, including those listed above, without the presence of Plaintiffs' counsel.

We look forward to your prompt response.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold
Of Counsel

PMG:JRG

cc: Ed Swanson
August Gugelmann
Jennifer Neill
Tamiya Davis
Patricia Ferguson
Carrie Stafford
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EXHIBIT C



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November 10, 2021

VIA ELECTRONIC MAIL ONLY

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

Tamiya Davis
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Re: *Armstrong v. Newsom; Coleman v. Newsom*: Advocacy Letter for [REDACTED]
[REDACTED] re: Staff Misconduct at SVSP
Our File Nos. 0581-03, 0489-03

Dear Tamiya and Nick:

We write regarding *Armstrong* and *Coleman* class member, [REDACTED] [REDACTED] is transgender. She has a hearing disability and requires hearing aids to effectively communicate, has a mobility disability, and receives mental health treatment at the Enhanced Outpatient Program (“EOP”) level of care. She has experienced significant disability-related staff misconduct, including persistent harassment and retaliation at Salinas Valley State Prison (“SVSP”) impacting her ability to access required disability accommodations and harming her mental health as described in the declaration attached hereto as **Exhibit A**.

Her problems with staff at SVSP were exacerbated when she filed a 602 regarding staff misconduct. Ex. A, ¶ 11. This staff complaint prompted ongoing disability-related retaliation and harassment. *Id.* Specifically, Sergeant [REDACTED] after admonishing her for filing the 602, began interfering with her access to the TDD phone. *Id.*, ¶¶ 14-15. Following an interview with *Coleman* Plaintiffs’ counsel, Sergeant [REDACTED] and Lieutenant [REDACTED] called [REDACTED] a “snitch” and asked if she gave up information or paperwork. *Id.*, ¶¶ 16-17. Just two days later, Sergeant [REDACTED] and Lieutenant [REDACTED] accelerated their campaign of harassment by conducting multiple retaliatory cell searches and inappropriately confiscating her disability accommodations, including her hearing aids,

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as well as other property. *Id.*, ¶¶ 18-20. She was issued three retaliatory Rules Violation Reports (“RVRs”) in response to supposed property violations. *Id.*, ¶ 20.

██████████ mental health deteriorated as a result of the ongoing harassment and retaliation she experienced at the hands of staff at SVSP. While under such significant retaliation and stress, she became afraid to leave her cell. *Id.*, ¶ 24. She began having trouble eating and sleeping. *Id.* Because she did not feel safe attending her specialty appointments, her transgender hormone therapy was discontinued, causing further harm to her physical and mental health. *Id.* Her medical records confirm that fear of retaliation from custody staff was the reason she deteriorated. *See* MHPC Progress Notes dated 6-22-2021; *See also* 7-13-2021, (“[S]he cannot trust medical because she feels that they will tell custody and she is struggling with retaliation from custody due to lawsuits she has filed. . . Pt has also been refusing to attend medical appointments- particularly with transgender specialist. . . She stated that she does not want to go to medical due to suspicion that the nurses are close with COs and will talk about her case with them. . . She claimed that a sgt is targeting her for her complaint against him to the cpt due to issues with her money orders. She stated that she has been told she cannot use an office for phone use and feels that this is retaliation.”)

██████████ is still suffering the repercussions of asking for help to defend herself from staff misconduct at SVSP. Although she recently transferred to R.J. Donovan Correctional Facility (“RJD”), she remains without essential disability accommodations, including her hearing aids and other ADA approved property and has not yet received access to her transgender therapies. The DME Supply Receipt completed at SVSP prior to transfer to RJD states ██████████ hearing aids and compression socks were “lost.” To correct this inaccuracy, ██████████ hand wrote in the bottom right corner, “... Sgt. ██████████ & Lt. ██████████ and ██████████ refused to return ADA appliances” *See* October 25, 2021 DME Supply Receipt, attached hereto as **Exhibit B**.

Upon arrival at RJD, records confirm that ██████████ did not have her hearing aids or compression stockings. *See* October 25, 2021 DME Supply Receipt, attached hereto as **Exhibit C**. She received her compression stockings and her hearing impaired vest on November 1, 2021. *See* November 1, 2021 DME Progress Note. Records indicate that ██████████ is working with her Primary Clinician on obtaining the rest of her ADA equipment. *See* November 3, 2021 MH Treatment Plan at 10. ██████████ **reports that she is still without required hearing aids.**

We request that Defendants conduct an Office of Internal Affairs (“OIA”) investigation into the disability-related harassment and retaliation reported by ██████████

