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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, 58,585
 9 people incarcerated in California prisons have been infected with the novel coronavirus. In
 10 the last month, two people incarcerated in CDCR have died of COVID-19, bringing the
 11 total to 246 people who have died after being infected while in prison in California. Of
 12 those approximately half were *Armstrong* class members.

13 In the midst of continued outbreaks and a rising death count in California prisons,
 14 Defendants continue to resist vaccination efforts that would better protect *Armstrong* class
 15 members. On September 27, 2021, the Court in *Plata v. Newsom* ordered mandatory
 16 vaccinations for staff working in CDCR prisons. *See* Doc. 3684, Order re: Mandatory
 17 Vaccinations, *Plata v. Newsom*, No. 01-01351-JST. In its order, the Court held that
 18 Defendants’ failure to require staff vaccinations—especially in light of the abysmally low
 19 staff vaccination rates at many prisons—violates the Eighth Amendment. *See id.* at 18.
 20 The Court found that staff are the primary vectors of the virus in prisons, and those who
 21 are unvaccinated present a significant risk of harm because they frequently come into close
 22 contact with “elderly, chronically ill, critically ill, medically fragile, and disabled patients,”
 23 many of whom are *Armstrong* class members. *Id.* at 17. Despite the ongoing risk of
 24 serious illness or death to people in its custody, Defendants have failed to protect the
 25 “vulnerable population that resides in CDCR’s facilities.” *Id.* at 18. But, instead of
 26

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

1 developing a robust plan to vaccinate its staff, Defendants promptly appealed the Court’s
2 order. *See* Doc. 3693, Defendants’ Notice of Appeal, *Plata v. Newsom*, No. 01-01351-JST
3 (Oct. 12, 2021). On November 26, 2021, the Ninth Circuit granted Defendants’ motion for
4 a stay of the order pending appeal and ordered expedited briefing. *See* Doc. 28, Order,
5 *Plata v. Newsom*, No. 21-16696. Plaintiffs continue to encourage Defendants to require
6 vaccination of all staff, particularly with the rise of new and possibly more dangerous
7 COVID variants on the horizon.²

8 Defendants have not yet been able to resolve the backlog of *Armstrong* class
9 members who have been awaiting expedited transfer to accessible housing in mainline
10 institutions, nearly nine months after the Court Expert noted his “concern” with the large
11 number of people inappropriately housed because of their disabilities. *See* Doc. 3201
12 (Feb. 1, 2021) at 8. While Defendants acknowledged that the number of inappropriately
13 housed class members was trending up in the fall, Defendants represented that they were
14 addressing the problem by changing their policy so that individuals without disabilities
15 could be transferred, despite the continuing restrictions on transfers between prisons during
16 the pandemic, in order to make space for *Armstrong* class members awaiting transfer to
17 accessible beds. Unfortunately, Defendants’ data shows that change resulted in a one-time
18 decrease in the total number of class members on the expedited transfer list. In fact, the
19 number of mis-housed class members increased each week up until November 2021.
20 During the November 18, 2021, meeting Defendants asserted that the need to isolate and
21 quarantine people in celled housing due to COVID-19 remains a significant factor in their

22 _____
23 ² Despite the *Plata* Court’s holding that they are acting with deliberate indifference to class
24 members’ health and safety, Defendants falsely state below that “Plaintiffs know, and the
25 record shows, that CDCR has been one of the most proactive correctional systems in the
26 country battling [COVID-19].” Plaintiffs do not agree, and the record is to the contrary.
27 Defendants have never submitted any evidence to dispute Plaintiffs’ evidence of their
28 systemic failures to safely and accessibly house class members during the pandemic,
which contributed to countless class members becoming infected with COVID-19. Nor
can Defendants reasonably dispute that *Armstrong* class members—who account for about
half the deaths from COVID-19 despite representing only about 10% of the incarcerated
population—have suffered disproportionately from CDCR’s inadequate response to the
pandemic.

1 ability to easily transfer incarcerated people to new placements. The most recent data
2 available to Plaintiffs since the November 18, 2021 meeting shows that the number
3 remains stagnant—with 138 class members with impacting placement codes housed
4 inaccessibly at non-designated institutions in violation of the ARP as of December 31,
5 2021. It is troubling that so many class members remain mis-housed at this point in the
6 pandemic, as it does not appear that the need for isolation and quarantine housing will be
7 eliminated soon.

8 If additional steps are not taken to expedite transfers more quickly, Plaintiffs fear
9 that Defendants will create a “new normal” where more than 100 class members are mis-
10 housed at non-designated institutions at any given time, a significantly higher number than
11 the pre-pandemic levels, when (according to Defendants) there were only several dozen
12 class members mis-housed statewide. Unfortunately, with brand new movement
13 restrictions in place in response to the massive COVID-19 outbreaks due to the Omicron
14 variant, Defendants likely missed their opportunity to take necessary steps in 2021 to
15 transfer mis-housed class members when it was safe to do so. Defendants must resolve
16 this problem and accommodate the housing needs of people with disabilities despite the
17 ongoing need to have celled housing available for isolation and quarantine.

18 **2. Defendants’ Statement**

19 In concert with the court appointed Receiver, who is responsible for medical care
20 and infectious disease control within the prisons, Defendants have worked tirelessly to
21 provide a comprehensive and proactive response to the unprecedented challenges caused
22 by the global pandemic to ensure that class members are accommodated and to ensure the
23 safety and security of all incarcerated people, whether class members or not. Over the last
24 twenty months, Defendants have dedicated resources to addressing the COVID-19
25 pandemic and providing timely information to address Plaintiffs’ concerns and maximize
26 invaluable resources. Notwithstanding the challenges of a new variant, Defendants
27 continue to make significant and comprehensive efforts to contain and minimize the effects
28 of an unparalleled, global pandemic on the people housed in its institutions, staff, and

1 visitors by continuing with a robust vaccination process, maintaining a stringent testing
2 process, enforcing appropriate mitigation measures, working with Plaintiffs to address
3 individual concerns, and many other proactive efforts.

4 Plaintiffs raise concerns about the staff-vaccination rates and continue to urge
5 CDCR to mandate that all staff receive vaccinations to provide further protection to class
6 members. CDCR is mindful of Plaintiffs' concerns, but notes that this particular issue is
7 currently being addressed in *Plata v. Newsom*. Notwithstanding Plaintiffs' concerns, it
8 must be noted that the vast majority of class members are vaccinated. Vaccinations have
9 been offered to all inmates and as of January 13, 2022, 91% of the DPP population has
10 been fully vaccinated. CDCR's robust system to protect the total inmate population has
11 resulted in approximately 81% of the approximate 105,000 people in CDCR's custody
12 being fully vaccinated and 70% of staff being vaccinated.³ Moreover, as of January 14,
13 2022, 77% of eligible inmates have received a vaccination booster. Further, as of January
14 18, 2022, CDCR has performed approximately 2,424,341 tests (PCR and antigen) and over
15 50,527 in the last two weeks, alone.⁴

16 With few exceptions, class members on the expedited transfer list remain there for a
17 short period before being transferred off the list and placed in accessible housing at
18 mainline institutions. Hence, Plaintiffs' statement that Defendants "have not yet been able
19 to resolve the backlog of *Armstrong* class members who have been awaiting expedited
20 transfer to accessible housing in mainline institutions, nearly nine months after the Court
21 Expert noted his 'concern' with the large number of people inappropriately housed because
22 of their disabilities," is misleading and seemingly dismisses Defendants' collaborative
23 efforts during the unprecedented global pandemic. Defendants continue to address the
24 Court Expert's concerns noted in his June 2, 2021 report about "appropriately" or

25 _____
26 ³ <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited January 13,
2022.)

27 ⁴ <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited January 18,
28 2022.)

1 “expeditiously” meeting class-member needs and continue to invite Plaintiffs’
2 participation in addressing these issues. But Plaintiffs’ characterization that a quick fix
3 exists or that CDCR has failed to act is wrong. On April 26, 2021, California Correctional
4 Healthcare Services (CCHCS) issued new guidance on necessary movement, which
5 included transfers of people with disabilities impacting placement. On June 22, 2021 and
6 more recently on December 27, 2021, CCHCS issued its updated guidance regarding
7 COVID-19 screening and testing when moving inmate/patients. The Program Status
8 Report, effective January 9, 2022, outlines some programming and movement restrictions
9 for two weeks. These updated guidelines continue to prioritize class members, by
10 permitting “necessary movement,” a definition that includes “the transfer of people with
11 disabilities impacting placement (including DPP and DDP individuals).” Under these
12 guidelines, Defendants have been diligently working to remove those class members who
13 remained on the Expedited Transfer List because of pandemic-induced transfer restrictions
14 by transferring them to designated housing, but movement between the facilities is subject
15 to several factors. CDCR must also facilitate transfers for many other people, including
16 class members returning from county jails and *Coleman* and *Clark* class members. As a
17 result, CDCR has prioritized movement for those with the most significant disabilities,
18 such as class members utilizing a wheelchair or who are blind or low vision. CDCR staff
19 also regularly interview class members in non-designated institutions to ensure they are
20 being accommodated and CDCR has implemented robust reporting requirements to
21 Plaintiffs’ counsel and the Court Expert on these individuals. Moreover, when a class
22 member cannot be accommodated at an institution, CDCR has arranged special transports
23 to ensure that they are housed accessibly. Notwithstanding these efforts, many non-class
24 members, assigned to lower-tier and lower-bunk housing needed to be first transferred to a
25 non-designated institution to free up the lower-tier and lower-bunk housing at designated
26 institutions, but such moves had not been considered essential. Through coordinated
27 efforts, however, staff has now received approval to move these non-class members from
28 Substance Abuse Treatment Facility (SATF), California Medical Facility (CMF),

1 California Health Care Facility (CHCF), R.J. Donovan (RJD), and other designated
2 institutions to non-designated institutions to free up lower-tier and lower-bunk housing at
3 the designated institutions so that class members can be transferred expeditiously to the
4 designated institutions.

5 Defendants have also provided Plaintiffs detailed data on various metrics, including
6 the number of class members on the list; the new class members on the list; the number of
7 class members transferred the same week that they appeared on the list; the total transfers
8 per week; the percentage of transfers from the previous week; and other information.

9 Defendants provided an updated report before the October 26, 2021 meeting, provided
10 specific information at the meeting such as the rate of class-member turnover and the
11 number of class members who have remained on the list for various periods of time.

12 Similarly, Defendants provided additional information to Plaintiffs before the November
13 18, 2021 all-parties meeting. The data demonstrates that the number of class members on
14 the expedited transfer list continues to trend down. While Plaintiffs characterize this
15 progress as slow, that assessment discounts the fact that there is actually substantial
16 turnover of class members on the list.

17 Defendants also note that a robust system of monitoring and reporting created with
18 Plaintiffs over the course of the pandemic remains in place. These policies require
19 institutions to meet with class members in non-designated placements biweekly to verify
20 and document that they are being accommodated. This documentation is provided to
21 Plaintiffs on a rolling basis along with weekly reporting on class members on the
22 Expedited Transfer List and Housing Restriction Compliance Reports.

23 The record shows that CDCR has been one of the most proactive correctional
24 systems in the country in battling an insidious virus the likes of which have not been seen
25 in over a century. Defendants will continue to be transparent and collaborate with the
26 Court Expert, Plaintiffs' counsel, and other stakeholders as they work to protect the
27 inmates under their charge and the staff dedicating themselves to this duty for the duration
28 of this pandemic.

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

3 **1. Plaintiffs' Statement**

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

5 In response to evidence of widespread abuse, assaults and retaliation against
 6 incarcerated people on the basis of their disabilities who request accommodations and face
 7 discrimination, on September 8, 2020, the Court issued orders finding remedial efforts
 8 were necessary in order to “prevent further violations of the ARP and class members’
 9 ADA rights at RJD.” Doc. 3059 at 42. On March 11, 2021, the Court issued further
 10 orders finding remedial efforts were necessary to prevent ongoing violations of the ADA
 11 and ARP at five additional prisons—Substance Abuse Treatment Facility and State Prison,
 12 Corcoran (“SATF”), California State Prison Corcoran (“COR”), California State Prison
 13 Los Angeles County (“LAC”), California Institute for Women (“CIW”), and Kern Valley
 14 State Prison (“KVSP”) (collectively, the “Court Orders”). *See* Docs. 3217 and 3218.

15 After over a year of negotiations, the parties reached agreement on the vast majority
 16 of provisions included in Defendants’ RJD and Five Prisons Remedial Plans (“Plans”).
 17 Doc. 3336. The Plans were filed with the Court on October 29, 2021. *See* Doc. 3336-1,
 18 Exs. A, B. Plaintiffs’ counsel filed objections to two provisions of the Plans. Doc. 3336.
 19 On December 13, 2021, the Court sustained Plaintiffs’ objections ordering Defendants to
 20 propose shorter deadlines for conducting investigations and to include further details
 21 regarding the post-investigation review panel composition and process in the remedial
 22 plans. Doc 3356. Notwithstanding these disputes, certain provisions of both Remedial
 23 Plans have been implemented, including body-worn cameras (“BWC”) and Audio Visual
 24 Surveillance Systems (“AVSS”) at all six prisons as of December 1, 2021. Additional
 25 Sergeants have been hired and trained at all six prisons and custody and health care staff
 26 have received additional training as of October 2021.

27 On January 10, 2022, the Governor released the proposed 2022-2023 budget for
 28 CDCR, which includes requests for funding for implementation of staff misconduct

1 remedies statewide. Notably, the budget request includes the extension of court-ordered
2 remedies including implementation of AVSS at ten additional prisons and BWC at four
3 additional prisons – SVSP, CCI, SAC, and CCWF. See State of California Budget Change
4 Proposal, 5225-082-BCP-2022-GB, attached hereto as **Exhibit A**. In recognition of the
5 importance of these remedies, the budget proposal recognizes that any existing camera
6 coverage in CDCR is inadequate and outdated, stating: “Statewide installation of AVSS to
7 ten additional institutions and an expansion of BWC technology to CCI, SAC, CCWF, and
8 SVSP will increase CDCR’s accountability to [sic] by adding a powerful tool to address
9 potential concerns of staff and incarcerated individual misconduct.” *Id.* at D. Plaintiffs
10 applaud this recognition of the importance of the Court’s prior Orders and remedies and
11 CDCR’s significant commitment towards reducing disability-related staff misconduct by
12 expanding AVSS and BWC to additional prisons. The extension of BWC use in CDCR is
13 consistent with a growing trend towards the use of BWCs in prisons as an essential part of
14 good correctional practice. *See* Jonah E. Bromwich & Jan Ransom, In a First, Ohio Moves
15 to Put Body Cameras on Guards in Every Prison, The New York Times, January 14, 2022,
16 attached hereto as **Exhibit B**.

17 Defendants have also begun production of documents in compliance with the
18 Court’s Orders. Defendants have now made three quarterly productions in compliance
19 with the RJD Remedial Plan and Five Prisons Remedial Plan. The parties continue to meet
20 and confer to ensure that all required documents are produced.

21 Notwithstanding commitments made by Defendants to undertake significant
22 reforms to the staff misconduct investigation process, those reforms have not been
23 implemented. Now, there appears to be a dispute regarding the implementation timeline.
24 Plaintiffs’ counsel learned for the first time, on December 8, 2021, upon release of the final
25 regulatory package, that Defendants plan to stretch the roll-out of new reforms to
26 June 2023. Plaintiffs object to the lengthy delay, especially in light of evidence of ongoing
27 deficiencies in Defendants’ staff misconduct investigations including persistent bias
28 against incarcerated people, incomplete investigations, and improper disciplinary decision-

1 making by Hiring Authorities. *See* Doc. 3341, Exs. A and B (letters from Plaintiffs’
2 counsel detailing ongoing problems with Defendants’ investigations). The implementation
3 deadlines included in the regulations violate the Court’s orders, are inconsistent with
4 representations made by Defendants during the parties’ fourteen months of negotiations,
5 and are insufficient to protect the rights of *Armstrong* class members. *See* December 13,
6 2021, letter from Michael Freedman to Tamiya Davis and Jennifer Neill attached hereto as
7 **Exhibit C**. The 2023 implementation dates for 1824s, 602-HCs, and third-party
8 complaints are unacceptable, especially because this will perpetuate two discipline and
9 investigation systems, one of which has been shown to be ineffective, at the six prisons.
10 The Court Expert agrees with concerns raised by Plaintiffs’ counsel regarding the lengthy
11 implementation timeline. *See* Doc. 3365 at 3. The entire process for all types of
12 complaints should be implemented at the six prisons as soon as possible and no later than
13 May 31, 2022. The *Armstrong* class cannot wait until mid-2023 for Defendants to
14 implement some of the most important remedies in the Plans, which are intended to
15 comply with Court orders issued in September 2020 and March 2021. Plaintiffs are
16 prepared to file an enforcement motion, if necessary, to ensure swift implementation of the
17 new investigation process at the six prisons.

18 In response to concerns over the deaths of five class members, allegations of blatant
19 disability discrimination and denial of ADA accommodations by staff, and reports of
20 retaliatory RVRs issued by certain health care staff members, the Court ordered Court
21 Expert Ed Swanson to conduct an investigation and to produce a report regarding staff
22 misconduct allegations at SATF. Doc. 3338. The parties provided written submissions to
23 the Court Expert on December 8, 2021, outlining extensive disrespect and discourteous
24 treatment by SATF staff members, including through the issuance of false, retaliatory,
25 discriminatory or otherwise inappropriate RVRs, which naturally erode relationships
26 between staff and incarcerated people, prolong incarceration, and ultimately have a
27 significant chilling effect on the ability of class members to seek and obtain required
28 disability accommodations from staff members. *See* Plaintiffs’ Written Submission to

1 Court Expert attached hereto as **Exhibit D**. Following an *Armstrong* tour of SATF on
2 December 14-17, 2021, Plaintiffs' counsel submitted a Supplemental Written Submission
3 to Court Expert, attached hereto as **Exhibit E**, based on information learned during that
4 visit that is relevant to the Court Expert's investigation of SATF.

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

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

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

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

25 Plaintiffs have outlined specific and comprehensive remedies necessary to address
26 the failure of the RVR process to uphold the due process rights of class members, detect
27 staff misconduct, and hold responsible staff accountable. *See* Doc. 3296, Ex. B. The
28 parties met to discuss this serious problem on December 9, 2021. Defendants requested

1 additional time to respond to Plaintiffs' requests for reform. Defendants agreed to provide
2 a response in writing by January 24, 2022 and to meet with Plaintiffs on January 28, 2022
3 to discuss their position. In the meantime, Plaintiffs continue to bring to Defendants'
4 attention the pervasive problems that the mere issuance of false, retaliatory, discriminatory
5 and inappropriate RVRs have on the system as a result of the chilling effect RVRs have on
6 the ability of class members to speak up and assert their ADA rights and to attempt to hold
7 staff accountable for misconduct.

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

10 **2. Defendants' Statement**

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

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

18 In compliance with the Court's September 8, 2020 and March 11, 2021 orders, and
19 notwithstanding pending appellate review, Defendants have engaged in a year-long series
20 of substantive meet-and-confer sessions with Plaintiffs and the Court Expert to develop
21 comprehensive and effective remedial plans. During the meet-and-confer sessions, the
22 parties have identified disputed elements of the remedial plans, shared information related
23 to positions taken concerning the plan, and resolved nearly all areas of disagreement. Over
24 the course of the last year, Defendants have provided Plaintiffs and the Court Expert with
25 extensive written policies related to the remedial plan and presented Plaintiffs and the
26 Court Expert with third-party tutorials or informational sessions concerning officer
27 training, the operation and placement of fixed surveillance cameras, staff investigation
28 process, employee discipline, components of a computerized early-warning system, and

1 other aspects of the remedial plans. As the Court recently noted, “[t]hese agreed-upon
2 measures constitute substantial improvements that will go a long way to bringing
3 Defendants into compliance with the ARP and ADA at the six prisons.” Doc. 3356 at 2.
4 Further, the Court found, the “implementation of these [] remedial measures is likely to
5 have a positive impact on...the overall reliability of the outcomes of investigations,” of
6 staff-misconduct allegations.” Doc. 3356 at 15.

7 Within months of the Court’s orders, significant progress was made with
8 components of the remedial plans that concern increased staffing, body-worn cameras,
9 fixed camera installation (AVSS), document production, training, and other remedies.
10 Docs. 3177, 3183. Specifically, nine additional sergeants and one supervising lieutenant
11 were put in place at RJD in December 2020 and, as of August 23, 2021, thirty-eight
12 additional sergeants were in place at LAC, SATF, KVSP, CIW, and COR. AVSS
13 deployment has been completed at all six institutions. AVSS was deployed at RJD on
14 April 5, 2021; at LAC on October 1, 2021; at COR on November 1, 2021; and at SATF,
15 CIW, and KVSP by December 1, 2021. Body-worn cameras were fully deployed in
16 January 2021 at RJD; in July 2021 at SATF, KVSP, CIW, and COR; and in August 2021
17 at LAC. In May 2021, the parties and the Court Expert received a demonstration of the
18 AVSS and the body-worn cameras deployed at RJD, including the body-worn cameras’
19 extensive ability to capture video and audio interactions between staff and inmates. All
20 who attended the demonstration, including Plaintiffs’ counsel, were impressed by the
21 camera technology and encouraged by the anticipated positive impact on staff and inmate
22 relations. On June 30, 2021, the Court Expert filed his first quarterly report and, while
23 noting the ongoing negotiations and additional work to be done, described the fixed-
24 camera and body-worn camera technology deployed at RJD as “quite impressive.” Doc.
25 3290. The quarterly report conveys that the use of body-worn cameras appears to have had
26 a positive impact on relations between staff and inmates at RJD and concludes that “on the
27 whole, RJD appears to be adhering to the operations plan for use of cameras and retention
28 of footage.” *Id.*

1 Plaintiffs express concern regarding the implementation of the new staff misconduct
2 process and threaten that they may file an enforcement motion “to ensure swift
3 implementation of the new investigation process” at RJD, LAC, SATF, COR, KVSP, and
4 CIW. Defendants have worked hard to implement the new processes as quickly as
5 possible, to incorporate Plaintiffs’ suggestions, have engaged in conferences to share
6 additional information with Plaintiffs to address their concerns, including a conference
7 with the Court Expert on December 20, 2021 and January 11, 2022, and urge Plaintiffs to
8 refrain from any such enforcement motion on this issue in light of the significant progress
9 and commitments made to date. Although Defendants have considered earlier
10 implementation dates, the realities of deploying unprecedented statewide changes to the
11 staff misconduct and discipline processes while also developing fixed-camera surveillance
12 systems at up to twenty-two institutions during a global pandemic and faced with limited
13 resources necessitates a different timeframe than the one demanded by Plaintiffs.
14 Notwithstanding Plaintiffs’ assertions, this Court did not set a deadline for Defendants to
15 fully deploy new staff misconduct and discipline processes, and given Defendants’ task to
16 restructure the CDCR’s staff misconduct allegation, screening, referral, investigative, and
17 disciplinary processes, the proposed timeframe is reasonable and necessary for successful
18 implementation. The statewide deployment of the new staff misconduct investigation and
19 staff discipline processes necessitates extensive resources that includes the hiring and
20 training of new staff and the development of technological tools to ensure a smooth
21 transition. As stated in the January 10, 2022 Budget Change Proposal, CDCR requires an
22 additional \$35.6 million to hire and train 175 positions for 2022-2023 fiscal year, scaling
23 up to 192 positions in the next fiscal year, and ongoing, to restructure the relevant
24 processes. Despite the proposed timeframe, significant components of the new processes
25 will be deployed, shortly, to address Plaintiffs’ concerns. As stated in the proposed staff
26 misconduct regulations, as of January 1, 2022, all allegations of staff misconduct, raised in
27 a CDCR Form 602-1, will be routed outside of the local institutions for initial review by
28 the Centralized Screening Team before being assigned for appropriate investigation. Doc.

1 3339-5, Ex. A. CDCR anticipates that by May 2022, all allegations of staff misconduct
2 received by the filing of a CDCR Form 602-1 from the six institutions will be assigned for
3 investigation by the Office of Internal Affairs if deemed appropriate by the new screening
4 process. As demonstrated by recent data included in the January 10, 2022 Budget Change
5 Proposal, CDCR estimates that the vast majority, up to 70%, of staff misconduct
6 allegations arise from inmates submitting a CDCR Form 602-1.⁵ Staff misconduct
7 allegations received from other sources, including from CDCR Form 602-HC, CDCR
8 Form 1824, or third-parties, will be subject to different timeframes and subsequently
9 phased in. Hence, current circumstances do not necessitate an enforcement motion and
10 would only redirect resources from areas in greater need of such resources to implement
11 CDCR's unprecedented statewide changes to these processes.

12 Defendants will, to the extent that they are requested to or are able to, facilitate the
13 Court Expert's investigation of enumerated issues at SATF as ordered by the Court to do
14 so. Defendants produced responsive documents and information to the Court Expert on
15 December 8, 2021. Defendants note, however, that some of the issues identified by the
16 Court arose before the Court's March 11, 2021 order. Defendants further note that
17 different components of the issues identified by the Court have previously been addressed
18 by Defendants, and Defendants have shared appropriate information with Plaintiffs
19 concerning various class members. Moreover, court-ordered remedial measures have been
20 implemented at SATF that address many of the concerns raised by the Court. For
21 example, in accordance with the scheduled roll-out, approximately 1114 fixed cameras and
22 681 body-worn cameras have been deployed at SATF, along with fourteen new sergeants
23 and one supervising lieutenant to focus on ADA-related issues that may face the
24 approximately 843 class members housed at SATF. Notwithstanding this, Defendants will
25 continue to provide information on a rolling basis, as requested by the Court Expert, and
26

27 ⁵ See State of California Budget Change Proposal, 5225-082-BCP-2022-GB, attached
28 hereto as **Exhibit A**.

1 facilitate his investigation in accordance with the Court's order to do so.

2 **b. Defendants' Response to Demands for RVR Reform**

3 Defendants believe that there is no need for additional court intervention on these
4 issues because the significant work and commitments made to date addresses Plaintiffs'
5 concerns that "CDCR has failed to address the endemic use of false and retaliatory Rules
6 Violations Reports." During the extensive negotiations, Defendants have agreed that
7 important pieces of the remedial plans will apply statewide, such as the pepper-spray
8 policy and staff misconduct and investigation processes, even though the Court did not
9 order such widespread implementation. Under the new staff misconduct investigation
10 process, allegations of false and retaliatory Rules Violations Reports will be subjected to a
11 staff misconduct investigation conducted by the Office of Internal Affairs. Inmates shall
12 be provided the opportunity to view any video footage related to a Rules Violation Report
13 with which they have been charged and may present the video footage at the disciplinary
14 hearing as defense evidence even if the hearing officer is not using the video footage as
15 evidence. To further demonstrate that Defendants take seriously all allegations of staff
16 misconduct, which includes alleged false RVRs and retaliation for requesting
17 accommodations, CDCR has agreed to effect further unprecedented change statewide. As
18 revealed in the May 2020 Revision of the State's budget, in addition to implementing
19 AVSS (fixed cameras) at the six institutions required by the *Armstrong* orders, CDCR
20 requested to install, in fiscal year 2021-2022, AVSS at four additional institutions—
21 namely, Salinas Valley State Prison (SVSP), California State Prison – Sacramento (CSP-
22 SAC), California Correctional Institution (CCI), and Mule Creek State Prison (MCSP). By
23 the end of this fiscal year (June 2022) there will be fixed-cameras at approximately
24 thirteen, or 39%, of the thirty-three CDCR institutions.⁶ This includes RJD, LAC, SATF,
25 KVSP, COR, CIW, SVSP, CSP-SAC, CCI, MCSP, and the three other institutions with
26

27 ⁶ Deuel Vocational Institution is closed and the California Correctional Center is expected
28 to be closed by June 30, 2022.

1 fixed cameras already installed (High Desert State Prison, CHCF, and the Central
2 California Women's Facility (CCWF)). On January 10, 2022, the current administration
3 released its budget for fiscal year 2022-2023 that provided for additional camera coverage
4 at numerous institutions. The Governor's proposed budget includes funding to deploy
5 fixed cameras at ten institutions. These ten institutions are Calipatria State Prison (CAL),
6 Centinela State Prison (CEN), California State Prison - Solano (SOL), California Medical
7 Facility (CMF), CHCF, San Quentin State Prison (SQ), Pleasant Valley State Prison
8 (PVSP), Avenal State Prison (ASP), Ironwood State Prison (ISP), and Chuckawalla Valley
9 State Prison (CVSP). Additionally, the proposal includes funding for additional body-
10 worn camera technology at four additional institutions, including California Correctional
11 Institution (CCI), SAC, CCWF, and SVSP. This further demonstrates CDCR's
12 commitment to install AVSS over the next three fiscal years, until AVSS has been
13 installed at all institutions. Based on recent data, this means that approximately **70% of**
14 **Armstrong class members will be housed at an institution with prison-wide, fixed-**
15 **camera coverage**, or funding for such by the end of the next fiscal year.⁷ Further, by end
16 of next fiscal year, twenty-two of its thirty-three institutions, or **67%**, will be equipped
17 with fixed-camera technology. The January 10, 2022 budget proposal also provides
18 funding for the deployment of body-worn cameras at four additional institutions to include
19 SAC, SVSP, CCI, and CCWF. Based on recent data, nearly a third, or **35%**, of all class
20 members will be housed at institutions with unprecedented body-worn camera deployment.
21 Notwithstanding these unprecedented developments, CDCR has agreed to continue its
22 discussions with Plaintiffs' counsel, along with the Court Expert, concerning the current
23 RVR process and to provide a response to Plaintiffs' formal demands by January 24, 2022.

24

25 ⁷ Based on data collected on January 12, 2022, there are 11,075 class members housed in
26 CDCR's institutions. Class members housed at the following institutions is as follows:
27 118 at ASP; 49 at CAL; 106 at CCI; 238 at CCWF; 54 at CEN; 1269 at CHCF; 145 at
28 CIW; 774 at CMF; 325 at COR; 143 at CVSP; 141 at HDSP; 54 at ISP; 221 at KVSP; 475
at LAC; 72 at PVSP; 913 at MCSP; 974 at RJD; 110 at SAC; 843 at SATF; 480 at SOL;
363 at SQ; 387 at SVSP.

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

2 **1. Plaintiffs' Statement**

3 The parties continue to meet in a workgroup to address the provision of
4 accommodations for Deaf and hard-of-hearing class members. The most recent meeting
5 was December 2, 2021. While progress has been made in some areas, there are ongoing
6 issues regarding the provision of certain accommodations necessary to ensure equal access
7 to prison programs and services.

8 Prior to the December 2 workgroup meeting, Defendants shared three different
9 memoranda regarding issues that have been the subject of negotiations for months: the
10 provision of pocket talkers, sign language interpreters to deaf signers admitted to hospitals
11 outside of prisons, and captioned telephones system wide.

12 Unfortunately, Defendants failed to provide a draft version of the memorandum
13 regarding the provision of pocket talkers prior to finalization. While it appears to be a step
14 in the right direction, the memorandum suffers from fatal errors. We are concerned the
15 memorandum will be interpreted to completely preclude class members who already have
16 hearing aids from receiving pocket talkers, and will not resolve ongoing violations of the
17 ADA. *See* January 6, 2022, letter from Caroline Jackson to Tamiya Davis attached hereto
18 as **Exhibit F**. Plaintiffs will continue to meet with Defendants to address these concerns,
19 as well as to discuss Plaintiffs' comments to the other two draft memoranda.

20 Plaintiffs continue to receive reports from class members regarding difficulty
21 hearing with the hearing aids provided by CDCR that distort sound, introduce extraneous
22 background noise, and create painful feedback. The two models of hearing aids offered by
23 CDCR lack basic settings that are common in hearing aids, such as a telecoil that pairs
24 with compatible with assistive devices, designed to mitigate these deficiencies. The
25 provision of pocket talkers may partially compensate for the inadequacy of the hearing
26 aids. However, Plaintiffs remain concerned that poor quality hearing aids continue to
27 prevent class members equal access to CDCR programs, services and activities.

28

2. Defendants' Statement

Defendants remain committed to providing class members equal access to programs, services, and activities in accordance with the ADA and will continue to meet with Plaintiffs to discuss the issues that pertain to their clients as part of the parties' ongoing workgroups including those noted above. Defendants disagree, however, that the recently issued pocket-talker memorandum is fatally flawed or fails to address "ongoing violations of the ADA." Instead, Defendants contend that it sufficiently addresses the needs of inmates with disabilities and provides access to them in accordance with the ADA. The Pocket Talker memorandum is not interpreted to completely preclude class members who already have hearing aids from receiving pocket talkers; such a condition is uncommon and will be reviewed on a case-by-case basis to determine the class members' needs. Further, Plaintiffs' continued complaints that hearing aids provided to class members are of poor quality and fail to accommodate their needs are based on a relatively small number of isolated complaints and fail to account for the vast amount of class members who utilize effective hearing aids provided to them by Defendants without complaint. As of January 13, 2022, 3,159 inmates are prescribed and issued hearing aids. Medical executives from CCHCS tested out the Flame 250 hearing aid that the vendor shipped to them. This model (Flame 250) amplifies sound as expected and is comfortable to wear. Per the vendor, this model is used worldwide and in government-funded programs including CDCR.

Executives from CCHCS HQ will reiterate to the health care executives at the institutions regarding the availability of the two types of hearing aids based on the severity of hearing loss and strength of hearing accommodation needs. This will be achieved via an email to the regional medical executives and then going over the message on the upcoming January 19, 2022 statewide physician leadership call. It should be noted that the type of hearing aid needed by each patient will ultimately be determined by the treating Audiologist during audiology examinations.

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

2 **1. Plaintiffs' Statement**

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

10 The joint Blind/Low-Vision Workgroup has not convened since the last Joint Case
11 Status Statement was filed. Defendants have provided no updates on the various issues
12 outlined in that Statement since its filing. In particular, Defendants have reported no
13 progress on developing a statewide system (1) to document blind and low-vision class
14 members' needs for accessible formats (such as large print, audio recording, and braille) of
15 written information and (2) to produce the information in these formats; nor have they
16 reported progress on making auxiliary aids—such as electronic video magnifiers—
17 available to these class members outside restricted locations and hours. On December 10,
18 2021, Plaintiffs detailed the legal basis for the requested accommodations, the importance
19 of auxiliary aids for *Armstrong* class members, and why the currently relied on
20 accommodations—assistance from ADA workers and staff and access to the library and
21 classrooms—are not reasonable accommodations. *See* December 10, 2021, letter from
22 Jacob Hutt to Tamiya Davis attached hereto as **Exhibit G**. Plaintiffs await Defendants
23 response.

24 Defendants refer to the tablet program—which has still not been implemented at
25 any prison with a significant blind and low-vision population—as a solution to this issue,
26 but have not provided Plaintiffs with any information about plans to make CDCR-
27 produced written materials (such as RAP responses and RVR documentation) accessible to
28 blind and low-vision class members on these tablets. Plaintiffs would welcome efforts by

1 Defendants to utilize the tablets as part of a solution to this problem. However, tablets
2 may not be an effective auxiliary aid for all blind and low-vision class members. People
3 who are both blind and hard of hearing may not be able to hear tablets read documents
4 aloud. People who are blind and have hand or arm mobility disabilities may be unable to
5 operate the tablets independently. Defendants must also explore providing written
6 materials in audio format—besides large print and braille—for those class members who
7 are blind and do not read braille. Finally, Defendants state that they “continue[] to
8 research” the availability of contractors to produce CDCR-completed forms in large print
9 and braille; yet Plaintiffs raised this issue nearly ten months ago in a letter to Defendants,
10 and in July 2021 even facilitated a conversation between Defendants and a specific
11 contractor capable of fulfilling this need. Plaintiffs are troubled by the lack of progress on
12 this issue. As stated in Plaintiffs’ December 10, 2021 letter, if Defendants are unwilling to
13 present a plan for remedying these ADA violations, Plaintiffs will seek involvement of the
14 Court Expert and, if necessary, intervention from the Court.

15 Plaintiffs also continue to await a finalized version of the white-cane memorandum
16 from Defendants, *see* Doc. 3341 at 19 (same), a draft of which they returned to Defendants
17 with edits seven months ago.

18 **2. Defendants’ Statement**

19 Defendants have committed significant resources and effort to ensure that blind and
20 low-vision class members are appropriately accommodated. Defendants access numerous
21 sources of information to continuously understand class members’ needs. Additionally,
22 Defendants participate in frequent working groups, both internally and with Plaintiffs, to
23 gain further insight about the needs and concerns of these class members.

24 For example, during the pandemic and in response to increased movement within
25 institutions, the parties worked to develop interim measures to ensure that blind and low-
26 vision class members are properly situated to new living environments. As agreed to by
27 the parties, this included a comprehensive memorandum and training materials for the
28 ADA coordinator, or their designated staff, who would be situating these class members to

1 review, followed by a thorough checklist of necessary areas and items to orient the class
2 members to. The orientation is to be conducted within 24 hours of a class members'
3 placement into a new housing environment, and includes a guided walkthrough of the unit
4 to facilitate independent and safe navigation by the class member. The class member is
5 oriented to housing areas, toilets/showers, officers' stations, dayrooms, exits (both
6 emergency and ingress/egress), dining halls, and phones. Further, the orientation requires
7 staff to introduce class members to ADA workers (if they are available in the housing unit,
8 meaning it is not being utilized for isolation or quarantine purposes), or staff who will be
9 available to assist the class member when requested. Defendants continuously reach out to
10 staff to ensure that the orientations are timely and effective, based on the process put into
11 place. In fact, recent data demonstrates that in December 2021, 94% of the orientations
12 were completed with twenty-four hours. The parties continue to discuss its
13 implementation, whether improvement to the system is needed under current
14 circumstances, and when and how to offer such orientations to blind and low-vision class
15 members after the pandemic. Finally, even though the parties have not met to discuss
16 these issues, it is important to note that Defendants continue to work on these issues even
17 if the parties are not meeting in a workgroup. Moreover, the last workgroup occurred very
18 near the filing of the last joint case statement and Defendants have schedule the next
19 workgroup in mid-January at the suggestion of Plaintiffs.

20 Defendants are exploring a variety of options to provide large-print or braille
21 versions of written materials including contracting with third-party vendors. CDCR
22 appreciates the importance of this issue to class members and continues to research the
23 availability of contractors who can produce CDCR-completed forms in large print and
24 braille. It should be noted, however, that there are currently three class members statewide
25 who can read braille. CDCR reached out to these class members and each one confirmed
26 that they did not want to receive written documents in braille. Each class member further
27 confirmed that their needs were currently being accommodated. CDCR, however,
28 continues to accommodate low-vision class members with access to auxiliary aids,

1 handheld magnifiers, staff and ADA workers who read documents aloud to class members.
2 Additionally, audio recordings of BPH hearings are available upon request to CDCR staff
3 who in turn work with BPH to obtain the transcript on CD and then loan the class member
4 a CD player to listen to the transcript. In addition, staff are trained annually to provide the
5 accommodation of reading documents to class members upon request. ADA workers are
6 also trained and available to read documents to class members as requested. Nonetheless,
7 Defendants will continue to meet and confer with Plaintiffs concerning the provision of
8 large-print, braille, or audio versions of written materials and their contention that there is
9 no system to document class members' individual need for accessible versions of
10 documents.

11 Defendants contend, however, that the tablet program, which recently rolled out at
12 Valley State Prison, will include a host of accessible features to accommodate class
13 members' needs and serve to address Plaintiffs' concerns. These tablets include a variety
14 of assistive programs designed to facilitate access for class members and include, but are
15 not limited to, text enlargement, VRI capabilities, video calling, and text to speech. CDCR
16 is working with the contractor to enhance these capabilities to include voice to text,
17 increased recreational options for incarcerated people, different formats for imparting
18 information, and more. These tablets will eventually be provided to all CDCR inmates
19 free of charge. Defendants believe that this will be a substantial positive development for
20 both class members as well as the general CDCR population.

21 Defendants look forward to continued discussion of these, the white-cane
22 memorandum (which was distributed to the field on January 7, 2022), and other issues
23 addressing class-member concerns at future workgroup meetings.

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

25 With regard to the broader problem of equal access to job and program assignments
26 for people with disabilities, the parties convened a small work group to address disability
27 discrimination against Plaintiffs, as documented in multiple tour reports and letters. *See*
28 *Doc. 2680 at 13-14.* The parties agreed to exchange program assignment data on a

1 quarterly basis. Plaintiffs contend that the data continues to show disparities in
2 assignments for people with disabilities and most recently outlined ongoing discrepancies
3 in advance of a November 19, 2021 meeting. *See* November 12, 2021, Letter from Tom
4 Nolan to Katie Riley and Dawn Lorey, attached hereto as **Exhibit H**. The parties agree to
5 work cooperatively toward ensuring equal access in program assignments for people with
6 disabilities but these conversations were initially put on hold during the pandemic.

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

13 **F. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
14 **Disability Tracking Information**

15 Following Defendants' statewide durable medical equipment ("DME")
16 reconciliation in early January 2019 that revealed 7,346 class members were missing one
17 or more items of DME and that 2,349 class members' DME records had errors, CCHCS
18 implemented the DME Discrepancy Report Tool in January 2020. Defendants have agreed
19 to a process to ensure reconciliation of what records indicate a class member should have
20 and what they actually have. Defendants reported they are developing a process to
21 reconcile DME annually. Specifically, DME will be confirmed during health care
22 encounters and staff will be required to check a box confirming DME was checked.
23 Anyone who has not had a medical encounter in the last nine months will be flagged
24 electronically and will be seen by staff. A Form 7362 to request evaluation will be
25 completed by staff if medical evaluation is necessary. Plaintiffs are hopeful this process
26 will be adopted soon and that it will eliminate ongoing problems with lost, stolen, broken
27 or otherwise missing DME throughout the state.

28 Relatedly, Defendants acknowledged problems with identification of some class

1 members who utilize DME but who have not been assigned any disability code.
2 Defendants distributed training materials to health care providers regarding how to assign
3 the proper disability codes, but that was not enough to resolve ongoing problems. During
4 the November 18, 2021 meeting, Defendants reported that they will add a reconciliation
5 process for DPP codes to the process described above for DME. In other words,
6 Defendants will reconcile anyone who has received DME but does not appear to have a
7 corresponding DPP code annually during health care encounters and will identify and
8 ducat for reconciliation anyone who has not been seen by a health care provider.
9 Defendants assert, however, that some patients will not have a corresponding DPP code as
10 not all DME requires a DPP code.

11 Defendants' disability tracking system also fails to identify and track class members
12 with upper extremity disabilities. Plaintiffs requested that Defendants create a new
13 disability code for this population. *See* Doc. 3322 at Exs. G and H. CCHCS does have a
14 system to identify upper-extremity disabilities, and on September 28, 2021, shared a report
15 with Plaintiffs that showed all patients with upper-extremity disabilities and
16 accommodations. Defendants maintain that, through this list, they are able to identify and
17 accommodate people with upper extremity disabilities. However, the list contains
18 thousands of names, so it is difficult to understand exactly how it functions as a tool for
19 staff to identify who requires what accommodations. Plaintiffs' counsel continues to share
20 with Defendants reports of failures to accommodate class members as well as statements
21 from CDCR staff who require assistance in properly identifying who must be
22 accommodated. Plaintiffs are committed to resolving this ongoing problem.

23 **1. Defendants' Statement**

24 CCHCS is in the process of developing a comprehensive DME accountability and
25 reconciliation process. A workgroup has been established and logistics are being worked
26 on to ensure this process serves the intended purpose of establishing an effective and a
27 sustainable DME reconciliation process. Once the process is established, it will be piloted
28 at one of the facilities at an institution.

1 CCHCS and CDCR are in complete agreement that individuals with upper
2 extremity disabilities, which limit a major life activity, require accommodation under the
3 Americans with Disabilities Act (ADA). However, we are in disagreement that CCHCS
4 and CDCR must create a new Disability Placement Program (DPP) code. It is CDCR's
5 and CCHCS' position that the addition of a new DPP code will not provide any further
6 operational advantages in assuring the needs of inmates with upper extremity disabilities
7 are met. Rather, our position is that inmates who require any accommodation under the
8 ADA shall be accommodated, whether they have a DPP code or not. In fact, staff rely on
9 the Strategic Offender Management System (SOMS), "CHSS035C-DPP/Accommodation
10 Summary," screen to identify inmates who require accommodation under the ADA and for
11 any other physical limitation.

12 The 1845/7410 power form in Electronic Health Record System (EHRS) is linked
13 to SOMS, noting the appropriate accommodation to staff. The addition of a new DPP code
14 to this system will not provide any enhancements to this process. In fact, it will deter
15 current efforts into multiple directions and processes, convoluting our established
16 procedure. In many of the particular inmates' issues cited in the individual advocacy
17 letters attached to the March 2, 2021 letter, the DPP/Accommodations Summary provided
18 sufficient information to allow for the appropriate accommodation, based on their
19 particular upper extremity disability. Examples include: special cuffing, lifting
20 restrictions, transport vehicle with a lift, no rooftop work, and Durable Medical Equipment
(DME) associated with their upper mobility disability.

21 Again, the reliance on a DPP code is faulty reasoning; rather, the reliance on the
22 accommodations required is what is important to inmate patient. CDCR and CCHCS
23 continuously revisit the DPP/Accommodation Summary screen in SOMS/Cerner systems
24 to see if improvements can be made to ensure all needed accommodations are included.
25 For example, as recently as recently as April 16, 2021, the 1845/7410 power form was
26 updated. In the Non-Formulary Accommodation Section, a provider can now select
27 "LBO" and type Trapeze Bars in the free text field. Although future enhancements are
28 forthcoming, these changes reflect our ongoing efforts to improve accommodations for

1 inmates with upper extremity disabilities without the advent of a new DPP code.

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

3 **1. Plaintiffs' Statement**

4 CDCR and DAPO fail to ensure that parolees with severe and impacting placement
5 disabilities are accommodated on parole and during the transition to parole. Class
6 members do not consistently receive adequate planning for parole and adequate
7 transitional housing, transportation, benefits application assistance, assistance obtaining
8 identification cards, and other transitional services that are critical for these individuals to
9 succeed on parole. *See* Doc. 2680 at 11-12; Doc. 2655 at 11-13. As a result, class
10 members needlessly struggle to comply with parole conditions and to transition to life
11 outside of prison.

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

25 The parties are actively engaged in negotiations to address these problems. The
26 parties have agreed in principle to drafting a revised parole remedial plan or a new parole
27 remedial plan section that will cover the new policies, procedures and supports for parolees
28 with disabilities as they transition to parole that are now being negotiated.

1 Through these negotiations, Defendants have represented that they are committed to
2 developing a process by which CCHCS will assess all who are paroling to determine who
3 needs to be prioritized for transitional housing based on disability and related medical
4 needs and that they will work with Plaintiffs to create and implement this process.
5 Defendants also agreed to work with Plaintiffs to ensure that, by October 1, 2021, CDCR-
6 funded transitional housing programs no longer have categorical restrictions for people
7 with disabilities. Although Defendants failed to meet this deadline, at the parties'
8 December 6, 2021 meeting, Defendants represented that they would be able to schedule
9 meetings with CDCR-funded programs to educate them on their obligations to provide
10 reasonable accommodations to parolees with disabilities and to remove improper
11 disability-based exclusions in January or February 2022.

12 Defendants also agreed to make disability grievances available to class members
13 living in CDCR-funded transitional housing programs, and to include ADA compliance in
14 their annual inspections of these programs, which is necessary to identify and correct
15 violations of the ADA and the ARP by CDCR contractors. Defendants also agreed to
16 identify and track all parolees with disabilities who are housed in CDCR-funded programs
17 and all parolees with disabilities who are on waitlists for placement in CDCR-funded
18 programs, and are in the process of implementing this tracking system. Defendants report
19 that they are in the process of developing a transportation policy with a goal of ensuring
20 accessible transportation to all parolees released from prisons and county jails, and that
21 they are revising DAPO's policy on providing temporary housing and transportation
22 assistance to parolees, including parolees who require such assistance as accommodations
23 for their disabilities. Plaintiffs have raised concerns that the current policy lacks clear
24 guidance on when to provide such assistance to parolees, including consideration of
25 disability-related factors, and look forward to commenting on the revised policy.

26 On October 14, 2021, in response to concerns raised in Plaintiffs' May 4 letter and
27 supporting class member declarations, Defendants established a formal procedure by
28 which parole agents can provide for an audible low battery warning on GPS tracking

1 devices for parolees who have difficulty feeling the standard vibrating low battery warning
2 because of a disability—such as persons with paralysis or nerve damage in their legs—and
3 at the December 6, 2021 meeting, Defendants agreed to develop a training for parole
4 agents on this and other reasonable accommodations for parolees with disabilities who are
5 subject to GPS monitoring.

6 Defendants have also agreed to provide a memorandum to health care providers so
7 that information sharing between CCHCS and the Social Security Administration will no
8 longer be a barrier to the benefits application process for releasing individuals, and to add
9 requirements for the timely completion of benefits applications for class members by
10 CDCR-contracted benefits workers, so that applications for Medi-Cal, Social Security
11 Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”), and other
12 benefits are more likely to be approved before individuals are released from CDCR where
13 possible, or as soon as possible after release.

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

22 Defendants have made a number of promising representations about what they *will*
23 do in the future. While the vast majority of these commitments have not yet been
24 implemented, Plaintiffs are committed to working with Defendants to achieve a durable
25 remedy to ensure they are able to meet their legal obligations under the ADA and the
26 *Armstrong* Remedial Plans by operating their transition-to-parole and parole programs in a
27 manner that no longer systemically discriminates against parolees with disabilities.

28 Despite progress on promises made, discussed above, Plaintiffs remain disappointed

1 and concerned about Defendants’ failure to timely and adequately log and investigate
2 allegations of employee non-compliance raised in the class member declarations reporting
3 disability discrimination in the transition to parole and while under parole supervision.
4 First, inquiries into allegations raised in most of the class member declarations shared with
5 Defendants on May 4, 2021, were not initiated until July 6, 2021, in violation of the
6 Court’s accountability orders, with some delayed until August, September, and even
7 October 2021. Second, none of the allegations that appeared on the logs were even tracked
8 until September 2021, four months after the declarations were shared with Defendants, and
9 many allegations of disability discrimination from the parolee declarations were not
10 tracked on the accountability logs at all. Third, although Defendants had represented that
11 they planned to interview the class member declarants in order to investigate their reports
12 of disability discrimination, Plaintiffs learned on November 29, 2021, that Defendants
13 completed the inquiries into 20 allegations without speaking with any of the declarants,
14 and in 18 of 20 cases (or 90%), the disability discrimination was “not confirmed.” This
15 calls into the question the comprehensiveness of the inquiries and raises the potential for
16 bias, where inquiries into serious allegations of disability discrimination were opened and
17 closed without interviewing the individuals central to the allegations.

