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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

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

26

Judge: Hon. Claudia Wilken

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REDACTED

1 I, Caroline E. Jackson, declare:

2 1. I am an attorney duly admitted to practice before this Court. I am senior
3 counsel in the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel of record for
4 Plaintiffs. I have personal knowledge of the facts set forth herein, and if called as a
5 witness, I could competently so testify. I make this declaration in support of Plaintiffs’
6 Response to the Court Expert’s Second Report Regarding Treatment of People with
7 Disabilities at SATF. As part of my role as Plaintiffs’ counsel in *Armstrong*, I visit prisons
8 and speak with class members and staff, and tour prison areas, including housing units, and
9 review the accommodations available to class members. I regularly meet with attorneys
10 for Defendants and California Department of Corrections and Rehabilitation (“CDCR”)
11 officials to try to attempt to resolve concerns related to the Americans with Disabilities
12 Act, *Armstrong* Remedial Plan, and court orders.

13 **Deaf and Hard-of-Hearing Workgroup**

14 2. The parties formed a workgroup several years ago to address access issues
15 for deaf and hard-of-hearing class members. I serve as co-lead for Plaintiffs’ counsel on
16 this workgroup. Workgroup meetings usually take place once every month or two months
17 and typically are attended by a number of stakeholders, including Plaintiffs’ counsel;
18 counsel for Defendants; counsel for the California Correctional Health Care Services
19 (“CCHCS”); one or more representatives from the Court Expert’s office; and
20 representatives from CCHCS, the Division of Adult Institutions (“DAI”), the Office of
21 Correctional Education (“OCE”), Enterprise Information Services (“EIS”), and others, as
22 necessary. I regularly attend workgroup meetings.

23 3. A week or two before each meeting of the workgroup, Plaintiffs’ counsel
24 sends a proposed agenda detailing the issues that Plaintiffs would like to discuss and
25 outstanding requests for documents and information. Plaintiffs’ counsel previously filed
26 our proposed agenda for each meeting of the workgroup between September 2020 and
27 January 2023, in support of Plaintiffs’ Response to Court Expert’s Report Regarding
28 Treatment of People With Disabilities at SATF, filed on February 7, 2023. *See* Dkt. No.

1 3459-1 ¶ 65, Exs. 69-87.

2 4. Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiffs’
3 proposed agenda for the March 9, 2023, meeting of the workgroup, which we sent to
4 Defendants on February 23, 2023.

5 5. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiffs’
6 proposed agenda for the May 12, 2023, meeting of the workgroup, which we sent to
7 Defendants on May 2, 2023.

8 6. Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiffs’
9 proposed agenda for the July 26, 2023, meeting of the workgroup, which we sent to
10 Defendants on July 12, 2023.

11 7. The parties’ workgroup has not timely resolved a number of critical issues,
12 including those identified in the Court Expert’s Report Regarding Treatment of People
13 With Disabilities at SATF, filed on December 20, 2022. *See* Dkt. No. 3446 at 37-42.

14 8. Plaintiffs’ counsel has included concerns with Defendants’ failure to provide
15 effective communication of announcements to deaf and hard-of-hearing class members on
16 our proposed agenda for each of the fourteen meetings of the workgroup since July 2021.

17 9. Plaintiffs’ counsel has included concerns with telephone access for deaf and
18 hard-of-hearing class members on our proposed agenda for each of the 22 meetings of the
19 workgroup since September 2020.

20 10. Plaintiffs’ counsel has included concerns with hearing aid quality on our
21 proposed agenda for all but two of the seventeen meetings of the workgroup since March
22 2021. (We did not include concerns with hearing aid quality on our proposed agenda for
23 the July 2021 or August 2021 meetings of the workgroup.)

24 11. My colleagues and I regularly repeat information and positions at
25 workgroups meetings that we shared at previous workgroup meetings, and Defendants
26 respond simply that they will take our position under consideration, with no set deadline
27 for responding to our requests or addressing our concerns. As a result, Plaintiffs’ proposed
28 agenda for the January 12, 2023, meeting of the workgroup included as its first item

1 “Workgroup Structure.” In the agenda, Plaintiffs’ counsel explained, “Many agenda items
2 have not moved forward over the last year. In addition, Defendants have not timely
3 produced information needed to inform discussions on several priority issues in the time
4 between workgroup meetings. Plaintiffs would like to discuss how best to structure this
5 workgroup to ensure that discussion moves forward and issues are resolved timely.” *See*
6 Dkt. No. 3459-5 at 89, Ex. 87. That discussion did not result in significant improvements.

7 12. In an effort to make workgroup meetings more productive, Plaintiffs’
8 counsel began attending meetings with attorneys from the Office of Legal Affairs (“OLA”)
9 in the weeks between full workgroup meetings to discuss the status of requests for
10 documents and information and to develop a better understanding of Defendants’ positions
11 on concerns raised in the workgroup. At the requests of counsel for Defendants, Plaintiffs’
12 counsel now lists agenda items in order of priority and sends the proposed agenda to
13 Defendants’ about two weeks before the meeting. These efforts also have not yet resulted
14 in significant improvements.

15 13. Plaintiffs’ proposed agenda for the May 12, 2023, meeting of the workgroup
16 reduced the number of items for discussion to six. *See* Ex. 2. The sixth item was a table
17 summarizing outstanding information requests to date. In the agenda, Plaintiffs’ counsel
18 noted, “We have limited the number of issues in the agenda for this workgroup meeting to
19 assist Defendants in preparing for substantive discussion on each topic. There are a
20 number of critical issues for which Plaintiffs still are awaiting information from
21 Defendants, including related to accessible phone technology, tablet content, and suicide
22 prevention in administrative segregation. Those information requests are repeated at the
23 end of this agenda. We request this information as soon as possible so that we can proceed
24 with informed discussion of these issues. We will add these issues back to the agenda
25 once the information has been produced by Defendants and revised by Plaintiffs.”

26 14. Plaintiffs’ proposed agenda for the July 26, 2023, meeting of the workgroup
27 similarly noted, “We limited the number of issues in the agenda for this meeting to assist
28 Defendants in preparing for substantive discussion on each topic. There are a number of

1 critical issues for which Plaintiffs still are awaiting information from Defendants. Those
2 information requests are repeated at the end of this agenda.”

3 15. The section of Plaintiffs’ proposed agenda for the July 26, 2023, meeting of
4 the workgroup entitled “Outstanding Information Requests” listed fourteen outstanding
5 items, with the date of the initial request and the time by which Plaintiffs’ counsel
6 requested that the information be produced. This list includes information related to
7 accessible telephones, captioned telephones, hearing aids, and effective communication of
8 announcements. *See* Ex. 3 at 6-8.

9 **Complexity of Hearing Disabilities**

10 16. Hearing disabilities are complex. How they impact the individual can depend
11 heavily on the context of the communication taking place: someone may be able to hear
12 with hearing aids alone in a quiet, one-on-one setting, where they are close to the
13 speaker, such as an appointment in a doctor’s office; the same person may need additional
14 accommodations in environments such as classrooms, where they are farther from each
15 speaker and where other people in the environment generate background noise.

16 **Hearing Aid Quality**

17 17. After over a year of unsuccessful advocacy by Plaintiffs’ counsel to improve
18 the quality of hearing aids provided to class members, Plaintiffs’ counsel retained an
19 expert in hearing aids and hearing technology. The expert is an audiologist who has
20 worked for the Veterans Health Administration in San Francisco for 25 years and who has
21 served as the Chief of Rehabilitation Services since 2015.

22 18. Plaintiffs’ expert reviewed class member medical records, including
23 appointments with audiology providers and Ear, Nose, and Throat specialists, survey
24 responses from class members regarding their experience using the hearing aids available
25 to them, a prior monitoring tour report from Plaintiffs’ counsel, and documents describing
26 the specifications of the hearing aids provided to class members.

27 19. On May 24 and 25, 2022, Plaintiffs’ expert visited the R.J. Donovan
28 Correctional Facility. During the tour, the expert interviewed a number of deaf and hard-

1 of-hearing class members about their hearing aids and visually examined the devices. She
2 also toured a large portion of the institution to better understand the listening conditions for
3 class members in various programs, services, and activities.

4 20. Plaintiffs' expert then produced a detailed written report with her
5 recommendations. On July 13, 2022, Plaintiffs' counsel shared this report with
6 Defendants and CCHCS to provide technical assistance and in the hopes of advancing the
7 parties' discussion of the poor quality of the hearing aids provided to class members. A
8 true and correct copy of the expert's report and Plaintiffs' counsel's cover letter, sent to
9 Defendants and CCHCS on July 13, 2022, is attached as **Exhibit 4**.

10 21. On July 26, 2023, counsel for CCHCS produced a one-page document
11 entitled, "Summary of Defense Expert Recommendations on Hearing Aids." The
12 document lists recommendations for testing of hearing and criteria for hearing aids, with
13 no analysis or explanation of how the consultants developed these recommendations. I
14 reviewed this summary alongside the recommendations of Plaintiffs' expert in hearing aids
15 and hearing technology, Defendants' current hearing aid contract, and the specifications
16 sheet for the hearing aid most commonly provided to class members. I also shared the
17 "Summary of Defense Expert Recommendations on Hearing Aids" with our expert and
18 discussed the difference between these recommendations and the recommendations our
19 expert had made in her report. Based on this consultation, I determined that the hearing
20 aid recommendations provided in the "Summary of Defense Expert Recommendations on
21 Hearing Aids," if followed, would not result in an improved quality of hearing aids. I also
22 determined that these hearing aid recommendations, if followed, could in fact result in
23 provision of lower-quality hearing aids. On August 11, 2023, I sent a letter to counsel for
24 CDCR and CCHCS explaining the results of my review. A true and correct copy of my
25 letter dated August 11, 2023, is attached as **Exhibit 5**.

26 **Provision and Tracking of Assistive Devices**

27 22. On April 11, 2023, I sent a letter to Defendants regarding their failure to
28 track non-medical assistive devices and their failure to provide these devices to class

1 members at no cost. Attached hereto as **Exhibit 6** is a true and correct copy of my letter
2 dated April 11, 2023.

3 23. Plaintiffs' counsel has advocated for increased access to pocket talkers, a
4 personal sound amplification product ("PSAP"), for years. The subject was discussed by
5 the parties in September 2020, during a Deaf and Hard-of-Hearing Workgroup meeting.
6 Since then, pocket talkers have been a regular part of the parties' workgroup discussions
7 regarding accommodations for people with hearing disabilities. Plaintiffs' counsel also
8 sent letters to Defendants setting forth the criteria we believe would be suitable for
9 providing deaf and hard of hearing class members with access to PSAPs. Attached hereto
10 as **Exhibit 7** and **Exhibit 8** are true and correct copies of these letters, dated January 6,
11 2022, and June 17, 2022, respectively.

12 24. In her July 2022 report, Plaintiffs' expert in hearing aids and hearing
13 technology, described above, described Defendants' approach to pocket talkers, set forth
14 above, as "unconscionable." *See* Ex. 4.

15 25. Following additional discussions and repeated advocacy from Plaintiffs'
16 counsel in the form of written correspondence and workgroup discussions, Defendants
17 agreed to develop a policy for providing pocket talkers free-of-charge to people with
18 hearing disabilities on an individual basis. A true and correct copy of an email from
19 Alexander Powell, then an attorney with the CDCR Office of Legal Affairs, dated June 26,
20 2023, informing Plaintiffs' counsel that pocket talkers would be so provided is attached as
21 **Exhibit 9**. Although this promise has been made, Plaintiffs' counsel does not know the
22 status of Defendants progress toward drafting or implementing the promised policy.

23 **Vibrating Watches**

24 26. Scheduled programming and appointments, such as meals, yard and dayroom
25 releases, medication line, visiting, and individual medical appointments typically are
26 announced orally over the public address system. Deaf and hard of hearing people who
27 cannot hear well enough to understand these announcements frequently miss these events.

28 Watches with vibrating alarms (or "vibrating watches") allow deaf and hard-of-hearing

1 people unable to hear announcements to set reminders for these events, compensating for
2 the inaccessible nature of the prison's announcement and event-reminder system.

3 27. Plaintiffs' counsel has explained to Defendants that vibrating watches should
4 be a component of a comprehensive system for ensuring effective communication of
5 announcements in our proposed agenda for each meeting of the Deaf and Hard-of-Hearing
6 Workgroup since November 2022. In our proposed agenda for the July 26, 2023, meeting
7 of the workgroup, Plaintiffs' counsel reported, "We continue to receive reports that
8 vibrating watches would help deaf people be aware of scheduled appointments. For
9 example, deaf signers at CCWF reported continuing to miss appointments and [that] a
10 vibrating watch would allow them to be more independent. One reported that she cannot
11 sleep during the day because she may miss appointments." *See* Ex. 3.

12 **Effective Communication of Announcements**

13 28. In addition to scheduled programming and appointments, Defendants
14 announce last-minute changes to these events orally over the public address system. Deaf
15 and hard of hearing people who cannot hear well enough to understand these
16 announcements often do not receive this information at all, causing confusion and
17 hardship. For example, when a housing unit is on program modifications that require in-
18 unit distribution of medication, a nurse distributing that medication may come at some
19 point in a two-hour window, rather than at a predetermined time.

20 29. Plaintiffs' counsel has repeatedly urged Defendants to develop a reliable and
21 auditable system for providing effective communication of announcements. In recent
22 months, Defendants have proposed using tablet notifications for this purpose.

23 30. Since the November 10, 2022, meeting of the Deaf and Hard-of-Hearing
24 Workgroup, Plaintiffs' counsel has repeatedly raised concerns with the limited ability of
25 tablet notifications to provide effective communication of announcements to deaf and
26 hard-of-hearing class members. At these meetings, Plaintiffs' counsel has explained that
27 incarcerated people may not always have their tablets on their person. For example, a deaf
28 or hard-of-hearing class member may not have their tablet, or be permitted to use their

1 tablet, during a vocational assignment, education assignment, or during other
2 programming. Plaintiffs' counsel has also explained that the tablets do not seem to have a
3 mechanism to alert users that an announcement has been posted, meaning they are not
4 suitable for providing time-sensitive notifications. Tablets also may experience poor
5 Internet connectivity or other technical issues that affect their functionality.

6 Equal Access to Phone Services

7 31. At the December 11, 2020, meeting of the Deaf and Hard-of-Hearing
8 Workgroup, representatives for Defendants stated that they were meeting with the
9 California Public Utilities Commission to move forward with the installation of captioned
10 telephones across the state.

11 32. On December 16, 2021, Defendants issued a memorandum entitled,
12 "Americans with Disabilities Act Caption Phones Purchase and Implementation." The
13 memorandum instructs wardens or their designees at 23 institutions, not including SATF,
14 to "purchase and install at a minimum, one CapTel 840 Plus telephone for each area that
15 currently utilizes a Teletypewriter (TTY)/Telecommunications Device for the Deaf (TDD)
16 telephone for use by the deaf or hard of hearing inmate population or any other inmate who
17 demonstrates a need." Attached hereto as **Exhibit 10** is a true and correct copy of
18 Defendants' memorandum, dated December 16, 2021.

19 33. On March 7, 2023, Defendants issued a memorandum entitled, "Updated
20 Americans with Disabilities Act Caption Phone Purchase and Implementation at the
21 ViaPath Institutions." The memorandum states in part that CDCR "is ready to move
22 forward with making these [captioned] phones available at the remaining 11 institutions
23 not listed in the December 2021 memorandum." The memorandum further instructs
24 wardens or their designees at these institutions to "purchase and install at a minimum, one
25 CapTel 840 Plus telephone for each area that currently utilizes a Teletypewriter
26 (TTY)/Telecommunications Device for the Deaf (TDD) telephone for use by the deaf or
27 hard of hearing inmate population, or any other inmate who demonstrates a need."

28 Attached hereto as **Exhibit 11** is a true and correct copy of Defendants' memorandum,

[4363603.2]

1 dated March 7, 2023.

2 34. On September 19, 2023, I visited the CapTel Captioned Telephone website.
3 I reviewed the specifications of the CapTel 840 telephone and the CapTel 840i telephone,
4 available at <https://www.captel.com/>. The CapTel 840 Plus was not listed on the CapTel
5 Captioned Telephone website; however, I found it listed on the website for the West
6 Virginia Department of Health and Human Resources, available at
7 <https://dhhr.wv.gov/cdhh/equipment/Documents/840%20Plus%20info.pdf>. Based on my
8 review of the specifications of this device, I determined that the telephone does not allow
9 users to type their responses. In other words, a user must speak intelligibly to effectively
10 use the CapTel 840 Plus. Accordingly, the captioned phones provided by Defendants are
11 not accessible to non-speaking class members.

12 35. Conversely, TTY/TDD phones allow the user to type messages, which can
13 be transmitted directly to another TTY/TDD phone or can be relayed to a standard
14 telephone through the Telecommunications Relay Services provided by the Federal
15 Communications Commission. These phones are accessible to non-speaking class
16 members.

17 36. I am not aware of any other telephone provided by Defendants to class
18 members in the state prisons that allows the user to type their responses. Defendants do
19 not provide, for example, devices compatible with the Internet Protocol Relay Service (IP
20 Relay). IP Relay allows individuals with hearing or speech disabilities to participate in
21 telephone calls via typing and reading typed messages, using the Telecommunications
22 Relay Services provided by the Federal Communications Commission.

23 37. Plaintiffs' counsel has added concerns with captioned telephones to our
24 proposed agenda for each of the seventeen meetings of the Deaf and Hard-of-Hearing
25 Workgroup since March 2021. In these meetings, Plaintiffs' counsel has raised concerns
26 regarding the locations in which Defendants installed captioned phones for the institutions
27 listed in their December 16, 2021 memorandum entitled, "Americans with Disabilities Act
28 Caption Phones Purchase and Implementation." Plaintiffs' counsel has stated that the

1 locations Defendants chose impede class members’ access to captioned telephones.
2 Plaintiffs’ counsel also has raised concerns regarding whether captioned phones are
3 installed in locations that offer appropriate privacy to ensure class members’ access to
4 confidential legal calls.

5 38. In the Court Expert’s Report Regarding the Treatment of People with
6 Disabilities at SATF, filed December 20, 2022, he describes the experiences of a deaf
7 *Armstrong* class member he refers to as “Person E.” *See* Dkt. No. 3446 at 38-41. On
8 September 19, 2023, Plaintiffs’ counsel sent a letter to Defendants on behalf of Person E
9 raising concerns with his access to captioned telephones at SATF. Attached hereto as
10 **Exhibit 12** is a true and correct copy of the letter sent by Plaintiffs’ counsel on September
11 19, 2023.

12 39. Defendants announced in March 2021 that they intended to provide tablets to
13 the incarcerated population. The tablets include an application that allows users to make
14 video calls when connected to “kiosks,” which typically are located in the dayroom. The
15 tablets also include an application that allows users to place voice calls.

16 40. The application that enables video calls does not contain any features to
17 make these video calls accessible to deaf and hard-of-hearing people who do not sign. For
18 example, the tablets do not provide captioning software for these calls, nor do they allow
19 users to type messages to one another during the call.

20 41. The tablets also do not include software that make voice calls accessible to
21 deaf and hard-of-hearing people who do not sign. For example, the tablets do not provide
22 a captioned telephone application, a TTY/TDD application, or an IP Relay application.

23 42. Plaintiffs’ counsel has added concerns with accessible telephone software for
24 the tablets to their proposed agenda for multiple meetings of the Deaf and Hard-of-Hearing
25 Workgroup since March 2021. Plaintiffs’ counsel also has separately discussed this
26 concern in a workgroup focused on tablet accessibility features, which I also participate in.
27 However, Defendants have not yet introduced features that make either video calls or voice
28 calls accessible for deaf and hard-of-hearing people who do not sign. Most recently, on

1 April 21, 2023, Defendants stated they had no plans to add features to the tablets that
2 would allow non-signing deaf people to place calls via accessible telephone software, such
3 as a captioned telephone application, a TTY/TDD application, or an IP Relay application.

4 43. Since no technological solution has been made available to accommodate
5 deaf and hard-of-hearing people's phone use on the tablets, Plaintiffs' counsel has
6 repeatedly requested that Defendants develop an interim measure to provide deaf and hard-
7 of-hearing people with expanded access to TTY/TDD or captioned phones during times
8 when hearing people are able to make voice calls in-cell through their tablets. Plaintiffs'
9 counsel included this item on their proposed agendas for the March 2023, May 2023, and
10 July 2023 meetings of the Deaf and Hard-of-Hearing Workgroup. However, Defendants
11 have not yet reported introducing any such interim measure.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct, and that this declaration is executed at San Diego, California,
14 this 21st day of September, 2023.

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16 Caroline E. Jackson

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INDEX OF EXHIBITS TO DECLARATION OF CAROLINE E. JACKSON IN SUPPORT OF PLAINTIFFS’ RESPONSE TO COURT EXPERT’S SECOND REPORT REGARDING TREATMENT OF PEOPLE WITH DISABILITIES AT SATF

Exhibit	Description	
1	Plaintiffs’ proposed agenda for March 9, 2023 meeting of the Deaf and hard-of-hearing workgroup, sent to Defendants on February 23, 2023	REDACTED & UNDER SEAL
2	Plaintiffs’ proposed agenda for May 12, 2023 meeting of the Deaf and hard-of-hearing workgroup, sent to Defendants on May 2, 2023	
3	Plaintiffs’ proposed agenda for July 26, 2023 meeting of the Deaf and hard-of-hearing workgroup, sent to Defendants on July 12, 2023	
4	Letter from Caroline Jackson, Rosen Bien Galvan & Grunfeld, to Tamiya Davis and Alexander Powell, CDCR Office of Legal Affairs, and Bruce Beland, CCHCS Office of Legal Affairs, regarding Plaintiffs’ expert report re poor quality of hearing accommodations for Deaf and hard of hearing class members (July 13, 2022)	REDACTED & UNDER SEAL
5	Letter from Caroline Jackson, Rosen Bien Galvan & Grunfeld, to Tamiya Davis and Alexander Powell, CDCR Office of Legal Affairs, and Brianne Burkhart, CCHCS Office of Legal Affairs, regarding response to Defendants’ expert recommendations regarding hearing aids (August 11, 2023)	
6	Letter from Caroline Jackson, Rosen Bien Galvan & Grunfeld, to Tamiya Davis, CDCR Office of Legal Affairs, regarding recognition	REDACTED & UNDER SEAL

Exhibit	Description	
	and protection for assistive technology devices (April 11, 2023)	
7	Letter from Caroline Jackson, Rosen Bien Galvan & Grunfeld, to Tamiya Davis and Alexander Powell, CDCR Office of Legal Affairs, regarding pocket talker memorandum (January 6, 2023)	
8	Letter from Caroline Jackson, Rosen Bien Galvan & Grunfeld, to Tamiya Davis and Alexander Powell, CDCR Office of Legal Affairs, regarding clarification of personal sound amplification products memorandum (June 17, 2022)	
9	Email from Alexander Powell, CDCR Office of Legal Affairs, to Plaintiffs' counsel and Court Expert regarding pocket talker update (June 26, 2023)	REDACTED & UNDER SEAL
10	Americans with Disability Act Caption Phones Purchase and Implementation Memorandum (December 16, 2021)	
11	Updated Americans with Disability Act Caption Phone Purchase and Implementation at the ViaPath Institutions Memorandum (March 7, 2023)	
12	Letter from Mackenzie Halter, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, regarding Person E's access to captioned phones on Facility G at SATF	REDACTED & UNDER SEAL

EXHIBIT 1

Deaf/Hard-of-Hearing Workgroup Agenda

Meeting Date: March 9, 2023

1. **CART:** The parties are scheduled to discuss CART on March 10. Plaintiffs will separately send a list of topics for discussion in advance of that meeting.
2. **Auto-Captioning as an Immediate, Stop-Gap Accommodation:** Defendants have represented that they have paused the Microsoft Teams implementation requirements and are conducting a pilot at CHCF of WebEx due to a security issue identified recently with Microsoft Teams.

