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

22 JOHN ARMSTRONG, et al.,

23 Plaintiffs,

24 v.

25 GAVIN NEWSOM, et al.,

26 Defendants.

Case No. 4:94-cv-02307-CW

**JOINT STATUS STATEMENT RE
 COMPLIANCE WITH THE COURT’S
 DECEMBER 7, 2023 ORDER
 (ECF NO. 3538)**

Judge: Hon. Claudia Wilken

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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 why
17 the Court action he recommends is, in his view, necessary to achieve compliance with the
18 Americans with Disabilities Act (ADA) and remedial plan at SATF. *See Armstrong v. Newsom*,
19 58 F.4th 1283, 1297 (9th Cir. 2023) ("Under the PLRA, [t]he overarching inquiry is whether the
20 same vindication of federal rights could have been achieved with less involvement by the court in
21 directing the details of prison operations. A district court may, however, provide specific
22 instructions to the State without running afoul of the PLRA. In particular, when a district court
23 has previously tried to correct the deficiencies in prison operations through less intrusive means,
24 and those attempts have failed, relief prescribing more specific mechanisms of compliance is
25 appropriate.") (internal citations and quotation marks omitted). In making recommendations, the
26 Court Expert may rely on information contained in the parties' responses to his reports, as well as
27 information he may have learned from the parties since they filed their responses. (ECF
28 No. 3521.)

1 The Court Expert filed his addendum to his second SATF report on November 28, 2023.
 2 (ECF No. 3529.) Following a meet-and-confer, the parties entered a stipulation to address the
 3 items in the addendum report, which the Court issued as an order on December 7, 2023. (ECF
 4 No. 3538.) There are 15 items in the stipulation and the each of those items, (1)-(15), is listed
 5 below in a shaded grey box. The parties have met and conferred with the assistance of the Court
 6 Expert and provide the following status update on each of the 15 stipulation items. The parties
 7 will file separate proposed orders.

8 JOINT STATUS UPDATE RE: SATF STIPULATION¹

9 I. NON-MEDICAL ASSISTIVE DEVICES (ITEMS 1-3)

10 **(Item 1)** Within 90 days of the Court's order on this stipulation, CDCR must provide a
 11 draft written policy to Plaintiffs and the Court Expert setting out how the RAP at SATF can order,
 12 purchase, and distribute non-medical assistive devices the SATF RAP determines are reasonable
 13 accommodations.

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

24 **(Item 3)** Within 60 days of issuance of the final policy, SATF must update its local
 25 operating procedure to reflect the new policy. CDCR must provide the Court Expert and Plaintiffs
 26

27 ¹ The meet-and-confer language in the stipulation (ECF No. 3538) was removed for the purposes
 28 of this briefing with the exception of Item 12, where that language relates to a dispute. Statements
 are joint unless otherwise delineated as either Plaintiffs' Statement or Defendants' Statement.

1 with the revised local operating procedure within 14 days of its issuance.

2 * * * * *

3 The parties have reached agreement on a policy for the provision of non-medical assistive
4 devices at SATF satisfying items 1 and 2, above. The final policy documents are:

- 5 • A policy memorandum titled “Reasonable Accommodations Provisions at
6 Substance Abuse Treatment Facility,” designed to provide for non-medical
7 assistive devices as a reasonable accommodation. (Declaration of Dawn Lorey
8 (Lorey Decl.), Ex. A.)
- 9 • SATF Local Operating Procedure titled “Operational Procedure No. XXX –
10 Reasonable Accommodations Provided Through the Reasonable Accommodation
11 Panel Process”. (Lorey Decl., Ex. B.)
- 12 • SATF Local Operating Procedure, Attachment A: DAI HQ Approved
13 Assistive Devices. (*Id.*)
- 14 • SATF Local Operating Procedure, Attachment B: Assistive Device Referral
15 and Procurement Tracking Log. (*Id.*)
- 16 • SATF Location Operating Procedure, Attachment C: Armstrong Remedial
17 Plan, page 8. (*Id.*)
- 18 • SATF Local Operating Procedure, Attachment D: CDC Form 128 B,
19 Reasonable Accommodation Issuance Chrono. (*Id.*)

20 There are three aspects of the policy that are not evident in the above documents that the
21 parties memorialize here.