18 Plaintiffs’ counsel will continue to work with Defendants to address ongoing
19 failures to accommodate disabilities and discrimination faced by class members on parole.

20 **2. Defendants’ Statement**

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

28 Defendants take a comprehensive approach to provide people with disabilities with

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

14 As part of the ongoing meetings related to Plaintiffs' May 4 letter, CDCR informed
15 Plaintiffs that they have completed an internal review of their community-contracted
16 programs, as new rate sheets have been submitted by the programs to DRP, to ensure that
17 there are no improper restrictions to housing people with hearing, vision, mobility, or
18 mental-health disabilities, as Plaintiffs have alleged. CDCR is also in the process of
19 finalizing talking points that will be discussed with the community-contracted programs,
20 after receiving input and suggestions from Plaintiffs' counsel, to educate them on disability
21 accommodations for parolees who may be housed there. CDCR informed Plaintiffs that a
22 yet-to-be-determined evaluation of the parolee, before their release from the institution,
23 will likely be required to determine if their disability necessitates limited, short-term,
24 housing while they are awaiting approval for SSI-funded housing arrangements. This is a
25 result, in part, because Defendants have temporarily significantly increased the re-entry-
26 housing capacity of available bed space by accessing further funding to meet the increased
27 need for additional bed space up and until end of the current fiscal year. Although it will
28 not engage in a "prioritization of parolees," CCHCS will, however, develop a tool to share

1 disability and related medical information and accommodation that may be used for
2 housing considerations by the appropriate staff members. DRP will continue to work on
3 an educational video to inform providers of the needs of parolees with disabilities who are
4 participating in their programs.

5 Defendants continue to meet and confer with Plaintiffs to inform them of DAPO's
6 recent efforts to ensure that parolees' benefits applications are completed before the
7 parolees are released from prison. DAPO intends to amend the TCMP contracts to ensure
8 that benefits 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 the statute requires CDCR to assist inmates with
25 obtaining necessary information or documents that may be held by other agencies, such as
26 birth certificates or social security numbers. This should increase the number of parolees
27 released with Cal ID cards and ameliorate some of the alleged difficulties parolees face
28 when released without a Cal ID card as raised by Plaintiffs in their May 4, 2021 letter.

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

12 **H. Joint Monitoring Tool**

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

22 The parties met on September 16, 2021 to discuss a path forward regarding
23 outstanding policy issues that must be resolved to effectively audit. The parties agreed to
24 convene multiple separate workgroups to tackle these outstanding issues. The parties also
25 plan to meet over the next few months to resolve problems with the audit questions that
26 have been identified during recent tours. The first such meeting occurred the second week
27 of November. The next meeting is scheduled for January 26, 2022. The parties have yet
28 to come to agreement on a format for scoring and reporting compliance.

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

2 Before the pandemic, construction continued at several of the designated
3 institutions with former CAMU Manager Mike Knowles overseeing the process and
4 reporting on construction progress and anticipated timeframes in monthly reports produced
5 to Plaintiffs. Construction was halted due to COVID-19 but resumed statewide in
6 June 2020, and any significant issues impacting construction are noted in the Monthly
7 Construction Report that is provided to Plaintiffs.

8 The parties agreed to a flexible, collaborative approach in which they would meet
9 regularly to discuss different institutions and be joined by local ADA staff with close
10 knowledge of the institutions. The parties also plan to tour institutions together to resolve
11 outstanding issues and address Plaintiffs' concerns collaboratively. The parties will
12 schedule joint tours at VSP and LAC to discuss Master Planning issues once programming
13 at the prisons is fully up and running as the prisons emerge from COVID-19 related
14 restrictions. Because accessible programming space is a key concern for Plaintiffs, these
15 tours cannot occur until programming has returned to normal.

16 In addition, Defendants are in the process of auditing whether program
17 modifications referenced in the Master Plan have been memorialized in local operating
18 procedures at each institution. Defendants have agreed to provide copies of local operating
19 procedures implementing the program modifications to Plaintiffs as soon as they are
20 finalized on a rolling basis.

21 One area of dispute between the parties concerns whether Defendants are required
22 to make emergency exits fully accessible to prisoners with impacting placement mobility
23 and vision disabilities in units where those individuals are housed. Plaintiffs await a
24 response from Defendants to their letter outlining the disagreement and are hopeful the
25 parties can resolve these disputes.

26 **J. Investigation of County Jails**

27 Plaintiffs continue to assert that a pattern and practice of denying disability
28 accommodations to class members exists at multiple jails but especially the Los Angeles

1 County Jails. *See* Doc. 2680 at 22-24; Doc. 2786 at 26-27; Doc. 3322 at 25-29 & Exs. I, J,
2 K. Defendants disagree with Plaintiffs’ assertions and have been meeting with county
3 counsel for a number of counties in an effort to improve relations, information sharing, and
4 ADA compliance at the jails. Unfortunately, Plaintiffs contend, these conversations alone
5 are not enough as evidenced by the longstanding failure of Los Angeles County Jail to
6 implement their policy to allow and provide canes to detainees. Defendants reported that
7 Los Angeles County plans to roll their four-year old policy out as a “pilot” in the coming
8 months. Plaintiffs may conduct additional discovery to ensure ADA compliance for
9 *Armstrong* class members housed in LA County Jail.

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

4 Respectfully submitted,
5 DATED: January 18, 2022 ROSEN BIEN GALVAN & GRUNFELD LLP

6 By: /s/ Penny Godbold
7 Penny Godbold

8 Attorneys for Plaintiffs

9
10 DATED: January 18, 2022 ROB BONTA
11 Attorney General of the State of California

12 By: /s/ Trace O. Maiorino
13 Trace O. Maiorino
14 Deputy Attorney General

15 Attorneys for Defendants

16 **FILER’S ATTESTATION**

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

20
21 DATED: January 18, 2022 /s/ Penny Godbold
22 Penny Godbold

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EXHIBIT A

STATE OF CALIFORNIA

Budget Change Proposal - Cover Sheet

DF-46 (REV 10/20)

Fiscal Year 2022-23	Business Unit 5225	Department Department of Corrections and Rehabilitation	Priority No. Click or tap here to enter text.
Budget Request Name 5225-082-BCP-2022-GB		Program Various	Subprogram Various

Budget Request Description

Statewide Correctional Video Surveillance Continuation

Budget Request Summary

The California Department of Corrections and Rehabilitations requests \$80.3 million General Fund and 32.0 positions in 2022-23, and \$7.6 million General Fund in 2023-24 and ongoing to deploy fixed cameras at ten institutions, body-worn cameras at four institutions, and manage/maintain recorded video.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Click or tap here to enter text.	
Does this BCP contain information technology (IT) components? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO Kristin Montgomery	Date Click or tap to enter a date.

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No.5525-170 Project Approval Document: S4PRA

Approval Date: 10/5/2017

If proposal affects another department, does other department concur with proposal? Yes No

Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Tammy Irwin	Date Click or tap to enter a date.	Reviewed By Madelynn McClain	Date Click or tap to enter a date.
Department Director Connie Gipson	Date Click or tap to enter a date.	Agency Secretary Kathleen Allison	Date Click or tap to enter a date.

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE Dept. of Technology

PPBA Allison Hewitt	Date submitted to the Legislature 1/10/2022
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A. Budget Request Summary

The California Department of Corrections and Rehabilitations (CDCR) requests \$80.3 million General Fund and 32.0 positions in 2022-23, and \$7.6 million General Fund in 2023-24 and ongoing to deploy fixed cameras at ten institutions, body-worn cameras at four institutions, and manage/maintain recorded video.

B. Background/History

CDCR oversees, manages, and is responsible for safely and securely housing incarcerated individuals within its institutions. However; CDCR's ability to effectively monitor all activities is limited due to the large acreages of adult institutions. Video surveillance improves CDCR's ability to effectively monitor all activities but the majority of the existing video surveillance equipment within the adult institutions, sometimes decades old, is or will soon be obsolete and is ineffective compared to modern technology.

In 2015, the Office of the Inspector General conducted a special review of High Desert State Prison (HDSP), and recommended CDCR "...immediately install cameras in all inmate areas, including, but not limited to, the exercise yards, rotundas, building dayrooms, patios, and program offices of HDSP."

In 2016, CDCR installed an Audio-Video Surveillance System (AVSS) with 207 high definition cameras in designated high-traffic and large congregation areas at HDSP. This served as a technical pilot, enabling CDCR to test the viability of operating this type of equipment on CDCR's network. In 2017-18, CDCR received funding to complete the AVSS at HDSP and install the AVSS at Central California Women's Facility (CCWF). These locations were determined to have an immediate need for AVSS based on criteria such as the number of violent incidents in 2015-16.

Also in 2016, a Coleman Special Master monitoring team recommended CDCR install video surveillance cameras to increase observation and provide transparency in areas where actions leading to allegations commonly occur. In 2018-19, CDCR received funding and installed 178 video surveillance cameras at SAC.

In September 2020, the United States District Court ordered CDCR in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.) to install surveillance cameras in all areas of Richard J. Donovan Correctional Facility (RJD) to which incarcerated people have access, including, but not limited to, all exercise yards, housing units, sally ports, dining halls, program areas, and gymnasiums, within 90 days. CDCR was further ordered to retain footage of use of force and other triggering events indefinitely, and all other footage for a minimum of 90 days. The Court also ordered the use of body-worn cameras (BWCs) within 60 days for all correctional officers at RJD who may interact with protected class members.

Effective January 19, 2021, CDCR deployed BWCs in compliance with the court's order at RJD. All correctional officers and sergeants who interact with the incarcerated population are required to wear a BWC. In addition, CDCR activated 966 high definition cameras in designated high-traffic and large congregation areas on April 5, 2021, in accordance with the *Armstrong* court directive.

In March 2021, the United States District Court ordered CDCR in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.) implement the same remedial measures that were required at RJD at five prisons—California State Prison, Los Angeles County (LAC), California State Prison, Corcoran (COR), Substance Abuse Treatment Facility (SATF), California Institution for Women (CIW), and Kern Valley State Prison (KVSP). The 2021 Budget Act includes resources to enable CDCR to implement these measures.

The 2021 Budget Act also included resources for CDCR to implement AVSS at Salinas Valley State Prison (SVSP), California Correctional Institution (CCI), and Mule Creek State Prison (MCSP) and complete the AVSS installation at SAC.

Analysis of Problem

Video Surveillance Resource History

(Dollars in thousands)

Program Budget	2017-18	2018-19	2019-20	2020-21	2021-22
Authorized Expenditures	\$10,843	\$2,643	\$1,243	\$13,664	\$95,303
Actual Expenditures	\$8,843	\$1,811	\$1,243	\$13,808	\$82,023*
Authorized Positions	0	0	0	6	40
Filled Positions	0	0	0	6	36
Vacancies	0	0	0	0	4

** As of December 31, 2021

Note: Actual Expenditures represent OE&E and custody overtime only

Workload History

Workload Measure	2017-18	2018-19	2019-20	2020-21	2021-22
Number of institutions where full or partial AVSS deployment completed	3	0	1	1	5 completed, 4 in progress

C. State Level Consideration

This project aligns with CDCR's departmental goals to serve and be responsible to the public, behave professionally through fair, honest, and ethical behavior, and treat others with respect and dignity.

The implementation of an AVSS solution in adult institutions aligns with and supports Objective 2.1, Incident Prevention, and Objective 2.2, Drug Interdiction Program, of the Department's strategic plan.

Objective 2.1 Incident Prevention states "...facilities will reduce the rate of incidents that interfere with orderly facility operations by 20 percent through the implementation of a proactive Incident Prevention Strategy."

Objective 2.2 Drug Interdiction Program states, "...reduce the use of controlled substances and alcohol by 20 percent in the previously identified 'Intensive' institutions; by 10 percent at the 8 identified 'Moderate' institutions; and by 5 percent at all other institutions..."

Implementation of the AVSS constitutes an information technology project requiring approval from the California Department of Technology (CDT). CDCR received project approval from CDT in October 2017 to implement the AVSS in all CDCR institutions during multiple fiscal years as part of the Statewide Correctional Video Surveillance (SCVS) project. In addition, CDCR received funding in 2017-18 through an approved BCP for the deployments at CCWF and HDSP, as well as funding in 2018-19 through an approved BCP for the deployment at SAC and 2021-22 for the deployment at RJD, LAC, CIW, COR, SATF, KVSP, MCSP, CCI, SVSP, and completion of SAC.

D. Justification

Statewide installation of AVSS to ten additional institutions and an expansion of BWC technology to CCI, SAC, CCWF, and SVSP will increase CDCR's accountability to by adding a powerful tool to

address potential concerns of staff and incarcerated individual misconduct. In addition, it is also an effective tool for contraband interdiction and investigations for CDCR.

Contraband Interdiction

CDCR has long recognized the ongoing problems caused by the trafficking and use of illegal drugs and contraband within its institutions, with visiting rooms being a common avenue for the introduction of such contraband. The importing, trafficking, and use of illegal drugs and contraband can lead to an increase in incarcerated individual violence, the establishment of an underground economy, and incarcerated individual deaths due to drug overdoses. Refer to Table 1 in Attachment A – Data Tables, which illustrates incarcerated individual overdose deaths in institutions from January 1, 2017 through June 30, 2021.

CDCR determined a multilayered approach is the most effective way to reduce contraband activity within the institutions. This approach includes heightened physical security, dismantling drug distribution systems, disrupting gang activity, and closing all contraband avenues of entry. This approach enables CDCR to reduce the amount of contraband entering institutions, minimizing its availability to incarcerated individuals. Video surveillance supports this approach by providing an impartial account of events, recorded in real time, which can be reviewed, as necessary, during an investigation.

Unlike older video surveillance technologies used at CDCR, the AVSS video recordings will be stored for at least 90 days. This capability increases the availability of video recordings for use as evidence during the investigation of discovered or reported incidents. The following events shall require staff to preserve the recorded data, until instructed otherwise, as potential evidence in investigations and in administrative, civil, or criminal proceedings:

- Any use of force incident
- Riots
- Suspected felonious criminal activity
- Any incident resulting in serious bodily injury, great bodily injury, and all deaths
- All PREA allegations
- Allegations of incarcerated individual misconduct (i.e., Serious Rules Violation Reports by staff)
- Allegations of staff misconduct by an incarcerated individual, employee, visitor, or other person
- Incidents that may potentially be referred to the District Attorney's Office
- An employee report to supervisor of on-the-job injury, or
- Incarcerated individual claims with the Department of General Services, Office of Risk and Insurance Management, and Government Claims Program

Additionally, the Office of Grievances may request to review audio and/or video recordings when conducting an inquiry as it relates to a submitted appeal.

Since implementation at CCWF, HDSP, and RJD, these institutions have utilized their AVSS to identify suspects in investigations, including attempted homicides. The institutions have successfully utilized video from their respective systems to locate lost, misplaced, or stolen items eliminating the need for lengthy searches and potential lockdown situations leading to modified programming.

The Department has also seen a significant increase in the number of incidents where intruders have gained access to institutional grounds to introduce illegal drugs and contraband into an institution by throwing contraband into the Minimum Support Facility (MSF) perimeter. In light of this, AVSS installations use radar technology to cover vulnerable areas outside the MSF perimeter.

This technology detects movement outside of the perimeter and alerts staff to potential security incidents and is integrated into the existing Video Management System (VMS) software. The VMS is programmed to send real time alerts or trigger an alarm when the system detects activity in the covered area. Modern cameras utilize infrared illumination to allow the camera to record at night without the need for traditional exterior lighting and will be used to monitor the perimeter, in conjunction with the radar technology, where necessary to see in low light situations.

The AVSS records video, and audio from select locations, from all cameras simultaneously on a dedicated Video Management System (VMS) in real-time. The VMS allows authorized CDCR users to watch live or recorded video to gather and retain evidence. The AVSS enables CDCR to automatically retain all audio and video recordings for up to 90 days, which is not possible at institutions with older video surveillance equipment. Video is exported from the AVSS to other storage devices or discs for retention as needed.

Enhancing Accountability

In addition to the contraband interdiction program benefits already described, audio and video recording technology enables CDCR to capture and store video evidence of violent incidents such as assaults, batteries, and riots. Surveillance video, including BWC technology, also provides evidence and transparency in resolving allegations of staff misconduct, use of force, and sexual misconduct, as well as staff introduction and possession of drugs and contraband. High-quality visual recordings of incidents serve as irrefutable evidence in investigations, as well as administrative, civil, or criminal proceedings. The existence of audio and video evidence improves the institution's ability to conduct and conclude investigations compared to investigations reliant solely on eyewitness testimony. This assertion is supported by over two years of data which CDCR has already collected to evaluate the effectiveness of the AVSS installations. At CCWF and HDSP where full AVSS installations have been in place for a few years, video recordings have proven impactful to the outcomes or decision-making process in the resolution of Rules Violation Reports (RVRs), staff complaints, and incident reports when they are available and applicable. Refer to Table 4 in Attachment A – Data Tables.

Resource Needs

Depending on the institution size and design, each AVSS may consist of approximately 500 to 1,000 digital cameras installed inside and outside the buildings throughout an institution. Typical locations include, but are not limited to: exercise yards, housing units, program buildings, administration buildings, visiting rooms, gymnasiums, sally ports, and visitor processing areas. This level of camera coverage far exceeds the existing coverage at other institutions. For example, SVSP had 75 cameras and only covered the areas related to visiting and the sally port areas prior to the implementation of AVSS in 2021-22. CCI had 261 cameras prior to the implementation of AVSS in 2021-22, and they only provided coverage for visiting, housing units, yards, and sally port areas. Furthermore, the cameras at CCI were older analog-based cameras and not comparable to modern cameras in terms of capabilities. On average, previous deployments consist of fewer than 100 cameras institution-wide and with lower resolution quality and shorter retention capabilities. Refer to Table 5 in Attachment A – Data Tables for a list of camera counts by institution. The same table identifies camera technology type, which is either Internet Protocol (IP) or analog. Generally speaking, analog camera technology indicates older cameras.

The deployment of AVSS technology, including BWC for designated custody staff, creates ongoing IT maintenance and operations workload. To address this workload, CDCR is requesting 4.0 Information Technology Specialist Is for each institution receiving BWC. IT staff provide first and second-level IT support including troubleshooting, diagnosis, and repair of BWC components. IT staff monitor performance, perform system maintenance, and work with institution staff to make adjustments or enhancements to the BWC components as institution operational needs change.

CDCR also requests 14.0 Correctional Officers – 1.0 at each institution receiving AVSS and 1.0 at each institution receiving BWC in this proposal. These AVSS Investigative Services Unit (ISU) officers

Analysis of Problem

will be responsible for monitoring and reviewing video downloaded from the AVSS. They will process all AVSS Evidence Request Forms, and capture the requested events on Digital Versatile Discs (DVDs) and other approved storage methods within 24 hours of the occurrence of the event or request. These BWC Correctional Officers will serve as the liaison to local IT staff, coordinating resolution of any issues and requesting necessary access for new users. Additionally, they will perform follow-up investigation work pertaining to criminal conduct captured by BWCs.

In addition, 4.0 Associate Governmental Program Analysts (AGPAs) will be liaisons between the institutions and various internal stakeholders. The AGPAs are responsible for tracking the status of events such as use of force incidents, riots, and suspected felonious criminal activity; monitoring compliance with the BWC policy such as reporting damaged and inoperable equipment; and developing and coordinating special projects requiring a high level of organizational skills. Further, the AGPAs are solely responsible for evaluating, reviewing, and maintaining spreadsheets on all damaged and inoperable equipment relative to BWCs and AVSS, as well as tracking repairs and operational functionality. This request includes one AGPA each for SAC, CCI, CCWF, and SVSP where BWCs will be deployed.

The Division of Adult Institutions (DAI) also requests 4.0 AGPA positions to perform redaction of audio and video recordings in response to increased Public Records Act (PRA) requests involving videos from the AVSS. PRA requests for reports and investigations into matters concerning officer-involved incidents are limited to: the discharge of a firearm at a person; use of force resulting in death or great bodily injury; or, sustained findings of sexual assault or acts of dishonesty directly relating to the reporting, investigation, or prosecution of crime, or misconduct by a fellow officer. Audio and video redaction:

- Removes personal information to preserve the anonymity of complainants and witnesses.
- Protects confidential medical and financial information, and information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers.
- Protects the physical safety of the peace officer, custodial officer, or others where there is a specific, particularized reason to believe disclosure would pose a significant danger.

In addition, OIA requests 3.0 Special Agent investigators and 1.0 Senior Special Agent for their Forensic Analysis Support Team (FAST) to serve as the OIA video surveillance and BWC liaisons to other OIA staff, local IT staff, and institution staff. Many OIA investigations are highly confidential, sensitive, and urgent, requiring Special Agents who can review video when requested by other OIA personnel, perform follow-up investigation work pertaining to staff misconduct captured by video surveillance footage, be OIA's experts on camera operation and locations, download and process video surveillance footage as evidence, and testify in court and at State Personnel Board on the methodology and technical aspects of preserving and downloading video evidence. This request includes a technical correction to add 2.0 Special Agent positions that were inadvertently left out of the 2021-22 Statewide Correctional Video Surveillance BCP.

Analysis of Problem**E. Outcomes and Accountability****Projected Outcomes**

Workload Measure
Reduce violent incidents within 18 months of the complete installation of video surveillance equipment at each institution in conjunction with various components of other interdiction efforts.
Reduce contraband (drugs, cell phones) entering an institution within 24 months of the complete installation of video surveillance equipment at each institution in conjunction with various components of other interdiction efforts.
Reduce number of incarcerated individual allegations of staff misconduct within 24 months in the institutions. Afford more transparency to substantiate or refute allegations of staff misconduct within the institutions in conjunction with the various components of other interdiction efforts.

F. Analysis of All Feasible Alternatives

Alternative 1: Provide \$80.3 million General Fund and 32.0 positions in 2022-23, and \$7.6 million General Fund in 2023-24 and ongoing to deploy fixed cameras at ten institutions, body-worn cameras at four institutions, and manage/maintain activities.

Pros:

- Provides 24 x 7 comprehensive coverage for all areas where incarcerated individual movement and congregation occurs statewide.
- Provides video coverage of custody staff interactions with incarcerated individuals.
- Deters criminal activities such as violent incidents, drug and contraband activity, and alleged staff misconduct.
- Monitors activities in incarcerated individual movement areas and institution/facility ground MSF perimeters.
- Provides an objective record of incidents that can be used during investigations into allegations against incarcerated individuals and staff.

Cons:

- Results in additional General Fund resources.

Alternative 2: Do not provide additional resources to deploy fixed cameras at 10 additional institutions and body-worn cameras at 4 additional institutions.

Pros:

- Does not result in additional General Fund costs.

Cons:

- Does not provide 24 x 7 comprehensive coverage for all areas where incarcerated person movement and congregation occurs statewide at the identified institutions.
- Will not provide video coverage of custody staff interactions with incarcerated individuals at the identified institutions.
- Will not provide a deterrent for criminal activities at the identified institutions, such as violent incidents, drug and contraband activity, and alleged staff misconduct at the identified institutions.
- Will not provide CDCR with the ability to monitor activities in incarcerated person movement areas and institution/facility ground MSF perimeters at the identified institutions.

Analysis of Problem

- Will not provide an objective record of incidents that can be used during investigations into allegations against incarcerated individuals and staff for incidents that occur at the identified institutions.

G. Implementation Plan

Attachment B: Implementation Plan

H. Supplemental Information

Attachment A – Data Tables

Attachment B – Implementation Plan

I. Recommendation

Approve Alternative #1 which will provide \$80.3 million General Fund and 32.0 positions in 2022-23, and \$7.6 million General Fund in 2023-24 and ongoing to deploy fixed cameras at ten institutions, body-worn cameras at four institutions, and manage/maintain recorded video.

BCP Fiscal Detail Sheet

BCP Title: Statewide Correctional Video Surveillance Continuation

BR Name: 5225-082-BCP-2022-GB

Budget Request Summary

Personal Services

Personal Services	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
Positions - Permanent	0.0	32.0	32.0	32.0	32.0	32.0
Total Positions	0.0	32.0	32.0	32.0	32.0	32.0
Salaries and Wages Earnings - Permanent	0	2,988	2,988	2,988	2,988	2,988
Total Salaries and Wages	\$0	\$2,988	\$2,988	\$2,988	\$2,988	\$2,988
Total Staff Benefits	0	1,600	1,600	1,600	1,600	1,600
Total Personal Services	\$0	\$4,588	\$4,588	\$4,588	\$4,588	\$4,588

Operating Expenses and Equipment

Operating Expenses and Equipment	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
5301 - General Expense	0	142	142	142	142	142
5302 - Printing	0	21	21	21	21	21
5304 - Communications	0	38	38	38	38	38
5306 - Postage	0	10	10	10	10	10
5320 - Travel: In-State	0	47	47	47	47	47
5322 - Training	0	9	9	9	9	9
5340 - Consulting and Professional Services - Interdepartmental	0	5	5	5	5	5
5340 - Consulting and Professional Services - External	0	12	12	12	12	12
5368 - Non-Capital Asset Purchases - Equipment	0	99	63	63	63	63
539X - Other	0	75,334	2,622	2,622	2,622	2,622
Total Operating Expenses and Equipment	\$0	\$75,717	\$2,969	\$2,969	\$2,969	\$2,969

Total Budget Request

Total Budget Request	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
Total Budget Request	\$0	\$80,305	\$7,557	\$7,557	\$7,557	\$7,557

Fund Summary

Fund Source

Fund Source	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
State Operations - 0001 - General Fund	0	80,305	7,557	7,557	7,557	7,557
Total State Operations Expenditures	\$0	\$80,305	\$7,557	\$7,557	\$7,557	\$7,557
Total All Funds	\$0	\$80,305	\$7,557	\$7,557	\$7,557	\$7,557

Program Summary

Program Funding

Program Funding	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
4500027 - Internal Affairs	0	1,239	1,227	1,227	1,227	1,227
4500039 - Information Technology	0	74,407	3,780	3,780	3,780	3,780
4530010 - General Security	0	2,071	2,071	2,071	2,071	2,071
4530028 - General Security Overtime	0	2,101	0	0	0	0
4550051 - Division of Adult Institutions	0	487	479	479	479	479
Total All Programs	\$0	\$80,305	\$7,557	\$7,557	\$7,557	\$7,557

Personal Services Details

Positions

Positions	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
1402 - Info Tech Spec I (Eff. 07-01-2022)	0.0	4.0	4.0	4.0	4.0	4.0
5393 - Assoc Govtl Program Analyst (Eff. 07-01-2022)	0.0	8.0	8.0	8.0	8.0	8.0
9662 - Corr Officer (Eff. 07-01-2022)	0.0	14.0	14.0	14.0	14.0	14.0
9766 - Special Agent (Eff. 07-01-2022)	0.0	5.0	5.0	5.0	5.0	5.0
9767 - Sr Special Agent (Eff. 07-01-2022)	0.0	1.0	1.0	1.0	1.0	1.0
Total Positions	0.0	32.0	32.0	32.0	32.0	32.0

Salaries and Wages

Salaries and Wages	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
1402 - Info Tech Spec I (Eff. 07-01-2022)	0	378	378	378	378	378
5393 - Assoc Govtl Program Analyst (Eff. 07-01-2022)	0	606	606	606	606	606
9662 - Corr Officer (Eff. 07-01-2022)	0	1,278	1,278	1,278	1,278	1,278
9766 - Special Agent (Eff. 07-01-2022)	0	593	593	593	593	593

Salaries and Wages	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
9767 - Sr Special Agent (Eff. 07-01-2022)	0	133	133	133	133	133
Total Salaries and Wages	\$0	\$2,988	\$2,988	\$2,988	\$2,988	\$2,988

Staff Benefits

Staff Benefits	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
5150450 - Medicare Taxation	0	44	44	44	44	44
5150500 - OASDI	0	61	61	61	61	61
5150600 - Retirement - General	0	830	830	830	830	830
5150800 - Workers' Compensation	0	105	105	105	105	105
5150820 - Other Post-Employment Benefits (OPEB) Employer Contributions	0	103	103	103	103	103
5150900 - Staff Benefits - Other	0	457	457	457	457	457
Total Staff Benefits	\$0	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600

Total Personal Services

Total Personal Services	FY22 Current Year	FY22 Budget Year	FY22 BY+1	FY22 BY+2	FY22 BY+3	FY22 BY+4
Total Personal Services	\$0	\$4,588	\$4,588	\$4,588	\$4,588	\$4,588

Table 1: Surveillance Video Camera Counts by Location, Technology Type, Coverage Areas, and Operational Condition as of December 06, 2021.

Institution	IP Cameras	Analog Cameras	Coverage Areas (Primary)	Operational Cameras (%)
ASP		60	Visiting/Sally Ports	100%
CAC	283		Various	100%
CAL	68	66	Visiting/A Dining/B Yard	52%
CCC		66	Visiting/Sally Ports	100%
CCI	6	255	Visiting/Housing/Yard/Sally Ports	79%
CCWF	526		Entire Institution	100%
CEN		72	Visiting/Yards/Sally Ports	83%
CHCF	450		Visiting/Yards/Sally Ports/Various	92%
CIM	7	6	Towers/Yards	38%
CIW	686		Entire Institution	100%
CMC		125	Visiting/Admin	100%
CMF		78	Visiting/Yards	31%
COR	954		Entire Institution	100%
CRC	40	17	Visiting/Yard/A Stairwell	82%
CTF		55	Visiting/Yards	13%
CVSP		29	Visiting/Yards	48%
DVI			Institution Deactivated	0%
FSP	9	21	Visiting/Yards	93%
HDSP	731		Entire Institution	100%
ISP		18	Visiting/Sally Ports	50%
KVSP	878		Entire Institution	100%
LAC	815		Entire Institution	100%
MCSP	315	30	Visiting/Yards/Sally Ports	98%
NKSP		36	Visiting/Sally Ports	83%
PBSP		272	Visiting/Yards/Sally Ports	35%
PVSP	20	70	Visiting/Sally Ports	59%
RJD	966		Entire Institution	100%
SAC	205	64	Visiting/Yards/Sally Ports	91%
SATF	1117		Entire Institution	100%
SCC	49	42	Visiting/Yards	93%
SOL	55	39	Visiting/Yards/Sally Ports	69%
SQSP	71	204	Central Health Services Bldg.	100%
SVSP		75	Visiting/Sally Ports	91%
VSP	153	3	Visiting/Sally Ports/ASU/Housing	56%
WSP		40	Visiting/Sally Ports	78%
Total	8404	1743		77%

Table 1 data obtained from CDCR's Enterprise Information Services.

Table 2: Inmate Deaths in Institutions from Overdose from January 01, 2016 - June 30, 2021

Year	Overdoses Resulting In Death
2016	28
2017	39
2018	61
2019	63
2020	23
2021*	5
Total	219

Table 2 data obtained from CCHCS Clinical Support and Special Projects Unit

**One additional case is pending final report for the period of 1/1/2021 - 6/30/2021.*

Table 3: January 01, 2017 - November 30, 2021 Contraband Discovered in Institutions from Major Drug Discoveries Log

Type of Contraband	2017	2018	2019	2020	2021
Cellular Telephones	12,631	11,005	10,494	9,209	7,543
Heroin (lbs)	23.7	27.7	31.5	22.6	25.3
Marijuana (lbs)	87.7	113.0	55.0	64.7	124.6
Methamphetamines (lbs)	35.9	35.9	37.6	49.3	75.5
Tobacco (lbs)	445.3	373.6	325.0	421.5	152.7

Table 3 data obtained from CDCR's Office of Research

Table 3.5: January 01, 2017 - November 30, 2021 Contraband Discovered in Institutions from K-9 Search Discoveries Log

Type of Contraband	2017	2018	2019	2020	2021
Cellular Telephones	1,937	2,490	2,015	1,743	1,464
Heroin (lbs)	5.4	3.4	5.6	4.4	1.9
Marijuana (lbs)	12.6	18.5	17.6	35.6	15.2
Methamphetamines (lbs)	7.2	8.3	13.5	10.6	8.3
Tobacco (lbs)	184.0	146.0	147.5	114.4	83.5

Table 3.5 data obtained from CDCR's Office of Research

Table 4: Number of Persons Arrested for Attempting to Introduce Drugs, Alcohol, or Contraband - By Fiscal Year

Fiscal Year	Staff	Visitors	Non-Visitors	Totals
2014-15	6	207	51	268
2015-16	7	224	51	282
2016-17	9	221	32	262
2017-18	4	269	57	330
2018-19	10	286	56	352
2019-20	5	186	47	238
2020-21	5	15	44	64
Totals	46	1408	338	1,792

Table 4 data obtained from CDCR's Office of Research.

Table 5: AVSS Data for CCWF and HDSP - February 01, 2018 to May 31, 2020

Institution	Rules Violation Reports (RVR)			Staff Complaints			Incident Reports		
	Video Available	Impact	No Impact	Video Available	Impact	No Impact	Video Available	Impact	No Impact
CCWF	1,927	1250	851	932	582	179	1219	630	560
HDSP	3,645	2,205	1,772	406	332	37	1301	999	308
Totals	5,572	3,455	2,623	1,338	914	216	2,520	1,629	868

Table 5 data obtained from CDCR's Office of Research

The data in Table 5 represents the number of times AVSS was available for Rule Violation Reports, Staff Complaints, and Incident Reports and if the video had an impact at CCWF and HDSP. A single video can be used in more than one Rule Violation Report.

The AVSS technology will be implemented as follows:

Task	Approximate Timeframe
Establish, recruit and fill positions	July 2022 - September 2022
Conduct site visits and design systems	August 2022 - October 2022
Procure equipment and services	September 2022 - November 2022
Install network equipment	December 2022 - March 2023
Install cabling and cameras	December 2022 - June 2023
Train users	June 2023
Test cameras and validate viewing objectives	June 2023 - July 2023
Solution validated and accepted	July 2023

EXHIBIT B

In a First, Ohio Moves to Put Body Cameras on Guards in Every Prison

The state is distributing 5,100 new body-worn cameras, the most extensive commitment of any state as corrections facilities across the country push for better surveillance.

Jan. 14, 2022



A still frame from the body-worn camera of a guard at the Ohio State Penitentiary in Youngstown last summer. Ohio Department of Rehabilitation and Correction, via Associated Press

Thousands of Ohio prison guards will begin wearing body cameras for the first time this year, bringing more transparency inside prison walls at a time when the coronavirus pandemic and guard shortages are making many prisons more dangerous.

Annette Chambers-Smith, the head of the state prison agency, said the state was buying 5,100 body-worn cameras that will be used by guards and parole officers in all of the state's prisons. Not every guard will wear a camera at all times, but the program is still ambitious: Axon, the company that is supplying the cameras, said the state was adopting the largest body camera program of any prison agency in the world.

There are already thousands of surveillance cameras across Ohio's 28 state prisons, but the addition of body cameras could make it easier to review the actions of guards and prisoners, capturing incidents that are not visible through existing cameras or are blocked from view by other people.

The move comes as [several other states have begun to use body cameras](#) in prisons and jails, albeit on a smaller scale, amid increasing criticism that prison guards, like police officers, are regularly involved in violent encounters that may involve witnesses with competing versions of events.

"This is ultimately about safety, transparency and accountability for everyone who works or lives in our prisons," Ms. Chambers-Smith said in a statement.

The plan to roll out body cameras follows the death in January of last year of Michael A. McDaniel, a 55-year-old prisoner who collapsed and died after guards pushed him to the ground several times following a fight outside of his cell. A coroner ruled that his death was a homicide, and the [prison system fired seven guards and a nurse; two more employees resigned](#). No criminal charges were filed.

An image from a video provided by the Ohio Department of Rehabilitation and Correction showing prison guards with Michael McDaniel at the Correctional Reception Center in Orient, Ohio. Ohio Department of Rehabilitation and Correction, via Associated Press

Surveillance video captured much of the guards' encounter with Mr. McDaniel, who ended up on the ground 16 times over the course of less than an hour. But the video missed several key moments: a stairwell blocked

much of the initial fight between Mr. McDaniel and the guards, in which [investigators determined that he had punched two officers](#), and the cameras captured only part of a takedown, several minutes later, in which guards appeared to push him into the snow outside.

Mr. McDaniel's sister, Jada McDaniel, said she supported the use of body cameras and believed that the guards might have intentionally engaged her brother behind the stairwell, knowing that it partially obscured what was happening. Ms. McDaniel said she believed that the guards would not have been so aggressive with her brother had they all been wearing cameras.

Michael McDaniel Jada McDaniel

"My brother would still be alive," said Ms. McDaniel, who teaches math and science to fourth graders in Columbus. "They would have thought twice. They probably wouldn't have taken him out and abused him the way they did. There's no way they would have taken him behind the stairwell."

Ms. McDaniel said she believed that the guards would also benefit from having more of their interactions on camera.

"The guards need protection as well," she said. "The body camera will catch everything."

A new [prison agency policy](#) governing body cameras says that cameras may automatically activate when a gun or pepper spray is drawn. The policy says that the cameras must be powered on at all times, meaning that even if guards cannot or do not activate them, video would still be captured and stored for 18 hours.

In jails and state and federal prisons across the country, officials [have been struggling to hire enough prison guards](#) to fill in for those who have retired, fall ill with Covid-19 or are avoiding dangerous assignments, leaving correctional facilities with high infection rates and not enough staff to handle potentially violent confrontations.

In New York, [stabblings at the massive jail complex on Rikers Island](#) have surged and gangs have increased their influence in the jail during the pandemic as some prison guards have [taken advantage of generous sick leave policies](#). Some guards wear body cameras at the complex, but not all.

In 2019, the sheriff overseeing the jail in Albany County, N.Y., said he was putting body cameras on guards after several inmates who had been transferred from Rikers Island said they had been abused at the Albany jail. The sheriff said at the time that he [believed the cameras would have proven that the officers were innocent](#).

Prison officials in several other states, including Wisconsin and Georgia, have begun to put cameras on some prison guards. A lawsuit in California over claims that prison employees had violated disabled prisoners' rights led a judge to order that [officers at five state prisons](#) be outfitted with the cameras. New York State has also tested the technology at some prisons, and New Jersey lawmakers are [considering a bill that would put body cameras on every prison guard](#).

The Ohio Civil Service Employees Association, which represents prison guards in the state, has not opposed the body camera program but said it was a low priority at a time when there were 1,700 vacant positions for correctional officers, in part because the state had not filled positions of officers who had recently retired.

"To be frank, it's hell right now," the union president, Christopher Mabe, a retired prison sergeant, said of working in Ohio prisons. "Body cameras are a distraction, as far as we're concerned, to the real and dangerous staffing issues in prisons now."

Ms. Chambers-Smith, the prisons director, said the body-worn cameras would cost \$6.9 million in the first year and about \$3.3 million each year after that. They were being paid for by grants, funding from the federal stimulus act passed by Congress in response to the pandemic in 2020, and the

Jonah E. Bromwich and Jan Ransom contributed reporting.

EXHIBIT C



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December 13, 2021

VIA ELECTRONIC MAIL ONLY

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

Jennifer Neill
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Re: *Armstrong v. Newsom*: Objections to Implementation Timelines for Investigation and Discipline Reforms and Response to Investigation Assignment Index, Review Guidelines, and Information re: EWS
Our File No. 0581-03

Dear Jenn and Tamiya:

We write regarding the CDCR’s proposed emergency regulations for the new staff misconduct process submitted to the Office of Administrative Law on December 8, 2021. We also write in response to the three deliverables shared by Defendants on December 1, 2021 pursuant to the parties’ October 29, 2021 stipulation: (1) Defendants’ draft Investigation Assignment Index (“IAI”); (2) Defendants’ draft investigation/inquiry report review guidelines (“Review Guidelines”); and (3) information regarding the automatic alert function of the Early Warning System (“EWS”).

We would like to set a meeting with you and Ed to discuss these documents this week. Please let us know your availability as soon as possible.

I. Defendants’ Implementation Dates for the New Investigation and Discipline Process

Plaintiffs are still reviewing the emergency regulations, which we obtained on the afternoon of Thursday, December 9, 2022 from the Office of Administrative Law (“OAL”). These regulations should have been emailed to us at the same time they were submitted to OAL. Plaintiffs object to the lengthy implementation timelines set forth in the regulations. According to § 3486(c) of the regulations, CDCR will not fully

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implement the new staff misconduct process at the six prisons covered by the Court's orders until **June 30, 2023**—over a year and a half from now, notwithstanding the Court's findings in 2020 and early 2021 of widespread and serious ADA violations occurring at the six prisons. At those prisons, CDCR will not implement the process for 602-1s until May 31, 2022, for 602-HCs until March 31, 2023, for 1824s until April 30, 2023, and for third-party complaints until June 30, 2023.

These implementation deadlines violate the Court's orders, are inconsistent with representations made by Defendants during the parties' fourteen months of negotiations, and are insufficient to protect the rights of *Armstrong* class members.

The RJD Injunction states that “[w]ithin fourteen days of reaching agreement with plaintiffs, or receiving this Court’s order resolving any disagreements, Defendants shall issue the RJD Remedial Plan in final form and implement its provisions pursuant to the terms described below, unless the RJD Remedial Plan sets a different date for implementation of a component of the RJD Remedial Plan.” Dkt. 3060, at 2-3. The Five Prisons Injunction contains an identical provision. *See* Dkt. 3218, at 3. Meanwhile, the RJD Remedial Plan and Five Prisons Remedial Plan (“Plans”) state that “CDCR will promulgate emergency regulations that are anticipated to be phased in beginning January 1, 2022, that will describe organizational changes regarding the processing of staff misconduct allegations toward and incarcerated person or parolee.” Dkt. 3336-1, Ex. A, at 4; *id.*, Ex. B, at 3-4. The Plans then proceed to describe the changes to the system to which the parties agreed. If Defendants are not even implementing the new process until May 31, 2021, then Defendants are not “phas[ing]” in the new system as of January 1, 2022. The language of the Court’s orders and the Plans, standing alone, is sufficient to bind Defendants to a January 1, 2022 implementation date for the six prisons covered by the Court’s orders.

In addition, Defendants in the course of our negotiations repeatedly represented the new system would be implemented as of January 2022. Multiple participants—Jennifer Neil, Tamiya Davis, and Amy Miller, among others—stated more times than we can count that time was of the essence in our negotiations because CDCR had to implement the new regulations and system by January 2022. Despite the fact that the parties met and conferred about the reforms to the investigations and discipline system many dozens of times, Defendants never mentioned any implementation dates later than January 2022, let alone implementation of some parts of the new process as late as June 30, 2023. Along these lines, the draft regulations provided to Plaintiffs on September 23, 2021—the most up-to-date version of the regulations provided to Plaintiffs prior to Plaintiffs’ filing of their objections—included blanks for specific implementation dates

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for 602-1s, 602-HCs, and 1824s that all stated “XXXX 2022.”¹ Given Defendants’ prior representations in the negotiations, Plaintiffs had no reason to believe that the implementation dates would be anything other than January 2022. Now that Defendants have submitted regulations with final implementation dates well into 2023 (regulations that we had to request from the Office of Administrative Law because Defendants did not even provide them to us as a courtesy), Plaintiffs can only presume that Defendants acted in bad faith by omitting their true intentions. Defendants know full well that had they been forthcoming with their intentions to delay full implementation until June 2023, Plaintiffs would have objected.

The *Armstrong* class cannot wait until mid-2023 for Defendants to implement some of the most important remedies in the Plans, which are intended to comply with Court orders issued in September 2020 and March 2021. We therefore request to meet and confer with Defendants to revise these implementation dates.

Although Defendants have already had almost a year and a half to prepare for implementation of court-ordered reforms, Plaintiffs acknowledge that such sweeping changes may not occur on January 1, 2022. The 2023 implementation dates for 1824s, 602-HCs, and third-party complaints are, however, unacceptable. The entire process for all types of complaints should be implemented at the six prisons no later than May 31, 2022. In addition, it would be wise for Defendants to implement the process at one prison—RJD—before implementing it at the other five prisons covered by the Court’s orders, in order to identify any implementation problems. Trial implementation at RJD should occur by no later than March 31, 2022 to ensure a smooth transition for the remaining five prisons by May 31, 2022.

¹ The only place that Defendants ever suggested that the new process would be implemented on the timeframes now set forth in the regulations was in Exhibit A to the Declaration of Amy Miller, filed on November 12, 2021 in opposition to Plaintiffs’ objections to the Plans. *See* Dkt. 3339-5. Ms. Miller stated in her declaration that Exhibit A was a copy of the “emergency regulations that are anticipated to be phased in beginning January 1, 2022. These emergency regulations will describe the organizational changes to the processing of complaints of staff misconduct toward an incarcerated person or parolee, and will have statewide application.” *Id.*, ¶ 5. Exhibit A itself indicates that it is a rough draft of the regulations. *Id.*, Ex. A. Nowhere in text of Ms. Miller’s declaration or in Defendants’ response to Plaintiffs’ objections did Defendants indicate that Defendants would not begin implementing the process until May 31, 2022 and complete implementing the process until June 30, 2023.

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II. Investigation Assignment Index

The IAI will be used by the Office of Internal Affairs to determine whether an allegation of misconduct toward an incarcerated person should be investigated by a Correctional Sergeant, Correctional Lieutenant, or Special Agent.

We see two, interrelated problems with the IAI. Far too few investigations will be conducted by Special Agents, the investigators within CDCR with the most experience and training to conduct investigations, and too many investigations into serious misconduct will be conducted by Lieutenants and Sergeants. The IAI indicates that Special Agents will only, as a matter of course, be assigned to two types of cases: (1) Sexual violence toward an incarcerated person or parolee and (2) Misconduct resulting in significant injury or death of an incarcerated person or parolee. Special Agents will also be assigned to other types of allegations where (1) “Exigent circumstances exist,” (2) “The misconduct resulted in great bodily injury or death of an incarcerated person or parolee,” (3) “Evidence of felony criminal conduct is present,” and (4) “The allegation involves a high-ranking, non-civil service staff member.”

Collectively, these categories are far too narrow. Special Agents should be involved in the most serious and complex investigations. Special Agents should also be involved in investigations implicating the types of misconduct that are at the core of the Court’s orders, namely integrity/code of silence investigations. Though the categories listed by CDCR cover some of these types of investigations, many would not be covered. For example, the IAI indicates that Lieutenants would be assigned as a matter of course to the following, extraordinarily serious allegations of misconduct:

- Intentional unnecessary force that did not result in great bodily injury
- Retaliatory use of force that did not result in great bodily injury
- A conspiracy among staff to cover up misconduct
- Destruction of evidence
- Intentional misrepresentations and falsifications on law enforcement reports and records, including incident reports and RVRs
- Threatening witnesses to an investigation

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We anticipate that CDCR will respond that the above-listed allegations would be investigated by Special Agents because in such cases there would be evidence of felony criminal misconduct. Historically, however, CDCR has almost never considered officer misconduct to be criminal in nature, let alone felonious. And the IAI itself indicates that CDCR is underinclusive with respect to what conduct constitutes a felony. As an example, the IAI provides that Lieutenants would investigate allegations that staff (1) destroyed, fabricated, falsified, altered, or planted evidence and (2) threatened witnesses. All such conduct constitutes a felony. Yet, pursuant to the IAI, Special Agents would not conduct those investigations.

We have attached a proposed revision to the IAI that more appropriately assigns cases among the different types of investigators. Our revisions are intended to accomplish three goals. First, for all but a few of the most serious types of misconduct (which should only be assigned to Special Agents), the IAI would indicate that the case can be assigned to either of two types of investigators. For example, the IAI would indicate for excessive/unnecessary use of force allegations that the case could be assigned to either a Lieutenant or a Special Agent. The Allegation Investigation Unit (“AIU”) manager could then use the factors set forth on the first page of the IAI to determine to which type of investigator to assign the case.

Second, for some types of misconduct, we have proposed that a higher level of investigator conduct the investigations. For example, we have proposed that Special Agents, not Lieutenants, conduct investigations into destruction of evidence, false statements on official reports, coordinated efforts to prohibit reporting of misconduct, and intimidation of witnesses, and that Lieutenants or Special Agents, rather than Sergeants, investigate allegations of retaliation for reporting misconduct or filing a grievance or a lawsuit.

Third, we have added two additional factors for the AIU Managers to consider when assigning cases: (1) severity of harm to incarcerated person(s) and (2) seriousness of alleged misconduct. These additions are necessary in order to comply with the RJD Remedial Plan and Five Prisons Remedial Plan, which both provide that CDCR, in assigning cases, will consider “the complexity and seriousness of the staff misconduct allegation and the potential level of discipline.”

Given that the new system is going live on January 1, 2022, and that these components are essential to its operation, it is critical that, as we requested above, we meet this week.

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In advance of the meeting, it would be helpful if CDCR could provide some additional information regarding the anticipated workload for investigators. How many cases does CDCR anticipate will be routed to the AIU on an annual basis? How many will be assigned to Correctional Sergeants, Correctional Lieutenants, and Special Agents? How many Correctional Sergeants, Correctional Lieutenants, and Special Agents does CDCR intend to employ within the AIU? How many will CDCR need to hire to reach those staffing levels?

III. Investigation/Inquiry Report Review Guidelines

The Review Guidelines will be used by OIA Managers, Hiring Authorities, and EAPT to determine if an investigation was thorough, complete, and unbiased, based on the investigation/inquiry report.

Plaintiffs propose a number of modifications and additions to the Review Guidelines:

- For the first guideline—“was all pertinent evidence requested, collected, and reviewed”—Plaintiffs recommend that Defendants add a non-exhaustive list of the types of evidence typically reviewed in staff misconduct investigations, including: incident reports, medical and mental health records, Form 7219s, video-taped interviews, audio-video data, time-sheets, etc. Consistent with the Court Expert’s September 10, 2021 Proposal, Plaintiffs also propose supplementing this guideline to include: “Whether investigators identified a need to seek further documents as the investigation progressed, and whether investigators sought those further documents.”
- Consistent with the Court Expert’s September 10, 2021 Proposal, the following guideline should be included: “If the investigator identified any contradictory testimony or evidence, did the investigator identify the contradictory testimony or evidence in an appropriate and unbiased manner?”
- As set forth in the Court Expert’s September 10, 2021 Proposal, the following guideline should be included: “Did investigators give appropriate weight to information gathered in interviews – for example, did investigators credit the word of a single staff member over that of multiple

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incarcerated persons, and, if so, was that reasonable in light of the evidence?”

