

1 DONALD SPECTER – 083925
 RITA K. LOMIO – 254501
 2 MARGOT MENDELSON – 268583
 PRISON LAW OFFICE
 3 1917 Fifth Street
 Berkeley, California 94710-1916
 4 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704
 5
 MICHAEL W. BIEN – 096891
 6 GAY C. GRUNFELD – 121944
 THOMAS NOLAN – 169692
 7 PENNY GODBOLD – 226925
 MICHAEL FREEDMAN – 262850
 8 ROSEN BIEN
 GALVAN & GRUNFELD LLP
 9 101 Mission Street, Sixth Floor
 San Francisco, California 94105-1738
 10 Telephone: (415) 433-6830
 Facsimile: (415) 433-7104

CALIFORNIA OFFICE OF THE
 ATTORNEY GENERAL
 ROB BONTA
 Attorney General of the State of California
 MONICA ANDERSON
 Senior Assistant Attorney General
 SHARON A. GARSKE
 Supervising Deputy Attorney General
 SEAN LODHOLZ
 OLENA LIKHACHOVA
 D. MARK JACKSON
 TRACE O. MAIORINO
 Deputy Attorneys General
 State Bar No. 179749
 455 Golden Gate Avenue, Suite 11000
 San Francisco, California 94102-7004
 Telephone: (415) 510-3594
 Fax: (415) 703-5843
 E-mail: Trace.Maiorino@doj.ca.gov
 Attorneys for Defendants Gavin Newsom
 and the California Department of Corrections
 and Rehabilitation

11 LINDA D. KILB – 136101
 12 DISABILITY RIGHTS
 EDUCATION & DEFENSE FUND,
 13 INC.
 3075 Adeline Street, Suite 201
 14 Berkeley, California 94703
 Telephone: (510) 644-2555
 15 Facsimile: (510) 841-8645

16 Attorneys for Plaintiffs

17
 18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20

21 JOHN ARMSTRONG, et al.,
 22 Plaintiffs,
 23 v.
 24 GAVIN NEWSOM, et al.,
 25 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, 73,066
 9 cases of the novel coronavirus have been detected among people incarcerated in California
 10 prisons. Since the last status conference statement, an additional 6 people incarcerated in
 11 CDCR have died of COVID-19, bringing the total to 251 people who have died after being
 12 infected while in prison in California. Of those, approximately half were *Armstrong* class
 13 members, even though they make up only about 11% of the total incarcerated population.
 14 This is a tragic but predictable result of Defendants’ systemic failures to safely and
 15 accessibly house class members during the pandemic, which contributed to countless class
 16 members becoming infected with COVID-19.

17 In the midst of continued outbreaks and a rising death count in California prisons,
 18 Defendants continue to resist vaccination efforts that would better protect *Armstrong* class
 19 members. On September 27, 2021, the Court in *Plata v. Newsom* ordered mandatory
 20 vaccinations for staff working in CDCR prisons. *See* Doc. 3684, Order re: Mandatory
 21 Vaccinations, *Plata v. Newsom*, No. 01-01351-JST. In its order, the Court held that
 22 Defendants’ failure to require staff vaccinations—especially in light of the abysmally low
 23 staff vaccination rates at many prisons—violates the Eighth Amendment. *See id.* at 18.
 24 The Court found that staff are the primary vectors of the virus in prisons, and those who
 25 are unvaccinated present a significant risk of harm to the incarcerated because they
 26

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

1 frequently come into close contact with “elderly, chronically ill, critically ill, medically
2 fragile, and disabled patients,” many of whom are *Armstrong* class members. *Id.* at 17.
3 Despite the ongoing risk of serious illness or death to people in its custody, Defendants
4 have failed to protect the “vulnerable population that resides in CDCR’s facilities.” *Id.* at
5 18. But, instead of developing a robust plan to vaccinate its staff, Defendants promptly
6 appealed the Court’s order. *See* Doc. 3693, Defendants’ Notice of Appeal, *Plata v.*
7 *Newsom*, No. 01-01351-JST (Oct. 12, 2021). On November 26, 2021, the Ninth Circuit
8 granted Defendants’ motion for a stay of the order pending appeal and ordered expedited
9 briefing. *See* Doc. 28, Order, *Plata v. Newsom*, No. 21-16696. Plaintiffs continue to
10 encourage Defendants to require vaccination of all staff, particularly with the rise of new
11 and possibly more dangerous COVID variants on the horizon.²

12 Defendants unfortunately failed to resolve the backlog of *Armstrong* class members
13 who have been awaiting expedited transfer to accessible housing in mainline institutions
14 when they had the opportunity to do so, even though more than a year has passed since the
15 Court Expert noted his “concern” with the large number of people inappropriately housed
16 because of their disabilities. *See* Doc. 3201 (Feb. 1, 2021) at 8. Defendants’ failure to
17 make a dent in the number of inappropriately housed class members before the
18 reimposition of movement restrictions due to the Omicron variant has predictably led to a
19 sharp increase in the number of mis-housed class members. As of March 4, 2022, there
20 are 190 class members with impacting placement codes housed inaccessibly at non-
21 designated institutions, in violation of the *Armstrong* Remedial Plan (this does not include

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 “the record shows that
25 CDCR has been one of the most proactive correctional systems in the country battling
26 [COVID-19].” Plaintiffs do not agree, and the record is to the contrary. Defendants have
27 never submitted any evidence to dispute the extensive evidence from Plaintiffs that
28 established their 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 an additional 116 class members with impacting placement codes awaiting transfer to
2 designated mainline prisons from reception centers).

3 Contrary to Defendants’ statement below, and as documented in more detail in prior
4 Case Status Statements, *see, e.g.* January 18, 2022 Joint Case Status Statement, Doc. 3369,
5 at 2-3, Defendants’ own data confirms that the number of inappropriately housed class
6 members continued to trend upward and then remained stagnant for the summer and fall of
7 2021, after interfacility movement of class members was deemed “necessary” by CCHCS.
8 While Plaintiffs and the Court Expert met on multiple occasions with Defendants on
9 addressing the large number of mis-housed class members, and Plaintiffs warned about the
10 consequences of failing to consider additional steps to speed up transfers of class members
11 to accessible locations, Defendants chose instead to stay the course, with predictable
12 results.

13 Plaintiffs fear that Defendants have now created a “new normal” where there are
14 always more than 100 class members mis-housed at prisons not designed to safely house
15 individuals with their disabilities, a significantly higher number than the pre-pandemic
16 levels, when (according to Defendants) there were only several dozen class members mis-
17 housed statewide at any given time. It is troubling that so many class members remain
18 mis-housed at this point in the pandemic, as it does not appear that the need for isolation
19 and quarantine housing will be eliminated soon.

20 Unfortunately, with new movement restrictions in place, Defendants missed their
21 opportunity to transfer large numbers of mis-housed class members when it was safe to do
22 so. Defendants must come up with a way to expedite transfers more quickly once
23 movement restrictions are lifted again. If they move as slowly as they did in 2021, it is
24 inevitable that the number of inaccessibly housed class members will continue to rise.

25 **2. Defendants’ Statement**

26 In concert with the court appointed Receiver, who is responsible for medical care
27 and infectious disease control within the prisons, Defendants have worked tirelessly to
28 provide a comprehensive and proactive response to the unprecedented challenges caused

1 by the global pandemic to ensure that class members are accommodated and to ensure the
2 safety and security of all incarcerated people, whether class members or not. Over the last
3 twenty-four months, Defendants have dedicated resources to addressing the COVID-19
4 pandemic and providing timely information to address Plaintiffs' concerns and maximize
5 invaluable resources. Notwithstanding the challenges of a new variant, Defendants
6 continue to make significant and comprehensive efforts to contain and minimize the effects
7 of an unparalleled, global pandemic on the people housed in its institutions, staff, and
8 visitors by continuing with a robust vaccination process, maintaining a stringent testing
9 process, enforcing appropriate mitigation measures, working with Plaintiffs to address
10 individual concerns, and many other proactive efforts to address an unprecedented,
11 challenging, and ever-changing landscape.

12 Plaintiffs raise concerns about the staff-vaccination rates and continue to urge
13 CDCR to mandate that all staff receive vaccinations to provide further protection to class
14 members. Vaccinations have been offered to all inmates. As of January 13, 2022, 91% of
15 the DPP population has been fully vaccinated. CDCR's robust system to protect the total
16 inmate population has resulted in approximately 82% of the institution population total of
17 95,825 people in CDCR's custody being fully vaccinated and 72% of staff being
18 vaccinated³. Moreover, as of February 24, 2022, 77% of eligible inmates have received a
19 vaccination booster. Further, as of March 14, 2022, CDCR has performed approximately
20 2,708,427 tests (PCR and antigen) and over 28,475 in the last two weeks, alone⁴.

21 The number of class members on the expedited transfer list increased over the last
22 two years due to movement restrictions necessitated by the global pandemic. However,
23 with few exceptions and excluding any necessary pre-transfer quarantine period, when
24 movement is open class members on the expedited transfer list remain there for only a
25

26 ³ <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited March 14,
27 2022.)

28 ⁴ <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last visited March 14,
2022.)

1 short period before being transferred off the list and placed in accessible housing at
2 mainline institutions. CDCR also implemented procedures during the pandemic to ensure
3 that class members at non-designated institutions are accommodated while they await
4 transfer and arranges special transports for those class members who cannot be
5 accommodated at their present institution. CDCR also has robust monitoring and reporting
6 requirements for all class members housed in non-designated spaces, which were created
7 with input from Plaintiffs' counsel.

8 Defendants continue to address the Court Expert's concerns noted in his June 2,
9 2021 report about "appropriately" or "expeditiously" meeting class-member needs and
10 continue to invite Plaintiffs' participation in addressing these issues. But Plaintiffs'
11 characterization that a quick fix exists or that CDCR has failed to act is wrong. On April
12 26, 2021, California Correctional Healthcare Services (CCHCS) issued new guidance on
13 necessary movement, which included transfers of people with disabilities impacting
14 placement. During this time, CDCR had to facilitate movement for several groups,
15 including other *Armstrong* class members returning from county jails and Coleman and
16 Clark class members. As a result, CDCR prioritized movement for *Armstrong* class
17 members with the most significant disabilities, such as class members utilizing a
18 wheelchair or who are blind or low vision. CDCR continued its monitoring and reporting
19 of class members in non-designated spaces, arranged special transport for class members
20 when they could not be accommodated, and Defendants met multiple times with Plaintiffs'
21 counsel and the Court Expert to update them on CDCR's progress, provide detailed data,
22 and discuss any concerns. CDCR subsequently reduced the number of non-reception-
23 center class members on the expedited transfer list from 188, before the April 26, 2021
24 guidance on necessary movement was issued, to 147 by January 4, 2022. CDCR also
25 provided information to Plaintiffs' counsel and the Court Expert showing that a significant
26 portion of class members who remained on the expedited transfer list were in medical
27 beds.

28 Unfortunately, movement restrictions had to be re-implemented on January 4, 2022,

1 due to a spike in COVID-19 cases caused by the Omicron variant. This has
2 understandably caused the number of class members on the expedited transfer list to
3 increase again (there are 190 non-reception-center class members on the expedited transfer
4 list as of March 4, 2022). However, those restrictions were lifted on February 23, 2022.
5 CDCR will continue to reduce the number of class members on the expedited transfer list,
6 prioritizing those class members with the most significant disabilities, and will ensure class
7 members awaiting transfer are accommodated or, otherwise, receive a special transport.
8 CDCR will also continue its weekly reporting on these class members to Plaintiffs’
9 counsel and the Court Expert.

10 Plaintiffs’ concerns that the current state of the expedited transfer list represents the
11 “new normal” is unfounded, as we remain in a global pandemic that is stretching into its
12 third year. Furthermore, Plaintiffs’ assertion that if Defendants “move as slowly as they
13 did in 2021, it is inevitable that the number of inaccessibly housed class members will
14 continue to rise” is simply not accurate. As noted above, the number of non-reception-
15 center class members on the expedited transfer list during the window in which necessary
16 movement for class members had resumed (April 26, 2021 through January 4, 2022)
17 dropped approximately 22% and was trending down.

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

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

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. The majority of provisions of both Remedial Plans have been implemented,
19 including body-worn cameras (“BWC”) and Audio Visual Surveillance Systems (“AVSS”)
20 at all six prisons as of December 1, 2021. Additional Sergeants have been hired and
21 trained at all six prisons and custody and health care staff have received additional training
22 as of October 2021.

23 On January 10, 2022, the Governor released the proposed 2022-2023 budget for
24 CDCR, which includes requests for funding for implementation of staff misconduct
25 remedies statewide. Notably, the budget request includes the extension of court-ordered
26 remedies including implementation of AVSS at ten additional prisons and BWC at four
27 additional prisons. *See* Doc 3369, Exhibit A.