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Nick Weber
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██████ at SVSP that impacted her ability to access ADA accommodations and caused her mental health to deteriorate. It is essential that the multiple overlapping events reported by ██████████ be considered together and not be broken into isolated claims and spread across multiple investigations by different OIA investigators, as has been the practice of OIA in the Declaration Allegation Review Team (“DART”) process. Specifically, a team of OIA investigators should investigate the continuing course of retaliation and misconduct waged against ██████████ including, but not limited to, the following specific events:

1. Sergeant ████████ made disparaging comments about her sexual orientation in front of other staff and incarcerated people, placing her at great risk of harm;
2. Multiple money orders were taken from her and were never placed in trust account;
3. She was reprimanded by staff for filing a 602 about money orders;
4. She was retaliated against for filing 602s, including through the denial of access to the TDD phone;
5. She was retaliated against and called a “snitch” for talking to representatives from Plaintiffs’ counsel, including through inappropriate cell searches and removal of property, including disability accommodations (i.e., DME);
6. She received three false and retaliatory RVRs;
7. Sergeant ████████ approached other incarcerated people and offered property and favors in exchange for harming her.

All officers involved in the misconduct listed above must be investigated for misconduct and, if warranted, re-directed to positions in which they are not permitted to have contact with incarcerated people during the pendency of the investigation into the above matters. Allowing these officers to remain assigned to their regular posts during the pendency of the investigation would not only expose class members to substantial risk of additional misconduct at the hands of these problem officers; it would also compromise the integrity of the investigation by enabling these officers to intimidate, harass, and retaliate by issuing false RVRs against witnesses to their misconduct.

Following the review of the RVRs listed above, CDCR should take any appropriate action to rescind the RVRs, remove all attendant effects of the RVRs (i.e.,

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Nick Weber
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SHU-terms, loss of credits, or program restrictions), and purge [REDACTED] [REDACTED] custody file of any references to such RVRs, while retaining records in her file to memorialize that staff issued several false and retaliatory RVRs against her.

We also ask that Defendants take steps to immediately return any property to her, especially missing DME and disability-related accommodations, including her special TV, radio, and braille books. We also ask that her transgender therapies be initiated at RJD.

Finally, we request that CDCR process her 602 alleging staff misconduct related to multiple false and retaliatory RVRs and open an investigation even if the RVRs have not been fully adjudicated.

Please confirm that OIA will be investigating these allegations and produce all associated documentation following the close of the investigation.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold
Of Counsel

PG:etb

Enclosures: Exhibits A-C

cc:

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August Gugelmann
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Trace Maiorino
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EXHIBIT D

**Plaintiffs’ Proposed Agenda for Meeting on Remedial Measures to Address
Discrimination Against Parolees with Disabilities**

November 2, 2021 at 1pm – 3pm

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I. Topics Involving CCHCS

A. Transitional Housing for Paroling Class Members

The parties have agreed to create a policy whereby CCHCS evaluates individuals releasing from CDCR to determine if they have disability or related medical needs that require that they be prioritized for transitional housing placements in the event that they do not have other housing options. CCHCS has created a workgroup to develop a tool that will include and quantify various disability and clinical factors relevant to whether an individual should be prioritized for transitional housing. A medical professional will use the output of this tool to make an individualized evaluation to assess each releasing individual's need to be prioritized for transitional housing. Plaintiffs have already provided a number of recommendations on factors to be considered, and the parties agreed to collaborate on the development of the tool and the implementing policy.

There is an existing dispute that will need to be resolved before the policy is finalized: whether there should be some bright-line categories of individuals whose disability and/or related medical needs will always necessitate transitional housing provided by Defendants if they do not have other housing options. Please see the agenda for the previous meeting for a more detailed history of the negotiations and the positions taken by the parties on these issues.

At the October 6 meeting, Defendants reported that CCHCS, DAPO, and DRP have been meeting internally since September 15 on the tool, but are likely several meetings away from being ready to work with Plaintiffs on developing this tool and the policy that will be issued to the field. **Please propose dates and times for Plaintiffs' first meeting with the CCHCS workgroup and other relevant stakeholders, and an update on how you envision integrating Plaintiffs into this process.**

The parties have also agreed that the transitional housing priority information will be provided from CCHCS to STOP, which will use this information to decide on housing placements for individuals releasing on parole, and that a written procedure must be developed once the CCHCS tool and directive are completed. DRP, DAPO and CCHCS are also discussing internally how to coordinate these issues and how to consider non-medical factors that are relevant to whether releasing individuals require or should be prioritized for transitional housing due to a disability, such as GPS requirements.

