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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION

22 **JOHN ARMSTRONG, et al.,**

23 Plaintiffs,

24 v.

25 **GAVIN NEWSOM, et al.,**

26 Defendants.

4:94-cv-02307-CW

**STIPULATION [AND PROPOSED
ORDER] RE: COURT EXPERT’S
ADDENDUM TO SECOND REPORT
REGARDING TREATMENT OF
PEOPLE WITH DISABILITIES AT
SUBSTANCE ABUSE TREATMENT
FACILITY (SATF) [ECF NO. 3529]**

INTRODUCTION

1
2 On November 8, 2021, the Court ordered the Court Expert to investigate whether class
3 members were being denied accommodations for their disabilities or discriminated against on the
4 basis of their disabilities at SATF. (ECF No. 3338.) Thereafter, the Court Expert filed his report
5 and the parties submitted their responses. (ECF Nos. 3446, 3453, 3459, 3463). The Court
6 adopted the Court Expert's undisputed findings and ordered further monitoring and that the Court
7 Expert file a further report in six months. (ECF No. 3467.) The Court Expert's second SATF
8 report was filed on August 24, 2023. (ECF No. 3500.) The parties filed responses to the second
9 report. (ECF Nos. 3504, 3510, 3515.)

10 On November 7, 2023, the Court ordered the Court Expert to file an addendum to his
11 second SATF report to respond to the parties' assertions with respect to the progress, or lack
12 thereof, that CDCR has made in curing the ADA and remedial plan violations identified in the
13 Court Expert's first and second SATF reports. (ECF No. 3521.) The Court specified that to the
14 extent the Court Expert believes Court action is necessary to ensure CDCR's timely compliance
15 with the ADA and remedial plan at SATF, either in the form that Plaintiffs propose or otherwise,
16 he shall (1) state so in his report; (2) specify the Court action he recommends; and (3) explain
17 why the Court action he recommends is, in his view, necessary to achieve compliance with the
18 ADA and remedial plan at SATF. *See Armstrong v. Newsom*, 58 F.4th 1283, 1297 (9th Cir.
19 2023) ("Under the PLRA, [t]he overarching inquiry is whether the same vindication of federal
20 rights could have been achieved with less involvement by the court in directing the details of
21 prison operations. A district court may, however, provide specific instructions to the State
22 without running afoul of the PLRA. In particular, when a district court has previously tried to
23 correct the deficiencies in prison operations through less intrusive means, and those attempts have
24 failed, relief prescribing more specific mechanisms of compliance is appropriate.") (internal
25 citations and quotation marks omitted). In making recommendations, the Court Expert may rely
26 on information contained in the parties' responses to his reports, as well as information he may
27 have learned from the parties since they filed their responses. (ECF No. 3521.)

28 The Court Expert filed his addendum to his second SATF report on November 28, 2023.

1 (ECF No. 3529.)

2 The parties have met and conferred together and with the Court Expert and have reached
3 the following agreements.¹

4 **STIPULATION**

5 **A. Non-Medical Assistive Devices**

6 (1) Within 90 days of the Court's order on this stipulation, CDCR must provide a draft
7 written policy to Plaintiffs and the Court Expert setting out how the RAP at SATF can order,
8 purchase, and distribute non-medical assistive devices the SATF RAP determines are reasonable
9 accommodations. Within 14 days of receipt of the draft written policy, Plaintiffs must provide
10 written feedback to CDCR. Within 30 days of receipt of the draft policy, the parties and the
11 Court Expert shall meet to discuss any proposed changes to the policy. If the parties reach
12 agreement on the policy, CDCR shall issue the final policy within 60 days of the meeting. If the
13 Court Expert determines the parties are not able to reach agreement on the policy, the parties
14 shall, within 30 days of the Court Expert's determination that an agreement cannot be reached,
15 submit a joint statement to the Court setting out the disputes regarding the policy.

16 (2) The draft written policy must ensure that a class member can maintain their assistive
17 devices, and that, as with DME, these assistive devices are not improperly confiscated when a
18 class member is disciplined. The written policy must include a system for tracking nonmedical
19 assistive devices so that staff can identify when someone has such property. The written policy
20 shall be consistent with CDCR's statewide direction, which went into effect October 5, 2023, that
21 when the RAP approves a reasonable accommodation to ensure class-member access to
22 programs, services, and activities in compliance with the ADA and the remedial plan, CDCR will
23 incur the cost associated with the reasonable accommodation when no reasonable alternative
24 exists, unless such an accommodation creates an undue burden under the ADA.