28 In response, the Legislative Analyst’s Office (“LAO”) released a February 2022

1 analysis of the proposed budget entitled “Monitoring Correctional System Staff
2 Misconduct Investigations.” attached hereto as **Exhibit A**. The LAO concludes that “the
3 proposed resources for OIG may result in a level of monitoring that does not meet
4 legislative expectations for oversight.” *See* Ex. A, summary. Under the Governor’s
5 proposal, the OIG would be allocated \$624,000 to monitor 10 percent of the investigations
6 handled by OIA under the new process. Ex. A, at 4. Thus, under this budget proposal, the
7 OIG would be reviewing fewer cases at the OIA level than currently reviewed (only 10
8 percent of cases under the proposed budget as opposed to the current standard of 15
9 percent of cases). *Id.* Also, the budget does not provide for a review of screening
10 decisions for all grievances but rather excepts out health care grievances, requests for
11 reasonable accommodation, and third-party claims. *Id.* This is especially concerning
12 because it means that the allegations central to the staff misconduct litigation in this case—
13 those raised by class members on disability accommodation forms, those raised by
14 Plaintiffs’ counsel, and health care staff grievances which are at the heart of the Court
15 Expert’s investigation into allegations of problems at SATF—would not be monitored by
16 the OIG. The LAO recommended that clear expectations for OIG monitoring be
17 established and appropriate resources set accordingly. *Id.* Seven additional OIG positions
18 are necessary in the budget to simply maintain the current level of OIG oversight over 15
19 percent of OIA investigations, and an additional five OIG positions are necessary to
20 monitor screening of all staff misconduct allegations, including ADA, health care and
21 third-party grievances relevant to this case. *Id.* at 5. Four additional OIG positions, which
22 the LAO characterizes as “cost neutral” would ensure that local prison investigations,
23 which are not currently covered by the Governor’s budget proposal, be monitored by the
24 OIG. *Id.* at 5. Adequate OIG oversight of the new staff misconduct investigation and
25 discipline process is essential to ensuring compliance with this Court’s orders. That is
26 especially true in light of the recent OIG report finding that 91% of Defendants’
27 investigations of the declarations of incarcerated people describing disability-related staff
28 misconduct at RJD filed with this Court were poor. *See* March 2022, Special Report, The

1 California Department of Corrections and Rehabilitation’s Processing of Disabled
2 Incarcerated Persons’ Staff Misconduct Allegations at the Richard J. Donovan
3 Correctional Facility, [https://www.oig.ca.gov/wp-content/uploads/2022/03/RJD-Special-](https://www.oig.ca.gov/wp-content/uploads/2022/03/RJD-Special-Review.pdf)
4 *Review.pdf* (last accessed March 15, 2022). If Defendants are truly serious about
5 discovering and eliminating the disability-related staff misconduct that is rampant inside
6 California prisons, the LAO recommendations regarding OIG funding should be given due
7 consideration for the May revision of the 2022-23 budget.

8 Defendants have also begun quarterly production of documents in compliance with
9 the Court’s Orders. Although the new process for staff misconduct investigations and
10 discipline has not formally rolled out, Plaintiffs have identified failures to comply with
11 court-ordered remedies evident in the quarterly production. Most recently, in a February 9,
12 2022 letter to Defendants, Plaintiffs identified serious problems with BWC compliance
13 among staff at SATF. Defendants currently have no way to monitor compliance with
14 BWC policies which are necessary to effectuate the staff misconduct remedies covered by
15 the Court’s Orders. During a recent meeting regarding Defendants’ proposed plan for
16 BWC monitoring, Defendants reported that only cameras discovered to have been
17 activated for less than six and a half hours during an eight hour shift will be reviewed.
18 Plaintiffs object to this proposal and caution Defendants that they will not discover many
19 instances of BWC non-compliance if they limit monitoring in this way. They are likely
20 only to discover examples of unintentional non-compliance. Blatant examples of
21 intentional BWC non-compliance, including one officer who left a camera activated but on
22 a table, and others that deactivated briefly but in clear violation of policy, as evidenced in
23 Plaintiffs’ February 9, 2022 letter, will not be discovered by only monitoring cameras that
24 are turned off for prolonged periods of time. Further, Defendants are undermining the
25 intent of the BWC policy which is to ensure that cameras are on at all times, except in
26 limited circumstances, by sending a signal that cameras will not be monitored unless
27 deactivated for more than 19% of a shift. The parties continue to meet and confer
28 regarding implementation of Defendants’ monitoring of BWC policies and Defendants are

1 investigating the specific examples raised in Plaintiffs' letter.

2 The parties reached agreement regarding implementation deadlines for rolling out
3 the new staff misconduct investigation process for all types of complaints. *See* Doc. 3371.
4 In addition to the regulation timelines for implementation the new investigation and
5 discipline process for complaints raised on 602-1's, Defendants also agree that any
6 claim(s) that meet the definition of staff misconduct in the CDCR Form 1824 and CDCR
7 Form 602-HC, third-party complaint, and quarterly interviews, will be routed to the
8 Centralized Screening Team ("CST") at the Office of Internal Affairs ("OIA") and
9 processed under the new regulatory process by no later than September 30, 2022. Doc.
10 3371 at 4-5.

11 In response to concerns over the deaths of five class members, allegations of blatant
12 disability discrimination and denial of ADA accommodations by staff, and reports of
13 retaliatory RVRs issued by certain health care staff members, the Court ordered Court
14 Expert Ed Swanson to conduct an investigation and to produce a report regarding staff
15 misconduct allegations at SATF. Doc. 3338. The parties provided written submissions to
16 the Court Expert on December 8, 2021, and Plaintiffs' counsel supplemented the written
17 submission following a subsequent visit to SATF. *See* Doc. 3369, Exs. D-E. Plaintiffs
18 provided an additional written supplement based on a review of RVRs received from
19 Defendants initiated by mental health staff at SATF. *See* February 28, 2022, Letter from
20 R. Lomio to E. Swanson, attached hereto as **Exhibit B**. On March 2, 2022, Plaintiffs'
21 counsel produced a review of staff misconduct investigations including BWC footage that
22 was produced pursuant to the quarterly document production for SATF. Plaintiffs'
23 submissions, which now include video footage, document a culture of disrespect and
24 discourteous treatment by SATF staff members, including through the issuance of false,
25 retaliatory, discriminatory or otherwise inappropriate Rules Violation Reports ("RVRs"),
26 which naturally erode relationships between staff and incarcerated people, prolong
27 incarceration, and ultimately have a significant chilling effect on the ability of class
28 members to seek and obtain required disability accommodations from staff members. *See*

1 Doc. 3369, Exs. D-E.

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

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

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

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

21 Plaintiffs have outlined specific and comprehensive remedies necessary to address
22 the failure of the RVR process to uphold the due process rights of class members, detect
23 staff misconduct, and hold responsible staff accountable. *See* Doc. 3296, Ex. B. The
24 parties met to discuss this serious problem on December 9, 2021. Defendants responded to
25 Plaintiffs' request for reform on February 3, 2022, and the parties met to discuss
26 Defendants' response on February 7, 2022. Defendants assert that revisions to the training
27 for Chief Disciplinary Officers (CDO), as well as implementation of any Early Warning
28 System, will resolve problems identified by Plaintiffs' counsel. Plaintiffs have requested

1 to review proposed changes to the CDO training, which Defendants agreed to provide by
2 the end of February 2022. Plaintiffs have also requested information on whether certain
3 data “red flags” would be included in the EWS to identify problematic RVRs including
4 flags for incarcerated people who receive a high number of RVRs in short period of time,
5 flags for staff who appear to be issuing a disproportionate number of RVRs, and flags for
6 incarcerated people who receive an RVR within a short period of time after filing a staff
7 misconduct complaint. Plaintiffs’ counsel also requested whether the EWS would flag
8 staff members who were initiating RVRs that were later voided, dismissed, or otherwise
9 reduced, as these may be indicators for staff who have inappropriately issued RVRs. In
10 light of evidence that class members sometimes receive RVRs as a result of their
11 disabilities, Plaintiffs have requested Defendants to identify discriminatory RVRs prior to
12 disposition, and to divert those out of the RVR process. Defendants initially declined to
13 attempt to divert discriminatory RVRs but, during the February 7, 2022 meeting, agreed to
14 reconsider.

15 Plaintiffs will continue to attempt to resolve problems with the RVR process
16 collaboratively with Defendants but remain skeptical that Defendants’ current proposed
17 revisions will be enough to combat the persistent problem of false, retaliatory,
18 inappropriate and discriminatory RVRs. In the meantime, Plaintiffs continue to bring to
19 Defendants’ attention the pervasive problems identified in that process, in an effort to
20 further negotiations.

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

23 **2. Defendants’ Statement**

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

25 Defendants take all allegations of staff misconduct seriously and are committed to
26 investigating and taking appropriate remedial action where warranted. Although
27 Defendants disputed many of Plaintiffs’ allegations, Defendants worked diligently with
28 Plaintiffs concerning their staff misconduct allegations at RJD, California State Prison, Los

1 Angeles County (LAC), Kern Valley State Prison (KVSP), California State Prison –
2 Corcoran (COR), SATF, and California Institution for Women (CIW).

3 In compliance with the Court’s September 8, 2020 and March 11, 2021 orders,
4 Defendants have engaged in over a year of substantive meet-and-confer sessions with
5 Plaintiffs and the Court Expert to develop comprehensive and effective remedial plans.
6 During the meet-and-confer sessions, the parties identified disputed elements of the
7 remedial plans, shared information related to positions taken concerning the plan, and
8 resolved nearly all areas of disagreement. Over the course of the last year, Defendants
9 have provided Plaintiffs and the Court Expert with extensive written policies related to the
10 remedial plan and presented Plaintiffs and the Court Expert with third-party tutorials or
11 informational sessions concerning officer training, the operation and placement of fixed
12 surveillance cameras, staff investigation process, employee discipline, components of a
13 computerized early-warning system, and other aspects of the remedial plans. As the Court
14 recently noted, “[t]hese agreed-upon measures constitute substantial improvements that
15 will go a long way to bringing Defendants into compliance with the ARP and ADA at the
16 six prisons.” Doc. 3356 at 2. Further, the Court found, the “implementation of these []
17 remedial measures is likely to have a positive impact on...the overall reliability of the
18 outcomes of investigations,” of staff-misconduct allegations.” Doc. 3356 at 15.

19 Within months of the Court’s orders, Defendants executed significant components
20 of the remedial plans that included increased staffing to specifically address disability-
21 related issues of class members, body-worn-camera deployment, fixed camera installation
22 (AVSS), document production, training, and other remedies. Docs. 3177, 3183.
23 Specifically, nine additional sergeants and one supervising lieutenant were put in place at
24 RJD in December 2020 and, as of August 23, 2021, thirty-eight additional sergeants were
25 in place at LAC, SATF, KVSP, CIW, and COR. AVSS deployment has been completed at
26 all six institutions. AVSS was deployed at RJD on April 5, 2021; at LAC on October 1,
27 2021; at COR on November 1, 2021; and at SATF, CIW, and KVSP by December 1, 2021.
28 Body-worn cameras were fully deployed in January 2021 at RJD; in July 2021 at SATF,

1 KVSP, CIW, and COR; and in August 2021 at LAC. In May 2021, the parties and the
2 Court Expert received a demonstration of the AVSS and the body-worn cameras deployed
3 at RJD, including the body-worn cameras' extensive ability to capture video and audio
4 interactions between staff and inmates. All who attended the demonstration, including
5 Plaintiffs' counsel, were impressed by the camera technology and encouraged by the
6 anticipated positive impact on staff and inmate relations. On June 30, 2021, the Court
7 Expert filed his first quarterly report and, while noting the ongoing negotiations and
8 additional work to be done, described the fixed-camera and body-worn camera technology
9 deployed at RJD as "quite impressive." Doc. 3290. The quarterly report conveys that the
10 use of body-worn cameras appears to have had a positive impact on relations between staff
11 and inmates at RJD and concludes that "on the whole, RJD appears to be adhering to the
12 operations plan for use of cameras and retention of footage." *Id.* Defendants have worked
13 hard to implement as quickly as possible the new staff-misconduct processes that
14 restructure CDCR's staff misconduct allegation, screening, referral, investigative, and
15 disciplinary processes. The statewide deployment of the new staff misconduct
16 investigation and staff discipline processes necessitates extensive resources that includes
17 the hiring and training of new staff and the development of technological tools to ensure a
18 smooth transition. As stated in the January 10, 2022 Budget Change Proposal, CDCR
19 requires an additional \$35.6 million to hire and train 175 positions for 2022-2023 fiscal
20 year, scaling up to 192 positions in the next fiscal year, and ongoing, to restructure the
21 relevant processes. Despite the realities of deploying unprecedented statewide changes to
22 the staff misconduct and discipline processes while also developing fixed-camera
23 surveillance systems at up to twenty-two institutions during a global pandemic and faced
24 with limited resources, Defendants have agreed to deploy the new processes no later than
25 September 30, 2022 at RJD, LAC, SATF, COR, KVSP, and CIW. Notwithstanding the
26 September 30, 2022 timeframe, significant components of the new processes will be
27 deployed shortly. As stated in the proposed staff misconduct regulations, as of January 1,
28 2022, all allegations of staff misconduct, raised in a CDCR Form 602-1, will be routed

1 outside of the local institutions for initial review by the Centralized Screening Team before
2 being assigned for appropriate investigation. Doc. 3339-5, Ex. A. CDCR anticipates that
3 by May 2022, all allegations of staff misconduct received by the filing of a CDCR Form
4 602-1 from the six institutions will be assigned for investigation by the Office of Internal
5 Affairs if deemed appropriate by the new screening process. As demonstrated by recent
6 data included in the January 10, 2022 Budget Change Proposal, CDCR estimates that the
7 vast majority, up to 70%, of staff misconduct allegations arise from inmates submitting a
8 CDCR Form 602-1⁵. Staff misconduct allegations received from other sources, including
9 from CDCR Form 602-HC, CDCR Form 1824, or third-parties, will be phased in and fully
10 integrated no later than September 30, 2022.