- Plaintiffs propose the following guideline: “For cases in which AVSS and/or BWC footage was not initially preserved, did investigators attempt to identify the date and time of the misconduct from witnesses and documents, and, if the date and time of the misconduct was identified, did investigators attempt to locate, preserve, and review the AVSS and/or BWC footage?”
- As set forth in the Court Expert’s September 10, 2021 Proposal, the following guideline should be included: “Was the investigation completed in a timely manner and, if not, why not.”

At the parties’ upcoming meeting, Plaintiffs’ counsel would like to discuss how CDCR intends to operationalize the Review Guidelines, including: 1) which reviewers will be required to review and evaluate the investigation report based on the guidelines, and in what order; 2) the format in which the Review Guidelines will be presented and the application of the Review Guidelines will be documented (e.g., check-list, qualitative form with space for comments, etc.); 3) the standard by which reviewers will determine, using their application of the Review Guidelines, whether an investigation was thorough, complete, or unbiased; and 4) the conditions under which additional investigation will be required.

IV. EWS Automatic Alert Functions

In their December 1, 2021 communication, Defendants provided a non-exhaustive list of executives who will receive reports and automatic alerts generated by the EWS. In addition to those executives, Plaintiffs propose that OIA executives—including the OIA Deputy Director and the Special Agents in Charge for each OIA region—receive reports and automatic alerts related to investigations that are generated by the EWS. Plaintiffs also seek clarification regarding who the CIPRIO Director is. Pursuant to the parties’ Stipulation, Plaintiffs look forward to receiving additional information about the EWS no later than December 15, 2021.

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We look forward to discussing these concerns further at our upcoming meeting.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Michael Freedman

By: Michael Freedman

MLF:JRG

Enclosure (by email attachment)

cc: Ed Swanson
August Gugelmann
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Gannon Johnson
Chor Thao
Adriano Hrvatin
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Andrea Moon
Sean Lodholz
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Co-counsel

EXHIBIT D

PLAINTIFFS’ WRITTEN SUBMISSION TO COURT EXPERT RELATED TO
COURT ORDER REGARDING ALLEGATIONS OF MISTREATMENT OF
ARMSTRONG CLASS MEMBERS AT SATF (Doc. 3338)

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APPENDIX 2

INTRODUCTION

The California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF), is the state's largest prison, housing 4,998 people as of December 1, 2021. SATF has one of the largest DPP populations (854 as of December 1), particularly of those with significant, impacting-placement disabilities (641). It also is one of the most complicated institutions; it houses class members who are Level II, III, and IV; who are housed on SNY, GP, and NDPF yards; and who are part of the EOP and/or DDP. It has one of the largest, if not the largest, populations of *Armstrong* class members with communication disabilities (345).

SATF has a long history of noncompliance with its *Armstrong* and Americans with Disabilities Act (ADA) obligations. It has been the repeated focus of enforcement litigation in this case. Unfortunately, we continue to identify wide-ranging noncompliance. Since November 2019, Plaintiffs have sent over a hundred reports, letters, and emails related to SATF, more than any other institution. Many involved instances where class member already had attempted, unsuccessfully, to request the disability accommodation through the CDCR 1824 process and simply given up asking.

Overall, Defendants fail to timely and meaningfully respond to concerns identified by Plaintiffs' counsel. Of the 132 letters, emails, and tour reports sent to Defendants regarding SATF since November 2019, we have received a response to only 58 of them. *See* Appendix 1. Those responses were sent, on average, 158 days later. Responses often were poor, contained incorrect information, and ignored critical issues. Many of the letters that have not been responded to yet have been pending for a long period of time, including 569, 551, and 526 days for a series of letters on behalf of blind class members. That has made it very difficult to resolve issues at SATF and provides Plaintiffs' counsel with no ability to evaluate the manner in which SATF's management respond to reports of noncompliance. *See* Doc. 3338 at 3 ("The Court Expert shall also investigate the response of SATF's management to the incidents cited by Plaintiffs' counsel.").

On March 11, 2021, the Court found credible class members' testimony regarding a culture at SATF "of staff targeting inmates with disabilities and other vulnerable inmates for mistreatment, abuse, retaliation, and other improper behavior," and ordered remedial action. *See* Order, Doc. 3217 at 40. Over a month later, Plaintiffs' counsel conducted a monitoring tour of SATF. The tour involved almost 70 class member interviews, a two-day, on-site walking tour in May 2021, additional remote staff interviews, and observation of the Reasonable Accommodation Panel (RAP) meeting. Our findings, which we detailed during an exit meeting on May 24, 2021, were deeply alarming. We informed headquarters and institution staff that it appeared the DPP program had collapsed at SATF and that we had observed firsthand during our walking tour the dismissive attitude of staff to class member needs.

We provided the following examples:

- Housing units with large and complex *Armstrong* populations continued to be regularly staffed by officers who appeared unfamiliar with their duties and responsibilities, including those who supervise IDL and those normally assigned to first watch, and who were held over to cover staffing shortages.
- We had last visited SATF in February 2020. At that time, we raised concerns that the two officers in A2, both working overtime and outside their regular assignment, were dangerously clueless about their responsibilities and about how to communicate with the deaf signers clustered in the unit. In May 2021, the problem was the same. When we visited, the unit was staffed by two non-regular officers. They said they would find out who was deaf if people just did not respond when their names were called over the intercom. They said they could ask ADA workers to provide individual notification, but were then unable to find a list of ADA workers in the office and also could not figure out how to find that information through SOMS.
- In D3, there was one non-regular officer alone in the building. He could not find magnifiers, a whiteboard, or the DPP roster (an OLA attorney found the DPP roster for him but it was almost a month out of date). The officer also could not find a list of ADA workers, either in the office or through SOMS.
- When we were in D4 at the beginning of third watch, we were approached by a class member who seemed very lost and scared and said he had been at SATF about a month but has a hard time reading and did not know if someone could help him read. He was confused by what was happening in the prison. He reported that he previously had been in the DDP at KVSP. We called the housing officer over to see if he could help him, including by introducing him to ADA workers or setting up a time to read his paperwork to him. The officer was on overtime, as was his partner, and said he was normally assigned to roof management projects and not in a housing unit. The officer did not help the class member and instead simply told him to ask regular second watch staff for help the next day.
- Housing officers were unable to do things as simple as being able to identify *Armstrong* class members and ADA workers in their unit. That was true in a majority of the units we visited, including A2, D2, D3, D4, E4, and E5. Indeed, in D2, we were unable to find a DPP roster anywhere, even an outdated one. This was particularly discouraging in D4, where the officer said that he would ask class members to produce paperwork proving incontinence if they asked for a shower after a toileting accident, because incarcerated people, in the officer's words, can be "con artists" and "try to trick you." That officer also did not know basic disability codes and had widely off-base guesses (in fact, he believed "DNH")

meant someone who did **not** have a hearing disability, and that is what the “n” stood for).

- Officers on E5 could not answer how they would safely evacuate the building in the event of an emergency or how they would identify and help people with disabilities. They said only they would “call the fire department.”
- We have long reported that certain staff on Facility D are rude and dismissive to people with incontinence and refuse to provide them with timely showers after toileting accidents. During the tour, even people who do not need incontinence showers and do not have disabilities approached us to tell us that they observed staff being rude and outright denying requests for continence showers by people with disabilities.
- One piece of evidence relied on by the Court in its March order related to failure to provide a TDD to a declarant in D2. Those events occurred in February 2020. We visited D2 in May 2021 and asked the regularly-assigned officer to set up the TDD. He refused to do so and admitted that he did not know how.

We also observed firsthand a visual environment created by staff that sent a message of unapproachability to class members. We provided the following examples:

- Class members widely reported that officers simply stay in the office and do not walk the unit. That also is what we saw during our walking tour. In fact, some officers had turned off the office lights and were sitting in a dark office, so you could not see that they were there, making them entirely unapproachable.
- In D4, there were Trump stickers all over the office and on the door, including some with inappropriate language. One that was on the office’s door and faced out into the dayroom read: “TRUMP 2020: No more bullshit.” There were similar stickers in the D4 officers’ office (see photograph below).



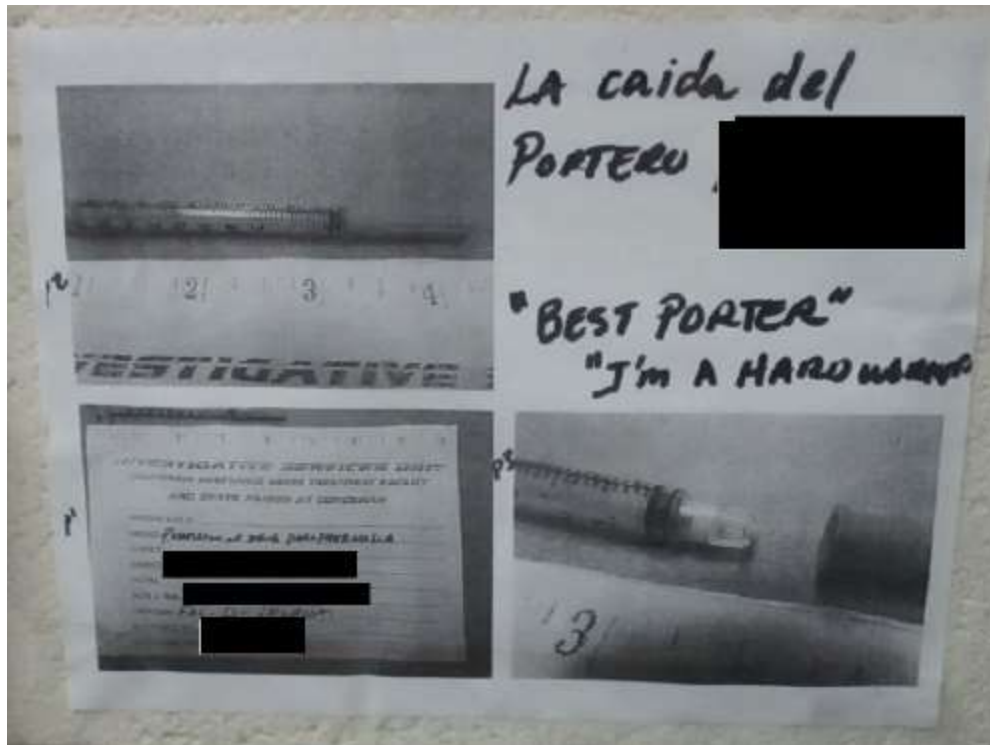
- We saw oversized, outward-facing flags on the wall of the officer’s office in C6, including a Blue Lives Matter flag with a punisher skull superimposed onto it. Underneath that was a large Don’t Tread on Me flag with a coiled rattlesnake. That was visually intimidating and certainly does not create an environment where people feel comfortable asking officers for help or sharing concerns with them.



- We observed a sign on a counselor’s office discouraging people from asking for help (“WARNING DO NOT DISTURB THIS MEANS YOU!”). We heard of similar sign that apparently had been taken down before we arrived.



- In D3, officers had created their own meme, which was posted in officer’s office making fun of “La caída de Potero Ramirez.”



We also informed institution and headquarters staff that healthcare staff at SATF have displayed at times shocking indifference, and even hate, for our clients. This included the vile and hateful public comments made by SATF nurses on a popular Instagram page earlier that month, celebrating the murders of *Armstrong* class members at SATF.

Based on Plaintiffs' tour findings, headquarters staff visited SATF, and we held a series of headquarters-level meetings to discuss what corrective action would be taken. Secretary Allison visited SATF shortly after Plaintiffs sent the letter regarding the hateful comments by nurses at SATF. Secretary Allison met with Plaintiffs' counsel on June 11, along with Undersecretary of Operations Jeff Macomber, Assistant Secretary of Legal Affairs Jennifer Neill, and DAI Director Connie Gipson to discuss concerns about SATF. On June 29, 2021, Warden Cisneros presented her corrective action plan in a meeting attended by Plaintiffs' counsel and Secretary Allison, CEO Bob Edwards, Director Gipson, DAI Associate Director Jared Lozano, Assistant Secretary Neill, Regional Executive Christopher Podratz, Undersecretary of Health Care Services Dr. Diana Toche, CCHCS Director of Corrections Services Tammy Foss, and CCHCS Deputy Director of Institution Operations Jackie Clark. In addition, in early June 2021, a team from CAMU, including Adam Fouch, Dawn Lorey, and Vimal Singh, went to SATF to review *Armstrong* and *Clark* issues. The CAMU team presented their findings to Plaintiffs' counsel on June 14. We also met with Chief Deputy Receiver Richard Kirkland, Director Foss, and Undersecretary Dr. Toche of the Receiver's office on June 23, 2021, to discuss our concerns related to healthcare staff at SATF specifically.

Among other things, retired annuitant Pat Vazquez was placed on special assignment within the ADA office at SATF from July 19, 2021, to October 22, 2021. Retired annuitant William Best was placed on special assignment with local healthcare staff. The institution created an AOD Tour Inspection Worksheet covering postings, auxiliary aids, white boards, binders, appeal boxes and availability of forms, post orders, cleanliness, medication distribution, and familiarity with DPP OPs.

Based in part on the *Armstrong* tour findings, Plaintiffs' counsel in *Plata* conducted a remote tour in August 2021, and Plaintiffs' counsel in *Clark* conducted an in-person tour jointly with CAMU and OLA in June/July 2021. Both tours identified problems consistent with those found during the *Armstrong* tour in April/May 2021. See Letter from Sophie Hart, *Plata* Plaintiffs' Counsel, to CDCR/CCHCS, Follow-up From August 10-13, 2021 Remote *Plata* Visit to SATF (Oct. 8, 2021); *Clark* Plaintiffs' Report from SATF Supplemental Interviews (July 30, 2021).

Plaintiffs' counsel in *Armstrong* visited the institution again on September 14-15, 2021, to meet with the warden, ADA staff, Ms. Vazquez, and CEO Edwards, to learn more about how the institution was addressing Plaintiffs' concerns. We were pleased to meet some of the new sergeants allocated by the Five Prisons Order and to see the body-worn cameras. The new sergeants and the lieutenant who oversees them had just finished training and appeared to be well suited for their new positions. The Court-ordered remedial measures are critical to improving the entrenched noncompliance at SATF. We are not confident that those measures alone will be enough to achieve durable compliance, and we welcome the Court Expert's review. We also are pleased with recent staffing changes at the Warden and ADA Coordinator positions. Durable compliance, however, cannot be achieved by reliance on certain people being in leadership positions; the ADA Coordinator role in particular is one that sees frequent turnover. Over the last two years, there have been three different ADA Coordinators at SATF.

Finally, we note that many of the problems identified at SATF are not unique to SATF and may require careful consideration of existing policies and procedures in place statewide. Although we appreciate the attention that is being paid to SATF now, it is unfortunate that it took a Court order, a deeply troubling site visit by Plaintiffs' counsel, and vile public comments by SATF employees celebrating the killing of *Armstrong* class members to get that attention.

DISABILITY ACCOMMODATIONS

For years, we have documented substantial barriers to disability accommodations at SATF. We have seen healthcare staff defer evaluations indefinitely, even in the face of actual injury, defer responsibilities to custody staff, and otherwise unnecessarily delay determinations. Staff fail to consider and/or provide reasonable accommodations in a timely and professional manner, and often are dismissive of class members' disability-

related needs. We are concerned that even when problems repeatedly are brought to the institution's attention, staff fail to identify, investigate, and address noncompliance. This is true regardless of whether an issue was raised by PLO or through the CDCR 1824 or healthcare grievance process.

It is difficult to get a complete understanding of the scope of the problem. We have for years documented problems with the grievance process at SATF. On September 29, 2020, we informed institution and headquarters staff that we were concerned that SATF was not appropriately addressing requests for disability accommodations, either in response to CDCR 1824s or in response to our advocacy letters. Instead of thoughtfully addressing the merits of such requests, the institution was relying on outdated, irrelevant, and secondhand information in an attempt to discredit or undermine people with disabilities. In April 2021, we sent a detailed letter outlining concerns with the CDCR 1824 process. Among other things, we noted that poor RAP responses may have resulted in *Armstrong* class members ceasing to request disability accommodations or report disability discrimination through the CDCR 1824 process. *See* Rita Lomio & Tania Amarillas, Plaintiffs' Counsel, to Alexander Powell, CDCR Office of Legal Affairs, CDCR 1824 Process at SATF at 7-8 (Apr. 8, 2021) (including statements by class members); *see also* Order, Doc. 3059 at 31 (Sept. 8, 2020) ("By definition, these data do not take into account ADA requests and grievances that class members did not make or submit, nor do they take into account requests and grievances that class members withdrew. As discussed above, some of the declarants state that they filed some ADA requests or grievances but later withdrew them, or that they decided not to make new requests because of the threats, intimidation, or coercion they experienced.") (discussing Richard J. Donovan Correctional Facility).

We understand that, following our April/May 2021 tour, headquarters staff observed and provided feedback on RAP meetings at SATF. We appreciate those efforts and hope that they have improved RAP responses. However, it will take more time to earn class members' confidence in that process. This may be one reason that many "issues have come to light not because they were identified by supervisors at SATF but because Plaintiffs' counsel uncovered them and informed SATF management." *See* Order, Doc. 3338 at 3 (Nov. 8, 2021).

1. Whether Class Members Are Being Denied Appropriate Supplies (Category 1)

We have, for years, reported that class members are denied appropriate supplies by medical staff. We have written about this in a number of contexts, including, most recently, related to pull-up diapers, wheelchairs, walkers, suppositories, catheter bags, and hearing aid batteries. Appendix 1 identifies tour reports, letters, and emails since November 2019 related to denial of appropriate supplies. We outline a few areas of concern here.

a. Toileting Supplies

The adequacy of supplies to manage disability-related continence is critical to ensuring class members' program access and basic human dignity. As you know, we have asked that Defendants abolish limits on access to necessary incontinence supplies statewide to remedy ongoing violations of the ADA. *See* Letter from Penny Godbold, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, & Bruce Beland, CCHCS Office of Legal Affairs, Limitations on Access to Basic Incontinence Supplies and Accommodations (Aug. 18, 2021).

At SATF, insufficient access to incontinence supplies has been a feature of many class members' daily lives for years. The problem has endured notwithstanding countless class member reports, our monitoring efforts, and the attention of SATF management. Class members report that they receive untimely refills of supplies, insufficient supplies, or no supplies altogether. For example:

- [REDACTED] DPW, DNV, DNH, reported when he transferred to SATF in February 2021 that he did not receive incontinence supplies upon arrival to the institution, preventing him from accessing programs. Plaintiffs' counsel identified that the problem may have stemmed from the fact that his previous order for incontinence supplies had not been reconciled and that he had not yet seen his provider as ordered. *See* Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | [REDACTED] DPW, DNV, DNH, SATF (Feb. 19, 2021); *see also* Office of the Inspector General, Substance Abuse Treatment Facility and State Prison at Corcoran Medical Inspection Report, Cycle 6 at 8 (Sept. 2021) (noting that compliance inspectors found that "patients were not referred to their providers within the required time frames upon their arrival at the institution.").
- [REDACTED] DPW, a monolingual Spanish speaker with urinary and fecal incontinence, reported that he was not provided sufficient toileting supplies for the frequency of his accidents, despite having requested additional supplies from his provider. *See* Letter from Gabriela Pelsinger & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED] DPW, SATF (Mar. 23, 2021).
- [REDACTED], DPW, is prescribed suppositories as keep-on-person to facilitate bowel movements. He reported being instructed to submit a medical slip whenever he runs out or is about to run out of them. However, Mr. [REDACTED] reported that even when he submits a slip early, he often goes days without suppositories because medical staff tell him that

the pharmacy has not sent them yet. In the meantime, Mr. [REDACTED] must fashion homemade suppositories out of soap for insertion into his rectum. Mr. [REDACTED] also has a suprapubic catheter and reported that the bags he is given break and rip, spilling urine all over him and his bed. Each time that happens, he is required to go to medical, dripping urine, for a replacement. Mr. [REDACTED] reported that he asked medical staff if he could have extra bags so that when his bag did open up and rip, including if he is getting ready to go to bed, he can change the bag himself without having to go to medical. He reported that this request was denied. *See* Nursing Face-to-Face (Apr. 1, 2021); Email from Rita Lomio, Prison Law Office, to T Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Seventh Email) (Apr. 29, 2021).

Our colleagues in *Plata* received numerous reports of dismissive and unprofessional behavior from nursing staff when people came to the clinic to request incontinence supplies, including “reports of nurses telling patients to ‘get out of here’ when they came to the clinic to request incontinence supplies” and “giving patients too-small incontinence briefs and condom catheters and dismissing them when they asked for the appropriate size.” Doc. 3717 at 18, *Plata v. Newsom*, No. 01-1351-JST (N.D. Cal. Oct. 26, 2021). In their letter following up on patient interviews at SATF in August 2021, *Plata* Plaintiffs’ counsel shared several examples. *See* Letter from Sophie Hart, *Plata* Plaintiffs’ Counsel, to CDCR/CCHCS, Follow-up From August 10-13, 2021 Remote *Plata* Visit to SATF at 3-4 (Oct. 8, 2021).

Perhaps the most telling, and concerning, example of the SATF’s disregard and inaction in recent years is in its failure to provide class members with pull-up diapers. This issue has been the focus of concerted headquarters’ and institution- level attention in the last six months. While we are hopeful that the institution has finally implemented a durable remedy, we remain concerned that any progress made was not the result of institutional initiative, but instead required Plaintiffs’ counsel to repeatedly raise and elevate the concern for over a year. This is not a sustainable means for Defendants to achieve compliance with the ADA and *Armstrong* Remedial Plan.

Plaintiffs’ counsel conducted monitoring tours of SATF in October 2019 and February 2020 and spoke to a number of class members with mobility disabilities and incontinence. Several of those class members reported that the brief-style diapers with adhesive tabs or tape that they were issued fell down or leaked due to poor adhesion, and so did not accommodate their incontinence. They believed that pull-up style diapers would better accommodate their needs. However, they reported that medical staff told them that the institution does not carry pull-up diapers, with no further explanation. *See* October 2019/February 2020 SATF Tour Report (Mobility) at 17. One class member with tremors in his hands reported receiving a response to a 602-HC stating that “our warehouse does not have pull ups, they carry diapers.” *See* [REDACTED],

Healthcare Grievance – Text Note (Dec. 16, 2019). Another class member who previously received pull-up diapers at another institution reported that medical staff told him in response to his request that SATF does not supply pull-up diapers. A third class member reported that his brief-style diapers leak and cause him to develop a rash, but that when he asked for different supplies, nursing staff told him, “This is not about living in luxury.” He described being entirely disillusioned with the 602-HC process as a result. A class member added, regarding the brief-style diapers’ tendency to come undone at night or while ambulating, “It’s beyond cruel, it’s downright degrading.” We requested that SATF “discontinue its practice of automatically denying any request for pull-up style diapers and retrain medical staff about the need for individual assessment of requests for disability accommodations, including diapers.” October 2019/February 2020 SATF Tour Report (Mobility) at 19.

Defendants’ response to these serious concerns referred repeatedly to the “standardized medical supply catalog,” with no apparent consideration of these class members’ individual needs for accommodation with pull-up diapers. Defendants also did not address the unprofessional comments by nursing staff or the impact of those comments on class members’ willingness to seek accommodations in the future. *See* SATF Response to the *Armstrong* Monitoring Tour - October 2019 at 20-22. Defendants also reported that two class members actually began to refuse their brief-style diapers. Electronic medical records for [REDACTED], however, suggest that he may have done so due to the inadequacy of the briefs the institution continued to issue to him. *See* CDCR 7536 for [REDACTED] (Mar. 18, 2020) (“I/P has been refusing briefs due to pt wants the pull-ups.”). Mr. [REDACTED] still housed at SATF, remains without pull-up diapers to this day.

Nine months after receiving Defendants’ response, in May 2021, we alerted Defendants that [REDACTED], 65-years-old and a full-time wheelchair user with incontinence, had repeatedly requested pull-up diapers because it is difficult and painful for him to attach the tabs of his diapers. However, he had been told by medical staff that the institution does not issue them. *See* Letter from Eva Amarillas Diaz & Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Availability of Pull-Up Diapers at SATF (May 14, 2021); *see also* Outpatient Progress Note (May 20, 2021) (“On asking what difficulty he has using the briefs he states that has arthritis in his hands and fingers that impairs his ability to pull these tags and grab them as well. He states he has also carpal tunnel syndrome on the right side and trigger fingers on the right hand second and third digit for which he has received cortisone injections recently. He states because of arthritis in the hands, carpal tunnel syndrome on the right hand and trigger finger second and third digit right hand he has difficulty grabbing these tapes and securing them to the brief. He states that he has used pull-ups at CHCF and he was able to use them without major difficulty. Upon asking him he able to grab the pull-ups with his both hands he stated yes and it will be much easier then wearing a diaper.”).

We again asked that Defendants retrain medical staff at SATF on the availability of pull-up diapers and develop standards for issuance. To remedy the institution's years-long history of denying these diapers as an accommodation, we also asked that Defendants direct medical staff to affirmatively ask people with incontinence supplies whether pull-ups might better accommodate them.

We elevated the concern to headquarters staff. At a meeting with CCHCS leadership on June 23, 2021, a CCHCS representative described pull-up diapers as “low-hanging fruit” for the institution to resolve. Mr. [REDACTED] finally received the diapers on June 29, after the CEO intervened.

In September, the SATF CEO shared a SATF Healthcare Storyboard with Plaintiffs' counsel. The storyboard stated that the CEO had communicated with medical leadership on the “importance of follow-thru (i.e. pull up diapers)” and that a pallet of pull-up diapers had been delivered to the medical warehouse. We hope that this issue has been resolved, but it is entirely inappropriate that it required repeated advocacy by Plaintiffs' counsel for over a year, at both the institution and headquarters level.

b. Hearing Aid Batteries

Class members who use hearing aids repeatedly have raised concerns with the availability of hearing aid batteries at SATF. *See* June/September 2018 SATF Armstrong Monitoring Tour Report (DPH-SLI) at 38; Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Sixth Email) (Apr. 28, 2021); Letter from Tovah Ackerman, Plaintiffs' Counsel, to Alexander Powell, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, Deaf and Hard-of-Hearing Class Member Concerns at SATF at 6-8 (Aug. 10, 2021). Many reported having a difficult time receiving hearing aid batteries when they submit a 7362 or request them at pill call. Class members noted that medical staff will outright deny or give them the runaround when they request hearing aid batteries. As a result, some class members have gone so far as to restrict the use of their hearing aids because they cannot reliably replace their hearing aid batteries. For class members with hearing aids, properly working hearing aids are critical in order to ensure equal access to programs, services, and activities. In addition, hard-of-hearing class members rely on their hearing aids to hear what is happening around them and stay safe in a prison environment.

Plata monitoring has identified the same concerns: “[W]e heard reports of nurses . . . so frequently dismissing patients who requested hearing aid batteries that patients had begun severely restricting use of their hearing aids.” Doc. 3717 at 18, *Plata v. Newsom*, No. 01-1351-JST (N.D. Cal. Oct. 26, 2021); *see also* Letter from Sophie Hart, *Plata* Plaintiffs' Counsel, to CDCR/CCHCS, Follow-up From August 10-13, 2021 Remote *Plata* Visit to SATF (Oct. 8, 2021). One such patient is [REDACTED], DNH.

Plaintiffs' counsel met with Mr. [REDACTED] during the April/May 2021 monitoring tour of SATF. Mr. [REDACTED] raised longstanding concerns with the availability of hearing aid batteries. Mr. [REDACTED] explained that he has had difficulty receiving hearing aid batteries in a timely manner for years.

On March 13, 2019, Mr. [REDACTED] filed an 1824 stating the following:

<p>WHAT CAN'T YOU DO / WHAT IS THE PROBLEM? Without batteries for my hearing aids, I cannot hear in groups, or when several people are talking, or when people are yelling or using the PA system. This means that I cannot access education, vocational training, nor church services - when my hearing aids are not working.</p>
<p>WHY CAN'T YOU DO IT? Between over-worked and harried nursing staff, very limited yard access, not being allowed to get batteries during medication release, it is very difficult to get my batteries for my hearing aids. My batteries went dead on March 4, and I was unable to get replacements until March 13, 2019; this is typical.</p>
<p>WHAT DO YOU NEED? I need regular and easy access to replacement batteries for my hearing aids. I need batteries when I need them, not when it's convenient for the staff.</p>
<p>NOTE: I have sent a copy of this 1824 to the Prison Law Office.</p>
<p><small>(Use the back of this form if more space is needed)</small></p>

1824 Log No. SATF-F-19-01778.

The RAP responded to Mr. [REDACTED] concerns on April 11, 2019, noting that Mr. [REDACTED] had been issued hearing aids on March 13, 2019, nine days after Mr. [REDACTED] requested batteries. Mr. [REDACTED] explained to Plaintiffs' counsel that his concerns were temporarily resolved, but then, in mid-2020, there again were weeks-long delays in receiving hearing aid batteries. On July 15, 2020, Mr. [REDACTED] filed another 1824 stating again that it takes "several days to two-plus weeks to get replacements."

<p>WHAT CAN'T YOU DO / WHAT IS THE PROBLEM? I am hearing Impaired, DHH, and wear two hearing aids. When I need new batteries, it takes several days to two-plus weeks to get the replacements, depriving me of my medical orthotics. This problem has happened before, was fixed, and has come back in recent weeks. It does not appear to be related to the COVID19 epidemic.</p>
<p>WHY CAN'T YOU DO IT? (1) If I go to pill-call, I am told by the nurse at the window that I cannot get the batteries during pill-call. (2) When I put in a medical request, it used to take one-day to get them, now the wait time has grown to 2-weeks, most recently from 7/1/2020 to 7/15/2020</p>
<p>WHAT DO YOU NEED? I need two (2) sets of batteries dispensed at a time. One set to have in the hearing aids, one set to replace those when they wear out, allowing me the time to wait for the replacements without doing without my orthotics. Alternatively, and better, would be rechargeable hearing aids, leaving me the recharger.</p>
<p style="text-align: right;">(Use the back of this form if more space is needed)</p>
<p>DO YOU HAVE DOCUMENTS THAT DESCRIBE YOUR PROBLEM?</p>

1824 Log No. SATF-F-20-03589.

The RAP response noted that Mr. [REDACTED] received hearing aid batteries on July 15, thirteen days after he submitted a 7362 for batteries. The DVP documentation noted that an SRN II would “look into delay in processing/dispensing hearing aids to see if COVID related or not.” It is not clear from the response what, if anything, resulted of the SRN’s investigation.

When Plaintiffs’ counsel met with Mr. [REDACTED] in April 2021, the issues with hearing aid batteries persisted. He reported that he tried to obtain replacement batteries twice on April 28, 2021, at the pill call window, but the first time he was told to come back later and the second time no one was there. He reported that when he tries to go into the clinic to ask for replacement batteries, he is told to leave: “Nurse tells me to go to the pill line. They [pill line] say no, we don’t do [hearing aid batteries] then. They say come to the main office, but they tell me to leave and stand at the window. When at the window, they say not doing it, come back later. Always putting me off.” By email dated April 28, 2021, we asked the institution to ensure he receives replacement batteries and that there is a reliable system in place to ensure he timely receives replacement batteries going forward. See Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Sixth Email) (Apr. 28, 2021).

On May 24, 2021, Plaintiffs’ counsel raised these concerns during the tour exit meeting. Then, on June 9, 2021, we met with the SATF CME Dr. Godwin Ugwueze. Dr.

Ugwueze stated that the fastest way to get hearing aid batteries is to use 7362, but patients can also walk in and request new batteries. We were hopeful that this issue would be promptly resolved. However, we spoke with Mr. [REDACTED] again in August 2021 during the *Plata* tour of SATF, and Mr. [REDACTED] continued to report the same delays. Mr. [REDACTED] reported receiving his first pair of hearing aid batteries in three months on August 7, 2021, after making several requests. In late May or early June, Mr. [REDACTED] tried to request batteries from the DME line only to be told they cannot give him batteries. Mr. [REDACTED] then put in a 7362 to request the batteries. The 7362 was returned to him saying to come to the pill call window to request batteries. Mr. [REDACTED] went to the pill call window, and the nurse told him to come back later because they are not handing out hearing aid batteries right now. Mr. [REDACTED] reported that he then submitted a 602-HC regarding the situation but never received a log number or response. *See* Letter from Sophie Hart, *Plata* Plaintiffs' Counsel, to CDCR/CCHCS, Follow-up From August 10-13, 2021 Remote Plata Visit to SATF (Oct. 8, 2021).

Mr. [REDACTED] was not alone in reporting these concerns. We raised other examples of class members with similar concerns in a letter to Defendants following the April/May *Armstrong* monitoring tour. [REDACTED], and [REDACTED], both reported that it is difficult to timely receive batteries for their hearing aids. They reported that it takes three to four days to receive replacement batteries and that nursing staff deflect their requests for new batteries, particularly on Facilities D and F, and that these problems have not improved after filing multiple 1824s and 602s. An additional DNH class member on Facility D, who asked to remain anonymous due to fear of retaliation, reported that nurses rudely deny him batteries, and that he sometimes cannot even go to pill call to request them because custody staff in his building do not release him, or because his building is on modified programming. *See* Letter from Tovah Ackerman, Plaintiffs' Counsel, to Alexander Powell, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, Deaf and Hard-of-Hearing Class Member Concerns at SATF at 6-8 (Aug. 10, 2021).

In response to these concerns, we have not received information on how SATF will ensure that class members have timely access to hearing aid batteries. The SATF CEO shared with Plaintiffs' counsel a SATF Healthcare Storyboard. The storyboard stated that hearing aid batteries are available daily at pill call. It is not clear whether that direction will be sufficient to address this longstanding problem.

c. Durable Medical Equipment

In addition to toileting supplies and hearing aid batteries, class members have reported for years that SATF staff fail to provide them adequate and timely access to DME, including wheelchairs, walkers, canes, wheelchair gloves, orthopedic shoes, white canes, and disability vests. *See, e.g.,* March 2017 SATF *Armstrong* Tour Report at 24-26;

October 2017 SATF *Armstrong* Tour Report at 21-22; October 2019/February 2020 SATF Tour Report (Mobility) at 15-17.

Unfortunately, even after we repeatedly raise the same concerns, the institution is unable to implement a sustainable solution. For example, during the April/June 2019 monitoring tour of SATF, blind and low-vision class members reported difficulties getting properly-size white canes with the proper cane tip. We raised these concerns in our subsequent tour report. *See* April/June 2019 SATF *Armstrong* Monitoring Tour Report (DPV) at 2-4. We returned to SATF in October 2019 and February 2020 to interview blind and low-vision class members. Again, we received reports of issues obtaining white canes.¹ *See* October 2019/February 2020 SATF *Armstrong* Monitoring Tour Report (DPV) at 3.

During the April/June 2019 monitoring tour, Plaintiffs' counsel heard from a class member, [REDACTED], DPV, DLT, that medical staff deferred issuing a white cane for Mr. [REDACTED] pending optometry and ophthalmology results. Mr. [REDACTED] concerns were included in our April/June 2019 tour report. Defendants' failed to issue Mr. [REDACTED] a white cane after our report. We again heard from Mr. [REDACTED] in 2021 that he had repeatedly requested a white cane through the CDCR 1824, 602-HC, and 7362 processes starting in at least February 2021. His requests were inexplicably denied pending: (1) an optometry evaluation for new glasses; (2) the arrival of his new glasses; and (3) the provider's observation that "[h]e has not been running into anything here today at this visit." The provider also failed to take action after being reminded by a nurse that DPV patients can have white canes. The confusing response to Mr. [REDACTED] 602-HC from CEO Edwards also relied on incorrect criteria to determine if Mr. [REDACTED] required a white cane. We outlined these concerns in a letter to Defendants. *See* Letter from Tania Amarillas, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, [REDACTED], SATF (June 28, 2021). Mr. [REDACTED] was able to finally receive a white cane in July 2021, nearly **two years** after Plaintiffs initially reported his need for a white cane.

The delay in issuing Mr. [REDACTED] a white cane was not an isolated incident. In January 2021, we raised a similar concern for [REDACTED], DPV. Mr. [REDACTED] reported that his provider denied his request for a white cane in July 2020,

¹ In January 2020, a workgroup was formed to address, primarily, the problems identified at SATF for blind and low-vision class members. Due to the COVID-19 pandemic, the workgroup did not meet again until December 2020. Over the last year, Plaintiffs have worked with Defendants to produce a memorandum that would address the issuance of white canes and direct providers to supply appropriately-sized white canes and proper cane tips to any blind or low-vision class member who requests one. Defendants, however, have failed to finalize this memorandum, and Plaintiffs continue to receive reports from class members stating they have difficulty receiving a white cane.

notwithstanding Mr. ██████ reports of feeling unsafe ambulating because Mr. ██████ has “good vision out of his right eye with prescription glasses.” *See* Email from Tania Amarillas, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, Armstrong Advocacy | ██████ ██████ ██████, DPV, SATF (Jan. 12, 2021). The DME formulary states the only criteria necessary to issue a white cane is to qualify for a DPV code, which Mr. ██████ had. Plaintiffs’ counsel again requested that SATF issue Mr. ██████ a white cane in May 2021. *See* Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, SATF Punch-List Items - Class Member Interviews (Eighth Email) (May 14, 2021). He saw a provider on May 25, 2021, after the RAP requested he be evaluated for a white cane, but he again was denied despite his reports of bumping into people at pill line because “[p]atient demonstrated ability to navigate indoor clinic terrain unassisted and without hesitation.” The decision was deferred pending his next appointment with an optometrist or ophthalmologist, which he has had, but he remained without a white cane. *See* Letter from Tania Amarillas, Jacob Hutt, and Skye Lovett, Plaintiffs’ Counsel, to Alexander Powell, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, Blind and Low Vision Class Member Concerns at SATF at 4-5 (Nov. 16, 2021). Mr. ██████ finally received a temporary white cane on November 13, 2021, **ten months** after we initially alerted Defendants to this issue.

Plaintiffs’ counsel identified a number of other issues with provision of DME during the April/May 2021 tour, with class members reporting written and oral requests for loaner wheelchairs, cushions, gloves, walkers, canes, therapeutic shoes, and a gel foam mattress repeatedly being unreasonably denied or delayed. *See, e.g.*, Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Fourth Email) (Apr. 23, 2021); Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Sixth Email) (Apr. 28, 2021); Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Seventh Email) (Apr. 29, 2021). (SATF requested that Plaintiffs’ counsel send any concerns arising from class member interviews in daily emails.)

In addition, we would like to highlight two recent examples that demonstrate the seriousness of the problem. First, on June 2, 2021, Plaintiffs’ counsel informed Defendants that ██████, a 55-year-old class member with significant, impacting-placement mobility disabilities, had requested a wheelchair since at least February 1, 2021, because he cannot safely walk to meals and pill line. Nonetheless, 121 days later (as of the date of our letter), he had not been evaluated by a provider for a wheelchair, even though, 46 days before, he fell backwards and slammed his head on the ground while attempting to walk to pill line and had to be treated at a community emergency room. We provided a detailed outline of the many delays and errors in his care. In one case, the provider inexplicably deferred her responsibility to conduct a

medical assessment to an unidentified building officer. *See* Letter from Skye Lovett and Rita Lomio, Plaintiffs' Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, and Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], DPM, SATF (June 2, 2021). Although we have not yet received a response to our letter, we continued to raise our concerns with headquarters staff and the SATF CEO. Mr. [REDACTED] reported that medical staff failed to issue him a walker on July 23, 2021, in part because a custody officer assigned to the Facility A clinic unnecessarily interfered during his medical encounter with a nurse. Medical staff did not call Mr. [REDACTED] back to receive the walker until Plaintiffs' counsel intervened and raised these concerns on August 13 during a call with SATF medical leadership. *See* Letter from Sophie Hart, Plaintiffs' Counsel, to CDCR/CCHCS, Follow-up From August 10-13, 2021 Remote *Plata* Visit to SATF at 9 (Oct. 8, 2021).

Second, on June 9, 2021, Plaintiffs' counsel informed Defendants that [REDACTED], DPV, age 71, who has a mobility disability, repeatedly requested a walker in May 2021 due to slips, falls, and difficulty walking. The nurses who reviewed his 7362s and met with him failed to address his immediate disability accommodation and safety needs and instead deferred determination until his next chronic care appointment, which had not yet been scheduled. He was not issued a walker until custody staff intervened when he became stranded on the yard and could not walk at all. *See* Letter from Skye Lovett and Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, [REDACTED], DPV, DNM, SATF at 4-6 (June 9, 2021); *see also* Office of the Inspector General, Substance Abuse Treatment Facility and State Prison at Corcoran Medical Inspection Report, Cycle 6 (Sept. 2021) (finding that "[n]urses did not always perform complete assessments and timely notify providers when patients had urgent symptoms"). We have not yet received a response to our letter.

We have received little information from Defendants on what, if anything, will be done to address problems with access to DME. The SATF CEO shared with Plaintiffs' counsel a SATF Healthcare Storyboard. The presentation included the following remedies to address DME issues (at pages 4, 6, 9, and 16):

- The CP&S addressed PCPs' reliance on custody officers to assess patient mobility and appropriate wheelchair issuance.
- Same-day wheelchair, walker, and cane replacement/accommodations instituted. Full complement of standard size wheelchairs available on grounds.
- CEO making rounds on patients with advocacy letters.

These are important first steps, and we are grateful that the CEO is taking these concerns seriously. However, we do not believe these efforts, without more, will be

adequate. One unresolved issue, for example, is that on September 15, 2021, the CEO said that class members should request DME through the 7362, and not the 1824, process, but conceded that there currently was no interim accommodation process built in to the 7362 process, so class members might be delayed in receiving DME only after they are seen by a provider (that is, nurses may not issue temporary accommodations).

2. Whether Class Members Are Being Treated Disrespectfully When Seeking Accommodations (Category 2)

Unfortunately, a common theme we hear in our interviews with class members is that healthcare and custody staff treat them disrespectfully when they request accommodations. As set forth in Appendix 1, we have raised this concern with Defendants a number of times in the last two years. We look forward to next week's monitoring tour to see if the recently implemented body-worn cameras have made a difference, at least with custody staff.

a. Healthcare Staff

In May 2021, we informed headquarters and institution staff that class members widely report that healthcare staff belittle, ridicule, and taunt them. These are not new issues. *See, e.g.*, March 2017 SATF *Armstrong* Tour Report at 27 (describing an 1824 filed by a class member designated DPO and DPV reporting that a nurse called him an "old cripple n----," and that while the RAP stated the allegation would be processed as a staff complaint, it did not appear on non-compliance logs); October 2017 SATF *Armstrong* Tour Report at 23 (reporting inappropriate comments from medical staff during an appointment, including, "Don't make me hit my button and get the cops involved, you know what they do. I'm your lifeline in here.").

On June 9, 2021, we interviewed CME Godwin Ugwueze, M.D., and asked whether he was aware of any unprofessional or rude conduct by healthcare staff against patients. Dr. Ugwueze said that he learns of any problems through inmate appeals. Unfortunately, that does not seem to be a reliable method to learn of these issues. Class members report that they are retaliated against for filing such appeals. For example, Plaintiffs raised concerns with medical staff retaliating against [REDACTED], DPW, after Mr. [REDACTED] wrote a 602 regarding an LVN's false RVR against him. The LVN retaliated by refusing to administer Mr. [REDACTED]'s medication to him and then proceeded to write him another false and retaliatory RVR. *See* Letter from Tania Amarillas, Laura Bixby, & Sophie Hart, Plaintiffs' Counsel, to CCHCS/CDCR, [REDACTED], SATF (Nov. 24, 2021).

We also have concerns about whether meaningful investigations are in fact conducted. In August 2021, Plaintiffs' counsel wrote a letter on behalf of [REDACTED] [REDACTED] [REDACTED] DPO, an elderly wheelchair user who requires a weekly provision of

diapers and wipes to accommodate his incontinence. Mr. [REDACTED] was issued an RVR in September 2020 by a Psych Tech after she refused to provide him with his diapers during pill call and after she, according to Mr. [REDACTED] called him a “retard” for requesting diapers on the wrong day. Mr. [REDACTED] filed a 602-HC, regarding the incident. Although the staff complaint process later found that the Psych Tech had violated policy, it is not clear whether the institution investigated her unprofessional conduct or something else, and the institution did not identify or dismiss the RVR she had initiated against Mr. [REDACTED]. See Letter from Tania Amarillas & Rita Lomio, Plaintiffs’ counsel, to Tamiya Davis, CDCR Office of Legal Affairs, & Bruce Beland, CCHCS Office of Legal Affairs, Urgent Request to Dismiss RVR Issued by Healthcare Staff at SATF to Elderly Class Member Requesting Incontinence Supplies (Aug. 14, 2021).

Other examples of medical staff’s unprofessional conduct include:

- [REDACTED] a 54-year-old, full-time wheelchair user housed in the CTC, reported that nurses do not always help him properly clean and change himself after a toileting accident, and sometimes take hours to assist him. As a result, he developed two wounds worsened by prolonged exposure to moisture. He also reported a rash on his groin, which he believes is exacerbated by nursing staff doing superficial cleanings and refusing to clean his groin area. Nursing staff reportedly also did not ensure that the shower was cleaned and made him wait for showers for hours at a time. See Letter from Tania Amarillas & Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, [REDACTED] SATF (July 29, 2021).
- A DNH class member on Facility D, who asked to remain anonymous due to fear of retaliation, reported that when he tried to explain problems with his hearing aids to his provider in late 2020 or early 2021, his provider responded, “This is what the State gives you. Take it or leave it.” See Letter from Tovah Ackerman, Plaintiffs’ Counsel, to Alexander Powell, CDCR Office of Legal Affairs, & Bruce Beland, CCHCS Office of Legal Affairs, Deaf and Hard-of-Hearing Class Member Concerns at SATF at 4 (Aug. 10, 2021).
- Patients at SATF, including class members, reported that nurses were rude and unprofessional while passing out medications, including by using slurs and verbally abusive language. See Letter from Sophie Hart, Plata Plaintiffs’ Counsel, to CDCR/CCHCS, Follow-up From August 10-13, 2021 Remote Plata Visit to SATF (Oct. 8, 2021).

- On Facility E, people in the DDP reported that some nurses have the attitude that “everyone is lying when they report their medical problems. Nurse Roman was identified by [REDACTED], DD1 in E5, as disrespectful: she “talks to us like we’re trash”; on Facilities F and G, [REDACTED], DD2 in G2, reported that Nurse Ignacio threatened to throw away his sick call slips because “you file too much paperwork.” *See Clark Plaintiffs’ Report from SATF Supplemental Interviews at 5 (July 30, 2021).*
- b. Custody Staff

In May 2021, we informed headquarters and institution staff that class members widely report that custody staff are rude and dismiss their requests for accommodations. These issues, too, are not new. *See, e.g.,* March 2017 SATF *Armstrong* Tour Report at 14-16; October 2017 SATF *Armstrong* Tour Report at 18-20; June/September 2018 SATF Tour Report (DPV) at 25-26 (reporting custody staff are dismissive and disrespectful to blind and low-vision class members, including by accusing them of faking their disabilities); April/June 2019 SATF *Armstrong* Monitoring Tour Report (DPV) at 38-39 (sharing reports of inappropriate comments by staff to class members, including calling class members “frequent whiners” and questioning the existence of class members’ disabilities); October 2019/February 2020 SATF (Mobility) Tour Report at 25-26 (reporting that officers conduct retaliatory cell searches in response to requests for accommodation, threaten class members with RVRs for speaking up about lack of accommodations, and tell class members to go away when they ask for help).

One area where we see this routinely is with respect to requests for accommodations related to incontinence and toileting accidents. Class members with incontinence face some of the harshest backlash from custody staff when asking for accommodations. Denying someone accommodations following an incontinence accident is dehumanizing and degrading. We have raised these concerns on behalf of class members with incontinence for years, yet little seems to change. *See* March 2017 SATF *Armstrong* Tour Report at 20 (custody staff inappropriately deny clean laundry to class members with incontinence following toileting accidents); October 2017 SATF *Armstrong* Tour Report at 16 (class members with incontinence have difficulty receiving clean laundry and showers as-needed after toileting accidents); June/September 2018 SATF Tour Report (DPV) at 38 (reporting that a class member with incontinence is refused toilet paper, towels, clothes, biohazard bags, wipes, extra showers, and clean laundry as-needed); October 2019/February 2020 SATF (Mobility) Tour Report at 20-21 (sharing class members’ reports of being denied showers after toileting accidents, being accused of faking, and in one case being threatened with an unclothed body search to “check” after requesting a shower).

In addition to our tour reports, we have sent a number of recent advocacy letters regarding staff misconduct towards class members with incontinence. [REDACTED], [REDACTED], DLT, reported that housing unit officers in D3 deny or substantially delay his access to showers following toileting accidents, and retaliate against him for filing 1824s and 602s by spreading rumors about him to other incarcerated people. *See* Letter from Rita Lomio & Skye Lovett, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], DLT, SATF (Sept. 8, 2020). Mr. [REDACTED] later reported similar concerns in April 2021. *See* Email from Tania Amarillas, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Ninth Email) (May 28, 2021).

[REDACTED] [REDACTED] a full-time wheelchair user with urinary and fecal incontinence, reported that he was not provided with access to the ADA shower or clean clothing or linens after toileting accidents. *See* Letter from Gabriela Pelsinger & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED] [REDACTED] DPW, SATF (Mar. 23, 2021). Plaintiffs' counsel requested that this allegation be placed on the accountability log, and Defendants' May 17, 2021 response indicated that it would be. *See* Letter from Patricia Ferguson, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs' Counsel, Advocacy regarding [REDACTED] [REDACTED] ([REDACTED] DPW, SATF (May 17, 2021). The non-compliance logs indicate that Mr. [REDACTED] allegation was not confirmed and no action was taken. Mr. [REDACTED] continued to have difficulty receiving incontinence accommodations.

In April 2021, [REDACTED] [REDACTED], DPO, DPV, reported he is denied showers after toilet accidents almost daily. *See* Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Seventh Email) (Apr. 29, 2021). Mr. [REDACTED] also reported difficulty getting the bags he needs to dispose of his used incontinence supplies. He reported that often, when he asks officers for a bag, they tell him there are no bags, despite the fact that Mr. [REDACTED] can see bags in the office. *See* Email from Tania Amarillas, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ARM | SATF Punch-List Items - Class Member Interviews (Ninth Email) (May 28, 2021).