On October 6, Defendants also floated that CCHCS was considering only evaluating whether releasing individuals should be prioritized for housing after Defendants have been unable to find housing for them. Plaintiffs are opposed to this concept, as the CCHCS evaluation would often occur too late to be able to actually prioritize these individuals for transitional housing if they are only evaluated after they have been refused housing. As Defendants have previously explained, housing placements are typically

made about 60 days prior to an individual's release date, so if CCHCS waits until after Defendants are unable to make such a placement, there will be very little time remaining to: (a) complete the CCHCS evaluation; and (b) actually locate a transitional housing placement for the individuals who require such housing as an accommodation. The housing priority designation could also prove important for someone who is initially housed by Defendants, but loses their initial housing placement, for example because the STOP program they were sent to turned out not to be accessible. **Please confirm that Defendants agree that this idea is not workable.**

How far in advance of the release date CCHCS would need to generate the housing prioritization information for paroling individuals to ensure that there is sufficient time to be able to find transitional housing before they are released?

B. Releasing with Medications and Durable Medical Equipment

The parties have agreed that DAI and CCHCS will develop a statewide policy that would (a) ensure that releasing individuals are released with all their prescribed DME and prescription medications; and (b) that would provide a mechanism for DAPO to replace class members' lost or broken DME during a transitional period after their release to bridge the gap that frequently occurs for class members in getting Medi-Cal started up after their release.

On October 6, Defendants stated they would have a draft policy ready to share with Plaintiffs by the week of October 18, but we have not yet seen the draft. **Please provide us the draft statewide policy in advance of the November 2 meeting.**

C. Releasing with More Than 30 Days of Prescription Medications

The parties have been discussing whether CCHCS will release individuals with a greater than 30-day supply of prescription medications, at least until durable remedies are achieved for the documented problems class members have experienced with running out of medications before they can find a doctor, get their Medi-Cal started, and get prescription information to their doctor. Plaintiffs continue to believe that releasing individuals with a 90-day supply for medications is necessary at this time. Please see the agenda for the previous meeting for a more detailed history of these negotiations.

Dr. Joseph Bick attended the October 6 meeting and stated that he is keeping an open mind as to whether it would be appropriate to provide more than a 30-day supply of release medications, and that he is willing to speak with the Executive Director of the Transitions Clinic Network, a UCSF clinical professor who has published research regarding the practical difficulties that releasing individuals have in connecting to a primary care physician to obtain necessary medications within the first 30 days of release. We are also willing to have a discussion with Dr. Bick, relevant CCHCS staff, and the

Transitions Clinic Executive Director after this separate meeting if that would be helpful. **Please update us after this discussion.**

D. Continuity of Care from CDCR to the Community

On October 6, Deputy Director of Nursing Barbara Knox described the current process by which institutions attempt to facilitate a “warm handoff” from CCHCS to community health care providers for releasing individuals, including by trying to schedule appointments with community providers prior to release. There is also an unfortunately vague reference to making follow up appointments in the community for certain CCHCS patients who are paroling in the proposed regulations on release medications that are now pending. **As requested at the October 6 meeting, please produce the written policies that govern the “warm handoff,” as described by Deputy Director Knox.**

Deputy Director Knox also explained that CCHCS considered the “reach-in” model used by some county jail systems, whereby the community-based clinician communicates directly with the releasing individual via TeleMed prior to the release, but found that it did not work well. She agreed to look into what the problems were and report back to us. **Why did CCHCS decide that the “reach-in” model did not work as well? Our understanding is that many county probation systems in the United States have used this model successfully.**

E. Assistance with Social Security Benefits Applications

CCHCS is drafting a formal memorandum to reiterate that doctors must provide relevant information sought by the Social Security Administration from class members’ medical records for their benefits applications, which would include instructions and perhaps samples of well-completed response forms for common conditions for which Social Security Disability Insurance (“SSDI”) benefits are granted, to help clinicians learn how to do a thorough job completing the relevant forms for these benefits applications. **Please update us on the status of this directive and share a draft before it is finalized.**

II. STOP Programs

A. Tracking Class Members in STOP Programs and on Waitlists

Defendants agreed to implement a SOMS-like tracking list of parolees with disabilities who are housed in STOP programs, and a separate tracking list of parolees with disabilities on waiting lists for housing placements. Defendants initially represented that they would implement the tracking list for those already in STOP programs by August 1, 2021, but have reported delays in the implementation at each subsequent meeting. **Please provide an update on the status of the project and an estimate of when this tracking system will be put into place.**

In light of the delays, on October 6, Plaintiffs again requested a list of all class members who are on current STOP waiting lists for housing placements. Defendants stated that they should be able to provide a snapshot list of the class members, but needed to discuss internally. **Please provide us the list of class members on waiting lists for STOP housing placements as soon as possible.**

B. Removal of Disability-Based Exclusions from STOP Programs

Defendants have been representing since June and up through September 2 that, by no later than October 1, 2021, they would engage with all STOP programs to remove blanket disability-based exclusions—in particular, exclusions for individuals with vision, hearing, mental health, and developmental disabilities—and to ensure the programs understand what reasonable accommodations they may need to provide to individuals with disabilities, and are educated about and have access to resources and training so they are prepared to do so. Unfortunately, Defendants have failed to meet this timeframe.