11 On March 9, 2022, during an informational meeting with Plaintiffs, CDCR shared
12 with Plaintiffs the results of its initial audit of its BWC technology. Although Plaintiffs
13 expressed concern, it must be noted that this was a preliminary and initial test-run of
14 CDCR's auditing system. As explained to Plaintiffs, CDCR set an initial threshold of 6.5
15 hours of BWC footage and reviewed any footage that contained less than that initial
16 threshold. As stressed at the informational meeting, under CDCR policy the expectation is
17 that all staff who are required to wear BWCs may only deactivate the BWC for reasons
18 dictated by policy. Plaintiffs' characterization that staff may deactivate the BWCs for up
19 to 1.5 hours for any reason during their shift without being in violation of CDCR's policy
20 is incorrect.

21 Defendants will facilitate the Court Expert's investigation of enumerated issues at
22 SATF. Defendants produced responsive documents and information to the Court Expert
23 on December 8, 2021. Defendants note, however, that some of the issues identified by the
24 Court arose before the Court's March 11, 2021 order. Defendants further note that
25 different components of the issues identified by the Court have previously been addressed
26

27 ⁵ State of California Budget Change Proposal, 5225-082-BCP-2022-GB. (See Joint Case
28 Statement Ex. A, Doc. 3369.)

1 by Defendants, and Defendants have shared appropriate information with Plaintiffs
2 concerning various class members. Moreover, court-ordered remedial measures have been
3 implemented at SATF that address many of the concerns raised by the Court. For example,
4 in accordance with the scheduled roll-out, approximately 1114 fixed cameras and 681
5 body-worn cameras have been deployed at SATF, along with fourteen new sergeants and
6 one supervising lieutenant to focus on ADA-related issues that may face the approximately
7 843 class members housed at SATF. Defendants will continue to provide information on a
8 rolling basis, coordinate site inspections or interviews, as requested by the Court Expert,
9 and facilitate his investigation in accordance with the Court's order to do so.

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

11 No additional court intervention is needed on these issues because the significant
12 work and commitments made to date address Plaintiffs' concerns that "CDCR has failed to
13 address the endemic use of false and retaliatory Rules Violations Reports." During the
14 extensive negotiations, Defendants have agreed that important pieces of the remedial plans
15 will apply statewide, such as the pepper-spray policy and staff misconduct and
16 investigation processes, even though the Court did not order such widespread
17 implementation. Under the new staff misconduct investigation process, allegations of false
18 and retaliatory Rules Violations Reports will be subjected to a staff misconduct
19 investigation conducted by the Office of Internal Affairs. Inmates shall be provided the
20 opportunity to view any video footage related to a Rules Violation Report with which they
21 have been charged and may present the video footage at the disciplinary hearing as defense
22 evidence even if the hearing officer is not using the video footage as evidence. To further
23 demonstrate that Defendants take seriously all allegations of staff misconduct, which
24 includes alleged false RVRs and retaliation for requesting accommodations, CDCR has
25 agreed to effect further unprecedented change statewide. As revealed in the May 2020
26 Revision of the State's budget, in addition to implementing AVSS (fixed cameras) at the
27 six institutions required by the *Armstrong* orders, CDCR requested to install, in fiscal year
28 2021-2022, AVSS at four additional institutions— namely, Salinas Valley State Prison

1 (SVSP), California State Prison – Sacramento (CSP-SAC), California Correctional
 2 Institution (CCI), and Mule Creek State Prison (MCSP). By the end of this fiscal year
 3 (June 2022) there will be fixed cameras at approximately thirteen, or 39%, of CDCR
 4 institutions⁶. This includes RJD, LAC, SATF, KVSP, COR, CIW, SVSP, CSP-SAC, CCI,
 5 MCSP, and the three other institutions with fixed cameras already installed (High Desert
 6 State Prison, CHCF, and the Central California Women’s Facility (CCWF)). On January
 7 10, 2022, the current administration released its budget for fiscal year 2022-2023 that
 8 provided for additional camera coverage at numerous institutions. The Governor’s
 9 proposed budget includes funding to deploy fixed cameras at ten institutions. These ten
 10 institutions are Calipatria State Prison (CAL), Centinela State Prison (CEN), California
 11 State Prison - Solano (SOL), California Medical Facility (CMF), CHCF, San Quentin State
 12 Prison (SQ), Pleasant Valley State Prison (PVSP), Avenal State Prison (ASP), Ironwood
 13 State Prison (ISP), and Chuckawalla Valley State Prison (CVSP). The proposal includes
 14 funding for body-worn camera technology deployment at four additional institutions,
 15 including California Correctional Institution (CCI), SAC, CCWF, and SVSP. This further
 16 demonstrates CDCR’s commitment to install AVSS over the next three fiscal years, until
 17 AVSS has been installed at all institutions. Based on recent data, this means that
 18 approximately **70% of *Armstrong* class members will be housed at an institution with**
 19 **prison-wide, fixed-camera coverage**, or funding for such by the end of the next fiscal
 20 year⁷. Further, by end of next fiscal year, twenty-two of its thirty-three institutions, or
 21 **67%**, will be equipped with fixed-camera technology. Based on recent data, nearly a third,
 22 or **35%**, of all class members will be housed at institutions with unprecedented body-worn

23 _____
 24 ⁶ Deuel Vocational Institution is closed.

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 camera deployment. Notwithstanding these unprecedented developments, CDCR has
2 agreed to continue its discussions with Plaintiffs' counsel, along with the Court Expert, as
3 demonstrated by the parties productive February 7, 2022 meeting during which the parties
4 discussed Plaintiffs' concerns related to the RVR process. The next meeting is scheduled
5 for March 22, 2022.

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

7 **1. Plaintiffs' Statement**

8 The parties continue to meet in a workgroup to address the provision of
9 accommodations for deaf and hard of hearing class members. The most recent meeting
10 was February 23, 2022. While progress has been made in some areas, there are ongoing
11 issues regarding the provision of certain accommodations necessary to ensure equal access
12 to prison programs and services.

13 In August 2021, Defendants announced plans to launch a four-months proof-of-
14 practice period for testing the use of various kinds of speech-to-text services to ensure
15 effective communication during due process and educational interactions with deaf and
16 hard of hearing individuals who do not use sign language. Defendants identified three
17 institutions for the proof-of-practice without any apparent consideration for identifying the
18 prisons with the populations with the greatest need for the technology. For example,
19 Plaintiffs' counsel has repeatedly advocated on behalf of a non-signing deaf class member
20 at SATF, an institution not chosen for the proof-of-practice, who has been effectively shut
21 out of all programming for over a decade. This advocacy has included explaining why
22 receiving written notes from the teacher, who is also tasked with teaching the class, does
23 not result in effective communication. Plaintiffs' counsel has requested that Defendants
24 launch a proof-of-practice at SATF, which could both ensure this class member immediate
25 access to an accommodation and ensure that the proof-of-practice occurs in a prison where
26 the population needs speech-to-text services. Defendants have not yet agreed to do so.

27 Due to the pandemic, Defendants have yet to begin the proof-of-practice for
28 educational programming. Defendants have completed the proof-of-practice for due

1 process encounters at San Quentin, an institution with no deaf non-signers. During this
2 proof-of-practice, class members and staff completed surveys regarding the effectiveness
3 and accuracy of the speech-to-text service. Plaintiffs' counsel has requested the
4 underlying survey results that Defendants will use to evaluate the program. This data will
5 allow Plaintiffs' counsel to follow up with individual participants and to observe any other
6 trends in the results.

7 Since the last CMC statement, Defendants have agreed to continue to negotiate the
8 memo regarding pocket talkers as an accommodation for deaf and hard of hearing class
9 members. However, despite this progress, Plaintiffs' counsel remains concerned that the
10 poor quality of the hearing aids provided by CDCR deprive class members of equal access
11 to CDCR programs, services and activities. Plaintiffs are hopeful that this important issue
12 will be resolved.

13 **2. Defendants' Statement**

14 Defendants remain committed to providing class members equal access to
15 programs, services, and activities in accordance with the ADA and will continue to meet
16 with Plaintiffs to discuss the issues that pertain to their clients as part of the parties'
17 ongoing workgroups including those noted above. The institutions chosen for the proof-of
18 concept for speech-to-text technology in education were CMF and CCWF. CMF was
19 chosen as the male institution and CCWF as the female institution since both house DDP,
20 DPP, and EOP students. The proof-of-concept is best suited at these locations because
21 these are not yard-based prisons. The non-signing deaf class member at SATF is a high
22 school graduate with a 9.8 reading level. He completed the Computer and Related
23 Technology program and earned the Milestone Completion Credit with assistance from his
24 teacher via written notes on November 22, 2019. The Communication Access Realtime
25 Translation (CART) contract has already been approved for the proof-of-concept at CMF.
26 The implementation of the proof-of-concepts at CMF and CCWF have been delayed due to
27 the modified programming caused by the COVID-19 pandemic. Defendants will begin
28 when regular in-person programming resumes.

1 Defendants have agreed to reevaluate the process to issue pocket-talkers and are
2 working on revising the pocket-talker memorandum. But as previously advised, the
3 pocket-talker memorandum is not interpreted to completely preclude class members who
4 already have hearing aids from receiving pocket talkers; such a condition is uncommon
5 and will be reviewed on a case-by-case basis to determine the class members' needs.
6 Further, Plaintiffs' continued complaints that hearing aids provided to class members are
7 of poor quality and fail to accommodate their needs are based on a relatively small number
8 of isolated complaints and fail to account for the vast amount of class members who utilize
9 effective hearing aids provided to them by Defendants without complaint. As of January
10 13, 2022, 3,159 inmates are prescribed and issued hearing aids. Medical executives from
11 CCHCS tested out the Flame 250 hearing aid that the vendor shipped to them. This model
12 (Flame 250) amplifies sound as expected and is comfortable to wear. Per the vendor, this
13 model is used worldwide and in government-funded programs including CDCR.
14 Moreover, there are two types of hearing aids available to class members including the
15 Flame 250 and the Arexton Arena. Executives from CCHCS HQ reiterated to the health
16 care executives at the institutions regarding the availability of the two types of hearing aids
17 based on the severity of hearing loss and strength of hearing accommodation needs. This
18 was achieved via an email to the regional medical executives and then reviewed at the
19 January 19, 2022 statewide physician leadership call. Nursing executives were also sent
20 this e-mail on February 17, 2022. The medical leaders were advised to refer patients for
21 follow up appointments with hearing aid specialists if patients complain of poor quality or
22 fitting hearing aids. The patients may need to be educated on using different settings for
23 complaints of quality or fitted with different tips for complaints of discomfort. Moreover,
24 additional training will be provided to ADACs to ensure that they are aware that two
25 different hearing-aid models are available even if their particular institution only stocks
26 one of these two models. It should be noted that the type of hearing aid needed by each
27 patient will ultimately be determined by the hearing aid dispenser or the audiologist who
28 conducts the hearing 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, reading and writing
5 accommodations, orientation and mobility training for visually impaired class members,
6 accommodations assessments and skills training, braille literacy, availability of white
7 canes, accessibility of tablet program (including training), and photophobia
8 accommodations.

9 Plaintiffs sent a December 10, 2021 demand letter regarding the need for a
10 statewide system for identifying, documenting, and providing reading and writing
11 accommodations for blind and low-vision class members. Defendants have yet to
12 respond. Despite raising this issue in eleven consecutive Blind and Low-Vision
13 workgroup meetings, multiple statewide letters, individual advocacy letters, and dozens
14 of *Armstrong* monitoring tour reports, Defendants have reported no progress on developing
15 such a system. As Plaintiffs have explained, Defendants must (1) identify and document
16 blind and low-vision class members' needs for accessible formats (such as large print,
17 audio recording, and braille) of written information and (2) produce the information in
18 these formats. Defendants must also make auxiliary aids for reviewing written
19 information—such as electronic video magnifiers—available to these class members
20 outside restricted locations and hours.