25
26
27 ¹ The Court Expert did not make recommendations about Sec. III. Deaf and Hard of
28 Hearing Accommodations: (A) Hearing Aids; Sec. IV. Healthcare Issues: (A) Permanency of
Positions; Section V. Compatible Housing, and therefore, these issues are not addressed in this
stipulation.

1 **(3)** Within 60 days of issuance of the final policy, SATF must update its local operating
2 procedure to reflect the new policy. CDCR must provide the Court Expert and Plaintiffs with the
3 revised local operating procedure within 14 days of its issuance.

4 **B. Blind and Low-Vision Accommodations**

5 **1. Assistive Devices in the SATF Libraries**

6 **(4)** Within 90 days of the Court’s order on this stipulation, CDCR shall confirm in writing
7 to the Court Expert and Plaintiffs that SATF has enough Merlin devices at the facility that they
8 can immediately replace a broken device with an extra device.

9 Defendants must make a good faith effort to complete this task by the date specified. If
10 Defendants are unable to complete a necessary task due to matters beyond their control (e.g.,
11 unavailability of equipment from vendor, supply-chain delays, etc.), Defendants shall provide
12 Plaintiffs and the Court Expert a written explanation for the delay and meet and confer with
13 Plaintiffs and the Court Expert to resolve the issue if necessary. If the parties are not able to
14 resolve this issue with the Court Expert’s assistance, the parties shall submit a joint statement to
15 the Court setting out the status of the issue within 30 days of the Court Expert’s determination
16 that an agreement cannot be reached.

17 **2. Access to Low-Vision Assistive Devices Beyond the Library**

18 **(5)** Within 90 days of the Court’s order on this stipulation, CDCR must provide the Court
19 Expert and Plaintiffs a date by which all individualized assessments of DPV class members at
20 SATF will be complete.

21 Defendants must make a good faith effort to complete this task by the date specified. If
22 Defendants are unable to complete a necessary task due to matters beyond their control (e.g.,
23 patient refusal to participate in the individualized assessment, COVID-19 status, out-to-court
24 status, etc.). Defendants shall provide Plaintiffs and the Court Expert a written explanation for the
25 delay and meet and confer with Plaintiffs and the Court Expert to resolve the issue if necessary. If
26 the parties are not able to resolve this issue with the Court Expert’s assistance, the parties shall
27 submit a joint statement to the Court setting out the status of the issue within 30 days of the Court
28 Expert’s determination that an agreement cannot be reached.

1 (6) Within 90 days of the Court’s order on this stipulation, CDCR must explain in writing
2 to the Court Expert and Plaintiffs’ counsel when and how it will resolve all issues at SATF
3 addressed in the current draft Blind/Low-Vision stipulation.

4 **C. Deaf and Hard-of-Hearing Accommodations**

5 **1. Announcements**

6 (7) Within 90 days of the Court’s order on this stipulation, Defendants must provide to
7 Plaintiffs and the Court Expert either: 1) a draft proposal regarding how CDCR will audit whether
8 officers at SATF effectively communicate announcements to deaf and hard-of-hearing people,
9 and how CDCR will take corrective action when officers are found to fail to communicate such
10 announcements; or 2) a draft proposal regarding an alternative, auditable method of ensuring
11 effective communication of announcements that does not rely on correctional staff or ADA
12 workers to communicate announcements to deaf and hard-of-hearing people. Within 14 days of
13 receipt of the draft proposal, Plaintiffs must provide written feedback to CDCR. Within 30 days
14 of receipt of CDCR’s proposal, the parties and the Court Expert shall meet to discuss the
15 proposal. If the parties reach agreement regarding the proposal, then CDCR shall implement the
16 auditing system or alternate auditable method of ensuring effective communication of
17 announcements within 60 days of the meeting. If the Court Expert determines the parties are not
18 able to reach agreement regarding the proposal, the parties shall, within 30 days of the Court
19 Expert’s determination that an agreement cannot be reached, submit a joint statement to the Court
20 discussing the disputes regarding the proposal.