On October 6, Defendants stated that they were “close” to providing revisions to the bullet points that Plaintiffs drafted and shared on August 11, 2021, that will be used to guide the meetings that DRP will hold for each STOP region with all STOP subcontractor programs regarding the expectations with respect to accommodating parolees with disabilities, which is a necessary predicate to removing the unlawful disability-based exclusions employed by CDCR-funded programs. **Please provide the revisions to these bullet points in advance of the November 2 meeting, so that they can be taken to final, and the meetings with STOP subcontractors can be scheduled.**

On October 6, Defendants agreed that Plaintiffs may observe these meetings with the STOP providers once they are scheduled. **When will the meetings hosted by each STOP region take place?**

Given these delays, what is Defendants’ updated estimate on when the disability-based exclusions will finally be removed from CDCR-funded programs?

C. Access to 1824s in STOP Programs

Defendants have agreed to provide access to 1824s for parolees with disabilities at all STOP programs by giving the programs a printable 1824 form. Defendants still need to figure out the logistics for how the 1824s will be submitted to headquarters. Plaintiffs think that programs should print out and place 1824s in an accessible public location, along with stamped envelopes that class members may use to mail the 1824 forms to headquarters.

Please provide an update on when 1824s will be provided to STOP programs, how the 1824s will be made available to parolees with disabilities housed there, and how they will be submitted to headquarters.

D. Adding ADA Compliance to Annual Inspections of STOP Programs

Defendants have agreed to include ADA compliance issues as part of the annual inspections of STOP programs, including the availability of shower chairs, accessible bathroom features such as grab bars, and stairs. We understand these inspections are not being done by experts, but are looking to make them as helpful as possible for giving programs advice about relatively simple improvements that enhance accessibility. We also want to make sure the inspections check for *Armstrong* posters, and the presence of 1824 appeals in an accessible public location, and information about the 1824 process.

On August 11, Defendants stated that they would share an initial list of ADA compliance issues they had identified with Plaintiffs after the meeting, and that Plaintiffs would then provide additional checks to be done, but Defendants have still not shared their initial list with Plaintiffs. **Please provide Defendants' list of ADA compliance issues that you propose be included as part of the annual inspections of STOP programs in advance of the November 2 meeting.**

III. Cash Assistance/Case Supports to Parolees

On October 14, Defendants e-mailed answers to Plaintiffs' questions that had been pending for months on the source of the "less than \$2 million per year" that Defendants have represented is all that is available for parole agents to use to provide supportive services to parolees—including temporary housing assistance and transportation assistance, such as bus passes. **Plaintiffs will raise follow-up questions and seek additional information and clarification during the November 2 meeting, including but not limited to the following answers:**

- **Question:** Please provide information and documentation regarding the formula used to calculate how much money is available each year for "cash assistance."
 - **Defendants' Response:** Casework Assistance = $\$436 \times (\text{Sex Offender } \{ \text{HRSO} + \text{Non-HRSO} \} + \text{EOP}) \text{ Average Daily Population}$
 - **What is the history of this allocation/calculation? Is there a way to add Armstrong class members with disabilities impacting placement to this allocation?**
- **Question:** How is the \$2 million per year allocated? Is there a certain amount available for each Parole Region? Parole Unit? Parole Officer?
 - **Defendants' Response:** Each parole region is given an certain allotment based on their projected need for the year. These amounts are driven by the previous year expenditures. It is allocated by parole region: Northern and Southern.

- **Question:** How is the use of the cash assistance tracked? How would a parole region, parole unit, or parole officer know how much is available at any given time?
 - **Defendants' Response:** It is tracked in the Adult Parole Management System (APOMS). Both the parole region and the DAPO HQ Budget Unit monitor the budget throughout the fiscal year and perform monthly projections to determine the total that will be spent for the fiscal year.
 - **Is the APOMS System a replacement for or successor to the Parolee Automated Cash Assistance Tracking System ("PACATS"), described in Policy No. 11-05 and Directive No. 13-13? If so, when did APOMS replace PACATS? Is there any policy or directive governing its use?**

We would also like to discuss the data from APOMS produced for the last three fiscal years regarding the use of this cash assistance by each parole unit.