(a) **Please provide an update on this program, including the status of the CHCF pilot, hardware acquisition, and status of CCPOA negotiations related to use during RVR hearings.**

(b) Plaintiffs have been waiting, since at least February 3, for a response to whether Defendants will share a draft of the instructions and training with Plaintiffs' counsel before issuing it to the field, so we have an opportunity to review and comment. **What is Defendants' position?**

It is critical that the parties work together. For example, the two-page Microsoft Teams memorandum that Defendants issued without providing Plaintiffs an opportunity to review and comment contained confusing and inaccurate information, referring to "permanent hearing impairment (DPH)." That, of course, is not what DPH means. Nor does DNH mean, as the memo implies, a "temporary" hearing disability.

In addition, Plaintiffs' counsel has identified issues that headquarters apparently was unaware of, including that institutions understood that the autocaptioning program as a whole had been paused and at CIM for example, ADA staff did not plan to train staff on the program and staff were not using the accommodation for qualifying class members. Similarly, it was Plaintiffs' counsel who uncovered the fact that, at RJD, the ADAC told only deaf **signers**, and not deaf **non-signers**, about the program – the exact wrong population. And at RJD, it took staff 15 minutes to get Teams to work with captions. **What has been done to address this and make sure that headquarters identifies problems proactively, and does not rely on Plaintiffs' counsel to uncover them by chance during monitoring tours?**

(c) Plaintiffs have serious concerns with the accuracy of autocaptioning, particularly for important due process encounters. See Letter from Caroline Jackson, Plaintiffs' Position on Access to Captioning Services at 24-25 (Dec. 19, 2022) (Attachment 1). It is critical that clear guidance to the field and oversight mechanisms be put in place. Plaintiffs will send a letter regarding the failure of Microsoft Teams autocaptioning during an RVR hearing and the institution's inability to recognize and remedy the failure to provide effective communication after the class member filed an appeal. **Plaintiffs would like to discuss how to address these situations.**

3. **Hearing Aids:** Over seven months ago, we provided Defendants with an expert report that found “the quality of the CDCR issued hearing aids to be very poor” and concluded that the hearing aid models CDCR currently provides are “Personal Sound Amplification Products (PSAP) rather than hearing aids by today’s standards.” See Expert Report of Dr. Andrea Bourne (July 13, 2022) (Attachment 2). The Court Expert, in his SATF report, found that “hard of hearing people who use hearing aids at SATF consistently reported, in surveys and in interviews, that the hearing aids they received were of poor quality and did not work well.” ECF 3446 at 37.

Defendants have made little progress in addressing these concerns. We were told that Defendants had retained a consultant, Dr. Kelly, to review various issues related to accommodations for deaf and hard-of-hearing class members, including hearing aids. **Please send us Dr. Kelly’s CV as soon as possible.**

Defendants have provided little information on what, exactly, Dr. Kelly’s review will consist of and its timeline. Defendants agreed to provide an update, in response to specific questions, two weeks after the January 12 workgroup meeting. Defendants did not do so. Plaintiffs reiterated their requests on February 14, and have not received a response. As soon as possible, please answer the following questions:

- (a) In the SOW, what subjects in particular have you asked the expert to look at? **Please provide a copy of the SOW in advance of the workgroup meeting.**
- (b) What are the expectations for Dr. Kelly with respect to (i) visiting institutions to observe the listening environments; (ii) interviewing class members about their experience; (iii) evaluating the listening equipment (hearing aids, etc.) that Defendants provide; and (iv) evaluating the equipment that Defendants use to assess class members’ needs (e.g., equipment for speech-in-noise testing)?

At this time, given the lack of information provided by Defendants regarding Dr. Kelly’s review, class counsel does **not** consent to Dr. Kelly interviewing class members. See *Coleman v. Brown*, 938 F. Supp. 2d 955, 968 (E.D. Cal. 2013) (holding that “defendants violated their professional duty” by “having its experts conduct these *ex parte* interviews with represented class members”).

- (c) What type of communication does the contract require Dr. Kelly to have, with whom, and along what timeline? For example, does the contract require monthly meetings with Dr. [REDACTED] Dawn Lorey, and [REDACTED]? Bi-monthly meetings?
- (d) What is the expected work product? Will it be a written report that will be shared with Plaintiffs’ counsel?
- (e) What timeline, if any, is in the contract indicating how quickly the contractor is expected to complete work?

At the Court Expert’s direction, Defendants committed to providing, by January 26, 2023, their position on whether they can and will preview and allow Plaintiffs’ counsel to comment on draft contracts for hearing aids and for the consultant retained to evaluate hearing aids, pocket talkers, and other accommodations. Defendants did not do so. Please explain:

- (f) Do any laws prohibit CDCR from sharing these contracts with Plaintiffs’ counsel?

(g) If these contracts can legally be shared, will Defendants share them with Plaintiffs' counsel?

4. **Pocket Talkers:** Pocket talkers or other Personal Sound Amplifiers (PSAs) are common accommodations for hard-of-hearing people. They may augment hearing aids or be a back-up when someone's hearing aids are broken. See Expert Report of Dr. Andrea Bourne at 11 (July 13, 2022) (finding Defendants' current approach to issuance of pocket talkers to be "unconscionable"). Pocket talkers are particularly useful for older people because the controls are easier to use and they are easier to take on and off, and are particularly critical in CDCR now given the known inadequacy of the two hearing aids provided in CDCR. *Id.*

Defendants have not provided clear information on whether and when pocket talkers will be provided as a reasonable accommodation to class members.

We regularly see, in violation of the ARP and ADA, institutions deny pocket talkers on the grounds that they are non-formulary and not medically necessary. That, of course, is simply wrong. As the Court Expert has explained, "[d]enying a class member a needed accommodation because that item is not kept at the medical supply warehouse is **never acceptable.**" ECF 3446 at 34 (emphasis added); see also *id.* at 63 ("Healthcare staff and all members of the RAP should also be reminded of the responsibility to provide individualized disability accommodations, even if doing so requires ordering nonformulary items."). And staff have an "independent duty to provide DME where it is a reasonable accommodation, regardless of whether providers believe it is 'medically necessary.'" *Id.* at 32.

To provide a few examples of class members denied a pocket talker under incorrect standards:

Class Member	Prison	Summary
<p>██████████ ██████████, DNH</p>	<p>SQ</p>	<p>Mr. ██████████ was denied a replacement pocket talker for improper reasons by the Reasonable Accommodation Panel (RAP), and then by a nurse, an audiologist, and a Health Program Manager III:</p> <ul style="list-style-type: none"> ● "Pocket Talkers are not standard of care." See 1824 Log No. SQ-A-22-00240 (Oct. 27, 2022). ● "IP here for audio visit, requesting for amplifier but cannot provide per Vince audio tech. No F/U at this time." Progress Note - Nurse (Jan. 19, 2023). ● "I/P has a broken pockettalker. Wants a new one. We don't supply amplifiers (pockettalkers) only hearing aids and he has aids! No F/U." Audiology Consultation Note (Jan. 19, 2023). ● "The Health Care Grievance Office reviewed the Durable Medical Equipment and Medical Supply Formulary and did not find the pocket talker as an available item for

		ordering . . . Durable Medical Equipment and medical supplies shall be distributed by health care staff based on medical necessity as defined in the Durable Medical Equipment and Medical Supply Formulary.” See 602 HC Log No. SQ HC 22000823 (Jan. 17, 2023).
██████████ ██████████ DNH	RJD	<p>Mr. ██████████ repeatedly has filed paperwork requesting a pocket talker or permission to purchase a personal amplifier so that he can participate in programs, services, and activities, including education. RJD has failed to accommodate his disability or provide a substantive response to his disability-related appeals.</p> <p>After his CDCR 1824 was denied, the Office of Appeals granted Mr. ██████████’s appeal and directed RJD to investigate whether the “denial of a medical hearing device denies claimant the opportunity to fully participate in education and rehabilitative programs.” See Log No. 247151.</p> <p>RJD failed to investigate timely and told Mr. ██████████ that he would receive no additional response besides a notification of the time expiration of his appeal.</p> <p>Plaintiffs sent an advocacy letter about this on January 11, 2023, and have received no response.</p>
██████████ ██████████ DNH	RJD	The RAP improperly denied Mr. ██████████’s request for a pocket talker: “A DVP was submitted by a Medical Subject Matter Expert which details medical does not issue pocket talkers as DME’s.” See 1824 Log No. RJD-A-22-1893 (Dec. 1, 2022).
██████████ ██████████ DNH	SATF	<p>Mr. ██████████ requested a pocket talker via multiple 7362s and an 1824 in 2022. He was not provided a pocket talker as an interim accommodation and did not see an audiologist until 138 days after his initial request, at which point the audiologist recommended “fitting of a pocket-talker,” as well as fitting for stronger bilateral hearing aids.</p> <p>Plaintiffs’ counsel advocated for Mr. ██████████ to be issued a pocket talker as an interim accommodation in August 2022. In their October 2022 response, Defendants stated that the audiologist’s “assessment, plan, and recommendation did not include a pocket talker,” and only made reference to the development of a joint CCHCS/CDCR memorandum to provide direction to the field on the issuance of pocket</p>

		talkers. Mr. [REDACTED] has not been provided a pocket talker.
[REDACTED] [REDACTED] DNH	COR	Mr. [REDACTED] also has been denied a pocket talker, and his medical record shows confusion over who is responsible for issuance. On July 20, 2021, an audiologist wrote, "IP wanted a pocket talker. We don't carry or issue amplifiers (pocket talkers). He needs to see his PCP." Eight days later, the PCP wrote: "Patient also wanted pocket talker to help with hearing in certain area. Audiology follow-up ordered for reeval. Will rediscussed with patient about pocket talker after hearing aid fixed." It does not appear he was ever evaluated for or given a pocket talker.

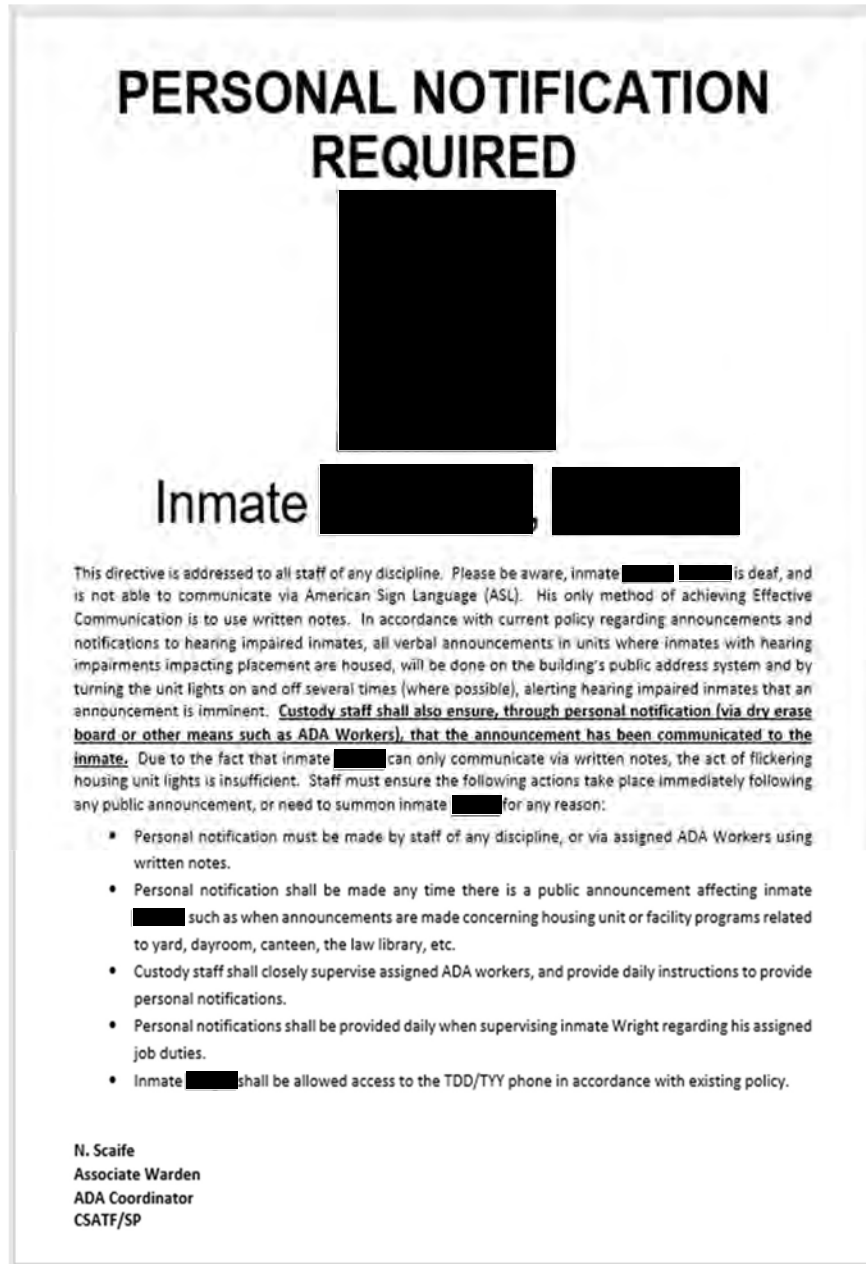
Please explain Defendants' position on whether pocket talkers currently may be provided as reasonable accommodations. If so, please explain what direction has been provided to the field to that effect. If not, please explain the legal basis for Defendants' position.

- 5. Effective Communication of Announcements:** Plaintiffs have notified Defendants of the failure to provide effective communication of announcements to deaf and hard-of-hearing people statewide for years, and it has been on the workgroup agenda for eighteen months without any proposed solution from Defendants beyond training, which has proven ineffective; a tablet calendar function, which would not provide time-sensitive notification of, for example, the arrival of the medication nurse; and Field Training Sergeants, who are not stationed in the housing units and therefore cannot provide effective communication of the many announcements which happen throughout the day. Defendants have rejected Plaintiffs' technology-based solutions without offering a credible alternative.

The problem persists. The Court Expert, in his report regarding SATF, found "that custody staff at SATF are not complying with the requirement to ensure deaf and hard of hearing people receive announcements. . . SATF leadership cannot continue to respond to complaints by deaf and hard of hearing people about not receiving announcements by stating that staff will ensure they receive announcements. SATF leadership should audit staff compliance with the requirement to make individualized announcements to people who cannot hear the intercom." ECF 3446 at 42.

During a January 2023 monitoring tour at SATF, Plaintiffs' counsel interviewed the deaf non-signer identified as "Person E" in the Court Expert's report. After Plaintiffs' counsel informed the warden, ADA Coordinator, and other institution and headquarters staff that Person E still was not receiving effective communication of announcements, the ADA Coordinator generated the following poster to be placed at the officers' station and medical clinic (see next page):

....



Plaintiffs understand that this poster may have been modified since it was produced by Defendants. See ECF 3463 at 9-10 (“After speaking with the class member and staff about the best ways to accommodate him, staff created and offered a common-sense remedy, which was later altered at the class member’s request.”). **Please produce the updated version of the poster in advance of the workgroup meeting.**

Plaintiffs would like to discuss:

- (a) How will Defendants monitor whether the poster is working at SATF?
- (b) Will similar posters be developed for other deaf and hard-of-hearing class members statewide? If so, how will Defendants (i) identify which class members require these

posters, and (ii) audit whether these posters ensure that class members receive effective communication of announcements? If not, why not?

- (c) Have any other changes to expectations for provision of announcements to deaf and hard-of-hearing class members been made since the last meeting of this workgroup? For example, have Defendants reviewed whether vibrating watches, a potential partial solution, will be provided to class members as durable medical equipment?

In response to the Court Expert's findings regarding Defendants' failure to provide effective communication of announcements to class members at SATF, Defendants stated that they created a working group to identify ways to audit staff communication of announcements to deaf persons. See ECF 3453 at 14-15.

- (d) We would like to discuss whether and when this working group has met, and, if so, what issues have been discussed. How frequently will the group meet?
- (e) Who will participate in this working group? How will the Court Expert and Plaintiffs be involved?

6. Equal Phone Access

- (a) **Tablet Accessibility:** ViaPath tablets allow hearing people to make in-cell voice calls during expanded hours, including non-programming times and when a housing unit or yard is on modified programming affecting dayroom access. Similar opportunities are not extended to deaf and hard-of-hearing people who require video calling, VRS, or captioning, as these features are not currently available on the tablets. ECF 3446 at 42.

Plaintiffs' counsel requested, well before the rollout of the tablets, that tablets be equipped with video calling, relay services, and captioning as required by the ADA and ARP.* However, many deaf and hard-of-hearing class members remain without this critical accommodation.

- (i) At the last meeting on tablet accessibility, Plaintiffs requested that Defendants prioritize confirming which types of accessible phone services are available via the tablets – VRS (likely available), IP relay, and captioned telephone services. **Please provide an update on the availability of these services and Defendants' plan to implement them.**
- (ii) Following our January 2023 monitoring tour at SATF, the ADA Coordinator issued a memorandum recognizing that the tablets “enabled hearing inmates the ability to use a telephone while deaf inmates are unable,” which is an “inequity of access to programs and activities, which the Americans with Disabilities Act (ADA) aims to prevent.” (Attachment 3) Accordingly, the ADA Coordinator directed that housing staff should allow deaf signers access to the videophones in the dayroom as a reasonable accommodation during times when hearing people are able to make voice calls in-cell.

Will Defendants issue similar direction to provide a partial remedy to existing unequal access to videophones statewide? Will Defendants issue similar direction at SATF and

* Indeed, two years ago, Defendants represented that the tablets would be ADA-compliant and equipped with “Video Relay Service/American Sign Language-Video Calling Services (VRS/ASL-VCS).” See *The Informed Patient*, Issue 47 (Mar. 12, 2021).

statewide regarding access to TTY/TDD and captioned telephone services for deaf and hard of hearing class members who do not know sign language? This direction would not resolve Defendants' obligation to make phone calls through the tablets accessible in-cell for deaf and hard-of-hearing people, but it is a simple, immediate step that can be taken to mitigate existing disability discrimination.

(iii) Plaintiffs' counsel also has received reports from deaf signers that the dayroom kiosks used to make video calls through tablets automatically blur the background of the image, which obscures class members' signing away from the torso. We recommend that instead of blurring the background of the video, Defendants place privacy screens around the kiosks, similar to those used for videophone calls. Plaintiffs' counsel have also received reports that the video frame on the kiosks is too small and does not capture deaf class members' full signing space, limiting their ability to communicate. **Plaintiffs would like to discuss these issues.**

(b) **Access to the PREA and OIG Hotlines:** Plaintiffs repeatedly have raised concerns that Deaf class members have been sexually abused, harassed, and bullied by other incarcerated people and staff and that they do not have a way to confidentially report abuse in sign language, including through the videophone. Over a year ago, Plaintiffs reported that relay interpreters refused to allow Deaf class members at RJD and SATF access to the PREA and OIG hotlines. We received no response to that letter. On January 24, 2023, we sent an email to memorialize the same issue at SATF and SQ and demand that Defendants address the issue (Attachment 4). **Please explain how Defendants will address and audit this issue statewide, including how they will ensure, beyond a one-time training, that all relay interpreters are aware that they must leave voicemails on PREA and OIG lines if requested by the class member.**

(c) **Videophone Connectivity:** At the last workgroup meeting, Defendants requested that Plaintiffs' counsel provide specific institutions and yards experiencing videophone connectivity concerns.

Plaintiffs informed Defendants of connectivity issues at LAC by email on February 17, 2023. Plaintiffs' counsel also observed on a recent RJD monitoring tour that five out of eight videophone test calls timed out before reaching the interpreting service. Similarly, Plaintiffs' counsel received reports in January at SATF that videophone calls on Facilities A, E, and G freeze frequently, and that it can take days to weeks for ViaPath to reboot the phones or make necessary repairs. **Please be prepared to discuss what action Defendants have taken to remedy each of these connectivity concerns.**

Defendants must track these reports, at both the headquarters- and institution-levels, to better determine the nature of the problems and identify prompt solutions. **Please explain what steps Defendants will take to track, investigate, and resolve videophone connectivity issues at the institutional and statewide levels.**

(d) **Confidential Legal Calls for Deaf Signers:** Class counsel continues to face barriers arranging confidential video calls through institution litigation coordinators. Usually, we have to remind them to reach out to the ADA office to understand their obligation to make such calls accessible, and sometimes that is not enough to educate them. We are very concerned that private attorneys (not class counsel) will be unable to navigate the system. We would like to discuss this issue.

- (e) **Captioned Phones:** At the last workgroup meeting, the parties discussed the need to audit system-wide compliance with the captioned phone implementing memorandum, including the need to ensure that captioned phones are available in appropriate locations and that class members are made aware that they are available for use. **Please provide an update.**
- (i) *Institutions with CDCR lines (23 institutions):* We understand that Defendants have already installed captioned telephones at all institutions with CDCR lines, except at San Quentin. **We request an update regarding what progress has been made at SQ, as well as whether Defendants have reviewed and revised any LOPs after Plaintiffs' identified concerns.**
- (ii) *Institutions with ViaPath lines (11 institutions):* Captioned phones have not been provided at these institutions, including those like SATF that have a large number of hard-of-hearing class members. **Please provide the memorandum for purchase and implementation of captioned phones at Viapath institutions and provide an update on roll-out.**

7. Tablet Content

- (a) **ASL Videos:** Defendants stated that they were in the final stages of working with ViaPath to implement ASL TV content on the tablets. Defendants stated they would produce a "mock-up" of the video library to Plaintiffs' counsel, which we have not yet received. **Please provide a copy of the video library mock-up to Plaintiffs' counsel in advance of the workgroup meeting.**
- (b) **Video-Based ASL Courses:** Defendants said they cannot provide the Gallaudet ASL e-learning course in CDCR because it is now tuition-based. Defendants agreed to look into different options to provide ASL education. **Please provide an update on whether Defendants can provide Start ASL textbooks or another ASL education option.** Plaintiffs' counsel remain concerned that Defendants will not provide live video or in-person instruction for ASL; because ASL is a three-dimensional language, it is very difficult to learn through written material alone.
- (c) **Suicide Prevention in Administrative Segregation:** Plaintiffs' counsel have for years requested that Defendants provide free recreational materials for deaf and hard-of-hearing class members in segregated housing, as an accessible equivalent to the Radio Loaner Program provided to hearing individuals as a suicide prevention tool. At the last workgroup meeting, Defendants proposed to provide class members with several silent movies out of copyright (made before 1927). Plaintiffs' counsel do not believe this solution alone is sufficient and will provide more information on our position in advance of the workgroup meeting.
- (i) Plaintiffs previously proposed a loaner tablet pre-loaded with content for deaf class members or a modification to policy to allow deaf class members to retain access to video content on their otherwise restricted tablets while in administrative segregation. Have Defendants further investigated either of these options?
- (ii) Have Defendants investigated developing a tablet application or library that could remain unrestricted in administrative segregation, containing all ASL-based content? One central repository for ASL content may be easier to navigate for deaf class members who are unfamiliar with tablet technology or who have limited English proficiency.

8. **Certified Deaf Interpreters:** Plaintiffs would like to discuss how to identify and track deaf signers who require a CDI to fully benefit from prison programs, services, and activities. The parties agreed to move this issue from the BPH/CDCR cross-over meetings to this workgroup.

9. **Outstanding Information Requests**

Please produce the following information at least a week in advance of the workgroup meeting or explain the cause of the delay.