A class member in D5, who wished to remain anonymous due to fear of retaliation, reported that housing unit officers, especially on Third Watch, "repeatedly stated that they no longer are required to issue *Armstrong* showers to those who request one due to incontinence issues." *See* Letter from Rita Lomio and Amber Norris, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, and Andrea Moon, Office of the Attorney General, ADA Worker Program at SATF During the COVID-19 Pandemic at 3 (Dec. 30, 2020).

We raised these concerns with SATF leadership on May 24, 2021, at the conclusion of our April/May 2021 monitoring tour. In response, during a June 29, 2021

meeting with SATF leadership, the warden presented her corrective action plan, including that a memorandum was circulated to staff about providing timely showers after toileting accidents. Since then, Plaintiffs' counsel continues to receive a stream of allegations regarding the denial of incontinence-related accommodations, so it does not appear that the memorandum has resolved the problem.

In addition to the misconduct class members with incontinence face, other class members report disrespectful treatment by custody staff. For example:

- [REDACTED], DNV, who has adult strabismus/dual exotropia, reported that his DPV code was removed without explanation on July 31, 2019, but that he continued to have a vision vest. However, he was forced to give up his vision vest on December 6, 2019, when a sergeant visited him and told him, "If you don't give me your vest, I'm fit to [pepper] spray you. . . They said you no longer meet criteria. I can give you a 115 or I can spray you." *See* Letter from Tania Amarillas, Jacob Hutt, & Skye Lovett, Plaintiffs' Counsel, to Alexander Powell, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, Blind and Low Vision Class Member Concerns at SATF (Nov. 16, 2021).
- [REDACTED] [REDACTED] [REDACTED] DPW, reported that he requested a trapeze bar from custody staff on several occasions. Staff responded that they were not the regular staff, that they did not have time to help him, or that "it was not their problem." *See* Letter from Gabriela Pelsinger & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED] [REDACTED] [REDACTED] DPW, SATF (Mar. 23, 2021).
- Custody staff dismissed a request by [REDACTED], DPW, to move to a cell with trapeze bars while on Facility F and dissuaded him from filing paperwork about the situation by threatening him, telling him that things would get worse if he submitted paperwork; these staff also refused to help him fill out an 1824 or 602 even though he cannot read or write in Spanish or English. *See* Letter from Ilian Meza Peña & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, Failure to Provide Trapeze Bars During the COVID-19 Outbreak at SATF (Dec. 24, 2020).
- [REDACTED], DNM, DPV, reported that while he was in quarantine in the Facility A gym, he was placed in a bunk a long way from the bathrooms and showers and that he stopped drinking water to avoid needing to use the restroom as a result. He reported that he begged officers to move him, but he was ignored. *See* Email from Patrick Booth, Prison Law Office to Andrea Moon, Office of the Attorney General, Monitoring

Compliance re Non-Architectural Accommodations for *Armstrong* Class Members (Dec. 16, 2020).

- Officers threatened [REDACTED], DNM, with RVRs when he asked for information about his job assignment in Spanish. Officer Padilla refused to consider a chrono documenting Mr. [REDACTED]'s need for accommodation, called him a “faggot” for writing to his counselor to request the chrono, and retaliated against Mr. [REDACTED] by making him walk the yard for his entire shift. Other officers, including a sergeant, refused to intervene in this misconduct. And, staff in his kitchen job threatened to unassign him entirely for asking for accommodations. *See* Letter from Amber Norris & Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, & Sean Lodholz, Office of the Attorney General, [REDACTED], DNM, SATF (Nov. 10, 2020).
- [REDACTED], DPW, reported he was yelled at and received an RVR in response to his request for a standing count accommodation. *See* Letter from Rita Lomio, Plaintiffs’ Counsel, to Nick Meyer, CDCR Office of Legal Affairs, Standing Count Procedures at SATF (Nov. 5, 2020).
- [REDACTED], DPO, DNH, reported that he was housed in the gym for about a week and then housed briefly in E2. He reported that he can stand for only a very short amount of time, that he had trouble getting from his wheelchair to his bed in E2, and that he was afraid to get out of bed. He reported that he raised these concerns with housing officers, but they did not offer him any help and instead simply told him, “You better get used to it.” *See* Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Medical Isolation and Quarantine Housing for *Armstrong* Class Members at the California Substance Abuse Treatment Facility and State Prison, Corcoran at 6 (Sept. 14, 2020).

Plaintiffs have also raised concerns in *Plata* and *Clark* with custody staff’s treatment of class members. In *Plata*, Plaintiffs raised concerns with custody officers assigned to the Facility A clinic and work change performing unnecessarily invasive body searches and making inappropriate comments about a class member’s body. *See* Letter from Sophie Hart, *Plata* Plaintiffs’ Counsel, to CDCR/CCHCS, Follow-up From August 10-13, 2021 Remote *Plata* Visit to SATF at 8-9 (Oct. 8, 2021). In *Clark*, preliminary findings in the May 2021 *Clark* joint audit showed significant backsliding in implementation of essential areas of the program, including that people in the DDP were getting their needs met almost exclusively through the efforts of DDP officers: “Most people told us the housing unit officers do not help them, and a few went so far as to say that the housing unit officers wave them off, or tell them to ask their DDP officer, instead

of providing any help. . . . SATF has always had a large DDP population, and was for a long time working hard to create a culture of support, where all staff were available and willing to help and where essential DDP processes worked smoothly and well. It seems to have become a place where compliance rests on the backs of a few very hard-working officers with minimal help from other staff.” *See* Email from Sara Norman, Prison Law Office, to Adam Fouch, Division of Adult Institutions, DDPs at SATF (May 14, 2021).

3. Whether Class Members Are Otherwise Discriminated Against on the Basis of Their Disabilities (Category 3)

Plaintiffs have identified a wide range of other forms of discrimination against class members at SATF because of their disabilities. This includes failure to provide safe and accessible housing during the pandemic, including for purposes of quarantine and through access to trapeze bars; lack of access to adequate magnifiers and related auxiliary aids; lack of access to sign language interpretation; failure to assign appropriate DPP codes; failure to provide effective communication of written healthcare information; failure to provide assistance in the CTC; an inadequate ADA worker program; and failure to accommodate class members with limited English proficiency. We can provide additional information about those and other topics upon request.

Plaintiffs highlight here a particular concern with the issuance of discriminatory and retaliatory RVRs to class members at SATF. During the May 2021 site visit, one captain stated that he “of course” has identified false RVRs, including as recently as two weeks prior to Plaintiffs’ tour, when an officer submitted a baseless RVR against a person considered to be difficult. The captain reported that no disciplinary action was taken against the officer. In another case, a sergeant responsible for adjudicating RVRs stated that custody officers are sworn police officers and therefore do not lie; as a result, he reported, he will always believe their version of events over that presented by incarcerated people.

We have reported a number of concerns with particular RVRs. For example:

- A full-time wheelchair user was issued multiple RVRs for failing to stand for count. *See* Letter from Rita Lomio, Plaintiffs’ Counsel, to Nick Meyer, CDCR Office of Legal Affairs, Standing Count Procedures at SATF (Nov. 5, 2020).
- A Deaf man was found guilty of an RVR for “behavior which could lead to violence” for attempting to communicate through sign language with an officer. *See* Letter from Caroline Jackson, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Advocacy for [REDACTED], [REDACTED] (DPH, DPS, DPV) (Jan. 20, 2021).

- A full-time wheelchair user was found guilty of being “in the out of bounds area against the wall of G building #3.” *See* RVR Log No. 5562853. The class member said that he was out of bounds because there was an alarm on the yard and his wheelchair pusher, who was in the DDP, had to get down for the alarm, so he could not move. Nonetheless, the class member was found guilty. He challenged the RVR on several grounds, including the fact that he did not understand the RVR hearing because it was conducted in English and that he was not allowed to call the ADA worker as a witness. Then-Warden Stu Sherman denied his appeal. *See* Letter from Tania Amarillas & Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, DPP Access for Class Members at SATF with Limited English Proficiency at 3-4 (July 6, 2021).
- ██████████ ██████████ ██████████, no code, submitted an 1824 on September 24, 2021, alleging that Officer Salceda in F2 threatened to issue him an RVR for requesting a lower tier/lower bunk accommodation while recovering from eye surgery. *See* 1824 Log No. SATF-F-21-01515. Mr. ██████████ noted in his 1824 that he “just had surgery in [his] left eye and that [he’s] 93% blind in [his] right eye.” Mr. ██████████ explained he cannot see well enough to be upstairs. Instead of receiving the requested accommodation, Mr. ██████████ was threatened with an RVR. In response to the 1824, the RAP issued Mr. ██████████ a lower bunk chrono on September 30. However, this chrono does not address Mr. ██████████ main request since it does not also state that Mr. ██████████ needs to be on a lower tier. Additionally, nowhere in the RAP response or the supporting documentation is the officer’s unprofessional conduct addressed.
- A 65-year-old class member in ABE II, received and was found guilty of two serious RVRs in November 2020 and January 2021 after he was denied accommodations for his learning disability, and so was unable to complete his written assignments. He lost sixty days of credit and was referred to committee for consideration for placement in close custody as a result of these RVRs. *See* Letter from Skye Lovett & Patrick Booth, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, ██████████, ██████████, DNH, DPM, LD, SATF (Sept. 3, 2021).
- A class member with low vision was issued three serious RVRs in December 2019 and March 2020 after his ABE I instructor failed to appropriately accommodate him, threatened him with RVRs for months, and characterized his legitimate requests for disability accommodation as manipulative excuses. As a result, the class member was not eligible for the one-time twelve-week Positive Programming Credit awarded to many incarcerated people, which will result in him serving a longer term of

incarceration. He also received an RVR when he reported being unable to work in the kitchen safely without his prescription glasses, which had been long-delayed due to the COVID-19 pandemic. *See* Letter from Skye Lovett & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], DLT, DPV, SATF (May 31, 2021).

- Healthcare staff have initiated RVRs to a Deaf class member for requesting a sign language interpreter, to a class member with incontinence for requesting his supplies, and to a full-time wheelchair user for filing a grievance. These are discussed in more detail in the next section.

In addition, non-vocational education staff at SATF initiated 77 RVRs against Armstrong class members between January 1 and August 17, 2021. Plaintiffs' counsel is in the process of reviewing those RVRs and will be doing a more focused review during next week's tour. We have preliminary concerns regarding lack of oversight; in September 2021, for example, the Vice Principal at SATF said that she was not aware of RVRs initiated by instructors to their students with disabilities.

RVRS INITIATED BY HEALTHCARE STAFF (Categories 4-6)

"[T]rust between patients and doctors . . . is necessary to provide constitutionally adequate healthcare." Declaration of Dr. Joseph Bick, Director, CCHCS, Doc. 3670-1 ¶ 12, *Plata v. Newsom*, No. 01-1351-JST (N.D. Cal. Sept. 10, 2021). That is equally true for trust between patients and nurses; nurses are in many ways the face of the medical clinics. They often are the first person a patient sees after the patient submits a sick call slip requesting medical assistance or disability supplies. And Licensed Vocational Nurses (LVNs) are responsible for day-to-day interactions with patients, including administering medications and issuing necessary supplies. A breakdown in the relationship between these nurses and the patient population creates an obvious risk to the patients' health and hinders patients' ability to request and receive disability accommodations.

Unfortunately, in the past year, Plaintiffs' counsel have received numerous reports that nurses at SATF threaten patients with RVRs and, nurses at SATF in fact have initiated dozens of RVR proceedings against their patients. That has had serious consequences. Patients at SATF have reported to us that they avoid seeking help from medical services because of the behavior of these nurses. *See* Letter from Sophie Hart, Plaintiffs' Counsel, Follow-up From August 10-13, 2021 Remote *Plata* Visit to SATF (Oct. 8, 2021). This is unsurprising, given what happens when patients do ask for help from nurses. For example, after [REDACTED], a 58-year-old full-time wheelchair user with incontinence, asked twice about the status of his recent wheelchair order on October 9, 2020, nursing staff refused to answer him, dismissed him, and asked him to leave the clinic. He was later issued an RVR for "Disrespect w/o Potential for Violence/Disruption." *See* Letter from Tania Amarillas, Laura Bixby, & Sophie Hart,

██████████, SATF (Nov. 24, 2021). ██████████, a Deaf class member, was given an RVR by a nurse after he requested a sign language interpreter because he could not understand her and she thought he was “pretend[ing] he is deaf.” This left him feeling frustrated and like healthcare staff “consider me as a joke.” Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, ██████████, DPH, SATF at 2-4 (July 9, 2020).

When nurses regularly initiate or threaten to initiate unwarranted RVRs, it erodes the relationship between medical staff and patients. It is critical that patients feel they can openly communicate with their healthcare providers, including about conduct like drug use and sexual activity, which implicate their health and wellbeing and also may be punishable by an RVR. If patients regularly see medical staff issuing RVRs, they may reasonably be dissuaded from reporting conduct they know to be prohibited.

RVRs, including counseling-only RVRs, may cause people to serve longer terms of imprisonment through loss of credits or findings of unsuitability for parole, may deny them access to beneficial programs, and may suspend certain privileges, including the ability to call their loved ones. *See, e.g., In re Hare*, 189 Cal.App.4th 1278, 1294 (2010) (finding petitioner to be a “strong candidate for release on parole” but affirming, under deferential standard of review, the Governor’s parole reversal based on a six-year-old RVR); *In re Reed*, 171 Cal.App.4th 1071 (2009) (affirming the denial of parole on the ground that petitioner had received a recent 128-A counseling chrono); *Menefield v. Board of Parole Hearings*, 13 Cal.App.5th 387 (2017) (holding that, pursuant to the California Code of Regulations, minor and administrative misconduct may be considered when determining a life prisoner is unsuitable for parole). Both serious RVRs and counseling-only chronos are kept in the same section of the prisoner record considered by the Board of Parole Hearings. Declaration of Thomas Nolan, Doc. 3052-2 ¶ 5 (Aug. 25, 2020). These disciplinary records are often “dispositive” to the decision of parole suitability. *Id.* ¶ 6. In the dozens of parole hearings that Mr. Nolan has observed, the Board “universally” treated counseling-only chronos as “disciplinary infractions of concern.” *Id.* ¶ 5.

For example, ██████████ ██████████ ██████████, an elderly wheelchair user at SATF who requires a weekly provision of diapers and wipes to accommodate his incontinence, was issued an RVR by a Psych Tech last year after she refused to provide him with his diapers during pill call and after she, according to Mr. ██████████ called him a “retard” for requesting diapers on the wrong day. *See* Letter from Tania Amarillas & Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, and B. Beland, CCHCS Office of Legal Affairs, Urgent Request to Dismiss RVR Issued by Healthcare Staff at SATF to Elderly Class Member Requesting Incontinence Supplies (Aug. 14, 2021). Although the staff complaint process later found that the Psych Tech had violated policy, and although incarcerated witnesses corroborated Mr. ██████████ account, he nonetheless was found guilty of the serious offense of “Disrespect w/Potential for

Violence/Disruption.” After advocacy by Plaintiffs’ counsel, the RVR was voided prior to Mr. ██████ parole hearing. But it already had had devastating consequences for Mr. ██████ who has been incarcerated since 1983 (over 37 years) and who has worked very hard to better himself in prison and participate in the MAT program. Earlier this year, he had his first parole hearing in over nine years. The Comprehensive Risk Assessment, which was completed before this RVR was voided, found that he is a moderate risk for violence. The only evidence of violent behavior in the last eighteen years, however, was the voided RVR issued by the Psych Tech.

On June 9, 2021, we spoke with SATF Chief Medical Executive Godwin Ugwueze, M.D., about our concerns with medical staff initiating RVRs against their patients. Dr. Ugwueze said that healthcare staff “can report [to custody staff] someone has done something that is not good and may merit [an] RVR.” He said that there is no requirement that he be notified when healthcare staff make such reports. When we raised this issue with SATF headquarters and medical leadership again during an August 2021 *Plata* tour, leadership stated they were not aware of any RVRs being issued by medical staff, that they did not support or condone healthcare staff writing up patients, and that it would be a “distraction for care.”

After a August 2021 *Plata* tour, Plaintiffs’ counsel requested and received a list of RVRs issued at SATF between January 1, 2021 and August 17, 2021, listing the name and position of the reporting employee.² A medical employee was listed as the reporting employee for 61 RVRs during this time period. All were nursing staff, and the vast majority (59 out of 61) were LVNs. Four LVNs ██████, ██████) were responsible for 47 of the 61 RVRs. (In addition to the 61 RVRs initiated by medical staff, 18 were initiated by mental health staff. We have requested but not yet received those RVRs.)

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² As far as Plaintiffs are aware, this list of RVRs does not include RVRs that were issued but voided prior to Plaintiffs’ inquiry. Thus, the true number issued by medical staff may be even higher. We repeatedly have asked Defendants whether (and if so, how) they track RVRs initiated by medical staff that are later voided. We have not yet received a response.

RVRs Reported by Medical Staff at SATF Between 1/1/2021 and 8/17/2021			
Reporting Employee	Position	Yard	Total RVRs
	LVN	A	1
	LVN	D	2
	LVN	D	11
	LVN	B	4
	LVN	F, G	3
	LVN	C, D, E	12
	LVN	B, F	10
	LVN	F	1
	LVN	A, E, F	14
	LVN	E	1
TOTAL-LVN			59
	RN	B	1
	RN	E	1
TOTAL-RN			2
TOTAL-MED STAFF			61

After receiving this list, Plaintiffs' counsel in *Plata* requested that CDCR and CCHCS review each of these 61 RVRs to determine whether any should be rescinded. Plaintiffs' counsel further requested that CDCR and CCHCS investigate the four LVNs who were responsible for 75% of these RVRs, for misuse of the disciplinary process. On October 26, the *Plata* Defendants reported the following in the Joint Case Management Conference Statement filed with the Court:

The SATF CEO reviewed the 61 RVR's referenced by Plaintiffs and determined that all were appropriate and none should be rescinded. The nurses listed in the RVRs did submit their written findings (variance reports) of patient behaviors to custody, the custody review process for RVRs was followed at SATF, and the patient RVRs were subsequently issued through the custody RVR process.

Doc. 3717 at 19, *Plata v. Newsom*, No. 01-1351-JST (N.D. Cal. Oct. 26, 2021). Plaintiffs' counsel in *Plata* thereafter requested copies of all 61 RVRs. CCHCS and CDCR provided copies of these RVRs on November 23, 2021.

The *Armstrong* Court directed the Court Expert to investigate "why four nurses are responsible for seventy-five percent of all RVRs issued this year by medical staff at

SATF and whether those RVRs were properly issued; whether it is the case that medical leadership was unaware of any RVRs being issued by medical staff before being informed by Plaintiffs' counsel, and, if so, why they were not." Doc. 3338 at 2-3.

We have conducted a preliminary review of these RVRs. We have requested but not yet received statewide and local policies related to variance reports and initiation of RVRs by healthcare staff. We also have not spoken to many of our clients who received the RVRs.³ Nonetheless, review of these RVRs has only amplified our concerns. The vast majority were issued for conduct that was not serious and did not pose any risk of harm to others—for example, being late to the pill line or forgetting to bring a water cup to the pill line. Most troubling, many of the RVRs were issued to punish patients for conduct that should simply have been reported to their medical or mental health care teams—for example, not taking medications correctly, or not showing up to take medications at all. These RVRs appear designed to punish patients for their failure to comply with medication and treatment protocols, rather than assisting patients to get the help and treatment they need. And, again, four LVNs were responsible for most of these RVRs. This abuse of the RVR process by staff members tasked with caring for sick, disabled, and mentally ill patients is deplorable. Furthermore, these nurses were given free rein to issue RVRs at will, with no meaningful oversight. It is unacceptable that even after an initial review by the SATF CEO, all of these RVRs were affirmed—it took the involvement of the Court Expert for any credible review to occur.

CCHCS's "philosophy of nursing practice" explains that nurses should adhere to the principles that "[a]ll patients have individual worth and uniqueness," "[a]ll patients have a right to dignity, respect, confidentiality, and participation in matters regarding their health care," and that "the focus of nursing is patient-centered and the practice of nursing reflects the biological, psychological, emotional, and spiritual well-being of the patient." HC-DOM Section 1.4.17(a). Choosing to formally discipline patients for being late to pick up their medications, or for taking their medications incorrectly, falls far below those standards.

We are also concerned that there does not appear to be any system for medical supervisors to review the RVRs initiated by medical staff. As described by Defendants in the *Plata* CMC Statement, the current process is that nurses write what are called "variance reports," and send those reports to custody staff, who then formally issue the RVR in SOMS, listing the nurse as the reporting employee. The RVR then goes through the regular custody review process. From our review of these RVRs, it is apparent that custody staff simply copy the content of the RVR from the report the nurses send them. Most of the RVRs are written in first person, from the perspective of the nurse. Despite

³ We have requested to speak to several patients who were issued RVRs by nurses at SATF either during the upcoming *Armstrong* monitoring tour or via confidential phone interviews. We may raise concerns about additional RVRs after these interviews.

the nurse's obvious role in initiating these RVRs, it does not appear that the nurse's supervisor or anyone on the medical leadership team ever receives notice of these RVRs, let alone reviews the RVRs to determine whether the decision to punish the patient was appropriate or whether some other intervention might be warranted.

On December 7, 2021, the day before this written submission was due, Plaintiffs' counsel received a list of 20 RVRs that CCHCS had decided to void after further review. While we note here which RVRs have been voided, and support the voiding of these RVRs, this action does not ameliorate our concerns. CCHCS voided these RVRs only after repeated inquiries by Plaintiffs' counsel, multiple rounds of review, and discussion of the issue in both the *Plata* and *Armstrong* cases. While these individual RVRs may have been voided, SATF needs to address policies and a staff culture that allowed the RVRs to occur in the first place.⁴ And as discussed above regarding Mr. [REDACTED] even RVRs that are later voided can have negative consequences.

Moreover, CCHCS has not voided all RVRs that were, in Plaintiffs' view, unwarranted, and it is unclear how CCHCS decided which RVRs to void, and which to affirm. For example, most of the 26 RVRs issued for suboxone medication misuse are substantially similar, yet CCHCS decided to void just one of these RVRs, issued to [REDACTED]. CCHCS also voided all of the RVRs issued to patients for failing to report to pill call except for the two RVRs issued to [REDACTED]. Plaintiffs' counsel in *Plata* intends to write to CDCR and CCHCS to renew their request to dismiss the remaining RVRs and request further action to address this issue systematically at SATF. We encourage the Receiver and Court Expert to work together to review these issues. We have included our preliminary suggestions for systematic reform at the end of this section, after detailing our specific concerns with each major category of RVRs.

1. Failing to Report/Being Late to Pill Call

Many of the RVRs written by nurses at SATF were issued to patients for failing to report to the pill line, or showing up late to the pill line. In CDCR, patients typically receive their medications via a pill line, conducted outdoors, with patients lining up at windows to the medical clinic, and nurses administering the medications from inside the clinic. Patients wait in the pill line monthly, daily, or multiple times a day, depending on the medication they are prescribed. Some medications—called NA or “nurse administered” and DOT or “Directly Observed Therapy”—need to be administered or observed by nurses (for example, insulin injections and many medications to treat mental health conditions fall in this category). Other medications—called KOP or “keep on

⁴ Even after Plaintiffs' counsel raised concerns about healthcare staff issuing RVRs, healthcare staff at SATF continued to issue them. Between August 18, 2021, and November 29, 2021, three additional RVRs were issued to *Armstrong* class members by medical and mental health staff at SATF.

person” medications—are given typically in 30-day supplies, and are picked up by patients in the pill line monthly. Defendants record, for each patient, their medication administration history in the Medication Administration Record portion of the electronic medical record.

CCHCS policies contemplate that sometimes patients will not show up to take their medications, and describe an appropriate, common-sense approach for staff to take when this happens. First, the policy explains that nurses should identify those patients who did not show up to the pill line, and determine whether they were prevented from getting to the pill line (for example, because there was a lockdown or they were offsite). HC-DOM Sections 3.2.4(c)(2)(F) & 3.5.41(c)(4)(B). Then, the policy explains that the patient’s treatment team will be automatically notified of missed doses, once the patient misses: (1) three consecutive days of a scheduled NA or DOT medication; (2) 50 percent or more of scheduled doses over seven consecutive days of an NA or DOT order; or (3) a single dose of a medication on the Critical Adherence Medication List. HC-DOM Section 3.5.41(c)(3)(A). Once notified, “[p]rescribers shall consider changing prescriptions, discontinuing medications, or discontinuing auto-refill for medication refusals and document the rationale for the action in the health record.” HC-DOM Section 3.5.41(c)(5). SATF’s Local Operating Procedure lays out essentially the same policy. *See* SATF LOP 430. These policies—appropriately—do not contemplate punishing people who do not show up to pill line, or who show up late. Instead, the policies recognize that sometimes people will decide not to take their medication, and focuses on mitigating the potential risk to the patient’s health when that happens.

Rather than simply rely on the process laid out in policy, between January 1 and August 17, 2021, four nurses at SATF wrote 12 RVRs for patients who were late or failed to report to pill line. Many were issued to patients with mobility-impacting disabilities, though that fact was not discussed in the RVR paperwork. All twelve RVRs were written by four LVNs who work across the institution: [REDACTED] While these are all Counseling RVRs, they are nonetheless placed in the prison file and can and can be used against the person in the future without a hearing or opportunity for the incarcerated person to be heard.

Most of the allegations in the RVRs are brief, and do not include any information from the incarcerated person. Some, however, contain particularly concerning details, including that implicate the patient’s disability. For example, LVN [REDACTED] wrote that [REDACTED], a full-time wheelchair user, “was given a direct order to get his HS medication from the window that was open,” but claimed that “[h]e ignored it until the 2nd time when his pusher finally brought him up.” *See* RVR Log No. 7110577. (It is unclear from the RVR whether Mr. [REDACTED] actually heard and ignored the nurse’s request, and at what point he asked his wheelchair pusher to maneuver him to the window.) The nurse then complained that he “proceeded to ramble on about his nephew and that he was doing good,” after she had told him to “not just hang around holding up

the medication lines.” Apparently annoyed with him for sharing positive news with her, she “informed him next time if there was an issue it could be a 128 [(a counseling RVR)].” She claims he then said, “For this fuck go ahead you might as well give me the write up.” She wrote him up immediately for “disrespectful behavior.” This RVR against an elderly incarcerated man with a disability who appears to have been making polite conversation in the pill line survived the CEO review of RVRs at SATF and was voided only in anticipation of Court Expert review. A write-up for disrespectful behavior can have serious consequences at a person’s parole suitability hearing. *See In Re Willcoxon*, No. H036224, 2012 WL 929838, at *13 (Cal. App. Mar. 19, 2012) (write-up for disrespect considered by Board as example of “a lifelong inability to control . . . impulses and anger”).

In another RVR, LVN [REDACTED] wrote that [REDACTED], “presented to the window after the completion of the noon medication pass and stated ‘I was late because I was shaving for a visit I have later.’” *See* RVR Log No. 7087747. LVN [REDACTED] reported that she told him that “shaving can be done at an alternate time,” and that he “would be receiving disciplinary action.” In May 2021, when LVN [REDACTED] wrote this RVR, visitation had only recently reopened, and many people incarcerated in CDCR had not seen their loved ones in over a year.⁵ This was very likely one of the first times, if not the first time, Mr. [REDACTED] was seeing his loved ones after months of COVID-19 lockdowns. It is deeply upsetting that the nurse chose to take the (to us) unheard of and we believe extraordinary step of writing Mr. [REDACTED] an RVR for being late to pill call that day.

We have included a table of all twelve RVRs issued by these four nurses in this category in Appendix 2. According to information received December 7, 2021, all of these RVRs with the exception of those issued to [REDACTED] have been voided. While we appreciate that further review was done, these RVRs are problematic on their face and should never have been issued. Furthermore, we received information from a patient on Facility G that a custody officer assigned to the yard (Officer Federico) informed him in late November of a “new rule” that patients who do not report to pill line, or who leave the pill line to use the restroom, will receive an RVR. If true, this policy promises that patients, particularly those with disabilities, will continue to receive inappropriate RVRs. Plaintiffs also remain concerned that these RVRs survived the custody review process at SATF, as well as the CEO’s review of these RVRs.

⁵ *See* Doc. 3579 at 19, Joint Case Management Conference Statement, *Plata v. Newsom*, No. 01-1351-JST (N.D. Cal. Apr. 27, 2021) (reporting “in-person visits resumed on April 10, 2021”); Statement from CDCR Secretary Kathleen Allison on Visiting (Nov. 13, 2020), <https://www.cdcr.ca.gov/covid19/statement-from-cdcr-secretary-kathleen-allison-on-visiting/> (“As a wife and mother, I can only begin to imagine what the last eight months have been for families who have not been able to see each other.”).

2. Alleged Medication Misuse

Another major category of RVRs initiated by medical staff at SATF was for medication misuse. The majority of these RVRs were written about patients incorrectly taking their suboxone film. Suboxone is a medication used to treat opioid addiction. It works by blocking the receptors in the brain that opiates such as heroin affect, thereby blocking the effects of those drugs if used, and also preventing cravings for those drugs. In CDCR, it is prescribed to patients as part of their participation in the Medication-Assisted Treatment/Integrated Substance Use Disorder Treatment program and is paired with other forms of addiction treatment, like Cognitive Behavioral Therapy. Suboxone film is designed to be used sublingually (below the tongue), though it binds to other mucus membranes in 30-60 seconds as well.

Between January 1, 2021, and August 17, 2021, LVNs at SATF issued 26 RVRs to patients for incorrectly taking their suboxone. *See* Appendix 2, Table 2. The majority of these allegations involved patients putting the film on the roof of their mouth rather than under their tongue, though some also involved patients swallowing the film or spitting the film back into their water cup. Two LVNs were responsible for all but six of these RVRs, with LVN [REDACTED] issuing eight and LVN [REDACTED] issuing twelve. Despite alleging medication diversion, all but one of these RVRs were actually written up as “disobeying an order” about how to properly take medication, with only one RVR (Mr. [REDACTED]) for possession of a controlled substance.

Nurses should not respond to incorrect consumption of suboxone in the pill line by writing RVRs. All people prescribed suboxone are struggling with addiction and attempting to get treatment for it. In fact, CCHCS leaders including Director Lisa Heintz and Chief Nurse Executive Amber Kelly stated on a call on December 1, 2021, that RVRs are not appropriate in these circumstances. Director Heintz stated that RVRs should be reserved for true diversion rather than medication misuse. And Chief Nurse Executive Kelly stated that they do not encourage the RVR process with suboxone. They also stated they have not heard of similar RVRs being issued at institutions other than SATF.

Issuing RVRs for suboxone misuse undermines the patient relationship and does not help people struggling with addiction to get the help they need. The appropriate response for possible suboxone medication misuse is to refer the patient to their provider, who can meet with them, determine whether they are struggling with a relapse, and help them to get additional or alternative treatment as needed.

Although medical staff should not be writing *any* disciplinary sanctions for medication misuse, several of these suboxone RVRs are especially problematic. For example, the RVR for [REDACTED]), Log No. 7056104, is unnecessarily severe. Mr. [REDACTED] allegedly allowed his suboxone film to fall into his water cup.

Although it was his first offense, LVN [REDACTED] nonetheless wrote him up for a “serious” offense and referred the matter to the DA for felony prosecution. Another similarly problematic RVR was issued to [REDACTED]), Log No. 7082101. Mr. [REDACTED] was also written up by LVN [REDACTED] for a “serious” offense for allegedly using his finger to swipe the suboxone out of his mouth, despite this being his first offense. Mr. [REDACTED] stated at his disciplinary hearing that the suboxone “got stuck to my mouth, C/O [REDACTED] was there and saw it was stuck, I moved it back under my tongue. I wasn’t trying in to cheek it, I need this medication.”

LVN [REDACTED] wrote several concerning RVRs regarding suboxone misuse as well. For example, LVN [REDACTED] wrote an RVR for [REDACTED]), Log No. 7089337, after she twice instructed him to place the suboxone under his tongue rather than between his teeth and lower lip. After she explained that placing suboxone elsewhere was considered diversion, Mr. [REDACTED] placed the suboxone under his tongue. Nonetheless, he was issued an RVR for disobeying an order. LVN [REDACTED] also wrote an RVR for disobeying an order for [REDACTED]), Log No. 7061050, even though she had not issued any orders to Mr. [REDACTED]. LVN [REDACTED] overheard another nurse, LVN [REDACTED] tell Mr. [REDACTED] not to place his suboxone under the water faucet. Mr. [REDACTED] then told LVN [REDACTED] that he wanted the doctor to take him off suboxone and did not want to be on it anymore. LVN [REDACTED] did not write an RVR for Mr. [REDACTED] presumably because Mr. [REDACTED] explained that he was not trying to divert the suboxone but rather simply did not want to take it anymore. But LVN [REDACTED] took it upon herself to write a RVR for Mr. [REDACTED] for disobeying another nurse’s orders. These are inappropriate uses of the RVR mechanism.

There were also a few RVRs written for alleged medication misuse of non-suboxone drugs. (See Appendix 2, Table 3.) Not all of these RVRs specified which medication was allegedly being misused, but those that did demonstrate why these RVRs were inappropriate as well. Specifically, the two RVRs for [REDACTED]), Log Nos. 7056954 and 7057673, both allege that he was not swallowing his prescribed medication—but the medications listed are buspirone (anti-anxiety medication, not a controlled substance), mirtazapine (antidepressant, not a controlled substance), and olanzapine (antipsychotic, not a controlled substance). These medications are used to treat mental illness, and any issues about Mr. [REDACTED] not taking them or taking them incorrectly should be addressed with his mental health treatment team, not punished with an RVR. Similarly, [REDACTED], was issued an RVR, Log No. 7064301 for initially not taking his prescribed Wellbutrin, an antidepressant that is not a controlled substance. Again, any reluctance by Mr. [REDACTED] to take his prescribed antidepressant is something to be addressed by his treating doctor rather than punished.

CCHCS’s policy specifically addresses medication non-adherence for psychiatric medications and does not recommend issuance of an RVR. Rather, the Medication

Adherence policy governing psychiatric medication outlines the appropriate response to a patient not taking psychiatric medication:

Patients prescribed psychiatric medications by a mental health prescriber:

1. For medications on the Critical Adherence Medication List, the patient shall be seen by a mental health prescriber for an urgent mental health referral within 24 hours from receipt of the notification of medication non-adherence.
2. For non-critical medications, a mental health prescriber shall review the health record and document in the health record the plan of action within seven calendar days from receipt of the notification of medication non-adherence.
 - a. The documented plan of action should take into account anticipated future medication non-adherence.
 - b. A mental health prescriber shall follow up with a face-to-face session addressing the medication non-adherence as soon as clinically indicated, but no longer than 30 calendar days from the first day the mental health prescriber is notified of non-adherence.
3. Any medication adherence counseling session with a mental health prescriber shall be documented in a detailed note, and shall take place in a confidential setting, unless the patient refuses to attend.

HC-DOM Section 3.5.41(c)(6)(E). Thus, there are a set of procedures medical and mental health staff should follow to address non-adherence with psychiatric medication. These procedures ensure that the patient receives needed care, rather than being punished for medication non-adherence that may be related to their mental illness.

If mental health staff are allowed to introduce punishment by RVR into their response to medication non-adherence, they will be turning the clock back by decades to the era when “mentally ill inmates who act out [were] typically treated with punitive measures without regard to their mental status.” *Coleman v. Wilson*, 912 F. Supp. 1282, 1320 (E.D. Cal. 1995). Mental health staff’s role is to ensure that the RVR process is not used to punish conducted that is influenced by mental disorder. *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1088 (E.D. Cal. 2014). Allowing mental health staff to initiate RVRs whenever mental health staff feels disrespected, or to induce compliance with treatment, undermines the entire purpose of the mental health care system.

While we have highlighted specific RVRs for medication misuse as problematic, all of the RVRs in both tables were inappropriately issued and should be voided. According to information received on December 7, 2021, after further review, one of the RVRs issued for suboxone misuse was voided, as well as one of the RVRs issued for misuse of other medication. There is no readily-apparent reason why these two RVRs—issued to [REDACTED]), Log No. 7069859, and [REDACTED]), Log No. 7058860—were voided while all others were affirmed. All of these RVRs were inappropriately issued. First, issuing these type of RVRs undermines treatment goals, which can actually endanger patient safety. Second, this type of RVRs can also be a tool for staff retaliation against people with disabilities, including mental illness. Third, the majority of these RVRs were issued by only two nurses, which suggests these RVRs do not address a widespread problem of diversion, but are harmful and punitive and issued only by certain staff members. The remainder of these RVRs should be voided as well.

3. Failing to Bring Water Cup to Pill Call

The third group of RVRs written by medical staff at SATF were issued to patients who failed to bring a water cup with them to the pill line. *See* Appendix 2, Table 3. All four RVRs were issued by the same LVN, [REDACTED] on D Yard. CCHCS policies require that patients bring a cup with them to the pill line. *See* HC-DOM 3.2.4(c)(2)(D) (“Patients will bring a cup of water to the pill window unless Local Operating Procedures (LOPs) direct otherwise.”). These policies do not, however, allow nurses to issue RVRs to patients who fail to do so. And again, all RVRs in this group were issued by a single nurse, which suggests these are not the result of a widespread problem at SATF, but rather the very troubling actions of a single nurse. While all of these RVRs were apparently voided upon CCHCS Headquarters’ review, it is alarming that this nurse issued the RVRs in the first place, and concerning that they were affirmed by the regular review processes at SATF, as well as by the CEO.

4. Other Problematic RVRs

In addition to these concerning categories of RVRs written by nurses at SATF, several other RVRs were facially problematic, listed below. According to information received December 7, 2021, these four RVRs were also voided upon CCHCS Headquarters’ review. Again, it is troubling that these RVRs were initially affirmed and only voided after the Court Expert was directed to investigate this issue.

- a) RVR issued to [REDACTED]), Log No. 7107958, regarding an incident on 7/29/2021: Mr. [REDACTED] is a full-time wheelchair user (DPW), has dementia, is in the developmental disability program (DD2), has mental health diagnoses, and is at the EOP level of care. His documented adaptive supportive needs include (among others) a direction to staff to use “[s]low simple language/repeat as needed,” and give “one or two step instructions,”

“frequent reminders,” and “assist[ance] to understand rules/procedures.” On 7/29/2021, an LVN wrote him an RVR for becoming agitated and throwing his water cup on the ground during pill line, which was being conducted in his building. The nurse alleged that when she was giving him his pills, he repeatedly stated “I don’t want my shot this morning.” She reported that after she requested clarification multiple times, he became agitated, and “threw his plastic cup on the ground, but not in my direction. When his cup of water hit the ground, the splash of the water got my right shoe and right lower portion of my PPE gown wet.” As the nurse acknowledges, Mr. ██████ did not throw his cup at her; it appears that he was simply frustrated by their miscommunication. Especially in light of his developmental disability, mental health diagnosis, and documented adaptive support needs, this RVR should be dismissed.

- b) RVR issued to ██████), Log No. 7094452, regarding an incident on 5/31/2021: LVN ██████ reported Mr. ██████ “stormed into the clinic while [she] was conducting the diabetic line [(administering insulin to diabetic patients)].” LVN ██████ reported that she “asked the I/P to leave the clinic and wait outside. He then began yelling that Correctional Officer (C/O) ██████ watched him fall and hit his head and pass out and sent him across the yard to get a new inhaler.” After he left the clinic, LVN ██████ called C/O ██████, who explained that he had sent Mr. ██████ to the medical clinic to get a new inhaler. LVN ██████ wrote that she “advised C/O ██████ that the I/P needed to put a request in for his KOP’s and not to be sent to the clinic causing a delay in program.” She then wrote Mr. ██████ an RVR for refusing to return to his housing unit. This RVR is concerning; when it was written, she was aware that a custody officer had directed Mr. ██████ to go to the clinic to get a new inhaler. She was also aware of Mr. ██████’s report that he had just fallen and hit his head, which should have resulted in a referral to a registered nurse or provider for an assessment. We could not find any notes explaining this incident in Mr. ██████’s medical record.
- c) RVR issued to ██████), Log No. 7078645, regarding incident on 4/13/2021: Mr. ██████ is diabetic. The RVR states that when he presented to the medication window to receive his insulin injection, he showed the nurse a blood sugar reading that was three hours old. The nurse told him to re-do the test. The nurse reports that he refused, and stated, “Fuck this.” The nurse then told him he would not receive his insulin, and asked him to leave the window. He did so without incident. She then wrote him up for “Disrespect w/out Potential for Violence/Disruption,” stating, “Any form of disrespect will not be tolerated.” This RVR was inappropriate and unnecessary—Mr. ██████’s decision to forgo his insulin instead of

repeating his blood sugar test should not have resulted in an RVR, even if he said “fuck this” when refusing his insulin. He appropriately immediately left the window when the nurse asked him to leave, which should have been the only consequence for his actions. Again, there are processes in place to make sure his care team is notified of medication refusals, so he could be counseled on any threat to his health.

- d) RVR issued to [REDACTED], Log No. 7110578, on 8/8/2021: This RVR appears to have been issued in error. It is identical to the RVR issued to [REDACTED] on that same date, regarding Mr. [REDACTED]'s delay during medication line and alleged “rambl[ing]” about his well-being, discussed in detail above. *See* RVR issued to [REDACTED] [REDACTED], regarding incident on 8/8/2021, Log No. 7110577. The RVR does not mention Mr. [REDACTED] or explain his involvement, if any, in these events. It is disturbing that this RVR, which is plainly erroneous, survived both the custody review process and the SATF CEO’s review of these RVRs.

5. Recommendations

We look forward to the Court Expert’s investigation and recommendations on this subject. Initiation of RVRs by healthcare staff against patients warrants close scrutiny and additional oversight and accountability processes must be developed. Plaintiffs submit for the Court Expert’s consideration the following initial proposals:

- a) All RVRs initiated by healthcare staff at SATF prior to the institution of robust oversight processes should be dismissed.
- b) CCHCS leadership should develop statewide guidance, in coordination with the Receiver, Court Expert, and *Coleman* Special Master, to healthcare staff regarding when it is appropriate to refer a patient to the RVR process. This training must substantively address when RVRs are appropriate and not just guide healthcare staff to write RVRs in more detail. This training should also include a discussion of the significant impact RVRs have on parole suitability findings. Given the serious impact RVRs have on people’s lives, and the harm the referral to the disciplinary process does to the relationship between patients and medical staff, such referrals by healthcare staff should only be done in exceptional circumstances—for example, where there are legitimate safety concerns.
- c) SATF healthcare leadership should oversee the RVRs initiated by medical staff. When a healthcare staff member writes a variance report that will be used as the basis for an RVR, it should first be reviewed by their

supervisor, before it is referred to the RVR process. The CNE, CME, and/or CEO should also regularly (at least monthly) review all RVRs with healthcare staff listed as the reporting employee, to ensure the review process is working appropriately. Given the demonstrated recent failure of SATF leadership to appropriately review these RVRs, headquarters-level review of all SATF healthcare RVRs should also be instituted for at least one year to ensure the adequacy of the review process.

Finally, while this letter covers only RVRs issued by healthcare staff at SATF, as discussed throughout, healthcare staff issuing disciplinary sanctions to their patients is fundamentally problematic. SATF has an especially troubling staff culture of disrespect towards *Armstrong* class members. But even at other institutions, healthcare staff initiating RVRs can undermine the patient-provider relationship and discourage patients from seeking needed accommodations. For that reason, the guidance and oversight processes developed at SATF should be applied statewide.

HOMICIDES OF *ARMSTRONG* CLASS MEMBERS

1. Investigations into Deaths of *Armstrong* Class Members (Category 7)

Almost eighty-two percent of the 854 class members at SATF are housed on SNY or NDPF yards. Many are elderly, have significant and isolating disabilities, and have underlying sex offense convictions. These factors all put them at significant risk of harm from both staff and incarcerated people. *See* Order, Doc. 3217 at 61 (Mar. 11, 2021) (finding that “staff target inmates with disabilities and other vulnerable inmates for mistreatment”); Office of the Inspector General, Special Review: High Desert State Prison at 20 (Dec. 2015) (“The dangers associated with an inmate’s paperwork and R suffix are all too real.”).

We receive reports that staff at SATF, particularly those assigned to SNY yards, ridicule and harass class members because of their disabilities, disclose information about their underlying convictions, spread other rumors that put class member lives in danger, and do not take class member safety concerns seriously. These issues, unfortunately, are not new. *See, e.g.*, SATF October 2017 *Armstrong* Tour Report at 18-20 (Apr. 24, 2018) (reporting that custody staff harass class members, make inappropriate comments about class members’ conviction offenses, and fail to protect class members). Many people with disabilities cannot protect themselves.

One class member reported earlier this year that after he told an officer that he had witnessed someone assault a wheelchair user, the officer responded, “I don’t give a fuck.” Other class members report unsuccessfully requesting single cell housing because their disabilities anger their cellmates; one class member reported, for example, that due to his blindness and incontinence, his cellmate gets upset with him when he has to get up and

find his way to the toilet in their small cell at all hours of the night. (Even with population reductions during the pandemic, SATF currently is at 146% capacity. *See* CDCR, Division of Correctional Policy Research and Internal Oversight, Office of Research, Weekly Report of Population as of Midnight December 1, 2021.) We provide several other recent examples of staff’s failure to take safety concerns seriously below.

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

Since June 2019, at least eight incarcerated people have been brutally killed at SATF. Five were people with documented disabilities, including four people with DPP codes, and four were over 62 years of age.

Name	No.	Age	Housing	DPP	DME and Accommodations	Date of Assault	Date of Death
		72		DPM, DNH	Walkers, Canes, Foot Orthoses, Loin Truss-Hernia Belt, Mobility Impaired Disability Vest, Hearing Impaired Disability Vest, Ground Floor, Bottom Bunk	9/3/19	9/3/19
		48		DPH	Sign Language, Ankle Foot Orthoses/Knee Ankle Foot Orthoses, Eyeglasses, Hearing Aid, Hearing Impaired Disability Vest	1/16/20	1/16/20
		62		DPW	Wheelchair, Urologic Supplies, Eyeglasses, Therapeutic Shoes/Orthotics, Ground Floor, Bottom Bunk, Barrier-Free/Wheelchair Accessible	1/16/20	1/19/20
		64		N/A	Ankle Foot Orthoses/Knee Ankle Foot Orthoses Permanent, Eyeglasses, Therapeutic Shoes/Orthotics Permanent, Lifting Restriction, Bottom Bunk	6/10/20	6/10/20

		67		DPM, DNH	Incontinence Supplies, Walkers, Wheelchair, Back Braces, Canes, Eyeglasses, Hearing Aid, Hearing Impaired Disability Vest, Mobility Impaired Disability Vest, Bottom Bunk, Lower Tier, Shower Chair	5/6/21	5/6/21
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The Court directed the Court Expert to investigate “what investigation has been done to determine if the deaths of class members at SATF are in any way connected to a lack of concern by SATF staff members for *Armstrong* class members.” Doc. 3338 at 3.

Plaintiffs have received very little information from Defendants about investigations into the deaths of the class members listed above. We summarize the information we do have below. Before doing so, we note that we have received no response from Defendants to our request that they develop a system to review significant events resulting in serious harm to *Armstrong* class members to determine all contributing factors and whether there should be any policy or procedure revisions, including related to provision of disability accommodations or other protections for vulnerable people with disabilities. *See* Letter from Tovah Ackerman & Rita Lomio, Plaintiffs’ Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, & Tamiya Davis, CDCR Office of Legal Affairs, Defendants’ Failure to Protect Class Members After Multiple Homicides at SATF at 8 (May 13, 2021) (Request 2).

Even if there is no violation of existing policies or procedures, these events offer a critical opportunity to determine whether revisions or additions to policies and procedures should be implemented to protect class members. The absence of any such review mechanism places class members at continued risk of harm. Thus, “lack of concern by SATF staff members for class members” can be seen not just in line officers’ refusal to take safety concerns seriously, but also in SATF management’s failure to conduct a review and determine whether additional processes should be put in place to protect class members going forward.

a. [REDACTED]

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

We reported this information to Defendants in *Armstrong* and *Clark* previously. See Emails Between Sara Norman, Plaintiffs' Counsel, and Adam Zuckerman, CDCR Office of Legal Affairs, Homicide at SATF [REDACTED] (Sept. 12, 2019 & Jan. 27, 2020) ("According to several sources, Mr. [REDACTED] made repeated requests for help from staff before his death, expressing his fear and anxiety over living in the dorm and dealing with other prisoners, and staff were not responsive. We have already started to hear from DDPs in [REDACTED] who are frightened and shaken by the situation and fear that staff are unwilling or unable to protect them."); Letter from Tovah Ackerman & Rita Lomio, Plaintiffs' Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, and Tamiya Davis, CDCR Office of Legal Affairs, Defendants' Failure to Protect Class Members After Multiple Homicides at SATF at 2 (May 13, 2021).

Furthermore, [REDACTED], DPV, LD (unverified), DD2, EOP, who is now at MCSP, reported that Mr. [REDACTED] was gay and that an officer told [REDACTED] who is charged with Mr. [REDACTED] murder, that Mr. [REDACTED] and Mr. [REDACTED] were involved in a relationship. Mr. [REDACTED] acknowledged that both he and Mr. [REDACTED] were gay, but denied that they were involved. Mr. [REDACTED] reported that he was locked into the pod with the two men during the assault. He said that during the assault, Mr. [REDACTED] turned to him and said, "[REDACTED], stay out of this, this has nothing to do with you, or I'll hurt you." Mr. [REDACTED] felt that he could not intervene because his disability made him vulnerable, or in his words, because Mr. [REDACTED] is "in shape and can see." Mr. [REDACTED] reported that he went to officers for help after the assault. He reported that he was interviewed by Mr. [REDACTED] defense attorney or an investigator in early to mid-April and was asked to testify. He described loss of sleep and traumatic memories from the assault when interviewed by Plaintiffs' counsel in April 2021: "I can still taste his blood in the air. . . . My mind got messed up because it was so senseless. . . . He stomped [REDACTED]'s head into the ground and his eyeball popped out."

