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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

**PLAINTIFFS’ RESPONSE TO COURT
EXPERT’S SECOND REPORT
REGARDING TREATMENT OF
PEOPLE WITH DISABILITIES AT
SATF [ECF NO. 3500]**

Judge: Hon. Claudia Wilken

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[4356773.3]

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1 **INTRODUCTION**

2 Nine months ago, the Court Expert found that the largest state prison, the California
3 Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”), “is failing its
4 disabled population.” Dkt. No. 3446 at 5; Dkt. No. 3467 at 2 (adopting undisputed
5 findings of Court Expert). The Court decided “to allow Defendants to continue to devise
6 and implement any policies, procedures, or reforms that are necessary for them to achieve
7 compliance with the ADA and ARP at SATF,” and ordered the Court Expert to file a
8 report on Defendants’ progress within six months. Dkt. No. 3467 at 2.

9 As evidenced by the Court Expert’s second report, there is a significant difference
10 in progress between efforts led by California Correctional Health Care Services
11 (“CCHCS”) and those led by the California Department of Corrections and Rehabilitation
12 (“CDCR”). CCHCS and the Receiver have developed several promising measures to
13 address problems identified in the Court Expert’s first report. There is, however, a lack of
14 discernible progress by CDCR, including where headquarters-level action is required.

15 CDCR offers little more than a plan to have a plan, recycling of past policies that
16 have proven inadequate, and assurances that they will continue to talk with Plaintiffs’
17 counsel on issues that strike at the very heart of this case and represent foundational
18 barriers to ADA and ARP compliance. This includes accommodations for class members
19 with vision and hearing disabilities and the provision of non-medical assistive devices.

20 CDCR’s failures necessitate Court action. A wait-and-see approach might have
21 been appropriate in the early years of the remedial phase of this case, but the waiting
22 period is long over. It has been almost 30 years since this case was filed, and nine months
23 since the Court Expert filed his initial report. Plaintiffs’ counsel has attempted to resolve
24 the very issues identified by the Court Expert in dozens of meetings between the parties
25 over a period of years. Defendants’ attempt to sidestep Court oversight by gesturing to
26 even more discussions between the parties is either a deliberate strategy to delay or a
27 failure to appreciate the urgency of resolving the critical issues here.

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1 Every day without concrete solutions is a day that people with disabilities suffer
 2 from discrimination in violation of rights guaranteed by federal law and the orders of this
 3 Court. The ADA, which was designed to correct “apathetic attitudes,” *Alexander v.*
 4 *Choate*, 469 U.S. 287, 296 (1985), does not allow prison officials to “sit idly by” in the
 5 face of known problems. *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 270
 6 (D.D.C. 2015) (Jackson, J.). Plaintiffs’ counsel remains willing to assist Defendants, but it
 7 ultimately is Defendants’ “affirmative duty” to accommodate people with disabilities—a
 8 duty that is “at its *apex* in the context of a prison facility,” where people “necessarily rely
 9 totally upon corrections departments for all of their needs while in custody.” *Id.* at 269.
 10 Years of protracted discussions without an end in sight cannot continue.

11 To help structure implementation of necessary reforms and to finally provide relief
 12 to class members, the Court should order CDCR to develop and implement, in consultation
 13 with Plaintiffs and Court Expert, a concrete plan within specific parameters by a date
 14 certain, as set forth in the proposed order filed herewith. *See Armstrong v. Newsom*, 58
 15 F.4th 1283, 1297 (9th Cir. 2023) (“relief prescribing more specific mechanisms of
 16 compliance is appropriate” where less intrusive means have failed) (citation omitted);
 17 *Ensley Branch, N.A.A.C.P. v. Seibels*, 31 F.3d 1548, 1571 (11th Cir. 1994) (finding that
 18 prior decree’s omission of deadlines “turned out to be a serious flaw”).

19 ARGUMENT

20 I. COURT ACTION IS NEEDED TO ENSURE BARRIERS TO ADA AND ARP 21 COMPLIANCE THAT ARE THE PRIMARY RESPONSIBILITY OF CDCR 22 ARE FINALLY RESOLVED.

23 Defendants have not remedied barriers to ADA and ARP compliance at SATF
 24 identified by the Court Expert that are the primary responsibility of CDCR and that, in
 25 many cases, require action from headquarters. Defendants assure the Court that they are
 26 continuing to work on the issues and will continue discussions with Plaintiffs. That is
 27 inadequate. The parties have discussed these very issues for years, in dozens of meetings.
 28 *See Declaration of Jacob J. Hutt in Support of Plaintiffs’ Response to the Court Expert’s*
Second Report Regarding Treatment of People with Disabilities at SATF (“Hutt Decl.”),

1 filed herewith, ¶¶ 29-38; Declaration of Caroline E. Jackson in Support of Plaintiffs’
2 Response to the Court Expert’s Second Report Regarding Treatment of People with
3 Disabilities at SATF (“Jackson Decl.”), filed herewith, ¶¶ 2-6, 8-15, 23-24, 27, 29-30, 37,
4 42-43 & Exs. 1-3, 7-8. Those discussions have not resulted in timely resolution of the
5 issues or even a timeline for curing the violations, *see id.*, and Defendants do not offer
6 complete solutions or a proposed timeline for implementing them even now.

7 **A. Defendants Must Develop a Plan to Accommodate Blind and Low-**
8 **Vision Class Members at SATF.**

9 The Court previously found “that vision-impaired class members are being denied
10 reasonable accommodations for their disabilities because low-vision assistive devices are
11 broken in multiple libraries at SATF.” Dkt. No. 3467 at 4. In his second report, the Court
12 Expert found that “assistive devices in the library are the only means that some class
13 members with low vision have to read” and that “libraries are often unavailable to class
14 members.” Dkt. No. 3500 at 15.

15 Defendants do not dispute these findings. Dkt. No. 3504 at 9. Nor can they.
16 People at SATF who are blind or have low vision and need to use certain auxiliary aids to
17 read and write are severely limited in when and where they can read and write—limitations
18 not placed on their sighted peers. Those class members must rely on libraries to access
19 critical auxiliary aids because they are not available in the housing units. *See* Hutt Decl.
20 ¶ 5. Those class members cannot independently read letters from and write to loved ones
21 and their attorneys, study and complete homework, draft grievances, prepare legal filings,
22 prepare and review written materials for their parole hearings, or write in a journal in the
23 early morning, late afternoon, evening, or any other time the law libraries are not open.

24 Plaintiffs’ counsel has identified this issue at SATF and unsuccessfully attempted to
25 resolve it since at least 2017 by, among other things, raising it in tour reports, letters, and
26 no fewer than 28 meetings. Hutt Decl. ¶¶ 29-38. Defendants have steadfastly refused to
27 develop a viable plan to ensure sufficient access to auxiliary aids to allow blind and low-
28 vision class members to read and write independently. *Id.* ¶¶ 36-37.