The parties have also agreed in principle that DAPO Policy 11-05, governing the use of cash assistance, needs to be revised. Plaintiffs believe that DAPO policy should provide clear guidance on when to provide temporary housing or transportation support to parolees, including consideration of disability-related factors, and on the importance of providing this support to individuals with disability-related needs that make them less likely to succeed on parole if homeless.

IV. GPS Monitoring

On October 14, Defendants reported that they have established a formal procedure with the GPS provider Vera Tracks to provide for an audible low battery warning. Parolees who have difficulty feeling the standard vibrating low battery warning—such as persons with paralysis or neuropathy in their legs—will be able to request that the GPS device provide a double alert tone rather than a vibration as an accommodation. **Please update us on when the audible low battery warning option will be implemented.**

Plaintiffs have also been recommending that a directive go to the field regarding GPS-related accommodations—not only for the audible low battery warning, but also other hardware-related accommodations, such as GPS battery packs and wrist GPS monitors, as well as on the need for reasonable accommodations for parolees with disabilities that impact their ability to comply with GPS charging requirements. Defendants stated that they needed to discuss internally. **Do you agree that such a directive is necessary?**

Defendants also stated that the training manual for GPS devices may include guidance on reasonable accommodations for persons with disabilities. **As requested on October 14, please produce the portion of the manual that covers disability accommodations.**

Plaintiffs have also raised our concern regarding the existing DOM section on ADA accommodations relating to GPS monitoring employs a standard for granting such accommodations that is inconsistent with the ADA and the ARP. *See* DOM Chapter 8, Article 2, Section 81024.4. **Please confirm that Defendants agree that this section of the DOM will need to be revised once the parties agree on a directive regarding GPS-related accommodations.**

V. Parole Violations and Parole Supervision

Defendants have stated that parole agents are already required to take disability into account when determining the consequences for an alleged parole violation, and that all parole revocations already receive supervisory review, but that they are planning to take two additional steps to address the problems identified by Plaintiffs:

- First, Defendants will provide a “refresher” training on these requirements, which they are in the process of developing. **Please provide an update, and share the training materials with Plaintiffs when it is ready.**
- Second, Defendants are working on adding functionality to the Pivots system so it will provide automated notification to the parole administrator reviewing a petition for revocation that the parolee has a disability code that may impact their ability to understand or comply with parole conditions.

On October 14, Alma Underwood reported that Defendants could not estimate the timeframe for implementing this second proposed remedy, and warned that it might take six months to a year to do so. The lengthy timeframe to implement a process that Plaintiffs do not believe will address the problem makes it all the more important that the parties discuss Plaintiffs’ proposed remedies as soon as possible.

As noted in our May 4, 2021 letter, we believe a policy change is required, to include:

- Requiring supervisory oversight to review potential revocations for the subset of parolees with disabilities that are most likely to impact their ability to comply with conditions of parole; and
- In the case of anyone with such a disability who is reincarcerated for an alleged parole violation more than twice in a one-year period, mandating a headquarters-level review to determine if the person’s disability was a factor in the failure to comply with the parole condition, and to determine how best to accommodate the person to provide them an equal opportunity for success on parole.

On September 2, the parties discussed how parole caseloads could potentially be modified to take into account parolees’ disabilities as part of the remedy. Plaintiffs proposed (a) adopting a special caseload for DD2 and/or DD3 parolees, modeled on the

special caseloads currently used for EOP parolees (with one agent who specializes in parolees with developmental disabilities, supervises only DD2/DD3 parolees, and has a lighter overall caseload than the standard 53:1 ratio); or (b) having Parole Agent IIs supervise DD2/DD3 parolees, as is currently the policy for DPH parolees who use sign language interpretation as their primary means of effective communication. Please see the previous agendas for more detail on these discussions.

Defendants expressed some concerns regarding the proposals regarding modified caseloads and, on October 14, reported that they were not feasible to implement at this time because of insufficient funding. Plaintiffs appreciated DAPO Assistant Deputy Director John Stern's attendance at the October 14 meeting, and Defendants' representation that they are taking our concerns seriously and talking at high levels internally about what to do. **When will Defendants be prepared to engage with Plaintiffs on our proposals? It is important that we do so soon, so that Plaintiffs can determine whether there is common ground for negotiations in this area.**

VI. Funding for Transitional Housing

In 2020/2021, Defendants obtained one-time funding from two sources that funded an additional 600 transitional housing beds for parolees:

- A one-time emergency supplemental BSCC grant for \$15 million plus a \$6.9 million bonus for housing for parolees; and
- \$15 million granted from philanthropic sources to Amity, which has allowed DRP to use the funds, which were distributed to STOP providers statewide