Plaintiffs' counsel in *Clark* conducted interviews at SATF on June 30 and July 1, 2021. In a report dated July 30, 2021 (at pages 2-3), Plaintiffs' counsel informed Defendants that in Building [REDACTED], where Mr. [REDACTED] died in September 2019:

[M]any people described verbal abuse and threats from some officers, particularly Officers [REDACTED] and [REDACTED] (who is a regular on third watch). One person who was moved from [REDACTED] to [REDACTED] said that he told staff he would commit suicide if he were told he had to go back to [REDACTED]. (He had no plans for self-harm and had spoken to his clinician, who appeared to have addressed this statement appropriately and well.) Others were not as extreme in their statements, but many had stories of abuse they had experienced or witnessed from those officers (noted below). A disproportionate number of these reports came from members of the LGBTQ community, who described frequent slurs and homophobic and transphobic comments from Officers [REDACTED] and [REDACTED]. It was telling that

when we asked about Officers ██████ and ██████ in a neutral way with those who had not mentioned them by name, their faces changed. Nearly everyone had a strong response to those two names, and it was nearly always negative.

There was a palpable fear of retaliation among some of the people we interviewed from Facility ██████. People described a regular practice of “hitting the cells” of people who filed 602s or were seen to complain. Several expressed fear that the interviews with us would result in retaliation from staff. Several people also reported that they had seen other DDPs victimized by other incarcerated people, but felt powerless to report it to staff.

Not surprisingly, nearly all of the individual concerns and reports of staff misconduct noted below come from people in ██████.

Investigations in the quarterly production show ongoing dismissive attitudes regarding the safety of people with disabilities in Building ██████, including those recognized as vulnerable to victimization (*Clark* class members designated DD2 or DD3). For example, one person who is DD2 alleged that an officer berated and used unnecessary force against him following a verbal dispute between him and his cellmate; another described an officer calling him “dumb” and inappropriately confiscating his property. *See* DAI-513; ALTS-24592. We have serious concerns with the quality of investigations into these and other allegations. In these two cases, for example, investigators failed to substantiate allegations despite significant supporting evidence (in the first case) and based on interviews with randomly selected staff and incarcerated people and apparently non-responsive documentation (in the second).

We are aware of no policy changes at SATF following the killing of Mr. ██████. In response to our concerns raised under *Clark*, we were told of several changes in practice: that mental health and custody staff increased rounding on people in the DDP in the building following a meeting with the ADA Coordinator, and that mental health staff identified and addressed the concerns of one person in the DDP. While useful, these actions appear to have created no durable change.

b. ██████, and ██████

In 2020, two class members who were uniquely vulnerably due to their disabilities—██████ a 62-year-old, full-time wheelchair user, and ██████ a 48-year-old Deaf man—were bludgeoned to death on a Level II yard by someone who lived in their dorm. The person who confessed to the killings said that he had wanted to be transferred from the dorm, had told staff that he would attack someone if he was not, and, when staff ignored him, had targeted two vulnerable people with disabilities

who had underlying sex offense convictions. (It is our understanding that many people on that SNY yard have sex offense convictions.) We heard from multiple people that, on the day of his death, the Deaf class member tried to ask housing officers and a counselor for help and protection from the person now suspected of his murder, and that staff did not help or call a sign language interpreter.

Plaintiffs' attempts to propose modest policy changes to protect class members in light of these homicides gained no traction and have been met largely with indifference. We first wrote to the institution in January 2020, less than two weeks after the deaths, to report that we had received information indicating that an incarcerated person who remained on Facility A directed or encouraged the alleged assailant to kill Mr. [REDACTED] and Mr. [REDACTED]. We shared the information in hopes that it would aid in any investigation or other efforts to ensure that people at SATF were safe. *See* Email from Rita Lomio, Prison Law Office, to Stuart Sherman, Warden, SATF-A Double Homicide (Jan. 29, 2020). Many class members were fearful of what had happened, however, and did not authorize us to share more information at that time.

Class members reported that they were interviewed in the immediate aftermath of the homicides, and later by outside investigators. However, they described serious deficiencies in the nature of the interviews. One class member detailed officers dismissing and demeaning him in response to his attempt to share information relevant to the deaths. Another class member who witnessed the homicide reported that the threat assessment interviews were conducted in the dayroom. People were reportedly moved from C Section to B Section and called, two at a time, to speak with investigators in C Section. As a result, those waiting in B Section could clearly monitor the interviews and "if what you said is going on paper. . . it traumatized a lot of people but no one wants to come forward." These interviewing techniques understandably cause witnesses to feel exposed, nervous, uncomfortable, and unsafe cooperating with investigators. *See* Letter from Rita Lomio and Megan Lynch, Plaintiffs' Counsel, to Patrick R. McKinney II, CDCR Office of Legal Affairs, Investigations at Salinas Valley State Prison (Nov. 14, 2017). And indeed, a class member reported that after outside investigators spoke with him in the sally port of his building, with two building officers present and in plain view of other incarcerated people, other staff confronted him about his participation in the interview, causing him to fear retaliation.

During a meeting on March 11, 2021, Defendants represented that the only investigation into the gruesome killing of a Deaf class member and a full-time wheelchair user was a criminal homicide investigation by an outside agency, and that CDCR had no role in scoping that review and had not otherwise directed a review of the events leading up to the homicides to identify areas for improvement or action. In the absence of independent action by Defendants, Plaintiffs conducted a narrow review of the murder of the Deaf class member last year and, in September 2020, proposed corrective actions, including related to the housing of Deaf class members upon transfer to a new yard and

effective communication when a Deaf class member raises safety concerns. *See* Letter from Tovah Ackerman & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Recommendations Following the Killing of Armstrong Class Members at SATF (Sept. 29, 2020).

Defendants' response was woefully inadequate. *See* Letter from Tamiya Davis, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs' Counsel, Recommendations Following the Killing of *Armstrong* class members at the California Substance Abuse Treatment Facility (Dec. 10, 2020). As a result, we scheduled a meet and confer. Although Plaintiffs provided an agenda with a list of detailed questions a month in advance of the meeting, CDCR officials were entirely unprepared to discuss the issues and, when pressed for further information, made statements that contradicted and undermined what they had written in their letter. *See* Attachment C to Letter from Tovah Ackerman & Rita Lomio, Plaintiffs' Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, & Tamiya Davis, CDCR Office of Legal Affairs, Defendants' Failure to Protect Class Members After Multiple Homicides at SATF (May 13, 2021) (summarizing parties' discussions). Furthermore, although Defendants claimed that they had opened an investigation into staff's failure to call a sign language interpreter after Mr. █████ raised safety concerns immediately before he was bludgeoned to death, Plaintiffs found no evidence of that on the non-compliance logs.

On August 20, 2021, Defendants produced an inquiry memorandum for ALTS 25799 (████████████████████), which apparently was opened over a year after Mr. █████ death and 283 days after Plaintiffs brought the matter to Defendants' attention. Plaintiffs did not understand the scope of the investigation and detailed their concerns with it in a letter two days later. *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Jennifer Neill & Tamiya Davis, CDCR Office of Legal Affairs, Objections to Non-Compliance Inquiry ALTS 25799 and Request for OIA Investigation (Aug. 22, 2021).

On December 6, 2021, Defendants produced another inquiry memorandum related to Mr. █████ *See* Memorandum from B.A. Bankston, Investigative Lieutenant, to Theresea Cisneros, Warden, Allegation Inquiry (AI-011-21) Homicide of Inmate █████ █████ January 16, 2020 (June 4, 2021). It appears this inquiry was opened on May 27, 2021. Plaintiffs have not yet had a chance to carefully review this memorandum, although it, too, appears to suffer from defects in scoping and timeliness.

We are aware of no policy review or revisions following the brutal killings of Mr. █████ and Mr. █████ Defendants refused to implement Plaintiffs' suggestions, including related to the housing of Deaf class members on orientation and placement of video remote interpretation (VRI) laptops. *See* Letter from Tovah Ackerman & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Recommendations Following the Killing of *Armstrong* Class Members at SATF at 7 (Sept. 29, 2020) (Request 1: "Deaf people should not be isolated in an orientation

building when they arrive to a new yard at SATF, and should be provided a sign language interpreter upon arrival to a new yard so they can understand any yard-specific procedures and meet and communicate with relevant officers.” Request 2: “SATF should place VRI laptops in the handful of buildings that house class members who use sign language and should provide additional training to housing officers and counselors so they know that they can and should call for a staff interpreter, or use the VRI laptops, to help them communicate and build relationships with the Deaf people in their care”).

We were alarmed to see a RAP response dated May 2020, just months after Mr. [REDACTED] was killed, denying a Deaf person’s request for a sign language interpreter for a “delicate situation,” which a sergeant later clarified was “a safety/enemy concern.” In particular, the RAP responded: “Per policy and procedure, a Sign Language Interpreter (SLI) is not required for Non-Due-Process communication.” Log No. SATF-D-20-2950. That is false. *See, e.g.*, SATF OP 497 at 1, 10; Doc. 2345 at 25 (Order); Doc. 1045 at 3 (Order). It also is dangerous. On July 29, 2020, we asked Defendants to “propose revisions to OP 497 to explain how Deaf class members will be provided with a sign language interpreter during a counselor’s open line and how they can report immediate safety concerns in sign language.” Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], DPH, SATF (July 29, 2020). In a response sent almost a year later, Defendants refused to make any revisions. Letter from Gannon Johnson, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs’ Counsel, [REDACTED] - DPH (SATF) (July 13, 2021). Defendants said that the allegations would be placed on the accountability log, but that process does not identify when policies or procedures should be revised; it focuses on identifying whether staff violated existing policies. Regardless, it does not appear that Defendants referred these allegations to the accountability log until almost a year after our advocacy letter; two related inquiries were opened on July 2 and July 15, 2021, and closed on August 11 and August 26, respectively, with no action.

c. [REDACTED]

In May 2021, [REDACTED] a 67-year-old, hard-of-hearing wheelchair user with incontinence was found dead in his cell in a puddle of blood. *See* Progress Note – Nurse (May 6, 2021). According to the initial press release, the death is being investigated as a homicide; the class member’s 37-year-old cellmate has been identified as a suspect. Mr. [REDACTED] had an underlying sex offense conviction.

During a SATF exit meeting on May 24, 2021, we informed the institution that people reported to us that people in the unit yelled for the housing officers and banged on their cells and the walls in an attempt to get their attention, screaming “Man down.” People reported that officers did not hit the alarm until over an hour later, and that officers in the unit sometimes do not conduct rounds overnight at all. One person reported that ISU interviewed them for less than a minute cell-side about the event, and

that they were not afforded any confidentiality; people in the cells nearby could hear what they had to say. One class member who wished to remain anonymous due to fear of retaliation reported that he was interviewed by ISU for about 20-30 seconds at his cellside, with many other incarcerated people within hearing distance. He stated that no one who was interviewed this way would have been able to report anything anonymously.

DAI-1727 also relates to concerns with the investigation process; namely that a then-sergeant at SATF (later promoted to lieutenant at PVSP) released confidential evidence related to the investigation to thirty-three staff members without authorization. That evidence includes J-Pay emails from incarcerated people reporting that the tower officer had fallen asleep and asking their loved ones to call 911 (“if you up please call 911 and tell them someone is dying here at satf state prison in C120. The tower officer have fell to sleep and can’t here us trying to get his attention, please its a emergency”).

Class members also reported that Mr. ██████ had unsuccessfully attempted to get single cell status due to his incontinence. ██████, DNM, DNH, DNV, for example, reported that he was good friends with Mr. ██████ and that Mr. ██████ had been requesting a single cell for a long time due to his incontinence. Mr. ██████ last saw Mr. ██████ about a week before his murder, and Mr. ██████ talked about wanting a single cell. The last time Mr. ██████ refused a cellmate, officers wrote him up, so Mr. ██████ was forced to accept the cellmate who allegedly murdered him. (We saw in Mr. ██████ c-file an RVR from November 1, 2020, for Refusing to Accept Assigned Housing-Delaying a Peace Officer.)

Another class member who wished to remain anonymous due to fear of retaliation reported to us that Mr. ██████ had been requesting a single cell due to his incontinence and that this was the second time officers forced him to take on a cellmate. The class member reported that in the early morning when Mr. ██████ was killed, Mr. ██████ cellmate started yelling at about 3:45 a.m. Mr. ██████ was generally well-liked, so people in the other cells began yelling for the correctional officers and banging on their beds and the walls. They screamed “man down.” This class member said they were all yelling so loudly there was no way officers could not hear them. People in the unit with J-Pay tablets even tried to notify their family members that there was an emergency going on, in case they could contact staff at the institution. However, officers reportedly did not hit the alarm bell until 5:10 a.m. The class member reported that there are nights in the housing unit where officers do not conduct rounds at all.

When Plaintiffs’ counsel interviewed Mr. ██████ in October 2019, he reported that he had incontinence and could not move fast enough to get from his bed to the toilet to prevent soiling himself. He reported that cellmates became frustrated with him when he stayed up late to clean his clothing and sheets due to his toileting accidents, and that he had been attacked by cellmates previously. He reported that he had other significant

disabilities as well, including trouble hearing in both ears, one lung, a prosthetic eye, back pain (possibly related to herniated and degenerative discs), difficulty standing on his right leg, and nerve damage. He reported that because of his disabilities, he could not bathe in his cell sink after he experienced incontinence, which usually happened at night while he was asleep. He reported that he would ask officers to let him use the shower after experiencing incontinence, but they would say they were busy and not let him use the shower, so he would have to wait until the regular shower time. *See* October 2019/February 2020 SATF Tour Report (Mobility) at 21 (reporting staff denying Mr. ██████ showers for incontinence, especially on Third Watch). He reported that he unsuccessfully requested single cell housing from healthcare staff, who told him that they would look into it, and floor staff, who told him that all ADA cells were occupied. *See* 7362 (July 31, 2019) (“On 7-15-19, I had drs line & explained my need for a ADA cell. The dr didn’t know the exact way to obtain this but said he would put in an order.”).

We are aware of no policy review or revisions following the killing of Mr. ██████. Following his death, we said that “Defendants must develop a plan to protect *Armstrong* class members at SATF, including a review of its classification system, the housing of vulnerable people with disabilities, and provision of single cell status.” Letter from Tovah Ackerman & Rita Lomio, Plaintiffs’ Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, & Tamiya Davis, CDCR Office of Legal Affairs, Defendants’ Failure to Protect Class Members After Multiple Homicides at SATF at 8 (May 13, 2021) (Request 3). During a meeting on June 11, 2021, Secretary Allison stated that the single cell memorandum from 2016 would be placed in the regulations, where they would get more attention. *See* Memorandum from Scott Kernan, Secretary, Inmate Housing Assignment Considerations During the Screening and Housing Process (Jan. 19, 2016) (“Examples of inmates who should be considered for single-cell status, or other appropriate housing, on the basis of vulnerability are: . . . An inmate who is incontinent, and has ‘uncontrolled mishaps’ that require him to clean himself at all hours of the day and night”). We have not received an update on that effort. We were told that SATF was considering imposing a limit on the age difference between cellmates, but we have received no further information about that, and it was not included in the warden’s corrective action plan dated June 21, 2021.

d. Other Allegations of Staff Failure to Take Safety Concerns Seriously

i. Reports by Plaintiffs’ Counsel

We also have reported failures by staff to take class member concerns seriously where the class member was not ultimately killed but was violently assaulted. For example:

- ████████████████████, a 71-year-old class member who at the time was designated DPV and used a cane, back brace, and orthotics, was violently

attacked in his cell on May 12, 2021. He reported that housing officers failed to take his safety concerns seriously before, during, and after the attack. Even after a PLO representative informed an officer at SATF about Mr. [REDACTED]'s serious safety concerns, and the officer promised to take the class member directly to the sergeant, the officer did not in fact do so. We detailed Mr. [REDACTED]'s allegations in a series of letters and emails. *See* Letter from Skye Lovett & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Failure to Protect Blind Class Member at SATF (May 26, 2021); Email from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, Failure to Protect Blind Class Member at SATF (May 28, 2021); Email from Tamiya Davis, CDCR Office of Legal Affairs, to Rita Lomio, Prison Law Office, Failure to Protect Blind Class Member at SATF (May 31, 2021); Letter from Skye Lovett & Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, & Bruce Beland, CCHCS Office of Legal Affairs, [REDACTED], DPV, DNM, SATF (June 9, 2021).

- [REDACTED], a wheelchair user, felt vulnerable while housed in the dorm, not only because he could not independently perform his ADLs, but because he was also an easy target for assault. Mr. [REDACTED] is classified as GP and felt that he could not defend himself if someone decided to attack him. Unfortunately, that proved to be the case. On June 15, 2021—less than a week after arriving to Facility B—Mr. [REDACTED] was stabbed multiple times in the neck, chest, and back. *See* TTA Progress Note (June 15, 2021) (“Patient was stabbed by other inmates many times this morning. On exam patient is awake, appropriate, has multiple stabbing wounds on his body including both arms, back of his neck, right chest above the nipple.”); Progress Note – LVN (June 15, 2021) (“Upon arrival in front of building 3 door patient [REDACTED] [sic] [REDACTED] sat on a wheelchair bleeding from which appeared to be multiple stab wounds.”). Mr. [REDACTED] reported that he did not know his attacker. Mr. [REDACTED] believes this person attacked him because he knew he was in a wheelchair, had limited mobility in his arms and legs, and could not fight back. Following the attack, Mr. [REDACTED] was transported to the hospital and then placed in administrative segregation. *See* Letter from Tania Amarillas, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED] [REDACTED] [REDACTED], SATF (July 29, 2021).

And class members continue to report that staff disclose sensitive conviction offenses or otherwise incite violence against them. We see no indication that Defendants take these concerns seriously. For example:

- In April 2021, a wheelchair user reported to us that a housing officer went up to him and said, “You’re letting people with weirdo charges push you around? That’s how you roll?” (The wheelchair user believes an ADA worker who helps him may be incarcerated for statutory rape.)
- We reported that [REDACTED], DPW, DNH, LD (unverified), has heard from others that officers share information and spread rumors about his underlying conviction” and that, as a result, he does not go to yard. *See* Letter from Rita Lomio & Skye Lovett, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], [REDACTED] DPW, DNH, LD (unverified), SATF at 2 n.1 (Aug. 25, 2020); *see also* Letter from Skye Lovett & Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], [REDACTED], DPW, DNH, LD (unverified), SATF, at 3 n.2 (May 22, 2020) (same). Defendants’ response, received almost a year later, did not address, or even mention, those allegations. *See* Letter from Gannon E. Johnson, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs’ Counsel (May 10, 2021).
- Several people in the DDP on Facility E reported that the building officers do very little to help them. *See Clark* Plaintiffs’ Report from SATF Supplemental Interviews (July 30, 2021). Some said that the officers wave them away, even when they have safety concerns and need staff help to resolve them. Many reported that building staff push them off to the DDP officers or the ADA workers. A few reported having seen staff in their office with the door closed and the light off, with a sign that said “NO” or “DON’T ASK” on the wall (which has since been taken down). One person said that the regulars are not a problem, but the relief staff mock DDPs and refuse to help or threaten to hit the alarm if they don’t stop asking for help. These reports were consistent between Buildings E4 and E5. *Id.* at 2. For example, [REDACTED], DD2, E4, reported an incident in April or May 2021 in which he was walking with a transgender person past a group of officers and a sergeant in front of the Facility E program office and overheard one staff call them retarded and child molesters. He said that when he turned to see who said it, he was told “keep walking.” *Id.* at 4.
- We reported that [REDACTED], DLT, has alleged that staff attempt to incite incarcerated people against him because he requests disability-related help. *See* Letter from Rita Lomio & Skye Lovett, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, [REDACTED], [REDACTED], DLT, SATF (Sept. 8, 2020). We have not received a response from Defendants over a year later.

- ██████████, DPW, DNH, arrived at KSVP from SATF on June 8, 2021. On June 9, he was assaulted by three officers, who reportedly said to him during the assault, “This is not SATF, motherfucker. This is not SATF. . . We don’t care about these vests here, raghead,” referring to the disability vests that some class members wear. Based on what the officers were saying while beating him, Mr. ██████ believes that officers assaulted him because he is well known for requesting disability accommodations and reporting staff misconduct and violations of the ARP, and officers at KVSP intended to send a message to him early in his time at the institution that those requests would be met with violence. He also believes that staff at SATF might have alerted staff at KVSP that Mr. ██████ utilized the CDCR 1824 process and reported staff misconduct, including violations of the ARP and excessive use of force, dozens of times during his brief stay at SATF, and that is why the officers at KVSP mentioned SATF while they were beating him. When describing the assault, Mr. ██████ said, “All the fury the COs wanted to take out on me at SATF, they took out on me at KVSP.” *See* Letter from Patrick Booth, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, KVSP *Armstrong* Monitoring Tour (March/April 2021) at 3-5 (Aug. 10, 2021).

ii. Investigations in Most Recent Quarterly Production

A review of the investigations produced in the quarterly production also demonstrate a failure to take safety concerns seriously and investigate them appropriately. For example:

No.	Class Member	Summary
21-091 (AIMS)	██████████, DPM	Mr. ██████ alleged that, on 2/4/21, Officer ██████ refused to address his safety concerns after his cellmate threatened him. Officer ██████ reportedly took him to the program office, threatened to write him up for reporting concerns, and sent him back to the yard, where he was assaulted. When he returned to the yard, Mr. ██████ reported that he was issued two false stacked RVRs. An AIMS inquiry was conducted. During her interview, Sergeant ██████ reported that Officer ██████ denied at the time that Mr. ██████ reported safety concerns, and that Mr. ██████ did not report safety concerns to Sergeant ██████; this testimony is contradicted by Sergeant ██████’s notes on the holding cell log, which stated that Mr. ██████ was being interviewed for safety concerns. In his interview, Officer ██████ also denied that Mr. ██████ reported safety concerns to him, but in the RVR he wrote, Officer ██████ stated that Mr. ██████ reported safety concerns. This strongly suggests dishonesty on the part of both officers. Also, Officer ██████ issued the complainant an RVR for “attempting to manipulate staff” by reporting safety concerns, which is

		<p>unacceptable. The complainant was issued a second RVR for battery; in the local investigation, an incarcerated witness confirmed that Mr. [REDACTED] was the victim of the battery, and that Mr. [REDACTED] had attempted to report safety concerns prior to assault. The AIMS inquiry did not include any incarcerated witnesses. After the AIMS inquiry, the case was referred to and rejected by OIA despite clear evidence of staff misconduct and dishonesty found in the AIMS inquiry. No documents in the case file indicate that the two inappropriate RVRs issued to Mr. [REDACTED] were voided as a result of information discovered during the investigation.</p>
DAI-1064 (Local)	[REDACTED], EOP	<p>Mr. [REDACTED] alleged that he was issued an RVR for fighting when he was actually the victim of an assault on 6/25/21. He alleged that he was bitten, his tooth became loose from being hit in the face, and he broke his tooth. The local investigation was shockingly incomplete; only one officer, Officer [REDACTED] was interviewed, and she did not provide any relevant information about whether Mr. [REDACTED] was the victim of the assault. No incarcerated people were interviewed. The RVR was not based on staff's observation of the incident; instead, it was based on "confidential information," but such information was not reviewed in the local investigation. The incident report and Form 7219 confirms Mr. [REDACTED] injuries, including: "Abrasion/Scratch, Swollen area, to the left side of mouth, cheek, and below the eye. Bite mark to left bicep. SBI attachment: Two teeth were loose and extraction is planned, Teeth #8 and #9 will be extracted." These injuries, which corroborate Mr. [REDACTED] claim that he was victimized, were not considered in the investigation.</p>
DAI-1018 (AIMS)	[REDACTED], DPW, DNH, CCCMS	<p>Mr. [REDACTED] alleged that staff failed to respond to his man down (i.e. request for urgent medical attention) on the STRH cage yard for 15-20 minutes on 6/1/21. In the AIMS inquiry, two incarcerated people confirmed that staff failed to respond for 5-20 minutes after they began calling man down on behalf of Mr. [REDACTED]. All staff denied the allegations. Even though Mr. [REDACTED] filed a timely grievance that was processed on June 4, 2021, investigative delays resulted in deletion of video evidence because STRH cameras loop over every thirty days.</p>
21-284 (AIMS)	[REDACTED], DNH, LD	<p>Mr. [REDACTED] alleged that, on 5/1/21, Officers [REDACTED] refused to run program and publicly blamed the denial of programming on cell [REDACTED] (Mr. [REDACTED]) for refusing to lock up. According to the grievance, these officers sent an incarcerated person to tell other incarcerated people that program was cancelled because of the person in cell [REDACTED]. In the AIMS inquiry, a review of the unit log book confirmed that program was cancelled on 5/1/21 due to an incarcerated person refusing to lock up because his toilet was clogged. One of the incarcerated people interviewed during the AIMS inquiry, Mr. [REDACTED] admitted that Officer [REDACTED] told him to notify people of the reason for cancellation of the program. Mr. [REDACTED] also claimed that an announcement was made over the PA blaming Mr. [REDACTED] for the program cancellation. Collectively, Mr. [REDACTED] reported that staff's conduct created hostility against Mr. [REDACTED] among the unit. Two additional witnesses, Mr. [REDACTED] and Mr. [REDACTED], confirmed that Mr. [REDACTED] had told them that program was cancelled because of Mr. [REDACTED] (though Mr. [REDACTED] believed that</p>

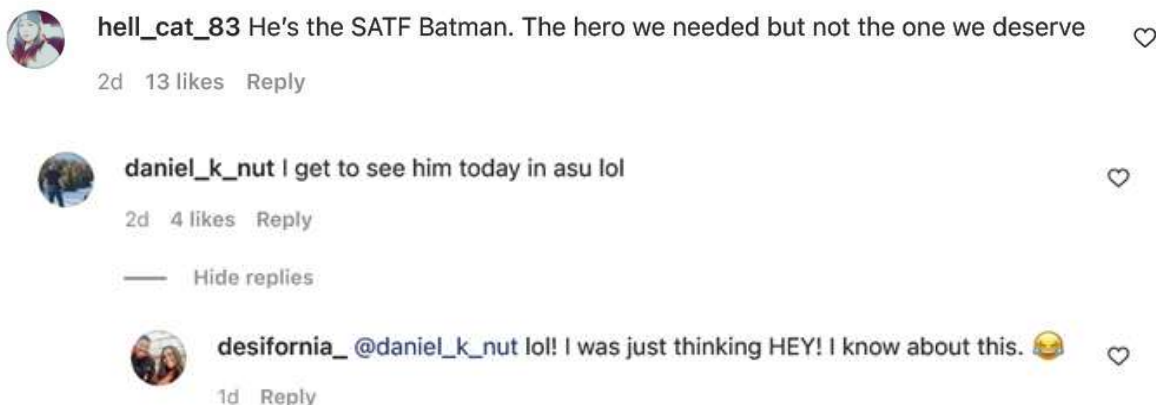
	<p>Mr. █████ did that of his own volition, rather than by the instruction of staff). Officers' AIMS testimony was also inconsistent: for example, Officer █████ claimed that Sergeant █████ approved the cancellation of programming, but Sergeant █████ claimed that the decision to cancel program was made before he arrived on the scene. The AIMS inquiry failed to address these inconsistencies. The SATF Warden inexplicably found that there was "no evidence" to support the allegations.</p>
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2. Disciplinary Action Against Staff Members in Relation to Deaths of Class Members (Category 8)

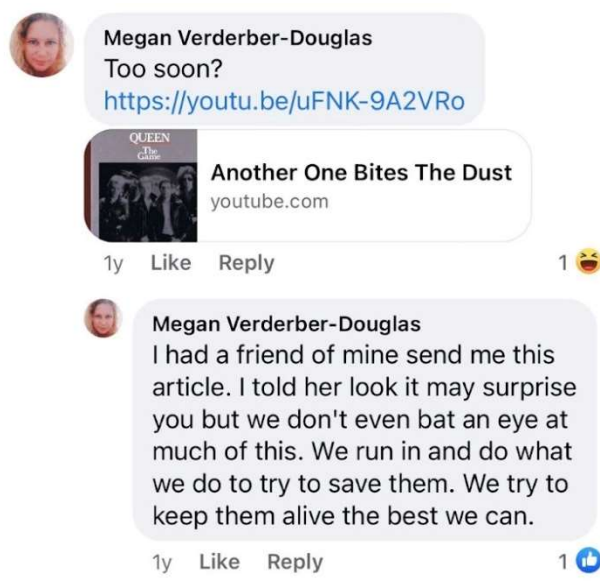
The Court directed the Court Expert to investigate "what, if any, disciplinary action has been taken against any staff member in relation to the deaths of class members beyond placing on leave nurses who posted offensive comments." Doc. 3338 at 3.

Plaintiffs alerted Defendants in May 2021 that people who identified themselves as employed at SATF had posted vile public comments on a popular Instagram page celebrating the gruesome murders of *Armstrong* class members ("Was there when it happened. Epic.") and praising the person who confessed to the murders ("He's the SATF Batman. The hero we needed but not the one we deserve"). See Letter from Tovah Ackerman & Rita Lomio, Plaintiffs' Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, & Tamiya Davis, CDCR Office of Legal Affairs, Defendants' Failure to Protect Class Members After Multiple Homicides at SATF at 8 (May 13, 2021).





On July 15, 2021, we brought additional public postings by SATF staff to Defendants’ attention—in particular, public posts by [REDACTED] and [REDACTED]. For example, the day after two of our clients were brutally bludgeoned to death, [REDACTED] publicly posted on Facebook, “Too soon?” with a link to the song, “Another One Bites The Dust.”



Although most have made their profiles and posts private now, you can still see entrenched views on [REDACTED] Facebook page:



Siobhan Thomas likes Mandatory Life Sentences for Pedophiles & Child Molesters, Death for Child Killers. on Causes.
Sep 12, 2010 · 🌐

When Plaintiffs visited SATF on June 30 and July 1, 2021, under *Clark*, we learned that [REDACTED] were still working at the institution. Headquarters staff at the institution with us assured us that they would be removed from the institution. We do not know why they were not immediately placed on leave. This conduct would not be tolerated in any professional workplace, and it should not be tolerated in CDCR.

Defendants recently produced the investigation file (21-320) related to Plaintiffs' May 2021 letter. According to the produced documents, Central Intake rejected three subjects ([REDACTED], [REDACTED], and [REDACTED]) for investigation on the basis of no misconduct. The flawed reasoning used by the OIA is the same that we have seen for years – investigators give the narrowest possible interpretation of the misconduct, which would require the least investigation (or no investigation, as in this case), and reject the inquiry. Here, for example, during the local inquiry, [REDACTED] wrote: “[REDACTED] posted, ‘I get to see him today in asu lol.’ It is known that lol stands for ‘Laugh Out Loud.’ It is unknown if [REDACTED] made the statement ‘lol’ in response to the murders or not. [REDACTED] made the statement, ‘I don’t think you work at satf, do you? I don’t recognize you.’ The statement at face value doesn’t violate policy or procedures. [REDACTED] posted in response to [REDACTED] wherein she posted, ‘she’s validated.’ The statement at face value doesn’t violate policy or procedures.” The investigator ignored entirely the offensive context in which those comments were made (a video post rejoicing in the murders of class members at SATF), the fact that it disclosed the housing location of an incarcerated person, and the fact that staff have a duty to report misconduct by others.

The comments are inflammatory, jeopardize the safety and security of the prison, and place incarcerated people, particularly those with underlying sex offense convictions, at great risk of serious harm or death. These comments constitute multiple violations of the CDCR Disciplinary Matrix, including but not limited to discourtesy toward inmates; endangering self, fellow employees, and inmates; disruptive, offensive, or vulgar conduct which causes embarrassment to the Department; failure to observe and perform within the scope of training; improper transmittal of confidential information; and intentional failure to intervene or attempt to stop misconduct by another employee. *See* DOM § 33030.19; Gov’t Code § 19572(t) (“Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person’s employment.”); *see also* Memorandum from Kathleen Allison,

Secretary, and J. Clark Kelso, Receiver, Implementation of Social Media Policy and Required Training (May 28, 2021) (“[A]ny staff member or contracted employee who makes irresponsible or unethical comments, posts, or other online interactions reflecting discredit on themselves or the department, either on or off duty, could still subject that staff member to adverse disciplinary action, up to and including termination. Whether you are sworn or non-sworn, your status as an employee of the department makes you a role model for correctional excellence and you are held to a high-level of professionalism, respect, and compassion at all times.”); *cf.* Letter from Gay Grunfeld, Plaintiffs’ Counsel, to J. Clark Kelso, Receiver, et al., Plaintiffs’ Staff Misconduct Motions in Armstrong, and the Duty of Mental Health and Medical Staff to Report Violence Against People with Disabilities at 5 (July 27, 2020) (raising concerns regarding “accountability of healthcare staff and whether adequate channels and support are available to allow and require clinical staff to safely report any misconduct that they observe”).

We look forward to the Court Expert’s investigation into these important matters.

* * * * *

We hope this information is helpful in your investigation. Please let us know if we can be of further assistance.

Dated: December 8, 2021

By: /s Rita K. Lomio

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EXHIBIT E

PLAINTIFFS’ SUPPLEMENTAL WRITTEN SUBMISSION TO COURT EXPERT
RELATED TO COURT ORDER REGARDING ALLEGATIONS OF
MISTREATMENT OF *ARMSTRONG* CLASS MEMBERS AT SATF

January 7, 2022

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APPENDIX

INTRODUCTION

Plaintiffs visited SATF on December 14-17, 2021, to examine whether people with disabilities are being discriminated against through the RVR process and whether D/deaf people are receiving the accommodations they need to meaningfully participate in prison programs. We reviewed various documents, interviewed 59 class members, and interviewed staff.

In this letter, we provide an overview of our preliminary findings and concerns that relate to the Court-ordered investigation into allegations of mistreatment of *Armstrong* class members at SATF. This is not a comprehensive list of our disability-related concerns. We believe some concerns can be addressed directly by the institution, and we will send a letter outlining those concerns separately. There also are a number of disability-related allegations we still are evaluating, and for which we need to review additional documentation. In addition, several class members feared retaliation and would not let us report their allegations.

At the outset, we note that, through our review of investigation files as part of the quarterly production, we identified a number of incomplete and inadequate local, AIMS, and OIA investigations that appeared to be weighted heavily in favor of staff. *See, e.g.,* Plfs.' Written Submission at 53-55 (Dec. 8, 2021). Investigations were improperly delayed, ignored substantive allegations, discounted the accounts of incarcerated people, and failed to address clear dishonesty in staff accounts.

We found similar evidence of bias against incarcerated people in the RVR process at SATF, not only by the staff person initiating the RVR, but also by the sergeants who approved the RVRs, hearing officers who found class members guilty, and chief disciplinary officers who approved the completed RVRs.

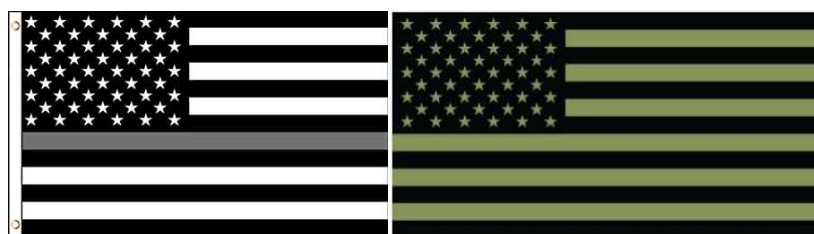
Unfortunately, we saw visual evidence of this as well. On December 17, we visited the Investigative Services Unit ("ISU") office at SATF. The ISU is currently responsible for investigating allegations of staff misconduct, as well as allegations of staff non-compliance with ADA policies that are not routed through AIMS. We saw a large Blue Lives Matter flag, approximately 3 feet by 5 feet, prominently displayed on the wall of the ISU office, in clear view of anyone who entered the office. (Staff removed the flag before we left the office, presumably in response to us being there.) We also saw a Thin Gray Line flag and a print of a green and black tactical flag in one of the individual ISU offices.

It is deeply disturbing that the very people in charge of investigating allegations of staff violations of CDCR policy are so blatantly disobeying it themselves, even after the attention placed by the Secretary, Inspector General, and others on this very issue after we raised it after our visit to SATF in May 2021, and we were assured by the Secretary

and Warden in subsequent meetings that it had been addressed. *See* Plfs.’ Written Submission at 5 (Dec. 8, 2021). The continued, prominent display of these flags suggests a bias against incarcerated people by the very people charged with investigating allegations of staff misconduct against them and suggests that an ongoing and deeply-rooted lack of objectivity persists at SATF.

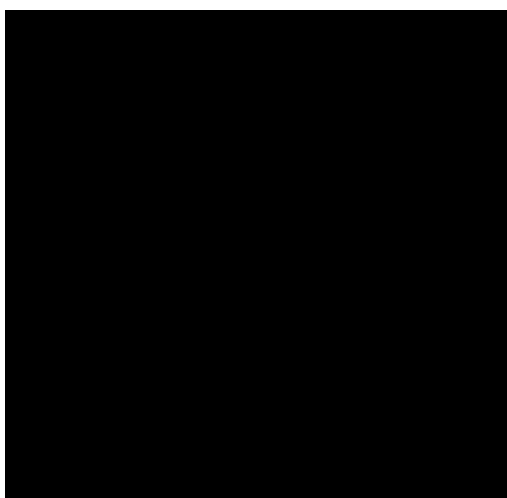


[back right wall]



[inside office]

In addition, on the first day of the tour, we saw an officer wearing a [REDACTED] [REDACTED] resembling [REDACTED] discussed in the Bishop Report, which identified non-uniform attire worn at RJD as a potential indication of participation in the “[REDACTED] [REDACTED] [REDACTED]



See J.L. Bishop, Associate Warden, California Institution for Men, to Kimberly Seibel, Associate Director, Findings of Inmate Interviews at Richard J. Donovan Correctional Facility, December 4-5, 2018 at 5, 12 (Dec. 10, 2018) (noting that incarcerated people at RJD reported that yard staff who wore [REDACTED] identified as “[REDACTED],” and recommending that “[c]ustody supervisors should be charged with enforcing uniform policy, to include disallowing non-approved apparel to be worn with the uniform (e.g., [REDACTED])”).

DISABILITY ACCOMMODATIONS

1. Whether Class Members Are Being Treated Disrespectfully When Seeking Accommodations (Category 2)

We continue to receive reports that healthcare and custody staff treat people with disabilities disrespectfully, including when they seek disability accommodations. This makes it less likely that people will ask staff for help. *See generally Armstrong v. Newsom*, No. 94-CV-02307 CW, 2021 WL 933106, at *4 (N.D. Cal. Mar. 11, 2021) (finding that class members stopped asking for disability-related help due to staff misconduct).

This type of unprofessional behavior by staff also can escalate into more serious altercations, including those with disciplinary consequences that can extend prison terms and that could have been avoided if staff had responded initially to class member requests with respect and professionalism. For example, [REDACTED], DPM, DPV, E4, reported that while housed in E1, the control officer typically did not close cell doors for three to five minutes after opening them. Mr. [REDACTED] was concerned because, due to his significant vision disability, he was unable to see if someone entered his cell and stole his property during this time. He told us that he had politely asked the control officer four or five times in June 2021 if he would accommodate his disability and close his door more promptly. The officer refused to do so, and Mr. [REDACTED] was later issued an RVR for “Disrespect w/out Potential for Violence/Disruption,” after he became so frustrated by his inability to obtain that accommodation that he used profanity. *See Log No. 7101396.*

a. Healthcare Staff

- [REDACTED], DPW, E1, reported that, on June 2, 2021, when she was in the clinic to get a replacement wheelchair, Nurse Puebla was rude and threatened to give her an RVR after Ms. [REDACTED] did not take off her beanie. When Ms. [REDACTED] tried to explain that she had never been asked to remove her apparel by a nurse before, and that custody staff had not asked her to remove her beanie, an officer in the clinic told her to “shut up” and leave the clinic. As a result, Ms. [REDACTED] was not able to get her replacement wheelchair.

- [REDACTED], **DPW, DD2, F3**, reported that while on Facility E in around June 2021, a nurse told him to leave pill call because, due to his disability, he was unable to read a sign with several lines of text about the process for taking prescribed suboxone. He reported that when the nurse told him to read the sign and he responded that he could not, the nurse continued to insist that he read one of the lines. When he explained that he is DD2 and does not know how to read or write, the nurse asked him, “What is that?” (referring to his DDP designation), then told him, “Leave, leave,” and rudely shooed him away.
- [REDACTED], **LD, C5**, reported when patients have questions about their medications, nurses respond with, “Shut up!” or “Just take your meds and leave.” Mr. [REDACTED] reported that one time, he struggled to pick up his suboxone strip, and instead of helping him, the nurse threw the strip on the ground.

b. Custody staff

- [REDACTED], **E5**, who has incontinence, reported that officers in Building E5, particularly the regular Third Watch tower officer, tell her that “there is no such thing as an incontinence shower.” She reported that she has consistently been denied showers upon request after toileting accidents. She reported that officers have mocked her or made disparaging comments regarding her attempts to access the shower.
- [REDACTED], **DLT, D4**, was involved in a physical altercation with another person on November 1, 2021, around approximately 7:50 - 8:45 p.m. Custody staff, including Officers McPhetrdige and Ferrer, responded to the scene. As they prepared to cuff him, Mr. [REDACTED] requested that they do so in accordance with his front cuffing chrono, which is an accommodation for his upper extremity disability.¹ One of the officers then called him a “liar,” and another officer forcefully pulled Mr. [REDACTED]’s hand and cuffed it behind his back. Mr. [REDACTED] was restrained in this manner for approximately an hour, until medical staff ordered that he be re-cuffed in the front of his body. Mr. [REDACTED]’s shoulder was reportedly dislocated as a result of the force used by staff. Mr. [REDACTED] reported that [REDACTED], witnessed the incident.

¹ According to the electronic medical record, Mr. [REDACTED] had an 1845/7410 dated August 21, 2020, which listed a special cuffing accommodation. There also are 1845/7410s dated June 29, 2021, and October 20, 2021, in the medical record, which do not list that accommodation. Based on our review of the medical record, it is not clear what the basis was for removal of the accommodation from the 1845/7410, whether Mr. [REDACTED] was informed of the change, or whether the removal was an error.

- [REDACTED], DNM, DNH, DPV, G2, is an ADA worker and reported that he had assisted people with disabilities file CDCR 1824s regarding equal access to canteen. *See, e.g.*, Log Nos. SATF-G-21-01705, SATF-G-21-01706 & SATF-G-21-01731. He also filed a CDCR 1824 in September 2021, reporting that the anti-retaliation posters in his unit had been taken down. *See* Log No. SATF-G-21-01504. Incarcerated people informed him afterwards that officers were referring to him as a “snitch” and were spreading rumors that he had “fucked up” the canteen process for people, and that “you got [REDACTED] to thank for it because he filed all those complaints.” In addition, Mr. [REDACTED] reported that an officer approached him and informed him in confidence that Field Training Sergeant Flores referred to him as “a problem” on or around December 10, 2021.
- **A class member on Facility F**, who asked to remain anonymous due to fear of retaliation, reported that on December 14, 2021, he witnessed officers mocking someone who had a fecal incontinence accident after walking to the dining hall for breakfast and while standing in line. The officers reportedly loudly mimicked writing a report about the individual’s toileting accident, making comments like, “It was approximately four inches in length.” The class member could not recall the names of all officers, but believes that Officer Fernandez may have been present.
- **A class member housed in Building A2**, who asked to remain anonymous due to fear of retaliation, reported that prior to the implementation of body-worn cameras, officers regularly made inappropriate comments regarding conviction offenses. For example, after searching for someone, officers would say, “I bet we would’ve found you faster if we put out an Amber Alert on you.” The class member described one officer in particular, Officer [REDACTED] on Second Watch, who made regular announcements over the PA system in the unit discouraging people from wearing masks and mocking COVID-19 testing with racist accents. He reported that while overt staff misconduct has lessened since implementation of body-worn cameras, officers still make inappropriate comments. Officer [REDACTED] for example, who works regularly Tuesday through Saturday, reportedly makes racist comments over the PA system almost daily in the morning on Second Watch. For example, referring to immigrants, he says, “Your friendly government wants to remind you to stay away from aliens.”

2. Whether Class Members Are Discriminated Against on the Basis of Their Disabilities (Category 3)

a. Failure to Provide Computer-Assisted Real-Time Transcription

There is a very small population statewide of people who are deaf but do not know sign language. SATF houses at least six such class members. These class members are

particularly isolated, marginalized, and excluded from prison programs, services, and activities. We have reported for years that Defendants have failed to offer appropriate disability accommodations for them. *See, e.g.*, Letter from Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Accommodations for Deaf and Hard of Hearing Class Members Who Do Not Know Sign Language (Nov. 27, 2019).

Over two years ago, we asked that [REDACTED], DPH, be provided computer-assisted real-time transcription ("CART") so he could practice his faith in fellowship and participate in other prison programs, including veteran's support groups and substance abuse recovery groups. *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], SATF (July 26, 2019); Letter from Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], SATF (Feb. 25, 2020). "Real-time captioning (also known as computer-assisted real-time transcription, or CART), is a service . . . in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language." U.S. Dep't of Justice, ADA Requirements: Effective Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>.

Mr. [REDACTED], who is 63 years old and has been incarcerated for over a decade, has **never** been provided CART in prison, even though SATF ADA staff agreed that CART "would be effective" and proposed no equally effective alternative. *See* Letter from Alexander Powell, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs' Counsel, [REDACTED] at 2 (Sept. 25, 2020). Since then, Defendants have given Plaintiffs and the Court empty promises.² *See, e.g.*, Doc. 3266, Joint Case Status Statement at 25 (May 17, 2021) (Defendants' Statement) ("Defendants continue to request quotes to add this feature for the next fiscal year beginning July 1, 2021."); Doc. 3296, Joint Case Status Statement at 18 (July 15, 2021) (Defendants' Statement) ("now that funding has been approved, OCE continues to request quotes to add this feature for the current fiscal year").

We visited Mr. [REDACTED] again last month. Over the last two years, he has retreated further into himself. He has given up trying to enroll in any programs, because his

² Defendants also purport to be trying a "proof of practice" at a few institutions, not including SATF, to see if automated speech-to-text recognition software could be used instead of CART. Defendants' choice of institutions and settings is hard to understand. For example, they propose to evaluate use of the software during due process encounters at San Quentin, an institution not designated for deaf non-signers. And now they say they will not even begin the "proof of practice" until pandemic-related restrictions are lifted. That is simply unacceptable. They have an obligation to provide CART now.

disability will not be accommodated. The last time he tried to sign up was for the veteran's support group two years ago that he could not understand because of his deafness. He lives a tremendously isolated life in prison, and is almost completely unable to communicate with his peers and with staff, and lacks family ties. He is, in his words, "by myself in a silent world." That a person with a serious disability, in this day and age, can be so marginalized and callously disregarded, and that Defendants persist in refusing to provide the minimal disability accommodation required years after being placed on notice of the problem, is nothing short of shocking.

b. Failure to Provide Sign Language Interpretation

Failure to provide sign language interpretation at SATF has been the subject of multiple court orders and significant attention by the parties in recent years. Unfortunately, during a recent tour, we learned of two recent events where no interpreter was provided and that placed D/deaf people at risk of harm.

First, no interpreter was scheduled for the three-day Alternatives to Violence Project (AVP) workshop scheduled for November 9-11, 2021. As a result, the workshop was canceled for all participants. This exact problem has been the subject of multiple advocacy letters and tour reports since 2017.³ Three years ago, we were told that a specific procedure had been developed for AVP and related events to ensure that Deaf class members at SATF had the opportunity to participate and would be provided with interpreters. In particular, we were told that as soon as AVP or another similar event was scheduled, the ADA office would schedule interpreters. The interpreters would be

³ See, e.g., Letter from Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, October 2017 *Armstrong* Monitoring Tour at SATF, Issues Related to Deaf Class Members at 4 (Nov. 7, 2017); Letter from Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Failure to Provide Sign Language Interpreters at SATF at 3 (June 19, 2018) (Mr. ██████████, submitted an 1824 requesting an interpreter for AVP and the RAP responded, "VRI services are not available for this group because the sponsor is not a state employee and is not allowed to utilize the state computers or laptops"); *id.* at 5-6 (no interpreter was provided for AVP for two class members on Facility B, either in-person or through VRI); Letter from Rita Lomio, Plaintiffs' Counsel, to Heather McCray and Jennifer Neill, Board of Parole Hearings, Request for Decision Review, Administrative Review, and New Board Hearing for Class Member ██████████, DPH, DPV, at SATF at 10 (July 31, 2018) ("Mr. ██████████ also explained that he and another deaf class member 'tried to sign up for AVP about three weeks ago and they had to put us out cause an interpreter wasn't available.'"); June/September 2018 SATF *Armstrong* Monitoring Tour Report (DPH-SLI) at 16 (deaf class member on A yard reported that an interpreter was present only for two out of three days of AVP).

canceled only if the final attendance list, which we were informed often is not complete until a day or two before the event, had no class members who use sign language.

However, that procedure does not appear to be written anywhere (including in LOP 497) and does not appear to be operating. It is not clear to us where and why the breakdown occurred. “Neither the ADA office nor SATF’s staff SLIs were aware of this class and there were issues with CRM staff being available to log into and use the VRI.”⁴ Email from Tamiya Davis, CDCR Office of Legal Affairs, to Laura Bixby, Plaintiffs’ Counsel (Nov. 14, 2021). Given the history of deaf people at SATF being harassed and even assaulted when others believe they are losing programs or privileges because of them, this failure to facilitate basic access is particularly concerning.

Second, a Deaf class member reported that a graduation ceremony, which had been long-delayed because of COVID-19, was scheduled for a large group of students on November 12, 2021. An interpreter was not scheduled or available for the graduation ceremony. As a result, the ceremony was canceled for all participants because the institution failed to comply with its ADA obligations, which reportedly caused immense anger and resentment towards Deaf class members and placed them at risk of harm.

c. Disability Discrimination in the RVR Process at SATF

We continue to identify serious problems with the RVR process at SATF. In some cases, the RVRs related directly to a class member’s disability. In other cases, the RVRs impede class members’ willingness to request help from staff. The RVRs span a wide range of program areas, but the core problems are the same: inadequate oversight, bias in the review and adjudication process, and failure to consider the class member’s account or disability needs. We provided several examples of flawed and discriminatory RVRs in our initial submission. *See* Plfs.’ Written Submission at 25-27 (Dec. 8, 2021). In this section, we provide additional examples related to standing count and education. Other sections of this written submission highlight concerns with RVRs related to healthcare access and ability to report safety concerns.

i. Standing Count

In 2020, Plaintiffs wrote to Defendants three times stating that SATF’s standing count policy, which limits disability accommodations to people with DPW codes, violated the plain language of the *Armstrong* Remedial Plan. *See* Letter from Rita Lomio, Plaintiffs’ Counsel, to Nicholas Meyer, CDCR Office of Legal Affairs, Standing Count

⁴ As previous ADA staff at SATF have recognized, AVP is an important event that requires use of a team of in-person interpreters, and not video remote interpretation (“VRI”), to allow Deaf people to have equal access to its contents, which include a mix of speakers and break-out group sessions.