1 **1. Restriction of Certain Auxiliary Aids to the Law Library Does**
 2 **Not Afford Blind and Low-Vision Class Members Equal**
 3 **Opportunity to Read and Write.**

4 “[M]erely the opportunity” to read and write “at some time and in some way”—
 5 here, in the law library, for limited periods of time, during restricted hours—is not
 6 sufficient under the ADA. *See Disabled in Action v. Bd. of Elections in City of New York*,
 7 752 F.3d 189, 199 (2d Cir. 2014) (affirming decision that defendants denied people with
 8 disabilities meaningful access to fully participate in its voting program due to inaccessible
 9 polling sites, even where people had the opportunity to cast an absentee ballot).

10 First, the law libraries at SATF are open only on certain days, for limited hours, and
 11 are restricted in occupancy. Hutt Decl. ¶¶ 15-18. For example, for the entire month of
 12 April 2023, the only law library that services people housed on both Facilities F and G was
 13 scheduled to be open for only 11 days. *Id.* ¶ 17. That same month, those facilities housed
 14 1,542 people, 35 of whom were documented as being blind or having severely low vision.
 15 *Id.* ¶ 18. And, although blind and low-vision people may use the ADA computers located
 16 in the law libraries to type and print documents “during normal library hours,” policy
 17 permits them to do so for only two hours at a time. *Id.* ¶ 25.

18 The law library on Facility A is scheduled to be open only from 9 am to 12 pm, and
 19 12:30 pm to 3 pm, when many people are at work or in school, and is limited to only six
 20 people at a time. Hutt Decl. ¶¶ 16-17. (Facility A houses 610 people, 10 of whom are
 21 documented as being blind or having severely low vision. *Id.* ¶ 16.) As one low-vision
 22 person previously housed on Facility A explained:

23 [E]ven if the library was open for us seven days a week, that’s not going to
 24 give us low-vision guys the same access as everyone else. For example, it
 25 still wouldn’t let us read anytime from the late afternoon, when the library
 26 closes, until the next morning. And that’s significant, because mail call is at
 27 around 3pm, after the library has closed. So if I get a letter in the mail and I
 28 want to be able to know what it says, too bad-I’ll be receiving it after the
 library is closed so I can’t use the DaVinci in there. I’d have to wait until the
 next time I could get into the library to read the letter. Sometimes that means
 that I get a document or a letter on Saturday and have to wait until Tuesday
 to know what it says.

Id., Ex. 12 ¶ 11.

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1 Second, as the Court Expert found, “there is a shortage of librarians at SATF” that
2 prevents access to auxiliary aids in the law libraries even during regular library hours. *See*
3 Dkt. No. 3500 at 15 (“[W]e attempted to view assistive devices in two libraries but were
4 unable to because there were no librarians staffing the library.”). And access to the law
5 libraries, which are located some distance from the housing units at SATF, may be further
6 restricted or denied altogether as a result of modified programming due to staff training,
7 lockdowns, searches, foggy conditions, or inclement weather. Hutt Decl. ¶¶ 20-23; *id.*,
8 Ex. 14 ¶ 13 (class member was unable to review his Serious RVR because of lockdown).

9 Third, people with disabilities are not allowed to use the auxiliary aids at any time
10 the library is open; they must request access to the auxiliary aids, and policy requires that
11 they be afforded access “no later than seven working days of the request.” *See* Hutt Decl.,
12 Ex. 10 at 49. Sighted individuals do not have to wait up to seven days before they can read
13 or write—they are able to do so anytime.

14 Fourth, the ADA computers and other auxiliary aids are located in common areas of
15 the law libraries, affording people little to no privacy to read and write. Due to the
16 positioning of the auxiliary aids, any sighted individual standing behind a user is able to
17 see what that user is reading or typing, because the auxiliary aids’ large screens face the
18 common area. Hutt Decl. ¶ 26. Sighted people, by contrast, are able to read and write
19 privately in their cell- or bed-areas, where their property, including court filings,
20 correspondence, course materials, and other reference materials, is located. *Id.*

21 Defendants’ proposed solution in response to the Court Expert’s second report—
22 that they will “continue[] to collaborate with Plaintiffs to ensure class-member access to
23 assistive devices that do not depend on library staffing” and will work with a consultant to
24 make devices available “outside of the prison libraries”—is no solution at all. *See* Dkt.
25 No. 3504 at 9. It is simply a plan to have a plan at some undetermined time.

26 In the meantime, class members with vision disabilities are discriminated against.
27 The current system, which requires people to submit a written request for additional library
28 access that “will be considered on a case-by-case basis” and then wait for a response

1 within 30 days, is grossly inadequate. *See* Dkt. No. 3504 at 9; Dkt. No. 3504-1 ¶ 8; Dkt.
 2 No. 3459-2 at 55. Sighted people do not have to wait 30 days before they are told whether
 3 they may read or write. The system also requires people who need access to auxiliary aids
 4 to read and write to complete a written request form, something that may be difficult to do
 5 independently without the very aids they are requesting access to.

6 **2. Defendants Have Not Developed a Policy to Prevent Future**
 7 **Delays in Repairing Broken Assistive Devices.**

8 The Court previously ordered Defendants to “repair all broken low-vision assistive
 9 devices in libraries at SATF” and to update the Court Expert on their progress
 10 “implementing policies and procedures designed to ensure that all such devices are
 11 functional at all times at SATF.” Dkt. No. 3467 at 4. Defendants do not appear to have
 12 created sufficient policies and procedures. Defendants have a weekly library checklist, but
 13 it does not explain which devices should be checked (for example, electronic handheld
 14 magnifiers, typewriters, Perkins Braille writers, ADA computers, Optelecs, Merlins,
 15 DaVincis, and Magnapages), and does not include anywhere to document which device, if
 16 any, is not operational. Hutt Decl., Ex. 10 at 49 & Attachment W. The checklist says, “If
 17 the device is not working, contact the AP over libraries,” but SATF policy and procedure
 18 does not otherwise appear to explain what should be done to ensure broken devices are
 19 immediately repaired or replaced and who is responsible for doing so, making it unclear
 20 whether and how staff can be held accountable. *See id.*; *Armstrong*, 58 F.4th at 1295 (“If
 21 prison staff are not held accountable when they unlawfully fail to accommodate disabled
 22 inmates ... disabled inmates will stop speaking up.”); Dkt. No. 3446 at 45 (finding that “it
 23 is possible class members would not keep asking to use devices that are broken”).

24 Defendants also do not explain why it took at least seven months to repair an
 25 assistive device in the Facility D law library, or what will be done to prevent such long
 26 delays in the future. Dkt. No. 3500 at 14 & n.11; Dkt. No. 3504-1 at 5. The Court
 27 Expert’s second report states that the delay may have been caused by Defendants’ failure
 28 to pay the vendor for repair. Dkt. No. 3500 at 14-15. Defendants do not identify any

1 actions taken to prevent that from recurring, including clarifying staff responsibilities or
2 procuring additional devices so there is always a replacement device available.

3 * * *

4 The Court should order Defendants, in consultation with Plaintiffs and the Court
5 Expert, to develop a concrete plan by a date certain to comply with their obligations under
6 the ADA, ARP, and this Court's prior orders to ensure blind and low-vision class members
7 at SATF have equal opportunity to read and write.