22 First, regarding the training guidance provided to staff, the parties agree that staff will
23 receive the following during training:

24 During the in-person training with SATF ADA office and Business Services, the
25 reasonable accommodation procurement process will be discussed, and a strong
26 emphasis will be placed on the internal process for expediting these orders. These
27 will be treated as **HIGH PRIORITY** orders. SATF procurement staff will explain
28 their local process for expediting orders which includes reprioritizing the ADA
orders ahead of existing orders, expedite the routing and delivery of the purchasing
documents for approval to local executives to expedite signatures and completing
the final review process expeditiously. This may include staff having to personally
“hand walk” the documents through the signature process. The ultimate goal is to

1 not have these orders processed as routine or be unnecessarily delayed. Barring
 2 issues beyond the control of staff, the approval process for ADA devices should
 generally be completed within two weeks.

3 Defendants intend to provide training to staff using the above agreed upon policy
 4 memorandum and local operating procedure and attachments (Lorey Decl., Exs. A and B) and
 5 therefore are not creating separate training materials. Plaintiffs' counsel has concerns about the
 6 durability of training and guidance on the new policy for incoming ADA staff, especially new
 7 ADA Coordinators, if not reduced to writing. Some of these concerns will be addressed by the
 8 forthcoming updates to the 1824 Desk Reference Manual. Plaintiffs' counsel is hopeful that
 9 anything not covered in the 1824 Desk Reference Manual updates will be adequately
 10 memorialized in future training and guidance for staff.

11 Second, the LOP states, "If the RAP is unable to identify the appropriate accommodation
 12 needed for the incarcerated person, the ADA Coordinator shall consult with a qualified assistive
 13 device specialist." (Lorey Decl., Ex. B.) Though not defined in the policy, the parties agree that
 14 "qualified assistive device specialist" means a specialist with the requisite knowledge, skills, and
 15 experience, acquired through education, training, or certification, that can provide CDCR with
 16 recommendations regarding accommodating disabilities through the provision of appropriate non-
 17 medical assistive devices for a correctional setting depending on the particular disability and the
 18 activity for which an accommodation is needed.

19 Finally, this policy was negotiated and agreed on by the parties with the understanding that
 20 the policies and negotiated process and materials would be replicated statewide after a brief trial
 21 period at SATF barring no concerns during the trial period.

22 **II. BLIND AND LOW-VISION ACCOMMODATIONS**

23 **A. Assistive Devices in the SATF Libraries (Item 4)**

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

27 * * * * *

28 This stipulation item has been resolved. On March 6, 2024, Defendants notified Plaintiffs'

1 counsel and the Court Expert that as of February 20, 2024, CDCR confirmed the delivery,
2 installation, and testing of six new Merlin devices at SATF facility libraries A, B, C, D, E, and F-
3 G.² The old Merlin devices were removed from the facility libraries and put in a centralized
4 storage area at the Central Library on Facility B Vocational Area for use in case the new devices
5 break. Photographs of the Merlin devices in their present locations were provided to Plaintiffs’
6 counsel.

7 **B. Individual Assessments of DPV Class Members (Item 5)**

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

11 Defendants must make a good faith effort to complete this task by the date specified.

12 * * * * *

13 **1. Plaintiffs’ Statement**

14 This stipulation item is not resolved. On August 5, 2024, Plaintiffs’ counsel informed
15 CDCR that the list produced by CDCR on June 7, 2024, purporting to show that as of April 25,
16 2024, all DPV class members on the roster as of February 26, 2024, had either been evaluated by a
17 vision specialist or refused a vision specialist assessment appeared to be incomplete. Hutt Decl.,
18 Ex. 69. CDCR has not explained why CDCR did not notify Plaintiffs’ counsel that it would not
19 meet the deadline that Defendants set for conducting these assessments, as required by the Court’s
20 order, although class members’ assessments were delayed by months (in one case, the class
21 member has not been seen at all).³ Declaration of Dr. Grace Song ¶¶ 4-6 (“Decl. Song M.D.”).
22 CDCR’s focus below on whether the class members had an upcoming parole hearing confuses the
23 matter; the Court’s December 7, 2023 Order was to ensure reading and writing accommodations to
24

25 ² Facilities F and G share a library.

26 ³ Defendants assert that these class members had access to interim accommodations, such as
27 Zoomax Snow 12 electronic magnifiers, but provide no evidence regarding these class members’
28 access to or use of such devices. However, Plaintiffs’ counsel raised concerns in August that staff
at SATF had not informed all DPV class members that such accommodations existed at the
institution. *Id.*, Ex. 70 at 10-11.

1 allow class members at SATF to meaningfully participate in prison programs, services, and
2 activities. A subsequent Court order related to parole accommodations required assessments
3 statewide for both DPV and DNV class members. *See* Dkt. No. 3584 at 2.