21 Defendants' failure to provide these accommodations to blind and low-vision class
22 members, in violation of the ADA and the *Armstrong* Remedial Plan, denies them the
23 ability to read and write on the same terms as their fully sighted peers. For example, class
24 members throughout the state report difficulty reading and completing prison forms
25 because they are not available in large print, including notices of RVRs and 602 grievance
26 forms. Class members are unable to complete classroom assignments and engage in
27 written recreational activities without readily available access to auxiliary equipment such
28 as high-powered magnifiers which are stored in the law libraries, are time restricted, and

1 have very limited availability. Class members who depend on such equipment in the law
2 libraries must devote their limited access to reviewing legal documents, leaving them
3 without time to read letters from family members or enjoy books or other recreational
4 reading.

5 Defendants' two suggested fixes—magnifiers in the law library and assistance with
6 reading and writing from third parties, such as ADA workers—will not provide blind and
7 low-vision class members with privacy, independence, or equal access to programs,
8 services, and activities as required by the ADA and the ARP. *See, e.g.*, 28 C.F.R.
9 §§ 35.130(a), 35.160(b)(2), 36.303(c)(1)(ii) & (c)(ii); ARP §§ II.E.1, II.G, IV.I.2.a.

10 Although Defendants expressed an intention at the last workgroup meeting to respond to
11 Plaintiffs' demand letter by the deadline set forth therein (February 10, 2022), Plaintiffs
12 have received no response, and intend to seek involvement of the Court Expert and, if
13 necessary, an order from the Court.

14 As in recent Joint Case Status Statements, *see, e.g.*, Doc. 3369 at 23; Doc. 3341 at
15 23, Defendants refer to the tablet program—which has still not been implemented at any
16 prison with a significant blind and low-vision population—as a solution to this issue, but
17 have not provided Plaintiffs with any information about plans to make CDCR-produced
18 written materials (such as RAP responses and RVR documentation) accessible to blind and
19 low-vision class members on these tablets. At the February 16, 2022, meeting of the
20 Blind/Low-Vision Workgroup, Plaintiffs again asked Defendants for such information,
21 which Defendants were unable to provide. Plaintiffs would welcome efforts by Defendants
22 to utilize the tablets as a means of addressing this longstanding problem.

23 Additionally, the parties have discussed how to ensure that blind and low-vision
24 class members have prompt access to white canes. On January 6, 2022, Defendants
25 circulated a memorandum providing guidance to healthcare providers on assessing blind
26 and low-vision class members for white canes. On January 21, Plaintiffs wrote to
27 Defendants outlining various concerns with this memorandum, and we await a response.

28 ///

1 **2. Defendants' Statement**

2 Defendants have committed significant resources and effort to ensure that blind and
3 low-vision class members are appropriately accommodated. Defendants access numerous
4 sources of information to continuously understand class members' needs. Additionally,
5 Defendants participate in frequent working groups, both internally and with Plaintiffs, to
6 gain further insight about the needs and concerns of these class members.

7 Defendants are exploring a variety of options to provide large-print or braille
8 versions of written materials including contracting with third-party vendors. CDCR
9 appreciates the importance of this issue to class members and continues to research the
10 availability of contractors who can produce CDCR-completed forms in large print and
11 braille. It should be noted, however, that there are currently three class members statewide
12 who can read braille. CDCR reached out to these class members and each one confirmed
13 that they did not want to receive written documents in braille. Each class member further
14 confirmed that their needs were currently being accommodated. CDCR, however,
15 continues to accommodate low-vision class members with access to auxiliary aids and
16 handheld magnifiers in the libraries, education classes, and during cell-front instruction,
17 along with staff and ADA workers who read documents aloud to class members. On
18 August 13, 2020, a memorandum was sent to direct all designated institutions to develop a
19 schedule for DPV class members to access the auxiliary devices in the library during
20 modified programming. Additionally, audio recordings of BPH hearings are available
21 upon request to CDCR staff who in turn work with BPH to obtain the transcript on CD and
22 then loan the class member a CD player to listen to the transcript. Further, staff are trained
23 annually to provide the accommodation of reading documents to class members upon
24 request. ADA workers are also trained and available to read documents to class members
25 as requested. Nonetheless, Defendants will continue to meet and confer with Plaintiffs
26 concerning the provision of large-print, braille, or audio versions of written materials and
27 their contention that there is no system to document class members' individual needs for
28 accessible versions of documents.

1 Plaintiffs requested that Defendants write a memo regarding white canes and
2 subsequently exchanged edits between parties. This, however, did not delay the addition
3 of the white cane to the Supply Formulary and its accompanying order in the electronic
4 medical record which occurred March 2020.

5 Defendants contend, however, that the tablet program, which recently rolled out at
6 Valley State Prison, will include a host of accessible features to accommodate class
7 members' needs and serve to address Plaintiffs' concerns. These tablets include a variety
8 of assistive programs designed to facilitate access for class members and include, but are
9 not limited to, text enlargement, VRI capabilities, video calling, and text to speech. CDCR
10 is working with the contractor to enhance these capabilities to include voice to text,
11 increased recreational options for incarcerated people, different formats for imparting
12 information, and more. Further, CDCR is working with its partners (*i.e.*, CCHCS, DRP,
13 etc.) to incorporate all accessibility features available for independent use by the blind and
14 low-vision population for the documentation they submit to be available for consumption
15 by tablet users. CDCR already has a requirement in place for the vendor/contractor
16 (ViaPath Technologies) to apply all accessibility standards to any documentation they
17 post/provide on the tablet, so anything they create must be developed with accessibility in
18 place. Beginning in March and over the next three months, these tablets will be deployed
19 at CVSP, SOL, LAC, CEN, ASP, CCWF, SCC, KVSP, HDSP, CIW, and SATF. These
20 tablets will eventually be provided to all CDCR inmates free of charge.

21 Defendants believe that this will be a substantial positive development for both
22 class members as well as the general CDCR population. Defendants look forward to
23 continued discussion of these, the white-cane memorandum, and other issues addressing
24 class-member concerns at future workgroup meetings.

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

26 With regard to the broader problem of equal access to job and program assignments
27 for people with disabilities, the parties convened a small work group to address disability
28 discrimination against Plaintiffs, as documented in multiple tour reports and letters. *See*

1 Doc. 2680 at 13-14. Defendants continue to provide Plaintiffs with comprehensive
2 program access data every month. Plaintiffs believe that the data continues to show
3 troubling disparities in assignments for people with disabilities and most recently outlined
4 ongoing discrepancies in advance of a November 19, 2021 meeting. *See* Doc. 3369, Ex. H
5 (November 12, 2021, Letter from Tom Nolan to Katie Riley and Dawn Lorey). Plaintiffs
6 updated that data in recent correspondence to Defendants on February 24, 2022.

7 The program access workgroup has been meeting regularly since April 2021 to
8 discuss credit earning for class members and other incarcerated individuals with
9 disabilities, and to discuss the assignment process, in order to better understand ongoing
10 disparities in credit earning under Proposition 57 for people with disabilities, as well as
11 related disparities in the program access assignment data. Most recently, on January 31,
12 2022 and February 3, 2022, the parties met to discuss Defendants' analysis of the program
13 access data by the CDCR Office of Research. Plaintiffs provided feedback and the parties
14 will continue to discuss the Office of Research approach. On March 2, 2022, the parties
15 met to discuss Plaintiffs' approach to analyzing the Program Access data, which highlights
16 program access problems for specific institutions and specific program types. The parties
17 will meet again on April 7, 2022.

18 **F. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
19 **Disability Tracking Information**

20 **1. Plaintiffs' Statement**

21 Following Defendants' statewide durable medical equipment ("DME") reconcilia-
22 tion in early January 2019 that revealed 7,346 class members were missing one or more
23 items of DME and that 2,349 class members' DME records had errors, CCHCS imple-
24 mented the DME Discrepancy Report Tool in January 2020. Defendants have agreed to a
25 process to ensure reconciliation of what records indicate a class member should have and
26 what they actually have. Defendants reported they are developing a process to reconcile
27 DME annually. Specifically, DME will be confirmed during health-care encounters and
28 staff will be required to check a box confirming DME was checked. Anyone who has not

1 had a medical encounter in the last nine months will be flagged electronically and will be
2 seen by staff. A Form 7362 to request evaluation will be completed by staff if a medical
3 evaluation is necessary. Questions remain about how DME that is granted under the
4 reasonable accommodation standard by custody staff will be reconciled and how the box
5 flagging that people have been seen for reconciliation by medical staff will become
6 unchecked to ensure annual review of DME. Plaintiffs are hopeful this process will be
7 adopted soon and that it will eliminate ongoing problems with lost, stolen, broken or
8 otherwise missing DME throughout the state.

9 Relatedly, Defendants acknowledged problems with identification of some class
10 members who utilize DME but who have not been assigned any disability code.
11 Defendants distributed training materials to health-care providers regarding how to assign
12 the proper disability codes, but that was not enough to resolve ongoing problems.
13 Defendants reported that they will add a reconciliation process for DPP codes to the
14 process described above for DME. In other words, Defendants will reconcile anyone who
15 has received DME but does not appear to have a corresponding DPP code annually during
16 health-care encounters and will identify and ducat for reconciliation anyone who has not
17 been seen by a health-care provider. Defendants assert, however, that some patients will
18 not have a corresponding DPP code as not all DME requires a DPP code. Plaintiffs
19 dispute this as to the vast majority of DME, but will continue to work with Defendants to
20 attempt to reconcile the problems and to develop tools for identifying missing DME
21 electronically.

22 Defendants' disability tracking system also fails to identify and track class members
23 with upper-extremity disabilities. Plaintiffs requested that Defendants create a new
24 disability code for this population. *See* Doc. 3322 at Exs. G and H. CCHCS does have a
25 system to identify upper-extremity disabilities, and on September 28, 2021, shared a report
26 with Plaintiffs that showed all patients with upper-extremity disabilities and accommoda-
27 tions. Defendants maintain that, through this list, they are able to identify and accom-
28 modate people with upper-extremity disabilities. However, the list contains thousands of

1 names, so it is difficult to understand exactly how it functions as a tool for staff to identify
2 who requires what accommodations. Indeed, Plaintiffs' counsel has interviewed numerous
3 ADA Coordinators at prisons throughout the state who have not used this list and do not
4 regularly refer to it to track class members. Plaintiffs' counsel continues to share with
5 Defendants reports of failures to accommodate class members as well as statements from
6 CDCR staff who require assistance in properly identifying who must be accommodated.
7 Plaintiffs are committed to resolving this ongoing problem.

8 **2. Defendants' Statement**

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

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

25 Moreover, the 1845/7410 power form in Electronic Health Record System (EHRS)
26 is linked to SOMS, noting the appropriate accommodation to staff. The addition of a new
27 DPP code to this system will not provide any enhancements to this process. In fact, it will
28 deter current efforts into multiple directions and processes, convoluting our established

1 procedure. In many of the particular inmates' issues cited in the individual advocacy
2 letters attached to the March 2, 2021 letter, the DPP/Accommodations Summary provided
3 sufficient information to allow for the appropriate accommodation, based on their
4 particular upper extremity disability. Examples include: special cuffing, lifting
5 restrictions, transport vehicle with a lift, no rooftop work, and Durable Medical Equipment
6 (DME) associated with their upper mobility disability. CDCR and CCHCS continuously
7 revisit the DPP/Accommodation Summary screen in SOMS/Cerner systems to see if
8 improvements can be made to ensure all needed accommodations are included. For
9 example, as recently as April 16, 2021, the 1845/7410 power form was updated. In the
10 Non-Formulary Accommodation Section, a provider can now select "LBO" and type, for,
11 example, "Trapeze Bars" in the free text field. Although future enhancements are
12 forthcoming, these changes reflect our ongoing efforts to improve accommodations for
13 inmates with upper-extremity disabilities without the advent of a new DPP code.

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

15 **1. Plaintiffs' Statement**

16 CDCR fails to ensure that parolees with disabilities are accommodated on parole
17 and during the transition to parole. Class members do not consistently receive adequate
18 planning for parole and adequate transitional housing, transportation, benefits application
19 assistance, assistance obtaining identification cards, and other transitional services that are
20 critical for these individuals to succeed on parole. *See* Doc. 2680 at 11-12; Doc. 2655 at
21 11-13. As a result, class members needlessly struggle to comply with parole conditions
22 and to transition to life outside of prison, and are denied an equivalent opportunity to
23 succeed on parole as parolees without disabilities.

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

1 programs are available to class members. *See* Doc. 3266, Ex. F.⁸ In that letter, Plaintiffs
2 demanded that Defendants take immediate steps to address their systemic failure to
3 accommodate parolees with disabilities by providing the minimum supports necessary for
4 them to succeed on parole, and by adopting other remedial measures to prevent
5 discrimination against parolees with disabilities. *Id.* Plaintiffs also objected to the many
6 Division of Rehabilitative Programs (“DRP”) and other CDCR-funded programs in
7 DAPO’s directory of transitional housing programs that explicitly exclude people with
8 hearing, mobility, vision, and/or mental health disabilities from their programs, in violation
9 of the ADA.