8 **B. Defendants Must Develop a Plan to Accommodate Deaf and Hard-of-**
9 **Hearing Class Members at SATF.**

10 This Court previously found that "SATF does not ensure access to written
11 communication for" class members "who cannot hear or sign" and who "require written
12 communication to be able to access education and programs, to communicate with their
13 family and friends, and to otherwise participate in daily living." Dkt. No. 3446 at 38; *id.* at
14 7; Dkt. No. 3467 at 3. In his second report, the Court Expert found that little has changed
15 in response to his detailed findings and recommendations in this area: "it remains the case
16 that [these] class members at SATF do not reliably receive announcements"; it is "not clear
17 what, if any, action SATF took in response to our recommendation that SATF ensure that
18 phones be made available to deaf people who do not sign"; the issue of low-quality hearing
19 aids "has not been resolved"; it remains to be seen whether "CART is used effectively in
20 due process events and is expanded to other programs and services"; and SATF's attempt
21 to educate a handful of class members regarding the limited availability of CART was
22 "counterintuitive" because it did not provide them the disability accommodation they
23 needed to understand the information. Dkt. No. 3500 at 12-14 (finding that "many of" the
24 problems previously identified "remain unresolved"); *see also* Dkt. No. 3446 at 37-42.

25 Defendants do not dispute these findings. Dkt. No. 3504 at 10-12. Instead, they
26 offer perfunctory assurances that they "will improve" systems, "remain[] willing to
27 collaborate" with Plaintiffs, and will "explore alternative methods." *Id.* at 10. Such
28 assurances are insufficient at this stage of the case. Plaintiffs' counsel has met with CDCR

1 representatives at least 22 times in an attempt to resolve these very issues, with little or no
 2 progress. Jackson Decl. ¶¶ 2-15, 42-43 & Exs. 1-3. In these meetings, Plaintiffs’ counsel
 3 largely has been met with noncommittal statements that CDCR will take Plaintiffs’
 4 counsel’s views into consideration. *Id.* ¶¶ 11-12.

5 The Court should order Defendants to develop a concrete plan by a date certain to
 6 ensure the timely provision of (1) effective communication of announcements,
 7 (2) accessible phone services, (3) adequate hearing aids, and (4) CART.

8 1. Effective Communication of Announcements

9 The Court Expert found that “it remains the case that deaf and hard-of-hearing class
 10 members at SATF do not reliably receive announcements.” Dkt. No. 3500 at 12-13. The
 11 few recycled and speculative measures offered by Defendants in response fall far short of a
 12 complete or well-reasoned corrective action plan.

13 Two of Defendants’ proposed measures offer nothing new or different. They state
 14 that “CDCR will improve its efforts to notify inmates with face-to-face communication by
 15 staff, which includes a new mandatory training on personal notifications,” and “will
 16 continue to issue ducats to incarcerated persons for medical appointments, due-process
 17 events, visiting, and other events.” Dkt. No. 3504 at 10. These approaches already have
 18 proven inadequate. Defendants have re-trained officers on providing effective
 19 communication repeatedly over the years, including in response to the Court Expert’s first
 20 report, with little apparent effect. *See* Declaration of Rita K. Lomio in Support of
 21 Plaintiffs’ Response to the Court Expert’s Second Report Regarding Treatment of People
 22 with Disabilities at SATF (“Lomio Decl.”), filed herewith, ¶¶ 29-32 & Exs. 12-14, 17 at 17
 23 (Item #20). Defendants provide no detail on how new training will be different—and more
 24 effective—than past trainings. Dkt. No. 3504-1 at 6 ¶ 11; *cf. Thomas v. Bryant*, 614 F.3d
 25 1288, 1320-21 (11th Cir. 2010) (affirming injunctive relief after prison officials conducted
 26 more training where, among other things, “the record calls into question whether the ...
 27 training has had any success”). Similarly, Defendants’ ducating system was in place at the
 28 time of the Court Expert’s investigation (and long before). Lomio Decl. ¶¶ 21-24. The

1 ducating system also relates to only a small subset of announcements, and even then is
2 inadequate because, as the Health Care Access Unit’s audit last year showed, appointment
3 times can change, and patients at SATF can be called to the medical clinic over an hour
4 before their scheduled (ducated) appointment times. *Id.* ¶¶ 25-28; *id.*, Ex. 10 at 3-4; *id.*,
5 Ex. 11 at 21-22.

6 A third measure is a promise without a result: Defendants offer to “continue[] to
7 explore potential technological solutions, such as vibrating watches, but have not identified
8 any devices or services that will work and also meet institutional security requirements.”
9 Dkt. No. 3504 at 10. Vibrating watches allow deaf and hard-of-hearing people unable to
10 hear announcements to set reminders for events, compensating for the inaccessible nature
11 of the prison’s announcement and event-reminder system. *See* Jackson Decl. ¶¶ 26-27.
12 Defendants’ failure to find prison-suitable devices is puzzling, as other state prison
13 systems, including Florida and Massachusetts, appear to provide vibrating watches. *See*
14 Lomio Decl., Ex. 24 § 408.11(A)(1)(m) (Massachusetts); *id.*, Ex. 26 ¶ 60 (Florida).

15 Finally, Defendants offer one new tentative measure: They state that they are in the
16 process of “proposing a policy for making announcements via inmate-issued tablets.” Dkt.
17 No. 3504 at 10. This involves sending, twice a day, “all generally applicable
18 announcements for that yard (e.g., canteen, yard, quarterly package pick-up, mail call,
19 etc.),” and nothing more. *Id.* This is an incomplete and nascent solution. It does not
20 address the fact that “some announcements are individualized (such as when a person is
21 being called to medical).” Dkt. No. 3500 at 12. Nor do Defendants explain how it will
22 address current practical realities, including regular changes to daily schedules, poor
23 Internet connectivity, and restrictions on when and where people are allowed to use tablets,
24 including at jobs and during education and programs. *See* Jackson Decl. ¶¶ 28-30.

25 Moreover, in all their proposed half-measures, Defendants do not discuss how they
26 will audit effective communication of announcements at SATF, *see* Dkt. No. 3504 at 10,
27 even though that was a central focus of the Court Expert’s first report. Dkt. No. 3446 at
28 42, 64 (Recommendation 22). It therefore is undisputed, as the Court Expert found in his

1 second report, that SATF still “has not devised a method to audit whether deaf people
2 consistently get announcements.” *See* Dkt. No. 3500 at 12 n.9.¹

3 In sum, since the Court Expert’s first report, Defendants still have not developed or
4 implemented a plan to provide and audit effective communication of announcements to
5 deaf and hard-of-hearing class members at SATF.

