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VIA EMAIL ONLY

November 21, 2023

Ed Swanson
Court Expert

Tamiya Davis
CDCR Office of Legal Affairs

Armstrong v. Newsom
RE: Summary of SATF Monitoring Tour Findings

Dear Mr. Swanson and Ms. Davis:

Plaintiffs conducted a monitoring tour of SATF this month. During the tour, we saw nothing to suggest that our previous concerns had been addressed. *See* Dkt. No. 3510. In fact, we found evidence of backsliding. We learned that previously promised corrective actions either had not in fact been implemented or had been rescinded. *See Armstrong v. Newsom*, 58 F.4th 1283, 1298 (9th Cir. 2023) (holding that district court properly “include[d] measures in its orders that Defendants may have adopted voluntarily” because “voluntary plans may change”).

In light of the Court’s November 7, 2023 order, we provide a summary here of several findings related to Defendants’ failure to cure the violations found in the Court Expert’s first and second SATF reports and inaccurate information provided by Defendants to the Court, Court Expert, and Plaintiffs’ counsel. We do not attempt to “re-prove” the Court Expert’s previous findings. Those findings are undisputed. Nor do we re-explain why Defendants’ proposed remedies are inadequate. The parties already briefed that issue.

We also note that the information in this letter is by no means complete. It has been difficult to get timely, accurate, and complete information from Defendants and to keep up with Defendants’ ever-changing positions on many of these issues.¹

¹ Furthermore, we intentionally focused our recent monitoring tour on issues not directly covered by the Court Expert’s investigation. (The Court’s recent order was issued during our tour.) We will later share in writing our concerns about ADA violations and *Armstrong* violations that do not directly fall within the scope of the Court Expert’s current investigation and/or that require additional investigation by Plaintiffs’ counsel to confirm. We shared several such issues with institution and headquarters officials during an exit meeting yesterday.

[4393326.1]

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Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 2

We ask that Defendants explain what they will do to address each issue below. Plaintiffs may send more specific requests related to these issues at a later time.

CUSTODY

1. Tracking Non-Medical Assistive Devices

Defendants told the Court that they would respond to Plaintiffs' April 11, 2023 letter requesting that they develop a system to purchase and track non-medical devices as reasonable accommodations by November 6, 2023. *See* Dkt. No. 3504 at 7. Defendants have not done so as of November 20.

The interim solution Defendants said is in place still does not appear to be working. Plaintiffs previously informed Defendants that the ErgoWriter for Person F did not appear to be properly documented. *See* Dkt. No. 3510 at 20 n.7 (Sept. 21, 2023). According to the electronic medical record and DPP Roster dated November 17, 2023, that appears still to be the case. Defendants also have not explained whether and how they intend to document reasonable accommodations that individuals previously purchased for themselves.

2. Charges for Non-Medical Assistive Devices

On October 5, 2023, Defendants represented to the Court that “**effective immediately** statewide, when RAP approves a Reasonable Accommodation that allows access to programs, services, and activities, CDCR will incur the cost associated with the reasonable accommodation when no reasonable alternative exists, unless such an accommodation creates an undue burden under the ADA. CDCR will revise the applicable local operating procedures to comport with the foregoing policy.” Dkt. No. 3515 at 7 (emphasis added). The next week, Plaintiffs' counsel asked Defendants for a copy of “whatever direction went out to the field about the new statewide policy referenced in Defendants' court filing.” *See* Email from Rita Lomio, Prison Law Office, to Trace Maiorino, Office of the Attorney General (Oct. 13, 2023). Defendants have not responded over a month later.

During our monitoring tour, the ADA Coordinator said that he had not received any direction to depart from existing policy that requires the person with a disability to pay for non-medical reasonable accommodations and said pocket talkers are the only non-medical reasonable accommodation he has “provided without the inmate paying for it.” The ADA Coordinator said that he had not received instruction to update the LOP related to payment for reasonable accommodations.

3. Accessible Phones

a. TDD

Defendants have twice told the Court – first in January and then in September 2023 – that SATF would test TDDs monthly. *See* Dkt. No. 3453 at 16; Dkt. No. 3504 at 11. That appears to be untrue. Both the ADA Coordinator and CAMU CCII confirmed that testing is supposed to be done quarterly per the most recent LOP, which the ADA Coordinator confirmed is dated June 2023, and not monthly. The ADA Coordinator said that SATF did not document testing of the TDD but had repeatedly found problems with the TDD during tests.

Defendants represented during a Deaf/Hard-of-Hearing Workgroup meeting that the CAMU CCII would be responsible for testing. Both the ADA Coordinator and CAMU CCII said they had received no direction that the CAMU CCII (or any other particular staff person) should be responsible for testing, and that they eventually wanted to have the CCI who tests VRI be responsible for testing the TDD. (That may not be a good system, as housing officers and not just ADA staff need to be familiar with the TDD and how to use it.)

The manner of testing itself seems to be inadequate. It appears to require only that the TDD be connected and that a prison line be called, with the tester confirming that the automated introductory language on the line is transcribed. The tester does not confirm that Voice Carry Over (VCO) works and does not do a test call with a live person on the other side to make sure the connection is sufficient to support a clear conversation.

When we tested the TDD during the tour, we found that no one knew how to get VCO to work (both ADA staff and housing officers were with us) and that the connection was insufficient to support a clear conversation. As seen in the transcript on the next page, text was garbled with Xs and ~s in place of words.

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Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 5

& Rita Lomio, Prison Law Office, to Ramon Ruiz, Office of Legal Affairs, Captioned Phone Implementation (Nov. 2, 2023). Defendants have not yet responded.