Information Requested	Date of Request	Status / Notes
Off-site Medical Encounters: CMF LOP for provision of sign language interpreters during off-side medical encounters	11/29/22	If the relevant information is incorporated in a restricted LOP, the LOP can be produced in whole under a protective order, or Defendants can produce the relevant sections without producing irrelevant, restricted information.
Visual Alarms: List of all buildings in CDCR institutions with visual alarms and type (e.g., fire alarm or the type of alarm that custody officers can operate)	10/28/22	
Tablets: Copy of the ASL training video	11/29/22	
Hearing Aids: Copy of the hearing aid contract before it goes to bid, and timeline for addressing concerns related to hearing aid quality	11/29/22	
Captioned Phones: Implementation memo for institutions with ViaPath-provided phone lines.	1/12/23 2/14/23	
Contracts: As directed by the Court Expert, a written response to the following questions: 1. Do any laws prohibit CDCR from sharing contracts with Plaintiffs' counsel before they have been sent out to bid? 2. If these contracts can legally be shared, will Defendants share them with Plaintiffs' counsel?	1/12/23	
ASL Videos: Copy of the ASL TV video library "mock-up" Defendants are developing with ViaPath	1/12/23	
PREA/OIG Lines: Rules regarding what a video relay interpreter may or may not do for class members in	1/24/23	

CDCR custody, including related to leaving voice messages, and a copy of all such direction provided to relay interpreters and all training materials		
Autocaptioning Program: Draft instructions and training for WebEx prior to being issued	2/3/23	
Hearing Technology Contractor: CV for consultant Dr. Kelly	2/14/23	
Hearing Technology Contractor: Scope of Work for consultant hired by Defendants	2/23/23	
Personal Notification Poster: Copy of the current version of the poster generated for Person E	2/23/23	

EXHIBIT 2

Deaf/Hard-of-Hearing Workgroup Agenda

Meeting Date: May 12, 2023

Plaintiffs' Note: We have limited the number of issues in the agenda for this workgroup meeting to assist Defendants in preparing for substantive discussion on each topic. There are a number of critical issues for which Plaintiffs still are awaiting information from Defendants, including related to accessible phone technology, tablet content, and suicide prevention in administrative segregation. Those information requests are repeated at the end of this agenda. We request this information as soon as possible so that we can proceed with informed discussion of these issues. We will add these issues back to the agenda once the information has been produced by Defendants and revised by Plaintiffs.

1. **Pocket Talkers:** Pocket talkers or other Personal Sound Amplifiers (PSAs) are common accommodations for hard-of-hearing people. They may augment hearing aids or be a back-up when someone's hearing aids are broken. See Expert Report of Dr. Andrea Bourne at 11 (July 13, 2022) (finding Defendants' current approach to issuance of pocket talkers to be "unconscionable"). Pocket talkers are particularly useful for older people because the controls are easier to use and they are easier to take on and off, and are particularly critical in CDCR now given the known inadequacy of the two hearing aids provided in CDCR. *Id.* Previously, Defendants stated that they had advised ADACs that pocket talkers should be provided through the RAP process, and that Defendants would conduct a survey to determine the number and location of pocket talkers throughout CDCR.
 - a. **Please confirm that Defendants' position on pocket talkers is as stated below or provide clarification:**
 - i. Defendants will make pocket talkers available through the RAP process under the "reasonable accommodation" standard.
 - ii. Defendants will not issue pocket talkers to individuals.
 - iii. Defendants may make pocket talkers available for check-out in housing units.
 - iv. Pocket talkers have historically been available for check-out in due process, medical and education settings, and will remain so. (Note that Plaintiffs' counsel does not believe that pocket talkers have historically been available outside medical and due process areas).
 - v. Defendants have informed ADACs of this approach but have not put it in writing, because ADACs already should have known that the issuance of pocket talkers as a reasonable accommodation is already covered by the 2017 Reasonable Accommodations Request Desk Reference Manual and the October 28, 2022 Memo on Reiteration of Reasonable Accommodation Requirements.

- vi. The approach listed above is temporary, as Defendants' overall position remains that hearing aids are the best accommodation for the vast majority of deaf and hard of hearing people.
 - b. **Please answer the following questions, which we first posed on March 28:**
 - i. Why have Defendants decided not to issue pocket talkers to individuals?
 - ii. What are the results of Defendants' survey, listing the number and location of pocket talkers throughout CDCR?
 - iii. Do Defendants have a process for acquiring more pocket talkers in response to demand? If so, what is it?
 - iv. Please produce all documentation regarding the check-out process.
 - v. Given that this position is "temporary," how will Defendants' position change in the future?
 - c. In addition, we understand that on or about April 26, CAMU circulated an email containing a policy regarding the issuance of pocket talkers. SATF's ADAC was among the recipients. **We request a copy of this email.**
 - d. Finally, we will be sending a letter no later than Friday that lists class members who have requested and been denied pocket talkers in the past three years. Defendants stated they had instructed ADACs to make pocket talkers available through the 1824 process, using the reasonable accommodation standard (and assured Plaintiffs' counsel that ADACs would rarely deny such requests). **We request to discuss this letter and the measures Defendants will implement to ensure class members are aware they can request pocket talkers and that ADACs are aware they should grant these requests.**
2. **Auto-Captioning as an Immediate, Stop-Gap Accommodation:** As of March 7, a Memo had been sent to the following 11 institutions instructing them to use automatic captioning via WebEx during due process encounters: CHCF, CIM, CMF, COR, RJD, SATF, SQ, SVSP, WSP. This Memo further instructed these institutions to develop LOPs within 30 days. Prior to the last meeting, we sent Defendants a letter regarding the dangers of inaccuracy captioning, highlighting the experience of a DNH class member at SQ whose primary method of communication is written notes. **We request that Defendants produce the LOPs from the 11 institutions with WebEx captioning, as they were due on April 6. We also request an update on how WebEx is going so far and whether institutions have reported any issues or best practices.**
 - a. Defendants' April 7 proposal regarding CART stated that it would be offered to all DPH class members with written notes as their primary or secondary method of communication, and others could request CART via the 1824 process. **Do Defendants intend to advise the field that automatic captioning should be offered or made available to the same population?**

- b. We previously requested that you educate class members about the accessibility features of the automatic captioning, such as adjusting the font size or color. We suggested that you show class members examples of the font options so they can select what will be easiest to read. **We request an update as to whether Defendants have implemented or plan to implement these measures.**
 - c. We understand that automatic captioning was not initially rolled out during RVR hearings due to the need to negotiate with the CCPOA. **Please provide an update on negotiations with the CCPOA regarding use of WebEx captioning during RVR hearings.**
 - d. We previously expressed concern that appeals staff have not responded appropriately when class members reported a lack of EC during due process encounters, due to appeals staff thinking that automatic captioning is sufficient to establish that EC was achieved. During our March 28 meeting, Defendants agreed to issue a directive to the field stating that appeals alleging a lack of EC during an encounter with automatic captioning should be evaluated appropriately, and taken seriously where the class member articulates specific concerns. **We request a copy of any directive that Defendants have issued to the field regarding how to respond to appeals alleging a denial of EC during an encounter where automatic captioning was used.**
3. **Hearing Aids:** Plaintiffs remain concerned by the long delay in addressing the failure to provide appropriate hearing aids in the California prison system. Over seven months ago, we provided Defendants with an expert report that found “the quality of the CDCR issued hearing aids to be very poor” and concluded that that the hearing aid models CDCR currently provides are “Personal Sound Amplification Products (PSAP) rather than hearing aids by today’s standards.” See Expert Report of Dr. Andrea Bourne (July 13, 2022). The Court Expert, in his SATF report, found that “hard of hearing people who use hearing aids at SATF consistently reported, in surveys and in interviews, that the hearing aids they received were of poor quality and did not work well.” Doc. 3446 at 37.

We request an update regarding Defendants progress toward evaluating the quality of hearing aids.

In addition, since March 15, we have been requesting answers to the questions listed below related to the hearing aid contract and the ENT specialist retained by Defendants. Please provide this information in advance of the May 12 meeting:

- a. What is the deadline for developing the next hearing aid contract?
- b. What is the deadline for Defendants to receive recommendations from Dr. Kelley, so the recommendations can be incorporated into the contract?
- c. What are Dr. Kelley’s qualifications to opine on the following topics (which fall outside the customary expertise of an ENT):
 - i. Industry standards for hearing aids, including adaptive directional

microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, active feedback suppression, tele-coil, and tinnitus sound generators.

- ii. The frequency of audiology visits adequate to ensure timely adjustment and repair of hearing aids.
- iii. The tests and procedures necessary to ensure proper fitting of hearing aids, such as probe microphone measurements.
- iv. Standards for providing other devices to assist listening, such as pockets talkers and FM systems.
- v. CART and any available “equivalents”.

d. Please provide a copy of Dr. Kelley’s CV.

4. **Effective Communication of Announcements:** Plaintiffs have notified Defendants of the failure to provide effective communication of announcements to deaf and hard-of-hearing people statewide for years, and it has been on the workgroup agenda for eighteen months without any proposed solution from Defendants beyond training, which has proven ineffective; a tablet calendar function, which would not provide time-sensitive notification of, for example, the arrival of the medication nurse; and Field Training Sergeants, who are not stationed in the housing units and therefore cannot provide effective communication of the many announcements which happen throughout the day. Defendants have rejected Plaintiffs’ technology-based solutions without offering a credible alternative.

The problem persists. The Court Expert, in his report regarding SATF, found “that custody staff at SATF are not complying with the requirement to ensure deaf and hard of hearing people receive announcements. . . SATF leadership cannot continue to respond to complaints by deaf and hard of hearing people about not receiving announcements by stating that staff will ensure they receive announcements. SATF leadership should audit staff compliance with the requirement to make individualized announcements to people who cannot hear the intercom.” ECF 3446 at 42.

- a. In response to the Court Expert’s SATF report, Defendants represented to the Court that “CDCR has created a working group to identify ways to audit staff communication of announcements to deaf persons. CDCR is amenable to input from Plaintiffs’ counsel and the Court Expert to develop an effective policy for auditing purposes. Options being considered include querying class members about their experiences receiving announcements and asking staff what their obligations are for communicating announcements to deaf persons.” ECF 3453 at 14. **Please provide an update on the workgroup and how it will incorporate input from the Court Expert and Plaintiffs.**
- b. At the March 8 meeting, EIS requested 60 days to give an update on their team’s progress toward identifying a technology-based solution to providing an auditable system for effectively notifying deaf and hard of hearing class

members of announcements. **Please provide an update.**

- c. **Please report any immediate steps Defendants will take to improve effective communication of announcements, such as posting signage.**
- d. During a January 2023 monitoring tour at SATF, Plaintiffs' counsel interviewed the deaf non-signer identified as "Person E" in the Court Expert's report. After Plaintiffs' counsel informed the warden, ADA Coordinator, and other institution and headquarters staff that Person E still was not receiving effective communication of announcements, the ADA Coordinator generated a poster to advise officers of his need for effective communication of announcements.

Since February 23, Plaintiffs' counsel has requested answers to the following questions:

- i. How will Defendants monitor whether the poster is working at SATF?
- ii. Will similar posters be developed for other deaf and hard-of-hearing class members statewide? If so, how will Defendants (i) identify which class members require these posters, and (ii) audit whether these posters ensure that class members receive effective communication of announcements? If not, why not?
- iii. Have any other changes to expectations for provision of announcements to deaf and hard-of-hearing class members been made since the last meeting of this workgroup? For example, have Defendants reviewed whether vibrating watches, a potential partial solution, will be provided to class members as durable medical equipment?

5. **Captioned Telephones.** Defendants are in the process of rolling out captioned telephones statewide. At last report, Defendants had installed and implemented captioned telephones at 23 institutions with CDCR-provided phone lines, and produced the corresponding LOPs for almost all of these institutions. Defendants had also directed the remaining 11 institutions with ViaPath-provided phone lines to purchase and install captioned telephones, and to develop LOPs.

- a. *Direction to ensure access:* In recent weeks, at least one institution (Corcoran) has responded to a request for captioned telephone access in restricted housing by stating that TTYs are available instead. TTYs are in no way equivalent to captioned telephones. **We request that Defendants instruct ADACs that requests for captioned telephones should be honored whenever possible, and that TTYs are not an appropriate substitute.**
- b. *Institutions with CDCR lines (23 institutions):* We have previously expressed concern with the location within these institutions where captioned telephones have been installed. We have enclosed as **Attachment A** a spreadsheet listing the locations within each institution where, according to the LOPs that Defendants produced to us, captioned telephones are available within each institution, and made notes specific to each institution. **Globally, we have the following questions and comments:**

- i. For several institutions, captioned telephones are listed as being located at “Central Control” or “Main control,” or with the clear intention that the phones would be stored in one location and brought to others as needed. Defendants have previously advised that captioned telephones need to be assigned to a specific telephone jack and cannot be brought to others, like a TTY or a landline phone. **Have Defendants verified that their captioned telephones can be brought to different locations and used without additional registration? If not, we request that Defendants ensure captioned telephones are installed only in locations that class members can access.**
- ii. Many institutions installed a single captioned telephone within the program office for each facility. We have passed onto Defendants that many class members have reported that this location deters them from using the captioned telephone: (A) many class members are uncomfortable going to the program office for this purpose, stating that they are afraid people will think they are going there to snitch on their peers or on the officers; (B) two class members at CCI have reported being frequently denied phone calls because the program office was being used for other purposes; (C) multiple class members have reported they cannot have truly confidential legal calls in the program office, because officers often enter during their calls. **Plaintiffs’ counsel renew our request that CDCR make captioned telephones available within at least one housing unit per yard so that class members face fewer barriers to accessing these services, and that Defendants identify a truly confidential location where class members can use the captioned telephone for legal calls.**
- iii. Several institutions have placed the captioned telephones in CCII offices, sergeants’ offices, or lieutenants’ offices. **Where are these offices typically located? Do class members have access to these program areas during regular programming hours or as-needed? Are meetings routinely held in these offices, which class members could not interrupt? What is the likelihood personnel would need to enter one of these offices during what is supposed to be a confidential legal call?**
- iv. For institutions where captioned telephones are located within housing units, some class members have voiced concerns regarding privacy, because others can read the other end of the conversation they are having. **Plaintiffs request that Defendants take steps to ensure others cannot read captioned conversations, for example by turning the telephone screen toward the wall or providing some type of privacy barrier around the screen of the telephone.**
- v. Many institutions have installed captioned telephones in locations that are not available to individuals under certain classifications or levels of care,

such as those in Mental Health Crisis Beds, or those in the ASU. **Since day one, we have requested that Defendants ensure captioned telephones are available in MHCBs, ASUs, and other specialized housing locations; we requested that Defendants take immediate steps to do so.**

- vi. Several institutions do not list the location of captioned telephones within their LOPs, or do not describe it with precision. The LOP does not have enough information for others to evaluate whether the location of the telephone is appropriate. **We have indicated these institutions in Attachment B and request that CDCR provide a list of the locations of the captioned telephones within each of these institutions.**
 - vii. There has been some delay in installing captioned telephones at San Quentin State Prison. **Please provide an update as to whether captioned telephones have been installed and implemented at San Quentin.**
- c. *Institutions with **ViaPath lines** (11 institutions):* We request an update regarding the progress of these 11 institutions toward acquiring and implementing captioned telephones. The Memo directing institutions to purchase captioned telephones state only that institutions must install captioned telephones wherever there is a TTY.
- i. **We request an update on Defendants' progress toward installing captioned telephones at each of these 11 institutions.**
 - ii. **We request that Defendants provide a list of the location where captioned telephones will be located within each institution (this information may be in the LOPs); we are especially concerned that captioned telephones be available for confidential attorney calls, and for those housed in MHCBs, ASUs, and other types of specialty housing.**
 - iii. Given the numerous reports from the 23 institutions with CDCR lines describing problems with the location of captioned telephones, **we request that Defendants describe how they will avoid repeating these problems when rolling out captioned telephones at institutions with ViaPath phone lines.**

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6. Outstanding Information Requests

Please produce the following information as soon as possible. The most important requests are marked **[Priority]**. Overdue requests are noted in **bold**.

Information and Documents Requested	Date of Request	Please Produce By
Off-site Medical Encounters: CMF has elected not to include instructions on requesting interpreters for off-site medical encounters in their LOPs, but states that the institution will follow the applicable flow-charts. We request an explanation for how CMF will ensure workers know to follow these flow-charts.	5/2/23	5/12/23
Visual Alarms: List of all buildings in CDCR institutions with visual alarms and type (e.g., fire alarm or the type of alarm that custody officers can operate)	10/28/22	4/7/23
Tablets: Copy of the training video	11/29/22	4/7/23
Hearing Aids: Content of the new hearing aid contract before it goes to bid, and timeline for addressing concerns related to hearing aid quality	11/29/22	[TBD, pending expert review]
ASL Videos: Copy of the ASL TV video library “mock-up” Defendants are developing with ViaPath	1/12/23	4/7/23
[Priority] Defendants’ Expert: Please provide a response in writing to the questions listed in item 3 regarding Dr. Kelley’s qualifications to opine as an expert, which should include Dr. Kelley’s CV and any relevant experience not listed in the CV. During our April 11 meeting regarding outstanding document and information requests, Plaintiffs’ counsel requested that this information be provided on a priority basis.	3/15/23	4/26/23
[Priority] Hearing Aids: Please provide the timeline for the next hearing aid contract and when any recommendations from Dr. Kelley would need to be made to be incorporated into that contract.	3/15/23	4/26/23

Information and Documents Requested	Date of Request	Please Produce By
During our April 11 meeting regarding outstanding document and information requests, Plaintiffs' counsel requested that this information be provided on a priority basis.		
EC of Announcements: Please provide an update on any available technology-based solutions to ensure that deaf and hard-of-hearing class members receive effective communication of announcements.	3/15/23	5/8/23 (OK to present drg 5/12 mtg)
EC of Announcements: Please report any immediate steps Defendants will take to improve effective communication of announcements, such as posting signage.	3/15/23	5/8/23
EC of Announcements: Please provide responses to the following questions from the agenda for the March 9 meeting of the workgroup: 1. How will Defendants monitor whether the poster generated for "Person E" at SATF is working? 2. Will similar posters be developed for other deaf or hard-of-hearing class members statewide? If so, how will Defendants (i) identify which class members require these posters, and (ii) audit whether these posters ensure that class members receive effective communication of announcements? If not, why not?	3/15/23	5/8/23
EC of Announcements: Please describe the workgroup on this issue, described in response to the Court Expert's SATF report that this workgroup already had been constituted. See ECF 3453 at 14-15. Defendants agreed to provide a description of the workgroup and answer the questions in Plaintiffs' agenda as to the composition of the workgroup, how frequently it will meet, and how Plaintiffs' counsel and the Court Expert will be involved.	3/15/23	5/8/23
Accessible Telephones: Please describe in writing the interim solution that Defendants propose to correct for unequal class member access to phone calls because of the lack of captioned telephones or text-based services on the tablets. Plaintiffs request to review any draft memorandum before it is issued and can do so on an expedited basis.	3/15/23	4/7/23

Information and Documents Requested	Date of Request	Please Produce By
<p>VRS calls to PREA/OIG Numbers: Defendants reported that a “tag” has been added to the screen viewable to video relay interpreters when a D/deaf person is calling the PREA or OIG hotlines indicating that the incarcerated person is allowed to leave a voicemail. Please provide a screenshot of what the video relay interpreter sees.</p>	3/15/23	4/7/23
<p>Captioned Telephones: Please send a list of the locations within each <u>ViaPath</u> institution where Captioned Telephones will be installed, as well as the Local Operating Procedures.</p>	3/15/23	4/7/23
<p>Captioned Telephones: Please confirm in writing whether institutions remain able to add devices in additional locations, and if so, whether the process differs from the initial acquisition process described in the Memo. Please also list the institutions, if any, that have acquired additional captioned telephone and the location where the phone or phones have been installed.</p>	3/15/23	4/7/23
<p>[Priority] Pocket Talkers: Please confirm that Defendants’ position on pocket talkers is as stated below or provide clarification:</p> <ul style="list-style-type: none"> b. Defendants will make pocket talkers available through the RAP process under the “reasonable accommodation” standard. c. Defendants will not issue pocket talkers to individuals. d. Defendants may make pocket talkers available for check-out in housing units. e. Pocket talkers have historically been available for check-out in due process, medical and education settings, and will remain so. (Note that Plaintiffs’ counsel does not believe that pocket talkers have historically been available outside medical and due process areas). f. Defendants have informed ADACs of this approach but have not put it in writing, because ADACs already should have known that the issuance of pocket talkers as a reasonable accommodation is already covered by the 2017 Reasonable Accommodations Request Desk Reference Manual and the 	3/28/23	4/26/23

Information and Documents Requested	Date of Request	Please Produce By
<p>October 28, 2022 Memo on Reiteration of Reasonable Accommodation Requirements.</p> <p>g. The approach listed above is temporary, as Defendants' overall position remains that hearing aids are the best accommodation for the vast majority of deaf and hard of hearing people.</p>		
<p>[Priority] Pocket Talkers: Please respond to the following questions and requests:</p> <ul style="list-style-type: none"> ○ What are the results of Defendants' survey, listing the number and location of pocket talkers throughout CDCR? ○ Do Defendants have a process for acquiring more pocket talkers in response to demand? If so, what is it? ○ Please produce all documentation regarding the check-out process. ○ Why have Defendants decided not to issue pocket talkers to individuals? ○ Given that this position is "temporary," how will Defendants' position change in the future? 	3/28/23	4/26/23
<p>CART: Provide a copy of the contract that Defendants stated would go out for bid on April 21.</p> <p>On April 21, Defendants stated the contract would go out "today" and agreed to send Plaintiffs' counsel a link to access the contract. Plaintiffs have yet to receive the link.</p>	4/21/23	
<p>Suicide Prevention in Restricted Housing: Please provide the following documents and information.</p> <ol style="list-style-type: none"> 1. Please provide a copy of the memorandum entitled, "Electronic Tablet Loaner Program in Administrative Segregation and Short-term Restricted Housing" (Aug. 4, 2017). 2. Who is eligible to receive an entertainment device while in restricted housing? For those eligible to receive an entertainment device (such as a tablet or loaner television) in restricted housing, when can they be issued the device (e.g. 	5/1/23	5/26/23

Information and Documents Requested	Date of Request	Please Produce By
<p>upon initial placement in restricted housing, following the initial classification committee, upon a not guilty finding for pending discipline, etc.)?</p> <ol style="list-style-type: none"> 3. When do restrictions on tablet features go into effect for people in restricted housing? (e.g. upon initial placement in restricted housing, following the initial classification committee, upon a guilty finding for pending discipline, etc.). 4. Will ASL TV content remain available on the tablets for people on disciplinary restrictions whose access to other tablet features is restricted? 5. Which restricted housing units have power capabilities? Which have a television service provider? 6. Which institutions make loaner televisions available to people in restricted housing, as described in the April 1, 2020 memorandum entitled, "COVID-19 Electronic Appliance Program for Restricted Housing Inmates"? Is this memorandum still in effect? 7. Are there any categories of persons (e.g., people at the EOP level of care) who are required to be placed in cells in restricted housing with power capabilities? If so, what categories? 8. For those who should be placed in cells with power capabilities while in restricted housing, what is the policy for ensuring they are placed in such cells? (We understand that some institutions have no electricity in their administrative segregation units, and as a result, some incarcerated people are transferred to other institutions for administrative segregation placements. What is the policy guiding that?) 		

**Captioned phone locations
Institutions with CDCR-Provided Telephone Lines**

	Prison	Locations	Notes
1	ASP	In each of the facility program offices	Program offices are not an appropriate location for the reasons stated in the agenda. Need a phone in or near the OHU.
2	CAC	Facility A program office Facility B program office Facility C program office	Program offices are not an appropriate location for the reasons stated in the agenda.
3	CAL	All (A, B, C, D) CCII offices MSF CCI Office (to connect in conference room) OHU Infirmery Officer (to connect at Inmate Payphone) ASU Sergeant's Office (to connect in the adjacent holding cells in the Property Room)	Need to verify whether class members would be allowed to access CCII offices, and whether this would cause stigma, as frequent trips to the program office does. Good that phones are available in the MSF, OHU, and ASU.
4	CCC	Main control and Central Control	Need to verify whether captioned telephones can be brought to different locations and plugged in, in the same way a TTY or a regular telephone can be. Captioned telephones usually must be registered to a phone number.