6 2. Accessible Phone Services

7 In December 2022, the Court Expert stated that “SATF must ensure that deaf people
8 who cannot sign have access to TTY/TDD phone calls and are educated on how to request
9 those calls and use the service.” Dkt. No. 3446 at 42; *see also id.* at 64 (Recommendation
10 24). In January 2023, Defendants assured the Court that “CDCR will ensure the hearing-
11 impaired incarcerated people are aware that these devices are available in each facility and
12 that the functionality of these devices is properly maintained.” Dkt. No. 3453 at 16. But,
13 as the Court Expert found last month, “[i]t is not clear what, if any, action SATF took in
14 response to our recommendation that SATF ensure that the phones be made available to
15 deaf people who do not sign.” Dkt. No. 3500 at 13. If any action was taken, it was
16 unsuccessful, as the Court Expert found during a site visit in July 2023:

17 Regarding TTY/TTD phones, we continue to hear reports that they did not
18 work, and we witnessed that they did not work in one housing unit we visited
19 when we toured at SATF. We also observed that staff had trained an ADA
20 worker, rather than the deaf people themselves, in how to use the TTY/TTD
21 phones. This is not acceptable, as it requires an ADA worker to be involved
22 in a private phone call.

22 ¹ The Court Expert noted that “the ADAC meets monthly with the deaf population and
23 asks whether they are getting communication of announcements.” Dkt. No. 3500 at 12 n.9.
24 It is not clear whether these meetings include deaf people who do not know sign language
25 and hard-of-hearing people and, if so, how effective communication is achieved. SATF’s
26 local operating procedure, which has been in place for the duration of the Court Expert’s
27 investigation, requires only monthly meetings for deaf people who use sign language.
28 Lomio Decl. ¶ 33 & Ex. 15 at 24. In any event, this is only a partial solution, as deaf
people may not know which announcements they missed, because they could not hear
them. It also is unclear if this is the same meeting that Defendants said they would
institute in response to the Court Expert’s first report. *See* Dkt. No. 3453 at 15 (“CDCR
will also add to their monthly Captain’s meetings inquiries to deaf and hard-of-hearing
class members as to whether they are receiving announcements.”). If it is, then the second
report demonstrates its failure as a remedy.

1 *Id.*²

2 Defendants now claim that they are “working to improve [their] response to reports
3 of broken TTY/TTD phones,” but provide little information except that they “will continue
4 to test them monthly.” Dkt. No. 3504 at 11. That is the exact same remedy that Defend-
5 ants offered in January 2023, which failed to fix the problem. *See* Dkt. No. 3453 at 16
6 (“Each TTY system is tested on a monthly basis to ensure it remains operational”).³
7 Defendants also propose training TTY/TDD users, but provide no information on that new
8 training or how it will be effectively communicated. Dkt. No. 3504 at 11.

9 Defendants next state that they plan to introduce captioned telephones at SATF this
10 year, a solution that has been promised to Plaintiffs since 2020. Dkt. No. 3504 at 11;
11 Jackson Decl. ¶¶ 31-33 & Exs. 10-11. As an initial matter, Defendants’ belief that “the
12 deployment of caption phones may render the TTY/TTD phones obsolete” is misplaced.
13 Dkt. No. 3504 at 11. Even with captioned phones, TTY/TDD phones will remain the only
14 accessible telephone in the state prisons for certain people with speech disabilities who do
15 not know sign language. Jackson Decl. ¶¶ 34-36. In any event, Defendants do not explain
16 how implementation of captioned phones at SATF will avoid the same pitfalls seen with
17 their initial roll-out at other institutions, including whether the phones will be available in
18 sufficient locations that are accessible to people with disabilities and provide them the
19 same privacy and convenience as hearing people. *See id.* ¶¶ 37-38 & Ex. 12 at 2-3.

20 Finally, Defendants fail to offer a remedy to one more problem: Their decision to
21 roll out tablets, which allow hearing people to place audio calls from inside their cells and
22 video calls in the dayroom, without including *any* software to make these features
23 accessible to deaf and hard-of-hearing individuals. Jackson Decl. ¶¶ 39-41; *see also* Dkt.
24 No. 3446 at 41 (finding that tablets at SATF do not contain any speech-to-text options for
25

26 ² Both Defendants and the Court Expert refer to “TTD.” The correct term is “TDD,”
27 which stands for “Telecommunication Device for the Deaf.”

28 ³ The SATF local operating procedure requires testing only on a quarterly, not monthly,
basis. Hutt Decl., Ex. 10 at 60.

1 video calls). The ADA Coordinator at SATF recognized this problem following the Court
2 Expert's first report:

3 With the implementation of the Global Tel Link (GTL) inmate tablets,
4 inmates have gained access to new services and activities, including use of
5 the tablets to make phone calls (non-video) while in the confines of their
6 cells. The tablets allow phone calls to be made even when traditional access
7 to a dayroom telephone would not be possible, such as when staff shortages
8 or security concerns result in modified programs. ...

9 This new process has enabled hearing inmates the ability to use a telephone
10 while deaf inmates are unable. This is an inequity of access to programs and
11 activities, which the Americans with Disabilities Act (ADA) aims to prevent.

12 Dkt. No. 3459-4 at 33.

13 To be sure, “[i]t is not in the control of the institution to determine what technology
14 is available to incarcerated people via tablets.” Dkt. No. 3446 at 42. But in the inter-
15 vening nine months, headquarters staff have done nothing to remedy the inaccessibility of
16 the tablet's phone feature. Jackson Decl. ¶ 42. And neither headquarters officials nor the
17 institution have developed an interim measure to provide deaf and hard-of-hearing people
18 with additional access to TTY/TDD or captioned phones so that they have closer to equal
19 access with their hearing peers.⁴ Jackson Decl. ¶ 43.

20 In sum, since the Court Expert's first report almost nine months ago, Defendants
21 have not developed or implemented a meaningful plan to ensure deaf and hard-of-hearing
22 people have equal opportunity to access phone services.

23 3. Adequate Hearing Aids

24 In December 2022, the Court Expert reported that “hard of hearing people who use
25 hearing aids at SATF consistently reported, in surveys and in interviews, that the hearing
26 aids they received were of poor quality and did not work well.” Dkt. No. 3446 at 37. In
27 his second report, the Court Expert found that “this issue has not been resolved.” Dkt. No.
28 3500 at 13. He found that the “CEO also identified this as a common concern he heard at

⁴ SATF has developed a policy to provide additional access to the videophone for deaf people who communicate through sign language. Dkt. No. 3459-4 at 33.

1 the RAP, and he contacted headquarters to inquire about whether a better-quality hearing
 2 aid could be provided.” *Id.* In response, Defendants promise only continued work with
 3 CCHCS “to address the quality and function of hearing aids” and continued meetings with
 4 Plaintiffs’ counsel. Dkt. No. 3504-1 at 6-7 ¶ 17. That is inadequate.

5 The subject of poor-quality hearing aids has been the discussion of numerous
 6 meetings between the parties since March 2021, with no solution in sight. Jackson Decl.
 7 ¶ 10. Over a year ago, Plaintiffs’ counsel provided Defendants with a report by a state-
 8 licensed audiologist with over 25 years of clinical experience with the Veterans Health
 9 Administration who concluded that the two hearing aid models CDCR currently provides
 10 are so poor in quality they cannot even be considered “hearing aids by today’s standards.”
 11 *Id.*, Ex. 4 at 7. She made a number of recommendations for the technical specifications of
 12 new hearing aids. *Id.* at 20-21. There has been very little progress on this issue by
 13 Defendants beyond sharing a one-page summary of conclusions from their consultant, with
 14 no explanation or analysis, that would do little to nothing to improve the quality of the
 15 hearing aids and may in fact make problems worse. Jackson Decl. ¶ 21 & Ex. 5.