4 In addition, on August 7, 2024, Plaintiffs' counsel informed CDCR that several class
5 members documented as having refused an assessment in fact had not refused and that there were
6 substantial delays in the issuance of a recommended device and/or training for those who had seen
7 the specialist, including a delay of over 240 days. Hutt Decl., Ex. 70. CDCR has confirmed that
8 accommodations recommended by the specialist were not provided to class members for
9 substantial periods of time (and in some cases, still may not have been provided), but has not
10 explained the reason for these delays and/or why it appears no action was taken until CDCR was
11 put on notice of the problem by Plaintiffs' counsel. *See id.*, Ex. 72. Issuance of devices
12 recommended by the specialist fall squarely within the Court's order regarding a date by which
13 individualized assessments "will be complete." Dkt. No. 3538 at 4. An assessment alone, without
14 the device it recommends, is not an accommodation.

15 Individualized assessments will only work if class members are given a meaningful
16 opportunity to attend and the specialist's recommendations are acted upon quickly. Plaintiffs
17 encourage CDCR to develop robust oversight mechanisms, including to track the timely provision
18 of accommodations and to ensure that any refusals are accurate, documented in accordance with
19 policy, and based on a fully understanding of what the assessment is for. Plaintiffs also will
20 continue to monitor this issue.

21 2. Defendants' Statement

22 Defendants have complied in good faith with the requirements in the stipulation and
23 therefore contend that this stipulation item is resolved. On March 6, 2024, Defendants notified
24 Plaintiffs' counsel and the Court Expert that assessments for all DPV-designated class members at
25 SATF identified on the DPV roster as of February 26, 2024, were scheduled through the end of
26 April 2024. CDCR anticipated all individualized assessments of DPV-designated class members
27 at SATF would be completed by April 25, 2024. On March 20, 2024, the Court ordered CDCR to
28 prioritize individual assessments of DPV-designated class members scheduled for a parole

1 suitability hearing in 2024 (*see* ECF No. 3584 at 3) and CDCR proceeded accordingly.

2 On June 4, 2024, CDCR notified Plaintiffs' counsel and the Court Expert that as of
3 April 25, 2024, all DPV-designated class members on the SATF roster as of February 26, 2024,
4 had been offered an assessment and were either seen by the vision specialist or have refused
5 assessment. A list of persons evaluated by the vision specialist and those who refused vision-
6 specialist assessment was provided to Plaintiffs' counsel on June 7, 2024.

7 On August 5, 2024, Plaintiffs' counsel informed Defendants that they identified four
8 individuals who were not included on the list provided to Plaintiffs on June 7, 2024 (the List).
9 (*See* Hutt Decl., Ex. 69.) The first three individuals identified in Plaintiffs' August 5, 2024,
10 correspondence were not included on the List because the accuracy of their DPV designation was
11 unclear and required confirmation. (Declaration of G. Song, M.D. (Song Decl.) ¶¶ 4-6.) The
12 fourth individual identified by Plaintiffs was not included on the List because he was scheduled
13 for a corrective eye surgery on April 17, 2024, that ultimately corrected his visual acuity to 20/20.
14 (*Id.* ¶ 7.)

15 Two of the four individuals identified in Plaintiffs' August 5, 2024, correspondence were
16 assessed by the vision specialist in August 2024 and were recommended an electronic magnifier to
17 accommodate their reading and writing needs; one individual had corrective eye surgery that
18 improve his corrected visual acuity to 20/20; and one individual missed their appointment due to
19 isolation status and was scheduled to be seen by a vision specialist on November 23, 2024. (*Id.*
20 ¶¶ 4-7.) None of these four individuals have an upcoming parole suitability hearing in 2024. (*Id.*)

21 Pending a vision-specialist evaluation, in addition to the ADA computers and other
22 assistive devices available at the SATF law libraries, each of these individuals had access to
23 Zoomax Snow 12 electronic magnifiers equipped with the Optical Character Recognition and text-
24 to-speech function to accommodate their reading and writing needs. (*Id.* ¶ 8.)

25 On August 7, 2024, Plaintiffs sent CDCR an advocacy letter identifying three class
26 members whom they claimed did not refuse vision specialist assessment as indicated on the list
27 provided to Plaintiffs on June 7, 2024. (*See* Hutt Decl., Ex. 70.) The first individual identified in
28 Plaintiffs' August 7, 2024, advocacy letter (Advocacy Letter) refused an off-site vision specialist

1 appointment scheduled for April 18, 2024, and also refused the subsequent on-site appointment
 2 scheduled for August 18, 2024. (Song Decl. ¶ 9, Exs. A and B.) The second individual identified
 3 in the Advocacy Letter refused an off-site vision specialist appointment scheduled for
 4 February 15, 2024, and also refused the subsequent on-site appointment scheduled for August 18,
 5 2024. (Song Decl. ¶ 10, Exs. C and D.) The third individual identified in the Advocacy Letter
 6 refused an off-site vision specialist appointment scheduled for February 15, 2024, but was
 7 subsequently assessed by the vision specialist on August 16, 2024. (Song Decl. ¶ 11.) None of
 8 these three individuals have an upcoming parole suitability hearing in 2024. (*Id.* ¶¶ 9-11.)