On October 6, Defendants reported that DRP's Budget Change Proposal seeking \$30 million in the next budget to continue the 600 additional beds was not renewed, and that while they believe they will not have to reduce the available beds until July 2022, they are trying to figure out a plan to replace this funding. **Please provide an update.**

Defendants have also reported that one of the reasons it is difficult to place class members in transitional housing are state, county and local restrictions on where parolees with PC 290 or PC 288 convictions can live, and how many can live in the same housing program. **Please provide information on these restrictions and how they are impacting placements for class members with PC 290 or PC 288 convictions.**

VII. Benefits Assistance and CAL-IDs for Class Members Prior to Release

Plaintiffs have provided evidence that parolees with disabilities often do not have benefits applications timely or accurately submitted by the time of their release, but because Defendants have not tracked this data, and removed the time requirements from the Transitional Case Management Program ("TCMP") contract, there is not currently a way

to measure the scope of the problem or to hold TCMP workers accountable for failing to timely or accurately complete benefits applications for individuals releasing from CDCR.

The parties have agreed that it is necessary to these requirements be added to the next TCMP contract (the current contract expires July 2022). Defendants represented that some of these changes could be implemented sooner. Specifically:

- Defendants will reinstate the requirement that Medi-Cal, Medicare, Veterans' Affairs, and Social Security benefits applications for releasing individuals must be submitted 90 days prior to the release date; and
- Defendants will require that data be compiled/tracked regarding (1) whether benefits applications are approved, rejected, or remain pending at the time of release; and (2) when TCMP benefits workers submit benefits applications for releasing individuals.

Defendants are also meeting with Social Security Administration representatives to see whether it is possible to share information so that they can track whether and when applications are approved for releasing individuals after they are released, though this may not be possible. **Please provide an update.**

Please update us on the implementation of A.B. 3073, to ensure that assistance is provided to releasing individuals to apply for CalFresh food stamps before they are released from CDCR.

Please also provide any updates on the following pending legislation:

- A.B. 1214, the legislative fix that would make incarcerated persons eligible for Medi-Cal 30 days prior to their release.
- S.B. 629 and A.B. 717, the legislative fixes to ensure that all eligible incarcerated persons are released with a valid California ID.

VIII. Transition to Parole Assistance While Under Parole Supervision

On October 6, Defendants reported that there are currently 80 social workers employed statewide by DAPO as part of the Behavioral Health Reintegration ("BHR") program, that will be hiring 40 additional social workers, and that the job duties of these social workers will include providing benefits assistance and other case management services to parolees. **Please report on the status of hiring these additional social workers.**

We would also like to see job descriptions or job duty statements for these positions that include assistance with benefits and other forms of case management for individuals with disabilities other than mental health conditions. Defendants recently produced a Duty

Statement for the Clinical Social Worker (Health/Correctional Facility) – Safety position.
Please produce any other job descriptions or duty statements for these positions.

It is our understanding that these 40 additional social workers will also be working as part of BHR, which typically provides clinical services to parolees with mental health disabilities. **Will BHR social workers be tasked with providing benefits assistance and other case management services to parolees who do not have mental health conditions, who still have a need for such assistance as accommodations for their disabilities, such as class members with physical or developmental disabilities?**

IX. Transportation

Defendants have been representing that they are in the process of finalizing a transportation policy that would require that parole agents pick up everyone released from CDCR institutions on parole to drive them to their parole county, using accessible vehicles where appropriate, and would also provide for parole agents to pick up parolees released from county jails after serving parole revocation terms. Please see the previous agenda for more detail regarding Defendants' representations about this policy.

On October 14, DAPO Assistant Deputy Director John Stern reported that, while the transportation policy is still with CCPOA for approval, he was also meeting with DAI the week of October 18 regarding some undefined "concerns" DAI raised with the policy. He further represented that he would also ask about when the policy can be shared with Plaintiffs at this meeting. **Please update us on the current status of the policy, and share a copy with us as soon as possible.**

Defendants have also stated that DAI, CCHCS and DRP are working on how to apply for paratransit services for releasing individuals prior to their release. They agree that this should be done but are working on the logistics. **Please provide an update.**

X. Accountability Logs

Plaintiffs were very disappointed that none of the allegations of non-compliance included in the class member declarations shared with Defendants on May 4, 2021, were included on either the May 2021 or June 2021 DAPO accountability logs. On September 2, OLA stated that the allegations are being investigated by Defendants even though they had not yet been logged, and that these allegations would first appear on DAPO's September 2021 accountability logs at the earliest, four months after the allegations were received by Defendants. **Please update us as soon as the allegations from the class member declarations are added to the accountability logs, and produce a copy of those logs as soon as possible thereafter.**

Please also report on whether DAI and DAPO can produce accountability logs on a regular and timely schedule going forward. Can DAI and DAPO do so by the end of the following month (e.g., January logs would be produced by the end of February)?