16 Plaintiffs remain willing to discuss this issue and provide technical assistance to
 17 Defendants, but it is ultimately Defendants’ responsibility to provide appropriate assistive
 18 devices, including hearing aids, to people with disabilities on a timely basis.

19 4. CART

20 In February 2023, this Court ordered Defendants to “make CART or an alternative
 21 reasonable accommodation available at SATF for [due process events, programming, and
 22 education] as soon as possible.” Dkt. No. 3467 at 3. Seven months later, Defendants have
 23 managed only to issue a policy memorandum for provision of CART for due process
 24 events. Dkt. No. 3500 at 13 (“We understand that CART will be available at SATF ... for
 25 due process events beginning August 24.”); Lomio Decl., Ex. 28 (CART policy memoran-
 26 dum). The Court Expert concluded that it is too soon to determine whether implementa-
 27 tion will be successful: “We will have to see whether CART is used effectively in due
 28 process events and is expanded to other programs and services.” Dkt. No. 3500 at 14.

1 Plaintiffs agree, but have two concerns about the roll-out so far.

2 First, Defendants do not appear capable of effectively educating deaf and hard-of-
 3 hearing class members about this new service. Defendants, with the assistance of
 4 Plaintiffs and the Court Expert, issued a policy that required SATF to conduct town halls
 5 “utilizing CART that have been advertised directly to IPs designated DNH and DPH to
 6 ensure awareness to the IP.”⁵ Lomio Decl., Ex. 28 at 3. This provision was intended to
 7 ensure that deaf and hard-of-hearing people were educated, directly and accessibly, about
 8 what CART is, whether it might help them, and how to request it. *Cf.* Marylyn Howe,
 9 Meeting the Needs of Late-Deafened Adults, 19 AM. REHABILITATION 25, *3 (Winter
 10 1993) (“[I]t often takes late-deafened adults years to learn about coping strategies, assistive
 11 technology, and their basic rights to communication access.”).

12 SATF failed to comply with this policy by (1) inviting only a small subset of class
 13 members who might benefit from CART to the town hall, and (2) failing to use CART for
 14 effective communication during the event.⁶ Dkt. No. 3500 at 13-14; *see also* Lomio Decl.

15 _____
 16 ⁵ “IP” stands for “Incarcerated Person.” The “DNH” code refers to someone who is
 17 documented as having a hearing disability requiring the use of an assistive device, such as
 18 a hearing aid. Dkt. No. 3459-7 at 8. The “DPH” code refers to someone who has deafness
 19 or a severe hearing disability requiring written notes, sign language, or lip reading as an
 accommodation. *Id.* Hearing disabilities are diverse and individualized, and someone may
 be able to hear with hearing aids alone in a quiet, one-on-one setting, such as an
 appointment in a doctor’s office, but need additional accommodations in noisier
 environments like a busy dayroom or a classroom. Jackson Decl. ¶ 16.

20 ⁶ Plaintiffs’ counsel also observed the town hall. Lomio Decl. ¶ 58. Person E, who relies
 21 on written notes for communication, was present. *Id.* He was not given any effective
 22 communication for the first several minutes of the town hall. *Id.* At some point, he was
 given a device with autocaptioning. *Id.* The resulting captioning was incomprehensible,
 with nonsensical phrasing and punctuation, and did not distinguish who was speaking, *Id.*
 ¶ 61 & Ex. 29. For example:

- 23 • “We developeders the main construments, sometimes I don’t understand what
 24 you’re saying.”
- 25 • “I don’t know if you’re eating progress guy.”
- 26 • “Izing part inboard itself in your, you’re here. Yeah, so it’s, yeah, because I
 27 don’t know what the exact date, but it’s and I, I know I haven’t count for six
 months, so right now fourth hearings are not specifically listed in the, in the, the
 encounters that we’re utilizing part not to say that we.”
- 28 • “Okay, so it’ll supervisor when you staff in the ball to.”

(footnote continued)

[4356773.3]

1 ¶¶ 58-62. The Court Expert recommended that Defendants “ensure that future town halls
 2 feature the use of CART.” Dkt. No. 3500 at 14. Defendants ignore this recommendation
 3 in their response and propose only to show a video at future town halls intended to instruct
 4 staff on how to schedule and interface with CART, *see* Dkt. No. 3504 at 12; Lomio Decl.
 5 ¶¶ 66-68 & Exs. 32a-32b—a proposed measure that will still exclude the target population
 6 from any extemporaneous remarks or question-and-answer periods. *See Lee v. City of Los*
 7 *Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (“the ADA’s broad language brings within its
 8 scope ‘anything a public entity does’”) (citation omitted); *Randolph v. Rodgers*, 170 F.3d
 9 850, 858 (8th Cir. 1999) (holding a deaf person’s “limited participation” in activities does
 10 not support a finding that he “enjoyed meaningful access”).

11 Second, Plaintiffs have serious concerns that Defendants will not provide CART “as
 12 soon as possible” for programming and education at SATF, as required by Court order.
 13 Dkt. No. 3467 at 3. Defendants state only that CART “will be incrementally expanded to
 14 rehabilitative sponsor led programs, religious services, mental health treatment groups, and
 15 substance use abuse treatment,” *see* Dkt. No. 3504 at 11-12, but do not provide a timeline
 16 for implementation or explain when CART will be expanded to all other programming,
 17 including education. Defendants’ record on CART does not auger well for a prompt and
 18 effective roll-out of this Court-ordered remedy. *See* Lomio Decl. ¶¶ 63-65, 69-74. Every
 19 day that CART is not available is another day that some of the most marginalized and
 20 isolated people with disabilities are excluded from accessing prison programs, services,

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- “What was selling in our minutes? I live on the wall, but be very specific on what it is for right now, but it's in the infancy stage people absolutely and let's make it, well, you know, it's target.”
 - “Okay, well. I did not my. I talked no, but it's hard. I write a text, but. Nobody, do you have a tablet? No, you don't have a tablet, but how long have you been thirteen. Since July of two thousand twenty- three.”
 - “Yeah, communicate with family education and South Bell.”
 - “All right, any questions about the video. Background Dallas and. Immediately, not yet, not yet.”

Id., Ex. 29.

[4356773.3]

1 and activities. *See* Dkt. No. 3446 at 38-41 (describing the “lonely and frustrating
2 existence” of Person E “over the last decade at SATF,” including his inability to
3 “meaningfully access programs due to a lack of CART or similar system”).

4 * * *

5 Defendants’ response to the Court Expert’s second report is nothing more than a
6 plan to have a plan at some unknown time and to continue the same measures that have
7 proven ineffective. This Court should require Defendants to develop, by a date certain, a
8 plan to finally resolve these issues. The Court also should order Defendants to comply
9 with their own policy and ensure all class members at SATF who may benefit from CART
10 are advised, through CART, of what the accommodation is and how to request it.