21 **2. TTY/TDD and Captioned Phones**

22 (8) Within 90 days of the Court’s order on this stipulation, CDCR must confirm in writing
23 to the Court Expert and Plaintiffs that SATF has sufficient stock of TTY/TDD phones and
24 captioned phones to replace a non-functional phone within 48 hours of such phone being reported
25 by an incarcerated person or discovered by staff to be broken.

26 SATF shall replace all nonfunctional TTY/TDDs and captioned phones within 48 hours.
27 While the replacement of a TTY/TDD phone or captioned phone is being done, and/or if a
28 replacement TTY/TDD phone or captioned phone does not resolve the issue and a repair is

1 necessary (for example, if there is an issue with the phone line), as an interim accommodation
2 until the phone is replaced or repair is completed, SATF shall provide the class member
3 immediate access to another TTY/TDD phone, captioned phone, or equivalent technology on
4 their facility or another facility at the institution at the same times, and with the same frequency,
5 as they would have been able to access the nonfunctional TTY/TDD or captioned phone.

6 SATF shall log each non-functional TTY/TDD and captioned phone, its location, the date it
7 was reported non-functional, the class member(s) who require interim accommodation because
8 the phone is non-functional, what repair is needed, and when the repair was completed.

9 Defendants shall provide Plaintiffs and the Court Expert with this log on a monthly basis.

10 Defendants must make a good faith effort to complete the repair within a reasonable period
11 of time. If Defendants are unable to complete a necessary task due to matters beyond their
12 control (e.g., infrastructure repair, unavailability of equipment from vendor, supply-chain delays,
13 etc.) then Defendants shall provide Plaintiffs and the Court Expert a written explanation for the
14 delay and meet and confer with Plaintiffs and the Court Expert to attempt to resolve the issue if
15 necessary.

16 **(9)** Within 60 days of the Court's order on this stipulation, Defendants must provide to
17 Plaintiffs and the Court Expert a draft proposal regarding how and by when CDCR will provide
18 training directly to deaf and hard-of-hearing class members at SATF regarding how to sign up for
19 captioned phones and how to operate captioned phones. Within 14 days of receipt of the draft
20 proposal, Plaintiffs must provide written feedback to CDCR. Within 30 days of receipt of
21 CDCR's proposal, the parties and the Court Expert shall meet to discuss the proposal. If the
22 parties reach agreement on the proposal, CDCR shall implement the proposed training within 60
23 days of the meeting. If the Court Expert determines the parties are not able to reach agreement on
24 the proposal, the parties shall, within 30 days of the Court Expert's determination that an
25 agreement cannot be reached, submit a joint statement to the Court discussing the disputes
26 regarding the proposal.

27 **(10)** Within 60 days of the Court's order on this stipulation, Defendants must provide to
28 Plaintiffs and the Court Expert a draft proposal regarding how and by when CDCR will provide

1 training to ADA and correctional housing staff at SATF regarding how class members may sign
2 up for captioned phones and how to operate captioned phones. Within 14 days of receipt of the
3 draft proposal, Plaintiffs must provide written feedback to CDCR. Within 30 days of receipt of
4 CDCR's proposal, the parties and the Court Expert shall meet to discuss the proposal. If the
5 parties reach agreement on the proposal, CDCR shall implement the proposed training within 60
6 days of the meeting. If the Court Expert determines the parties are not able to reach agreement on
7 the proposal, the parties shall, within 30 days of the Court Expert's determination that an
8 agreement cannot be reached, submit a joint statement to the Court discussing the disputes
9 regarding the proposal.

10 (11) Within 90 days of the Court's order on this stipulation, CDCR must provide the Court
11 Expert and Plaintiffs a timeframe for installing captioned phones in the housing units at SATF.

12 Defendants must make a good faith effort to complete this task by the date specified. If
13 Defendants are unable to complete a necessary task due to matters beyond their control (e.g.,
14 unavailability of equipment from vendor, supply-chain delays, etc.), Defendants shall provide
15 Plaintiffs and the Court Expert a written explanation for the delay and meet and confer with
16 Plaintiffs and the Court Expert to resolve the issue if necessary. If the parties are not able to
17 resolve this issue with the Court Expert's assistance, the parties shall submit a joint statement to
18 the Court setting out the status of the issue within 30 days of the Court Expert's determination
19 that an agreement cannot be reached.