5	CCI	Facility A, B Program Office Facility classification room D board room #2 OHU	<p>Program offices are not an appropriate location for the reasons stated in the agenda.</p> <p>Good that a phone is available in the OHU.</p> <p>Need to ensure access for people in the ASU.</p>
6	CEN	No mention of where the captioned phones are located.	<p>No information on location of captioned telephones.</p> <p>Need at least one per facility, including the MSF.</p>
7	CIW	Housing units located on Facility A Central Services	<p>Need to specify which housing units.</p> <p>Need phones accessible to the ASU, CTC, MCB, PIP, OHU, SHU, PHU, GP, CMP, etc.</p>
8	CMC	No mention of where the captioned phones are located.	<p>No information on location of captioned telephones.</p> <p>Need to ensure access for people in ASU, EOP buildings, non-EOP buildings, MCB, MSF.</p>
9	COR	In the program office, on 3A, 3C, MSF.	<p>Program offices are not an appropriate location for the reasons stated in the agenda.</p> <p>Need to ensure access for people in CTC, MCB, OHU, ASU, STRH, all facilities (several are omitted).</p>

10	CRC	In each facility program office.	Program offices are not an appropriate location for the reasons stated in the agenda.
11	CTF	Freemont dorm, Toro dorm, Unit I Office, X-WIng	Need to ensure access for people in OHU, ASU, all facilities (several are omitted).
12	CVSP	No mention of where the captioned phones are located.	No information on location of captioned telephones. Need to ensure access for people in OHU, all facilities including MSF.
13	FSP	Central control in both Facility A and B	Need to verify whether captioned telephones can be brought to different locations and plugged in, in the same way a TTY or a regular telephone can be. Captioned telephones usually must be registered to a phone number. Need to ensure access for people in ASU.
?	HDSP	No LOPs provided.	Need to ensure access on all facilities, including MSF.
14	ISP	Each Facility Program Office	Program offices are not an appropriate location for the reasons stated in the agenda. Need to ensure access for individuals in OHU, ASU.
15	KVSP	No mention of where captioned telephones are located.	No information on location of captioned telephones.

			Need to ensure access for individuals in CTC, MCB, STRH, and both EOP and non-EOP buildings on all facilities, including MSF.
16	PBSP	No mention of where the captioned phones are located.	No information on location of captioned telephones. Need to ensure access for individuals in STRH, ASU, SHU and on all facilities.
17	PVSP	Facility A, Building 1 (FAB1) Facility B, Building 5 (FBB5) Facility C, Building 1 (FCB1) Facility D, Building 5 (FDB5) Facility E program office STRH, CTC	Good that phones appear to be mainly located in housing units. Good that phones are available in the STRH and CTC. Program offices are not an appropriate location for the reasons stated in the agenda.
18	SAC	Facility control in A, B, and C. Central control "For use in the Facility Watch Office on MSF."	Need to verify whether captioned telephones can be brought to different locations and plugged in, in the same way a TTY or a regular telephone can be. Captioned telephones usually must be registered to a phone number. Need to ensure access for individuals in STRH, PSU, ASU, and EOP and non-EOP buildings on all facilities.
19	SCC	Facility A, B, C Unit Offices	If Unit Offices are comparable to Program Offices in how they are used, this is not an appropriate

			<p>location for the reasons stated in the agenda.</p> <p>Need to ensure access for individuals in OHU, ASU.</p> <p>Need to ensure phones available at fire camps, if telephones are otherwise provided.</p>
20	SOL	Program offices of Facility B for level III inmates, Facility D for level II inmates	<p>Program offices are not an appropriate location for the reasons stated in the agenda.</p> <p>Need to ensure access for individuals in facilities A and C, and in the ASU.</p>
21	VSP	Facilities A, B, C, and D Sergeant's offices; Infirmary, room 111; BPH, A viewing room.	<p>Need to identify whether sergeants' offices are used in the same manner as program offices; if so, this may not be an appropriate location.</p> <p>Good that there is access in the infirmary and in the BPH building.</p>
22	WSP	Facility A, B, C/H, and D MSF Program office Lieutenants Office BPH	<p>For facilities A, B, C/H, and D, need more information about which building the phone is located in.</p> <p>Need to ensure access for individuals in MHCB, CTC, ASU.</p> <p>Program offices are not an appropriate location for the reasons stated in the agenda. Lieutenants' offices may also not be appropriate.</p>

EXHIBIT 3

Deaf/Hard-of-Hearing Workgroup Agenda

Meeting Date: July 26, 2023

Plaintiffs' Note: We limited the number of issues in the agenda for this meeting to assist Defendants in preparing for substantive discussion on each topic. There are a number of critical issues for which Plaintiffs still are awaiting information from Defendants. Those information requests are repeated at the end of this agenda.

* * * * *

1. Hearing Aids
2. Pocket Talkers
3. Effective Communication of Announcements
4. Scheduling Interpreters for On-Site Medical Appointments
5. Accessible Phones
6. Outstanding Information Requests

* * * * *

1. **Hearing Aids:**

Defendants have been on notice for a year that “the quality of the CDCR issued hearing aids [is] very poor” and the two models provided are not even hearing aids by today’s standards. *See* Expert Report of Dr. Andrea Bourne (July 13, 2022). The Court Expert last year found that “hard of hearing people . . . at SATF consistently reported, in surveys and in interviews, that the hearing aids they received were of poor quality and did not work well.” Doc. 3446 at 37.

At the last workgroup meeting, CCHCS said that the recommendations of their consultant would be shared with Plaintiffs **by May 26**. Plaintiffs have not received anything. The CCHCS representative further said that they intended to start putting together a hearing aid contract “by early summer.”

Please produce the consultant’s recommendations immediately, in advance of the workgroup meeting.

Please have representatives at the workgroup meeting who have knowledge of and can discuss those recommendations and the current status of any hearing aid contract.

2. **Pocket Talkers (“PTs”):**

Pocket talkers or other Personal Sound Amplifiers (PSAs) are common accommodations for hard-of-hearing people. They may augment hearing aids or be a back-up when someone’s

hearing aids are broken. *See* Expert Report of Dr. Andrea Bourne at 11 (July 13, 2022) (finding Defendants’ current approach to issuance of pocket talkers to be “unconscionable”).

Please confirm that Defendants’ position on pocket talkers is as stated below or provide clarification:

- a) Defendants will make pocket talkers available as personal property to any individual with a DNH or DPH code. Individuals will need to request that a PT is issued to them via an 1824.
- b) Please confirm that, as personal property, PTs can accompany individuals in restrictive housing, offsite medical appointments, parole hearings, during transfer, and at all other relevant times, and will not be counted against property limits.
- c) Individuals who are issued PTs will only be personally liable for their own purposeful damage to the PT. PTs that malfunction or break due to normal wear and tear or other unavoidable causes will be replaced at no charge.
- d) Even if a facility does not yet have enough PTs to fill demand, individuals who currently request PTs—and are eligible—will be approved, placed on a waiting list, and informed that their PT will be issued as soon as it becomes available.

Please answer the following questions:

- a) What is the model of the PTs that CDCR is ordering? During our June 28 meeting, we understood that CAMU had identified a vendor and would know the model soon.
- b) How many PTs are available statewide now? How many PTs is CDCR ordering? How will they be allocated among institutions (i.e., please provide the number of PTs that will be provided to each institution)? When is the order expected to come through? What is currently happening to PT requests at institutions that do not have enough PTs?
- c) When will CDCR implement the new policy? When will new PTs be available in facilities?
- d) In our last meeting we agreed that there was a need for interim guidance and clarification on the issuance of PTs, particularly given the lack of uniform RAP responses and the frequent occurrence of improper denials on a medical basis (either using a medical necessity standard or requiring a medical referral). In particular, we’re interested in interim guidance on the distinction between the reasonable accommodation standard (which is appropriate) and the medical necessity standard (which is inappropriate) when considering PT requests. **Please provide us with that interim guidance, including the language used, the means of communication, to whom it was sent, and when.**
- e) *Pocket Talker policy*: We would like to review a draft of the new pocket talker memo. Please come ready to discuss a draft of the policy or to let us know when it will be ready for review.

- f) How would you like to proceed with accommodating class members who have requested (and been denied) pocket talkers in the past three years? Have you figured out how to identify past 1824s with pocket talker denials, as we discussed in our June 28 meeting? What kind of outreach will you do to individuals who were denied PTs? How else can we help?
- g) How will CDCR educate class members about PTs, including their function and purpose, their availability, how to operate them, and how to request one?
- h) How will PTs be identified and tracked pursuant to the Court's Order? *See* ECF No. 1046 at 6. How will PTs be tracked? Will they be identified as non-medical assistive devices in SOMS, or elsewhere?

3. **Effective Communication of Announcements:**

Plaintiffs have notified Defendants of the failure to provide effective communication of announcements to deaf and hard-of-hearing people statewide for years, and it has been on the workgroup agenda for eighteen months without any workable, durable solution from Defendants.

The problem persists. The Court Expert, in his report regarding SATF, found “that custody staff at SATF are not complying with the requirement to ensure deaf and hard of hearing people receive announcements. . . . SATF leadership cannot continue to respond to complaints by deaf and hard of hearing people about not receiving announcements by stating that staff will ensure they receive announcements. SATF leadership should audit staff compliance with the requirement to make individualized announcements to people who cannot hear the intercom.” ECF 3446 at 42.

Please come ready to discuss the following:

- a) What is/are CDCR's proposal(s) to ensure effective communication of announcements to deaf and hard of hearing people? What technology or equipment will be necessary to ensure announcements are received?
- b) At the March 8 meeting, EIS requested 60 days to give an update on their team's progress toward identifying a technology-based solution to providing an auditable system for effectively notifying deaf and hard of hearing class members of announcements. **Please provide an update.**
- c) **We would like to discuss how to audit EC to improve our shared understanding of problems and effective solutions.** Please come ready to discuss any proposed (1) objective measures to be used when auditing EC of announcements, and (2) methods of auditing. In addition, CDCR stated that it created a workgroup regarding audits of staff communication of announcements and would be open to input from the Court Expert and Plaintiffs' counsel. *See* ECF 3453 at 14. **Please provide an update on the workgroup and how (and when) the Court Expert and Plaintiffs should expect to provide input.**

- d) Will CDCR provide vibrating watches for deaf and hard of hearing individuals? We continue to receive reports that vibrating watches would help deaf people be aware of scheduled appointments. For example, deaf signers at CCWF reported continuing to miss appointments and a vibrating watch would allow them to be more independent. One reported that she cannot sleep during the day because she may miss appointments.
- e) Please report any immediate steps Defendants will take to improve effective communication of announcements, and how they can be audited.

4. **Scheduling Interpreters for On-Site Medical Appointments:**

Plaintiffs' counsel has reported for years that sign language interpreters are not consistently scheduled for class members' medical appointments. To address this concern, we have requested that healthcare schedulers be provided access to Business Information Services ("BIS"), which organizes staff interpreters' schedules each day, or have some other reliable process to schedule healthcare appointments for patients who use sign language around staff interpreters' availability. *See, e.g.,* Letter from Sophie Hart et al., Plaintiffs' Counsel, to Joe Bick, CCHCS Health Care Services, and Tamiya Davis, CDCR Office of Legal Affairs, Provision of Sign Language Interpretation During Healthcare Encounters at SATF (Apr. 24, 2023). Defendants have not yet explained how they will ensure that in-person sign language interpreters are scheduled for healthcare appointments.

During our joint monitoring tour at CMF on July 10, Deaf class members again reported that their medical appointments sometimes are rescheduled because no interpreter is available. Defendants' own sign language interpreter logs confirm that in many cases, schedulers simply forgot to request an interpreter for a class member's appointment. Despite available documentation, however, institution leadership reported that they were not familiar with the problem.

Since Defendants have not resolved this concern in response to institution-specific advocacy, we ask to add this item to the agenda. Please ensure that knowledgeable stakeholders attend the meeting to discuss the following questions:

- a) What is the process for scheduling in-person sign language interpreters for medical appointments? Who schedules sign language interpreters for different types of appointments (for example, nursing encounters, provider follow-up appointments, or radiology appointments)? On which days and during what hours are in-person interpreters available?
- b) Who is responsible for maintaining the sign language interpreter logs for healthcare appointments? How does that individual ensure that all appointments missed due to failure to schedule an interpreter appear on the logs?
- c) What are healthcare staff expected to do if they are unable to provide sign language interpretation for an appointment, including when VRI does not work?

5. **Accessible Phones**

- a) **Captioned Telephones:** At last report, Defendants had installed and implemented captioned telephones at 23 institutions with CDCR-provided phone lines, and Defendants had also directed the remaining 11 institutions with ViaPath-provided phone lines to purchase and install captioned telephones, and to develop LOPs.
- b) *Institutions with CDCR lines (23 institutions):* We have previously expressed concern with the location where captioned telephones are available. At the last workgroup meeting, Defendants said they were going to compile information from institutions about locations and how to ensure adequate access.

Please provide an update and be prepared to discuss (a) whether CDCR will make captioned telephones available within at least one housing unit per yard so that people with hearing disabilities have the same access as their peers and face fewer barriers to accessing these services, and (b) how they will ensure that there is truly confidential location where class members can use the captioned telephone for legal calls.

- c) *Institutions with ViaPath lines (11 institutions):* **Please provide an update on the progress of captioned phone installation at each of these 11 institutions. Please provide all LOPs for these institutions.**
- d) **Expanded Access to Captioned Phones and Videophones:** The tablets currently allow hearing people to make in-cell voice calls during expanded hours, including non-programming times and when a housing unit or yard is on a modified program that affects dayroom access. Similar opportunities are not extended to deaf and hard-of-hearing people who require video calling, VRS, or captioning, as these features are not currently available on the tablets. Court Expert's Report, ECF 3446 at 41-42 ("Tablets did arrive at SATF but provided neither speech-to-text nor captioning of video calls. Thus, while everyone around him could use tablets for family video calls, [a deaf class member] could not.").

As a result, deaf and hard-of-hearing people cannot make phone calls equally with their hearing peers. Following our January 2023 monitoring tour at SATF, the SATF ADA Coordinator issued a memorandum recognizing that the tablets allowing "hearing inmates the ability to use a telephone while deaf inmates are unable" is an "inequity of access to programs and activities, which the Americans with Disabilities Act (ADA) aims to prevent." The memorandum directed housing staff to allow deaf signers access to the videophones in the dayroom as a reasonable accommodation during times when hearing people were able to make voice calls in-cell.

At the March 9 meeting of this workgroup, we asked whether Defendants would issue similar direction regarding videophones statewide, and analogous direction at SATF and statewide regarding access to TTY/TDD and captioned phone services for deaf and hard-of-hearing class members who do not know sign language. Defendants stated they were open to the idea, but were not prepared to discuss, and have not responded to our written March 15 request to propose an interim solution to request this unequal access.

If true that implementation of new tablet features, including accessible phone software for deaf and hard-of-hearing people, has been paused, then there is no remedy in sight for deaf and hard-of-hearing people who currently have less telephone access than their hearing peers. Defendants must develop a policy to expand access to existing accessible phone technology to this population.

Please be prepared to discuss whether Defendants will issue statewide guidance allowing deaf and hard-of-hearing people access to the videophones, TTY/TDD, and captioned telephones in the dayroom as a reasonable accommodation during times when hearing people are able to make in-cell voice calls. If Defendants will not issue this interim guidance, please be prepared to explain why such a policy would not be required under the ADA and *Armstrong* Remedial Plan.

Additionally, please provide an update on whether Purple VRS will be available on the tablets in January 2024, since Defendants planned to make this change in advance of the tablet update freeze.

6. **Outstanding Information Requests**

Please produce the following information as soon as possible. If this information is not produced before the meeting, please be prepared to discuss the status of each request for information. Overdue requests are noted in **bold**.

Information and Documents Requested	Date of Request	Please Produce By
Visual Alarms: List of all buildings in CDCR institutions with visual alarms and type (e.g., fire alarm or the type of alarm that custody officers can operate)	10/28/22	4/7/23
Tablets: Copy of the training video	11/29/22	4/7/23
ASL Videos: Copy of the ASL TV video library “mock-up” Defendants are developing with ViaPath	1/12/23	4/7/23
Accessible Telephones: Describe in writing the interim solution that Defendants propose to correct for unequal class member access to phone calls because of the lack of captioned telephones or text-based services on the tablets. Plaintiffs request to review any draft memorandum before it is issued and can do so on an expedited basis.	3/15/23	4/7/23
VRS calls to PREA/OIG Numbers: Defendants reported that a “tag” has been added to the screen viewable to video relay	3/15/23	4/7/23

interpreters when a D/deaf person is calling the PREA or OIG hotlines indicating that the incarcerated person is allowed to leave a voicemail. Please provide a screenshot of what the video relay interpreter sees.		
Captioned Telephones: The LOPs for captioned telephones at institutions with ViaPath-managed lines.	3/15/23	4/7/23
Captioned Telephones: Confirm in writing whether institutions remain able to add devices in additional locations, and if so, whether the process differs from the initial acquisition process described in the Memo. List the institutions, if any, that have acquired additional captioned telephone and the location where the phone or phones have been installed.	3/15/23	4/7/23
Off-site Medical Encounters: CMF has elected not to include instructions on requesting interpreters for off-site medical encounters in their LOPs, but states that the institution will follow the applicable flow-charts. We request an explanation for how CMF will ensure workers know to follow these flow-charts.	5/2/23	5/12/23
Hearing Aids: Recommendations from Defendants' expert regarding hearing aids and other hearing technology.	5/12/23	6/12/23
Captioned Telephones: List of the locations where phones are placed for each institution.	5/12/23	6/12/23
Pocket Talkers: Please provide the forthcoming pocket talker memorandum to us for comment before it is finalized.	5/12/23	ASAP
EC of Announcements: Defendants' proposal to ensure effective communication of announcements for all DPH and DNH class members in time for Plaintiffs' counsel and the Court Expert to provide input prior to the Court Expert's report due date of August 24.	5/12/23	7/19/23
WebEx LOPs: Please provide the current version of the WebEx LOPs, which we understand have been revised since Defendants provided the previous versions on May 10.	6/30/23	ASAP

Status of Connectivity Assessments: Have connectivity assessments started? At what prisons? When will they be completed?	7/7/23	ASAP
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EXHIBIT 4



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July 13, 2022

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Re: *Armstrong v. Newsom*: Expert Report re Poor Quality of Hearing
Accommodations for Deaf and Hard of Hearing Class Members and
Request for Action
Our File No. 0581-03

Dear Tamiya, Lex and Bruce:

Plaintiffs' counsel has repeatedly raised concerns regarding the poor quality of the hearing aids that Defendants provide, the Soroya Flame 250 ("Flame 250") and the Rexton Arena HP3 ("Rexton").

Armstrong class members report that these hearing aids are not sufficient to ensure they have effective communication in programs, services and activities. This issue has been discussed at length in the Deaf and Hard of Hearing Working Group meetings in 2020 and 2021. It has also been raised in a succession of all parties' meetings, including on November 18, 2021, and in Joint Case Status Statements, the most recent of which was filed with the Court on May 16, 2022, *see* Dkt. No. 3412 at 17-18. In response, Defendants have refused to make changes, maintaining that the Flame 250 "amplifies sound as expected and is comfortable to wear" and that the Flame 250 is the same model provided to veterans and "used worldwide and in government-funded programs." *See* Joint Case Status Statement, Dkt. No. 3412 at 18. Defendants have not responded to Plaintiffs' concerns regarding the Rexton.

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To gain further insight into our class members' reports and assess Defendants' representations, we retained an expert in hearing aids and hearing technology, Andrea Bourne, Aud. D. Dr. Bourne has worked for the Veterans Health Administration ("VHA") in San Francisco for twenty-five years and has served as the Chief of Rehabilitation Services since 2015. She accompanied Plaintiffs' counsel for our tour of the R.J. Donovan Correctional Facility ("RJD") on May 24 and 25, 2022, where she interviewed a number of deaf and hard of hearing class members about their hearing aids and toured a large portion of the institution to better understand the listening conditions our class members face.

Based on this tour, class member interviews, and a separate document review, Dr. Bourne issued the enclosed report finding that the hearing aids and other assistive hearing technology that Defendants provide are not sufficient to ensure deaf and hard of hearing class members have effective communication in Defendants' programs, services and activities. The hearing aids provided by Defendants are far below the quality used by the VHA.

Dr. Bourne's report includes the following findings and recommendations to ensure deaf and hard of hearing class members have effective communication in Defendants' programs, services and activities:

1. Both the Flame 250 and the Rexton are of such poor quality that they may not be considered hearing aids at all, but rather "Personal Sound Amplification Products." Most notably, the hearing aids are not capable of being programmed to conform to a hearing aid prescription.
2. The Flame 250 and the Rexton are not used by the VHA or other government-funded programs. Indeed, the Rexton does not appear to be distributed in the United States at all, and neither hearing aid meets the minimum standards that the VHA has established for hearing aids.
3. The hearing aids that Defendants provide must be digitally programmable and have adaptive directional microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, active feedback suppression, tele-coil, and for class members with tinnitus (ringing in the ears), tinnitus sound generators.

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4. Defendants must increase the frequency of audiology services and the number of appointments available per month to ensure timely adjustment and repair of hearing aids.
5. Defendants must make pocket talkers readily available and provide access to FM systems in classroom settings for class members who cannot hear even with hearing aids.
6. These changes can be accomplished at reasonable cost to Defendants.

We have every reason to believe Dr. Bourne's findings and recommendations from the RJD tour apply with equal force systemwide. In response to Defendants' request, we have compiled the enclosed list of 99 class members who have raised concerns about the quality of the hearing aids that Defendants provided to them and have given permission for their names to be disclosed to Defendants. Notably, Plaintiffs' counsel has not sought to survey all 3,159 *Armstrong* class members who use hearing aids. The enclosed list reflects only those class members who have reported concerns. Where we have made a concerted effort to reach out to all class members who use hearing aids at a given institution, responses indicate that over 40% of class members have serious concerns about the quality of the hearing aids that they received.

We hope that Defendants will be amenable to making the changes Dr. Bourne recommends rapidly. To that end, **we request copies of all of Defendants' current contracts related to audiology services and assistive hearing technology, including Defendants' current contracts for hearing aids and pocket talkers, no later than August 12, 2022.** This request does not include contracts for volume-controlled telephones or amplified headphones. We further request a meeting with individuals who can answer questions about these contracts.

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We appreciate your attention to this important matter and are happy to answer any questions at the next Deaf and Hard of Hearing Working Group Meeting, currently scheduled for July 15, 2022, or at any other time.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:cg

Encl.: Dr. Bourne Report, List of Hearing Aid Complaints

cc: Nicholas Meyer	Mona Houston	Tammy Foss
Alexander Powell	Chantel Quint	Robin Hart
Patricia Ferguson	Jillian Hernandez	CCHCS Accountability
Gannon Johnson	Dawn Lorey	Joseph Williams
Chor Thao	Laurie Hoogland	Cathy Jefferson
Amber Lopez	Robert Gaultney	Amy Padilla
Robin Stringer	Saundra Alvarez	Jason Anderson
OLA <i>Armstrong</i>	Vimal Singh	Olga Dobrynina
Olena Likhachova	Joseph Edwards	Kandie Smith
Trace Maiorino	Lynda Robinson	Monique Matthis
Sean Lodholz	Barb Pires	Gloria Fernandez
Mark Jackson	Courtney Andrade	Yvonne Anaya
Sharon Garske	Miguel Solis	Christina Sachao
Ngoc Vo	Dawn Stevens	Claudia Williams
Lois Welch	Alexandra Tonis	Gently Armedo
Steven Faris	Jimmy Ly	Joshua Leon Guerrero
Jason Anderson	Jay Powell	Aaron Perez
Ed Swanson		
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Bourne Report RJD *Armstrong* Tour

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Introduction

I am a state-licensed audiologist with over 25 years of clinical experience. I have worked for the Veterans Health Administration (VHA) for 25 years gaining extensive experience in auditory rehabilitation. I have completed thousands of hearing aid evaluations and hearing aid fittings over the past 25 at the VHA. I conduct medical/legal audiology exams for the Veterans Benefits Administration (VBA), and I have written hundreds of medical opinions on hearing loss and/or tinnitus. I am a leader in Audiology Clinical Video Telehealth (Tele-Audiology) and lead one of the largest Tele-Audiology programs in the United States. Over the past eight years I started several Tele-Audiology programs across Northern California including the California State Veterans Home in Yountville. The Tele-Audiology programs serve thousands of veterans each year to treat their hearing health care needs. I am also an adjunct professor at the University of Pacific (UOP) Doctor of Audiology Program working as a preceptor in clinic and providing classroom instruction. In all my clinical environments I work with individuals from a wide range of socio-economic backgrounds. I am an expert at evaluating hearing aid needs and fitting a wide range of hearing aid technology from refurbished hearing aids donated from the Ear of the Lion Hearing Foundation to high-end premium technology.