11 **C. Defendants Must Develop a Plan to Provide and Track Non-Medical**
12 **Assistive Devices as Reasonable Accommodations.**

13 The Court previously found that “the lack of clear policies at SATF for when staff
14 must provide an assistive device, who must provide it, and how, is causing significant
15 confusion and the delay of necessary accommodations.” Dkt. No. 3446 at 45; Dkt.
16 No. 3467 at 2. The Court further found that SATF local operating procedure “requires
17 incarcerated people to purchase their own non-medical assistive devices” and “does not
18 explain how an incarcerated person who is indigent can obtain necessary non-medical
19 assistive devices.” Dkt. No. 3446 at 42-43 (footnote omitted); Dkt. No. 3467 at 2.

20 In his first report, the Court Expert recommended that SATF “create a clear process
21 for incarcerated people to receive non-medical assistive devices to accommodate their
22 disabilities.” Dkt. No. 3446 at 45, 63. By letter dated April 11, 2023, Plaintiffs’ counsel
23 requested that Defendants create a system to purchase and track non-medical assistive
24 devices in accordance with the Court Expert’s findings and recommendations. *See* Dkt.
25 No. 3500 at 14; Jackson Decl., Ex. 6. Plaintiffs’ counsel explained that the system should
26 (1) track such devices electronically, as required by the 2007 Injunction, *see* Dkt. No. 1045
27 at 6 (ordering tracking system to “include prisoners’ disability designations and the
28 disability accommodations they require, including ... assistive devices”); and (2) provide

1 such devices as reasonable accommodations at no cost. *See* Jackson Decl., Ex. 6 at 6-7.

2 In his second report, the Court Expert found that the issue was not resolved, that it
3 “appears to be a system-wide issue,” and that Defendants had not responded to Plaintiffs’
4 counsel’s April 11 letter “request[ing] that CDCR develop a system for CDCR to purchase
5 and track non-medical devices as reasonable accommodations.” Dkt. No. 3500 at 4, 14
6 (noting that “meaningful progress” cannot be made if CDCR does not “state its position”).

7 In response, Defendants state that they are “diligently working to develop an
8 electronic system to track non-medical devices necessary to accommodate class members’
9 disabilities.” Dkt. No. 3504 at 7. Defendants provide no information about the proposed
10 tracking system or when it will be shared with Plaintiffs’ counsel, beyond saying that they
11 will respond to the April 11 letter within sixty days—in other words, six months after they
12 received it. Dkt. No. 3504 at 7. In the meantime, Defendants remain in violation of the
13 2007 Injunction, and the Court Expert’s concerns remain unresolved.⁷

14 Defendants decline to develop a policy or procedure “concerning payment for non-
15 medical assistive devices.” Dkt. No. 3504 at 8. They claim that “[b]ecause requests for
16 reasonable accommodation for a disability are determined on a case-by-case basis, CDCR
17 is unable to issue a blanket policy concerning payment for non-medical assistive devices
18 that may potentially be requested through existing processes.” *Id.* As an initial matter,
19 Defendants conflate two separate issues. The decision whether an assistive device is a
20 reasonable accommodation for a particular class member may require an individualized
21 determination. That is a separate question from whether a class member may be forced to
22 pay for what has been determined to be a reasonable accommodation.

23 Regardless, no amount of “re-education” of RAP members at SATF will address
24 this problem. *See* Dkt. No. 3504 at 8. SATF does not appear to have changed its local
25

26 _____
27 ⁷ The interim solution Defendants represent is currently in place does not appear to be
28 working, as Person F’s non-medical assistive device is not currently listed in SOMS. *See*
Dkt. No. 3504-1 at 4 ¶ 7 (describing Defendants’ interim solution); Lomio Decl. ¶¶ 14-17
(describing lack of documentation of Person F’s assistive device).

1 operating procedure in response to the Court Expert’s December 2022 finding that it
2 “requires incarcerated people to purchase their own non-medical assistive devices” and
3 “does not explain how an incarcerated person who is indigent can obtain necessary non-
4 medical assistive devices.” Dkt. No. 3446 at 42-43 (footnote omitted); *see* Hutt Decl.,
5 Ex. 10 at 37. For over two years, Plaintiffs’ counsel has been unable to get a straight
6 answer from headquarters officials on whether they approve of SATF’s policy that forces
7 people with disabilities to pay for these devices even as reasonable accommodations. The
8 Court Expert found that Defendants in 2021 repeatedly failed to “address Plaintiffs’
9 counsel’s position regarding CDCR’s obligation to purchase assistive devices for indigent
10 incarcerated people with disabilities.” Dkt. No. 3446 at 44. Plaintiffs’ counsel continued
11 to get the run-around on this question from Defendants in 2023. Lomio Decl. ¶¶ 5, 10-13.
12 And Defendants do not provide a straight answer in their response to the Court Expert’s
13 second report. *See* Dkt. No. 3504 at 8-9.⁸

14 In the meantime, SATF continues to force class members to purchase their own
15 reasonable accommodations and, if they cannot or will not, to rely on other people to
16 complete a task for them—a clear violation of the ADA. For example, one class member,
17 JT, requested an assistive device to help him write independently. Lomio Decl. ¶ 6 &
18 Ex. 2 at 5. At the RAP meeting discussing this request in April 2023, the ADA Coordi-
19 nator said that the issue of payment was a statewide issue that required discussion outside
20 of the RAP meeting. *Id.* ¶ 6. In May 2023, the RAP issued a written response stating that
21 JT would have to purchase a \$3 letter writing guide himself, and that “[r]easonable
22 accommodation for blind inmates that need assistance with writing currently comes in the
23 form of assistance with writing from ADA workers”—that is, from other incarcerated
24 people. *Id.* ¶¶ 7-8; *id.*, Ex. 2 at 1; *id.*, Ex. 3. That is unlawful.

25

26

27 ⁸ Defendants point only to training the SATF RAP received on a one-page memorandum
28 dated October 2022, which is entirely silent on whether and when institutions may charge
people with disabilities for reasonable accommodations. Dkt. No. 3504 at 8 (citing Dkt.
No. 3453-1 at 180-81).

[4356773.3]

1 People with vision disabilities must be allowed to read and write privately and
2 independently. 28 C.F.R. § 35.160(b)(2) (“In order to be effective, auxiliary aids and
3 services must be provided ... in such a way as to protect the privacy and independence of
4 the individual with a disability.”); *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 506-
5 07 (4th Cir. 2016) (holding that blind voters were denied meaningful access to absentee
6 voting program in violation of ADA where they could vote absentee only with assistance
7 from sighted persons and could not vote absentee privately and independently at place and
8 time of their choosing); *Cal. Council of the Blind v. County of Alameda*, 985 F. Supp. 2d
9 1229, 1239-240 (N.D. Cal. 2013) (holding that blind voters stated an ADA claim where
10 they faced obstacles to utilizing accessible voting machines and were forced to rely on
11 human assistance). The need for privacy is only heightened in the prison setting given the
12 sensitive nature of some material, including related to commitment offenses, relationships
13 with loved ones, and mental health concerns. Hutt Decl. ¶ 27; *id.*, Exs. 12 & 17.