Procedures at SATF (Nov. 5, 2020); Letter from Rita Lomio, Plaintiffs' Counsel, to Nicholas Meyer, CDCR Office of Legal Affairs, ██████████, DPO, DPV, SATF (Sept. 9, 2020); Letter from Rita Lomio, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, ██████████, SATF (May 11, 2020).

Plaintiffs repeatedly requested to meet and confer over the matter, but, 484 days later, have received no response from Defendants, and SATF policy remains unchanged. *See* LOP 403, Disability Placement Program at 54 (rev. Oct. 2021).

This has had serious consequences for class members at SATF. For example, ██████████, G2, was issued and found guilty of multiple RVRs after he failed to stand for count. At that time, he was misclassified as DPO, but in fact was (and is) a full-time wheelchair user physically incapable of standing for count. *See* Letter from Rita Lomio, Plaintiffs' Counsel, to Nicholas Meyer, CDCR Office of Legal Affairs, Standing Count Procedures at SATF (Nov. 5, 2020). He reported that when he told officers on G yard that he could not stand due to his disability, they repeatedly were rude, hostile, and dismissive. Officer Campos told him, "If you are not [DPW] you will stand or I will write you up!"

Officer Campos in fact did initiate a counseling-only RVR against Mr. ██████████ for not standing for count on October 9, 2020, which was approved by Sergeant Ibbs. *See* Log No. 7036061. He was issued an administrative RVR for "Disobeying an Order" by Officer Campos the very next day when he again did not stand for count (because he physically could not). *See* Log No. 7037001. Two weeks later, the yard captain visited Mr. ██████████'s provider, who wrote in the medical record: "was approached to changed [sic] pt's classification to DPW from DPO to eliminate getting written up for not standing up during count. changed." The provider updated Mr. ██████████'s DPP code without evaluating him. It does not appear that any disciplinary action was taken against the officers who acted unprofessionally and denied Mr. ██████████'s request for a disability accommodation during standing count, or the staff who reviewed the RVRs and failed to consider whether they constituted disability discrimination. The institution also failed to review and revise its RVR processes to ensure that people's disabilities were appropriately considered.

In addition, ██████████ ██████████ ██████████, DPM, E1, was issued an RVR by Officer ██████████ on July 25, 2021, for refusing to stand during count. Mr. ██████████ grievance about this RVR is included in Defendants' staff misconduct document production at SATF DAI-1559. According to Mr. ██████████ he requested that Officer ██████████ accommodate him by allowing him to sit during count due to disability-related back pain. When Officer ██████████ denied him that accommodation, Mr. ██████████ remained standing. Nonetheless, Officer ██████████ issued him a false RVR. Even though Mr. ██████████'s cellmate at the time confirmed to investigators that Mr. ██████████ was standing during the count, SATF failed to confirm Mr. ██████████ allegations.

ii. Education

Plaintiffs also are concerned about the heavy use of RVRs by education staff against people with disabilities. Between January 1 and August 17, 2021, education staff at SATF initiated 266 RVRs against incarcerated people, and a disproportionate number of them (29%) were against people with documented disabilities. *See* Appendix. (On September 1, 2021, only 16% of students at SATF had DPP codes.) Several teachers were responsible for a particularly large number of RVRs against their students, as seen in the table below.

Instructor	Yard	Total	Total DPP
	A	19	14
	B	19	9
	B	25	19
	C	74	5**

* Mr. [REDACTED] also initiated four RVRs against his students between August 17 and December 1, 2021.

** As of August 25, 2021, only 6% of people housed on Facility C had DPP codes (34 of 599). And according to assignment data from September 1, 2021, fewer than 1% of students on C yard had a DPP code (just one student out of 107).

People who teach in prison have a challenging job. Their students often have had lifelong challenges with, and trauma related to, education. People with disabilities in particular require additional time, support, accommodations, and understanding from their already busy teachers. Education staff generally should not initiate RVRs against their students, or should do so only after documented efforts to resolve the issue through other means, including meaningful efforts to accommodate disabilities and create a positive learning environment, and after review by SATF management. This does not appear to be happening at SATF. As noted previously, until Plaintiffs raised the issue in September 2021, the Principal and Vice Principal at SATF were not aware of how many RVRs had been initiated by their staff and that some teachers initiated far more than others. They said that they do not ordinarily review such RVRs. In addition, in December 2021, Mr. [REDACTED] stated that he initiates RVRs automatically any time a student misses a class or an assignment. (After we raised concerns in September 2021 with RVRs initiated by SATF teachers, ADA staff at SATF gave an RVR training to teachers. However, Mr. [REDACTED] told us in December 2021 that he did not attend that training.)

Oversight also is important because use of RVRs against students may be evidence of high stress and burnout among teachers: “teachers who experience high stress are more likely to resort to punitive strategies when managing challenging behavior,” and a “teacher’s inability to de-escalate situations reinforces student misbehavior, which in turn, further exacerbates symptoms of teacher stress.” *See* S. Kim *et al.*, Impact of

Trauma-Informed Training and Mindfulness-Based Social–Emotional Learning Program on Teacher Attitudes and Burnout: A Mixed-Methods Study, *School Mental Health* 13, 55-56 (2021). Those teachers may require additional support, training, and resources to successfully manage their classes and deliver accessible education to students with disabilities.

Without adequate training, teachers may fail to identify the underlying causes of disruptive behaviors, despite the students’ attempts to convey distress through these behaviors. Teachers may respond to these misbehaviors by using control-focused, disciplinary actions that may be triggering for adversity-affected students, which further aggravates their symptoms of chronic stress.

Id. at 56 (citation omitted).

After we raised concerns with RVRs initiated by teachers at SATF, Defendants stated that “both education and ADA staff reviewed the RVRs and found that they were appropriate.” Email from Tamiya Davis, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs’ Counsel (Nov. 29, 2021). But it appears they did so without speaking to the students themselves and hearing their side of the story. If they had spoken with the students, they may have better understood the problem. We provide a few examples below based on our interviews with students with disabilities.

- **Teacher ██████████ (Continuing Education and GED)**

██████████, DPH, G3, a 43-year-old Deaf man, received a counseling-only RVR on April 30, 2021, from his Continuing Education instructor, ██████████, for “Behavior which could lead to violence.” *See* Log No. 7084673. The instructor summoned Mr. ██████████ to the program area to inform him that new DVDs with closed captioning were available, but did not arrange in advance for a sign language interpreter, improperly viewed Mr. ██████████ attempts to communicate in American Sign Language as aggressive, deployed his personal alarm after Mr. ██████████ did not respond to his “loud verbal command,” threatened to remove Mr. ██████████ from the college program, and later initiated the RVR against him for “Behavior which could lead to violence,” which was upheld by the reviewing sergeant. Plaintiffs sent a letter to Defendants with more information about failures of the RVR process in this instance. *See* Letter from Laura Bixby, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, ██████████ ██████████ ██████████, DPH (SLI) (Dec. 22, 2021).

██████████, DPW, D2, 58 years old, received a counseling-only RVR (Log No. 7057772) for “Failure to meet program/work expectations” from Mr. ██████████ a teacher, on January 20, 2021. (The RVR says: “This RVR was written on

behalf of ██████, PRNR ██████, GED Teacher.”) Mr. ██████ alleged that when he went to Mr. ██████’s cell to collect the assigned homework, Mr. ██████ stated he did not have the homework because he had already turned it into Ms. ██████. Mr. ██████ alleged that there was no signature from Ms. ██████ indicating the homework was collected. Mr. ██████, however, reported that Mr. ██████ had asked him to turn in “the homework I [Mr. ██████ assigned to you,” which was confusing because Mr. ██████ had not yet assigned any homework since taking over for Ms. ██████ in January. At the time, Mr. ██████ had only been assigned homework from his previous teacher, Ms. ██████. Mr. ██████ stated that he did not have any assignment from Mr. ██████ and did not know what he was talking about. Mr. ██████ then said that Mr. ██████ would be issued an RVR for failing to complete his assigned homework. Mr. ██████ did not realize until later that Mr. ██████ was talking about the homework Ms. ██████ had assigned him before she left. Because the RVR was counseling only, Mr. ██████ was not able to give his version of events before Sgt. ██████ reviewed the RVR. Mr. ██████ reported that he tried to file a 602 about the incident and RVR, but his 602 kept getting returned unprocessed. Since then, Mr. ██████ has been cut from education due to what he believes are programming shortages.

- **Teacher ██████ (ABE I)**

█████ ██████ ██████, DPM, A1, 63 years old, received two RVRs (Log Nos. 7087512 and 7129838) from Mr. ██████ his ABE I teacher, in May and October 2021 for “Disobeying an Order” and “Harassment of Another Person.” In the first RVR, Mr. ██████ alleged that Mr. ██████ threatened him after denying Mr. ██████ request to go to canteen during class. Mr. ██████ however, denied ever threatening Mr. ██████ and reported that he had first explained to Mr. ██████ that he had missed canteen the last time because he was in the hospital and really needed to make that week’s canteen so he would have access to snacks to manage his diabetes. He reported that Mr. ██████ said this was not allowed, but permitted him to go ask the education officer, so Mr. ██████ did just that. The education officer was busy at the time, so Mr. ██████ returned to class. Upon doing so, Mr. ██████ reported that Mr. ██████ said he would be written up for leaving class. During his RVR hearing, Mr. ██████ tried to explain all this, but the Senior Hearing Officer (SHO) told Mr. ██████ that he would still be found guilty because “this is prison and I can’t believe you 100%.” Instead of dismissing the RVR, it was dropped to counseling-only for “Failure to meet program/work expectations.”

In the second RVR, Mr. ██████ alleged that Mr. ██████ “was harassing him.” Log No. 7129838. Mr. ██████ however, reported that he had simply requested to talk to Mr. ██████ supervisor. Mr. ██████ was reportedly offended at the request and wrote up Mr. ██████ for harassment. Mr. ██████ asserts that was simply trying to talk to someone who could resolve their differences. The RVR was dismissed, and the hearing officer wrote that Mr. ██████ “does not clearly articulate how he was harassed.”

According to Mr. [REDACTED] the hearing officer commented that the RVR was “ridiculous” and that it sounded like Mr. [REDACTED] had a personal issue with Mr. [REDACTED] but there was no evidence of harassment.

Mr. [REDACTED] reported that he dreads going to class every day because of Mr. [REDACTED] who fosters a culture of fear and intimidation. Mr. [REDACTED] reported that Mr. [REDACTED] will threaten to issue an RVR to anyone who challenges him. Mr. [REDACTED] ended by saying that he tries his best to advance in his education but cannot do so in an environment like the one Mr. [REDACTED] has created.

[REDACTED], DPM, E1, a 63-year-old monolingual Spanish speaker, was issued a serious RVR for “Behavior which could lead to violence” on August 25, 2021. *See* Log No. 7115064. Mr. [REDACTED] the reporting employee, alleged that Mr. [REDACTED] disrupted an ABE I class by complaining that he was in pain and, when informed that he would be written up for disobeying an order not to disrupt class, “furiously got up and banged the desk with his close[d] fist.” Mr. [REDACTED] further alleged that when an ADA caregiver arrived to escort Mr. [REDACTED] out of the classroom, Mr. [REDACTED] “began to walk around with fist clenched saying in Spanish that he was not going to go back.” Mr. [REDACTED] however, reported that Mr. [REDACTED] misstated Mr. [REDACTED] actions and the reasons for them. Mr. [REDACTED] reported that five minutes into class with Mr. [REDACTED] on August 25, he had a sharp pain on the left side of his body. (Mr. [REDACTED] reported that had been experiencing similar, sporadic pains for the previous two months.) When he asked Mr. [REDACTED] to be escorted to the clinic, instead of letting Mr. [REDACTED] out to the clinic or alerting medical staff, Mr. [REDACTED] told Mr. [REDACTED] that he should have taken care of his medical concerns before he got to class. Mr. [REDACTED] tried to explain that there was no way he could have known his symptoms were going to present themselves during class. Eventually, the officer in education took Mr. [REDACTED] to the clinic to be seen. However, the clinic was busy and was not able to see Mr. [REDACTED] right away, so he was taken back to class. When Mr. [REDACTED] arrived to class, Mr. [REDACTED] said in Spanish, “Sit down and don’t bother me.” Mr. [REDACTED] tried to explain to Mr. [REDACTED] that his medical emergency warranted him saying something in order to go to medical. Upset at the circumstances, Mr. [REDACTED] attempted to get up and used his desk to support himself in his wheelchair, which had started to roll backwards, but denies that he “furiously . . . banged the desk with his close[d] fist.” Mr. [REDACTED] reported that Mr. [REDACTED] then immediately hit the alarm and had Mr. [REDACTED] escorted out of class. Mr. [REDACTED] denied ever walking around with his fists clenched. Mr. [REDACTED] was disturbed by the way his RVR hearing was conducted, stating that the hearing lieutenant said he was guilty after only about four minutes. Mr. [REDACTED] noted that he only said about two or three words during the hearing. Sgt. [REDACTED] approved the RVR, Lt. [REDACTED] found Mr. [REDACTED] guilty of the RVR, and AW Marsh approved the completed RVR.

Mr. [REDACTED] is particularly worried about this RVR because he has not received any RVR in ten years and is going in front of the Board of Parole in June 2022. Mr. [REDACTED]

believes the RVR was completely unjust and inappropriate and is concerned that his chances at parole are now ruined because of this RVR. Mr. [REDACTED] reported that the RVR “messed [him] up psychologically because it was not fair.” He said that, to this day, it still bothers him that he got written up for trying to ask for medical help.

- **Teacher [REDACTED] (ABE I)**

[REDACTED], **DPM, B1**, 45 years old, was issued a counseling-only RVR (Log No. 7086872) for “Absent from Work Assignment” on May 13, 2021. ABE I Instructor [REDACTED] the reporting employee, alleged that Mr. [REDACTED] failed to report at 8:15 am for his job assignment that began at that time. Mr. [REDACTED] however, reported that on the morning of May 13, 2021, he was scheduled for a blood draw. His building officer reportedly made an announcement that persons scheduled for blood draw and other medical appointments should not report to their education or work assignments. While waiting for his blood draw at the clinic, Mr. [REDACTED] heard over the facility’s PA system that he was called to education, and he was issued the RVR shortly thereafter. After explaining the situation to a lieutenant, who confirmed that building officers had instructed Mr. [REDACTED] not to report to education, Mr. [REDACTED] was told that the RVR would be voided. However, according to the documentation produced by Defendants, the RVR is listed as “Final/Concluded” as of August 2021.

Mr. [REDACTED] was issued a second RVR (Log No. 7088000) from Instructor [REDACTED] for “Refusal to Perform Assigned Duties” on May 17, 2021. Mr. [REDACTED] alleged that Mr. [REDACTED] failed to arrive on time for his job assignment, and, following his late arrival, left early after expressing irritation that Mr. [REDACTED] had written him up previously for attending a medical appointment. Mr. [REDACTED] however, reported that he does not have sufficient time to prepare for his 8:00 a.m. class because of his mobility disability. He is reportedly often last to shower and use the restroom, which, combined with delays in morning chow, cause him to be late to class. He reported that on the day in question, he spoke with the education officer and requested priority access to the bathroom so that he could arrive on time to education; the officer responded by denying his requested accommodation and threatening to write him up. When he arrived to class, at approximately 9:00 a.m., he explained his situation to Mr. [REDACTED] and requested that he be placed in a later class group. Mr. [REDACTED] refused and wrote him up. Sgt. [REDACTED] approved the RVR, and Sgt. [REDACTED], failing to consider the role of Mr. [REDACTED] disability in the showing up late for work, found Mr. [REDACTED] guilty of the RVR. AW Iversen approved the completed RVR.

[REDACTED], **DNM, DD1, B2**, 57 years old, received an RVR for “Failure to Meet Work Expectations” on October 5, 2021, from his ABE I teacher, Mr. [REDACTED]. See Log No. 7128381. Mr. [REDACTED] reported that in the months preceding the RVR, his instructor repeatedly denied him disability accommodations by directing him to write without assistance, then becoming argumentative when he asked for

accommodation; Mr. ██████ has an upper extremity disability that prevents him from writing even his full name. *See* Outpatient Progress Note (Mar. 4, 2021) (“MCC reflects his upper extremity (hand) restrictions with respect to lifting and pulling and making an x in place of his signature.”).⁵ Mr. ██████ reported that, due to the conduct of the instructor and the clerks assisting him, he felt increasingly frustrated and hopeless that education staff would ever fully understand his disability and need for accommodation. Then, on October 5, he received an RVR from his instructor for using profanity and refusing to do work in the classroom or take his homework assignment when he left class. Although upset with the RVR, Mr. ██████ reported feeling hopeful that it would convince his instructor of his need for accommodation. However, because no hearing is conducted for Counseling Only RVRs like the one Mr. ██████ received, there is no indication that SATF staff heard or considered his account of his instructor’s long-standing dismissiveness towards his disability. He reported that his instructor continues to require him to write in class, and he feels certain that he will receive another RVR in the future.

██████████, **DPO, B2**, a 60-year-old class member with a TABE score of 03.2, has severe chronic pain that prevents him from sitting or standing for long periods of time, as well as bilateral carpal tunnel syndrome that makes it difficult for him to write, even with wrist support braces. Mr. ██████ reported that his ABE I instructor ██████ repeatedly threatened to issue him RVRs in 2020 for refusing to complete tasks he could not do due to his disability (for example, sitting for the TABE test despite severe pain). He reported that he asked his counselor several times to be removed from education due to his difficulty with sitting in class for long periods because of pain. However, he remained in education, and last year he received and was found guilty of four RVRs from the instructor, Mr. ██████ between January 5 and May 11, 2021. *See* Log Nos. 7055669, 7065957, 7076952, 7086605. Between the four RVRs, Mr. ██████ lost 45 days of credit and 30 days of yard privileges. He was finally removed from education after the fourth RVR and placed on C-Status for 45 days by committee action.

Mr. ██████ first received an RVR on January 5, 2021, when he refused to sign for his remote homework packet, and instead presented a chrono for “no use of left hand for repetitive work.” Log No. 7055669. ABE I Instructor ██████ charged him with “Refusal to perform assigned duties,” a serious offense, and claimed that he had been “accommodating him for an extended period of time even before the medical chrono was

⁵ Plaintiffs have previously raised concerns with the use of Medical Classification Chronos (“MCCs”) at SATF because non-medical staff cannot access them. *See, e.g.*, Letter from Rita Lomio, Plaintiffs’ Counsel, to Bruce Beland, CCHCS Office of Legal Affairs, and Tamiya Davis, CDCR Office of Legal Affairs, Inaccessible Housing of *Armstrong* Class Members at SATF and Use of Medical Classification Chronos to Document Disability Accommodations and DPP Codes (May 10, 2021). It appears that the use of an MCC to document Mr. ██████ disability accommodations may have contributed to his teacher’s failure to accommodate him.

issued, only asking him to read the material and only answer the questions in writing when he felt like he could.” Mr. ██████ pled not guilty because, as he explained at the hearing, “he is not refusing assignments, he is only able to sign and return them as incomplete.” Mr. ██████ was nonetheless found guilty of the included charge of “Failure to meet program/work expectations,” which was reduced to a counseling-only RVR. He was also referred to classification committee for unassignment at his request to “alleviate the issuance of RVRs based on his ability to complete his assignments on his own.” Sgt. ██████ approved the RVR, Lt. ██████ found Mr. ██████ guilty of the counseling-only RVR, and AW Baer approved the completed counseling-only RVR.

Mr. ██████ did not see committee before receiving another RVR from Instructor ██████ on February 24, 2021, again for the serious offense of “Refusal to perform assigned duties.” Log No. 7065957. Instructor ██████ reported that Mr. ██████ had submitted a blank homework packet to the education officer, and told the education officer that he would not be attending class due to back pain; he did not seek a lay-in despite the officer’s encouragement. Mr. ██████ however, reported that he has historically sought lay-ins, but that they are often either denied altogether or not long enough to adequately address his pain. At the hearing, Mr. ██████ again pled not guilty and stated, “I can’t write because of the pain and I can’t sit for a prolonged period of time.” He was found guilty of the included administrative charge of “Failure to meet program/work expectations,” based on the partial admission that he “did not complete his homework as tasked and did not attend his assigned class.” He lost 30 days of yard privileges. It is unclear what consideration, if any, the hearing official gave to Mr. ██████ explanation that he was unable to write and sit due to the pain. Sgt. ██████ approved the RVR, Lt. ██████ found Mr. ██████ guilty of the administrative RVR, and AW Jones approved the completed administrative RVR. Mr. ██████ was again referred to committee for program review and unassignment, and again reported that he did not see committee before receiving his next RVR.

On April 8, 2021, Instructor ██████ issued Mr. ██████ a third RVR for “Continued refusal to work or participate in a work/training program.” Log No. 7076952. Instructor ██████ reported that Mr. ██████ came to the education building to inform him that he would not be attending class because he was in too much pain. This time at his hearing, Mr. ██████ pled guilty because he was “in so much pain he is unable to sit for long periods of time.” He was found guilty and lost fifteen days of credit, but the imposed loss of yard and dayroom privileges were mitigated because, according to the hearing officer, “██████ does appear to be in some pain, he was wearing braces on both hands and stated he has problems writing. . . ██████ is reporting to school, but due to the constant pain he is unable to complete the whole school day.” The hearing officer referred Mr. ██████ for the third time, to committee for program review and unassignment, based on the observation that **“Inmate ██████ appears to be in pain and has attempted to seek medical attention with no avail. I informed ██████ he needs to continue to report and try his best.”** It is not clear why this hearing officer did not more fully consider Mr.

■■■■■ disability and medical needs prior to finding him guilty and removing credit. Sgt. ■■■■■ approved the RVR, Lt. ■■■■■ found Mr. ■■■■■ guilty of the RVR, and AW Jones approved the completed RVR.

Mr. ■■■■■ again did not see committee, and received his fourth RVR from Instructor ■■■■■ on May 11, 2021 for the serious offense of “Continued refusal to work or participate in a work/training program.” Instructor ■■■■■ stated that Mr. ■■■■■ did not report to education, and when his building was called, relayed that “I am refusing to attend I am in too much pain.” Mr. ■■■■■ pled guilty and explained at the hearing, “I was really hurting bad that day. The next day I went to the hospital.” Nonetheless, he was found guilty and lost 30 days of credit, in part because, in response to the hearing officer’s questions, he admitted to going to the dining hall and pill line on the day he refused to go to class. Sgt. ■■■■■ approved the RVR, Lt. ■■■■■ found Mr. ■■■■■ guilty of the RVR, and AW Iversen approved the completed RVR. Mr. ■■■■■ was again referred to committee for program review, unassignment, and consideration for placement on C-Status as a program failure “due to multiple Serious RVR’s within the required timeframe.” He finally went to committee, where he was unassigned and placed on C-Status for 45 days.

Mr. ■■■■■ who has been incarcerated since 1990, had a subsequent parole suitability hearing scheduled for this July 2021. He waived his right to the hearing, however, in part because of the RVRs he received from his instructor. He reported telling the Board about the RVRs and explaining the profound impact of his chronic pain, but shared his impression that “[t]hey don’t care about that. It’s not a concern of theirs.” Mr. ■■■■■ reports that he is not interested in being reassigned to education, even if accommodated, because his experience with Instructor ■■■■■ and the many officers involved in his RVRs left him with the impression that custody and education staff at SATF lack a fundamental understanding of or sympathy for chronic pain and disability. The guilty findings against Mr. ■■■■■ also call into question Defendants’ assertion during the parties’ September 1, 2021 meeting on credit-earning opportunities during the COVID-19 pandemic that no student should have been punished during the pandemic for failing to complete their written education assignments.

- **Teacher ■■■■■ (ABE II)**

■■■■■ ■■■■■ ■■■■■, DPM, E1, 69 years old with a COVID risk score of 6, was issued a counseling-only RVR after refusing to attend class because of his teacher’s lax COVID protocols. *See* Log No. 7096308. Before he received the RVR, Mr. ■■■■■ reportedly spoke with the instructor, Ms. ■■■■■ to express his concerns about COVID safety in the classroom, including that she did not wear her mask correctly and did not enforce mask compliance in the classroom. Ms. ■■■■■ did not address his concerns. When Mr. ■■■■■ did not report for class on June 7, 2021, Ms. ■■■■■ issued him an RVR for “Failure to Meet Program/Work Expectations.” The RVR clearly outlines his

concerns: “On May 26th Inmate ██████ stated, ‘I don’t feel comfortable and it is too stressful dealing with student attitudes and COVID so I don’t want to come to school anymore.’” *Id.* Instead of resolving his safety concerns (by complying with existing CDCR/CCHCS policy), she issued him an RVR. Sgt. ██████ then reviewed and approved the RVR.

- **Teacher ██████ (GED)**

██████████, DPO, C6, 55 years old, has received numerous write-ups from one GED instructor, ██████. On March 4, 2021, Ms. ██████ issued him an RVR for not completing his homework, stating to him that it was “no excuse” that his grandmother had recently died. Mr. ██████ however, reported that the death of his grandmother hit him hard and caused him to struggle for weeks with uncontrollable crying, lack of any appetite, and feelings of depression. He acknowledges that he had difficulty completing many tasks during this period of time, but reported that the instructor was not at all sympathetic. Sgt. ██████ approved the RVR, Sgt. ██████ found Mr. ██████ guilty of the RVR, and AW Hacker approved the completed RVR.

The next week, on March 12, 2021, Ms. ██████ issued Mr. ██████ another RVR (Log No. 7069494) for “Disrespect With Potential for Violence/Disruption” after he engaged in a verbal dispute with her. The RVR, which was served to Mr. ██████ on March 17, 2021, stated that Ms. ██████ was requesting his removal from the GED class. On this same day (March 17), Ms. ██████ issued Mr. ██████ another RVR (Log No. 7072305) for “Refusal to Perform Assigned Duties,” this time for not attending the very GED class from which she had requested his removal. Ms. ██████ acknowledged that Control Booth Officer ██████ informed her that Mr. ██████ had stated that he was not going to class “because he thinks they are removing him from the class,” yet still issued him the RVR because he was “still assigned to this class and is required to attend.” Mr. ██████ reported that he did not appear for the class because he had already been told that he was being removed from it, and did not understand why he was still required to attend; he also reported that he did not feel comfortable attending the class with this instructor. Sgt. Martinez approved this RVR, Lt. ██████ found Mr. ██████ guilty of the RVR, and AW Morales approved the completed RVR.

- **Teacher ██████ (GED)**

██████████, unverified LD, A2, 25 years old, received an RVR (Log No. 7096769) from GED Teacher ██████ on June 18, 2021. Mr. ██████ alleged that Mr. ██████ showed up to class late, complaining that he had been vomiting for the past two days and requesting to go to the medical clinic. Mr. ██████ then allegedly verified that after waiting to see the doctor, Mr. ██████ went to the canteen and then returned to class. Mr. ██████ however, reported that Mr. ██████ allegation omitted crucial details about what occurred. Mr. ██████ reported that while he was

waiting to enter the medical clinic, he heard his name called for the canteen, so he returned to education to ask for permission from Mr. [REDACTED] to go pick up his canteen, which is typically allowed. Officer [REDACTED], the education officer, told him he was not permitted back into the education area and sent him home. At his housing unit, Officer [REDACTED] permitted Mr. [REDACTED] to go to the canteen but, while he was in line there, an officer stated he was supposed to be in education, and sent him back to his housing unit. Back at the housing unit, Officer [REDACTED] again told him that he had permission to go pick up his canteen, so he again returned to the canteen line. But once there he received a write-up for being out of bounds. According to Mr. [REDACTED] it was all one big mix-up between officers and he would not have been in line for the canteen if he had not been given permission—indeed, he attempted to return to education (but was denied entry) to request permission, and ended up receiving permission (twice) from Officer [REDACTED]. Sgt. [REDACTED] approved the RVR, Sgt. [REDACTED] found Mr. [REDACTED] guilty of the RVR, and AW Iversen approved the completed RVR.

Mr. [REDACTED] reported that Instructor [REDACTED] has written him up multiple times for going to get water too many times or for other insignificant issues, including once for supposedly walking by his classroom and waving to someone in his class. He reported that he has no recollection of doing that and does not think he even knows anyone in that class. Mr. [REDACTED] reported there is no point in challenging all of these little write ups, they simply stack up and are impossible to challenge.

- **Other**

[REDACTED], **DPM, A1**, 56 years old, was shot in the head prior to his prison term, and the bullet is still lodged in his brain. As a result of his brain injury, he is blind in his left eye and reported memory and “thinking” problems. His work supervisor, however, has issued Mr. [REDACTED] numerous RVRs after failing to accommodate his cognitive disability. Mr. [REDACTED] works as a clerk in the education department and reported that he enjoys his assignment, but he has asked on several occasions to be unassigned from his position because he keeps getting written up for not being able to keep track of time. Mr. [REDACTED] received multiple RVRs from his supervisor, [REDACTED], for being late to or failing to attend his work assignment, including on March 12, April 5, and May 12, 2021—all of which are a result of Mr. [REDACTED] difficulty remembering and keeping to a schedule. *See* Log Nos. 7070121, 7076580, & 7088686. Following the RVRs, Mr. [REDACTED] put together a schedule that Mr. [REDACTED] could place above his bed to remind him when to go to work. This simple accommodation significantly improved Mr. [REDACTED] ability to show up to work on time and should have been implemented without having to first resort to punishment.

[REDACTED] [REDACTED] [REDACTED], **unverified LD, A2**, reported multiple problems with education and Department of Rehabilitation Programs (“DRP”) staff who, according to him, have been relentless in writing him up for minor infractions. Mr. [REDACTED] has a

learning disability that has not been verified by CDCR, but he reported that he was in special education classes his whole life and he was told he had dyslexia and other learning issues. He reported that, in October, he approached the DRP Supervisor to let them know that he was not being accommodated. He reported that he was made to read out loud in class, and, after tripping over his words, he was told by the instructor that he was faking his issues and not trying hard enough. He felt humiliated. After that incident, Mr. [REDACTED] feels like “I have a target on my back.” Since then, the DRP instructor, [REDACTED], has been picking on him and wrote him up recently for “disobeying an order” for talking to other students in class. Mr. [REDACTED] stated that the write up was written up for talking out of turn, but it is a rehabilitative group where he understood you are supposed to be able to talk to others, especially about issues discussed in the group, if you have completed your work. Multiple people were talking, but she reportedly singled only him out for a write up. He believes this is happening because of reporting disability-related difficulty in the class. According to Mr. [REDACTED] he has become extremely discouraged, he has lost his confidence and he does not even want to speak up or to try for fear of doing something wrong that he will get written up for.

RVRS INITIATED BY HEALTHCARE STAFF

1. Supplemental Information About Specific RVRs Based on Patient Interviews (Category 5)

Plaintiffs have, in the past year, repeatedly raised the concern that nurses at SATF are initiating unwarranted RVRs to their patients. On November 23, 2021, CDCR and CCHCS produced copies of 61 RVRs written by SATF medical staff between January 1 and August 17, 2021. We conducted a preliminary review of these RVRs for our initial written submission and found that the vast majority of the RVRs were issued for conduct that was not serious and did not pose any risk of harm to others. Instead, these RVRs appeared to be designed to punish patients for their failure to comply with medication and treatment protocols, rather than assisting patients to get the help and treatment they need. We also found that just four LVNs were responsible for writing the majority of these RVRs.

We subsequently received a list of 20 RVRs that CCHCS and CDCR had decided to void after further review. We supported the voiding of these RVRs, but as we explained in our initial written submission, this action did not ameliorate our concerns. First, while these individual RVRs were voided, SATF still has not addressed policies and a staff culture that allowed the RVRs to occur in the first place. Second, CCHCS and CDCR did not void all RVRs that are, in Plaintiffs’ view, unwarranted, and it is unclear how CCHCS decided which RVRs to void, and which to affirm.

Most significantly, of the 61 RVRs we reviewed, 26 were issued to patients for incorrectly taking their suboxone, prescribed to treat opioid addiction. The majority of

these allegations involved patients putting the film on the roof of their mouth rather than under their tongue. Two LVNs were responsible for all but six of these RVRs, with LVN [REDACTED] initiating eight and LVN [REDACTED] initiating twelve. As we explained in our initial written submission, these RVRs are facially inappropriate and should be voided. Nurses should not respond to incorrect consumption of suboxone in the pill line by threatening punishment. All people prescribed suboxone are struggling with addiction and attempting to get treatment for it. Issuing RVRs for suboxone misuse undermines the patient relationship and will not help people struggling with addiction to get the help they need. The appropriate response for possible suboxone medication misuse is to refer the patient to their provider, who can meet with them, determine whether they are struggling with a relapse or ongoing cravings, and help them to get additional or alternative treatment as needed. Moreover, some of these RVRs appear to stem from medication misuse that is inadvertent, which should be dealt with through further education on proper use, not punishment.

Despite CCHCS Headquarters staff agreeing during a call with *Plata* Plaintiffs' counsel on December 1, 2021, that such RVRs were inappropriate, CCHCS and CDCR decided to void just one of these RVRs. There is no apparent basis for voiding this RVR and not others—most of the 26 RVRs issued for alleged suboxone medication misuse are substantially similar.

In addition, in October 2021, Defendants represented to the *Plata* Court that “[t]he SATF CEO reviewed the 61 RVR’s referenced by Plaintiffs and determined that all were appropriate and none should be rescinded.” *See* Plfs.’ Written Submission at 30 (Dec. 8, 2021). But the CEO apparently only reviewed the RVR paperwork and did not speak with patients. It is particularly important to speak with the patients for counseling-only chronos, because there is no hearing for those and therefore their version of events are not documented in the RVR paperwork.

We interviewed some of the patients who received these RVRs at SATF during our *Armstrong* tour the week of December 13, and in confidential phone calls during the week of December 20. Our conversations with these patients (several of which we summarize below) amplified our concerns. It was apparent from speaking to these patients that most of these incidents involved patients making reasonable mistakes in taking their suboxone. Others suggest patients may be continuing to struggle with their addiction and in need of additional help. The nurses’ decision to respond to these incidents by inflicting punishment—sometimes without even notifying the patient’s provider—was cruel and counterproductive. We continue to believe these RVRs should be voided, and that CCHCS should issue clear guidance to ensure similar RVRs are not issued in the future.

- [REDACTED] CCCMS, D4: On January 25, 2021, Mr. [REDACTED] received an RVR for “Disobeying an order.” LVN [REDACTED] who wrote the RVR (Log No. 7058981) described the violation as follows:

On 01/25/2021 at approximately 0750 hours, while performing my duties as a License Vocational Nurse passing AM medication in Delta Clinic, I witnessed inmate [REDACTED] ([REDACTED]) take his medication sublingually (medication is ordered to be taken sublingually and for the inmate stand in front of nurses until completely absorbed). I noticed inmate [REDACTED] put his hand near his mouth and then on to his cup. I asked inmate [REDACTED] to open his mouth and lift his tongue to check is medication has started to dissolve, which he complied. The medication was no longer underneath the inmate's tongue. I asked inmate [REDACTED] to show the side of his drinking cup and when inmate turned the drinking cup, pieces of the orange substance-like medication resembling the Suboxone film were stuck on the cup. Inmate [REDACTED] has been educated about the protocols of taking the medication and he has the right to refuse it if he does not want to take it. Inmate [REDACTED] is aware of this report. [REDACTED] TABE score is 5.9.

The RVR documents indicate that this was Mr. [REDACTED] first occurrence of disobeying an order. It notes that during the hearing he plead “not guilty” and said, “I did not disobey nothing.” Mr. [REDACTED] was found guilty and was punished by losing 30 days of time credits and having his tablet – which he uses to communicate with his family – temporarily removed.

On December 21, 2021, we spoke with Mr. [REDACTED] who maintained that he was not attempting to divert his medication. Mr. [REDACTED] is very appreciative of the MAT program, saying that it helped him stop using opiates, which he had used since he was young. He reported that when he received this RVR on January 25, he had only recently started suboxone (his medical record confirms he began on January 13) and was inexperienced in how to take the medication, which he described as extremely sticky. He reported that when he took the medication, it got stuck in the wrong location in his mouth, and so he attempted to move it with his finger, not realizing that it would then stick to his finger. He reported that while the suboxone was still on his finger, he attempted to explain to LVN [REDACTED] what happened, but she instructed him to leave the pill call window and take the medication. Mr. [REDACTED] said he walked away from the window and sucked the suboxone off his finger. He said that he was unable to put it back under his tongue so he “just ate it.” (Swallowing suboxone is not advised because less medication will be absorbed into the bloodstream — meaning it won't work as well and could result in withdrawal symptoms.) Contrary to LVN [REDACTED] statement that “Inmate [REDACTED] has been educated about the protocols of taking the medication,” Mr. [REDACTED] described the education he received about how to take suboxone as a verbal explanation lasting only “one and a half minutes.” He said that nobody had told him how sticky the medication is and that you're not supposed to touch it with your finger or try to move it.

Mr. ██████ reported that this was the first write-up he ever received in prison. Mr. ██████ reported that receiving it changed his perception of nursing staff and lieutenants, leading him to believe that many staff are “crooked” and will “back up each other,” even if it is not the truth. He believes that staff have a very negative view of incarcerated people and that they believe all incarcerated people lie. Receiving the RVR made him want to leave the MAT program, but he has so far decided to stay with it because it has been so helpful in his treatment.

- ██████ ██████ ██████, EOP, F3: On May 21, 2021, Mr. ██████ received an RVR for “Disobeying an Order.” LVN ██████, who wrote the RVR (Log No. 7089337), described the event as follows:

Today on May 21, 2021 at 0922 this writer explained to the inmate patient ██████ CDCR# BL0799 to drink or rinse his mouth with water and attach the medication strips to the underside of his tongue, one on each side and to not bend fold or overlap the medication and to not eat or drink anything while the medication dissolves and once the medication is placed properly, keep your hands away from your face and remain facing toward this writer for the duration that it takes for the medication to dissolve. Once the inmate patient took the suboxone strips he placed them under his tongue properly but when he was closing his mouth this writer could see that the inmate patient ██████ stuck his tongue out slightly and scraped the suboxone off the underside of his tongue using his lower teeth and moved the suboxone medication in between his lower front teeth and lower lip. This writer directed inmate patient ██████ to open his mouth and this writer could see the suboxone medication clumped and smashed to the top front of his lower teeth and in between his teeth and lower lip. This writer directed the inmate patient to place the medication back under his tongue and the patient did just that and then immediately diverted the medication back to the same area between his lower lip and teeth. This writer then directed the patient for a third time to place the medication under his tongue and that him placing the medication in an area other than where it is to be consumed is diverting the medication and is misuse of the medication and that the provider would be notified and disciplinary action for a verbal counseling will be completed. The patient then placed the medication back under his tongue until it was fully dissolved.

This was a counseling-only RVR, so no hearing was held, and thus there is no statement from Mr. ██████ in the RVR paperwork.

We spoke with Mr. ██████ on December 22, 2021. Mr. ██████ is in the mental health services delivery system at the EOP level of care. According to his medical record, he is diagnosed with schizophrenia and experiences auditory hallucinations. When we spoke to Mr. ██████ he explained that he received this RVR on the morning of May 21, 2021, and that he had just arrived to SATF the previous afternoon. He arrived from CHCF, where had been in a mental health

crisis bed, following a suicide attempt. Mr. [REDACTED] reported that he was nervous about his new surroundings, still somewhat unstable, and had experienced difficulty sleeping the evening before. He reported that the nurse delivering his medication to his cell woke him up in order to give him his medication, and that he was “half asleep” when she gave him his medication. Contrary to the nurse’s report, Mr. [REDACTED] explained that he did not intentionally move the suboxone out from under his tongue, but he did so accidentally and then had difficulty maneuvering it back because the film was so sticky. He reported a lot of the film ended up on his fingers, but, as the nurse’s report acknowledges, he eventually was able to get it back under his tongue.

Mr. [REDACTED] has been taking suboxone to treat his SUD since August 2020. He explained he had no problems taking the medication and was never written up for medication misuse before transferring to SATF (and he has not been since this incident). There is no indication in his medical record that he has been accused of attempting to divert suboxone before or after this incident. Mr. [REDACTED] is still on suboxone, and most recently saw his provider regarding his SUD on December 30, 2021. At that appointment, his provider noted his “MAR Summary review shows adherence to MAT as prescribed” and that Mr. [REDACTED] was requesting to join group programming, for further treatment of his SUD.

- [REDACTED], DPO, CCCMS, F2: When we spoke to Mr. [REDACTED] on December 14, 2021, he reported that he received an RVR (Log No. 7140195) for “Unauthorized possession of medication” from LVN [REDACTED] on November 23, 2021, for allegedly diverting his suboxone medication. We have not yet reviewed his RVR paperwork. His medical record includes a note from LVN [REDACTED] that day, stating “Pt attempted to divert suboxone on 11/23/21. Pt was written up and reeducated on proper way to take and why med compliance is important.”

Mr. [REDACTED] explained that he placed the suboxone in his mouth that day, but then took a sip of water, and the suboxone strip got stuck on the side of his water cup. He reported that when he realized this a few seconds later, he placed the strip back in his mouth. LVN [REDACTED] saw what happened and accused Mr. [REDACTED] of trying to divert his medication. Mr. [REDACTED] also reported—consistent with reports our office has heard and previously shared with CDCR and CCHCS—that LVN [REDACTED] is often very rude to patients in pill call. *See Letter from Sophie Hart, Plaintiffs’ Counsel, Follow-up From August 10-13, 2021 Remote Plata Visit to SATF (Oct. 8, 2021).* Mr. [REDACTED] said he has about 90 days left to serve, and would not risk getting written up and receiving additional time.

- [REDACTED], CCCMS, F2: On August 9, 2021, Mr. [REDACTED] received an RVR (Log No. 7173420) for “Disobeying an Order.” LVN [REDACTED] who also wrote this RVR, described the event as follows:

On Monday August 9, 2021 at approximately 0749 hours I was performing my job duties as the F Facility medication Administration Nurse. Inmate [REDACTED], (F2-[REDACTED]) approached the medication window for his morning medication of his Suboxone medication. I scanned [REDACTED] CDCR Identification Card, after verifying him. Prior to administering [REDACTED] his Suboxone strip, I educated him on how to place the strip underneath his tongue. I administered [REDACTED] his medication OF Suboxone strip to him by place the medication packet through medication port window for [REDACTED] to retrieve and place under his tongue. Inmate [REDACTED] obeyed my command by following my instructions to take the strip and placed it underneath his tongue. Approximately 30 seconds later I instructed [REDACTED] to open his mouth, to which he complied by showing me the medication strip was not underneath his tongue. I instructed [REDACTED] to tilt his head back, so I could see the roof of his mouth. [REDACTED] held his tongue upward preventing me from viewing the roof of his inner mouth. Inmate [REDACTED] refused to show the roof of his mouth to which he ignored my direct order. I gave [REDACTED] two more direct order to open his mouth and lower his tongue to which he finally complied. Inmate [REDACTED] put his tongue down allowing me to see the pallet of his mouth, which had the dry intact Suboxone strip. I informed [REDACTED] I observed him place it under his tongue, there is no reason he should have it on the roof of his mouth. Inmate [REDACTED] has been counseled regarding the proper way to take his medication. Inmate [REDACTED] is aware not to talk, eat, drink, or make any movements in his mouth that will making nursing staff believe he is attempting to divert his medication. Inmate [REDACTED] is aware that this kind of behavior will not be tolerated and he would be receiving a CDCR Rules Violation Report (RVR) for disobeying an order. The doctor will be notified of this intent.

He was charged with a serious RVR. At the RVR hearing, Mr. [REDACTED] explained he “was not trying to cheek [his medication],” and that the “medication was still in [his] mouth.” When we spoke with Mr. [REDACTED] he explained that he believed the film would dissolve better on the roof of his mouth. His RVR was reduced from a serious to an administrative RVR. In support of issuing an administrative RVR (as opposed to a counseling-only RVR), the hearing paperwork states that Mr. [REDACTED] had previously received a counseling-only RVR for this issue. But Mr. [REDACTED] only started suboxone in June 2021, and there is no record of a counseling-only RVR being issued to Mr. [REDACTED] in June, July, or earlier in August. There is also, troublingly, no indication in Mr. [REDACTED] medical record that his provider was ever notified of this alleged attempt to divert his suboxone. Again, when a nurse suspects a patient of diverting their suboxone, they should notify the patient’s MAT provider, so the provider can schedule an appointment with the patient and determine whether changes to their treatment are necessary. When we spoke with Mr. [REDACTED] on December 22, 2021, he reported he was still experiencing very significant cravings, and that his dose hadn’t been adjusted since he started MAT

in June. According to his medical record, when Mr. ██████ was started on MAT, he reported daily drug use, and that his cravings were at a 10/10.

Mr. ██████ also reported during our call that he had since received a second RVR, also from LVN ██████. His medical record confirms LVN ██████ wrote him an RVR on October 26, 2021, again for allegedly attempting to divert his suboxone. We have not yet reviewed this RVR paperwork, but plan to request this paperwork in our post-tour document request. This time, according to his medical record, his MAT provider was notified, and sent him a letter stating he would be seen to discuss this incident. But he was not seen by his PCP for MAT until December 29, 2021.⁶ At that appointment, his PCP noted he had recently been compliant with his medications and that he was “attending and engaged” in MAT programming. His provider also increased his dosage of suboxone.

2. Oversight by Healthcare Leadership (Category 6)

We previously recommended that “SATF healthcare leadership . . . oversee the RVRs initiated by medical staff.” Plfs.’ Written Submission at 40-41 (Dec. 8, 2021). Since then, several class members reported receiving RVRs initiated by mental health and custody staff that relate to access to medical care.⁷ We believe healthcare leadership must provide oversight over these as well and ensure appropriate training, counseling, and discipline for all staff performing functions related to the delivery of medical care, including, for example, custody officers who supervise patients waiting for appointments or medications outside the medical clinics, and mental health staff who conduct pill lines in EOP buildings. We note that many of these RVRs are counseling-only, which means that the class member was not afforded a hearing or opportunity to explain what happened. As we explained in our initial written submission, however, such RVRs nonetheless can have devastating consequences for our clients and affect whether they are found suitable for parole.

⁶ Mr. ██████ did see a different, covering provider regarding his MAT on November 20, 2021. That provider acknowledged he was “still struggling with cravings and requesting increase in dose,” but did not increase his dosage, apparently because the provider was at their license limit for prescribing suboxone.

⁷ In addition, we previously reported an inappropriate RVR that was initiated by a Psych Tech against an elderly class member with incontinence for requesting his diapers on the “wrong” day. *See* Plfs.’ Written Submission at 19-20 (Dec. 8, 2021). That RVR was voided three days after we brought it to Defendants’ attention, but only after it had been approved by all supervisors, even though the hearing officer improperly discredited the testimony of incarcerated people, and only after it had been incorporated into the class member’s Comprehensive Risk Assessment in advance of his parole hearing. *See Armstrong* Third Quarter 2021 Monitoring of Life Prisoner Parole Consideration Hearings at 10-12 (Nov. 30, 2021).

- [REDACTED] [REDACTED] [REDACTED] **DNH, EOP, G3**, whose first parole hearing is scheduled for 2026, received a counseling-only RVR from Psych Tech [REDACTED] on January 3, 2021, for “Behavior which could lead to violence,” after she accused him of “cheeking” his medication. *See* Log No. 7059946. (We have requested but not yet received this RVR.) Mr. [REDACTED] explained that, at the time, he was taking multiple medications for his medical and mental health concerns and adamantly denies ever trying to “cheek” any of them. He thinks that the Psych Tech issued him an RVR because he had become upset with her after she was rude and yelled at him during pill call. He reported that Psych Tech [REDACTED] is rude to other people as well and demands that they take their medication in the exact way she wants, even if they are in fact taking their medication correctly.
- [REDACTED], **DPO, DNH, D2**, was issued a counseling-only RVR by Officer [REDACTED] on September 22, 2021, for “Disobeying an Order,” after Officer [REDACTED] claimed that he was “loitering” outside of Building 1 during medication distribution in the gym. *See* Log No. 7122423. Mr. [REDACTED] reported that he chose to wait outside until there were fewer people in the gym before he went in to get his medication because he was concerned about the crowding, lack of social distancing, and poor mask compliance by staff and other incarcerated people in the gym. Mr. [REDACTED] reportedly communicated this to Officer [REDACTED], who ignored his concerns and told him that he would receive an RVR.
- [REDACTED] [REDACTED] [REDACTED], **DLT, D4**, received two RVRs from Officer [REDACTED], for failing to attend pill line on September 24, 2021, and June 29, 2021. *See* Log Nos. 7122867 & 7100531. (We will request these RVRs separately.) Mr. [REDACTED] reported that he was in significant pain as a result of his disability on those days and that he was unable to attend pill line. He also reported that Officer [REDACTED] is generally not accommodating of people with disabilities and he harrasses people with disabilities and transgender people. According to Mr. [REDACTED] some people in the unit are afraid of him.
- [REDACTED], **DPW, E4**, was issued a counseling-only RVR on November 8, 2021, by Officer [REDACTED] for “Failure to Meet Work Expectations” when he failed to report to his ISUDT group. *See* Log No. 7136412. Mr. [REDACTED] reported that he spoke with the group leader, Mr. [REDACTED], before the RVR was issued and expressed that he was feeling nauseated and unwell. Mr. [REDACTED] reportedly told Mr. [REDACTED] that he would get an RVR if he did not attend the class.

HOMICIDES OF *ARMSTRONG* CLASS MEMBERS

1. Sentinel Event Reviews (Category 7)

Plaintiffs strongly believe that Defendants must institute a meaningful sentinel event process when, among other things, *Armstrong* class members are killed or seriously injured. These events offer a critical opportunity to determine whether revisions or additions to policies and procedures should be implemented to protect people with disabilities. *See* Plfts.’ Written Submission at 43 (Dec. 8, 2021).

Defendants, in their written submission, stated:

[I]n response to Rita Lomio’s August 22, 2021 advocacy letter, SATF made some of the requested policy changes. SATF reviews all significant events that result in serious harm, including those that involve *Armstrong* class members, to ascertain all contributing factors to evaluate whether there should be disciplinary action or policy/procedure revisions. This review includes consideration of disability accommodations or other protections for vulnerable people with disabilities.