10 The parties are actively engaged in negotiations to address these problems, and have
11 agreed in principle to draft a revised parole remedial plan or a new parole remedial plan
12 section that will cover the new policies, procedures, and supports for parolees with
13 disabilities as they transition to parole that are now being negotiated and implemented. On
14 February 25, 2022, Plaintiffs shared our proposed revisions to the 2006 Parole Section of
15 the Armstrong Remedial Plan with Defendants, with the aim of reaching an agreement by
16 May 4, 2022, a year after Plaintiffs sent the demand letter that launched these negotiations.

17 Through these negotiations, Defendants have agreed to some promising policy
18 changes recommended by Plaintiffs. On October 14, 2021, in response to concerns raised
19 by Plaintiffs, Defendants established a formal procedure by which parole agents can
20 provide for an audible low battery warning on GPS tracking devices as an accommodation
21 for parolees who have difficulty feeling the standard vibrating low battery warning because
22 of a disability—such as persons with paralysis or nerve damage in their legs—and at the
23 December 6, 2021 meeting, Defendants agreed to develop a training for parole agents on
24 this and other reasonable accommodations for parolees with disabilities who are subject to
25 GPS monitoring.

26 _____
27 ⁸ Plaintiffs have subsequently shared additional class member declarations with
28 Defendants that provide further evidence that remedial measures are needed to address
discrimination against parolees with disabilities.

1 On January 20, 2022, CCHCS reported that they will now provide class members
2 releasing from CDCR with a 60-day supply of prescription medications—rather than the
3 30-day supply that had previously been provided to them. The CCHCS February 15, 2022
4 Memorandum, “60-Day Supply of Release Medications,” provides that, “to promote
5 continuity of care for patients released from CDCR while they establish care in the
6 community, **providers shall prescribe a 60-day supply of authorized medications,**
7 **effective March 1, 2022.**” This change should ensure that class members do not run out
8 of their medications before they are able to get their California identification cards and
9 Medi-Cal health insurance benefits set up, both of which are generally needed to obtain
10 medication renewals in the community. Plaintiffs applaud CCHCS for agreeing to this
11 change. This should have a significant positive impact on class members by improving the
12 continuity of care for individuals released from CDCR into the community on parole.

13 Defendants have agreed to add requirements that Transitional Case Management
14 Program (“TCMP”) benefits workers in the prisons submit benefits applications including
15 Supplemental Security Income and Social Security Disability Income, Veterans benefits,
16 Medi-Cal and Cal-Fresh food stamps, for qualified class members at 90 days prior to their
17 expected release date. Defendants also agreed to track the data regarding when TCMP
18 benefits workers actually submit the benefits applications for each releasing class member,
19 and whether the applications are approved, rejected, or remain pending at the time of
20 release. CCHCS also issued a memorandum dated February 3, 2022, “Providing Relevant
21 Health Information for Benefits Applications,” that makes clear the responsibility of health
22 care providers in the prisons to provide accurate and timely supporting medical
23 information for benefits applications, sets a five calendar day deadline for health care staff
24 to respond to requests from benefits providers for follow-up information needed to make a
25 final determination on pending benefits applications, and provides that each prison will
26 designate medical and mental health staff with whom the TCMP benefits workers can
27 coordinate on applications, with the goal of improving collaboration between benefits
28 workers and health care staff.

1 Defendants are also in the process of drafting a policy designed to ensure that class
2 members are released with all their prescribed durable medical equipment (“DME”) and
3 health care appliances (such as canes, hearing aids, and wheelchairs), and to provide a
4 mechanism for DAPO to replace lost or broken DME during a transitional period after
5 their release to bridge the gap that frequently occurs for class members in getting Medi-Cal
6 started after release.

7 Defendants have also represented that they are committed to developing a process
8 by which all paroling individuals will be assessed by health care staff to determine who
9 needs to be prioritized for transitional housing placements based on disability and related
10 medical needs, and that they will work with Plaintiffs to create and implement this process.
11 On December 15, 2021, CCHCS stated they will not make recommendations on who
12 should be prioritized for housing, but will provide an underlying clinical assessment
13 regarding each releasing individual’s disability and related medical needs that should be
14 considered by the Parole Service Associate (“PSA”) in determining transitional housing
15 placements. Plaintiffs will continue to work with CCHCS, DAPO and DRP to ensure that
16 releasing individuals who will be disproportionately harmed by the lack of transitional
17 housing because of their disabilities will be prioritized for such placements, including by
18 working with DAPO and DRP to develop a policy or directive governing transitional
19 housing placements, and by working with CCHCS on how to provide all the relevant
20 information to the PSAs so that they can take class members’ disabilities into account
21 when making transitional housing placements.

22 On January 20, 2022, Defendants reported that the Governor’s Proposed 2022-23
23 Budget includes \$10.6 million in annual funding over the next three years (or \$31.8 million
24 total) for the Returning Home Well program, which will reportedly provide post-release
25 housing services for 1,065 at-risk parolees who may be homeless or housing insecure.
26 Defendants reported that they believe the amount of funding sought will be sufficient to
27 ensure that no parolees are released without transitional housing (including but not limited
28 to class members). The estimated housing need is based on the average number of

1 releasing individuals reporting that they needed housing at the time of release from 2016-
2 17 through 2018-19. Plaintiffs are hopeful that the funding sought for Returning Home
3 Well will be included in the final budget, and that it will in fact be sufficient to provide
4 transitional housing for everyone who needs it. Given the increased credit-earning
5 opportunities available since the time period used to estimate the housing need, however, it
6 is possible that the funding request in the Governor's Proposed 2022-23 Budget
7 underestimates the future housing needs of releasing individuals. Ultimately, CDCR is
8 responsible for ensuring that parolees with disabilities are not excluded from the benefits
9 of parole, and so long as there is a limited supply of transitional housing placements
10 available, it is necessary that housing placement decisions include consideration of
11 whether a class member's disability makes them less likely to succeed on parole without
12 housing than a parolee without a disability.

13 During the negotiations, Defendants also agreed to work with Plaintiffs to ensure
14 that CDCR-funded transitional housing programs no longer have categorical exclusions for
15 people with disabilities, and to provide education to the CDCR-funded programs on their
16 obligations to provide reasonable accommodations to parolees with disabilities and to
17 remove disability-based exclusions. While there have been delays, Defendants
18 collaborated with Plaintiffs on drafting talking points for these meetings to educate their
19 contractors on the requirements of the ADA and the ARP, which took place over a three-
20 week period beginning on February 15, 2022. Defendants also agreed to make disability
21 grievances available to class members living in CDCR-funded transitional housing
22 programs, and to include ADA compliance in their annual inspections of these programs,
23 which is necessary to identify and correct violations of the ADA and the ARP by CDCR
24 contractors. Defendants also agreed to identify and track all parolees with disabilities who
25 are housed in CDCR-funded programs and all parolees with disabilities who are on
26 waitlists for placement in CDCR-funded programs, and are in the process of implementing
27 this tracking system.

28 Defendants also report that they are in the process of developing a transportation

1 policy with a goal of ensuring accessible transportation to all parolees released from
2 prisons and county jails, and that they are revising DAPO's policy on providing temporary
3 housing and transportation assistance to parolees, including parolees who require such
4 assistance as accommodations for their disabilities. Plaintiffs have raised concerns that the
5 current policy lacks clear guidance on when to provide such assistance to parolees,
6 including consideration of disability-related factors, and look forward to commenting on
7 the revised policy.

8 Among other remedial measures, the parties continue to discuss Plaintiffs'
9 proposals regarding how to ensure parolees' disabilities are taken into account when
10 determining the consequences for alleged parole violations. Plaintiffs are committed to
11 working with Defendants to achieve a durable remedy to ensure they are able to meet their
12 legal obligations under the ADA and the *Armstrong* Remedial Plans by operating their
13 transition-to-parole and parole programs in a manner that no longer systemically
14 discriminates against parolees with disabilities. The next meeting is on March 30, 2022.

15 Despite progress on promises made, discussed above, Plaintiffs remain disappointed
16 and concerned about Defendants' failure to timely and adequately log and investigate
17 allegations of employee non-compliance raised in the class member declarations reporting
18 disability discrimination in the transition to parole and while under parole supervision.
19 First, inquiries into allegations raised in most of the class member declarations shared with
20 Defendants on May 4, 2021, were not initiated until July 6, 2021, in violation of the
21 Court's accountability orders, with some delayed until August, September, and even
22 October 2021. Second, none of the allegations that appeared on the logs were even tracked
23 until September 2021, four months after the declarations were shared with Defendants, and
24 many allegations of disability discrimination from the parolee declarations were not
25 tracked on the accountability logs at all. Third, although Defendants had represented that
26 they planned to interview the class member declarants in order to investigate their reports
27 of disability discrimination, Plaintiffs learned on November 29, 2021, that Defendants
28 completed the inquiries into 20 allegations without speaking with any of the declarants,

1 and in 18 of 20 cases (or 90%), the disability discrimination was “not confirmed.” This
2 calls into the question the comprehensiveness of the inquiries and raises the potential for
3 bias, where inquiries into serious allegations of disability discrimination were opened and
4 closed without interviewing the individuals central to the allegations. Plaintiffs will
5 continue to raise concerns regarding Defendants responsibility to hold staff member
6 accountable for ongoing violations of the ADA, ARP and Court Orders in this case.

7 **2. Defendants’ Statement**

8 Defendants dispute Plaintiffs’ allegation that CDCR and DAPO fail to ensure that
9 parolees with severe and placement-impacting disabilities are accommodated during the
10 transition-to-parole process. Similarly, Defendants dispute Plaintiffs’ assertion that their
11 May 4, 2021 letter “established” discrimination against parolees with disabilities by failing
12 to provide minimum support while on parole, and preparation for parole, or equal access to
13 CDCR-funded transitional housing programs. As outlined below, Defendants have worked
14 continuously to effectuate multiple changes in the pre-parole planning process.
15 Defendants take a comprehensive approach to provide people with disabilities with
16 adequate pre-parole planning so that the successful completion of parole is equally
17 accessible to them. As part of the pre-release process, staff complete an assessment for
18 each inmate who is paroling, whether or not that inmate has a disability, to identify their
19 individual needs. Once those needs are determined, the staff and inmate/parolee work
20 collaboratively to complete a case plan identifying community-based programs that receive
21 federal, state, or other local funding to provide housing and other services to disabled
22 citizens. Notwithstanding other accommodations, such as prescribed medications, DME,
23 or other supportive services, along with the enormous pandemic-related challenges,
24 Defendants have been successful in providing transition-to-parole services to the
25 unprecedented number of parolees who have been discharged from CDCR institutions.
26 CDCR has released thousands of inmates since March 2020 to address the impact of the
27 COVID-19 pandemic, and Defendants worked tirelessly to provide transition-to-parole
28 services to those people in a very short period of time and under extreme circumstances.

1 As part of the ongoing meetings related to Plaintiffs' May 4 letter, CDCR informed
2 Plaintiffs that they have completed an internal review of their community-contracted
3 programs, as new rate sheets have been submitted by the programs to DRP, to ensure that
4 there are no improper restrictions to housing people with hearing, vision, mobility, or
5 mental-health disabilities, as Plaintiffs have alleged. CDCR finalized and presented its
6 talking points to the community-contracted programs, after receiving input and suggestions
7 from Plaintiffs' counsel, to educate them on disability accommodations for parolees who
8 may be housed there. CDCR informed Plaintiffs that a yet-to-be-determined evaluation of
9 the parolee, before their release from the institution, will likely be required to determine if
10 their disability necessitates limited, short-term, housing while they are awaiting approval
11 for SSI-funded housing arrangements. Further, Defendants have significantly increased
12 the re-entry-housing capacity of available bed space until the end of the current fiscal year
13 by accessing further funding to meet the increased need. Although it will not engage in a
14 "prioritization of parolees," CCHCS will, however, make available to the appropriate staff
15 members all relevant disability and related medical information that may be used for
16 housing considerations. DRP will continue to work on an educational video to inform
17 providers of the needs of parolees with disabilities who are participating in their programs.

18 Defendants continue to meet and confer with Plaintiffs to inform them of DAPO's
19 recent efforts to ensure that parolees' benefits applications are completed before the
20 parolees are released from prison. DAPO has initiated amendments, to be effective July 1,
21 2022, to its TCMP contracts to ensure that benefits applications for Medi-Cal will be
22 submitted at 90 days before release. Also, as part of the current social worker and parole
23 agent role, they provide post-release guidance to parolees and referrals to the services that
24 they may need while on parole to address treatment, program, and supportive needs. In
25 support, Behavioral Health Reintegration (BHR) will hire 30-40 licensed social workers to
26 fill current vacancies held due to hiring restrictions and while negotiating a revised duty
27 statement with their labor negotiation. The revised social worker duty statement increases
28 their responsibilities to identify and provide supportive services to address urgent and basic

1 needs presented by parolees. This focus includes identifying community resources or
2 services and referring or linking the parolees they serve to them. The anticipated TCMP
3 contract changes should substantially minimize the number of parolees with disabilities
4 being released without a completed Medi-Cal application.