20 (12) Defendants must ensure that the Court Expert and Plaintiffs have an opportunity to
21 offer input to Defendants about what accessibility features should be required in the next
22 statewide contract for tablets. The parties will meet and confer to discuss the recommendations.
23 If Plaintiffs' counsel believe that the proposed statewide contract for tablets does not comply with
24 the ADA and remedial plan, then the parties and the Court Expert shall meet to discuss the issues.
25 If the Court Expert determines the parties are not able to reach agreement on the proposal, the
26 parties shall, within 30 days of the Court Expert's determination that an agreement cannot be
27 reached, submit a joint statement to the Court discussing the disputes regarding the proposal.
28

1 **D. CART**

2 **(13)** Within 60 days of the Court’s order on this stipulation, Defendants must provide
3 Plaintiffs with a demonstration of the whiteboard captioning technology in various institutional
4 settings. Defendants must have a subject matter expert present at the demonstration to answer
5 Plaintiffs’ questions regarding the capabilities of the whiteboards’ captioning technology. The
6 parties shall then meet and confer with the Court Expert to attempt to resolve any outstanding
7 disputes regarding whether the whiteboard captioning technology is an adequate accommodation,
8 and the Court Expert will report to the Court on the resolution of these issues.

9 **E. Healthcare Issues**

10 The Court Expert’s addendum to his second SATF report provided two recommendations to
11 California Correctional Health Care Services (CCHCS). (ECF No. 3529, 11-12.) CCHCS
12 advised the parties and the Court Expert that CCHCS will continue to work with the Court Expert
13 to provide information requested in *Court Expert Recommendations (14) and (15)*.

14 **(14)** Within 30 days of receiving from CCHCS the final policy regarding RVRs, the parties
15 shall meet and confer with the Court Expert regarding the adequacy of the policy. The Court
16 Expert will report to the Court on the results of the meet and confer.

17 **(15)** Defendants shall request that CCHCS inform the Court Expert and Plaintiffs within 60
18 days of the Court’s order of whether an electronic system for submitting 7362s has been
19 implemented or when it expects to implement such a system, as well as whether CCHCS will
20 implement any interim measures to communicate with patients regarding their requests for
21 medical care. Within 30 days of such information being provided, the parties shall meet and
22 confer with the Court Expert regarding the proposal.

23 **F. Prison Litigation Reform Act**

24 The Court finds that the remedies ordered herein are narrowly drawn, extend no further
25 than necessary to correct the violations of class members’ rights under the ADA and ARP, and
26 are the least intrusive means necessary to correct such violations.

1 IT IS SO STIPULATED.

2
3 DATED: December 6, 2023

Respectfully submitted,
PRISON LAW OFFICE

4 By: /s/Rita Lomio
5 Rita Lomio

6 Attorneys for Plaintiffs

7 DATED: December 6, 2023

8 ROB BONTA
Attorney General of the State of California

9 By: /s/Sharon A. Garske
10 Sharon A. Garske
Supervising Deputy Attorney General

11 Attorneys for Defendants

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15
16 **FILER'S ATTESTATION**

17 As required by Local Rule 5-1, I, Sharon A. Garske, attest that I obtained concurrence in
18 the filing of this document from Rita Lomio, and that I have maintained records to support this
19 concurrence.

20
21 DATED: December 6, 2023 /s/Sharon A. Garske
Sharon A. Garske

22
23 IT IS SO ORDERED.

24
25 DATED: 12/7, 2023


26 Honorable Claudia Wilken
United States District Judge

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28

CERTIFICATE OF SERVICE

Case Name: *John Armstrong, et al. v.
Newsom, et al.*

No. 4:94-cv-02307-CW

I hereby certify that on December 6, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STIPULATION [AND PROPOSED ORDER] RE: COURT EXPERT'S ADDENDUM TO SECOND REPORT REGARDING TREATMENT OF PEOPLE WITH DISABILITIES AT SUBSTANCE ABUSE TREATMENT FACILITY (SATF) [ECF NO. 3529]

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 6, 2023, at San Francisco, California.

H. Su

Declarant

/s/ H. Su

Signature