I was asked to assess the quality of the hearing aids and other hearing technology available to deaf and hard of hearing individuals incarcerated in the California Department of Corrections and Rehabilitation (CDCR), and to offer an opinion on any hearing technology that CDCR uses to ensure deaf and hard of hearing people have equal access to the programs, services and activities in CDCR. I accompanied RBGG attorney Caroline Jackson on a visit to R.J. Donovan Correctional Facility (RJD) on May 24 and 25, 2022. We interviewed nine deaf and hard of hearing individuals housed at RJD, eight of whom gave permission to share the information disclosed in the interview with CDCR. Although CDCR declined to allow me to examine these individuals, I was able to visually inspect their hearing aids. I also did not have the opportunity to subjectively assess the hearing aid volume or sound quality of any CDCR hearing aids using customary equipment, such as a listening stethoscope, as CDCR denied permission for this as well.

Prior to the tour, I was provided several documents to review. These documents included the medical records of most interviewees, reflecting their appointments with the audiology providers and the Ear Nose and Throat (ENT) specialists they had seen while

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in CDCR custody, going back to 2018. Documents also included survey responses from eight of the nine interviewees regarding their experience using the hearing aids available to them and their experience attempting to communicate with institutional staff, and a report that Plaintiffs' counsel drafted regarding their interviews of deaf and hard of hearing class members in August of 2021. I also reviewed documents describing the specifications of the Flame-250 and Rexton Arena HP3 hearing aids, the ones currently in use by CDCR. Following the tour, I received a list dated 6/2/2022 of all *Armstrong* class members including their disability code and durable medical equipment.

We toured several different environments, including housing units on Facilities A and E, medical facilities on Facility A and E, the Triage and Treatment Area, the several rooms used by the Board of Parole Hearings, and a variety of mental health, educational, rehabilitative, and vocational programming spaces on Facilities A, B, and E. As part of my research relating to this report, I also reviewed the VA National Hearing Aid and Wireless Accessories contract for the period 11/1/2019 through 10/31/2024, FDA Regulation of Hearing Aids, Medi-Cal Hearing Aid Program Coverage, other State Department of Human Services Hearing Aid Programs, Soroya Hearing Technology, and Rexton Hearing Technology. Finally, I have been provided excerpts of Defendants' statements in recent Case Management Conference Statements, reflecting CDCR's position of the hearing aids they provide.

Overall, I found the quality of the CDCR issued hearing aids to be very poor. In fact, I would describe the Flame 250 and Rexton HP3 as Personal Sound Amplification Products (PSAP) rather than hearing aids by today's standards. These products do not have the ability to be tailored to the individual's frequency specific hearing impairment needs. Hearing aids are the gold standard for treating hearing loss and hearing aids should be calibrated to amplify specifically the sounds a person no longer hears. The CDCR hearing aids are not capable of adjusting amplified sounds to meet the person's unique hearing loss. Current modern hearing aid technology can be either basic or advanced, depending on the brand or model, but even basic modern hearing aids are far more advanced and customizable than the CDCR hearing aids. The CDCR hearing aids are not equipped with modern technology such as digitally programmable capabilities, adaptive directional microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, active feedback suppression, and tinnitus sound generators. Even the low-cost, refurbished hearing aids I fit to very low-income individuals eligible through the Ear of the Lion Foundation are digitally programmable and are much high quality than the CDCR hearing aids.

There is also no evidence that verification measurements of hearing aid function are obtained when fitting CDCR hearing aids. I have explained this need in greater detail in the audiology services section below.

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The current CDCR issued hearing aids significantly reduce access to important speech information not only during daily listening and communication experiences deaf and hearing individuals encounter with institutional staff and other incarcerated people, but also in classroom lectures and discussions in all CDCR's educational, vocation, rehabilitative, and mental health programming. Most structured and unstructured environments at RJD have high levels of background noise and are not equipped with sound absorbing materials to reduce reverberation and increase listening ease. Even the yard announcements (Facilities A and E) were very distorted and had garbled speech. It was very difficult to understand the announcement even with my normal hearing sensitivity. Also, depending on where I was standing in the yard, if too close to the speaker the signal was so loud and sharp it was painful to hear.

I was also concerned that RJD appears to provide only hearing aids for individual use. I believe many of the individuals at RJD would benefit from having a personal sound amplifier such as a pocket talker, in addition to hearing aids. This is especially important given the infrequency of available on-site audiology services and the need to have uninterrupted hearing assistance in all daily activities for the safety and welfare of people living with hearing loss. It may ultimately be necessary to provide FM systems and other technology to maximize the benefit individuals can receive from their hearing aids and to ensure equal access to CDCR educational, vocation, rehabilitative, and mental health programming.

I. Overview Of CDCR: Hearing Aid Users And Available Assistive Hearing Technology

As of June 2, 2022, the California Department of Corrections and Rehabilitation (CDCR) reports having at least 3,102 hearing aid users who are also *Armstrong* class members housed at any of 34 prisons statewide.¹ The RJ Donovan Correctional Facility houses 237 hearing aid users who are also *Armstrong* class members.

At present, I understand that CDCR provides hearing aids as treatment for hearing loss and may have Personal Sound Amplifiers (PSAPs) available in certain spaces to loan temporarily to people whose hearing aids are not working or who have difficulty hearing. CDCR currently provides either of two models of hearing aids: the Flame-250, which is manufactured by Soroya, and the Rexton Arena HP3. I further understand that CDCR

¹ The data I reviewed included 54 individuals statewide who were listed as having hearing aids but did not have either of the codes I am told indicates having an identified hearing disability. From what I understand, there may be others who have hearing aids but who do not appear on the list of *Armstrong* class members that Plaintiffs' counsel provided to me. At RJD, there were 14 individuals listed as having hearing aids who did not have a corresponding code indicating a hearing disability.

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provides the Flame-250 as a matter of course, and provides the Rexton Arena to individuals with more specialized needs.

I saw no indication that CDCR provides any other listening technology to incarcerated people for routine, personal use. When I toured RJD, I noted that PSAPs were available in each medical clinic we toured and were available near the offices where Incarcerated person Classification Committee and disciplinary hearings were held. I was told that these devices were available on loan during the encounter itself, but were not issued to any individual for their own personal use. In reviewing the CMC statements, I learned that CDCR does not provide FM systems or any other technology designed to supplement hearing aids in more challenging listening environments.

II. Hearing Aids Are Outdated, The Quality Is Poor, And There Is No Evidence Of Hearing Aid Verification

The hearing aids offered by the CDCR are poor quality, are not digitally programmable which is a current industry standard in order to be properly fit to a person's unique hearing loss configuration and listening needs, and there is no evidence of objective hearing aid fitting verification. The negative effects of these CDCR hearing aids include restricted access to classroom lectures and discussions in CDCR's educational, vocation, rehabilitative, and mental health programming. To obtain optimal benefit hearing aids should be adjusted to match the prescriptive amplification needs of an individual and the fitting properly verified with probe microphone measurements. Well researched prescriptive formulas have been available and used to properly fit hearing aids for decades. Prescriptive formulas do not appear to be used to fit CDCR issued hearing aids. The actual fitting of the device is not just about ensuring it physically fits comfortably in the person's ear, but that it has the correct programming to meet the person's frequency specific impairment needs and the fitting is objectively verified.

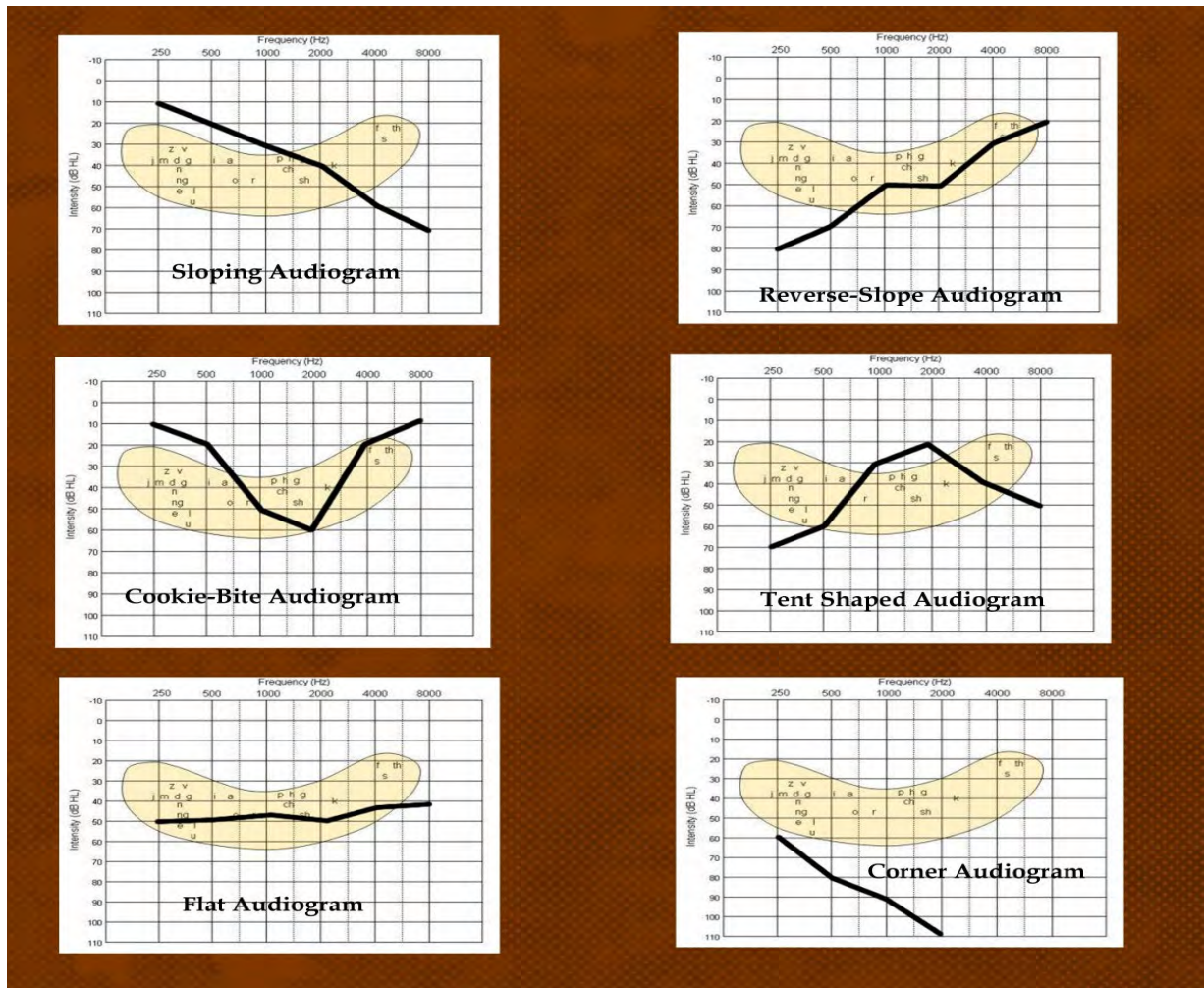
A. Features That CDCR's Hearing Aids Should Have And Why These Features Are Important

Hearing impaired listeners struggle to comprehend information when background noise is present much more than normal hearing listeners. The CDCR hearing aids I examined do not have the necessary noise reduction strategies for steady state and transient noise. Digital noise reduction is a nearly universal feature in modern hearing aids to reduce listening effort and fatigue for individuals with hearing impairment. Hearing loss causes degraded speech signals to be sent to the brain and consequently more cognitive resources are applied to speech reception. This results in fewer cognitive resources available for other tasks such as memory and comprehension. Deaf and hard of hearing individuals are disadvantaged in nearly every CDCR environment compared to normal hearing individuals because their increased listening effort reduces their memory, concentration and other cognitive resources. While the cost of modern hearing aids may

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be higher than the current models CDCR uses, the value pays for itself when you consider the wide range of health benefits properly fit hearing aids offer. The negative effects of untreated or insufficiently treated hearing loss include restricted ability to interact with other people; missing vital information, especially in emergency situations, which can lead to unpleasant encounters; heightened stress or anxiety due to the extra effort of understanding the world; and unnecessary fatigue from heightened stress and anxiety.

People have different degrees of hearing loss at different frequencies and the amplified sound should be shaped and fine-tuned for their loss. As you can see in the picture below hearing loss comes in many different configurations. To meet the goal of providing amplification to optimize speech understanding, especially in difficult listening environments, hearing aids need to be capable of adjusting separate frequencies bands across the entire speech spectrum.



The CDCR issued hearing aids offer very limited adjustments to accommodate different hearing loss configurations. After reviewing the Rexton Arena HP3 Technical

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Data sheet I am unclear if the Rexton has any control other than volume control. The Flame 250 is also problematic: its two potentiometers can only adjust a broad band of low frequency amplification, e.g., gain below 1000 Hz gets reduced up to 20 dB, and total hearing aid output. By contrast, Modern digitally programmable hearing aids can be tailored to a person's precise hearing threshold levels, e.g., increasing 2000-Hz sounds by 10 dB, 2500-Hz sounds by 15 dB and 3000-Hz sounds by 30 dB. These gain adjustments can be adjusted differently for soft, average and loud input levels as well as total output levels for specific frequency bands.

It is also important for hearing aids to offer options for treating ringing in the ears, a condition called tinnitus that is very common among people with hearing loss. I did not see any indication that either hearing aid has options for treating tinnitus, such as a tinnitus sound generator. Such options are standard in most hearing aids and can be essential treatment for people with tinnitus, because the ringing in their ears can prevent them from hearing and understanding sound even with properly fit hearing aids, especially in noisy or complicated listening conditions.

B. The Flame-250 And Rexton Arena HP3 Are Not Used By The VA And Cannot Be Made Adequate Simply By Better Adjustments

I was informed that Defendants have stated that the hearing aids they provide to incarcerated individuals are the same devices that the VA provides to veterans. This is not correct. I have worked as a clinical audiologist for the Veterans Health Administration for 25 years and I can attest that these hearing aids are not offered by the VA and fall well below the minimum standards that the VA requires for hearing aids. The US government has the largest hearing aid program in the country which is used in the Veterans Administration for veterans accessing VA Health Care. It is available to ensure veterans can actively participate in their health care. The VA contract is arranged with a list of several minimal requirements, such as digitally programmable capabilities, adaptive directional microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, and active feedback suppression. *Neither the Flame 250 nor the Rexton Arena HP3 hearing aids would meet minimum acceptable standards in the VA program.*

According to the Defendants' statement, "Patients may need to be educated on using different settings for complaints of quality or fitted with different tips for complaints of discomfort." However, without the ability to adjust the additional programs to the person's unique hearing loss prescription, the additional settings offer little benefit. Furthermore, while the non-custom tips used on hearing aids typically come in various sizes such as small, medium and large, even more important is the venting properties in the domes to help shape the proper frequency response and low and high frequency amplification needs of each patient. The CDCR hearing aids coupled with domes I observed at RJD did not have any venting properties. All the domes appeared to

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be closed domes. This can be a problem because closed domes can occlude the ear canal and increase the low frequency amplification which is not always appropriate and can make amplified sound and the person's own voice sound too hollow and unnatural. In general people with mild to moderate hearing loss benefit more from vented domes and people with moderate to severe hearing loss benefit more from closed domes.

Most of the major hearing aid companies in the United States offer very low MediCal pricing of \$199-\$300 per device for modern entry level hearing aids. In addition, several states have negotiated contracts with very low pricing for high quality hearing aids. Why does the CDCR provide such low-quality hearing aids when low-cost, high-quality devices are readily available? Surely they can do better for the 3,102 hearing aid people who are relying on CDCR to provide for their hearing health care needs and are powerless to obtain any quality devices on their own despite repeated requests for better quality hearing aids.

C. The Rexton Arena HP3 Is Poor Quality and Does Not Appear Intended For Sale In The United States

The Rexton Headquarters in the United States has never heard of the Arena HP3 device. I contacted the Rexton company by telephone to inquire about the Arena HP3 device and if it had a telecoil. They could not answer my questions and stated the Arena HP2 was discontinued in 2015 and there was no record of an HP3 manufactured by Rexton. The specifications of the device described as the Rexton Arena HP3 are unclear because the documents Defendants shared contain conflicting information. The Defendants shared a document of an online advertisement from "Professional Hearing Solutions (Pvt.Ltd), Pakistan's Best Hearing Aids & Audiology Center". The advertisement lists "With: Telecoil" and lists "Maximum Power Gain: 110 dB". This advertisement is not consistent with the Rexton Arena HP3 technical specification sheets the Defendants provided which list a Maximum Power of 140 dB SPL and does not list a telecoil. Based on this conflicting information, it is difficult to know the specifications of the Rexton Arena HP3 without further testing.

I had the opportunity to interview two individuals who used the Rexton: Mr. [REDACTED], and Mr. [REDACTED]. Both men were quite dissatisfied with the Rexton hearing aid. Mr. [REDACTED] said his did not work at all, whereas a pocket talker he used previously worked well for him. Mr. [REDACTED], who has used hearing aids for most of his life, had stopped using the hearing aid due to it providing little benefit. Based on a review of the hearing aid dispensers' progress notes it does not appear any of the hearing aids are fitted to any prescriptive formula or tested in any objective way to ensure at least soft speech is audible, normal speech is comfortable and loud speech is tolerable. Also critical in all hearing aid fittings is to ensure the maximum power output does not exceed the patients comfort level. Special precautions need to be taken for hearing aids like the Rexton with a maximum output above 132 dB, to avoid further damaging users' hearing.

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D. The Flame 250 Is Poor Quality And Does Not Appear To Be Widely Used In The United States

According to the Defendants, the Flame 250 is used worldwide and in government-funded programs including CDCR. This consultant was unable to identify any other US government funded hearing aid programs using the Flame 250. The Flame 250 does not list a telecoil in its technical specification sheet and likely does not have one. The Flame 250 is advertised online as a cheap hearing aid. While it may be a very low-cost device, it is unacceptable because the Flame aid is not digitally programmable and cannot be custom fit to an individual's hearing loss. The device only offers two potentiometers to adjust the frequency response: low cut and output control. These two controls are inadequate to adjust the frequency response to a person's prescriptive needs. Modern hearing aids can adjust several bands of frequencies from three to twenty in small dB increments and can adjust the bands differently for soft, average and loud input sounds as well as for maximum power levels. These changes can be performed in each of the three (or more) programs to maximize hearing for unique listening environments. One program may be for quiet listening environments, one program for noisy environments, another for classroom or telephone/telecoil. The three programs in the Flame 250 cannot be individually adjusted to meet the person's needs. Based on a review of the hearing aid dispensers' progress notes, it does not appear any of the hearing aids are fitted to any prescriptive formula or tested in any objective way to ensure at least soft speech is audible, normal speech is comfortable and loud speech is tolerable.

I had the opportunity to interview several individuals who use the Flame 250: Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED], as well as others who did not want their names disclosed. Each of them was very dissatisfied with the Flame 250's unnatural sound quality, lack of adjustable programs, lack of telecoil, and physical discomfort. Mr. [REDACTED] who had been using hearing aids since 2008, said the Flame 250 was much lower quality than the hearing aid he initially got when living in the community. When I looked at class members' Flame-250s I asked them about the telecoil option. Two individuals interviewed (Mr. [REDACTED] and Mr. [REDACTED]) were aware of the t-coil option and how to use it. They both said it didn't work. I was unable to determine whether this was due to the Flame-250 not having a working telecoil option or the telephone not having an induction loop. I understand that Plaintiffs' counsel has asked CDCR if the telephones in the dayrooms at RJD have induction loops, but as of the date of the report, Plaintiffs' counsel had not received a response.

All hearing aids that CDCR provides must be digitally programmable hearing aids with adaptive directional microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, active feedback suppression and telecoils. Individuals with tinnitus should have access to hearing aids with tinnitus sound generators. These hearing aids must be digitally programmed using software to conform to the prescriptive hearing needs of each

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individual and probe microphone measurements must be used to confirm adequate access to acoustic information for speech communication. CDCR may be able to take advantage of the very low MediCal pricing or other state contract pricing options to purchase modern digitally programmable hearing aids at a reduced cost range of \$200-\$300 per device.

III. The Prison Environment Necessitates Up-to-Date Hearing Technology

I toured the following areas at RJD to observe the acoustic environment and to learn about the type of communication tasks that incarcerated individuals typically perform in that environment:

- The visiting rooms for Facility D, including the enclosed courtyard immediately outside the visiting room, and for Facility E;
- Two housing units in Facility A and one in Facility E;
- The medical clinic in Facilities A and E;
- The Mental Health Services Delivery buildings for Facilities A and E;
- The Recreation Room for Facility A;
- The Chapel for Facility A;
- The recreation yard for Facilities A and E;
- The areas where Classification Committee meetings and disciplinary hearings take place on Facilities A and E;
- Academic classrooms on Facility B;
- ISUDT programming area in Facility B;
- The carpentry classroom in Facility B, including the enclosed classroom within the carpentry suite;
- The chow hall on Facility E;
- Several classrooms on Facility E, including one immediately off the yard, one adjacent to a housing unit dayroom, one adjacent to a lobby area in a housing unit, and one off a hallway near the computer lab;
- The Triage and Treatment area;

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- The Board of Parole Hearings building, including three of the four rooms in which parole hearings, court appearances, and attorney video visits take place;
 - The Reception and Receiving building; and,
 - The PIA shoe factory.
- A. RJD Has Many Challenging Listening Environments That Require Advanced Hearing Technology To Be Able To Hear Adequately In These Settings**

RJD presented a challenging communication environment, especially for deaf and hard of hearing individuals. Most of the RJD environments had challenging listening environments which included large rooms with high ceilings, flat, hard surfaces and open floor plans. These are inherently difficult listening environments for anyone with hearing loss, yet this is a typical environment I observed at the RJD facility. In these types of environments there is significant reverberation which degrades the speech signal, especially for people with hearing impairment. In typical listening situations, sound reaches our ears directly from a source as well as indirectly via reflections known as reverberation. Since reflections follow a longer path, they arrive later, thus distorting the direct sound from a source. Such distortions have a negative impact on speech intelligibility.

The most challenging listening environments appeared to be spaces where socialization takes place, as opposed to formal programming. The three areas that stood out to me most were the housing units in Facility A, the visiting area, and the recreation yard. The housing units had high ceilings and many hard surfaces creating reverberation, as well as poor lighting that would make it difficult for individuals with hearing loss to use visual cues to supplement their hearing. The visiting area was a large room with a loud air filter and several vending machines running. I expect that when multiple families or groups visit in the room simultaneously, the noise level would increase quickly, making it nearly impossible for a person with hearing loss to understand other speakers. The yard was chaotic with frequent announcements being made over a public address system. The sound quality of the public address system was so poor that it was difficult to understand and, depending on where I stood, painful to hear. Further, the frequent announcements created ongoing background noise that would interfere with the ability of any person with hearing loss to understand their conversation partner.

Although most formal programming did not take place in these environments, they presented a challenge for individuals with hearing loss to have even basic conversations or to communicate with correctional officers. **Anyone attempting to use hearing aids in these environments would need the hearing aids to have adaptive directional**

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microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, and active feedback suppression to allow them to hear in the presence of such loud background noise and to prevent the many loud noises from hurting their ears.

With the exception of the chapel and the recreation room, spaces for formal programming generally had better listening environments. The areas were quiet and had at least a modicum of sound absorption to minimize reverberation. **Even with these good listening conditions, however, individuals with hearing loss still need hearing aids that have adaptive directional microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, and active feedback suppression.**

B. Recommendations For Additional Hearing Technology And Other Accommodations

Even in an ideal listening environment, many people with hearing loss require additional technology to supplement their hearing aids. This technology can include PSAPs, FM systems, or other types of assistive listening devices. . Those who do not hear well enough to understand speech regardless of amplification may require text-based services to ensure communication access.