XI. Independent Living Organizations and Specialized Medical Clinics

Defendants added to the Compass system independent living organizations that provide community-based services to individuals with disabilities and networks of community-based medical clinics that provide services to parolees. As a result, these providers will show up as potential referrals for parolees when agents search for community resources, and parole agents will be able to add them to parolees' case plans. **We request a print-out of these resources so we can review the scope of these additions.**

XII. Outstanding Requests for Parolee Contact Information

Defendants recently produced an updated parolee contact list for class members including additional phone numbers, and indicated that we should reach out if we need to contact class members whose numbers are not listed. On October 22, Plaintiffs requested phone numbers for a number of parolees on whose behalf we have recently advocated, whose contact information is not on the updated contact list. **Please produce the requested numbers as soon as possible.**

XIII. Education on Braille/Sign Language/Tapping Cane Use Prior to Release

This is a placeholder for any updates on the status of negotiations on these topics in the blind/low vision and deaf/hard of hearing workgroups.

XIV. Scheduling Next Meeting

Please be prepared to propose dates in early December for the next meeting.

XV. Existing Agreements Between the Parties

A. Amending the Armstrong Remedial Plan

The parties have agreed to draft a revised parole remedial plan or a new parole remedial plan section that will cover the new policies, procedures and supports for parolees with disabilities that are now being negotiated, though the parties will need to agree on which are required by the ADA and should be included in the remedial plan.

B. E-Notifications to County Jails for Parolees with Mental Health Disabilities

The parties have agreed that e-mail notifications will be provided to county jails for parolees with mental health disabilities who were *Coleman* class members while in

CDCR, and Plaintiffs' counsel are now being copied on these e-mails. After the September 2 meeting, the parties were able to confirm that this has been implemented.

C. Production of CCHCS Accountability Logs

CCHCS has agreed to produce the health care employee accountability logs on a regular schedule, within about two months (e.g., January logs would be produced before the end of March, February logs before the end of April, etc.), and have begun producing the logs on this schedule.

EXHIBIT E



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November 1, 2021

VIA ELECTRONIC MAIL ONLY

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PROTECTIVE ORDERS**

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

Re: *Armstrong v. Newsom*: Emergency Evacuation Concerns for *Armstrong*
Class Members
Our File No. 0581-03

Dear Tamiya:

We write to follow up on the parties' discussions about emergency exits and emergency evacuation procedures during the September 23, 2021 all parties meeting. Plaintiffs have broad concerns about the safe, speedy evacuation of *Armstrong* class members during emergencies in California prisons.

Emergency evacuations in prison are of heightened concern for many different groups of *Armstrong* class members. People with disabilities are vulnerable during an emergency because, as a result of their disability, they may not be aware of or understand what is happening, and may require notification of the emergency and explanation of how to safely exit. Many class members will also need assistance, sighted guidance, and additional time during any evacuation process. Class members with impacting mobility and vision disabilities will require ADA accessible emergency exits. Yet, as discussed below, recent fires in units housing *Armstrong* class members call into question whether fire alarms/detectors are working and whether emergency evacuation plans are adequate and consider the needs of people with disabilities housed in the unit. In addition, many housing units do not have an adequate number of accessible emergency exits to accommodate the number of class members housed there.

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Given climate concerns and the prevalence of wildfires in California, in some cases occurring very close to California prisons, time is of the essence for ensuring safe and accessible emergency evacuations for all *Armstrong* class members.

Evidence of Recent Emergencies Impacting *Armstrong* Class Members

Recently, Plaintiffs have received multiple reports of concerning fires occurring inside units that house *Armstrong* class members. Multiple class members report witnessing confusion and panic among staff and that, despite significant smoke and the inability to see or breathe, buildings are not being evacuated. Others report that alarms do not even sound during fires, despite significant smoke, and there is skepticism that fire alarms are operational in some units.

Plaintiffs' counsel received multiple, consistent reports that a fire broke out in Building 9 on Facility B at Richard J. Donovan Correctional Facility on July 4, 2021. Class members consistently reported that there was significant smoke in the unit, that it was difficult to see and breathe, and that they were not evacuated. Some class members reported ongoing difficulty breathing after the incident. Health care records confirm that on September 9, 2021, two months after the fire, a CPAP machine was replaced for *Armstrong* class member _____), who has asthma and sleep apnea, because it still smelled of smoke. *See* Nursing Note (Sept. 10, 2021). Mr. _____ reported to Plaintiffs' counsel that he was still suffering from the side effects of smoke inhalation months after the fire and that the smoke was so bad during the fire, he used his CPAP machine to breath. *Armstrong* class member _____) similarly reported great difficulty breathing during and after the incident. All class members were concerned that they were not evacuated.