Def.’ Written Submission at 5 (Dec. 8, 2021). We attempted to learn more information about this process during our tour. Unfortunately, we were unable to get clear information. We were told there in fact was no new or revised process put in place. ADA staff said that they are not involved in reviews of significant events that result in serious harm to *Armstrong* class members.

In addition, Defendants stated: “[A]s requested by Plaintiffs, the housing policy was recently revised to include consideration of inmate’s disabilities while determining housing.” Defs’ Written Submission at 5 (Dec. 8, 2021). This appears to be referring to a memorandum entitled, “Expectation for Screening Inmates for Cellmate Compatibility,” and dated June 15, 2021. This memorandum, which had not before been shared with Plaintiffs and which was issued without any input from Plaintiffs, is woefully inadequate and in fact does little, if anything, to protect the interests of the *Armstrong* class.⁸ In fact, the memorandum appears to dilute the more robust memorandum that was the subject of

⁸ Only one example references someone with a physical disability and DPP code, but its utility is quite limited: “Inmate A has a history of elder abuse causing serious injury. Staff can either house inmate A with inmate B who is close to inmate A’s age with like case factors or with inmate C who is 18 years older and DPM. Staff should use their correctional judgment and house inmate A and B together as they appear to be more compatible.”

extensive negotiations between the parties, and that the Secretary said last year would be incorporated into regulations to ensure staff follow it. *See* Memorandum from Scott Kernan, Secretary, Inmate Housing Assignment Considerations During the Screening and Housing Process (Jan. 19, 2016). We have received no update on the status of those regulations.

2. Investigation into Death of [REDACTED] [REDACTED] (Category 7)

[REDACTED], DNH, is an Inmate Advisory Council representative and works as a sign language aide on Facility A. He reported that he assists deaf signers housed in Building [REDACTED] while on orientation. He reported speaking with [REDACTED] [REDACTED] three times in January 2020, after he had transferred to A yard, including interpreting for Mr. [REDACTED] and [REDACTED], who later confessed to targeting and killing Mr. [REDACTED]. Mr. [REDACTED] reported that he witnessed Mr. [REDACTED] being escorted to the program office on the day of his death and heard him voice to officers that he could not return to that building because “that guy’s going to kill me.” Mr. [REDACTED] also reported serious concerns with the institution’s investigation of the homicides related to investigator bias, lack of confidentiality, and intimidation. The Court Expert may want to speak with Mr. [REDACTED] regarding these concerns.

3. Disciplinary Action Against Staff Members in Relation to Deaths of Class Members (Category 8)

Defendants, in their written submission, state that “[d]isciplinary action is underway for medical staff that posted inappropriate comments on social media.” Defs.’ Written Submission at 6 (Dec. 8, 2021). It is not clear which medical staff that applies to; based on an investigation file produced previously, it appears there is no pending investigation of [REDACTED], [REDACTED], or [REDACTED]. *See* Plfs.’ Written Submission at 55-57 (Dec. 8, 2021); Q3 2021 Investigation File SATF-CC-21-320.

Defendants also do not explain what, if any, disciplinary action was taken against *custody* staff who posted public comments on the offensive social media post celebrating the brutal killings of Mr. [REDACTED] and Mr. [REDACTED]. It appears that the local investigation identified at least two custody staff members at SATF (Officers [REDACTED] and [REDACTED]), and at least two assigned to other prisons (Sergeant [REDACTED], CSP-Sacramento, and Officer [REDACTED], KVSP), as posting public comments. The Central Intake Panel declined to investigate Officer [REDACTED] or Officer [REDACTED]. *See* Plfs.’ Written Submission at 57 (Dec. 8, 2021); Q3 2021 Investigation File SATF-CC-21-320. And we are aware of no investigation of staff from other prisons, including of the person who runs the Late Relief himself (username: thelaterrelief), who posted the initial, terrible post, and who, based on a podcast last year and the content of his posts, appears to be a CDCR employee.

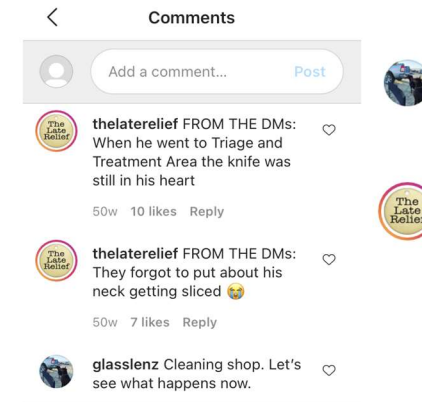
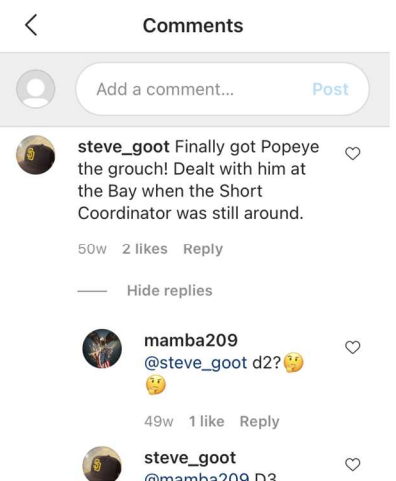
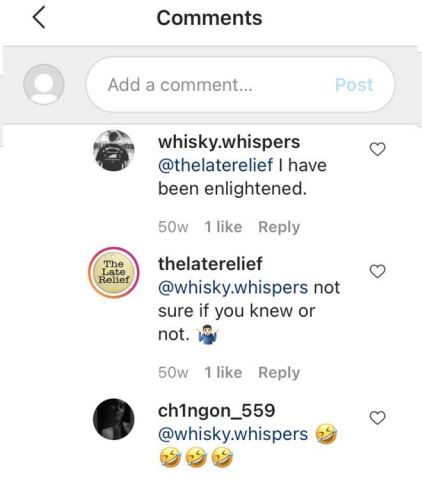
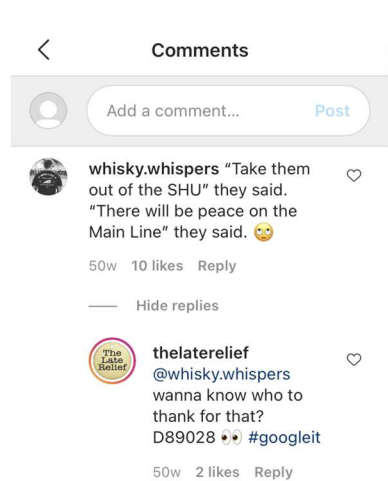
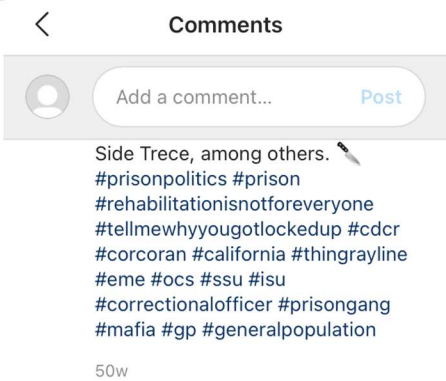
Endorsement of the Late Relief post, which celebrated the class members' killings because of their sex offense convictions, is particularly unacceptable and dangerous given the high number of people with sex offense convictions at SATF. During our tour last month, for example, a class member with a number of significant disabilities reported that an ADA worker who was pushing his wheelchair suddenly exclaimed angrily regarding others in the unit, "Boy rapers and child molesters." Although the comment was not directed at the class member, he felt profoundly uncomfortable because he too has an underlying sex offense conviction. However, he fears reporting the ADA worker's conduct, and asked us to share this incident anonymously, because the class member depends on the ADA worker for regular assistance. The ADA worker reportedly has told the class member about others' underlying conviction offenses, and the class member witnessed him promise information about those underlying conviction offenses to a clerk in the program office as recently as the day of our interview.

In addition, it appears that Defendants have not conducted any investigation into inappropriate comments posted by their employees about other class members homicides at SATF, and instead only requested an investigation of a few of the ones that Plaintiffs brought to their attention regarding the killing of Mr. [REDACTED] and Mr. [REDACTED]. For example, there were a number of offensive social media posts by people who appear to be CDCR employees on the same Late Relief Instagram page regarding the killing of [REDACTED] (sample excerpts on next page).

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thelaterelief Repost: La EME shot caller & Harpys 13 leader "Danny Roman" was stabbed to death by two inmates at Substance Abuse Treatment Facility (SATF). Both inmates attacked Roman in the yard, leaving him with stab wounds to the head & body. Roman was a prominent figure in La EME and oversaw narcotic and extortion proceeds from South Los Angeles: 38th Street, 36th Street, Primera Flats, Playboys and East Side Trece, among others.



[screenshots from The Late Relief Instagram]

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4. Inappropriate Use of RVRs Against *Armstrong* Class Members Who Report Safety Concerns

We also were deeply disturbed to see, notwithstanding the violence and killings at SATF in recent years, that people with disabilities nonetheless were issued and found guilty of RVRs for reporting safety concerns. We provide two examples below, and we also continue to evaluate RVRs that may fall into this category. We note, as an initial matter, that the Late Relief Instagram account has an offensive post about people reporting safety concerns. Based on the RVRs we have reviewed and our conversations with class members, it seems that some officers at SATF share these views.



[screenshots from The Late Relief Instagram]

██████████, DPM, received two RVRs on the same day after a housing unit officer repeatedly refused to address his safety concerns with a new person in his dorm. At the time, Mr. ██████████ was housed on the same yard where two *Armstrong* class members had been brutally murdered after officers failed to take their safety concerns seriously. Apparently still failing to recognize the significance class members' safety concerns, the officer who issued the RVR to Mr. ██████████ wrote in the paperwork, "[J]ust because [Mr. ██████████] doesn't like someone or doesn't feel safe around someone, that isn't a valid reason to not live in the building." Officers' continued disregard of class members' reported safety concerns is deeply troubling and dangerous. Mr. ██████████ situation underscores the issue, as he was assaulted after his reports were ignored.

On February 4, 2021 Officer ██████████ issued Mr. ██████████ two RVRs—one for "Fighting" and the other for "Delaying a Peace Officer in the Performance of Duties," while housed in A2. *See* Log Nos. 7062329 & 7062305. On the day of the RVRs, Mr. ██████████ was being harassed by a new person who had joined his pod that day. This person was antagonizing the people in the multi-person pod and threatening to attack Mr. ██████████ and his other podmates. Mr. ██████████ who uses a walker due to his mobility impairment, did not feel safe having someone around who made repeated threats in their first day living together. Mr. ██████████ told the new podmate to "calm down" because no

one wanted problems in the pod. The new podmate then told Officer [REDACTED] that Mr. [REDACTED] and the other podmates were threatening him. Officer [REDACTED] came over to talk to the pod, and Mr. [REDACTED] tried to explain what was happening and why they did not think the new podmate was a good fit.

In response to Mr. [REDACTED] reports, Officer [REDACTED] did nothing to remedy the situation and left it alone. Infuriated by the allegations from the podmates, the new podmate came up to Mr. [REDACTED] and asked him why he had a problem with him. Mr. [REDACTED] said he did not have a problem with him and that he just wants to stay out of trouble since his next board hearing is coming up (in 2022). Again feeling unsafe, Mr. [REDACTED] went to talk to Officer [REDACTED] about this interaction with the new podmate. But Officer [REDACTED] again refused to listen to Mr. [REDACTED] concerns and said that “nothing was going to happen” and the new podmate was “harmless.”

Mr. [REDACTED] however, refused to go back to the pod because he feared for his safety. Officer [REDACTED] then cuffed Mr. [REDACTED] and took him to the program office. Officer [REDACTED] asked Mr. [REDACTED] a few questions in the program office and, a few minutes later, told Mr. [REDACTED] to go back to his pod because a review showed that there was no credible threat against him. Mr. [REDACTED] was shocked and confused at how dismissive Officer [REDACTED] was about his safety concerns. When Mr. [REDACTED] returned to the pod, the new podmate was irritated that Mr. [REDACTED] had talked to Officer [REDACTED]. He again came over to yell at Mr. [REDACTED] which escalated until the new podmate lunged at Mr. [REDACTED]. In the process, the podmate hit Mr. [REDACTED] seated walker, and Mr. [REDACTED] alerted the officers to what was happening. However, the new podmate then alleged that Mr. [REDACTED] was the one trying to hit him, but the four other podmates present refuted the allegation against Mr. [REDACTED]. Mr. [REDACTED] was then cuffed again by Officer [REDACTED] and taken to the Short-Term Restrictive Housing unit (STRH), where he would spend the next several days.

When Mr. [REDACTED] was released from STRH and placed back on the yard on February 16, he received the two RVRs from Officer [REDACTED] for “Fighting” and “Delaying a Peace Officer.” Mr. [REDACTED] was found not guilty of the RVR for fighting but found guilty for delaying a peace officer. As a result, Mr. [REDACTED] has been on disciplinary status for months when the whole situation could have been avoided had Officer [REDACTED] taken Mr. [REDACTED] safety concerns seriously the first time he reported feeling unsafe.

The RVR paperwork highlights Officer [REDACTED] callousness towards Mr. [REDACTED] safety concerns:

CIRCUMSTANCES OF VIOLATION

On Thursday, February 4, 2021, at approximately 1150 hours while performing my duties as Facility A Building 2 Floor 1, I was approached by Inmate [REDACTED] A2-[REDACTED] who stated he could not live in the building. At this point all movement in and out of the building was stopped. When [REDACTED] was asked what the problem was he stated he didn't feel safe with the new Inmate that was just moved in his POD. I again asked [REDACTED] why he didn't feel safe, and he stated he felt the Inmate was mentally unstable and he didn't feel safe living with him. I explained to [REDACTED] that just because he doesn't like someone or doesn't feel safe around someone, that isn't a valid reason for the inmate to not live in the building. I again specifically asked [REDACTED] to explain why he didn't feel safe with the inmate living in the building and he stated "I cannot live here with him, he threatened me by saying he would handle it. I fear for my safety and cannot stay in this building." [REDACTED] refused to give me any other information to validate his claims that his safety was in question. [REDACTED] also made these statements in front of the unit porters that were working in the rotunda. I then ordered [REDACTED] to submit to waist restraints to which he complied. A yard staff reported to the building placing him in waist restraints, [REDACTED] was then escorted to the program office. Upon further interview, [REDACTED] continued with the same answers and stated he would go back to the building if he was ordered to. [REDACTED] is clearly attempting to manipulate staff, and has clearly resulted in delaying a Peace Officer in the performance of his duty. Due to [REDACTED] behavior I was prevented from doing my normal duty's for approximately an hour. When [REDACTED] was advised he would be receiving a write up for his actions he stated "That's fine, I have to do what I have to for my safety." [REDACTED] is aware of this report and is clearly unresponsive to any type of counseling and that continued action of this nature may result in progressive discipline and him being deemed a program failure.

Mental Health Status: GP
 Tabe score 9.0
 PERNR 16025

If feeling unsafe is not a legitimate reason to be moved, it is not clear what standard Officer [REDACTED] applied to assess Mr. [REDACTED] safety concerns, especially considering the history violent killings of multiple class members on the yard. Officer [REDACTED] handling of the situation was wholly inappropriate. Moreover, the senior hearing officer, Lt. [REDACTED], found Mr. [REDACTED] guilty under the same flawed logic:

- Comments:
1. In the contents of the Rules Violation Report (RVR), dated 02/04/2021, wherein the Reporting Employee, C/O [REDACTED] states in part, "...On February 4, 2021, at approximately 1150 hours while I was performing my duties as Facility A building 2 floor Officer, he was approached by inmate [REDACTED] who stated that he could not live in the building. At that point all movements stopped. Inmate [REDACTED] did not present a valid reason other than he did not feel safe living with the new inmate that just arrived.
 2. Inmate [REDACTED]'s statement, "this guy is EOP, he came in the dorm all loud, trying to hang cloths all over the place, getting mad and running and telling to the CO, accusing us of doing something to him. We all wanted him out It just happened I was the one to speak up.
 3. Inmate [REDACTED] failed to present this SHO with any additional information or evidence on his behalf, which could provide any mitigation to, or refute the charges against him.

During the post-tour exit meeting on December 28, 2021, Defendants informed us that the RVR for "Delaying a peace officer" had been voided after Mr. [REDACTED] filed a grievance challenging it. While we appreciate that in this case the grievance process yielded the proper result, we are concerned that not one person of the numerous levels of review during the RVR process (including the reviewing sergeant, the hearing officer, or

the chief disciplinary officer) recognized and addressed the plain issues in this deeply problematic RVR, and it was voided only because of alleged “confidential information.”⁹

We are also troubled by the institution’s handling of the staff complaint Mr. ██████ submitted against Officer ██████ in response to this incident. *See* SATF-CC-21-091. After his hearing, Mr. ██████ filed a CDCR Form 602 to contest the results of his RVR hearing. The Chief Deputy Warden (CDW) who reviewed the 602, CDW Shimmin, agreed with Mr. ██████ that his RVR for delaying a peace officer was “inappropriate” and directed the chief disciplinary officer to dismiss it. But the 602 response does not indicate that training was initiated for any of the staff members who issued, reviewed, heard, and/or approved the problematic RVR. The only remedial action taken was the dismissal of the RVR, which does not prevent these incidents from continuing to happen.

Additionally, CDCR failed to adequately investigate Mr. ██████ reports of staff misconduct. After Mr. ██████ filed a 602, an AIMS investigation was initiated, which led to an OIA investigation. But the outcome of the OIA investigation was insufficient and unsupported by the evidence. Sergeant ██████, the sergeant working on the day that Mr. ██████ reported his safety concerns, was interviewed as part of the AIMS investigation. When Mr. ██████ was brought to the program office after reporting his safety concerns, Sergeant ██████ spoke with Officer ██████ and ultimately decided to send Mr. ██████ back to the same unit, dismissing his safety concerns. During the AIMS investigation, however, Sergeant ██████ reported to the AIMS investigator that Mr. ██████ did not report safety concerns to her and that Officer ██████ did not convey to her that Mr. ██████ had any safety concerns. But her statements to the AIMS investigator are inconsistent with other contemporaneous documentation. For example, while Mr. ██████ was in the program office, he was placed in a holding cell. Sergeant ██████ was required to (and did) sign a log sheet that indicated the reason he was placed in the holding cell. She noted in the holding cell log that Mr. ██████ was being placed in a holding cell for “Safety concerns,” contradicting her report to the AIMS investigator that she was unaware of Mr. ██████ reports about his safety.

Officer ██████’s statements to the AIMS investigator were similarly untrue. Officer ██████ told the AIMS investigator that he “was not advised ██████ had safety concerns” and that he “recalled telling ██████ he did not have to go back to the building if he did not feel comfortable.” If Mr. ██████ did not report safety concerns, as Officer ██████ alleged, it makes little sense why Officer ██████ would tell Mr. ██████ that he did not have to return to the building if he did not feel comfortable. But, putting that to

⁹ We are also concerned that the RVR purportedly was voided but still appeared in SOMS as “Final/Concluded.” Defendants informed us that the RVR was voided twice, including after Plaintiffs raised concerns with it on-site during the December 2021 tour.

the side, Officer ██████'s statement to the AIMS investigator is inconsistent with his own narrative in the RVR paperwork, where he detailed at length that Mr. ██████ reported safety concerns. Moreover, Sergeant ██████ signed this RVR paperwork as the Reviewing Supervisor, indicating that she read and approved of the RVR. (Sergeant ██████ also was the Reviewing Supervisor for the other RVR that Officer ██████ issued to Mr. ██████ that day, for fighting, which was eventually dismissed.) It appears that both Sergeant ██████ and Officer ██████ *did* receive reports of safety concerns from Mr. ██████ but, upon being interviewed for the AIMS investigation, were dishonest about what Mr. ██████ reported to them. The AIMS investigator highlighted the officers' "conflicting information," and, based upon their inconsistent and false statements, referred the matter to the OIA for investigation of possible staff misconduct.

But, despite clear evidence that Sergeant ██████ and Officer ██████ dismissed Mr. ██████ safety concerns and were subsequently not truthful to the AIMS investigator, the OIA rejected the claim. Inexplicably, the OIA found that no misconduct occurred. It is unclear whether Sergeant ██████ or Officer ██████ received any training or counseling for ignoring a class member's serious safety concerns, for issuing that class member multiple RVRs for reporting safety concerns, or for lying to an AIMS investigator. The lack of consequences for this significant misconduct is deeply disturbing.

Sadly, Mr. ██████ is not the only class member who had his serious safety concerns dismissed and then was issued an RVR. ██████, DPW, E4, was issued an RVR on October 29, 2021, by Officer ██████ for "Fighting" after he was attacked in his cell by his cellmate. *See* Log No. 7134536. Mr. ██████ explained that, before the fight, he and his cellmate spoke with Officer ██████ through their cell door and requested a cell move because they were not compatible. Officer ██████ reportedly refused their request, telling them that they "needed to work it out." According to the RVR paperwork, Mr. ██████ cellmate then asked a second officer, Officer ██████, for a cell move. Officer ██████ reportedly opened the cell door to discuss the issue, but, when the cell door was opened, Mr. ██████ cellmate immediately began attacking Mr. ██████ (who has a prosthetic leg and very limited mobility). Mr. ██████ reports that his cellmate attacked him in order to be moved from the cell. Although Mr. ██████ was attacked, he still received an RVR for fighting. Officer ██████, who completed the RVR paperwork, noted that he "could not see ██████ at the time of the attack, and he could only see the cellmate throwing punching. But at the hearing for the RVR, the Hearing Officer reportedly pressured Mr. ██████ into pleading guilty and did not allow Mr. ██████ to review Officer ██████'s body-worn camera footage.¹⁰

¹⁰ Plaintiffs have not received the hearing documentation for this RVR and therefore do not know if the chief disciplinary officer resolved the issues in the RVR.

EXHIBIT F



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January 6, 2022

VIA ELECTRONIC MAIL ONLY

Tamiya Davis and Alexander Powell
CDCR Office of Legal Affairs
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Re: *Armstrong v. Newsom*: Pocket Talker Memo
Our File No. 0581-03

Dear Tamiya and Lex:

We write to raise concerns regarding the memo entitled “Appropriate Use and Distribution of the Pocket Talker” (“Memo”). Defendants provided this to Plaintiffs’ counsel on November 29, 2021.

As a threshold matter, we are concerned that we were not provided with a draft version to review prior to finalization. We requested a status update regarding this memo and the ability to review any drafts during deaf and hard of hearing work group meetings on August 26 and October 21. Despite these requests, we did not receive a copy of the memo until it had already been signed by Renee Kanan and Kimberly Seibel and marked “final.”

As it stands, the Memo appears to contain at least one semantic error that may prove fatal to the important progress this memo indicates. We hope that Defendants will take our feedback to heart and revise the memo accordingly.

I. Use of Medical Necessity And Reasonable Accommodation Standards

In the introduction, this memo states that pocket talkers are “provided to an incarcerated individual ... based on medical necessity.” *See* Memo at 1. Our understanding is that Defendants have agreed to use the reasonable accommodation standard to make final decisions regarding the issuance of durable medical equipment. Pocket talkers are no different, and the memo appears to acknowledge as much by

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describing them as a “reasonable accommodation” or “interim accommodation” at different points later in the Memo.

We request the following revision: “Pocket Talkers are non-formulary items provided to an incarcerated individual by medical providers under the following conditions based on medical necessity or as a reasonable accommodation.”

II. “Permanently Issued” Pocket Talkers

We raise the following concerns and request the following changes to circumstances when Defendants should provide a pocket talker on a permanent basis:

A. Include DPH Class Members

Currently, the Memo limits potential permanent pocket talker recipients to class members who have “a permanent hearing impairment that is improved with hearing aids (DNH)” and meet certain additional criteria. *See* Memo at 1. Plaintiffs’ counsel request that Defendants include DPH class members in the pool of potential recipients of permanent pocket talkers.

Unlike the Memo, the *Armstrong* Remedial Plan (“ARP”) does not distinguish between individuals whose hearing disability “is improved with hearing aids” and individuals whose hearing disability is not. Rather, the ARP defines DNH class members as individuals “who have residual hearing at a functional level with hearing aids” and DPH class members as individuals “who are permanently deaf or who have a permanent hearing impairment so severe that they must rely on written communication, lip reading, or signing because their residual hearing, with aids, does not enable them either to communicate effectively or hear an emergency warning...” *See* ARP §§ II.D.3, II.C.2.

By this definition, class members who require both lip-reading and hearing aids for communication are designated as DPH. Hearing aids improve the hearing of these class members, although they must also rely on lip-reading in addition to the hearing aids in order to communicate effectively. These class members may also benefit from a pocket talker, especially when communicating in noisy environments, because a pocket talker offers an alternative means of amplifying sound that is better suited to certain environments than hearing aids. They should not be excluded from the category of people eligible for a pocket talker.

We request Defendants make the following edit to the Memo: “A Pocket Talker should be provided permanently when the incarcerated individual has a permanent hearing impairment that is improved with hearing aids (DNH or DPH) AND has one or more of the following issues....” *See* Memo at 1.

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Page 3

B. Modify Requirements For Individuals With Functioning Hearing Aids To Receive Pocket Talkers

At Plaintiffs' request, Defendants have added a provision to provide pocket talkers on a permanent basis to class members who already benefit from hearing aids when:

The incarcerated individual is unable to hear adequately with hearing aids.
The incarcerated individual requires hearing aids and a pocket talker at all times. This is uncommon and should be reviewed on a case-by-case basis.

See Memo at 2. We appreciate Defendants' decision to include this group. However, we are concerned that the provision reflects a misunderstanding about how pocket talkers work and will ultimately exclude all class members who have hearing aids.

1. Modify Criteria of "Unable to Hear Adequately with Hearing Aids" and Requiring Both Hearing Aids And Pocket Talkers "At All Times"

Plaintiffs' counsel is concerned that restricting pocket talkers to those who are "unable to hear adequately with hearing aids" implies that pocket talkers are designed to work together with hearing aids to enhance what a person can hear. That this is incorrect – unlike an FM system or Bluetooth microphone, pocket talkers are not designed to be used in conjunction with hearing aids.¹ They are designed to be used separately.

An analogy could be drawn to distance glasses and reading glasses. Even if a single lens can correct both distance vision and reading vision, it would be folly to restrict reading glasses to people who are "unable to see adequately with distance glasses" or who require both distance and reading glasses "at all times." Practically, people who need both types of glasses only need one or the other at any given time, but may require both to equally participate in programs, services and activities.

So, too, with pocket talkers and hearing aids. Pocket talkers work well where hearing aids do not: in settings with background noise. In such noisy settings, hearing aids amplify distant background noise as much as any other sounds, making it much harder for hearing aid users to understand what other people are saying. By contrast, a person using a pocket talker can point the microphone toward the person whom they want

¹ It is possible that some individuals benefit from using both devices at the same time. As a general matter, however, most users alternate between pocket talkers and hearing aids depending on the environment, as opposed to using them simultaneously.

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to hear. The pocket talker will amplify only that sound and not the other surrounding noises, making it much easier to understand the person speaking.

2. **Modify Caveat That “This Is Uncommon And Should Be Reviewed On A Case-By-Case Basis”**

Plaintiffs’ counsel is concerned that the statement that it “is uncommon” for a person to require both hearing aids and pocket talker essentially pre-judges all requests for this accommodation as needing especially close scrutiny, which is inappropriate.

Indeed, it is inaccurate to say it is “uncommon” for an individual to be unable to hear adequately with hearing aids. Many hearing aids do not work as well in settings with background noise as they do in quiet settings. Most individuals in the free world, however, have the opportunity to acquire high-quality hearing aids with special filters and/or to use assistive devices such as an FM system or Bluetooth microphone, all of which are designed to allow hearing aids to function better in background noise. Further, individuals in the free world have more latitude to change their environment to accommodate their hearing needs.

These alternate options are not available to individuals incarcerated in CDCR. Pocket talkers are our class members’ only option to hear better amid background noise. Likely, our class members will have a higher demand for pocket talkers than people in the free world, who have other options. Therefore, it may not be uncommon for our class members to require both devices. Further, all devices issued according to medical necessity or reasonable accommodation are reviewed “on a case-by-case basis,” so this caveat is unnecessary.

To correctly reflect how pocket talkers typically are used, we request the following edit: “4. The incarcerated individual is unable to hear adequately with hearing aids in certain settings. The incarcerated individual requires hearing aids and a pocket talker at all times to have equal access to programs, services and activities, including entertainment and day room. ~~This is uncommon and should be reviewed on a case-by-case basis.~~” See Memo at 2.

III. **Pocket Talkers “Provided As An Interim Accommodation”**

As currently worded, the Memo restricts providing pocket talkers as an interim accommodation to medical and due process events, excluding all other programs. Providing pocket talkers during medical or mental health groups and classes is further restricted to “DNH incarcerated individuals with hearing difficulties and a dysfunctional device.” See Memo at 2. The Memo also requires permanently removing the cushions on the over-the-ear headphones, which may negatively affect use.

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A. Include All Programs, DPH Class Members And Any Individual With Difficulty Hearing, Even With Functional Hearing Aids

The Memo fails to include programs, such as education, self-help, and work assignments, as settings where class members can receive a pocket talker as an interim accommodation. Ideally, class members who require pocket talkers for programs will have a permanently issued pocket talker. However, there will still be times when a class member's hearing aids malfunction or their batteries die and they do not have time to secure a temporary pocket talker before attending their program. On those occasions, these individuals should not be denied effective communication in programs until they can secure a pocket talker from medical, especially since they may have to wait days or weeks for medical to process their request.

The Memo restricts offering pocket talkers during medical or mental health groups and classes to "DNH incarcerated individuals with hearing difficulties and a dysfunctional device." *See* Memo at 2. This wording inappropriately excludes DPH class members as well as DNH class members who have difficulty hearing despite a functional device.

As explained above, some DPH class members will benefit from pocket talkers, and some people who benefit from hearing aids will still have difficulty hearing in certain settings. Background noise often becomes an issue any time multiple conversations take place at the same time, when fans or heaters are running, or when construction or landscaping is taking place nearby. When that happens, the class member's hearing aids may be working perfectly well, but the class member still will have trouble hearing and understanding the other participants. It is necessary to have pocket talkers available for all who may need them to ensure effective communication.

We request the following changes: "2. Can be offered during ~~Medical or Mental Health~~ group/class environment, programming and work assignments to DNH or DPH incarcerated individuals with hearing difficulties and a dysfunctional device..... Pocket Talkers shall be available for use in all areas where health care encounters, ~~or~~ due process events, or group programming occurs. Pocket talkers should also be kept in the program office for use during work assignments." *See* Memo at 2.

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B. Replace Headphone Cushions, Do Not Remove Them

Finally, the Memo states that “[t]he Pocket Talkers will have over-the-ear headphones with the cushions permanently removed so the ears and the body of the machine can be cleaned with alcohol pads after each use.” See Memo at 2. It is our understanding that headphone cushions play an important role in isolating sound. Given that the purpose of the pocket talker is to amplify sound to be loud enough for someone with a hearing disability to understand speech without hearing aids, it is quite likely that the sound will also be loud enough to distract or annoy other individuals. Our class members have repeatedly stated that it creates a safety risk for them to annoy other incarcerated people, even when they are simply advocating for their own needs. We are concerned that, with the cushions removed, class members who need a pocket talker will decline the interim accommodation to avoid irritating the other participants in their class or group.

Instead of removing the cushions, we request that Defendants maintain a supply of replacement cushions. Our understanding is that replacement cushions can be purchased for about \$0.60 each. See https://www.amazon.com/Replacement-MDR-G45LP-MDR-G55LP-MDR-G410LP-MDR-G101LP/dp/B00WFRI8G4/ref=pd_lpo_3?pd_rd_i=B00WFRI8G4&psc=1 (last visited Dec. 20, 2021).

We request the following changes: “b. The Pocket Talkers will have over-the-ear headphones ~~with the cushions permanently removed so the ears and the body of the machine can be cleaned with alcohol pads after each use.~~ Cushions will be changed after each use. The institution will maintain a supply of replacement cushions wherever pocket talkers are stored.”

IV. Identifying “Contraband” Pocket Talkers

The Memo currently requires medical staff to evaluate each person who currently has a pocket talker for potential removal of the item as contraband:

All incarcerated individuals currently ordered or otherwise provided Pocket Talkers shall be evaluated for continued use meeting the above criteria. For those no longer meeting criteria, the Pocket Talker shall be discontinued and relinquished to Health Care staff. Custody staff shall assist in the removal of all unauthorized contraband Pocket Talkers from the incarcerated individual population. Contraband Pocket Talkers are those that do not meet the criteria listed above and therefore are not reflected on the SOMS DPP Disability/Accommodation Summary screen.

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See Memo at 2.

Plaintiffs' counsel are concerned that this provision will result in custody staff inappropriately confiscating pocket talkers. As described above, there are numerous instances where an individuals may validly require a pocket talker without meeting the criteria set forth in the Memo; for example, the class member may have a DPH code.

During the Deaf and Hard of Hearing Work Group Meeting held on December 2, 2021, Defendants stated that this provision will apply only to people who, for example, receive a pocket talker during a due process interaction and fail to give it back afterward. Defendants gave assurances they do not intend to confiscate pocket talkers from people who have the device listed in their DME.

We are concerned that the wording of the Memo, that individuals "currently ordered or otherwise provided Pocket Talkers shall be evaluated for continued use," *see* Memo at 2, does not reflect what Defendants have represented. We remain concerned that the Memo will be misinterpreted to cause medical staff to review and remove pocket talkers from individuals who have validly been issued pocket talkers in the past.

We request the following edit, to align the language of the Memo with Defendants' representation above: "All incarcerated individuals ~~currently ordered or otherwise provided~~ temporarily issued Pocket Talkers shall be evaluated for continued use meeting the above criteria."

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Thank you for your attention to this important matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:CEJ

Encl.: Pocket Talker Memo

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EXHIBIT G



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VIA EMAIL ONLY

December 10, 2021

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: Reading and Writing Accommodations for Blind and Low-Vision *Armstrong* Class Members

Dear Ms. Davis:

We write with a simple request that is long overdue: Defendants must provide blind and low-vision class members with equal access to reading and writing. Defendants must do this (1) by providing access to auxiliary aids, such as electronic magnifiers, in housing units, and (2) by providing state-issued written information in accessible formats, including large print, audio recording, braille.¹

This is critical to our clients' ability to better themselves and to independently access prison programs, services, and activities, including education, self-help groups, college correspondence courses, and grievance and RVR processes. For decades, Defendants have provided blind and low-vision class members with inferior access to reading and writing by requiring these class members—based only on their disabilities—to request approval to read and write at a preapproved time and location and for a preapproved duration, while providing other incarcerated people the option to read and write privately and independently at any time, from any location, and at any pace without notice or approval.

Our repeated attempts to obtain this modest and much-needed relief have been ignored or rebuffed. We have raised the issue in countless tour reports for prisons across the state. We then elevated the issue to the Headquarters level and, over the last year, encouraged Defendants to address this issue at nine meetings of the Blind/Low-Vision Workgroup. No apparent progress has been made.

In this letter, we detail the legal basis for our request, the importance of auxiliary aids for our clients, why assistance from ADA workers and staff and access to the library and classrooms are inadequate alternatives, and why Defendants' previously expressed concerns with our request are baseless.

¹ We already have set forth by letter the need to provide written materials in accessible formats. *See* Letter from Jacob Hutt, Plaintiffs' Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Re: Effective Communication of Written Information for Blind and Low-Vision Individuals (Mar. 15, 2021).

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This is not a complicated issue. **No later than February 10, 2022, Defendants must present a plan for remedying within six months the ADA violations described herein and in our March 15, 2021 letter regarding accessible formats for written materials.** We would be happy to help Defendants develop the plan. If Defendants are unwilling to do so, Plaintiffs will seek involvement of the Court Expert and, if necessary, intervention from the Court.

I. The Americans with Disabilities Act and *Armstrong* Remedial Plan require CDCR to make auxiliary aids available to low-vision *Armstrong* class members to ensure equal access to reading and writing.

CDCR must ensure equal access to “the benefits of services, programs, or activities of the Department” to people with disabilities. *Armstrong* Remedial Plan § I; 42 U.S.C. § 12132. Reading and writing in CDCR are programs, services, and activities within the meaning of the ARP and the ADA. *See Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001). From CDCR’s mental health programs offering written resources for participants, to its reading assignments for students in education; from its provision of simple crossword puzzles to its issuance of complex Rule Violation Reports; from its orientation handbooks to its pre-release notices of conditions of parole—CDCR makes reading and writing central to day-to-day life in custody.² Reading and writing are inextricably linked to the benefits available to incarcerated people in CDCR, and those whom CDCR prevents from reading and writing are obstructed from these benefits. *See Armstrong v. Wilson*, 124 F.3d 1019, 1023-25 (9th Cir. 1997). As programs, service, and activities, reading and writing must be made available on the same terms to people with disabilities—such as blindness and low vision—as to those without them.

The *Armstrong* Remedial Plan (ARP) also requires CDCR to provide *Armstrong* class members with reasonable accommodations “to ensure equally effective communication with staff, other inmates, and where applicable, the public.” ARP § II.E.1; *see also id.* § II.G (requiring accommodations to ensure equal access to the court, legal representation, and to health care services); *id.* § IV.I.2.a (requiring, for effective communication of CDCR “Notices, Announcements, and Alarms,” the provision of auxiliary aid accommodations to assist “inmates who have difficulty reading and/or communicating in writing”). In order to ensure effective communication, “[a]uxiliary aids which are reasonable, effective, and appropriate to the needs of the inmate/parolee shall be provided when simple written or oral communication is not effective.” *Id.* § II.E.1. The ARP contemplates several different types of auxiliary aids to assist low-vision class members with reading and writing, such as magnifiers, electronic readers, and computer assisted devices. *Id.* § II.G.

Finally, ADA regulations and caselaw interpreting the ADA make clear that Defendants must provide *Armstrong* class members with auxiliary aids to accommodate their disabilities in reading and

² During the coronavirus pandemic, in particular, access to reading and writing has fallen in where social activities have been on pause. And CDCR itself has acknowledged that blind and low-vision class members—who, according to Defendants, have “higher rates of serious mental health concerns, including depression and anxiety”—must be able to access recreational materials, of which written materials are a significant part. *See* Doc 2965 at 7; Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Recreational Materials for Blind and Low Vision Class Members (Apr. 23, 2020).

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writing. *See* 28 C.F.R. § 35.160(b)(2) (“In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.”); *Woodley v. Baldwin*, 2018 WL 3354915, at *6 (N.D. Ill., 2018) (incarcerated plaintiff with severe visual impairment was likely to succeed on merits of claim that prison did not reasonably accommodate him by providing him non-electronic magnifier rather than an electronic magnifier); *Abdullah v. Wexford Health Sources, Inc.*, 2019 WL 1376859, at *6 (S.D. Ill., 2019) (granting incarcerated plaintiff’s motion for a preliminary injunction alleging that prison violated the ADA by failing to provide him with a video magnifier to accommodate his vision loss); *Perez v. Arnone*, 600 F. App’x 20, 22 (2d Cir. 2015) (requiring evidentiary hearing to determine whether, *inter alia*, prison deprived incarcerated plaintiff of access to electronic magnifier in violation of the ADA); *Crowder v. Kitagawa*, 81 F.3d 1480, 1484-85 (9th Cir. 1996) (quarantine policy restricting the use of guide dogs on public transit and in public buildings denied blind people meaningful access, even though without guide dogs they were still able to access these spaces with some difficulty); *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 506 (4th Cir. 2016) (blind voters denied meaningful access to absentee voting program in violation of ADA where they could vote absentee only with assistance from sighted persons and could not vote absentee privately and independently at place and time of their choosing); *Cal. Council of the Blind v. County of Alameda*, 985 F. Supp. 2d 1229, 1239-40 (N.D. Cal. 2013) (blind plaintiffs stated an ADA claim based on “inferior voting experience” in which they faced obstacles to utilizing accessible voting machines and were forced to rely on human assistance).

II. Electronic magnifiers, including magnifiers with integrated text-to-speech software, are critical accommodations for people with vision disabilities.

Armstrong class members with vision disabilities rely heavily on electronic magnifiers, some of which include text-to-speech functions, for assistance with reading and writing. Indeed, for low-vision individuals, the availability of an electronic magnifier often determines whether or not they can read and write at all. These high-powered devices capture written content on a page and display it on a screen with variable levels of magnification which, at maximum magnification, far exceeds that of a non-electronic magnifying glass. *Compare* American Foundation for the Blind, CCTVs/Video Magnifiers, <https://www.afb.org/blindness-and-low-vision/using-technology/assistive-technology-products/video-magnifiers> (reviewing magnification ranges of various electronic magnifiers, including Merlin (up to 85x), Davinci (up to 77x), and Amigo (up to 25x)), *with* American Foundation for the Blind, Low Vision Optical Devices, <https://www.afb.org/node/16207/low-vision-optical-devices> (“Magnifying devices are generally either handheld or mounted on a stand, with zoom ranges from 2x to 10x.”). Although these devices can magnify anything placed under the device’s lens, class members most commonly utilize these electronic magnifiers to read written materials, such as legal mail, personal letters, and educational materials, and some class members also need to use them to write.³

³ *See* Merlin LCD User Manual at 20-21, <https://www.enhancedvision.com/downloads/users-manual/Merlin2%20LCD%20Manual%20MAN-0500-00%20Rev.%20X7.pdf> (guiding users how to utilize the auxiliary aid for assistance with writing by hand).

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Armstrong class members generally make use of two types of electronic magnifiers—desktop and handheld. Desktop magnifiers, such as the Merlin and DaVinci magnifiers, are stationary devices that capture information on a lens and magnify it on a large display screen.



Pictured: DaVinci HD/OCR All-In-One Desktop Magnifier



Pictured: Merlin LCD Desktop Electronic Magnifier

Handheld magnifiers, such as the Amigo HD, are portable devices that capture information on a lens and magnify it on a display screen built into the device itself.



Pictured: Amigo HD Portable Magnifier

These two types of electronic magnifiers serve different functions. See Conduct Science, *Magnifiers: All You Need to Know* (Jan. 20, 2020), <https://conductscience.com/magnifiers-all-you-need-to-know/> (“While handheld magnifiers are suitable for short-term tasks, stand and head-mounted magnifiers are ideal for prolonged use.”).

Electronic video magnifiers are superior to non-electronic magnifiers in several ways. First, unlike non-electronic magnifiers, they have variable levels of magnification (i.e. zooming in and out) and, at

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their maximum capacity, can magnify at a higher level than non-electronic magnifiers.⁴ See Mary Lou Jackson *et al.*, *Adding Access to a Video Magnifier to Standard Vision Rehabilitation: Initial Results on Reading Performance and Well-Being From a Prospective, Randomized Study*, *Digital Journal of Ophthalmology*, at 1.

Second, electronic magnifiers are superior to non-electronic magnifiers in that they allow the user to select a level of brightness, contrast, and even different color on the display screen that accommodates the user's needs. See Shelly Brisbin & Lee Huffman, *Choosing the Right Electronic Magnifier, Part 2: Larger Magnifier Systems, Specs, and Features*, American Foundation for the Blind, <https://www.afb.org/aw/17/8/15301>; American Foundation for the Blind, *CCTVs/Video Magnifiers* (last visited Aug. 20, 2021), <https://www.afb.org/blindness-and-low-vision/using-technology/assistive-technology-products/video-magnifiers>. Third, in certain desktop magnifier models, the magnifiers include text-to-speech software (also known as optical character recognition or OCR) that recognizes written words and reads them aloud to the user. See Brisbin & Huffman at 1 (discussing OCR capabilities of electronic magnifiers). We frequently receive complaints from class members regarding non-electronic magnifiers' inability to perform these critical functions. See, e.g., CMF AMT Report at 12 n.7 (describing class member's complaint that non-electronic magnifier in his possession is "physically too small and too low-powered to be of any use for [him] in reading [] letters").

The ADA makes clear that continuing to provide only antiquated card magnifiers and full page magnifiers in housing units is inadequate now that these powerful video magnifiers are widely available. Congress contemplated that new technologies may change the type of access that public entities must provide to achieve program access, and courts have held that, as new aids that improve access become available, covered entities must offer such aids when feasible. See H.R. Rep. No. 101-596 at 67-68 ("[i]n the future, new technology, such as speech-to-text services, may require other forms of direct access" to 911 emergency services for deaf); H.R. Rep. No. 101-485, pt. 2 at 108 (ADA's requirements "should keep pace with the rapidly changing technology of the times"); see also *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1131 (9th Cir. 2012) ("As new devices become available, public accommodations must consider using or adapting to them to help disabled guests have an experience more akin to that of non-disabled guests."); *Am. Council of the Blind v. Astrue*, 2009 WL 3400686, at *19 (N.D. Cal. Oct. 20, 2009) (holding agency's practice of reading letters by phone no longer provided meaningful access and requiring letters in accessible electronic formats because such "great strides [had] been made in computer aided assistance for the blind"); cf. *Enyart v. Nat'l Conf. of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1163 (9th Cir. 2011) (affirming preliminary injunction requiring bar examiners to permit blind tester to use modern screen access software in part because "assistive technology is not frozen in time: as technology advances, testing accommodations should advance as well"). Defendants' implementation of videophones for hearing- and speech-impaired class members—an update to the antiquated TDD devices—suggests agreement with the understanding that the ADA requires updating accommodations as available

⁴ Relatedly, they do not sustain the same type of wear and tear that breaks down non-electronic magnifiers. For example, we spoke recently with [REDACTED], DPV, SATF, who reported that he was previously issued a full-page magnifier for his personal use, but it has become scratched and opaque.

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technologies evolve. *See* Kathleen Allison, Director, DAI & Russell J. Nichols, Director, Enterprise Information Systems, Memorandum Re: Implementation of Video Relay Service Units (July 27, 2017).

III. Forcing low-vision class members to rely on assistance by ADA workers and staff violates the ADA.

Defendants frequently suggest that human assistance, whether by staff, ADA workers, or other incarcerated people, is an adequate alternative to providing class members with auxiliary aids to read and write. *See, e.g.*, CDCR Response to October 2019 - February 2020 SATF DPV AMT Report at 16. But forcing low-vision people to rely on human assistance in order to participate in a program, service, or activity is a textbook violation of the ADA. *See Cal. Council of the Blind*, 985 F. Supp. 2d at 1239 (N.D. Cal. 2013) (“[R]equiring blind and visually impaired individuals to vote with the assistance of a third party, if they are to vote at all, at best provides these individuals with an inferior voting experience ‘not equal to that afforded others.’” (quoting 28 C.F.R. § 35.130(b)(1)(ii)); *Payan v. Los Angeles Cmty. Coll. Dist.*, No. 2:17-CV-01697-SVW-SK, 2019 WL 9047062, at *7 (C.D. Cal. Apr. 23, 2019) (“[R]equiring blind students such as [Plaintiff] to seek affirmative assistance for their disabilities through repeated conversion requests and trips to OSS is itself a disparate burden imposed upon blind students, rendering their educational experience for a particular class inferior to those of their peers.”); *Am. Council of Blind v. Paulson*, 463 F. Supp. 2d 51, 59 (D.D.C. 2006) (“It can no longer be successfully argued that a blind person has ‘meaningful access’ to currency if she cannot accurately identify paper money without assistance.”), *aff’d*, 525 F.3d 1256 (D.C. Cir. 2008); *Nat’l Fed’n of the Blind*, 813 F.3d at 507 (“[B]y effectively requiring disabled individuals to rely on the assistance of others to vote absentee, defendants have not provided plaintiffs with meaningful access to Maryland’s absentee voting program.”). When Defendants force low-vision incarcerated people to rely on third-party assistance in order to engage in a program, service, or activity—here, reading and writing—they violate the ADA. *See* 28 C.F.R. § 35.130(a).

Forcing low-vision class members to rely on human assistance to read and write violates the ADA in several ways. It uniquely denies low-vision class members independence, it uniquely denies them privacy, and it uniquely limits their access to reading and writing to the availability and whims of third parties.

First, low-vision people cannot enjoy the same independence as their fully sighted peers in communicating with staff, other incarcerated people, and the outside world if all communication must first be filtered through another person. *See* 28 C.F.R. § 36.303(c)(ii) (requiring that the provision of auxiliary aids protect the independence of the user). Auxiliary aids enable these class members to freely and independently engage in the same sorts of activities that are otherwise off-limits to them. Forcing dependency on low-vision class members who wish to read and write violates the ADA. By making electronic magnifiers reliably and widely available to low-vision class members, CDCR can ensure independent reading and writing and remedy this violation.

Second, forcing class members to rely on human assistance to read and write documents strips them of their privacy in violation of the ADA. *See* 28 C.F.R. § 36.303(c)(1)(ii) (requiring that the provision of auxiliary aids protect the privacy of the user). When only fully sighted incarcerated people

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are permitted to read and write privately as they please, CDCR discriminates against those who are not fully sighted. *See* 28 C.F.R. § 35.130(a) (forbidding discrimination against people with disabilities by a public entity). We have repeatedly alerted CDCR to the harm that this ADA violation causes our clients. *See, e.g.*, October 2019 and February 2020 SATF DPV AMT Report at 10-11. *Armstrong* class members cannot be forced to reveal sensitive information—such as content of RVRs, case-related information, and medical records—with third parties, while those without disabilities can engage with such sensitive written information in private. Auxiliary aids afford individuals with vision disabilities the privacy they need to review sensitive information without intrusion.⁵

Third, requiring low-vision people to rely on human assistance for reading and writing provides them with infrequent and sporadic access, again in violation of the ADA. With respect to ADA workers, we have reported problems both with workers refusing to assist class members, *see, e.g.*, July 2019 CHCF AMT Report at 4, and with ADA worker shortages that leave class members without assistance when they need it, *see, e.g.*, July 2020 CMF AMT Report at 2. We have reported similar concerns with class members relying on custody staff to assist them with reading and writing. *See* July 2020 CHCF AMT Report at 6-7 (describing class members' reports that "there were very few staff who were willing or able to help them, especially with reading and writing"); May 2019 SVSP AMT Report at 3. To be clear, even if low-vision people could secure reliable assistance from staff and ADA workers, this would still represent an inadequate alternative to electronic video magnifiers, for the independence- and privacy-related reasons discussed above. In practice, assistance from an ADA worker or member of staff with reading and writing is insufficient even as a second-class solution, given the lack of frequent, regular access to such assistance.

IV. The placement of auxiliary aids in prisons' law libraries and educational classrooms leaves class members without a readily accessible accommodation for reading and writing.