9 Although Plaintiffs complain that Defendants did not explain the reasons for the delays in
 10 the issuance of the assistive devices recommended by the vision specialist. as requested in
 11 Plaintiffs' Advocacy Letter (*see* Plaintiffs' Statement at *supra*), and now also complain that
 12 Defendants did not provide evidence of class members' access to assistive devices pending vision
 13 specialist assessment (*see id.* at 5, fn. 3)⁴, the provision of recommended devices is not part of this
 14 stipulation item. SATF stipulation item 5 requires Defendants to "provide the Court Expert and
 15 Plaintiffs a date by which all individualized assessments of DPV class members at SATF will be
 16 complete" (*see* ECF No. 3533 at 4), which Defendants have done. Plaintiffs' attempt to expand
 17 the parameters of this stipulation item to discuss the issuance of assistive devices recommended by
 18 the vision specialist is not appropriately asserted as part of this status update and Plaintiffs'
 19 Advocacy Letter will be addressed through the regular advocacy process.

20 **C. Blind/Low-Vision Stipulation (Item 6)**

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

24 * * * * *

25 This stipulation item has been resolved.

26
 27
 28 ⁴ Plaintiffs raised this issue, for the first time, in the newly-added footnote contained in the draft SATF Stipulation Joint Statement returned to Defendants on October 14, 2024.

1 **III. DEAF AND HARD-OF-HEARING ACCOMMODATIONS**

2 **A. Announcements (Item 7)**

3 **(Item 7)** Within 90 days of the Court’s order on this stipulation, Defendants must provide
 4 to Plaintiffs and the Court Expert either: 1) a draft proposal regarding how CDCR will audit
 5 whether officers at SATF effectively communicate announcements to deaf and hard-of-hearing
 6 people, and how CDCR will take corrective action when officers are found to fail to communicate
 7 such announcements; or 2) a draft proposal regarding an alternative, auditable method of ensuring
 8 effective communication of announcements that does not rely on correctional staff or ADA
 9 workers to communicate announcements to deaf and hard-of-hearing people.

10 * * * * *

11 **1. Plaintiffs’ Statement⁵**

12 Prison life at SATF is regulated by auditory announcements. Many announcements apply
 13 to more than one person, for example when yard or dayroom are (or are not) open, when a class is
 14 (or is not) running, when the library is (or is not) open, when canteen is (or is not) open, when
 15 religious services are (or are not) taking place, when there is an emergency and people need to get
 16 on the ground, when people have a few minutes to return to their housing unit to use the bathroom,
 17 when it is time to report to a location for mental health groups, when the chow hall is open, when
 18 people can get their medication, when outside temperatures have risen so high that people on heat-

19 _____
 20 ⁵ Below, CDCR makes various, unavailing hearsay objections to class member declarations cited
 21 in this section. CDCR asks this Court to exclude a statement attributed to CDCR custody staff. *See*
 22 *id.* (citing Hutt Decl., Ex. 13 ¶ 17). It also seeks to exclude numerous statements attributed to
 23 CCHCS personnel or other agents of Defendants. *See id.* (citing Hutt Decl., Ex. 7 ¶ 31; Ex. 6 ¶ 13;
 24 Ex. 1 ¶¶ 7, 15, 24, 47; Ex. 12 ¶¶ 18, 23; Ex. 9 ¶ 14). Such statements, however, are non-hearsay.
 25 Fed. R. Evid. 801(d)(2)(D) (statement by party’s “agent” or “employee” is not hearsay); *see*
 26 <https://cchcs.ca.gov/wp-content/uploads/sites/60/NR/execOrgchart.pdf> (CCHCS Executive
 27 Leadership Chart, representing that Undersecretary Diana Toche, a CDCR employee, exercises
 28 joint control over CCHCS personnel). CDCR also requests the exclusion of meeting minutes and a
 memorandum prepared by the SATF Resident Advisory Council, an officially sanctioned
 committee. *See id.* (citing Hutt Decl., Ex. 12 at Exs. A, B); Cal. Code Regs. tit. 15 § 3230(a)
 (establishing incarcerated person advisory councils). As records of regularly conducted activity,
 however, both would be admissible. Fed. R. Evid. 803(6). Finally, CDCR requests the exclusion
 of six statements that are not offered for the truth of the matter asserted in the statement. *See id.*
 (citing Hutt Decl., Ex. 5 ¶ 12; Ex. 6 ¶ 86; Ex. 3 ¶ 19; Ex. 9 ¶ 24 & at Ex. A; Ex. 13 ¶ 17). By
 definition, however, such statements are not hearsay. Fed. R. Evid. 801(c)(2).