5 Moreover, recently approved legislation concerning inmates obtaining Cal-ID cards
6 before release should also facilitate parolees' timely reintegration. On October 7, 2021
7 Governor Newsom signed into law Senate Bill 629. Effective January 1, 2022, CDCR and
8 DMV are obligated to provide eligible inmates with valid identification cards before
9 release, and CDCR is required to assist inmates with obtaining necessary information or
10 documents that may be held by other agencies, such as birth certificates or social security
11 numbers. This should increase the number of parolees released with Cal-ID cards and
12 ameliorate some of the alleged difficulties alleged by Plaintiffs in their May 4, 2022 letter
13 that parolees face when released without a Cal ID card

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

25 **H. Joint Monitoring Tool**

26 The parties remain committed to developing a strong and effective joint monitoring
27 tool. The parties had planned to test the tool out at different types of prisons beginning in
28 April 2020. Those plans, unfortunately, were delayed by the COVID-19 pandemic. While

1 the parties engaged in a mix of onsite and offsite tours throughout 2021, this process
2 continues to be impacted by the pandemic and the parties agreed to cancel the in-person
3 tours during the latter months of 2021 and during the outset of 2022 due to the Omicron
4 variant. We have scheduled joint tours to start again during the week of March 14, 2022
5 with a joint tour of Valley State Prison.

6 The parties met on September 16, 2021 to discuss a path forward regarding
7 outstanding policy issues that must be resolved to effectively audit. The parties agreed to
8 convene multiple separate workgroups to tackle these outstanding issues. The parties also
9 plan to meet over the next few months to resolve problems with the audit questions that
10 have been identified during recent tours. The first such meeting occurred the second week
11 of November and have been ongoing. The parties have yet to come to agreement on a
12 format for scoring and reporting compliance. The parties have been meeting every month
13 to go over different sections of the negotiated joint monitoring tool and to resolve
14 outstanding disputes and concerns.

15 **I. ADA Structural Barriers, Emergency Evacuation Procedures, and Master**
16 **Planning Process**

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

23 The parties agreed to a flexible, collaborative approach in which they would meet
24 regularly to discuss different institutions and be joined by local ADA staff with close
25 knowledge of the institutions. The parties also plan to tour institutions together to resolve
26 outstanding issues and address Plaintiffs' concerns collaboratively. The parties will
27 address Master Planning issues at LAC during the previously scheduled LAC tour now
28 scheduled for the week of April 25, 2022. The parties will also schedule tours this year on

1 Master Planning issues at VSP and CIM although we want to wait until programming at
2 the prisons is fully up and running as the prisons emerge from COVID-19 related
3 restrictions. Because accessible programming space is a key concern for Plaintiffs, these
4 tours cannot occur until programming has returned to normal.

5 In addition, Defendants are in the process of auditing whether program
6 modifications referenced in the Master Plan have been memorialized in local operating
7 procedures at each institution. Defendants have produced to Plaintiffs copies of some
8 spreadsheets detailing the needed changes to the local operating procedures (“LOPs”) of
9 specific prisons that are required to implement the program modifications, but a significant
10 number of these have not yet been produced because Defendants must still collect them
11 and review them for completeness. Plaintiffs will need to review these spreadsheets and
12 LOPs in conjunction with onsite tours but are not currently able to do so due to COVID-
13 19, although we expect to begin onsite tours again in the coming months.

14 One area of dispute between the parties concerns whether Defendants are required
15 to make emergency exits fully accessible to prisoners with impacting placement mobility
16 and vision disabilities in units where those individuals are housed. Plaintiffs are reviewing
17 Defendants’ emergency evacuation plans and have serious concerns about whether they
18 provide the necessary direction to staff regarding how to accommodate class members and
19 ensure safe evacuation of people with disabilities during an emergency. These concerns
20 will be memorialized in a forthcoming letter. Plaintiffs are especially concerned because
21 problems with broken fire alarms have been reported by class members and confirmed by
22 Defendants at multiple prisons. Plaintiffs await a response from Defendants to their letter
23 outlining the disagreement and are hopeful the parties can resolve these disputes.

24 **J. Investigation of County Jails**

25 Plaintiffs continue to assert that a pattern and practice of denying disability accom-
26 modations to class members exists at multiple jails but especially the Los Angeles County
27 Jails. *See* Doc. 2680 at 22-24; Doc. 2786 at 26-27; Doc. 3322 at 25-29 & Exs. I, J, K.
28 Defendants disagree with Plaintiffs’ assertions and have been meeting with county counsel

1 for a number of counties in an effort to improve relations, information sharing, and ADA
2 compliance at the jails. Unfortunately, Plaintiffs contend, these conversations alone are
3 not enough as evidenced by the longstanding failure of Los Angeles County Jail to imple-
4 ment their policy to allow and provide canes to detainees. Defendants reported that Los
5 Angeles County is rolling out their four-year old policy as a “pilot” which they report will
6 be expanded to ensure the availability of canes for every classification level in the coming
7 months. Most concerning to Plaintiffs, based on information from CDCR, canes will not
8 be available in all units but rather, people who require a cane may need to be housed in
9 specialized units. This is a concerning development and Plaintiffs seek more information
10 from Defendants after their February 16, 2022, meeting with LACJ. Plaintiffs may
11 conduct additional discovery to ensure ADA compliance for *Armstrong* class members
12 housed in LA County Jail.

13 Defendants maintain that they will continue speaking to county jails in an effort to

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1 ensure compliance with the ADA. In fact, Defendants met with County Counsel on
2 November 3, 2021 and are in the process of scheduling another meeting in the near future.

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Respectfully submitted,
ROSEN BIEN GALVAN & GRUNFELD LLP

DATED: March 15, 2022

By: /s/ Thomas Nolan
Thomas Nolan

Attorneys for Plaintiffs

DATED: March 15, 2022

ROB BONTA
Attorney General of the State of California

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

Attorneys for Defendants

FILER’S ATTESTATION

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

DATED: March 15, 2022

/s/ Thomas Nolan
Thomas Nolan

EXHIBIT A



The 2022-23 Budget:

Monitoring Correctional System Staff Misconduct Investigations

FEBRUARY 2022

Summary. The Governor's budget proposes additional funding and positions for the California Department of Corrections and Rehabilitation (CDCR) to implement a new system for handling inmate and parolee allegations of staff misconduct and for the Office of the Inspector General (OIG) to independently monitor the new process. We find that the proposed resources for CDCR appear reasonable. However, the proposed resources for OIG may result in a level of monitoring that does not meet legislative expectations for oversight. Accordingly, we recommend that the Legislature determine its specific expectations and adjust the level of resources proposed by the Governor as needed to ensure expectations are met. To assist the Legislature in this process, we identify key issues for consideration.

BACKGROUND

OIG Oversees CDCR Handling of Allegations of Staff Misconduct

OIG is as an independent state agency responsible for oversight of CDCR's correctional programs. Currently, OIG is required by statute and court orders to perform certain activities. As part of this responsibility, OIG monitors CDCR's two primary processes for handling allegations of staff misconduct, which we describe in detail below. (See the nearby box for more detailed information on the history of OIG.)

CDCR Process for Handling Allegations Referred by Hiring Authorities

OIG Provides Input on and Monitors CDCR Allegation Routing Decisions. Hiring authorities at CDCR are staff in certain positions—such as

History of the Office of the Inspector General (OIG)

In the early 1990s, the California Department of Corrections and Rehabilitation (CDCR)—then known as the California Department of Corrections (CDC)—faced a succession of highly publicized cases alleging serious staff misconduct. At the same time, CDC was believed to be ineffective and inefficient in its ability to deter staff misconduct, to investigate misconduct when it did occur, or to discipline those who violated department policy or the law.

In response to these ongoing problems, Chapter 766 of 1994 (SB 1462, Maddy) established OIG within the Youth and Adult Correctional Agency (YACA). The legislation specified that OIG's role was to (1) review departmental policies and procedures for conducting investigations, as well as the department's compliance with them; (2) investigate allegations of personnel misconduct, including complaints of retaliation and other wrongdoing; and (3) recommend related corrective action. In 1998, following continued complaints of staff misconduct within CDC, the Legislature moved OIG out of YACA and established it as an independent state agency responsible for oversight and investigation of correctional programs, reporting directly to the Governor. (We note that, in 2005, YACA and all the departments that reported to it—including CDC—were consolidated into CDCR.)

wardens—who have the authority to hire and discipline employees. Whenever a hiring authority reasonably believes an employee committed misconduct warranting punitive action (such as salary reduction or dismissal), he or she must submit a referral to the Central Intake Panel (CIP). The CIP is a collection of stakeholders—including OIG representatives—led by CDCR’s Office of Internal Affairs (OIA). The CIP reviews any information provided about the allegation by the hiring authority—usually information from an initial inquiry into the matter done by prison or parole staff—and discusses how to route the allegation. For example, the CIP can decide to authorize an administrative or criminal investigation to assess whether the alleged misconduct occurred. Alternatively, if sufficient evidence already exists, the CIP can authorize the hiring authority to take direct disciplinary action without an investigation. The final decision on how to route the allegation is made by the OIA staff who lead the CIP. However, in its public reports to the Legislature and Governor, OIG notes instances when its staff disagree with decisions made by OIA.

OIG Focuses on Oversight of More Serious Investigations Conducted. OIG reports that its staff monitor the quality of about 15 percent of investigations that are conducted and tends to focus its monitoring activities on the department’s more serious investigations, such as cases involving alleged dishonesty, use of force, and criminal activity. In addition to monitoring the quality of the investigatory work, OIG monitors the performance of department attorneys involved in the investigation and discipline process and hiring authorities’ imposition of discipline. OIG includes these findings in its public reports to the Legislature and Governor. We note that because hiring authorities must file a Form 989 in order to refer an allegation to the CIP, this investigation and discipline process is often referred to as the “989 process.”

CDCR Process for Handling Allegations Referred by Inmates and Parolees

Some Grievance and Reasonable Accommodation Claims Contain Allegations of Staff Misconduct. CDCR regulations allow inmates and parolees to file certain claims known

as grievances to contest departmental policies, actions, or conditions that have a negative effect on their welfare. Grievances cover a variety of topics, such as disagreement with disciplinary actions and concerns about housing conditions. (We note that there are two categories of grievances, health care grievances and all other grievances, which we refer to in this post as regular grievances.) For example, an inmate might file a grievance arguing that the temperature inside his or her cell is excessively hot. In some cases, grievances allege that a violation of law, policy, or ethical standards by staff has taken place. For example, an inmate might file a grievance alleging that staff intentionally placed him or her in a particular cell that is known to reach excessive temperatures in retaliation for requesting to be moved to a different housing unit.

Aside from grievances, inmates and parolees who have physical or mental disabilities can submit claims requesting specific reasonable accommodations to enable them to access programs, services, or activities. For example, inmates who are unable to walk can request a cane, walker, or wheelchair. Inmates and parolees can also use this process to report harassment as a result of their disability. In some cases, requests for reasonable accommodation contain allegations of staff misconduct—such as if an inmate is reporting being harassed by staff.

Allegations Referred by Inmates and Parolees Historically Handled by Prison and Parole Staff.

As we discuss below, the process by which CDCR handles inmate or parolee allegations of staff misconduct made through grievances or requests for reasonable accommodation claims has been undergoing transition in recent years in response to various concerns. Historically, allegations of staff misconduct arising through grievances or requests for reasonable accommodation were typically handled by prison or parole staff. Specifically, staff were responsible for screening claims to identify those that contained allegations of staff misconduct. Staff then conducted inquiries into those allegations and reported the results to hiring authorities. Unless the hiring authority determined that the report warranted a referral to CIP via Form 989, these allegations did not rise to the attention of OIA or OIG.

OIG Raised Various Concerns About Historical Process. In 2018, in response to concerns raised by inmates' rights attorneys, the Secretary of CDCR requested that OIG review the quality of inquiries into inmate allegations of staff misconduct at Salinas Valley State Prison (SVSP) in Soledad. In its report, OIG concluded that such inquiries were inadequate because staff used poor investigation techniques, were inadequately trained, and showed signs of bias in favor of fellow staff members. Moreover, OIG indicated that these problems were likely not unique to SVSP. In a subsequent 2021 report, OIG raised concerns that staff at prisons statewide responsible for screening claims were failing to classify some grievances as containing allegations of staff misconduct. These concerns have been echoed by plaintiffs in an ongoing class action lawsuit (known as *Armstrong v. Newsom*) concerning CDCR's treatment of inmates with disabilities.