Similarly, we learned that at LAC a fire occurred in Building 1 on Facility D on October 31, 2020. Class members who were housed in that unit described a chaotic staff response, a failure to evacuate the building, and similar reports of significant smoke and difficulty breathing. _____), a *Coleman* class member at the EOP level of care, reported that he passed out for about 20 minutes due to smoke inhalation. _____), EOP, similarly reported that he too passed out due to smoke inhalation.

Others, as mentioned above, report that fire alarms/detectors do not appear to be functioning during fires that occur inside housing units.

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Responsibility for Providing Accessible Evacuation Plans and Emergency Exits

As a threshold matter, Defendants must ensure enough accessible emergency exits to accommodate *Armstrong* class members. 28 CFR § 35.133; *Armstrong* Remedial Plan § I. Specifically, the California Building Code (“CBC”) requires two exit access doorways from prisons when the design access load occupancy is **greater than ten** or when the distance travelled to an exit exceeds 100 feet. CBC § 1006.2.1.

Defendants maintain that, because they have three exits in housing units and the primary door on all housing units is accessible, they have complied with the ADA and building codes by ensuring one accessible exit during emergency evacuations. Plaintiffs disagree. The occupancy load of most units designated to house people with impacting mobility and vision disabilities is **greater than 10 people with disabilities**. Having only one accessible doorway in any housing unit that exceeds ten people with impacting mobility or vision disabilities who require an accessible exit violates the ADA, ARP and local building code requirements. Both of the housing units cited in the examples above house more than ten class members with mobility or vision disabilities who require accessible emergency exits. As far as Plaintiffs are aware, Defendants have agreed to ensure only one accessible exit in those and all units housing *Armstrong* class members.

Moreover, the Building Codes were not designed for units where people with disabilities are clustered. For example, at LAC, there are buildings that at times have housed more than 40 individuals who use wheelchairs. Application of the building codes cannot assume an even distribution of the population statewide because that is not how people with disabilities are housed in CDCR.

As discussed during our September 23, 2021 meeting, Defendants must take inventory of the number of class members with mobility and vision disabilities who require accessible exits and ensure adequate emergency exits are available to accommodate these class members. **By or before the next meet and confer, please report on what steps will be taken to ensure compliance with the ADA, ARP, and California Building Codes regarding the number of accessible emergency exits for each unit housing class members with impacting mobility and vision disability codes.** Specifically, please identify how many class members requiring an accessible exit are housed in each unit and how many ADA accessible emergency exits are available for such units. For units with only one accessible emergency exit available, please identify what steps will be taken to immediately rectify the problem.

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CDCR is also required to ensure the provision of reasonable accommodations during emergency evacuations. 28 CFR § 35.130(b)(1)(iii); 35.130(b)(7)(1); ARP § II.F. Specifically, evacuation plans should detail that accommodations are required and ensure that staff in the housing unit know exactly which class members require assistance during an evacuation and what type of assistance they require. Evacuation plans should also detail which exits in the unit are accessible, since Defendants have stated that they do not intend to make every exit accessible. Evacuation plans should ensure that staff members are made aware of which incarcerated people are required to use the accessible exits. **Please provide the emergency evacuation plans for units housing *Armstrong* class members with impacting disabilities.** If not included in evacuation plans, please also report on any fire-specific evacuation protocols including when and how staff are to determine whether it is necessary to evacuate a building due to smoke.

Protocols for emergency evacuations and contingency planning – such as planning for prison-wide wildfire evacuations, loss of electricity or water due to earthquake or other natural disaster, remediating smoke and identifying class members who are particularly susceptible to air quality problems in prisons found in wildfire prone locations – also implicate the safety and health of *Armstrong* class members. **Does CDCR currently address these foreseeable problems in disaster preparedness planning?**

Given credible reports that fire alarms are not functioning in multiple units housing class members, **please report on which housing units statewide are currently identified as having broken or faulty fire detector/alarms, how long they have been broken, the procedure for inspecting and identifying such detectors/alarms, the timeframe and process for repairing them, and what interim steps are taken to ensure that occupants in the housing units are safe while the alarms are not functional.** If any publicly available compliance or audit reports have been produced regarding fire detector/alarm compliance in CDCR, please also produce those reports.

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We look forward to receiving your response to these important issues on or before the next meet and confer.

By: Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/Penny Godbold

Penny Godbold
Of Counsel

PMG:can

cc: Ed Swanson	Joseph (Jason) Williams
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