Have Institution Received Caption Phones?	Yes
Amount of Caption Phones Ordered	9
Location of Caption Phones	Designated clustered buildings per facility, CTC, and STRH
Are Caption Phones Accessible to MHCB and CTC Inmates?	Yes
Any Barriers for DPH Inmates to access Caption Phones? i.e. recv'd caption phones, however, phones have not been installed (please advised if a remedy ticket has been submitted to EIS for installation. Please include the date of submission and remedy ticket number.	None
Please provide a brief statement on how will the Caption Phone info be communicated to your Deaf/HoH populations. i.e. how it works?	Townhall meetings with IAC members

Defendants also still have not responded to Plaintiffs' concerns and information requests regarding captioned phones at SATF sent **over two months ago**, including related to class member education, hours of availability, and sign-up processes. This letter was based on the experience of Person E, a deaf man discussed at length in the first SATF report. *See* Letter from Mackenzie Halter, Prison Law Office, to Tamiya Davis, Office of Legal Affairs, [REDACTED], DPH, SATF | Captioned Phones on G Yard, at 1 n.1 (Sept. 19, 2023).

The November 2023 tour showed little has changed. Captioned phones are not located or available for use in the housing units; instead, they are located and available for use in the chapels. The ADA Coordinator said that he wanted to make captioned phones available in the housing units to make them more accessible and to address logistical barriers, but he was instructed by headquarters to get the captioned phones installed as fast as possible and, because they require an institutional phone line, it was easier and faster to locate them in the chapel where there was an available phone line already instead of installing a new phone line in the housing units. The ADA Coordinator said headquarters had not provided direction on where the captioned

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 6

phones should be installed, and there are no current plans to install additional lines so that captioned phones can be located in more convenient locations. The ADA Coordinator said that during modified programming, it would be a challenge, but not impossible, to allow access to the captioned phone.

We viewed the captioned phone on Facility G and confirmed Person E's account from September that the captioned phone is in the hallway outside the chapel. The captioned phone is only accessible with a key held by the FTS sergeant, and we had to wait while the sergeant came to unlock the chapel and their office, where the captioned phone was kept. It then took us three tries before we could get a call to connect. (The posted instructions say that the captioned phone needs to be plugged in 15-30 minutes before use.) There appeared to be no plan for allowing a class member to use the captioned phone for a confidential legal call.

Regularly-assigned housing officers on Facilities F and G were unaware during our visit of what a captioned phone is and what the sign-up process for it is. An officer on Facility G guessed that perhaps it was a videophone or "braille" phone. (Facility G is where Person E previously was housed.) The lieutenant on Facility G similarly said he did not know if captioned phones were installed, and said this was because he's a "coverage" lieutenant, even though he is a permanent lieutenant who regularly covers Facility G.

The ADA Coordinator said that the previous LMS training on captioned phones was from 2022, and to his recollection only about 60% of staff completed it. He said that he asked IST to repost the LMS training recently. It is not clear what this training consists of; if it simply requires staff to read a policy memorandum regarding captioned phones, it will be ineffective. Instead, FTS should bring staff to view a captioned phone and see how it works, so they are informed and can help educate people with disabilities about its availability if, for example, someone is having trouble hearing their loved ones on the regular phone in the housing unit.

c. Tablets

People who require captioning or sign language still cannot use the tablets to make phone calls, as the tablets still do not have accessible phone features.

SATF still has not issued an interim policy to allow people greater access to the TDD or captioned phone, including during modified programming, to allow closer-to-equal access to their hearing peers who can make phone calls through their tablets. The ADA Coordinator on November 15, 2023, said that headquarters had instructed him to develop such a policy a week before and that a draft was pending with the warden. He reported that the policy would allow one extra TDD or captioned phone call a day – a restriction not placed on hearing people who, as we understand it, have no limitation on the number of calls they can place through the tablet. Such a

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 7

restriction is particularly inappropriate because many deaf and hard-of-hearing people who require use of accessible phones are profoundly isolated in prison, and rely even more on the ability to speak with family and loved ones through accessible phones for social interaction and support.

In addition, SATF has revised its memorandum allowing greater access to the videophone to make it **more restrictive**. It now allows deaf signers to make an additional videophone call only once on second watch and once on third watch – again, such limitations are not placed on hearing people.

SATF also appears to have a sizable waiting list for over-ear headphones for the tablet, and it is not clear when those will be provided by headquarters or its contractor, ViaPath. The ADA Coordinator reported that SATF ran out of over-ear headphones about two or three months ago.

4. Vibrating Watches

Defendants appear to have grossly misstated the security risk of a vibrating watch to the Court. *See, e.g.*, Dkt. No. 3504-1 at 6 (stating that Defendants have not identified any vibrating watches “that will work and also meet institutional security requirements”); Dkt. No. 3515 at 11-12 (“the alarm creates a security risk that must be addressed to ensure the safety of staff and incarcerated population”). Headquarters staff appears unaware that, in fact, Deaf people who can afford to pay for a vibrating watch already have such watches and have used them successfully in multiple prisons, including at SATF, for quite some time without creating any security problems.

Defendants also told the Court that vibrating watch testing would be concluded by October 19. Dkt. No. 3515 at 12. That deadline was not met, and we have not heard Defendants’ final decision based on the vibrating watch they had three Deaf people test. One of those Deaf people housed at SATF told Plaintiffs’ counsel that the vibrating watch they were given was of such low quality that he could not feel the vibration. He reported that he was asked to fill out a survey in writing without the assistance of a sign language interpreter (he is documented as reading at a fourth-grade level, while the survey is written at a seventh- or eighth-grade level, according to a secure online tool that measures ease of reading). It seems a better and more cost-effective approach would be to see what types of vibrating watches are already working well for Deaf people in prison and to order those watches without further delay for all Deaf people.