CDCR Currently Implementing New Process. In response to these concerns, CDCR has been revising its process for handling inmate and parolee allegations of staff misconduct since 2019. When fully implemented, the process—as outlined in emergency regulations that CDCR filed with the Office of Administrative Law on December 28, 2021—will include allegations of staff misconduct toward inmates and parolees that arise through grievances and requests for reasonable accommodation. In addition, claims filed by third parties (such as members of the public) will be reviewed for allegations of staff misconduct.

Under the new process, all claims will be forwarded by prison and parole staff to a new Centralized Screening Team (CST) within OIA. CST will screen all claims to determine whether they contain allegations of staff misconduct. If CST does not identify any allegation of staff misconduct, the claim will be sent back to the prison or parole staff to be addressed. If CST does identify an allegation of staff misconduct, CST will assess whether the allegation constitutes serious misconduct against inmates or parolees. (Regulations define a specific list of activities that constitute serious misconduct for the purposes of this screening decision, including excessive use of

force, dishonesty, and sexual harassment.) Claims alleging serious misconduct will be referred to a new unit within OIA—the Allegation Investigation Unit (AIU)—for an investigation. Claims containing allegations not determined to constitute serious misconduct will be sent back to local prison or parole staff to conduct an inquiry into the matter. All local inquiry reports will then be reviewed by OIA staff for completeness and independence.

At full implementation, CDCR expects that CST will receive about 220,000 claims per year with about 46,000 (21 percent) containing allegations of misconduct. Of these 46,000 allegations, CDCR expects that CST will refer 8,424 (18 percent) to AIU for an investigation due to the allegations constituting serious misconduct and the remaining 37,576 (82 percent) to be referred back to the prison or parole region for a local inquiry.

OIG Monitoring of New Process. In recent years, the Legislature has expressed interest in OIG oversight of CDCR's handling of staff misconduct allegations arising out of the grievance and request for reasonable accommodation processes. As a result, the 2019-20 budget package provided OIG with five positions and about \$780,000 in ongoing General Fund support to monitor CDCR's handling of inmate and parolee allegations of staff misconduct. However, this funding level was determined based on an earlier iteration of the new process under which it was assumed that fewer allegations would be received by OIA annually.

GOVERNOR'S PROPOSAL

Funding for CDCR to Implement New Process for Handling Allegations Referred by Inmates and Parolees. The Governor's budget provides \$35.6 million General Fund in 2022-23 (increasing to \$37 million in 2023-24, and generally decreasing to \$34.2 million annually in 2026-27) for CDCR to align its process for handling staff misconduct allegations with the emergency regulations filed on December 28, 2021. Under the proposal, CDCR would receive 175 additional positions in 2022-23 (increasing to 192 positions in 2023-24). This includes positions to staff CST and AIU.

Funding for OIG to Monitor New Process for Handling Allegations Referred by Inmates and Parolees. The Governor's budget provides \$2.3 million General Fund and 16 positions in 2022-23 (increasing to \$3.6 million and 24 positions in 2023-24) for OIG to monitor CDCR's new process for screening for and investigating staff misconduct alleged in claims submitted by inmates, parolees, and third parties. Under the Governor's proposal, OIG would do the following:

- **Monitor 30 Percent of Regular Grievances Received by CST (\$1.7 Million).** Under the proposal, OIG would receive resources to monitor about 30 percent of the estimated 147,500 regular grievances reviewed by CST. The proposal does not include resources for OIG to monitor the remaining 72,500 claims consisting of health care grievances, requests for reasonable accommodation, and third-party claims. OIG indicates that it plans to focus on regular grievances, rather than other types of claims, because it believes they are more likely to contain allegations of staff misconduct.
- **Monitor 10 Percent of Investigations Conducted by AIU (\$624,000).** Under the proposal, OIG would receive resources to monitor AIU investigations. Along with the resources initially provided in 2019-20, the proposal would allow OIG to monitor about 10 percent of the investigations conducted by AIU.

ASSESSMENT

Funding Proposed for CDCR to Implement New Process Appears Reasonable. We find that the funding proposed for CDCR to align its process for handling inmate and parolee allegations of staff misconduct to its current emergency regulations appears reasonable and would likely help address concerns that have been raised over the years.

Proposed Level of OIG Monitoring May Not Meet Legislative Expectations. The goal of monitoring is typically to be able to draw conclusions about an entire system by focusing on an adequately sized sample of cases processed in the system. There is no universally agreed upon

percentage of cases that constitutes a sample size adequate to carry out effective monitoring. Under the Governor's proposal, OIG would be monitoring a relatively small sample size of investigations—and not monitoring the screening of certain claims or quality of local inquiries at all. As such, it is possible that the Governor's proposal may not meet legislative expectations. Specifically, under the Governor's proposal:

OIG Would Not Monitor Certain Types of Claims Received by CST. As previously mentioned, under the proposal, CST screening of the annual estimated 68,000 health care grievances, requests for reasonable accommodation, and third-party claims would not be monitored by OIG, based on the assumption that they are less likely to contain allegations of staff misconduct than regular grievances. According to CDCR, based on three months of data, about 22 percent of regular grievances contain allegations of staff misconduct, whereas CDCR estimates that about 19 percent of all other claims will contain allegations of staff misconduct. Accordingly, the frequency with which misconduct allegations are expected to be found in other claims is not substantially lower than for regular grievances.

OIG Would Monitor Lower Percent of Investigations Than Under 989 Process. Under the Governor's proposal, OIG would monitor about 10 percent of investigations conducted by AIU. In comparison, OIG reports that it typically monitors about 15 percent of investigations under the 989 process. It is unclear why OIG would monitor a lower percentage in this case.

OIG Would Not Monitor Local Inquiries. CDCR expects that CST will annually identify 37,600 claims that contain allegations of less serious misconduct that would not be investigated by AIU. These claims will be sent by CST back to the referring prison or parole staff for a local inquiry into the matter. Reports prepared based on these inquiries will be reviewed for completeness by OIA staff. However, the Governor's proposal does not include resources for OIG to monitor these reports or the quality of review performed by OIA staff. This is notable because concerns about the quality of local inquiries were a key driver for creation of CDCR's new process.

RECOMMENDATION

Ensure Level of Monitoring Resources Meets Legislative Expectations. As noted above, in recent years, the Legislature has expressed interest in OIG oversight of CDCR's handling of staff misconduct allegations arising out of the grievance and request for reasonable accommodation processes. In reviewing the Governor's proposal, we recommend that the Legislature determine its specific expectations and adjust the level of resources proposed by the Governor as needed to ensure its expectations are met. Specifically, the Legislature will want to consider the following:

- **Should OIG Monitor All Types of Claims Received by CST?** Under the proposal, OIG would monitor 30 percent of regular grievances screened by CST but would not monitor screening of health care grievances, requests for reasonable accommodation, and third-party claims. If the Legislature wants OIG to monitor 30 percent of *all* types of claims submitted to CST, we estimate that an additional five positions and about \$600,000 annually above the Governor's proposal would be required.
- **Should OIG Monitor a Larger Portion of AIU Investigations?** Under the proposal, OIG would monitor about 10 percent of AIU investigations. If the Legislature wants OIG to monitor a higher percent of AIU investigations it would need to provide additional resources. For example, we estimate that having OIG monitor 15 percent of AIU investigations—the same as the portion of investigations that OIG monitors in the 989 process—would require an additional seven positions and \$1 million annually at full implementation.
- **Should OIG Monitor Local Inquiry Reports?** The Legislature could consider funding OIG so that it would be able to monitor a portion of the estimated 37,600 local inquiry reports. For example, we estimate that requiring OIG to monitor 20 percent of these reports—similar to the portion of investigations that OIG monitors in the 989 process—would require an additional four positions and \$500,000 above the Governor's proposed resources. We note, however, that the Legislature could make this change in a relatively cost neutral manner by reducing the portion of these reports monitored by CDCR OIA staff from 100 percent to 80 percent and redirecting savings from CDCR to pay for the increased OIG staff.

LAO PUBLICATIONS

This post was prepared by Caitlin O'Neil, and reviewed by Drew Soderborg and Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

EXHIBIT B



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

February 28, 2022

Mr. Ed Swanson
Court Expert

RE: RVRs Initiated by Mental Health Staff at SATF

Dear Mr. Swanson:

The *Armstrong* Court ordered an investigation into whether, among other things, RVRs initiated by medical staff at SATF were properly issued. *See* Doc. 3338 at 2-3. We previously explained why those RVRs were inappropriate. We write now because we have since learned that substantially similar RVRs have been initiated by mental health staff at SATF, raise similar issues, and likely require similar corrective action. This includes RVRs related to medication administration, as mental health staff sometimes distribute medication in EOP housing units.¹

The RVRs initiated by mental health staff, like those initiated by medical staff, demonstrate a failure to appropriately consider whether a physical or mental disability contributed to the alleged misconduct, an unduly adversarial relationship between staff and patients, lack of appropriate supervisory oversight, and lack of due process protections for counseling-only RVRs.² We ask that you consider these RVRs as you conduct your overall review of SATF, coordinate with the Receiver in *Plata* and the Special Master in *Coleman* as appropriate, and develop your recommendations. *See Plata v. Newsom*, 1/24/22 Tr. at 39-41 (N.D. Cal. No. 01-1351) (“THE COURT: I also continue to feel . . . what was or has been happening at SATF is cultural so there needs to be a culture change. . . . I think most of the people in the conference call are familiar with Judge Wilken and Mr. Swanson, and so you all know as I do that they will identify the steps that need to be taken, and they will take those steps.”).

¹ Pill lines usually are run in EOP housing units and not the yard’s medical clinic.

² Between January 1 and December 1, 2021, mental health staff at SATF initiated at least 19 RVRs. Plaintiffs’ counsel requested and reviewed 16 of those RVRs. Of those 16, 12 were issued as counseling-only, and one was later reduced to counseling-only.

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We provide a general overview of our concerns with these RVRs in this letter. We note at the outset that you have been asked to evaluate whether medical leadership was aware of the RVRs being issued by medical staff. *See* Doc. 3338 at 3. The mental health RVRs we reviewed were initiated by three psychologists, five psych techs (“PTs”), a licensed clinical social worker, a recreational therapist, and a lab assistant. In all cases, the counseling-only RVRs were reviewed only by a custody sergeant, and not mental health supervisory staff.³ And, as discussed during our ongoing negotiations regarding the RVR process, reviews of RVRs are perfunctory in practice, with a focus on process and not substance; no checklist or other guidance related to the review appears in the DOM or on the face of the RVR. The same is true of the mental health RVRs here.

Access to Medical Care

Like medical staff, mental health staff wrote a number of RVRs alleging medication misuse/noncompliance. The majority were issued to patients in the Integrated Substance Use Disorder Treatment (“ISUDT”) program, who were accused of misusing suboxone. The remainder were issued to patients for alleged misuse of their psychiatric medications, including BuSpar (buspirone, an anti-anxiety medication, and not a controlled substance), and Wellbutrin (bupropion, an antidepressant, also not a controlled substance).

RVRs ISSUED FOR ALLEGED MISUSE OF MEDICATION							
Patient	CDCR No.	Date	Yard	Medication	Reporting Employee	RVR Log No.	Offense
██████████	██████████	3/23/2021	G	BuSpar ⁴	██████████	██████████	Failure to meet program/work expectations (counseling only)
██████████	██████████	7/5/2021	STRH	Wellbutrin ⁵	██████████	██████████	Disobeying an order (counseling only)

³ The Department Operations Manual says that counseling-only RVRs “shall be submitted by the reporting employee to their immediate supervisor for review and approval,” and that “[i]f a Counseling Only RVR is completed, one copy is given to the inmate and the original is placed in the inmate C-File. At this point, the disciplinary process ends.” DOM § 52080.3 & 52080.3.1.

⁴ The RVR paperwork does not state which medication was at issue. However, a note from ██████████ in Mr. ██████████ medical records makes clear it was BuSpar, an anti-anxiety medication. *See* Progress Note (Mar. 23, 2021) (“I observed ██████████ attempt to divert his Buspar. It is the only medication he gets at noon so there is no question which med it was.”).