1. PSAPs, Especially Pocket Talkers, Should Be Made Routinely Available To Class Members

In drafting this report, I reviewed a memo that I was told that CDCR was preparing to implement systemwide regarding issuing PSAPs to deaf and hard of hearing incarcerated people. The memo stated that PSAPs are not recommended by medical and hearing aid specialists to meet the needs of individuals with hearing loss, and it allows healthcare staff to issue a PSAP only “if the incarcerated person has been diagnosed with permanent hearing impairment and has had a formal audiology evaluation where no other options exist in accommodating the incarcerated person’s hearing loss.”

I consider this approach unconscionable. Medical and hearing aid specialists typically do recommend hearing aids rather than PSAPs to meet the needs of individuals with hearing loss, but the two are not mutually exclusive. This is especially true with the CDCR hearing aids, given their poor quality and the time it takes to access hearing health care and hearing aid maintenance. Although a person's hearing disability is invisible, it still requires access to amplification every day and in all listening situations. At the VA, we receive several consults a week from physicians requesting pocket talkers for patients, despite current hearing aid use. There are many reasons why a person will benefit from both hearing aids and a personal amplifier, and on average we issue about 30-40 Pocket Talkers per month. Many of our older patients prefer Pocket Talkers to hearing aids because the controls are easier to use and because they are easier to take on an off. We

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dispense the William Sound Pocket Talker Ultra 2.0 because this model with comes with a tone control and telecoil option and offers improved sound quality compared to previous models. Tone control allows the user to have greater amplification of high or low frequencies, depending on their hearing needs. In general, Pocket Talker is a brand of PSAP that is higher quality than other brands.

I recommend that CDCR offer the William Sound Pocket Talker Ultra 2.0 to every person who has been determined to require hearing aids as a back-up for when their hearing aids go down. The cost of the Williams Sound Pocket Talker Ultra 2.0 is approximately \$100.00 per unit. If CDCR is unwilling to provide a Pocket Talker to everyone, at a minimum CDCR should provide Pocket Talkers (1) temporarily to anyone whose hearing aids are not working, so they can use it until they receive new batteries or can have the hearing aid fixed; and (2) permanently to anyone who reports not being able to hear well enough in certain environments with hearing aids alone, and it is determined that a Pocket Talker would provide additional benefit. Because audiology services are provided only once a month, it would not be unusual for someone to wait weeks for an audiology appointment when their hearing aids break. For most hearing aid users, it will not be enough to ask everyone to just speak louder, hearing aid users still need to have amplification in most environments. Not everyone will want a Pocket Talker, however several of the class members interviewed stated that they got more benefit from using a Pocket Talker than from hearing aids alone. It is important to have Pocket Talkers available to meet the needs of this population, in addition to providing Pocket Talkers as back-up for people who will benefit from them when their hearing aids go down.

2. Hearing Aid Users May Also Need Access To FM Systems in Classroom Settings

Even in an ideal listening environment, hearing aid users may require an FM system to have full access, especially in a of group environment or classroom. It is important to note that background noise as minimal as coughing or shuffling papers can interfere with a student's ability to understand the instructor if the student has hearing loss.

There are several different kinds of FM systems that can cost as low as \$100-300 dollars. When there is no sound system in use, FM systems can include either individual or area microphones. An individual microphone is given to an individual speaker, such as the instructor for a class, so that everything said into the microphone will go directly to the hearing aids or headphones of the person listening and they will not have interference from other background noise. This type of microphone is particularly effective in environments with a primary speaker, such as lecture-based courses. Area microphones can be installed to pick up all sound within a certain proximity to the microphone. This type of microphone is more effective for discussion-heavy settings where there is no primary speaker and turn-taking is not well controlled.

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In my opinion, CDCR should make sure that FM systems are available to individuals who use hearing aids and cannot hear and understand in academic, substance abuse and/or vocational classes and discussion groups, so that auditory access is complete and so that incidental background noise from the hallway or from other students does not interfere with their access to the group.

FM systems and induction loops pair with hearing aids through the telecoil setting. It would be necessary for the hearing aids the CDCR provides to have a working telecoil setting in order for hearing aid users to benefit from an FM system.

IV. RJD Audiology Services Are Insufficient to Ensure Appropriate Hearing Aid Quality

I was not able to provide an in-depth analysis of the audiology services available because I have not had the opportunity to observe audiology appointments nor to ask questions of the providers to determine the direction they have received. Based on interviews with class members, a tour of the facility, and review of audiology records, my overall impression of the CDCR hearing aid program is poor. It is an inadequate program because it denies class members decent hearing aids with modern technology to improve their hearing ability and ease of listening in the inherently noisy listening environments at RJD. Large rooms with high ceilings, flat, hard surfaces and open floor plans are difficult listening environments for anyone with hearing loss, yet this is a typical environment I observed at the RJD facility. It is also inadequate because audiology providers do not appear to have sufficient tools, i.e., real ear equipment and computerized hearing aid programming capability, or time with patients to properly adjust hearing aids to fully meet patients' listening needs, including both the hearing prescription itself and the proper fit of the device.

A. Hearing Tests Are Inadequate To Identify The Accommodations Necessary To Ensure Effective Communication

I was told that the only piece of equipment used to conduct audiology testing and hearing aid fittings is a portable audiometer. While portable audiometers are capable of valid diagnostic testing, the reviewed CDCR audiograms do not list the make and model of the equipment or the calibration date. This information would be helpful in assessing the exam quality. I reviewed several audiograms and audiology reports conducted by the hearing aid dispensers and there were some audiograms with incomplete information. It also does not appear that class member's middle ear function is being evaluated during audiology examinations or at least none of the information is documented. The purpose of assessing middle ear function is to ensure the tympanic membrane is intact and the ossicles (malleus, incus and stapes) are transmitting sound waves to the inner ear. It also does not appear that RJD audiologists routinely test a person's ability to understand speech with or without hearing aids. This test is necessary to determine whether and how

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much using a hearing aid will improve the person's ability to understand speech. This test can be conducted both under perfect listening conditions (i.e., with no background noise), and under varying levels of background noise, known as the Speech-in-Noise Test or SIN. **In my opinion, every person with suspected or identified hearing loss should receive a comprehensive hearing test every other year that includes tests of pure tone air and bone conduction, middle ear function, their ability to understand speech in quiet, and Speech-in-Noise Testing. There should also be routine supervision by a supervisor to ensure that audiology reports are complete.**

B. Hearing Aid Fittings Are Inadequate To Ensure Hearing Aid Fits And Works Effectively

There is also no evidence that verification measurements of hearing aid function are obtained when fitting CDCR hearing aids at RJD. Verification of a hearing aid fitting is an objective measure (often referred to as real-ear measurements or probe-microphone measurements) that ensures the hearing aid is operating appropriately for soft, average and loud speech input levels, as well as testing the frequency specific maximum power output to ensure it is tolerable. Audiology best practices guidelines state that probe microphone measurements should be completed to ensure that hearing aid gain and output meet prescribed targets. Currently, probe microphone measurements are the gold standard to verify hearing aid fittings and are the only way to ensure the aid is providing an audible signal. Based on the audiology progress notes and the information from the class member interviews there does not appear to be any probe microphone equipment to verify the hearing aid fittings. **In my opinion, every hearing aid fitting must include probe microphone measurements to confirm adequate access to acoustic information for speech communication.**

C. Audiology Services Are Inadequate To Meet Demand

Unfortunately, there was not a dedicated space for audiology services. I learned audiology services are only available one day each month and staffed by a hearing aid dispenser. Monthly services are not adequate to provide the needed follow up for aural rehabilitation and timely hearing aid maintenance, as it necessarily will result in patients waiting weeks or longer before having their hearing aids fixed. Because CDCR currently does not provide any form of back-up amplification, these individuals spend that time without access to much of the programming otherwise available to them in prison.

Seeing just 20 or 25 patients per month also is not sufficient to meet demand. I am told that RJD currently houses approximately 240 individuals who use hearing aids. A clinic seeing 20 patients per month will only be able to see each individual once per year. In my clinic at the VA, we expect to see patients twice per year, and more often if they are elderly or are having trouble with their hearing aids. These mid-year check-ups are necessary to ensure hearing aids are working properly and to catch problems in the early

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stages before the hearing aid becomes unusable for a period of time. **In my opinion, an audiology practice like RJD's with 237 patients should expect to have approximately 500 available appointments annually, to ensure that each individual can have 1-2 appointments per year and more as needed. Appointments should be available weekly to ensure patients do not have to wait longer than necessary without hearing access. Once RJD has the equipment and technology to provide a comprehensive appointment, each hearing test and hearing aid fitting appointment should be expected to last approximately one hour. The hearing aid follow up, maintenance, and trouble-shooting appointments should be expected to last approximately 30 minutes.**

D. Audiology Appears Not To Educate Class Members On Strategies To Maximize Their Hearing For Effective Communication

Of the audiology notes I reviewed, none documented reviewing aural rehabilitation or listening strategies for class members. Aural rehabilitation and listening strategies include how to prepare for encounters to maximum the ability to understand what people say, and how to ask for repetition in a way that will not anger the other conversation participant. These services are a routine and essential part of the services that we provide to ensure people with hearing losses can access their environments. **In my opinion, audiology providers should routinely provide aural rehabilitation to their incarcerated patients.**

V. Summary Of Recommendations

Significant improvements need to be made in the quality of hearing aids provided and the timely subsequent follow up care to meet the individual hearing health care needs of class members. The CDCR audiology program is inconsistent with the CDCR Vision and Mission ensuring individuals are equipped for active participation in rehabilitative and restorative justice programs. Immediate improvements to the CDCR audiology program are necessary to allow class members access to CDCR's educational, vocation, rehabilitative, and mental health programming. The following is a list of recommended additions to the current audiology services:

Class members require access to modern hearing aid technology with digitally programmable hearing aids with adaptive directional microphone technology, adaptive signal processing, noise reduction strategies for steady state and transient noise, active feedback suppression and telecoils.

All CDCR hearing aids must have functional telecoils to support effective telephone communication and access looped signals.

Individuals with tinnitus should have access to hearing aids with tinnitus sound generators.

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CDCR should take advantage of the very low MediCal pricing or other state contract pricing options to purchase modern digitally programmable hearing aids for all deaf and hard of hearing class members who would benefit from hearing aids.

FM systems should be available during academic, rehabilitative, vocational or college courses to increase access to speech signals and reduce distracting background noises for those who cannot otherwise participate.

Hard of hearing class members require a quality personal amplifier such as the William Sound Pocket Talker Ultra 2.0 as an addition to their hearing aids in the event the hearing aids are not functioning. This model comes with a tone control and telecoil option and offers improved sound quality compared to previous models.

Timely hearing health care must be available and CDCR should increase from monthly to weekly audiology services to ensure hearing aid problems can be resolved in a timely manner. Consider offering Tele-Audiology services to supplement face to face care to reduce delays in hearing aid services.

Probe microphone measurements must be used to confirm adequate access to acoustic information for speech communication.

In addition, I would like observe one or more audiology appointments and have the opportunity to interview a provider regarding their approach.

I appreciate the opportunity to participate in this important work. Please let me know if I can be of any additional service to the deaf and hard of hearing class members in the CDCR system.

Sincerely,

Andrea L. Bourne, Au.D. CCC-A

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Appendix A: Class Member Interviews

My recommendations arise in part from my interviews with the class members below, review of selected documents from their medical records, and where available, review of their response to a survey describing their experience using their hearing aids in the listening environments in prison. Interviewees included individuals using the Flame 250 and Rexton Area HP3 hearing aids, as well as individuals who had reported barriers to accessing audiology services and/or obtaining hearing aids. I have limited summaries to those individuals whom medical records indicated used either the Flame 250 or the Rexton Arena HP3 and who gave permission for me to share their information with CDCR.

A. [REDACTED]

Mr. [REDACTED]'s lack of modern hearing technology is limiting his access to CDCR's medical, educational, vocation, rehabilitative, and mental health programming. Mr. [REDACTED] reports dissatisfaction with his CDCR hearing aids. He appeared to be wearing a Flame 250. He reports a lot of problems with whistling and feedback, especially when he turns up the hearing aid volume. He states the CDCR hearing aid does not give him benefit in any listening situation. He has tried all three settings and he still cannot understand speech. He was told the hearing aid has a telecoil, but he reports it does not work. He reported he has worn digitally programmable hearing aids in the past and he could hear much better. He indicated that previous aids he used outside of the prison system worked much better because the aids were fine tuned to his unique hearing loss configuration. He reported that he has tried pocket talkers and FM systems in the past but neither provided him noticeable benefit.

B. [REDACTED]

Mr. [REDACTED]'s audiogram results from 5/13/19 reveal a bilateral mixed hearing loss. The test appears complete. He was seen by an ENT physician, diagnosed with otosclerosis and cleared for binaural amplification. He was fit with Flame 250 BTE aids on 10/3/19. Both aids were replaced with new Flame 250 aids on 3/23/22. He does not like the Flame 250 hearing aids. He is dissatisfied with the hollow sound he hears, and he wants hearing aids that provide a more natural sound quality and are rechargeable to eliminate the need to frequently replace batteries. He also reported that Flame 250 hearing aids are not physically comfortable and do not stay seated in his ears securely. He reported he often needs more volume but experiences feedback when he increases the hearing aid volume. He reported he was told he had a program for background noise and for the telephone but could not make these settings work properly.

He has been working in the RJD shoe factory for the past 10 years. He is unable to hear and communicate without his hearing aids. For the safety of himself and others he chooses to wear his hearing aids rather than hearing protection while at work. He reports

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significant difficulty hearing and understanding speech and needs frequent repetition before understanding speech. He reports the need to wear a face mask has interfered with his successful hearing aid use and he wants hearing aids that go inside of his ears rather than behind his ears. He reports his hearing aids have poor sound quality and amplify too much background noise. He also reports it takes approximately three months to get a hearing aid repaired or replaced. He has stopped attending groups and educational classes because he cannot hear well enough to actively participate. In addition, he reported he misses important announcements and he nearly missed attending our meeting due to the lack of speech audibility and clarity while wearing the Flame 250.

C. [REDACTED]

Mr. [REDACTED] had a hearing test completed on 11/19/20 with pure tone aid and bone conduction results documented on the audiogram. The test results showed a moderate to severe sensorineural hearing loss. Speech testing was not completed so his word recognition ability is unknown at this time. This makes it difficult to set expectations for hearing aid benefit. Mr. [REDACTED] was issued two Flame 250 hearing aids on 11/19/20. He is dissatisfied with the hearing aids because they amplify too much background noise and do not provide good speech clarity. He reports he cannot understand speech, especially high frequency female voices. He cannot adjust the Flame 250 hearing aids. He reported his hearing aids have a high, medium and low program but the different programs do not make speech clearer, just louder. He has not tried using a telecoil, he just uses the telephone volume control. During a recent Board Hearing he was offered a pocket talker to use, but the headphones were dirty and had body fluids from previous individuals using the device. Mr. [REDACTED] seems to be sensitive to loud noises and reported he experiences physical pain when there is too much background noise and loud environmental sounds. He is experiencing recruitment due to his hearing loss. Recruitment is the rapid growth of perceived loudness for those sounds located in the pitch region of a hearing loss. Mr. [REDACTED] has trouble hearing and communicating over the telephones. He is also interested in using a pocket talker as a back up to his CDCR hearing aids. He is involved in CDCR programs; however, he reports that he serves only as a facilitator, and never as a participant, because the role allows him to control the communication and ensure he can understand the others involved.

D. [REDACTED]

Mr. [REDACTED] reported a history of using the Flame-250 but did not have hearing aids at the time of his interview. His most recent hearing evaluation, conducted 9/24/19, was difficult to read. It contained right and left air conduction thresholds, but no masked bone conduction thresholds. The audiogram comments indicate the left ear was draining, but the ENT note indicates left sensorineural hearing loss. It is unclear if the left hearing loss is conductive or sensorineural based on the incomplete audiometric results. Recording indicated tinnitus but did not indicate prescribing any treatment for tinnitus, such as a

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tinnitus sound generator. He reports his ears ring so loudly he can barely hear in his daily listening environments. He reports using a hearing aid made the ringing louder, in addition to making the sound in his environment louder. He uses a fan or TV to help mask the ringing in his ears so he can sleep at night. He reports his Flame 250 has been broken since he was in a car accident on September 30th and he still does not have a replacement. He also does not have a spare hearing aid or a pocket talker to help him with access to the CDCR programs and necessary communication with institutional staff. He is unable to hear in the yard and relies on other incarcerated people to repeat what is announced. He struggles to hear on the telephone even when the sound is amplified. He is in an education class on B Yard and his teacher helps him access the class with one-on-one assistance. However, when she speaks to the whole class he cannot hear other students speaking. He recalls when he had hearing aids he could hear the teacher and other students more easily. Due to his hearing disability, he misses announcements.

E. [REDACTED]

Mr. [REDACTED] uses Rexton Arena HP3 hearing aids. He needs to be seen by audiology because his hearing aid does not work well and his earmold does not fit him well. He had to cut away pieces of his current earmold so it fit more securely and comfortably in his ear. He reported that when he wears the Rexton hearing aids outside he only hears wind noise. He reported that he had a pocket talker in 2020, but it was taken away when he quarantined following an off-site medical visit. He reported that with the pocket talker, he could hear anything he needed, and had an easier time hearing and communicating.

F. [REDACTED]

Mr. [REDACTED] has severe hearing loss and communicates via ASL. He was fit with two Rexton Arena HP 3 hearing aids with custom soft earmolds on 5/28/21. He had a follow up appointment on 7/30/21 and reported distorted sound quality in his left ear. He was referred by his PCP for follow up to rule out eustachian tube dysfunction. He stopped using the hearing aids because the batteries drain so quickly and it is a hardship to get the batteries replaced at CDCR.

Based on records I was provided, Mr. [REDACTED] also previously reported that the hearing aid has two volume settings, one of which is much too quiet, and the other of which is much too loud and squeals. He further reported the hearing aid lacks a T-coil, which means he cannot use it to access telephone or entertainment. I noted that this report appears to have been made after his July 30, 2021 encounter with audiology, suggesting that they were not able to solve the problem through adjusting the hearing aid.

**Class Member Reports of Poor Quality/Poorly
Functioning Hearing Aids**

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Class Member Reports of Poor Quality/Poorly Functioning Hearing Aids

Below is a list of class members who, since July 2021, reported that their current hearing aids do not appropriately accommodate their hearing. It does not include class members who asked to remain anonymous. Many of these class members reported receiving information from medical staff that only one model of hearing aid is available to them. It should be noted that this list is not intended to be exhaustive. It is largely limited to individuals that Plaintiffs’ counsel chose to interview during tours.

Calipatria State Prison (CAL)

- 1. [REDACTED]
- 2. [REDACTED]

California Correctional Institution (CCI)

- 3. [REDACTED]
- 4. [REDACTED]

California Health Care Facility (CHCF)

- 5. [REDACTED]
- 6. [REDACTED]
- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]

California Training Facility (CTF)

- 10. [REDACTED]

CSP – Los Angeles County (LAC)

- 11. [REDACTED]
- 12. [REDACTED]
- 13. [REDACTED]

Central California Women’s Facility (CCWF)

- 14. [REDACTED]
- 15. [REDACTED]
- 16. [REDACTED]
- 17. [REDACTED]
- 18. [REDACTED]

California Institute for Women (CIW)

- 19. [REDACTED]

Mule Creek State Prison (MCSP)

- 20. [REDACTED]
- 21. [REDACTED]
- 22. [REDACTED]
- 23. [REDACTED]
- 24. [REDACTED]
- 25. [REDACTED]
- 26. [REDACTED]
- 27. [REDACTED]

North Kern State Prison (NKSP)

- 28. [REDACTED]

RJ Donovan Correctional Facility (RJD)

- 29. [REDACTED]
- 30. [REDACTED]
- 31. [REDACTED]
- 32. [REDACTED]
- 33. [REDACTED]
- 34. [REDACTED]
- 35. [REDACTED]
- 36. [REDACTED]
- 37. [REDACTED]
- 38. [REDACTED]
- 39. [REDACTED]
- 40. [REDACTED]
- 41. [REDACTED]
- 42. [REDACTED]
- 43. [REDACTED]
- 44. [REDACTED]
- 45. [REDACTED]
- 46. [REDACTED]

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CSP – Sacramento (SAC)

- 47. [REDACTED], [REDACTED]
- 48. [REDACTED] [REDACTED]

San Quentin State Prison (SQ)

- 49. [REDACTED] [REDACTED]
- 50. [REDACTED], [REDACTED]
- 51. [REDACTED], [REDACTED])

Substance Abuse Treatment Facility (SATF)

- 52. [REDACTED], [REDACTED]
- 53. [REDACTED], [REDACTED]
- 54. [REDACTED], [REDACTED]
- 55. [REDACTED] [REDACTED]
- 56. [REDACTED] [REDACTED]
- 57. [REDACTED], [REDACTED]

Salinas Valley State Prison (SVSP)

- 58. [REDACTED], [REDACTED]
- 59. [REDACTED] [REDACTED]

Wasco State Prison (WSP)

- 60. [REDACTED] [REDACTED]
- 61. [REDACTED] [REDACTED]
- 62. [REDACTED], [REDACTED])

Valley State Prison (VSP)

- 63. [REDACTED], [REDACTED])

Folsom State Prison (FSP)

- 64. [REDACTED] [REDACTED]
- 65. [REDACTED], [REDACTED]
- 66. [REDACTED], [REDACTED]
- 67. [REDACTED] [REDACTED]
- 68. [REDACTED] [REDACTED]
- 69. [REDACTED] [REDACTED]
- 70. [REDACTED] [REDACTED]
- 71. [REDACTED], [REDACTED]
- 72. [REDACTED], [REDACTED]

Complaints from RJD in 2020

In addition, we received the following complaints from RJD in 2020. In addition to the individuals below, we received reports from eight others who did not give permission to share their names with CDCR.

- 1. [REDACTED], [REDACTED]
- 2. [REDACTED] [REDACTED]
- 3. [REDACTED] [REDACTED]
- 4. [REDACTED], [REDACTED]
- 5. [REDACTED] [REDACTED]
- 6. [REDACTED], [REDACTED]
- 7. [REDACTED] [REDACTED]
- 8. [REDACTED] [REDACTED]
- 9. [REDACTED] [REDACTED]
- 10. [REDACTED] [REDACTED]
- 11. [REDACTED], [REDACTED]
- 12. [REDACTED] [REDACTED]
- 13. [REDACTED] [REDACTED]
- 14. [REDACTED] [REDACTED]

- 15. [REDACTED] [REDACTED]
- 16. [REDACTED] [REDACTED]
- 17. [REDACTED], [REDACTED]
- 18. [REDACTED] [REDACTED]
- 19. [REDACTED], [REDACTED]
- 20. [REDACTED] [REDACTED]
- 21. [REDACTED] [REDACTED]
- 22. [REDACTED], [REDACTED]
- 23. [REDACTED] [REDACTED]
- 24. [REDACTED], [REDACTED]
- 25. [REDACTED] [REDACTED]
- 26. [REDACTED], [REDACTED]
- 27. [REDACTED] [REDACTED]

EXHIBIT 5



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August 11, 2023

VIA ELECTRONIC MAIL ONLY

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Brianne Burkhart
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Re: *Armstrong v. Newsom*: Response to Defendants' Expert Recommendations
Regarding Hearing Aids
Our File No. 0581-03

Dear Tamiya, Lex and Brianne:

We write to provide comments on the Summary of Draft Expert Report – Hearing Aids, which was provided to Plaintiffs' counsel on July 26, 2023. We reviewed the Summary of Draft Expert Report alongside our expert's recommendations, as set forth in a letter dated October 25, 2022; Defendants' current hearing aid contract; and the specifications sheet for the hearing aid that CCHCS most frequently provides, the Flame-250. We have included a chart reflecting our comparison.