14 In another clear violation of federal law, Person F was unable after “several 1824s
15 and RAP responses” to obtain an “accommodation to assist him in writing while in his cell,
16 like any other incarcerated person.” Dkt. No. 3446 at 43-45. It took until June 2023 for
17 SATF to finally approve the assistive device, and only after additional advocacy by
18 Plaintiffs’ counsel. Lomio Decl. ¶¶ 9-13 & Exs. 4-6. Even then, Defendants have not
19 explained why they would not purchase the device for Person F, but instead required his
20 mother to purchase it for him, claiming that “this action is taking place as a form of
21 reasonable accommodation.” *Id.* ¶¶ 11-13 & Ex. 6; *see also* Dkt. No. 3446 at 44.

22 The absence of clear direction also has led to inconsistent practices between
23 prisons. Although SATF required Person F to purchase “a device that assists people with
24 holding a pen,” Dkt. No. 3446 at 43, the RAP at Mule Creek State Prison (“MCSP”)
25 provided a class member with “a foam build-up grip holder” after he reported problems
26 holding a pen. Lomio Decl., Ex. 7. And although the RAP at SATF would not provide JT
27 a letter-writing guide, the RAP at MCSP ordered a reading guide for a class member
28 housed there “to keep on his person for use in education or any other setting that its use

1 will provide benefit to him.” *Id.*, Ex. 9 at 1.

2 The lack of a clear policy also has resulted in arbitrary distinctions. As the Court
3 expert noted, “CDCR supplies certain assistive devices (such as handheld LED magnifiers
4 and pocket talkers) free of charge to class members, but other assistive devices must be
5 purchased by class members with their own funds.” Dkt. No. 3500 at 14. Notably,
6 Defendants agreed to provide both LED magnifiers and pocket talkers free of charge only
7 after repeated demands by Plaintiffs’ counsel and protracted discussions. *See* Hutt Decl.
8 ¶ 7 (LED magnifiers); Jackson Decl. ¶¶ 23-25 & Exs. 4, 7-9 (pocket talkers).⁹ This
9 reactive approach must be initiated by Plaintiffs’ counsel and requires direction from
10 headquarters on a device-by-device basis; it is a set of grudging concessions and not a
11 durable system to provide accommodations “in a timely manner.” *See* 28 C.F.R.
12 § 35.160(b)(2).

13 None of these failures should surprise Defendants. In 2018, CDCR and CCHCS
14 jointly announced that they were discontinuing charges for Durable Medical Equipment,
15 including wheelchairs, walkers, and hearing aids, because they found that charging for
16 those items, among other things, “leads to inconsistencies in policy application, drives
17 appeal workload, and results in unnecessary workload for little gain.” Lomio Decl., Ex. 1
18 at 1. They further found that another benefit of discontinuing charges would be that
19 “[p]atients will not refuse to be issued medically-necessary DME in order to avoid losing
20 funds from their trust account.” *Id.*¹⁰

21 _____
22 ⁹ Handheld and headband LED magnifiers are an accommodation suited mainly for indi-
23 viduals with moderate vision disabilities, not severe vision disabilities. Hutt Decl. ¶ 7.
24 These non-electronic magnifiers are not an adequate accommodation for blind class
25 members for longer reading tasks given the size of the lens and, with respect to the
26 handheld magnifier, for most severely low-vision class members. *Id.* Defendants
27 distributed this inferior accommodation as a temporary measure while the parties continue
28 discussions on how they will make electronic magnifiers available in housing units. *Id.*

29 ¹⁰ “Inmates are almost always in an ‘indigent’ mode. They seldom have outside resources
30 and most have no source of income while incarcerated. They most often rely on a spouse,
31 mother, or other family member to provide funds they can use for toiletries, over-the-
32 counter medications like analgesics and antacids, telephone calls, writing paper and pens,
33 sanitary napkins, candy, etc. These ‘extras’ become extremely important to one who is
34 (footnote continued)

1 It is not clear why Defendants would arrive at a different conclusion with respect to
 2 devices needed as reasonable accommodations under the ADA, particularly where the
 3 ADA prohibits Defendants from “plac[ing] a surcharge on a particular individual with a
 4 disability ... to cover the costs of measures, such as the provision of auxiliary aids or
 5 program accessibility, that are required to provide that individual or group with the nondis-
 6 criminatory treatment required by the Act or this part.” *See* 28 C.F.R. § 35.130(f). As the
 7 ADA implementing regulations recognize, “detention and correctional facilities are unique
 8 facilities under title II. Inmates cannot leave the facilities and must have their needs met
 9 by the corrections system, including needs related to a disability.” 28 C.F.R. § Pt. 35, App.
 10 A. Other state prison systems, including Massachusetts, Florida, and Illinois, do not
 11 charge people with disabilities in their custody for these accommodations. *See, e.g.,*
 12 Lomio Decl., Ex. 24 § 408.07(A)(16) (Massachusetts); *id.*, Ex. 26 ¶ 47 (Florida); *id.*,
 13 Ex. 27 ¶ 60 (Illinois). It is unclear why Defendants allow SATF to continue to push the
 14 costs of reasonable accommodations on people with disabilities.

15 * * *

16 It has been almost three decades since people with disabilities filed this lawsuit
 17 alleging, among other things, that “Defendants have failed to furnish appropriate auxiliary
 18 aids,” Dkt. No. 1 at 12 ¶ 33; more than sixteen years since the Court ordered Defendants to
 19 track assistive devices, Dkt. No. 1045 at 6; and nine months since the Court Expert’s first
 20 report. Defendants still have no clear system for purchasing and tracking non-medical
 21 devices as reasonable accommodations. In light of the ongoing harm to the Plaintiff class,
 22 the Court should order Defendants to develop a concrete plan to address this issue.

23
 24
 25 _____
 26 locked up 24 hours per day. The inmate may well choose to forgo treatment of a medical
 27 problem in order to be able to buy the shampoo or toothpaste.” Nat’l Comm’n on Corr.
 28 Health Care, Charging Inmates a Fee for Health Care Services (Nov. 2017),
<http://www.nccchc.org/charging-inmates-a-fee-for-health-care-services> (opposing “fee-for-
 service or co-payment program that restricts patient access to care” and summarizing
 arguments against such a program).

1 **II. IT IS TOO SOON TO SAY WHETHER IMPROVEMENTS LED BY SATF**
 2 **HEALTHCARE LEADERSHIP WILL BE EFFECTIVE AND DURABLE.**

3 **A. Healthcare Processes That Implicate the Provision of Disability**
 4 **Accommodations.**

5 Plaintiffs agree that the SATF CEO and his leadership team have started to make
 6 several process improvements and have developed promising initiatives in response to the
 7 Court Expert's first report. Plaintiffs' counsel has received little concrete information
 8 about these measures.¹¹ It remains to be seen whether these efforts will be effective. *See,*
 9 *e.g.*, Dkt. No. 3500 at 7 (noting "small sample size" for review of reconciliation upon
 10 arrival); *id.* at 8 (noting "continued ... reports from class members that their 7362s did not
 11 get a response or that it took a long time to get a response"); *id.* at 10 (finding that issues
 12 related to the repair and replacement of Durable Medical Equipment "continue to account
 13 for a significant number of 1824s").