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██████	██████	1/31/2021	G	Suboxone	██████	██████	Unauthorized possession of medication (serious)
██████	██████	5/16/2021	G	Suboxone	██████	██████	Unauthorized possession of medication (serious)
██████	██████	2/1/2021	F	Suboxone	██████	██████	Failure to meet program/work expectations (counseling only)
██████	██████	3/30/2021	G	Suboxone	██████	██████	Failure to meet program/work expectations (counseling only)
██████	██████	1/31/2021	G	Abilify, Cogentin, and/or venlafaxine ⁶	██████	██████	Behavior which could lead to violence (serious, later reduced to counseling only)

As we detailed in our previous written submissions, these RVRs inappropriately punish patients for their failure to comply with medication and treatment protocols, instead of helping patients get the treatment they need, and are not sanctioned by CCHCS policies. CCHCS policies regarding suspected noncompliance with psychiatric medications call for patients to be referred to their mental health provider, who can address any non-adherence that may relate to the patient's mental illness. *See* HC-DOM § 3.5.41(c)(6)(E). And CCHCS Headquarters staff have similarly agreed that patients who are suspected of misusing suboxone should be referred to their ISUDT treatment team, instead of issued RVRs, so the provider can determine whether the patient needs additional or alternative treatment for their addiction. The RVRs issued to patients in the ISUDT program are particularly concerning, as these patient are actively trying to overcome their addiction. For the treatment to be effective, they must be able to communicate with healthcare staff about their drug use, without fear of discipline. The RVRs also can damage a patient's

⁵ The RVR paperwork does not state which medication was at issue. However, the paperwork states it was a "crush and float" medication. According to Mr. ██████ medical records, he was prescribed only one "crush and float" medication: Wellbutrin, an anti-depressant.

⁶ The RVR paperwork does not state which medication was at issue. However, the paperwork states it was a "direct observation therapy" (DOT) medication. According to Mr. ██████ medical records, he was prescribed three DOT medications at that time, none of which are controlled substances: Abilify (aripiprazole, prescribed for mood stabilization/psychosis), Cogentin (benzatropine, prescribed to treat side effects of other medications), and venlafaxine (prescribed to treat depression).

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support network; for example, Mr. ██████ lost one year of family visits and 90 days of visiting, along with 15 days of yard, 90 days of pay, and 30 days credit.

In addition, as with the RVRs issued by medical staff, certain mental health staff issued a disproportionate number of RVRs, suggesting that these RVRs may be the result of the harmful biases and attitudes of certain staff. Three of the medication administration RVRs were written by a single employee: PT ██████. Two of those were for alleged suboxone misuse. Plaintiffs' counsel spoke to the recipient of one of these RVRs, ██████, during our *Armstrong* monitoring tour at SATF in December 2021. Mr. ██████ reported that PT ██████ is openly critical of the ISUDT program and hostile to patients in the program. He reported that he has heard PT ██████ call people in the ISUDT program “druggies” and call the ISUDT providers the “biggest drug dealers in the prison.” It is deeply concerning that someone with this attitude is permitted to administer ISUDT medications to patients struggling with addiction and initiate multiple RVRs with apparently no meaningful oversight.

Separately, SATF mental health staff also wrote two concerning RVRs for ██████ ██████, EOP, for allegedly arguing with a PT who told him he needed to wear his blue shirt to pill call, instead of a white shirt and denim jacket. Mr. ██████ is no longer in custody, so we were unable to speak with him to hear his account of these events. However, based on our review of the RVR paperwork and his medical records, we are concerned by these RVRs.

We are unaware of any CDCR rule requiring patients to wear a blue shirt, rather than a white shirt and denim jacket, to pill call, and the RVRs cite no such rule. Moreover, at the hearing, Mr. ██████ explained that he believed the RVRs were retaliatory and issued only after he told the PT that he had filed a complaint against her. But there was no apparent investigation into Mr. ██████ claim that these RVRs were retaliatory. The PT did not even appear at the hearing, nor did the building officers who supposedly were involved in these incidents. There was also no apparent investigation into whether this incident resulted in a denial of care. The PT's written accounts suggest that during both morning and evening pill call, their arguments escalated to such a degree that she could not complete the administration of his medications, but there is no mention of this in his medical records.⁷ These RVRs suggest that healthcare staff—and in particular, those who conduct pill call each day and have frequent interactions with patients—are provoking unnecessary arguments, possibly resulting in the denial of care, with no oversight from health care leadership.

⁷ According to the Medication Administration Record (“MAR”), Mr. ██████ was prescribed three medications, all to treat his mental illnesses: BuSpar, Remeron, and Vistaril. PT ██████ documented in his MAR that he received his morning medications (BuSpar and Vistaril) at 7:49 AM on 1/10/2021, and his evening medications (BuSpar, Remeron, and Vistaril) at 6:13 PM.

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Disability Discrimination

We also are deeply concerned that clear evidence of disability discrimination appears to be disregarded—even when the Chief Disciplinary Officer is the former ADA Coordinator.

██████████, DNH, EOP, ██████████
 RVR Log No. ██████████ “Behavior which could lead to violence” (Serious)
 Date: January 31, 2021
 Reporting Employee: ██████████
 Reviewing Supervisor: ██████████ ██████████
 Classified by: ██████████
 Hearing Official: ██████████
 CDO: ██████████ (██████████ until October 2020)

██████████, 59 years old, has been incarcerated for two decades and has his first parole hearing in a few years. He received a serious RVR from PT ██████████ on January 3, 2021, for “Behavior which could lead to violence,” after she accused him of “cheeking” his medication. PT ██████████ alleged that, during morning pill call in the building, Mr. ██████████ refused to open his mouth to show her that he had taken his medication. PT ██████████ wrote that Mr. ██████████ was asked three times to show his mouth before he complied. Mr. ██████████ stated in the RVR hearing: “This whole write up is a lie, it did not happen like that. **I was unable to hear because my hearing aid was not working. It was the nurse who was getting loud and aggressive.** If I was doing that then why didn’t anyone hit their button? I should have been cuffed up and taken out of their [sic], none of this happened.” *See* RVR Log No. ██████████ (emphasis added). It does not appear from the RVR documentation that Mr. ██████████ allegation that PT ██████████ failed to provide effective communication was considered or investigated. The allegation does not appear on Defendants’ non-compliance or ALTS logs.⁸ This is particularly hard to understand, because the Chief Disciplinary Officer for this RVR was ██████████, who had, just three months before, been the ██████████ at SATF.

Mr. ██████████ was found guilty of the serious RVR based on “preponderance of evidence at the hearing,” although the charge was reduced to counseling-only in the interest of justice without

⁸ Mr. ██████████ appears in several of the ALTS logs for effective communication documentation issues from September 10, 2020, and April 8 and 29, 2021. Three of the four effective communication documentation deficiencies were confirmed and training was provided to staff. *See* March 2021 ALTS Statewide Log confirming allegation dated September 10, 2020; *see also* July 2021 ALTS Statewide Log confirming allegations dated April 8, 2021, and April 29, 2021. One allegation remains under investigation.

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explanation. It remains in his record, and will be seen by the Board of Parole Hearings when he goes to his first parole hearing in a few years.

Plaintiffs' counsel spoke with Mr. [REDACTED] in December 2021, and he 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 PT [REDACTED] 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 PT [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. *See* Plfs.' Suppl. Written Submission at 28 (Jan. 7, 2022).

Unfortunately, Mr. [REDACTED] is not the only example of failure to appropriately consider whether and how a disability may have affected the reported conduct. In some cases, RVRs appear to have been written for alleged behaviors that implicate the very mental health issues for which these patients need treatment.⁹

- [REDACTED], CCCMS, who is diagnosed with Generalized Anxiety Disorder and Opioid Use Disorder, received a counseling-only RVR for "Disrespect w/out potential for violence disruption" on June 27, 2021. At the time of the incident, Mr. [REDACTED] was being evaluated for mental health crisis. According to the Suicide Risk and Self-Harm Evaluation (SRASHE) notes, Mr. [REDACTED] was too agitated and not "mentally stable" enough at the time to even participate in the evaluation and associated safety planning. Nonetheless, the same clinician initiated an RVR when Mr. [REDACTED] used profane language out of frustration when he was unable to put on his suicide safety smock. According to the RVR Mr. [REDACTED] yelled, "Fuck you! I can't get this fuckin' shit around me. It keeps falling off! How the fuck am I supposed to put this shit on! I don't want to fuckin' be here..." He was placed on suicide watch under constant visual observation out of concern for his safety. It defies logic that someone who is too agitated and not mentally stable enough to participate in his mental health evaluation should, at the same time, be issued an RVR for disrespectful conduct.
- [REDACTED], EOP, who is diagnosed with Schizophrenia, received a counseling-only RVR on June 23, 2021. His clinical psychologist initiated the

⁹ The parties in *Coleman* sought to guard against such discrimination and the practice of issuing RVRs when mental illness may have contributed to the behavior. In particular, the parties agreed to a process for diversion of some cases entirely from the RVR process, and, for those cases that remain in the RVR process, clinical input by way of ensuring a mental health assessment of the RVR. *See* Title 15 §§ 3317.1; 3317.2; 3317(a). Counseling-only chronos are not subject to that process and should be, as illustrated below.

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discipline because Mr. [REDACTED] purportedly was disruptive during a mental health group on June 18, 2021. (We were not able to speak with him about what happened that day because he has since paroled.) A review of Mr. [REDACTED] mental health records shows that he received a subsequent RVR for the same alleged behavior a few weeks later, on July 3, 2021. The subsequent RVR underwent a Mental Health Assessment. The clinician who reviewed that RVR referenced a psychiatrist's June 18 note stating that an increase in Seroquel (an anti-psychotic medication) was warranted for Mr. [REDACTED] and that he was being considered for a higher level of care. The clinician concluded that Mr. [REDACTED] mental illness "so strongly influenced" his behavior on July 3 that he would be better served by documenting the behavior in an alternate manner. It seems that the same reasoning should apply to the June 23 RVR. But because that RVR was counseling-only, it did not receive any review beyond that of the custody sergeant signing off on it.

In addition, as with RVRs initiated by medical staff, when clinical staff initiate RVRs or otherwise punish class members, especially for minor or inappropriate reasons, they undermine the trust that is central to a functioning therapeutic relationship.

- [REDACTED] received a counseling-only RVR for "Failure to meet program/work expectations" on June 22, 2021, when he requested to be absent from his group due to a "personal matter."¹⁰ On that day Mr. [REDACTED] was able to schedule a phone call with his ill, 97-year-old grandmother. He requested to be excused from his morning Cognitive Behavioral Intervention group in order to take that call. Rather than understanding his need to speak with his ill and elderly grandmother, staff wrote up Mr. [REDACTED] for taking the call. He reported that, prior to this incident, he regularly attended the four-days-a-week group. But, as a result of the RVR, he stated that his trust was broken, undermining his therapeutic relationship with clinical staff. He

¹⁰ Mr. [REDACTED] has a history of participation in the mental health delivery system with Major Depressive Disorder and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct within the last ten years. He discharged from CDCR Mental Health services during a prior prison term. On March 4, 2021, his records reflect that he screened positive for severe psychiatric problems upon his arrival in CDCR for his current term, though he was not placed in the MHSDDS. As he reported in an interview with Plaintiffs' counsel, Mr. [REDACTED] still experiences depressive symptoms at times. Mr. [REDACTED] has been convicted of sex offenses and has a history of substance use, both of which both of which indicate that he may have a mental health condition recognized by the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition). In fact, as a result of his substance use and dependence, Mr. [REDACTED] has been diagnosed with substance use disorder. He currently participates in a cognitive behavioral group for sex-offenders.

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reported that he no longer actively participates in the group. CBI groups are a form of mental health treatment. The *Coleman* program guide provides that when patients refuse mental health treatment, the clinician should meet with the patient to encourage them to participate. See Doc. 5864-1 at 241, *Coleman v. Newsom* (E.D. Cal. 90-0520).

- [REDACTED], EOP, who is diagnosed with Anxiety, Bipolar Disorder, Major Depressive Disorder, and Borderline Personality Disorder, received a counseling-only RVR for “Behavior which could lead to violence” initiated by a psychologist on April 6, 2021. In an interview with Plaintiffs’ counsel, [REDACTED] reported that most of the allegations in the RVR are false. [REDACTED] denies making the statements alleged by the psychologist in the reports and denies pointing in threatening manner. The RVR also alleges that [REDACTED] intentionally tried to shame the psychologist by using the prefix “Mr.” instead of “Dr.” [REDACTED] asserts this is patently false, and denied knowing at the time that the group facilitator had a doctorate degree. [REDACTED] reported a history of disrespectful interactions with the group psychologist. [REDACTED] recalls the psychologist being very rude on the day in question and recalls asking the psychologist to please not be so rude. [REDACTED] intended to file a grievance about the interaction with their psychologist, and asked a different staff member how to spell the psychologist’s name. [REDACTED] reported that this RVR violated any trust they had with the group psychologist. Beyond the stress of the RVR itself, because of this incident [REDACTED] reported that they have refused groups and check-ins with this psychologist, including PTSD groups that they believe could otherwise be helpful. [REDACTED] filed a grievance about this RVR, which was denied.

Sincerely yours,

Tania Amarillas
Sophie Hart
Rita Lomio

PRISON LAW OFFICE

Penny Godbold

ROSEN BIEN GALVAN & GRUNFELD LLP

cc:	Audrey Barron	Gannon Johnson	Tammy Foss
	August Gugelmann	Tamiya Davis	Bruce Beland
	Jennifer Neill	Trace Maiorino	Robert Gaultney
	Patricia Ferguson	Chor Thao	Co-counsel