5. Effective Communication of Announcements

Deaf and hard-of-hearing people at SATF continued to report to Plaintiffs’ counsel that they do not receive effective communication of announcements. One deaf person housed in a unit with other deaf people said that when the lights flash, all deaf people have to go up to the housing

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 8

officer to try to figure out which of them was being called. Another hard-of-hearing person reported that he tries to stay in the dayroom as much as possible so that he can more easily hear announcements, but that he often misses mail because mail often is announced after the dayroom has been recalled, when he is back in his cell. Several class members also filed 1824s about lack of effective communication of announcements. *See, e.g.*, Log No. SATF-F-23-00127 (93-year-old man reporting that he cannot understand announcements over the loudspeaker and staff usually do not tell him about announcements unless he goes to the podium to ask, and requesting that he be informed of announcements like mail) (filed with assistance of Plaintiffs' counsel); Log No. SATF-G-23-01530 (person designated DNH reporting that he cannot hear announcements in the building; the sergeant who interviewed him in response to his 1824 noted "he expressed frustration and is valid," and "I did observe ██████ constantly studying my lips as I spoke, and trouble hearing"); Log No. SATF-F-23-00874.

During the walking tour, we observed regular housing officers on Facility G announce over the intercom "Yard/dayroom," without flashing the lights or providing individual notification. Shortly thereafter, they announced, "Last call for yard," again without flashing the lights or providing individual notification. Only after Plaintiffs' counsel inquired about the lack of effective communication did the officers flash the lights, but they still did not provide individual notification and instead said that if someone came to the door late because they could not hear the announcement, the officer would let them out. The whiteboard near the officer podium listed the day's schedule but at times that were not consistent with how the schedule in fact was being run that day. The officer explained that it was because they were short staffed because officers had been pulled onto Facility D to search for missing metal and that the schedule is usually subject to change based on staffing and programming at the time. At the time of our tour, there were vacancies in canteen staff, and so that program was not running consistently on any yard, as canteen staff were moving around the yards without a preset schedule. While on Facility E, we heard the announcement "12 o'clock meds" over the intercom at 11:25 am.

Defendants' proposed tablet solution does not address individual announcements (that is, it discusses only the unit-wide announcements of yard, dayroom, canteen, medical pass, mail call, phone call signups, religious services, and dining time). But ADA staff reported that healthcare ducat times are not always accurate; even if someone is scheduled to be seen by healthcare staff at 11 am, they may be called at 9:30 am or 2:30 pm depending on how the line is run that day or whether there is modified programming. An SRN II confirmed that appointments take place "usually within hours" of the time listed on the ducat, but reported that she does not audit the accuracy of healthcare ducat times. The medical scheduler on Facility D also confirmed that the RN line in practice does not run consistently with the times she schedules appointments for and that when she puts someone on the same-day RN line, they will not get a ducat for it, so they will not know in advance what time they will be called to the clinic.

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 9

6. CART

The ADA Coordinator reported that he observed CART used for an initial classification committee and that CART appeared to be more accurate than the autocaptioning used previously. He reported that he did not see any issues with it except (1) it did not transcribe certain CDCR acronyms correctly (e.g., “CCI”), and (2) the counselor requested a copy of the transcript from the vendor but did not receive it within 24 hours as required. (Although Defendants previously said they would send the vendor a list of CDCR acronyms, Plaintiffs’ counsel has not seen it and cannot confirm it is complete or was in fact sent to the vendor.)

Alarming, the ADA Coordinator said that he will allow CART only to people who are designated DPH or have “written notes” currently documented on SOMS as a primary or secondary form of communication. That is contrary to the CART policy memorandum, which permits people designated DNH to request CART via the 1824 process and provides that those requests shall be considered on a case-by-case basis and that staff shall provide CART unless they “can demonstrate that another equally effective means of communication is available.” The ADA Coordinator acknowledged this language but said that if someone has another form of communication documented in SOMS, such as speaking loudly and clearly or lipreading, he views that as a *de facto* equally effective alternative and does not conduct any further inquiry into the matter and will on that basis alone deny the CART request.

We found at least two 1824s from class members at SATF improperly denied on this basis. *See* 1824 Log Nos. 23-01511 & 23-01531. We sent one to Defendants on October 24, 2023, and asked that headquarters provide appropriate direction to the field. *See* Email from Rita Lomio, Prison Law Office, to Ramon Ruiz, Office of Legal Affairs. Instead of providing such direction to expeditiously address the problem, Defendants apparently simply routed it to the SATF ADA Coordinator to respond to as an advocacy letter, which he had not done as of the date of our tour.

When we visited SATF again on November 15, 2023, we were shown an iPhone with speech-to-text software. It is unclear whether this is supposed to be an alternative to CART. We tested it for over an hour and, based on our review, determined it is not an adequate alternative, although, if improved, could be a useful tool for deaf and hard-of-hearing people’s informal, one-on-one communication with other incarcerated people and help lessen their isolation. The software often abruptly stopped transcribing speech, mid-sentence. The software did not transcribe accurately (and often listed gibberish like “It’ll take Maria 22nd stamp at one and that’s not totally true”), did not identify who was speaking, and could not pick up what people were saying a few feet or yards away. Unless two languages were displayed at once, the text disappeared suddenly, before it could be fully read. When two languages were displayed at once, the non-English language was distracting and sometimes filled up the entire screen so the English could not be viewed. It was not clear whether the font size or background color could be changed.

7. Auxiliary Aids in the Libraries

The ADA Coordinator reported that SATF still is short librarians, and the staff they do have are rotating between yards, so not every library is open every day.