While some prisons have purchased electronic magnifiers for *Armstrong* class members to use, these prisons have typically placed the devices in restricted locations—usually the law library or, less often, in educational classrooms—where class members do not have sufficient access to them. There are several ways in which the placement of auxiliary aids in these locations inhibits access.

First, access to the law library is limited, preventing many DPV class members from reading and writing for most—if not all—of a given day. During the COVID-19 pandemic in particular, hours of access have been severely restricted for all incarcerated people. With respect to blind and low-vision people, Headquarters has required prisons housing DPV-designated individuals to "develop a schedule to allow DPV inmates access to auxiliary devices located in libraries for up to two hours per week for general recreation library users, and up to four hours per week for priority legal users."⁶ But this means that DPV class members who cannot read without an auxiliary aid located in the library have only two to

⁵ While desktop magnifiers, with their extra-large magnification and stationary screens, may not be ideal for sensitive materials, handheld magnifiers enable low-vision people to enlarge the words on a page *and* to do so out of view of other individuals.

⁶ Memo re: Access to Auxiliary Devices in Libraries for Inmates With Vision Impairment Impacting Placement During COVID-19 Pandemic (Aug. 13, 2020).

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four hours *in an entire week* to read any written document, forcing them to make impossible choices with their limited time in the library: Read an educational packet or a long letter from a family member? Read a detailed notice from the doctor or read a grievance response from CDCR? Low-vision class members cannot be forced into these choices that fully sighted people do not have to make. *See* CMF AMT Report at 12 (discussing DPV class member who, because of limited library hours, “must prioritize reading legal cases on ADA computer in the library, which often leaves him without any time to read letters that he has received over the course of the week from family members” with the assistance of an auxiliary aid). In the same vein, because library hours are often ducated concurrently with yard time, class members requiring the use of auxiliary aids in the library often must choose between going to the library and engaging in yard activities, such as exercise. For example, we spoke recently with [REDACTED], DPV, SATF, who reported that his yard schedule conflicts with PLU minimum time requirements, forcing him to use much if not all of his yard time each week in the library. These, too, are sacrifices that DPV class members’ fully sighted peers are not forced to make.

Furthermore, even outside the context of pandemic-related restrictions, most libraries are open only from 8 am to 4 pm, meaning that in the early morning and throughout the late afternoon and evening, many class members with vision disabilities are unable to read and write, unlike their fully sighted peers. As one class member reported, “We want equal protection to do the same things that other people can do. If you wake up in the middle of the night, you should be able to read your book, or a letter from your mom or aunt.” CMF AMT Report at 1. Defendants have even acknowledged, in the context of making portable CD players available for DPV class members to listen to their BPH hearing transcripts, that restrictions on library access can mean deficiencies in assistive device access. *See* CHCF Operational Procedure 05-009 Portable CD Player Loaner Program at 1 (Sept. 2021) (“Inmate-patients in the DPP, with a designation of DPV may be unable to use assistive reading devices when they do not have access to the law library; therefore, the need to offer portable CD players and headphones for this inmate-patient population has been identified.”); CSP-COR Operational Procedure 1014 at 2 (Apr. 2020) (same).

And in practice, library availability is far more restricted than what the official hours suggest. During the pandemic, we have reported that some DPV class members are not even receiving the minimal hours of library access that Headquarters has required of DPV-designated prisons. *See, e.g., Armstrong Advocacy Letter* | [REDACTED], HDSP, DNH, DPV. This problem existed before the pandemic, too. For instance, even before the pandemic, “chronic vacancies” (in CDCR’s words) at Salinas Valley State Prison have resulted in “limited access in all library areas across all SVSP.” CDCR Response to September-October 2019 SVSP AMT Report at 11; *see also* CSP-SAC RAP Response, 1824 Log No. SAC-H-21-00193 (in response to class member’s statement that he was “not getting ducated for the law library,” RAP acknowledged that “Law Library ducats have been canceled often because of staff shortages”).

Finally, even when auxiliary aids are placed in classrooms in the addition to the library, similar problems with access persist. As an initial matter, only those individuals who are enrolled in education are permitted to make use of auxiliary aids in the classrooms; this penalizes those individuals with disabilities who are not enrolled in education by forbidding their access to these critical aids. *See* Attachment B (“DAVINCI AND AMIGO PROTOCOL”) to CDCR Response to April-June 2019 SATF DPV AMT Report (“To use such equipment, inmates must be assigned to Education and documented as either DPV

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or DNV in SOMs.”). Moreover, as with law libraries, educational classrooms are often located far from where class members are actually housed. In most CDCR prisons, people must leave their housing units and walk to a different area of the prison to access the classrooms. Finally, like law libraries, classrooms run on preset schedules with limited hours of availability; at CMF, for example, *Armstrong* monitors were told during the July 2021 monitoring tour that the only times of the day that class members could make non-educational use of the auxiliary aids in the classrooms were during the limited periods when classes were not in session.

We have raised this problem for years, at both the institutional and Headquarters levels.⁷

Unfortunately, Defendants continue to offer various versions of the same response: ‘*Auxiliary aids are available to class members in the law library or in Education.*’⁸ Some prisons have acknowledged the need to explore alternatives to the untenable status quo. For instance, in its response to our August 2020 CMF *Armstrong* Monitoring Tour Report, the prison stated: “CMF agrees with the importance of providing access to auxiliary devices and is exploring the idea, as well as the logistics of locating these auxiliary devices in alternate locations, maintaining security and accountability of them.” CDCR Response to August 2020 CMF AMT Report at 6.

Even where certain prisons have acknowledged this problem, however, Headquarters has failed to develop a concrete, statewide plan for remedying the problem of restricted access to scarce auxiliary aids, and possible one-off fixes at individual prisons in the future will not solve this systemic problem.

V. Defendants must make auxiliary aids available to class members in their housing units.

As explained above, the placement of auxiliary aids exclusively in the law library and educational areas does not reasonably accommodate low-vision *Armstrong* class members’ needs for assistance with reading and writing. **As we have raised both at the institutional and headquarters levels, Defendants must make these auxiliary aids available to *Armstrong* class members in their housing units.**

How Defendants will make a particular type of device available in a housing unit will depend on the device. For example, portable devices—such as handheld electronic magnifiers—could be made available to class members on a check-out basis. Certain prisons, such as CMF, already employ a check-out system for their Amigo magnifiers within Education, and could expand this system to the housing

⁷ **Institution-level correspondence:** See, e.g., January 2020 HDSP AMT Report, Attachment D at 1; May 2019 HDSP AMT Report at 15; December 2020 CMF AMT Report at 9; August 2020 CMF AMT Report at 2; November 2019 CMF AMT Report at 16; July 2020 CHCF AMT Report at 8; July 2019 CHCF AMT Report at 4; June 2018 CHCF AMT Report at 18; October 2019 - February 2020 SATF DPV AMT Report at 15; April-June 2019 SATF DPV AMT Report at 23; June-September 2018 SATF DPV AMT Report at 17; October 2017 SATF AMT Report at 13. **Headquarters-level correspondence:** Letter from Penny Godbold, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Request for DPV Equipment at 3-4 (Mar. 22, 2019).

⁸ See, e.g., CDCR Response to July 2020 CHCF AMT Report at 42; CDCR Response to October 2019 - February 2020 SATF DPV AMT Report at 16; CDCR Response to January 2020 HDSP AMT Report at 58-59; CDCR Response to June – September 2018 SATF DPV AMT Report at 28.

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units. Desktop video magnifiers, by contrast, could sit in a permanent location within the housing unit where, on a sign-up basis, low-vision class members could use them.

Regardless of these device-specific details, any solution that CDCR develops for expanding access to auxiliary aids outside the libraries and educational classrooms must have, at a minimum, two features: (1) the solution must reflect the actual, surveyed needs of the existing blind and low-vision populations at designated prison, and (2) the solution must result in blind and low-vision class members being able to read and write on the same terms—specifically, with the same frequency and at the same times of day—as their able-bodied peers. Thus, if a survey of a particular housing unit’s DPV class members reveals that fifteen DPV class members require the use of an electronic magnifier as an accommodation for reading and writing, CDCR must ensure that a sufficient number of auxiliary aids are available *within this housing unit* to allow all fifteen individuals access to reading and writing equaling that of their fully sighted peers. In short, CDCR must depart from the status quo in which many low-vision people are able to read and write independently for only two to four hours a week, and almost never privately, whereas fully sighted people are able to read and write independently at all times and can choose to read and write privately.

VI. Defendants have not raised legitimate security concerns with placing auxiliary aids in housing units.

We note that Defendants have raised security concerns with the placement of auxiliary aids in housing units, but have never demonstrated to Plaintiffs that they have performed a thorough analysis of these supposed security concerns and the actions that could be taken to address them. *See Woodley v. Baldwin*, 2018 WL 3354915, at *6 (N.D. Ill., 2018) (noting that defendant prison had “failed to provide a valid security concern for not providing,” *inter alia*, an Amigo HD magnifier to incarcerated low-vision plaintiff). Lacking such an analysis, Plaintiffs respond here to the theoretical concerns that Defendants have previously raised.

First, Defendants have expressed concern—most recently during the July 28, 2021, meeting of the Blind/Low-Vision Workgroup—that electronic magnifiers could be used illicitly as cameras to transmit unauthorized photographs to a third party.

Response: Plaintiffs’ counsel has confirmed with the manufacturers of these devices that this is not a legitimate security concern. The devices are closed-circuit, without Wi-Fi connectivity, meaning that they cannot transmit images over the Internet. Furthermore, if the current Merlin and Davinci models have USB ports, class members are already not permitted to possess external drives to connect to these devices, and regardless, such USB ports can easily be deactivated either in the pre-purchase stage with the manufacturer or post-purchase by disabling the ports. While the camera on a Merlin and Davinci does capture photographs to synthesize the written content of a photographed document, there is no way for these devices themselves to store or transmit images. We note further that CDCR already permits the use of videophones—which, unlike electronic magnifiers, transmit live visual feeds—in the dayrooms of housing units that house Deaf class members, and that Plaintiffs’ counsel has not received reports of class members misusing these devices to transmit illicit images to the community.

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Second, Defendants have suggested—most recently during the July 28, 2021 meeting of the Blind/Low-Vision Workgroup—that these auxiliary aids could be disassembled and used as weapons.

Response: Plaintiffs’ counsel has confirmed with the manufacturers of the electronic magnification devices that this is not a legitimate security concern. A technical expert familiar with the design of the Merlin, Davinci, and Amigo confirmed to Plaintiffs’ counsel that there are no sharp components or removable objects that a low-vision class member could quickly remove from the auxiliary aids to create a weapon, particularly given that housing unit staff will be present when class members use these devices.

Third, Defendants have stated a concern with the auxiliary aids sustaining damage during transport from their usual locations to housing units. *See, e.g.*, CDCR Response to July 2020 CHCF AMT Report at 13.

Response: As stated above, it is imperative that Defendants *permanently* place auxiliary aids in housing units with blind and low-vision class members. This obviates the need for any regular transportation of auxiliary aids from, for example, a library to a housing unit, mooted Defendants’ concern. Furthermore, even if the solution to the problem discussed herein involves transporting auxiliary aids throughout the prison, there is no evidence that such transportation would likely result in the devices sustaining damage.

In all, Defendants have not set forth any legitimate security concerns with making electronic video magnifiers available in housing units, let alone concerns that would justify impeding equal access to reading and writing for low-vision class members.

For years, we have attempted to work with individual prisons to make auxiliary aids available outside restricted locations like the law library and educational classrooms, but Defendants have largely rebuffed or ignored these efforts, resulting in unequal access to reading and writing for low-vision class members. And nine months ago, we presented Defendants with a comprehensive letter outlining the need for Defendants to track which formats of written materials are accessible for individual blind and low-vision class members and to produce written materials in these formats to class members, but Defendants have made no tangible progress on this issue. Over the last year, the Blind/Low-Vision Workgroup has discussed reading and writing accommodations at ten Workgroup meetings, to no avail—this problem persists, and Headquarters must resolve it. **No later than February 10, 2022, Defendants must present a plan for remedying within six months the ADA violations described herein and in our March 15, 2021 letter regarding accessible formats for written materials.** If Defendants are unwilling to do so, Plaintiffs will seek involvement of the Court Expert and, if necessary, intervention from the Court.

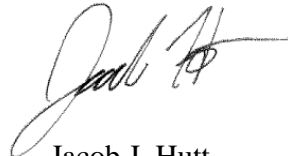
Defendants’ plan should include plans for an initial field survey—which should eventually be conducted on a periodic basis—to collect information on (1) which auxiliary aids are currently available at designated prisons and (2) what auxiliary aids are needed by designated prisons’ blind and low-vision

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populations. We have included, as an addendum to this letter, a list of questions that should be included in this field survey.

We look forward to discussing these issues with you soon.

Sincerely,



Jacob J. Hutt
Staff Attorney
Prison Law Office

cc: Ed Swanson, Court Expert
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ADDENDUM

Field Surveys Regarding Auxiliary Aids

Survey of Designated Prisons on the Current Availability of Auxiliary Aids

- For each desktop electronic magnifier at the prison:
 - o The item name and model of the magnifier
 - o Where in the prison it is located
 - o When the magnifier was purchased
 - o Whether the magnifier has a working text-to-speech function, including whether class members can listen private to the speech function.
 - o Who is eligible to use the magnifier
 - o How an individual signs up to use the magnifier
 - o Any current issues with the functionality or condition of the magnifier

Example response: "CMF has one Merlin reader, model number 123, located in the law library. It was purchased in 2018. It is OCR-compatible, and DPV class members may use the law library headphones to listen in private. Only DPV class members may use the Merlin reader. They can sign up to use the magnifier by appearing at the law library and asking the librarian to add their name to a list, if the device is not currently available for use. Recently, the Merlin reader's OCR function has stopped working consistently, and staff must frequently restart the machine to make it work."

- For each portable electronic magnifier at the prison:
 - o The item name and model of the magnifier
 - o The location in which an individual is permitted to use the magnifier
 - o The hours during which an individual is permitted to use the magnifier
 - o When the magnifier was purchased
 - o Who is eligible to use the magnifier
 - o How an individual signs up to use the magnifier
 - o Any current issues with the functionality or condition of the magnifier

Example response: "CMF has four Amigo HD portable magnifiers, model number 456, available for use only in educational classrooms. Class members who are enrolled in Education may use the Amigos during class hours only (9-11am and 1-3pm). The Amigos were purchased in 2019. Only DPV class members who are enrolled in education may use the Amigos. They can sign up to use the magnifiers by filling out a Form 22. The Amigos are in good working condition."

Survey on Blind and Low-Vision Class Members' Needs re: Auxiliary Aids

The following information should be solicited from DPV- and DNV-designated individuals in CDCR custody:

- Do you require the use of an electronic magnifier (such as a Merlin, Davinci, Galileo, Optelec, or Amigo) to read or write?
- If yes:
 - o Do you currently have sufficient access to the electronic magnifiers at this prison?

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- Do you need to use a portable electronic magnifier (such as an Amigo), a desktop electronic magnifier (such as a Merlin, Davinci, Galileo, or Optelec), or both?
- If you had unrestricted access to an electronic magnifier, how many hours per day do you estimate you would use the magnifier for reading, writing, and other tasks combined?

EXHIBIT H



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November 12, 2021

VIA ELECTRONIC MAIL ONLY

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Re: *Armstrong v. Newsom* and *Coleman v. Newsom*:
Discrimination in Program Assignments
Our File Nos. 0489-03, 0581-03

Dear Katie, Tamiya, and Dawn:

We write in anticipation of the parties' meeting on November 19, 2021 to discuss program assignment discrimination issues, and to chart a path forward for the Program Assignments workgroup. We appreciate the productive meetings we had starting late in the spring to investigate issues relating to Proposition 57 credit earning procedures, education credits, credits for outside programs, reception center credit earning, and PIA program access. However, as we have repeatedly documented in our letters and emails analyzing CDCR's program assignment data and as reported during audit tours, there remain significant disparities in the rates of job, program, and education assignments for *Armstrong* and *Coleman* class members vs. non class members.

The disparities in rates that class members with disabilities receive assignments when compared to those without disabilities are clearly evident when comparing assignments across institutions, as in **Chart A** set forth below, but they are even more stark and troubling when looking at the most sought after assignments such as PIA programs, and other higher paying positions in CDCR. These disparities document a lack of equal access to program assignments generally for people with disabilities, and especially with respect to the most desirable assignments, including those that come with pay. See, e.g., Letter from P. Godbold re Plaintiffs' Analysis of SATF Program Access Disparities, May 10, 2018; Letter from J. Winter re Plaintiffs' Analysis of SVSP Program

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Access Disparities, June 21, 2018; Letter from T. Nolan re Plaintiffs' Analysis of KVSP Program Access Disparities, July 9, 2018; Letter from P. Godbold re SATF Program Assignment Discrimination Task Force Meeting, June 7, 2018; Letter from J. Winter re Follow-up to June 29, 2018 Program Access Tour at SVSP, July 17, 2018; Letter from C. Woods re KVSP Program Assignment Discrimination Task Force Meeting, October 3, 2018.

Plaintiffs' position remains that the parties have no other choice but to rely on data to determine whether and where discrimination is happening, and that the data is enough to show troubling discrimination in assignments against our clients that the parties need to work together to eliminate.

We provide a brief overview of the key findings of our past work on this issue.

First, the parties agreed at the outset of this process that the case factors of class members should not be substantially different than those of non-class members. *See* February 13, 2017 Letter from Court Expert Ed Swanson to Parties at 2. Defendants have provided no evidence showing this is no longer true.

Second, on our monitoring tours and in reviewing Program Access data, Plaintiffs have uncovered blatantly discriminatory obstacles to assignments during each of the site visits conducted by the parties and also during routine *Coleman* and *Armstrong* monitoring. Plaintiffs have reported multiple times on acts of discrimination resulting in unequal treatment by CDCR of prisoners with disabilities regarding access to the most desirable assignments, PIA programs. *See, e.g.*, September 24, 2021 tour report on June 7-10, 2021 Tour of CSP Los Angeles County (documenting severely disparate rates of assignment to PIA programs for EOP patients, individuals with DDP-codes and individuals with DPP codes.)

For example, out of 142 PIA positions at LAC on September 1, 2021, there were 4 individuals with a hearing impairment code of DNH assigned to PIA positions, 1 individual with a mobility impairment assigned a position and no other individuals with *Armstrong* disabilities assigned to a PIA position. *Id.* at 22-23. There were also only 3 individuals in the EOP program who had PIA positions, and no one in the *Clark* DDP program had a PIA position. *Id.*; *see also* June 7, 2018 letter from P. Godbold (documenting intentional discrimination by PIA supervisors); June 29, 2018 letter from J. Winter (documenting that at SVSP, PIA and IWL work supervisors have absolute discretion about who joins their workforce); March 19, 2019 report by T. Nolan regarding tour of California State Prison—Los Angeles County (noting that although a waitlist for PIA assignments exists, PIA Superintendent Doug May admitted that he

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selects his workforce through applications and interviews, and that individuals can skip to the head of the line through this process).

Similar problems with lack of access to PIA programs system-wide were noted in our e-mail prior to our September 10, 2021 meeting of the Program Access workgroup with PIA officials. *See* Tom Nolan Email to Katie Riley, September 9, 2021, attached hereto as **Exhibit A** (analyzing August 2021 Program Access data and noting that statewide, “for all EOPs, the rate of assignment to PIA programs is a mere 1.35 percent, compared to a rate of assignment to PIA jobs of 7.56% for individuals with no mental health code. That means the rate of assignment for EOPs to PIA programs is **less than one fifth** the rate that individuals with no mental health codes are assigned to PIA jobs.”)

Finally, Plaintiffs have reported that staff members have admitted that they can circumvent the waitlist process to assign their desired candidate to a position or that they rely heavily on factors other than priority codes, such as interviews or referrals from others working in the same location. *See, e.g.*, January 31, 2019 report by T. Nolan re tour of California Men’s Colony at 5; Oct. 3, 2017 report by J. Yelin re tour of Avenal State Prison at 5. Defendants have promised to remove discretion from individual supervisors and assignment lieutenants, but have not demonstrated that this practice has ceased system-wide.

Plaintiffs have also reported on physical barriers to access. *See* October 3, 2018 letter from C. Woods (documenting that at KVSP, the Office Services and Related Technologies (OSRT), Small Engine Repair, Auto Mechanics, and Welding operate beyond a work change station at C Yard, and that the security check at the work change is largely inaccessible to persons with wheelchairs); March 15, 2019 report by T. Nolan re Joint Monitoring Tour of DVI (noting that most education assignments and some other assignments are held upstairs, so people with mobility impairments cannot access them). And Plaintiffs have reported on policies that are designed in a way that disadvantages class members. *See* February 4, 2019 email from M. Shinn-Krantz reporting on CDCR’s practice of unassigning Coleman class members when they are admitted to an MHC at an outside institution; March 27, 2019 letter from Dillon Hockerson re: same; April 1, 2019 email from M. Shinn-Krantz re same.

We acknowledge that our work in the program assignments workgroup this year has highlighted some possibly unintentional barriers to equal access that Defendants can work to address. For example, it is clear that a lack of part-time jobs at some institutions makes it more difficult for EOPs to be assigned, given their need to attend 10 hours of treatment groups each week. Similarly, we noted in meetings with education that non-revocable Educational Merit Credits are only available for people who obtain high school or college degrees, and that the lack of similar credits for cognitively impaired or learning

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disabled individuals who are working to obtain lower level educational benchmarks, such as completing ABE-I or ABE-II might deny equal access to this type of sentence reducing credits to class members who will never be able to realistically obtain a GED or college credit due to their disabilities.

The most recent program access data produced on November 2, 2021 for October 2021 shows that disparities in assignments remain (along with any resulting disparities in sentence reducing credit earning) and that CDCR has not made significant progress to close the gap.

Chart A

Category*	Population	Number Assigned	Percentage Assigned	Percentage Points Between Class Members and Non-Class Members
Non-MHSDS	58,502	46,777	79.95%	
CCCMS	21,487	16,361	76.14%	3.81%
EOP	5,188	2,970	57.24%	22.71%
Non-DPP	76,659	59,683	77.85%	
DNH	2468	1890	76.58%	1.27%
DPH	86	71	82.55%	-4.70%
DKD	64	38	59.38%	18.47%
DLT	2394	1821	76.06%	1.79%
DNM	1505	1174	78.00%	-0.15%
DPM	1845	1305	70.73%	7.12%
DPO	697	479	68.72%	9.13%
DPW	351	223	63.53%	14.32%
DPS	43	35	81.39%	-3.54%
DNV	195	135	69.23%	8.62%
DPV	192	122	63.54%	14.31%
LD	126	111	88.09%	-10.24%
Non-DDP	84,353	65,538	77.69%	
DD1	385	272	70.64%	7.05%
DD2	503	308	61.23%	16.46
DD3	34	18	52.94%	24.75%

*Figures exclude people housed in the following locations: ASU, Camp Program Beds, Condemned, CTC, Fire House, Hospice, LTRH, MHCB, NDS, OHU, PIP, PSU, RC, SHU, STRH, and SNY Fire House.

As in the past, the greatest disparities exist for DPW class members and EOP class members—only 63.53% of DPW class members are assigned, versus 77.85% of non-DPP

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individuals, and only 57.24% of EOP class members are assigned, versus 79.95% of non-MHSDS individuals.

Attached hereto as **Exhibit B** is a chart showing assignment rates by institution, based on the October 2021 program access data. This chart shows the continued relevance of data in identifying institutions that are outliers in terms of assignments for individuals with disabilities. Below are some examples of institutions with particularly pronounced disparities in rates of assignment for people with particular disabilities:

Assignment Rates for Developmentally Disabled *Clark* Class Members:

- At LAC, individuals with a DDP code of DD1 are assigned to programs at a rate of only 47.37 percent, which is only roughly two-thirds of the 74.39 percent assignment rate for individuals with no DPP code.
- At CMF, individuals with a DDP code of DD3 are assigned to programs at a rate of 36.36 percent, which is only a little greater than one-third of the 76.72 percent rate for individuals with no DPP code.
- At MCSP, individuals with a DDP code of DD2 are assigned to programs at a rate of 43.21 percent, which is less than two-thirds the 74.99 percent rate for individuals with no DPP code.

Assignment Rates for EOPs:

- At MCSP, individuals at the EOP level of care are assigned to a programs only 45.19 percent, which is only a little more than half the 82.78 percent rate at which non-mental health coded individuals are assigned to programs.
- At San Quentin, individuals at the EOP level of care are assigned to a programs only 42.86 percent , which is significantly less than the 71.63 percent rate at which non-mental health coded individuals are assigned to programs.
- At VSP, individuals at the EOP level of care are assigned to a programs only 50.33 percent, which is significantly less than the 89.32 percent rate at which non-mental health coded individuals are assigned to programs.
- At KVSP, individuals at the EOP level of care are assigned to a program only 55.34 percent, which is significantly less than the 80.42 percent rate at which non-mental health coded individuals are assigned to programs.

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Assignment Rates for *Armstrong* Class Members

- At SATF, individuals with a DPP code of DPV are assigned to programs at a rate of 47.44 percent, which is around two-thirds the 71.26 percent assignment rate for individuals with no DPP code.
- At SATF, individuals with a DPP code of DPO are assigned to programs at a rate of 47.44 percent, which is a around two-thirds the 71.26 percent assignment rate for individuals with no DPP code.
- At VSP, the assignment rate for individuals with a DPP Code of DPO is 50.94 percent, which is less than two thirds the 86.36 percent assignment rate for individuals with no DPP code.
- At CHCF, the assignment rate for individuals with a DPP code of DPV is 33.33 percent, which is only a little more than one-third the 86.93 percent rate for non-DPP individuals.
- At LAC, the 58.62 percent assignment rate for individuals with a DPP code of DPW is significantly lower than the 74.34 percent assignment rate for individuals with no DPP code.
- At SVSP, the 66.67% assignment rate for individuals with a DPP code of DPW is significantly lower than the 77.91% assignment rate for individuals with no DPP code.
- At Calipatria, the 54.55% assignment rate for individuals with a DPP code of DLT is significantly lower than the 72.02% assignment rate for individuals with no DPP code.

These highly disparate categories at specific institutions documented in **Exhibit B** should be investigated at each of the relevant institutions as soon as possible.

In addition to spotting problem institutions, the Program Access data allows the parties to identify disparities in the most highly paid and most desirable job positions. We recently highlighted the disparities in assignments to PIA positions, *See Exhibit A* hereto.

Similar disparities exist for the most highly compensated CDCR job assignments. Attached hereto as **Exhibit C** is a chart showing rates of assignments to different jobs based on pay grade.

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The chart shows the highest level of disparities in rates of assignment to Grade 1 jobs – the CDCR jobs that are the most highly sought after. For example, only 0.55% of all individuals in the CDCR at the EOP level of care are assigned to Grade 1 jobs, roughly one-quarter the 1.99% rate at which individuals with no mental health code are assigned to Grade 1 positions. Similarly, only 0.23% of DDP individuals in the *Clark* program are assigned to Grade 1 positions, which is less than one-seventh the 1.74% rate of assignment for individuals with no DPP code. Similarly, individuals with an impacting placement DPP code are assigned to Grade 1 job at a rate of 0.39%, which is roughly one quarter of the 1.80% rate for individual with no DPP code. (Note that these rates actually underrepresent the true disparity because they compare rates of people currently assigned to a position in different pay categories. Since individuals in these categories are assigned to any program at a lower rate than non-disabled individuals, the true disparities for each pay grade are even higher.)

Plaintiffs like Defendants proposal to start out the new workgroup, in part, with a review of assignment practices at different institutions. The parties' have heard many different accounts of the assignment process in past joint tours and investigations, and it is clear that and the assignment process often functions in practice much differently than is required by policy with many staff acknowledging that they hire folks they know they can get along with and depend on and with many class members reporting that the ability to obtain a desired assignment depends on who you know..

We look forward to meeting with you next week to discuss how the Program Access workgroup should proceed. As an initial matter, we like your idea of developing a survey of assignment lieutenants to determine what their actual practice is in assigning people. We might also want to consider interviews targeted towards work supervisors.

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Katie Riley, Tamiya Davis, Dawn Laurie
November 12, 2021
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We would also like to develop a more thorough plan to remedy ongoing program access discrimination, to highlight program access data for individual institutions in the Joint Monitoring process, and to continue to investigate the problem in general.

We look forward to our meeting next Friday.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Thomas Nolan

Thomas Nolan

By: Of Counsel

TN:ad

cc:

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Jimmy Ly
Joshua Leon Guerrero
Steven Faris
Sean Rashkis
Antonina Raddatz
Christine Ciccotti
Kristopher Kent

EXHIBIT A

Adam Dean

From: Thomas Nolan
Sent: Friday, September 10, 2021 1:03 AM
To: Katie Riley; Coleman Team - RBG Only; Armstrong Team - RBG only; Salas, Kori@CDCR; Sean Lodholz; Robert Perkins III; Thind, Sundeep@CDCR; Melissa Bentz; Davis, Tamiya@CDCR; Powell, Alexander@CDCR; Tang, Shirley@CDCR; Zuckerman, Adam@CDCR; Johnson, Gannon@CDCR; Nick Weber; Hockerson, Dillon@CDCR; Meyer, Nicholas@CDCR; Moak, Brian@CDCR; Penny Godbold; Margot Mendelson; rlomio; Patrick Booth; Sara Norman; Rana Anabtawi; Ostling, Linda; Scofield, Bryant; Liu, Helen@CDCR; Thomas, Edina@CDCR; Campbell, Janel@CDCR; Langowski, Kyle@CDCR; Hoffman, Kevin@CDCR; Singh, Suneeta (Nicki)@CDCR; Fouch, Adam@CDCR; Lorey, Dawn@CDCR; Hernandez, Jillian@CDCR; Jacobo, Francesca@CDCR; Dixon, Heidi@CDCR; Borunda, Royce@CDCR; Travis Williams; Legarda, Alicia@CDCR; Griffin, Martin@CDCR; Bonillas, Cynthia@CDCR; Link, Starla@CDCR; Sheley, Loran@CDCR; Thornburg, Anh; Stafford, Carrie@CDCR; Ferguson, Patricia@CDCR; Renteria, Simone@CDCR; Frost, Tennille@CDCR; Snell, Jennifer@CDCR; Villon, Juan@CDCR; Basinger, Matthew; Lizarde, Miguel@CDCR; Pulley, Shad@CDCR; Le Sieur, Crystal@CDCR; Tillotson, Mark@CDCR; Sanford-Miller, Jana@CDCR; Gonzales, Andre@CDCR; Iram Hasan; Lucas Hennes; Ryan Gille; Zanini, Stephen@CDCR; Fields, Robert@CDCR; Moreno, Jorge@CDCR; Olivarez, Melinda@CDCR; Jeff Sly; Rusty Bechtold; Steve Fama; Sara Norman; Rana Anabtawi
Cc: Kerry F. Walsh; Tim Rougeux; Mohamedu Jones
Subject: Armstrong/Coleman/Clark --Tomorrow's Program Access Workgroup Meeting w/ PIA [IWOV-DMS.FID3579]
Attachments: PIA Rate of Assignment Data for COL, ARM, CLARK, 09-09-2021.PDF; sept-21.xlsx

Dear Katie,

In preparation of our meeting tomorrow on Program Access and Prison Industries Authority ("PIA") programming, Plaintiffs analyzed the most recent PIA assignment data for August 2021 for class members in *Coleman*, *Armstrong*, and *Clark*, which Tamiya produced on September 1, 2021.

Given past monitoring on the issue at individual CDCR institutions, we were frankly not surprised to find some troubling disparities in the rates to which individuals with disabilities are assigned to PIA programming. For example, during our June 2021 tour of CSP-Los Angeles County, we spoke to PIA manager and we were told that out of 130 PIA positions at the institution, only 3 were help by *Armstrong* class members with a DPP code.

The data summarized below and in the attached PDF analyzing the program access data produced on September 1, 2021 (attached for reference) is particularly troubling for people with certain disabilities.

***Coleman* Class Members**

For example, system wide, there are only 88 EOP level of care individuals who have positions in any PIA program. The problem for EOPs with access to PIA programming is actually worse than that number suggests because more than half of the PIA assignments in the entire system for EOPs, 45 of them, are at a single institution – the California Men's Colony, and roughly half of the remaining EOPs with jobs are at CSP-Sacramento (11) and CMF (9). If you take out the 45 PIA assignments at CMC, there are only 38 PIA assignments for EOPs in the entire rest of the system. Moreover, for all EOPs, the rate of assignment to PIA programs is a mere 1.35 percent, compared to a rate of assignment to PIA jobs of 7.56% for individuals with no mental health code. That means the rate of assignment for EOPs to PIA programs is **less than one fifth** the rate that individuals with no mental health codes are assigned to PIA jobs.

- 1.35 percent of EOP class members are assigned to PIA assignments, but 7.56 percent of non-class members (GP) are assigned to PIA assignments .
 - Over half of the EOP class members with PIA assignments reside at CMC, there are 43 of them. This heavy concentration of PIA assignments among EOP class members at CMC means that EOP class members at other prisons across the state are even more underrepresented than 1.35 percent rate of assignment suggests.
 - EOP class members only have PIA assignments at 8 prisons across the state despite having significant EOP populations at 16 prisons across the state.
 - At CMF, 1.94 percent of EOP class members are assigned to PIA assignments while GP are assigned at 11.08 percent.
 - At LAC, .56 percent of EOP class members are assigned to PIA assignments while GP are assigned at 7.66 percent.
 - At MCSP, 1 percent of EOP class members are assigned to PIA assignments while GP are assigned at 14.97 percent.
- 5.93 percent of CCCMS class members are assigned to PIA assignments, but 7.56 percent of non-class members (GP) are assigned to PIA assignments .
 - At many prisons, CCCMS rates of assignment in PIA are much lower than those of GP
 - At SVSP, 3.1 percent of CCCMS class members are assigned to PIA assignments while GP are assigned at 7.55 percent.
 - At CIM, 9.25 percent of CCCMS class members are assigned to PIA assignments while GP are assigned at 14.15 percent.
 - At CCWF, 4.08 percent of CCCMS class members are assigned to PIA assignments while GP are assigned at 14.94 percent.

Armstrong Class Members

The data also shows very troubling disparities for *Armstrong* class members, who have mobility, hearing, vision, kidney and learning disabilities. Moreover, when we look only at individuals whose disabilities impact placement, the rates of assignment are extraordinary low. For example, only one individual who is DPH -- exactly 1 percent of the 100 individuals who are coded DPH systemwide, are assigned to PIA, which is nearly seven-fold less than the assignment rate to PIA of individuals without a disability code which is 6.87 percent. Not a single DPW-coded class member, out of 576 individuals in the state, has a PIA job.

- *Armstrong* class members in every disability category are underrepresented in PIA assignments across the state 4.64 percent of *Armstrong* class members are assigned to PIA assignments, while 6.87 percent of non-class members are assigned to PIA assignments.
- Disparities in PIA assignments are more dramatic for class members with disabilities that impact placement.
 - DPH class members are assigned to PIA at a rate of 1 percent
 - One class member has a PIA assignment and there 100 DPH class members in CDCR
 - DPW class members are assigned to PIA at a rate of 0 percent
 - There are 0 DPW class members with PIA assignments while there are 576 in CDCR
 - DPO class members are assigned to PIA at a rate of 1 percent
 - There are 10 DPO class members with a PIA assignment while there are 964 in CDCR
 - DPV class members are assigned to PIA at a rate of .84 percent
 - There are 2 DPV class members with a PIA assignment while there are 239 in CDCR

Clark Class Members

The data for *Clark* class members is also very troubling, with less than 2 percent of DD1 and DD2 coded class members assigned to PIA jobs (compared to 6.67 percent of people not on the class). Also, there are no DD3 class members with PIA positions.

- Non-class members are assigned to PIA at a rate of 6.67 percent
- 1.46 percent of DD1 class members are assigned to PIA.
- 1.92 percent of DD2 class members are assigned to PIA.
- 0 percent of DD3 class members are assigned to PIA.

These disparities in assignment to PIA are very troubling, and we look forward to working with Defendants and PIA to understand the reasons for these difference and to eliminate and disability-based or disability-related barriers to participation of people with disabilities in PIA programs.

Thanks. We look forward to meeting with you all tomorrow.

Tom

Thomas Nolan
Of Counsel



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CCCMS and EOP PIA Rate of Assignment by Prison for August 2021

Prison	PIA	POP	% in PIA	% in PIA	PIA	POP	% in PIA	% in PIA	PIA	POP	PIA	POP	
	CCCMS	CCCMS	CCCMS	GP	EOP	EOP	EOP	GP	GP	GP	Total	Total	
Avenal State Prison	108	1002	10.78%	12.55%		2	0.00%	12.55%	323	2573	431	3577	
California City Correctional Facility		1	0.00%	1.65%				1.65%	35	2126	35	2127	
California Correctional Center				2.79%				2.79%	59	2112	59	2112	
California Correctional Institution	46	880	5.23%	7.52%		3	0.00%	7.52%	145	1928	191	2812	
California Health Care Facility - Stockton	4	441	0.91%	5.35%		358	0.00%	5.35%	44	822	48	2126	
California Institution for Men	86	930	9.25%	14.15%		6	0.00%	14.15%	225	1590	311	2558	
California Institution for Women	65	461	14.10%	17.26%		45	0.00%	17.26%	73	423	139	958	
California Medical Facility	22	381	5.77%	11.08%	9	463	1.94%	11.08%	79	713	111	1973	
California Men's Colony	67	635	10.55%	17.69%	45	544	8.27%	17.69%	332	1877	445	3099	
California Rehabilitation Center	26	1076	2.42%	7.10%		2	0.00%	7.10%	104	1464	130	2543	
California State Prison, Corcoran	79	1131	6.98%	8.87%	4	204	1.96%	8.87%	179	2018	262	3367	
California State Prison, Los Angeles County	25	728	3.43%	7.66%	3	533	0.56%	7.66%	114	1488	142	2766	
California State Prison, Sacramento	13	356	3.65%	7.72%	11	845	1.30%	7.72%	68	881	92	2105	
California State Prison, Solano	69	618	11.17%	14.72%		1	0.00%	14.72%	396	2691	466	3318	
California Substance Abuse Treatment Facility	65	1891	3.44%	3.85%		473	0.00%	3.85%	103	2676	168	5052	
Calipatria State Prison		1	0.00%	3.12%				3.12%	91	2916	91	2917	
Centinela State Prison			#DIV/0!	5.21%				5.21%	155	2976	155	2976	
Central California Women's Facility	51	1251	4.08%	14.94%		89	0.00%	14.94%	156	1044	207	2400	
Chuckawalla Valley State Prison			#DIV/0!	5.21%				5.21%	119	2282	119	2282	
Correctional Training Facility	78	1136	6.87%	10.99%		1	0.00%	10.99%	376	3421	454	4560	
Folsom State Prison	72	603	11.94%	18.14%		7	0.00%	18.14%	383	2111	455	2722	
High Desert State Prison	13	974	1.33%	2.25%		9	0.00%	2.25%	51	2264	64	3247	
Ironwood State Prison		5	0.00%	3.78%				3.78%	90	2384	90	2389	
Kern Valley State Prison	7	1016	0.69%	1.45%		113	0.00%	1.45%	34	2345	41	3483	
Mule Creek State Prison	166	1498	11.08%	14.97%	7	698	1.00%	14.97%	245	1637	418	3846	
North Kern State Prison	11	895	1.23%	1.71%		93	0.00%	1.71%	43	2511	54	3808	
Pelican Bay State Prison	13	326	3.99%	5.80%		11	0.00%	5.80%	104	1794	117	2135	
Pleasant Valley State Prison	13	475	2.74%	3.10%		3	0.00%	3.10%	70	2259	83	2737	
RJ Donovan Correctional Facility	103	1243	8.29%	12.95%	3	782	0.38%	12.95%	162	1251	268	3291	
Salinas Valley State Prison	31	1000	3.10%	7.55%		295	0.00%	7.55%	112	1483	143	3013	
San Quentin State Prison	66	837	7.89%	11.06%	1	183	0.55%	11.06%	179	1619	246	2655	
Sierra Conservation Center	52	395	13.16%	3.68%		2	0.00%	3.68%	107	2908	159	3314	
Valley State Prison	61	999	6.11%	9.24%		293	0.00%	9.24%	156	1689	217	2981	
Wasco State Prison	23	995	2.31%	4.97%		69	0.00%	4.97%	100	2013	123	3559	
Grand Total		1435	24180	5.93%	7.56%	83	6127	1.35%	7.56%	5012	66289	6534	98808

Armstrong PIA Rate of Assignment by Category for August 2021

	PIA	Population	ARM Rate of Assignment	Non ARM Rate of Assignment
Hearing	164	2875	5.70%	6.87%
DPH	1	100	1%	6.87%
Kidney	0	116	0%	6.87%
Mobility	326	7840	4.16%	6.87%
DPW	0	576	0%	6.87%
DPO	10	964	1.04%	6.87%
DPM	49	2072	2.36%	6.87%
Speech	2	58	3.45%	6.87%
Vision	14	484	2.89%	6.87%
DPV	2	239	.84%	6.87%
LD	7	145	4.83%	6.87%
Armstrong	459	9882	4.64%	6.87%
Non Armstrong	6075	88400	n/a	6.87%

Clark PIA Rate of Assignment by Code for August 2021

	PIA	Total	Clark Rate of Assignment	Non Clark Rate of Assignment
DD1	7	479	1.46%	6.67%
DD2	12	626	1.92%	6.67%
DD3	0	73	0%	6.67%
Non Clark	6515	97650	n/a	6.67%

EXHIBIT B

Program Assignment Rates by Institution, October 2021

Institution	Non-MHSDS	CCCMS	EOP	Non-DPP	DNH	DPH	DLT	DNM	DPM	DPO	DPW	DKD	DNV	DPV	DPS	Non-DDP	DD1	DD2	DD3
Avenal State Prison	87.62%	77.84%	50.00%	84.83%	91.84%	N/A	71.88%	92.86%	N/A	N/A	N/A	N/A	N/A	66.67	N/A	84.79%	N/A	N/A	N/A
California City Correctional Facility	61.61%	50.00%	N/A	61.46%	63.64%	N/A	68.42%	83.33%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	61.59%	N/A	N/A	N/A
California Correctional Center	85.32%	N/A	N/A	85.33%	88.89%	N/A	87.50%	100.00%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	85.32%	N/A	N/A	N/A
California Correctional Institution	84.13%	75.60%	N/A	81.33%	88.64%	N/A	0.00%	82.61%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	81.44%	N/A	N/A	N/A
California Health Care Facility - Stockton	85.49%	82.70%	70.06%	86.93%	80.95%	100.00%	77.46%	86.36%	73.40%	58.49%	60.87%	62.22%	78.57%	33.33%	100%	82.37%	20.00%	60%	N/A
California Institution for Men	83.50%	82.80%	N/A	84.95%	71.51%	100.00%	78.13%	75.17%	63.75%	57.14%	N/A	50%	45.45%	90.91%	75.00%	83.44%	73.53%	60.53%	50%
California Institution for Women	90.72%	91.18%	53.66%	90.02%	90.91%	N/A	85.29%	81.25%	76.00%	N/A	N/A	N/A	N/A	N/A	N/A	89.30%	33.33%	100%	N/A
California Medical Facility	87.28%	81.71%	51.83%	76.28%	70.25%	80%	75.93%	77.14%	70.79%	73.03%	74.14%	N/A	90.91%	79.49%	87.50%	76.72%	74.42%	58.67%	36.36%
California Men's Colony	90.84%	87.59%	86.31%	90.01%	81.51%	N/A	84.80%	84.55%	25%	N/A	N/A	N/A	N/A	N/A	N/A	89.45%	88.10%	86.11%	100%
California Rehabilitation Center	84.45%	68.53%	66.67%	76.87%	84.38%	N/A	50.00%	86.67%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	76.96%	N/A	100%	N/A
California State Prison, Corcoran	75.26%	69.74%	57.41%	72.81%	74.03%	N/A	64.71%	73.33%	N/A	75.00%	N/A	N/A	N/A	N/A	N/A	72.62%	80%	45.45%	N/A
California State Prison, Los Angeles County	80.79%	75.24%	51.91%	74.34%	73.26%	100.00%	82.40%	66.67%	66.30%	70.83%	58.62%	N/A	N/A	60.00%	N/A	74.39%	47.37%	60.87%	100%
California State Prison, Sacramento	81.53%	78.05%	51.99%	70.36%	51.61%	N/A	52.00%	63.64%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	69.40%	84.62%	75%	66.67%
California State Prison, Solano	72.94%	69.45%	N/A	71.86%	77.27%	N/A	72.24%	77.08%	66.67%	N/A	N/A	N/A	N/A	N/A	N/A	72.31%	N/A	N/A	N/A
California Substance Abuse Treatment Facility	74.22%	69.85%	52.77%	71.26%	63.89%	71.43%	65.87%	78.57%	70.33%	57.65%	N/A	N/A	63.64%	47.44%	72.73%	70.42%	75.47%	67.50%	50%
Calipatria State Prison	72.00%	N/A	N/A	72.02%	68.42%	N/A	54.55%	77.78%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	71.97%	N/A	N/A	N/A
Centinela State Prison	80.96%	50.00%	N/A	81.21%	62.50%	N/A	57.14%	54.55%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	80.92%	N/A	N/A	N/A
Central California Women's Facility	92.60%	87.88%	75.61%	88.83%	90.91%	100.00%	91.67%	100%	94.87%	93.94%	N/A	100%	88.89%	N/A	N/A	89.41%	80%	88.89%	N/A
Chuckawalla Valley State Prison	80.66%	N/A	N/A	80.62%	89.01%	N/A	77.14%	72.73%	25.00%	N/A	N/A	N/A	N/A	N/A	N/A	80.63%	N/A	N/A	N/A
Correctional Training Facility	90.39%	84.89%	33.33%	88.91%	92.59%	N/A	90.25%	84.78%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	89.02%	N/A	N/A	N/A
Folsom State Prison	77.15%	68.12%	33.33%	75.15%	90.91%	N/A	50%	75.76%	57.14%	N/A	N/A	N/A	N/A	N/A	N/A	75.07%	N/A	N/A	N/A
High Desert State Prison	65.53%	64.01%	28.57%	64.31%	83.93%	N/A	74.19%	62.96%	52.94%	N/A	60.00%	N/A	87.50%	85.71%	N/A	64.99%	N/A	N/A	N/A
Ironwood State Prison	90.70%	60.00%	N/A	90.67%	88.89%	N/A	88.89%	83.33%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	90.63%	N/A	N/A	N/A
Kern Valley State Prison	80.42%	73.13%	55.34%	78.06%	79.49%	N/A	78.95%	62.96%	60.47%	68.18%	50.00%	66.67%	N/A	N/A	N/A	77.55%	N/A	0%	N/A
Mule Creek State Prison	82.78%	78.04%	45.19%	75.55%	66.67%	N/A	68.44%	74.21%	66.80%	53.57%	N/A	N/A	N/A	50.00%	N/A	74.99%	48.65%	43.21%	0%
North Kern State Prison	78.78%	74.03%	N/A	76.81%	100.00%	N/A	71.43%	50.00%	N/A	N/A	52.63%	N/A	N/A	N/A	N/A	76.74%	N/A	N/A	N/A
Pelican Bay State Prison	81.98%	71.13%	N/A	80.46%	76.19%	N/A	69.23%	75.00%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	80.15%	N/A	N/A	N/A
Pleasant Valley State Prison	84.37%	84.75%	N/A	84.42%	84.21%	N/A	71.43%	100%	88.89%	66.67%	N/A	N/A	N/A	N/A	N/A	84.40%	N/A	N/A	N/A
RJ Donovan Correctional Facility	88.54%	85.04%	62.42%	82.31%	77.89%	85.71%	70.59%	78.82%	77.21%	79.06%	68.35%	40.00%	78.26%	81.82%	85.71%	81.29%	64.86%	64.29%	100%
Salinas Valley State Prison	81.49%	74.50%	70.48%	77.91%	73.21%	66.67%	92.73%	78.13%	75.31%	70.59%	62.07%	N/A	28.57%	N/A	N/A	77.80%	76.67%	80.95%	0%
San Quentin State Prison	71.63%	59.00%	42.86%	64.64%	69.47%	81.82%	0.00%	72.34%	N/A	N/A	N/A	N/A	N/A	N/A	83.33%	65.23%	N/A	0%	0%
Sierra Conservation Center	73.52%	88.47%	33.33%	74.61%	78.26%	N/A	87.23%	92.31%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	74.90%	N/A	N/A	N/A
Valley State Prison	89.32%	83.60%	50.33%	86.35%	78.88%	N/A	80.95%	88.73%	65.67%	50.94%	61.54%	N/A	N/A	N/A	N/A	83.69%	50%	30%	N/A
Wasco State Prison	72.69%	58.44%	N/A	67.78%	85.71%	N/A	66.67%	37.50%	N/A	N/A	N/A	50.00%	N/A	N/A	N/A	67.40%	N/A	N/A	N/A

*Yellow highlight if difference between non-class member and class member is greater than 10 percentage points

*Orange highlight if difference between non-class member and class member is greater than 20 percentage points

*Red highlight if difference between non-class member and class member is greater than 30 percentage points

EXHIBIT C

Pay Grades of Class Members with Assignments, October 2021

	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	No Pay	Grand Total**
Non-MHSDS	1.99%	1.68%	4.29%	5.26%	11.25%	75.52%	100.00%
CCCMS	1.16%	1.06%	4.18%	3.88%	12.78%	76.94%	100.00%
EOP	0.55%	0.48%	3.23%	2.73%	15.65%	77.36%	100.00%
Non-DPP	1.80%	1.52%	4.26%	4.90%	11.76%	75.76%	100.00%
DPP	1.08%	1.10%	3.83%	4.08%	11.82%	78.10%	100.00%
Designated DPP*	0.39%	0.53%	3.38%	3.40%	11.75%	80.55%	100.00%
Non-DDP	1.74%	1.49%	4.24%	4.84%	11.75%	75.94%	100.00%
DDP	0.23%	0.38%	1.90%	2.05%	14.06%	81.38%	100.00%

*Disabilities Impacting Placement (DPM, DPO, DPW, DPH, DPV)

**These data show if you are assigned, at what rate you are assigned to a particular pay grade based on your class (class member, non-class member). For example, if you have a disability impacting placement and have an assignment, that assignment is at the Grade 1 level .39% of the time.