Based on our review, we are concerned that, based on recommendations included in Defendants' Summary of Draft Expert Report, the quality of hearing aids will not improve. Indeed, it seems possible that Defendants could provide *lower* quality hearing aids and still comply with their experts' recommendations. The Summary of Draft Expert Report does not provide any basis for the experts' conclusions¹, and is therefore difficult to evaluate. In contrast, our expert, Dr. Anrea Bourne, provided substantial support for the standards she recommended, including nationally accepted standards and example documents from other public entities that, similar to CDCR, provide hearing

¹ Pursuant to the Federal Rules of Civil Procedure, expert disclosures must be accompanied by a report that must contain "a complete statement of all opinions the witness will express and the basis and reasons for them" as well as "the facts or data considered by the witness in forming them." *See* Fed. R. Civ. Pro. Rule 26(a)(2)(B).

Tamiya Davis
Brianne Burkhart
August 10, 2023
Page 2

aids on a large scale. I have attached Dr. Bourne's report and subsequent letter with recommendations for hearing aid specifications.

Without any basis for your experts' opinions, nor any concrete position regarding whether your expert considered Dr. Bourne's recommendations, it is difficult for us to evaluate the recommendations and engage in meaningful negotiations. **We request to receive a copy of the full expert report or otherwise be provided with the basis for the recommendations including any standards, evidentiary support, research considered, etc.** This will allow us to review the report with our expert and determine if we believe additional meetings will be fruitful.

We appreciate your attention to this important matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

By: Caroline E. Jackson

CEJ:CEJ

Encls.: Comparison chart, Dr. Bourne Report, Letter re Hearing Aid Specifications

cc: Ed Swanson	Mark Jackson	Alexandrea Tonis
Nicholas Meyer	Jillian Hernandez	Joshua (Jay) Leon Guerrero
Patricia Ferguson	John Dovey	Dawn Lorey
Chor Thao	Robin Hart	Diane Toche
Ramon Ruiz	CCHCS Accountability	Joseph Bick
OLA <i>Armstrong</i>	Joseph Williams	Cory Lo
Sharon Garske	Cathy Jefferson	Lourdes White
Trace Maiorino	Jason Anderson	Mona Houston
Sean Lodholz	Jane Moses	Lois Welch
Olena Likhachova	Aaron Perez	Steven Faris
		CDCR CAMU
		Co-Counsel

	Our Recommendations	Current Hearing Aid Contract	Current Hearing Aids (Flame and Rexton)	Defendants' Recommendations
Hearing aid fitting	Conform to ASHA standards, to include probe microphone measurements.	"Ensure the devices are properly fitted without falling out.	n/a	No requirements.
FDA approval	Required	Not required.	None apparent	Not required
Channels	5+	Not specified.	2	"at least 2"
Programs	3+	Not specified.	"Three program models"	Not required.
Programmability requirements	"Fully programmable" using "true digital processing"	Not specified.	Analog (specifications say digital but not present on device)	"some level of programming"
Adaptive directional microphone technology	Required	Not specified.	None	Not required
Adaptive signal processing	Required	Not specified.	None	Not required
Nose reduction strategies	Required	Not specified.	"Microphone Noise Reduction"	Not required
Active Feedback Suppression	Required	Not specified.	None	Not required
Functional telecoils	Required	Not specified.	None	Not required
Tinnitus sound generators	Required	Not specified.	None	Not required
Allowable harmonic distortion	Less than 8%	Not specified.	1.3%-2.0%	Not limited.
Ear molds	Requires options for size, occlusion, and venting.	Not specified.	n/a	No requirements.

EXHIBIT 6



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April 11, 2023

VIA ELECTRONIC MAIL ONLY

Tamiya Davis
CDCR Office of Legal Affairs
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Re: *Armstrong v. Newsom*: Recognition and Protection for Assistive
Technology Devices
Our File No. 0581-03

Dear Tamiya:

We write to address our class members' long-standing concern about obtaining and maintaining access to non-medical assistive devices. In 2007, the *Armstrong* Court ordered Defendants to: “[D]evelop, implement, and begin to use a state-wide, computerized, networked real-time tracking system to track prisoners with disabilities by May 30, 2007. The tracking system shall include prisoners' disability designations and the disability accommodations they require, including ... assistive devices.” Dkt. No. 1045 at 6. To date, Defendants have done so for Durable Medical Equipment (“DME”) but not for non-medical assistive devices, such as typewriters and talking or vibrating watches. As the Court Expert found in a recent report regarding the treatment of people with disabilities at the Substance Abuse Treatment Facility (SATF), Dkt. No. 3446, these non-medical devices have been regarded and treated as personal property, resulting in many instances of our class members being denied access to these devices, and by extension being denied reasonable accommodation for their disability. *See id.* at 7; *cf.* Order re Court Expert’s Report, Dkt. No. 3466 (adopting Court Expert’s findings).

We write to request that Defendants develop a system for identifying and electronically tracking non-medical assistive devices and ensuring these devices are treated as reasonable accommodations, as required by the Court’s 2007 Order, Dkt. No. 3446, the *Armstrong* Remedial Plan (“ARP”) and the Americans with Disabilities

Tamiya Davis
April 11, 2023
Page 2

Act (ADA), 42 U.S.C. §§ 12101 *et seq.* We would be happy to meet with Defendants to discuss how to develop such as system.

I. The Court Has Ordered Defendants To Identify And Track Non-Medical Assistive Devices As Reasonable Accommodations

As a threshold matter, non-medical assistive devices constitute a form of reasonable accommodation that Defendants must provide in accordance with the ADA and the ARP. Federal law defines “assistive devices” (also referred to as “assistive technology” or “assistive technology devices”) as “any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.” Assistive Technology Act¹, 29 U.S.C. § 3002(4).

In the 2007 Order, the *Armstrong* Court characterized “assistive devices” as an example of “disability accommodations.” Dkt. No. 1046 at 6. This characterization is consistent with decisions from the Ninth Circuit. *See, e.g., Dunlap v. Liberty Nat. Prod., Inc.*, 878 F.3d 794, 799 (9th Cir. 2017) (listing various “assistive devices” that an employer was required to provide an employee as a “reasonable accommodation[]” for her disability). The State of California likewise recognizes that assistive devices, also known as assistive technology, constitute a reasonable accommodation for disability. *See, e.g.,* California Department of General Services, California Assistive Technology System Fact Sheet: Assistive Technology Resources for Reasonable Accommodation.

As a reasonable disability accommodation, Defendants must ensure that people with disabilities have access to the assistive devices they need to achieve equal access to Defendants’ programs, services and activities. *See* ARP § II.F (“The Department shall provide reasonable accommodations or modifications for known physical or mental disabilities of qualified inmates/parolees.”). This includes providing assistive devices at no cost. *See id.*; 28 C.F.R. § 35.130(f) (“A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.”). It also includes modifications to policy, practice and procedure to ensure that class members maintain access to these devices, or that they may purchase an assistive device at their own expense when it is otherwise appropriate. *See* ARP § II.F; 28 C.F.R. § 35.130(b)(7) (“A

¹ The Assistive Technology Act provides federal grants to states to fund programs designed to facilitate access to assistive technology devices, including devices used exclusively in private homes.

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public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”).

II. The Need To Recognize Assistive Devices As Reasonable Accommodations

In the past few years, we have reported on a number of class members who faced various difficulties obtaining or maintaining access to the non-medical assistive devices they are entitled to as a reasonable accommodation for their disability. The Court Expert reported similar problems in his recent report detailing ADA and ARP violations at SATF. *See* Dkt. No. 3446 at 6.

Defendants have recently acknowledged that custody and healthcare personnel should “provide reasonable accommodations without relying on a Chrono or medical prescription” and “based on the IP’s needs.” *See* Memo: Reiteration of Reasonable Accommodation Requirements (October 28, 2022). However, this memo will not prevent all the problems listed below, as many appear to arise because the assistive technology devices are treated as personal property, as opposed to as reasonable accommodation, and are not electronically tracked in accordance with the Court’s 2007 Order, Dkt. No. 1045, or otherwise recognized as reasonable accommodations by prison officials.

Inappropriate confiscation of assistive devices: Because assistive devices are considered personal property, these devices may be taken away from class members when DME would not be taken away. For example, Plaintiffs’ counsel recently reported that Mr. ██████████, ██████████ DPS, DPH, DPW, Upper Extremity Disability, had had his personal typewriter confiscated when he was placed in the CTC. *See* Report re RJD AMT (March 15, 2023) at 19. When he filed an 1824 requesting access to this assistive device, which he needed to be able to write letters to his family, the RAP responded that he had made a non-ADA request and directed him to file a Form 22. *Id.* at 19. Plaintiffs’ counsel has previously advocated for Mr. ██████████ ██████████ (DPV, DPO), who requires a talking watch to tell time. *See* Ltr. from P. Booth to T. Davis, ██████████ ██████████, ██████████ (Nov. 16, 2020) (“2nd ██████████ Letter”); Ltr. from P. Booth to R. Boyd, ██████████ ██████████ (Feb. 11, 2020). Prison officials had confiscated the talking watch, stating that the watch posed a security risk because it had an audible alarm. *See* 1st ██████████ Letter; 2nd ██████████ Letter. When Mr. ██████████ requested a new watch via a Form 1824, the RAP denied the request, citing a blanket prohibition on orders from the MaxiAids catalog. *See* 1st ██████████ Letter at 2. Despite Plaintiffs’ advocacy and the clear nexus between the talking watch and Mr. ██████████’s need for

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accommodation, it appears Defendants did not respond to either of Plaintiffs' advocacy letters. *See* 2nd [REDACTED] Letter.

Plaintiffs' counsel has also advocated for Mr. [REDACTED] [REDACTED] (DPW, DNH, upper extremity disability), who was denied access to the typewriter he required to be able to write due to being housed in the CTC. Ltr. from P. Booth to T. Davis, Failure to Accommodate People with Upper Extremity Disabilities (March 24, 2022) ("Upper Extremity Letter"), at 9-10. Even after Plaintiffs' counsel advocated for him, Defendants denied the request, stating the typewriter was "not allowable property in the CTC." *Id.* at 10. Mr. [REDACTED] [REDACTED] (DPW, DNH) reported that he once had a pocket talker he had purchased with his own funds, but it was taken away in 2017. *See* Report re DPH/DNH Monitoring Tour of RJD (August 18, 2020).

More recently, Mr. [REDACTED], [REDACTED] DNV has reported that when he was placed in the Psychiatric Services Unit (PSU) in August 2022, he was initially placed in a cell that lacked power capabilities, meaning he could not charge his talking book player. When Mr. [REDACTED] reported the problem in a grievance where he also stated he was experiencing suicidal ideations, both the Sergeant who evaluated his need for interim accommodations and the RAP itself determined that none of his DME (glasses, vision disability vest, etc.) requires electricity because "[t]he Talking Book is not considered Durable Medical Equipment (DME)." Mr. [REDACTED] ultimately was moved to a cell with power capabilities, but the cell move appeared unrelated to his need to charge his talking book player. Mr. [REDACTED], [REDACTED] (DPH) also reported that his vibrating watch was taken away from him in July 2022 when he was placed in administrative segregation. Although he was able to get the watch back soon after requesting it, the watch never should have been taken away from him at all. Finally, Mr. [REDACTED] [REDACTED] (DPV) reported via a Form 1824 that the headphones he uses to access his talking book player were reviewed when he was transferred to Short Term Restrictive Housing (STRH) due to safety concerns. Although the headphones were returned to Mr. [REDACTED] the Interim Accommodation Procedure (IAP) / Interview Worksheet noted that the headphones "are not listed as DME's in SOMS. Custody has no way of knowing they are DME."

Failure to replace missing or worn-out assistive devices: Because assistive devices are considered personal property, when the device goes missing, CDCR may refuse to replace the device unless it is included in a property receipt, which many class members cannot read. For example, Plaintiffs' counsel has advocated for Mr. [REDACTED] [REDACTED], [REDACTED] (DPH, LD, DD1), who reported that his talking book player went missing when he was sent to Short-Term Restricted Housing (STRH). *See* Ltr. from R. Lomio to T. Davis, [REDACTED] [REDACTED], DPH, LD (unverified), DD1, SATF (August 26, 2020). Because he could not read, he had no way of knowing that officers

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had failed to include the talking book player in his property receipt. *See id.* However, when he filed multiple 1824s requesting the talking book player, the institution denied his request because the player was not listed on the property receipt, even though the receipt listed a number of talking books. *See id.*

Refusal to provide requested assistive devices: Because the assistive devices are considered personal property, Defendants may refuse to provide the device even when the class member requiring the device is indigent and cannot afford to purchase it. For example, Plaintiffs' counsel repeatedly advocated for [REDACTED], [REDACTED] (upper extremity disability) to receive a specific large-grip pen and a typewriter as an accommodation that would allow him to write. *See* Upper Extremity Letter at 7-8. Despite this advocacy, Defendants refused to provide either device. *See id.* Plaintiffs' counsel has also advocated for [REDACTED], [REDACTED] (upper extremity disability), to request a typewriter to allow him to write. *See id.* at 9. Defendants responded the Mr. [REDACTED] could use one of the typewriters in the law library or purchase one at his own expense. Plaintiffs' counsel also advocated for Defendants to provide [REDACTED], [REDACTED] (DPH) with a vibrating watch. *See* Plaintiffs' Report re May 2022 AMT at RJD (June 17, 2022). Defendants responded that Mr. [REDACTED] had a significant balance in his trust account and had been "advised that he may order the watch." *See* Defs' Response to RJD Report (Oct. 20, 2022) at 17. In addition, Plaintiffs' counsel has that reported that [REDACTED], [REDACTED] (DPV, DPO) requires a 30x magnifier to read. *See* Plaintiffs' Report re February 2023 AMT at RJD (March 16, 2023). Mr. [REDACTED] requested the magnifier via a Form 1824 and was told he could purchase the magnifier. *See id.*

Refusal to approve purchase of assistive devices: Because assistive technology devices are considered personal property, Defendants have imposed personal property limit caps, such as a \$50 cap on the price of watches that incarcerated people can buy, that also apply to these devices, even if the only accommodations that are available exceed the capped prices. Several deaf class members at multiple prisons have reported that they have been denied access to vibrating watches because the only men's vibrating watches in the MaxiAids catalogue priced under \$50 are out of stock. *See* Ltr. from P. Godbold to T. Davis, Access to Vibrating Watches at Richard J. Donovan Correctional Facility (October 8, 2021) (reporting that **three DPH class members at RJD** had been denied vibrating watches due to the \$50 cap); Ltr. from C. Jackson to T. Davis, Advocacy for [REDACTED], [REDACTED] DLT, DNV, DPS, DPH (reporting denial of vibrating watch at LAC due to \$50 cap). Each time, Plaintiffs' counsel has had to intervene before CDCR would allow the class members to purchase vibrating watches that cost more than \$50. *See id.* **DPH class members at RJD** have also reported being denied permission to purchase other assistive devices that are customary for deaf and hard of hearing in the free world, including a vibrating alarm clock. The class member who reported this issue,

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who did not give permission to use his name, stated his request was denied because, even though the item was listed in the MaxiAids catalog, the sergeant did not know what a vibrating alarm clock is.

Plaintiffs' counsel also recently advocated for Mr. [REDACTED], [REDACTED] (DNH), who needs a pocket talker to hear well enough to understand his classes. *See* Ltr from C. Jackson to T. Davis, Advocacy for [REDACTED] [REDACTED] (DNH, DPM), Richard J. Donovan Correctional Facility ("RJD") (January 11, 2023). Mr. [REDACTED] submitted grievances requesting that RJD either to issue him a pocket talker or to give him permission to purchase his own. *See id.* His request was denied. *See id.* Although headquarters overturned the denial and directed RJD to reconsider his request, the new grievance timed out before Mr. [REDACTED] received a response. *See id.* It appears Defendants may recently have provided Mr. [REDACTED] with access to a pocket talker, but only after the Court Expert admonished Defendants for failing to make pocket talkers widely available.

Electronically documenting and tracking assistive devices as a reasonable accommodation, as required by the Court's 2007 Order, Dkt. No. 1045 at 6, and not as personal property would address the above problems as follows:

1. Custody staff would be alerted that the device is a reasonable accommodation, akin to DME, and should not be removed unless it presents a safety risk, even in the event of inter-prison transfers or transfers to restrictive or medical housing;
2. Where legitimate safety concerns exist, CDCR could identify and provide assistive devices that do not pose the same safety concerns, such as talking watches that do not have an audible alarm;
3. If the devices wears out or goes missing, there will be no confusion as to the specific device the class member needs, nor whether the class member is entitled to have the device replaced;
4. Institutions will have clear guidance regarding their obligation to purchase these devices for class members and/or to allow class members to purchase their own devices (when the class member prefers) irrespective of restrictions placed on personal property.

Finally, having better documentation of the assistive devices that class members use throughout CDCR may also help Reasonable Accommodation Panels, by providing a list of devices that other panels have approved as a reasonable accommodation for disability.

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However the current state of affairs, where class members must pay out of pocket for their own reasonable accommodations and risk having them lost or confiscated, violates the ADA, the ARP, and the Orders of the *Armstrong* Court.

We appreciate your attention to this important matter. We request a response no later than **May 9, 2023** indicating how Defendants intend to address our concerns. We are more than happy to meet to discuss this request at any mutually agreeable time.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:mr

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EXHIBIT 7



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January 6, 2022

VIA ELECTRONIC MAIL ONLY

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

Dear Tamiya and Lex:

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

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

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

I. Use of Medical Necessity And Reasonable Accommodation Standards

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

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

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

II. “Permanently Issued” Pocket Talkers

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

A. Include DPH Class Members

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Tamiya Davis and Alexander Powell
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B. Replace Headphone Cushions, Do Not Remove Them

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

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

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

IV. Identifying “Contraband” Pocket Talkers

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

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

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See Memo at 2.

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

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

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

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

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Tamiya Davis and Alexander Powell
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Thank you for your attention to this important matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:CEJ

Encl.: Pocket Talker Memo

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EXHIBIT 8



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June 17, 2022

VIA ELECTRONIC MAIL ONLY

Tamiya Davis
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Re: *Armstrong v. Newsom*: Clarification of Personal Sound Amplification
Products Memo
Our File No. 0581-03

Dear Tamiya and Lex:

We appreciate the opportunity that Defendants have afforded us to review a draft of the Personal Sound Amplification Products Memo (“PSAP Memo”) before its expected circulation on June 20, 2022. You previously circulated a draft for our review on November 29, 2021 (“November 2021 Draft”), and we provided comments by letter dated January 6, 2022 (“January 2022 Letter”).¹ Although the PSAP Memo does incorporate some of the concerns we raised in the January 2022 Letter, we are concerned that the PSAP Memo appears to provide less access to PSAPs than was contemplated in the November 2021 Draft. **We request that Defendants wait to issue the PSAP Memo until we have an opportunity to discuss it during the Deaf and Hard of Hearing Working Group meeting currently scheduled for July 15.**

The November 2021 Draft set forth criteria for issuing PSAPs permanently, temporarily, or on an interim basis, in an effort to ensure hard of hearing class members receive effective communication in a variety of circumstances where hearing aids were either unavailable or insufficient. By contrast, the revised draft PSAP Memo appears to provide far less access, contemplating only “rare” circumstances where deaf or hard of hearing class members would be issued a PSAP on a permanent basis, and no

¹ Both the November 2021 Letter and the January 2022 letter reference “pocket talkers” instead of PSAPs. The PSAP Memo states that a Pocket Talker is a type of PSAP.

Tamiya Davis and Alexander Powell

June 17, 2022

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circumstances where PSAPs would be provided on a temporary or interim basis. For the reasons stated below, we are concerned that the PSAP Memo does not ensure our class members' access to programs, services and activities.

Further, although explicit reference to “medical necessity” has been removed, the PSAP Memo nevertheless appears to adopt this standard exclusively, noting that PSAPs are “not approved by the Food and Drug Administration (FDA) nor are they recommended by medical and hearing aid specialists.” *See* PSAP Memo at 1. The FDA does not “approve” PSAPs because they are considered consumer electronic devices, and not medical devices subject to FDA regulation. (<https://www.fda.gov/consumers/consumer-updates/hearing-aids-and-personal-sound-amplification-products-what-know>) However, the the *Armstrong* Remedial Plan, specifically lists “sound amplification devices” as an example of reasonable accommodations that Defendants “shall provide ... for known physical or mental disabilities of qualified inmates/parolees.” *See* ARP § II.F.

If CCHCS is proposing a shift from away from health care staff approving PSAPs under the medical necessity standard towards custody staff approval for PSAPs under the ADA required reasonable accommodation standard, we seek clarification regarding how deaf and hard of hearing class members will access PSAPs.

I. Need to Provide PSAPs As An Interim Or Temporary Accommodation

PSAPs are necessary as an interim or temporary accommodation when a deaf or hard of hearing is temporarily unable to use hearing aids – for example, when batteries die, hearing aids are broken, or in noisy environments that are not accommodated by hearing aids.

We are particularly concerned that the PSAP Memo does not provide for PSAPs to be available for class members during medical, mental health and due process encounters, in the event they have difficulty hearing or their hearing aids do not work properly. The ARP recognizes a higher standard for ensuring equally effective communication in these settings. *See* ARP § II.E.2. Defendants have repeatedly assured Plaintiffs' counsel that PSAPs are available in due process encounters as back-up in case a class member's hearing aids are down at the time of the encounter. Several class members have also reported benefitting from PSAPs in medical settings. For the reasons set forth in the January 2022 Letter, we are also concerned that class members will be excluded from group programming and potentially from work assignments unless PSAPs are available as an interim accommodation in these settings.

Tamiya Davis and Alexander Powell

June 17, 2022

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Also, some people need access to PSAPs to ensure effective communication in group programs such as educational, vocational, self-help or drug treatment programming.

Consequently, without a temporarily issued PSAP, many deaf and hard of hearing class members will be entirely excluded from group programming while they cannot use hearing aids.

II. PSAPs As A Permanent Accommodation

Finally, we are concerned that the PSAP Memo has drastically narrowed the circumstances for when a deaf or hard of hearing individual will receive a PSAP as a permanent accommodation to only “rare” circumstances when “no other options exist in accommodating the incarcerated person’s hearing loss.” *See* PSAP Memo at 1.

Plaintiffs’ counsel has previously and repeatedly explained that most hearing aids—and especially the hearing aids that CDCR currently provides—do not provide effective communication in settings with background noise because they amplify all sound in the environment. The PSAP Memo tacitly acknowledges that PSAPs remedy this problem because they “amplif[y] the sound closest to the listener while reducing background noise.” PSAP Memo at 1. While PSAPs might not be the most effective accommodation for hearing in noisy environments, Defendants have repeatedly refused to provide a more effective alternative. Unless and until Defendants begin providing FM systems, Bluetooth microphones, or even higher-quality hearing aids to allow class members to use their hearing aids more effectively in background noise, PSAPs remain the most effective option available to our class members.

Plaintiffs’ counsel request that CDCR ensure PSAPs are available as a reasonable accommodation for deaf and hard of hearing class members who do not hear effectively with hearing aids in certain settings, and who require the PSAP to have equal access to programs, services and activities, including entertainment and dayroom. *See* January 2022 Letter at 4. Plaintiffs’ counsel further request that CDCR ensure PSAPs are available on a temporary or interim basis when an individual’s hearing aids are not working, or when the person is temporarily unable to wear hearing aids.