Defendants previously told the Court that blind and low-vision people at SATF can submit an 1824 for additional library access that “will be considered on a case-by-case basis.” *See* Dkt. No. 3504 at 9. That appears to be untrue; such requests are either ignored or denied based on recitation of existing policy on GLU/PLU access. For example:

1824 Request	RAP Response
<p>DPV class member reported lack of sufficient access to auxiliary aids in the law library, which impairs his ability to complete personal correspondence and CDCR forms, as well as read legal mail and court transcripts. He reported that the library has been closed since approximately May 31, 2023, and the institution is on modified lockdown.</p> <p>████████████████████, DPV, DPW <i>Log No. SATF-F-23-01097</i></p>	<p>“The facility Library is open Monday through Friday with the following COVID-19 guidelines. Library hours will be in accordance with your yard schedule. You will be able to access the library only during your yard times. No more than 4 inmates will be allowed inside the library at a time. PLU inmates will have priority. When one inmate leaves, another may enter. All inmates must leave when their yard time is over, no exceptions.”</p>
<p>DPV class member said he is “not being afforded adequate time in law library” to prepare legal material and requested to be provided “a reading machine to read in cell or additional time in law library.”</p> <p>████████████████████ DPV <i>Log No. SATF-E-23-00137</i></p>	<p>“The Education Department provided the RAP with a Disability Verification Process (DVP) Worksheet indicating library records show you are accessing the library in accordance with your General Legal User (GLU) status. You do not qualify for Priority Legal User (PLU) status due to lawyer representation.”</p>
<p>DPV class member reported that he needed access to auxiliary aids in the law library to read and write and “not only is the law library not open enough, I am double assigned and could not go anyway.”</p>	<p>“The Education Department provided the RAP with a Disability Verification Process (DVP) Worksheet indicating a review of your schedule in Strategic Offender Management System (SOMS) shows your availability to access assistive</p>

Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 11

<p>██████████ DPV <i>Log No. SATF-F-23-00326</i></p>	<p>equipment in the library, especially on Saturdays. . . . When access to the Law Library and Davinci is not possible, you may continue to use the full page magnifiers and ADA workers in your housing unit to assist you.”</p>
<p>DPV class member reported that he cannot read independently unless he is in the library, “which is closed very often (only open a few times per week, shut down when short staffed). If I have a Monday homework assignment due Wednesday, I can’t get to the library in time to complete it.”</p> <p>██████████ DPV <i>Log No. SATF-F-23-00753</i></p>	<p>No substantive response to the class member’s concern regarding sufficiency of library access.</p>

The second SATF report stated that the seven-month delay in repairing an assistive device in the Facility D law library may have been caused by Defendants’ failure to pay the vendor for repair. Dkt. No. 3500 at 14-15. The ADA Coordinator said that such payment was the responsibility of headquarters, not SATF.

8. Auxiliary Aids in the Restricted Housing Unit

Over six months ago, Plaintiffs’ counsel reported serious concerns with the lack of reading and writing accommodations available to blind and low-vision people in the Restricted Housing Unit (RHU) (then called Short-Term Restricted Housing, or STRH). *See* Letter from Jacob Hutt, Prison Law Office, to Chor Thao, CDCR Office of Legal Affairs, Lack of Reading and Writing Accommodations for Blind and Low-Vision Class Members in STRH at SATF (May 17, 2023). Plaintiffs’ counsel has not yet received a response, although Defendants’ stated that they would respond by October 23, 2023. *See* Email from Tamiya Davis, CDCR Office of Legal Affairs, to Jacob Hutt, Prison Law Office (Aug. 23, 2023). Plaintiffs’ counsel reported in that letter that even the minimal accommodations sometimes available to other blind and low-vision people in general population law libraries, such as desktop magnifiers, were unavailable to people in restricted housing, and that blind and low-vision people were subjected to extreme isolation on the basis of their disability as a result.

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 12

These concerns do not appear to have been addressed. Plaintiffs' counsel visited the RHU on November 8, 2023. At the time, the RHU housed two people designated DPV and one person designated DNV. Plaintiffs' counsel observed a new computer in RHU outside of the "law library" cage, but staff informed Plaintiffs' counsel that it was not plugged in and could not be turned on. The regular second watch officer present had not used the computer himself and did not know what functions would be available on the computer. He informed Plaintiffs' counsel that individuals who would like to access legal paperwork from their property or use the "law library" kiosk, including blind and low-vision individuals who may need the computer as a reading and writing accommodation, must submit a GA-22 in writing to the legal officer to be scheduled. He later added that these class members may make requests orally, but these requests may not be copied into the legal log that includes scanned GA-22 forms.

The LexisNexis module in the "law library" kiosk, which has in-screen magnification but no text-to-speech functions, was out of service at the time of Plaintiffs' counsel's visit. Staff informed us that it had been out of service for several months, and the ADA Coordinator reported that there was no estimated completion date for repairs.²

The ADA Coordinator reported that he is in the process of acquiring a desktop video magnifier for RHU, which would allow blind and low-vision class members to more independently read legal material, but had no estimated timeline for procurement.

9. FTS Sergeants and 1824s

In the second SATF report, the Court Expert noted: "we did hear both in surveys and in interviews that some class members felt that FTS sergeants were discouraging the use of the 1824 process by asking class members to first address problems with the FTS sergeants. We think it is reasonable for FTS sergeants to remind class members that they are an available resource and that they may be able to resolve an issue faster than a class member could receive assistance from an 1824, but FTS sergeants should be cautious not to use language that could be interpreted as discouraging the filing of 1824s." Dkt. No. 3500 at 18.

During our visit in November 2023, the lieutenant who supervises all FTS sergeants reported that he had not read the second SATF report, did not know that the Court Expert had made the findings listed above, and had therefore not spoken with FTS about the issue.