14 The "largest concern is the issue of sustainability." Dkt. No. 3500 at 5. Some of
 15 SATF's initiatives rely on temporary staff or additional duties for existing staff, including
 16 auditing reconciliation of DME upon arrival to SATF and the "brown bag program" for
 17 distributing incontinence and other medical supplies. *See* Dkt. No. 3500 at 7, 12; Lomio
 18 Decl., Ex. 16. Others are not included in (and in one instance appears to conflict with)
 19 written policies and instead depend on unenforceable "encouragement" from supervisors.¹²
 20 Dkt. No. 3500 at 5. The promising on-site wheelchair repair clinic is not a new initiative,
 21 *see id.* at 10, and it remains to be seen whether it will be a durable remedy that does not

22 ¹¹ Plaintiffs' counsel was not invited to attend two of the RAP meetings observed by the
 23 Court Expert or to participate in the biweekly meetings between the Court Expert and
 24 SATF leadership. *See* Dkt. No. 3500 at 5; Lomio Decl. ¶ 37. The summary document
 25 later produced to Plaintiffs' counsel includes insufficient information from which to form
 26 an opinion. Lomio Decl. ¶ 38 & Ex. 17.

27 ¹² *See* Dkt. No. 3500 at 8-9 ("the Chief Nursing Executive (CNE) at SATF has encouraged
 28 nursing staff during all staff meetings to send letters to patients when they are requesting
 information and will not be seen right away"); *compare id.* at 10 n.6 ("SATF healthcare
 leadership also told us they were encouraging nursing staff to treat 7362s regarding DME
 as 'symptomatic' so that patients with DME concerns are treated promptly, but we have
 not yet seen this instruction to staff clearly documented in LOP, memo, or training
 materials."), *with* Lomio Decl. ¶ 36 (discussing existing policy).

1 follow in the footsteps of its predecessor. In addition, we do not yet know if plans to
 2 evaluate options regarding effective communication of written patient letters and to
 3 implement automated reconciliation will be successful. *See id.* at 7, 8; Dkt. No. 3504 at
 4 13. Finally, it remains to be seen whether new policies and procedures prove effective.
 5 *See, e.g.*, Dkt. No. 3500 at 6-7 (replacing DME lost during transfer); *id.* at 9 (ordering non-
 6 formulary DME); *id.* at 9 (procuring DME and other supplies from the warehouse).

7 In sum, the initiatives led by CCHCS staff appear promising, but it is not yet clear
 8 that they have taken the steps needed to ensure that the gains are durable and that the
 9 processes work over the long term. The Court should retain oversight to ensure that those
 10 things happen. In particular, the Court should order Defendants to file periodic status
 11 reports on what measures they have taken to address denial of accommodations during
 12 transfer into SATF, problems with the 7362 process, failure to issue and repair DME, and
 13 failure to issue incontinence supplies. The report should address how these remedies will
 14 be made durable, including through adequate staffing and funding, and how Defendants
 15 will measure the efficacy and respond to any barriers to implementation.¹³

16 **B. Healthcare Staff and Use of the CDCR RVR Process**

17 The Court previously found that “nursing staff’s issuance of RVRs has damaged
 18 relationships with incarcerated people.” Dkt. No. 3446 at 50; Dkt. No. 3467 at 2. In his
 19 second report, the Court Expert lists two pending measures to address these concerns.
 20 First, “CCHCS will soon be altering SOMS so that most healthcare staff will not be able to
 21 author RVRs.” Dkt. No. 3500 at 16. Second, CCHCS is training healthcare staff to
 22 “report serious incidents (such as when they are the victim of violence or witness a crime)
 23 by authoring an incident report for their healthcare supervisor,” which after approval is
 24

25 _____
 26 ¹³ The Court has ordered the Court Expert to “work with the parties to develop systems at
 27 SATF to enable Defendants to identify and correct ... systemic problems.” Dkt. No. 3467
 28 at 3. The work has not yet been completed. *See* Dkt. No. 3500 at 4. Monitoring of the
 particular issues identified here, however, cannot, and need not, “wait for a global
 monitoring scheme,” *See Braggs v. Dunn*, 383 F. Supp. 3d 1218, 1282 (M.D. Ala. 2019);
 Dkt. No. 3500 at 16-17.

1 sent to the CEO and his staff and to custody staff. *Id.*

2 These measures, while positive, are not sufficient. Policy, not just training, must
3 clearly set forth the responsibilities of healthcare and custody staff, including when
4 healthcare staff should author a report, when healthcare or custody staff should enter an
5 RVR for behavior in a healthcare setting, what alternatives are available to avoid
6 healthcare staff relying on a punitive CDCR RVR process that creates or escalates
7 unnecessarily adversarial relationships between healthcare staff and their patients, and how
8 the system will be monitored.¹⁴ Plaintiffs understand that CDCR and CCHCS are
9 developing a policy to address these issues and that, currently, there is no manageable way
10 for SATF leadership to identify and track RVRs either authored directly by healthcare staff
11 or entered by custody staff based on healthcare staffs' reports. *See* Lomio Decl. ¶¶ 39-40;
12 *id.*, Ex. 18; *id.*, Ex. 19 at 1-2. Until an appropriate policy with meaningful oversight
13 mechanisms exists, the Court should continue to require regular reports on this matter.

14 **III. ADDITIONAL REPORTING BY THE COURT EXPERT**

15 The Court Expert plans, in a future report, to address the adequacy of staffing at
16 SATF to comply with the ADA and ARP, systems for sustainable compliance, and systems
17 to “ensure that Defendants respond substantively to letters by Plaintiffs’ counsel in a
18 reasonably timely manner.” Dkt. No. 3500 at 4. This work is critical. The new measures
19 and initiatives that have been or will be implemented by CDCR and CCHCS to correct the
20 violations of the ADA and ARP identified by the Court Expert will only be sustainable
21 with adequate (and permanent) staffing and oversight mechanisms. Plaintiffs’ counsel also
22 continues to raise significant concerns with SATF’s compliance with the ADA and ARP
23 that are outside of the current scope of the Court Expert’s investigation, including related
24 to accessible transportation, use of the disciplinary process, and provision of sign language
25 interpretation. *See* Lomio Decl. ¶¶ 43-50 & Exs. 21-23. Those matters remain unresolved.

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28 ¹⁴ Plaintiffs provided their position on this issue in writing to CDCR and CCHCS in May 2023. *See* Lomio Decl., Ex. 19 at 3-5.

1 DATED: September 21, 2023

Respectfully submitted,

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PRISON LAW OFFICE

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By: */s/ Rita K. Lomio*

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Rita K. Lomio

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Attorneys for Plaintiffs

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