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Tamiya Davis and Alexander Powell
June 17, 2022
Page 4

We appreciate your attention to this important matter and look forward to discussing it further during the July 15 Deaf and Hard of Hearing Working Group Meeting.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Caroline E. Jackson

By: Caroline E. Jackson

CEJ:CEJ

cc: Nicholas Meyer
Alexander Powell
Patricia Ferguson
Gannon Johnson
Chor Thao
Amber Lopez
Robin Stringer
OLA *Armstrong*
Olena Likhachova
Trace Maiorino
Sean Lodholz
Mark Jackson
Sharon Garske
Ngoc Vo
Lois Welch
Steven Faris
Jason Anderson
Ed Swanson
Co-Counsel

Mona Houston
Chantel Quint
Jillian Hernandez
Dawn Lorey
Laurie Hoogland
Bruce Beland
Robert Gaultney
Saundra Alvarez
Vimal Singh
Joseph Edwards
Lynda Robinson
Barb Pires
Courtney Andrade
Miguel Solis
Dawn Stevens
Alexandra Tonis
Jimmy Ly
Jay Powell

Tammy Foss
John Dovey
Robin Hart
CCHCS Accountability
Joseph Williams
Cathy Jefferson
Amy Padilla
Jason Anderson
Olga Dobrynina
Kandie Smith
Monique Matthis
Gloria Fernandez
Yvonne Anaya
Christina Sachao
Claudia Williams
Gently Armedo
Joshua Leon Guerrero
Aaron Perez

EXHIBIT 9

Rita Lomio

From: Powell, Alexander@CDCR <Alexander.Powell@cdcr.ca.gov> on behalf of Powell, Alexander@CDCR
Sent: Monday, June 26, 2023 4:15 PM
To: 'rlomio@prisonlaw.com'; Ed Swanson; Audrey Barron; Tovah Ackerman; Caroline Jackson; Claudia Ceseña; Skye Lovett
Cc: Davis, Tamiya@CDCR; Ferguson, Patricia@CDCR; Sharon.Garske@doj.ca.gov; Mark Jackson (mark.jackson@doj.ca.gov); Houston, Mona@CDCR; Mebane, Darnell@CDCR; Lorey, Dawn@CDCR
Subject: Pocket Talkers Update
Attachments: Sample Pre-Filled 1824 on PTs.docx

Good Afternoon,

I am writing to let you know that our policy towards pocket talkers is changing. After discussion with stakeholders, defendants have decided to issue pocket talkers through the 1824 process to any qualified person with a verified hearing disability, not contraindicated, i.e. a pacemaker, and on an individual basis, not check in/check out. This will allow disabled incarcerated people to have access to their pocket talker at all necessary and appropriate times.

Consequently, we need some time provide notice to labor, design the policy, train the field, and acquire more pocket talkers. CAMU is in the process of acquiring more through an emergency purchase order and a draft memo is under review.

However, there have been a recent onslaught of pre-filled 1824s that have come to institutions which has been delaying the provisioning of pocket talkers, as well as frustrating the RAP. I've attached a recent one received by RJD reflecting the nature of these new 1824s. Defendants understand and appreciate you advocating for your clients, but we request that you individualize and tailor your requests to the specific incarcerated person seeking the accommodation. This will allow the RAP to more quickly and effectively assess the request based upon each individual's specific case factors, as well as increase the efficiency of the RAP itself. Please let me know if you have any questions or if you believe anything that I've said is inaccurate.

Alexander Powell

Attorney, Class Action Team
CDCR, Office of Legal Affairs
Phone: [REDACTED]

: This communication with its contents may contain confidential and/or legally privileged information including, but not limited to, the attorney/client privilege and/or the attorney work product doctrine. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of this communication

EXHIBIT 10

State of California

Department of Corrections and Rehabilitation

Memorandum

Date: **December 16, 2021**

To: Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services

Subject: **AMERICANS WITH DISABILITIES ACT CAPTION PHONES PURCHASE AND IMPLEMENTATION**

It is the policy of the California Department of Corrections and Rehabilitation (CDCR) to provide equal access to its programs, services, and activities for inmates with disabilities and to comply with the Americans with Disabilities Act (ADA) and the Armstrong Remedial Plan. This memorandum is specifically directed to the following 23 institutions:

- Avenal State Prison (ASP)
- California City Correctional Facility (CAC)
- California Correctional Center (CCC)
- California Correctional Institution (CCI)
- California Institute for Women (CIW)
- California Men's Colony (CMC)
- California Rehabilitation Center (CRC)
- California State Prison, Corcoran (COR)
- California State Prison, Sacramento (SAC)
- California State Prison, Solano (SOL)
- Calipatria State Prison (CAL)
- Centinela State Prison (CEN)
- Chuckawalla Valley State Prison (CVSP)
- Correctional Training Facility (CTF)
- Folsom State Prison (FSP)
- Ironwood State Prison (ISP)
- Kern Valley State Prison (KVSP)
- Pelican Bay State Prison (PBSP)
- Pleasant Valley State Prison (PVSP)
- San Quentin State Prison (SQ)
- Sierra Conservation Center (SCC)
- Valley State Prison (VSP)
- Wasco State Prison (WSP)

In an effort to improve upon technology, CDCR has secured a California Public Utilities Commission (CPUC) approved vendor who can provide the latest technology in Caption phones, which allows the phone conversation to be automatically dictated on the screen.

Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services
Page 2

Upon distribution and receipt of this memorandum, Wardens, or designee, shall purchase and install at a minimum, one CapTel 840 Plus telephone for each area that currently utilizes a Teletypewriter (TTY)/Telecommunications Device for the Deaf (TDD) telephone for use by the deaf or hard of hearing inmate population or any other inmate who demonstrates a need. Each institution's Plant Operations and local phone Information Technology (IT) shall work with CDCR's Unified Communications and Collaboration Unit to ensure the phone lines are correctly programmed for the Caption phones to work properly. Institutions may contact Sukhjit Badwal, IT Manager I, at or (916) 216-9554 or Sukhjit.Badwal@cdcr.ca.gov, for assistance if needed.

Each institution shall complete an IT purchase requisition (PR) and send a solicitation package to the following non-competitive bid (NCB) vendor:

Weitbrecht Communications, Inc. (WCI)
1500 Olympic Blvd.
Santa Monica CA 90404
(800) 233-9130

The following documents must be attached to the IT PR:

1. Vendor signed and dated EIS 4004-E, Request For Quote- IT Goods/Services - NCB & Exempt
2. Line Item Cost Worksheet (or Vendor Quote sheet excluding terms & conditions)
3. Bidder Declaration (GSPD-05-105)
4. Postconsumer-Content Certification (Cal Recycle form 74)
5. Payee Data Record (STD. 204) and Supplemental Payee Data Form
6. Seller's Permit (or a copy)
7. Darfur Contracting Act of 2008
8. NCB Justification form
9. CDCR Form 1855

These documents can be accessed on the IT Acquisitions Unit website located here:
<http://intranet/ADM/EIS/Pages/IT%20Acquisitions.aspx>

Upon receipt of the Purchase Order (PO), WCI will ship the Caption phones directly to the institution. Warden or designee shall ensure all assigned Sign Language Interpreters (SLIs), Class Action Management Unit (CAMU) Correctional Counselor (CC) IIs, and the Americans with Disabilities Act Coordinator (ADAC) are trained on the use of the new Caption phones using the video to be provided by CAMU. Staff that received training will be responsible for training all custody staff. At institutions with an assigned SLI, the SLI or designee shall ensure all hearing-impaired inmates are instructed on how to properly use the new Caption phones as well as any other inmate identified as having a need to utilize the Caption phone. The ADAC or designee at institutions who do not have an SLI shall ensure this is completed.

Associate Directors, Division of Adult Institutions
Wardens
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Associate Wardens, Business Services
Page 3


Each Caption phone arrives with an identifying electronic serial number that CPUC uses to track phone calls made on the device. Each Caption phone will need to be assigned to a specific phone number and unit within the institution. For tracking and billing purposes, once assigned, the Caption phone cannot be utilized in any other phone jack. When not in use the Caption phones will be placed in a secure area until need for the next call.

The new Caption phones do not replace the TTY/TDD hearing impaired telephone, but provide another available accommodation to the inmate population. The TTY/TDD shall remain accessible for inmate use, if requested.

Each institution shall incorporate into the institution's existing Disability Placement Program (DDP) Local Operational Procedure (LOP) the process for inmates to access and utilize the new Caption phones. The DDP LOP shall include the process for training the hearing-impaired inmate population or any other inmate who demonstrates a need on how to use the new Caption phone. Inmates will continue to be allowed 40 minutes per phone call. This time frame can be extended for legal calls or at the direction of a staff member.

All custody staff shall be trained via On-the-Job Training (BET Code 11054143) on the use of the new caption phone within 90 days of installation of the caption phone. The Warden shall submit proof of practice of completed training and a copy of the updated LOP to the CAMU mailbox at CDCR.CAMU@cdcr.ca.gov and to each respective Associate Director.

Any questions pertaining to this process may be directed to Spencer Detlefsen, CC II, CAMU, at (916) 698-3603 or Spencer.Detlefsen@cdcr.ca.gov.


~~CONNIE GIPSON~~
Director
Division of Adult Institutions

cc: Jared D. Lozano
Kimberly Seibel
Laura Eldridge
Dawn Lorey
Jillian Hernandez
Spencer Detlefsen
Nicole Isaacson
Megan Roberts
Sylvia Dumalig
Sukhijt Badwal

EXHIBIT 11

State of California

Department of Corrections and Rehabilitation

Memorandum

Date: March 7, 2023

To: Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services
Procurement and Services Officers

Subject: **UPDATED AMERICANS WITH DISABILITIES ACT CAPTION PHONE PURCHASE AND IMPLEMENTATION AT THE VIAPATH INSTITUTIONS**

It is the policy of the California Department of Corrections and Rehabilitation (CDCR) to provide equal access to its programs, services, and activities for inmates with disabilities and to comply with the Americans with Disabilities Act (ADA) and the *Armstrong* Remedial Plan. This memorandum is only directed to the following 11 institutions, with ViaPath phone lines:

- Central California Women's Facility (CCWF)
- California Health Care Facility (CHCF)
- California Institution for Men (CIM)
- California Medical Facility (CMF)
- High Desert State Prison (HDSP)
- California State Prison, Los Angeles County (LAC)
- Mule Creek State Prison (MCSP)
- North Kern State Prison (NKSP)
- Richard J. Donovan Correctional Facility (RJD)
- Substance Abuse Treatment Facility (SATF)
- Salinas Valley State Prison (SVSP)

On December 16, 2021, the other 23 institutions were directed in the memorandum titled, *Americans with Disabilities Act Caption Phone Purchase and Implementation*, to purchase caption phones, to match the latest technology available for deaf and hard of hearing class members. CDCR is ready to move forward with making these phones available at the remaining 11 institutions not listed in the December 2021 memorandum.

Upon distribution and receipt of this memorandum, Wardens, or designee, shall purchase and install at a minimum, one CapTel 840 Plus telephone for each area that currently utilizes a Teletypewriter (TTY)/Telecommunications Device for the Deaf (TDD) telephone for use by the deaf or hard of hearing inmate population, or any other inmate who demonstrates a need. Each institution's Plant Operations and local phone Information Technology (IT) shall work with CDCR's Unified Communications and Collaboration Unit to ensure the phone lines are correctly programmed for the Caption phones to work properly. Institutions may contact Sukhjit Badwal, IT Manager I, at Sukhjit.Badwal@cdcr.ca.gov, for assistance if needed.

Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services
Procurement and Services Officers
Page 2

COMPLETION OF THE IT PURCHASE REQUISITION

With the assistance of the IT Acquisitions Unit (ITAU), each institution shall complete an IT Purchase Requisition (PR) with the following Non-Competitive Bid (NCB) vendor:

Weitbrecht Communications, Inc. (WCI)
1500 Olympic Blvd.
Santa Monica CA 90404
(800) 233-9130

In order to streamline the process, the ITAU will complete the solicitation process with the vendor. Each institution shall provide the following to ITAU:

1. Completed CDCR Form 1855, utilizing the pre-filled attachment to this memorandum
2. The number of units the institution is requesting to purchase

The requested information is due by COB, Friday, March 13, 2023 to Ashley Koewler, IT Specialist I, Enterprise Information Services (EIS), at Ashley.Koewler@cdcr.ca.gov.

Upon receipt of the Purchase Order (PO), WCI will ship the Caption phones directly to the institution. Warden or designee shall ensure all assigned Sign Language Interpreters (SLIs), Class Action Management Unit (CAMU) Correctional Counselor (CC) IIs, and the Americans with Disabilities Act Coordinator (ADAC) are trained on the use of the new Caption phones using the video to be provided by CAMU. Staff that received training will be responsible for training all custody staff. At institutions with an assigned SLI, the SLI or designee shall ensure all hearing-impaired inmates are instructed on how to properly use the new Caption phones as well as any other inmate identified as having a need to utilize the Caption phone. The ADAC or designee at institutions who do not have an SLI shall ensure this is completed.

Each Caption phone arrives with an identifying electronic serial number that CPUC uses to track phone calls made on the device. Each Caption phone will need to be assigned to a specific phone number and unit within the institution. For tracking and billing purposes, once assigned, the Caption phone cannot be utilized in any other phone jack. When not in use the Caption phones will be placed in a secure area until need for the next call.

The new Caption phones do not replace the TTY/TDD hearing impaired telephone, but provide another available accommodation to the inmate population. The TTY/TDD shall remain accessible for inmate use, if requested.

Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services
Procurement and Services Officers
Page 3

Each institution shall incorporate into the institution's existing Disability Placement Program (DPP) Local Operational Procedure (LOP) the process for inmates to access and utilize the new Caption phones. The revision may be incorporated as an addendum to be included in the next scheduled revision of the LOP. The DPP LOP shall include the process for training the hearing-impaired inmate population or any other inmate who demonstrates a need on how to use the new Caption phone. Inmates will continue to be allowed 40 minutes per phone call. This time frame can be extended for legal calls or at the direction of a staff member.

All custody staff shall be trained via On-the-Job Training utilizing BET Code 11054143 on the use of the new caption phone within 90 days of receipt of the caption phone. This training is available for the institutional In-Service Training Managers to enroll staff via the Learning Management System. The Warden shall submit a copy of the updated LOP to the CAMU mailbox at CDCR.CAMU@cdcr.ca.gov and to each respective Associate Director.

If you have any questions regarding the IT purchasing process, please contact Ashley Koewler, IT Specialist I, ITAU, EIS at (916) 490-4381, or Ashley.Koewler@cdcr.ca.gov, or Nicole Isaacson, IT Supervisor II, ITAU, EIS, at (916) 207-2541, or Nicole.Isaacson@cdcr.ca.gov.

Any questions pertaining to this process may be directed to Jillian Hernandez, Captain, CAMU, at (916) 698-9632, or Jillian.Hernandez@cdcr.ca.gov.



CONNIE GIPSON
Director
Division of Adult Institutions

Attachments

cc:	Jared D. Lozano	Spencer Detlefsen
	Ron Davis	Nicole Isaacson
	Mona D. Houston	Megan D. Roberts
	Raquel Buckel	Ashley Koewler
	Lourdes White	Sylvia Dumalig
	Jillian Hernandez	Sukhijt Badwal
	Darnell Mebane	

State of California

Department of Corrections and Rehabilitation

Memorandum

Date: **December 16, 2021**

To: Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services

Subject: **AMERICANS WITH DISABILITIES ACT CAPTION PHONES PURCHASE AND IMPLEMENTATION**

It is the policy of the California Department of Corrections and Rehabilitation (CDCR) to provide equal access to its programs, services, and activities for inmates with disabilities and to comply with the Americans with Disabilities Act (ADA) and the Armstrong Remedial Plan. This memorandum is specifically directed to the following 23 institutions:

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- Wasco State Prison (WSP)

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Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services
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Santa Monica CA 90404
(800) 233-9130

The following documents must be attached to the IT PR:

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2. Line Item Cost Worksheet (or Vendor Quote sheet excluding terms & conditions)
3. Bidder Declaration (GSPD-05-105)
4. Postconsumer-Content Certification (Cal Recycle form 74)
5. Payee Data Record (STD. 204) and Supplemental Payee Data Form
6. Seller's Permit (or a copy)
7. Darfur Contracting Act of 2008
8. NCB Justification form
9. CDCR Form 1855

These documents can be accessed on the IT Acquisitions Unit website located here:
<http://intranet/ADM/EIS/Pages/IT%20Acquisitions.aspx>

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Associate Directors, Division of Adult Institutions
Wardens
Americans with Disabilities Act Coordinators
Associate Wardens, Business Services
Page 3

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All custody staff shall be trained via On-the-Job Training (BET Code 11054143) on the use of the new caption phone within 90 days of installation of the caption phone. The Warden shall submit proof of practice of completed training and a copy of the updated LOP to the CAMU mailbox at CDCR.CAMU@cdcr.ca.gov and to each respective Associate Director.

Any questions pertaining to this process may be directed to Spencer Detlefsen, CC II, CAMU, at (916) 698-3603 or Spencer.Detlefsen@cdcr.ca.gov.



CONNIE GIPSON
Director
Division of Adult Institutions

cc: Jared D. Lozano
Kimberly Seibel
Laura Eldridge
Dawn Lorey
Jillian Hernandez
Spencer Detlefsen
Nicole Isaacson
Megan Roberts
Sylvia Dumalig
Sukhijit Badwal

EXHIBIT 12



PRISON LAW OFFICE

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Marissa Hatton
Jacob Hutt
A.D. Lewis
Rita Lomio

BY EMAIL ONLY

September 19, 2023

Tamiya Davis
CDCR Office of Legal Affairs

Re: *Armstrong Advocacy Letter*
[REDACTED], DPH, SATF | Captioned Phones on G Yard

Dear Tamiya,

I write regarding captioned phones on G yard at SATF, and in particular the experience of [REDACTED] [REDACTED] DPH, in using the phones. Mr. [REDACTED] speaks but due to his profound hearing loss, he requires that information be communicated to him in writing.¹ Because Mr. [REDACTED] also does not know sign language, the only phone Defendants historically have provided that is accessible to him at SATF is the Telecommunications Device for the Deaf (“TDD”).² The Court Expert described Mr. [REDACTED]’s inability to stay in touch with his family members due to a lack of disability accommodations, such as TDD, in his first report regarding the treatment of people with disabilities at SATF, referring to Mr. [REDACTED] as “Person E.”³ We write now because we understand that captioned phones have been introduced at SATF as an alternative to TDD, but that Mr. [REDACTED] has received little to no information from SATF staff regarding the availability or functionality of captioned phones and has been forced to rely on other incarcerated people to utilize this service.

Mr. [REDACTED] reportedly learned from the IAC ADA Coordinator that there is a captioned phone in the chapel on G yard. The phone reportedly is located in an open space in the chapel, between two offices. On September 13, 2023, at approximately 9 a.m., the IAC representative accompanied Mr. [REDACTED] to the

¹ Mr. [REDACTED]’s electronic medical record mistakenly states that Mr. [REDACTED]’s primary method of communication to accommodate his hearing is “None” and that his primary method of communication to accommodate his speech is “Written Notes.” See ADA/Effective Communication Patient Summary, Methods of Communication (updated August 21, 2023). The reverse is true.

² The Court previously found that this device has been denied to class members at SATF for months. See Dkt. No. 3217 at 10-11 (finding credible the declaration of a hard-of-hearing man at SATF who “repeatedly asked for a telecommunication device for the deaf in February 2020, and staff ignored his request for months, until June 2020”).

³ See Dkt. No. 3446 at 38-41; see also Dkt. No. 3500 at 13 (Court Expert reporting in August 2023 that, “we continued to hear reports that [TDD] did not work, and we witnessed that they did not work in one housing unit we visited when we toured at SATF.”).

Board of Directors

Christiane Hipps, President and Treasurer • Seth Morris, Vice President
Jason Bell • Vanita Gaonkar • Nick Gregoratos • Michael Marcum • Jean Lu
Claire McDonnell • Ruth Morgan • Adrienne Yandell

Tamiya Davis
 Re: [REDACTED] [REDACTED] | Captioned Phones
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chapel to sign up with the Field Training Sergeant to use the captioned phone that day. The Field Training Sergeant was not present, so Mr. [REDACTED] left a note explaining that he needed to make a call that day or the following morning. Mr. [REDACTED] reports that he was not contacted regarding his request until around 7:30 that evening, when the Field Training Sergeant on the next shift came to the housing unit to speak with Mr. [REDACTED] the IAC representative, and housing unit staff.⁴ Mr. [REDACTED] reported that after speaking with housing unit staff, the Field Training Sergeant told him that housing staff did not have any sign-up sheets for the captioned phone, and that the Sergeant would email a supervisor about adding Mr. [REDACTED] to the schedule for the captioned phone the following day. The next morning at approximately 8:30 a.m. on September 14, Mr. [REDACTED] reported that housing unit staff called him to sign up to use the captioned phone.

Mr. [REDACTED] attempted to call the Prison Law Office using the captioned phone at approximately 10:20 a.m. on September 14, 2023. Mr. [REDACTED] reports that he and the custody staff assisting him attempted to dial two to four times before successfully making the call out. The call then disconnected three times, requiring Mr. [REDACTED] and the custody staff assisting him to re-dial. The call connectivity also was poor—Mr. [REDACTED] expressed feeling that the Prison Law Office representative he spoke with was unable to fully understand what he was saying due to the connectivity issues. He shared that he gave up after the call disconnected for the third time because, “I was getting frustrated with the phone. It seems like every time I want the phone, there’s a problem, so I let it go. You weren’t understanding what I was trying to get across—I knew that by reading your answer.”

Mr. [REDACTED] filed a grievance, accepted on September 14, reporting that he only learned of the captioned phone’s existence and the process to sign up from another incarcerated person, and not from staff. Mr. [REDACTED]’s experience raises questions regarding the education provided to deaf and hard-of-hearing individuals at SATF regarding captioned phones as well as the functionality of the phones themselves. **Please respond to the following:**

Questions to SATF

- 1. Defendants’ policy regarding captioned phone implementation requires a sign language interpreter or their designee at SATF to “ensure all hearing-impaired inmates are instructed on how to properly use the new Caption phones.”⁵ What education has been provided to the deaf and hard-of-hearing population and to staff regarding the availability and operation of captioned phones at SATF? Please include an explanation of what information has been conveyed regarding the process to sign up to use captioned phones, instructions on how to use the phones (including dialing), and how to report issues with the phones, as well as an explanation of how SATF ensured this information was accessible. If this information has not been conveyed to the population, please**

⁴ Mr. [REDACTED] believes that the IAC representative may have contacted the Third Watch Field Training Sergeant on his behalf to ask about his access to the captioned phone.

⁵ Memorandum from Connie Gipson, Director of Division of Adult Institutions, “Updated Americans with Disabilities Act Caption Phone Purchase and Implementation at the ViaPath Institutions” (Mar. 7, 2023).

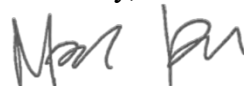
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provide captioned phone training to deaf and hard-of-hearing people at SATF within 21 days of this letter.

- 2. Please confirm that captioned phone sign-up sheets are available in every housing unit where individuals with hearing disabilities are held. Relatedly, what training has been provided to housing unit staff regarding the sign-up sheets?**
- 3. What actions have been taken with regard to the connectivity issues identified by Mr. [REDACTED]?**
- 4. On what days and at what hours of the day may Mr. [REDACTED] make phone calls using captioned phones? Are there any restrictions to when Mr. [REDACTED] may make a phone call, such as during inclement weather and fog conditions?**
- 5. Where are captioned phones located at SATF? Are there locations on each yard where class members may make confidential legal calls?**
- 6. In order to make a phone call, Mr. [REDACTED] is required to sign up for a specific time slot ahead of time, go to the chapel, and obtain assistance from staff in dialing the phone. This is not true for hearing people, who are able to make voice calls on their tablets from their cells. What actions is SATF taking to ensure deaf and hard-of-hearing people who do not sign have equal access and ability to make calls?**

Thank you for your prompt attention to this matter.

Sincerely,



Mackenzie Halter
Legal Fellow

cc:

[REDACTED]
Ed Swanson, Audrey Barron, Court Expert
Co-counsel
Patricia Ferguson, Alexander Powell, Nicholas (Nick) Meyer, Chor Thao, Ramon Ruiz, Amber Lopez, OLA Armstrong (OLA)
Lois Welch, Steven Faris (OACC)
Brienne Burkart, Sandra Alvarez (CCHCS Legal)
Mona Houston, Lourdes White, Jillian Hernandez, Cory Lo, CAMU Mailbox (DAI)
Diana Toche, Joseph Bick, John Dovey, Robin Hart, CCHCS Accountability, Joseph (Jason) Williams, Cathy Jefferson, Jason Anderson, Dawn Lorey, Jane Moses, Joshua (Jay) Leon Guerrero, Aaron Perez (CCHCS)
Sharon Garske, Trace Maiorino, Sean Lodholz, Mark Jackson, Olena Likhachova (OAG)