² In the interim, class members reportedly may use their tablets to access similar law library functions. The tablet has limited in-screen magnification, but Plaintiffs' counsel have reported concerns with the functionality of text-to-speech software with tablet applications.

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 13

HEALTHCARE

10. Triaging and Responding to DME-Related 7362s

In the second SATF report, the Court Expert wrote that SATF healthcare leadership had encouraged nursing staff to treat 7362s regarding DME as “symptomatic,” so that patients with DME concerns would be treated promptly. *See* Dkt. No. 3500 at 10 n.6; *see also* HCDOM § 3.1.5(c)(2)(B)(3)(a)(3) (“Patients who submit CDCR 7362s that describe symptoms shall be seen by the Primary Care RN within one business day.”).

It appears that, at the time the second report was filed on August 24, 2023, that practice was no longer in place, and had not been in place for some time. Instead, on June 26, 2023, the CNE reportedly issued written direction to nursing staff to revert back to previous policy, as outlined in the HCDOM, that does not require DME-related 7362s to be triaged as symptomatic. *See* Memorandum, Prison Law Office Request for Review of Patient [REDACTED] (Nov. 8, 2023) (internal citations omitted). The memorandum reportedly directed RNs to use “clinical judgement [sic] during the 7362 review process.” *Id.*

Plaintiffs’ counsel learned that the information in the second SATF report was outdated after raising a concern that an *Armstrong* class member at SATF had requested an extension of his temporary wheelchair via a 7362 because he was worried that upcoming loss of the wheelchair would “lead to a fall,” but that 7362 was triaged as asymptomatic, instead of symptomatic. *See* Individual Patient Medical Concern – Request for Review ([REDACTED], SATF) (Oct. 9, 2023). Plaintiffs’ counsel inquired why the practice described in the second SATF report of triaging the 7362 as symptomatic was not followed. CCHCS responded that, in its view, the 7362 was properly triaged as asymptomatic “as the triaging RN noted the patient was still in possession of the wheelchair.” *See* Memorandum, Prison Law Office Request for Review of [REDACTED] (Nov. 8, 2023) (internal citations omitted). But although he had it at the time of the triage, it was removed from him several days later, after the order for the wheelchair expired and **before** he was seen for the “asymptomatic” 7362, putting him at risk of falling. He was re-issued a wheelchair only after Plaintiffs’ counsel advocated on his behalf.

This does not appear to be an isolated incident. Patients with disabilities report, and their recent medical records appear to confirm, that their 7362s requesting repair and replacement of their DME still are not addressed timely – sometimes leading class members to file 1824s to attempt to remedy their concerns. A few examples are below.

Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 14

Patient DME Requests & Response	Calendar Days (Cumulative)
[REDACTED]	
<i>Initial Health Screening (July 26, 2023):</i> RN at R&R noted missing wedge pillow, “PT DID NOT HAVE ON ARRIVAL.” It is not clear whether the RN took any action other than to note the missing wedge pillow.	0
<i>7362 (dated July 27, 2023, triaged July 31):</i> “I am requesting a replacement wedge pillow. My wedge pillow was lost in transfer from S.Q. I arrived here on 7-26-23 at SATF.” The triaging nurse noted “MA” on the 7362.	1
<i>1824 (Aug. 7, 2023, Log No. 23-01474):</i> “I am a new arrival. . . My medical device (w[ed]ge pillow) was lost during transport. I used it when sleeping and sitting up. I reported it missing whe[n] I arrive to R/R medical staff during intake, also to ADA SGT and file a CDCR 7362 dated 7-27-2023. As of todate it has not been replaced. . . Having pain when sleeping and sitting up.” The RAP response also noted no interim accommodation because “you are not alleging a disability or requesting an accommodation to access Programs Services, or Activities,” and encouraged him to use a 7362 as the “appropriate avenue[] to address issues.”	12
<i>7536 (Aug. 11, 2023):</i> Issued “Wedge Pillow” by clinic medical assistant.	16
[REDACTED]	
<i>7362 (dated Sept. 5, 2023, triaged Sept. 7):</i> “Due to my aggravated injuries, I the ADA patient immediat[e]ly must be provided with a new wheelchair wide width <u>tire</u> to ease my movement. . . I filed the 1824.” The triaging nurse noted “MA” on the 7362.	0
<i>7536 (Sept. 12, 2023):</i> Issued “18 inch Drive loaner” wheelchair by clinic RN.	7

Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 15

[REDACTED]	
7362 (dated Sept. 13, 2023, triaged Sept. 14): “I am in need of a walker because I need a place to sit when the yard go[e]s down. Standing for long periods of time my back go out and my legs want to give.” Triaged as “RN Asy” (asymptomatic).	0
7536 (Sept. 22, 2023): “Blue standard walker” issued by a clinic RN.	9
[REDACTED]	
7362 (dated Sept. 13, 2023, triaged Sept. 14): “I’ve had two strok[e]s and I very unsteady and have trouble seeing. I’m requesting a walker.” Triaged as “ARN” (asymptomatic RN).	0
Nursing Face-to-Face (Sept. 28, 2023): “Refer[r]ed to provider for request for walker” within 14 calendar days.	15
Outpatient Progress Note (Oct. 10, 2023): Provider noted that “pt is not oriented and incoherent,” and sent [REDACTED] out to a higher level of care for further evaluation. There is no indication that [REDACTED] was provided a walker.	27
7362 (Oct. 18, 2023): “Eye off set – falling – and need a wheelchair please.”	35
Nursing Face-to-Face (Oct. 19, 2023): “Patient is requesting for wheel chair because he feels tired an[d] falls when walking around in the yard.” The nurse noted a recent neurology consultation and scheduled provider follow-up and that “issue resolved.”	36
Outpatient Progress Note (Oct. 31, 2023): No documentation from provider regarding requests for walker or wheelchair.	48
Plaintiffs’ Note: As of November 21, 2023 at 9:45 AM, there is no indication in [REDACTED] medical record that he has been assessed for either a walker or a wheelchair.	69

Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 16

[REDACTED]	
7362 (Sept. 19, 2023): “Need gloves for wheelchair.” The triaging nurse noted “MA” on the 7362. Plaintiffs’ Note: According to an SRN II interviewed during Plaintiffs’ monitoring tour, 7362s requesting wheelchair gloves may be triaged as asymptomatic, but should be addressed by the next business day by an MA. The MA should then enter a progress note documenting the encounter with the patient at which the item was issued. The electronic medical record does not indicate that any of these steps were followed in this case.	0
1824 (Nov. 7, 2023, Log No. 476138): Requesting wheelchair gloves, with the assistance of Plaintiffs’ counsel during monitoring tour.	49
7536 (Nov. 8, 2023): Issued “gloves for wheelchair use size extra large” by Psych Tech.	50

Many of these delays are longer than those Plaintiffs’ counsel reported in June 2023. See Letter from Skye Lovett and Rita Lomio, Prison Law Office, to Dr. Joseph Bick, Director of CCHCS Health Care Services, and Jason Williams, Director of CCHCS Corrections Services, Need for SATF LOP and HCDOM Revisions to Ensure Timely Response to 7362 Requests for Durable Medical Equipment Repair and Replacement at 5-6 (June 5, 2023) (table summarizing responses to patients’ requests for DME repair or replacement).

In response to Plaintiffs’ letter, CCHCS stated:

In July 2023, SATF began conducting CDCR 7362 audits focused on the DME process. SATF will conduct these audits for the next six months to ensure process efficiency. Subsequently, the Nursing Sub-Committee and leaders will report and review the data to ensure accuracy and facilitate appropriate follow-up actions. Summaries of these audits may be available in the beginning of February 2024.

Plaintiffs’ counsel do not know whether the above concerns were captured by the audit of 7362s related to the DME process, but are concerned that problems have persisted from July 2023, when the audit began, to present.

Plaintiffs' counsel also are concerned with the continuity of the instruction given to staff on triaging 7362s related to DME in light of the departure of the former Chief Nurse Executive, Juliet Ogbologu. The position currently is filled by an Acting CNE who has been at SATF for the last year and acting in the position since October 10, 2023.

11. Effective Communication with Deaf and Hard-of-Hearing Class Members During Healthcare Appointments

a. Written Notes for Deaf Non-Signer "Person E"

In the second SATF report, the Court Expert wrote that one deaf class member who does not know sign language ([REDACTED] or "Person E") reported that at least one healthcare staff member continued to make him write notes during healthcare encounters, despite healthcare staff being trained that "some deaf people can speak but cannot sign and how to correctly accommodate those class members." *See* Dkt. No. 3500 at 12; Dkt. No. 3446 at 64.

This may be because Defendants to this day have not updated documentation in Person E's medical records to accurately reflect his disability accommodation needs. In particular, the medical record for all patients contains an easy-to-access ADA summary page which includes the methods of communication. Plaintiffs' counsel informed Defendants over two months ago that the information on Person E's ADA summary page is wrong and gets his needs exactly backwards, stating that he needs no accommodation for a hearing disability (when in fact he needs written notes) and that he needs written notes for a speech disability (when in fact he can voice). *See* Letter from Mackenzie Halter, Prison Law Office, to Tamiya Davis, Office of Legal Affairs, [REDACTED] DPH, SATF | Captioned Phones on G Yard, at 1 n.1 (Sept. 19, 2023). Defendants have not responded to our letter, and as of November 20, 2023, Defendants have not updated Person E's medical record to prevent this problem from happening again.

Person E's current "Methods of Communication," as they appear in the electronic medical record, are copied below, alongside those of a Deaf signer housed on the same facility as Person E while he was at SATF.

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Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 18

Methods of Communication	Methods of Communication
SLI: No	SLI: Yes
Hearing Primary: None	Hearing Primary: American Sign Language
Hearing Secondary:	Hearing Secondary: Reads Lips
Speech Primary: Written Notes	Speech Primary:
Speech Secondary:	Speech Secondary:
Vision Primary:	Vision Primary:
Vision Secondary:	Vision Secondary:
Interview Date: 08/21/2023 00:00	Interview Date: 02/02/2007 00:00

(left) Person E, (right) [REDACTED]

In addition, Person E met with a provider at SATF in September 2023 to discuss several serious medical concerns, including colon cancer surveillance (for which he is at high risk), the results of a recent biopsy, chronic neck pain, and changes to his medication. Person E reported that the provider wrote very little and mostly spoke, notwithstanding Person E's attempts to explain that he could not hear and required written notes. He reported giving up trying to get the provider to accommodate his disability: "I shook my head – forget it."

The communication therefore was ineffective, and Person E did not understand the plan of care. He filed several 7362s in the following days asking for information covered in the appointment, including about whether he could receive a cervical pillow and be prescribed certain medications as "keep on person." Person E later explained to Plaintiffs' counsel that the provider had not effectively communicated to him that he had ordered two other medications, and that Person E did not take these two medications as a result.

The provider's documentation of effective communication during that appointment is confusing and contradictory. The provider documented, apparently in a free text field for the encounter itself, that, "I spoke slowly in basic language, repeated information to patient. Patient expressed understanding of plan of care. Effective communication achieved." Outpatient Progress Note (Sept. 26, 2023). That, of course, is not effective communication to Person E. The provider also documented elsewhere that he spoke louder and slower and "Written notes were utilized

Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 19

during the encounter,” but, in violation of policy, no written notes were scanned into the electronic medical record. *See* Effective Communication (Sept. 26, 2023).

b. Sign Language Interpretation for Deaf Signers

Plaintiffs’ counsel reported following our monitoring tour in January 2023 that medical staff on several facilities housing Deaf class members who use sign language were not familiar with video remote interpretation (VRI), did not have the equipment easily accessible, and were unable to connect to VRI. Several months later, however, Plaintiffs’ counsel continued to see entries in the electronic medical record of patients who use sign language suggesting that VRI equipment was not available or not working properly. *See* Letter from Sophie Hart *et al.*, Prison Law Office, to Dr. Joe Bick, Director of CCHCS Healthcare Services, and Tamiya Davis, CDCR Office of Legal Affairs, Provision of Sign Language Interpretation During Healthcare Encounters at SATF (Apr. 24, 2023).

Defendants responded to Plaintiffs’ advocacy letter almost seven months later. *See* Letter from Nicholas Meyer, CDCR Office of Legal Affairs, to Sophie Hart and Rita Lomio, Prison Law Office (Nov. 15, 2023). Defendants reported that the institution audited VRI systems and connectivity at all clinics in April and May, and conducted additional training at a “Nursing Skills Fair.” Defendants also reported that the institution was developing a job aid to be posted near each workstation. Defendants stated that while several of the incidents reported in Plaintiffs’ letter were still under review, the medical provider responsible for an additional incident was given training on the requirement to provide sign language interpretation.

Nonetheless, Plaintiffs’ counsel continues to see evidence in the electronic medical record that the same patients are not provided interpretation at their encounters, sometimes with the same providers.³

Patient / Encounter Date	Medical Record Entry
<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> G2 (Nov. 7, 2023)	Secondary method used. Pt refused to get out of the band. No SLI interpreters after hours. (RN <div style="background-color: black; width: 80px; height: 15px; display: inline-block;"></div>)

³ Though not within the scope of this review, Plaintiffs’ counsel also saw evidence in the electronic medical record that off-site medical encounters for Deaf patients at SATF may have taken place without sign language interpretation.

<p>██████████ G2 (Nov. 2, 2023)</p>	<p>PREP & SCREENING: OFFSITE MRI Prostate on 11/07/23. . . Please review [instructions] with patient and email the screening form to offsite or myself 2 days before the appointment. We will need this screening form back to send to the outside facility to ensure that the exam will be done safely.</p> <p>Plaintiffs' Note: There is no documentation in the electronic health record that an interpreter was provided to review the instructions with ██████████, who is also DD1.</p>
<p>██████████ A2 (Oct. 26, 2023)</p>	<p>Communication via post-it notes. SLI unavailable. (P&S ██████████)</p> <p>Plaintiffs' Note: Dr. ██████████ is the same provider Plaintiffs' counsel discussed denying an interpreter to ██████████ in our April 2023 advocacy letter. According to Defendants' response, non-compliance at that December 2022 encounter was confirmed, and the provider (Dr. ██████████) was provided training on the requirement to provide interpretation.</p>
<p>██████████ G2 (Oct. 4, 2023)</p>	<p>Onsite audiology with ██████████ Clinic conducted. IP returned to custody in stable condition. . . Equipment Accommodation: Yes. Comment: hearing aids. . . Sign Language Interpreter: No. (RN ██████████)</p>
<p>██████████ G2 (Sept. 27, 2023)</p>	<p>cysto 9/27/23 to be r/s due to inability to secure SLI; new appointment pending.</p> <p>9/26/23 RN requested SLI via CIT; only zoom interpreter available. Per PPA, they cannot accommodate zoom for this case and appt on 9/27/23 has been cx'd (RN ██████████)</p>
<p>██████████ G2 (Sept. 2, 2023)</p>	<p>SPEAK SLOWLY TO ALLOW INMTE TO READ LIPS. PROVIDED FOLEY CATH CARE IN WRITING TO INMATE. (LVN ██████████)</p>

Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 21

	<p>Plaintiffs’ Note: [REDACTED] secondary method of communication is hearing aids; “reads lips” is not a documented method of effective communication for [REDACTED]. It appears that [REDACTED] was interviewed on October 19, 2023, by an SRN about this incident, and reported that “they tried to use VRI during this visit but the reception kept on going on and off.”</p>
<p>[REDACTED] G3 (Aug. 30, 2023)</p>	<p>PREP: Offsite PET/CT on 9/6/23. . . Please review [instructions] with patient.</p> <p>Plaintiffs’ Note: There is no documentation in the electronic health record that an interpreter was provided to review the instructions with [REDACTED]. The procedure could not move forward because [REDACTED] ate beforehand, although the procedure required nothing by mouth. A healthcare grievance note was entered into [REDACTED] record on November 3, 2023, noting that [REDACTED] “Alleges appropriate Positron Emission Tomography (PET) preparation instructions were not provided and it would be an extended wait to be rescheduled.”</p>
<p>[REDACTED] G3 (June 26, 2023)</p>	<p>Patient was reminded of off site specialty appointment scheduled for 6/28/23 patient confirmed this appointment. . . Speech Language Interpreter: No. (LVN [REDACTED])</p>

12. Reconciliation Audits

The second SATF report described an auditing system developed by a nurse practitioner at SATF to determine whether primary care providers on each yard properly reconciled appointments for every new arrival to the institution. *See* Dkt. No. 3500 at 7. This reconciliation audit, which is ongoing, still depends on a single provider at SATF – NP [REDACTED] – and does not take place when he is on vacation or otherwise away from the institution. Plaintiffs’ counsel remain concerned that this system will continue to allow patients’ DME, medication, and pending appointments to slip through the cracks, disrupting continuity of care and denying them accommodations upon arrival to SATF.

For example, in early August, a class member with monocular blindness filed an 1824 reporting optic nerve damage, light sensitivity, and difficulty reading small print. *See* Log No. 23-

Mr. Ed Swanson & Ms. Tamiya Davis
 Re: Summary of SATF Monitoring Tour Findings
 November 21, 2023
 Page 22

01488 ([REDACTED]). The Disability Verification Process worksheet, completed on August 11, noted that “Patient has an appointment pending scheduling for Optometry.” According to [REDACTED] electronic medical record, an order had been entered for him to see optometry on August 11 on a routine priority basis. However, the order was discontinued on August 22, presumably when [REDACTED] transferred to another institution for a mental health crisis bed placement. It was not re-ordered when he returned to SATF on August 30. Nonetheless, the RAP response [REDACTED] received on September 7 incorrectly stated that “you have an appointment pending scheduling for Optometry.”

To understand why [REDACTED] optometry appointment had not been reconciled, Plaintiffs’ counsel reviewed the case with NP [REDACTED] NP [REDACTED] found that two appointments had not been reconciled when [REDACTED] returned to SATF, including a nursing appointment to check on [REDACTED] mental status following discharge from an EOP level of care after his crisis bed placement. However, although [REDACTED] arrival to the institution appeared in NP [REDACTED] reconciliation audit spreadsheet, NP [REDACTED] explained that these appointments had not been reconciled – or captured by the reconciliation audit – because he was on vacation when [REDACTED] returned to SATF on August 30. They were not detected for nearly three months, and even then only after Plaintiffs’ counsel inquired about [REDACTED] referral to optometry.⁴

13. Relationships Between Patients with Disabilities and Healthcare Staff

We remain concerned that Defendants are not proactively identifying or addressing barriers to relationships between healthcare staff and people with disabilities.

a. Patient Privacy and Therapeutic Relationships in CTC

Multiple regular custody staff in the CTC interviewed on different days during Plaintiffs’ monitoring tour stated that according to policy, custody staff should be present for medical encounters for all patients. Providers may request that a patient’s door be closed for an encounter, so long as custody staff maintain visual contact from outside the room, but custody staff must be present for all encounters with nursing staff – including during exchanges of sensitive medical information and other personal care (such as bed baths and showers). When a privacy screen is erected in these cases, custody staff reported that they stand inside the privacy screen with the patient and their care team. One regular officer explained that custody are expected to deactivate

⁴ It appears that this optometry appointment was not reconciled when [REDACTED] returned to SATF because it had not been reconciled by providers at CMF, where he was transferred for mental health crisis bed placement, and so was not available for providers at SATF to reconcile. A new order was entered for [REDACTED] to see optometry on November 8, after he filed another 1824 with the assistance of Plaintiffs’ counsel. *See* Log No. 475362.

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 23

their body-worn cameras during this encounter, but stand in close proximity to a patient facing perpendicularly to them, so that the officer can still see the patient in their peripheral vision. For patients on restricted housing status, a second officer stands outside the room.

The regular officers who described this policy reported that it was consistent with the Title 15 and with OP 427, which governs the CTC. However, the Chief Medical Executive, Chief Physician & Surgeons, and acting Chief Nurse Executive were unfamiliar with the policy, and believed that, like for patients on facility clinics, custody staff would not typically be present for encounters with the care team (the acting Chief Nurse Executive believed that nursing staff could request the presence of custody staff at an encounter). According to the SATF Chief Medical Executive, Dr. Godwin Ugwueze, patients on facility clinics can expect privacy in their encounters with medical staff, with a few exceptions for patients with certain mental health concerns, patients with a history of violence against medical staff, or patients on a restricted housing status. *See* HCDOM § 3.1.5(c)(3)(E)(3) (“As a default, custody staff is not required during a health care encounter with a patient who is not maximum custody or whose current behavior does not present a threat to the safety of staff or other patients.”).

Denying visual and auditory privacy during healthcare encounters to patients in the CTC, many of whom have complex medical needs and may be housed in CTC due to their disabilities, deprives them of dignity and erodes the trust between patients and their care teams.

b. RVRs Initiated By Mental Health Staff

In the first SATF report, the Court Expert found that “nursing staff’s issuance of RVRs has damaged relationships with incarcerated people. . . . When nurses are given the power to recommend punishment for their patients, even for minor rules violations, they are no longer just care providers; they are imposers of discipline.” Dkt. No. 3446 at 50. In response to the Court Expert’s findings, we understand that the Receiver is in the process of revising a policy related to RVRs initiated by medical staff.

Plaintiffs raised similar concerns with issuance of RVRs against patients with disabilities by mental health staff at SATF. *See* Letter from Tania Amarillas *et al.*, Prison Law Office, to Ed Swanson, Court Expert (Feb. 28, 2022) (“The RVRs initiated by mental health staff, like those initiated by medical staff, demonstrate a failure to appropriately consider whether a physical or mental disability contributed to the alleged misconduct [and] an unduly adversarial relationship between staff and patients”). Defendants apparently have declined to take any action in response to this letter, even though the same reasoning as to medical staff applies to mental health staff. Instead, Defendants told Plaintiffs’ counsel on November 6, 2023, that “This letter was sent to Ed. Defendants did not and do not plan on issuing a response.”

Mr. Ed Swanson & Ms. Tamiya Davis
Re: Summary of SATF Monitoring Tour Findings
November 21, 2023
Page 24

We appreciate your prompt attention to this matter. Please let us know if you would like copies of any of the documents referenced in this letter.

Sincerely yours,

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