1 sensitive psychiatric medications must return to their housing units for their safety, and when
 2 people can pick up mail or laundry. These types of announcements are made constantly
 3 throughout the day. *See, e.g.*, Hutt Decl., Ex. 1 ¶ 13 (Declaration of S.C., DNH, SATF), Ex. 2
 4 ¶¶ 13-14, 19 (Declaration of J.K., DNH, SATF), Ex. 3 ¶¶ 20-21, 23, 25 (Declaration of L.B.,
 5 DNH, SATF), Ex. 4 ¶¶ 8-10 (Declaration of M.M., DNH, SATF), Ex. 5 ¶¶ 10, 12 (Declaration of
 6 H.C., DNH, SATF), Ex. 6 ¶¶ 23-24 (Declaration of C.M., DNH, SATF), Ex. 7 ¶ 18 (Declaration
 7 of S.B., DNH, SATF). Other announcements relate to only an individual; for example, when a
 8 specific person is called for an appointment at the medical clinic, at the program office, or for an
 9 attorney interview. *See, e.g.*, Hutt Decl., Ex. 1 ¶ 13 (Declaration of S.C., DNH, SATF), Ex. 2 ¶ 12
 10 (Declaration of J.K., DNH, SATF), Ex. 4 ¶¶ 8-9 (Declaration of M.M., DNH, SATF), Ex. 6 ¶ 24
 11 (Declaration of C.M., DNH, SATF), Ex. 7 ¶ 18 (Declaration of S.B., DNH, SATF); Dkt. No. 3500
 12 at 12.

13 Missing announcements can have severe consequences. People can get in trouble with staff
 14 and be disciplined. *See* Hutt Decl. Ex. 1 ¶ 14 (Declaration of S.C., DNH, SATF), Ex. 3 ¶ 29
 15 (Declaration of L.B., DNH, SATF), Ex. 9 ¶ 14 (Declaration of G.E., DNH, SATF), Ex. 12 ¶¶ 15-
 16 28 (Declaration of C.M., DNH, SATF); Cal. Code Regs. tit. 15 § 3014 (“Incarcerated persons
 17 must respond promptly to notices . . . announced over the public address system”). People also
 18 may miss meals, medication, medical appointments, and rehabilitative programs. Hutt Decl., Ex. 1
 19 ¶¶ 8, 24, 30, 37 (Declaration of S.C., DNH, SATF), Ex. 2 ¶¶ 14-16 (Declaration of J.K., DNH,
 20 SATF), Ex. 3 ¶¶ 21-25 (Declaration of L.B., DNH, SATF), Ex. 5 ¶¶ 10-12 (Declaration of H.C.,
 21 DNH, SATF), Ex. 6 ¶ 53 (Declaration of C.M., DNH, SATF), Ex. 7 ¶¶ 15, 22-26 (Declaration of
 22 S.B., DNH, SATF). As a result, people with hearing disabilities at SATF are forced to live in a
 23 state of heightened vigilance for fear of missing an announcement. *Id.*, Ex. 1 ¶ 13 (Declaration of
 24 S.C., DNH, SATF), Ex. 9 ¶ 29 (Declaration of G.E., DNH, SATF), Ex. 12 ¶ 13 (Declaration of
 25 C.M., DNH, SATF), Ex. 13 ¶ 14 (Declaration of S.M., DNH, SATF).

26 Over the last eight years alone, CDCR repeatedly has been on notice—through its own
 27 auditing office, the Court Expert, Plaintiffs’ counsel, and people with disabilities directly—that
 28 people with hearing disabilities at SATF are not receiving effective communication of

1 announcements. Plaintiffs’ counsel raised concerns regarding the lack of an accessible
2 announcements system following monitoring tours in October 2016, March 2017, June 2018,
3 September 2018, and December 2018. Dkt. No. 3459-1, Exs. 38-41. In 2019, the CDCR Office of
4 Audits and Court Compliance directed SATF management to complete a Corrective Action Plan
5 to address this issue. Dkt. No. 3459-6 ¶¶ 15-19, Exs. D-E. Class members continued to raise the
6 issue between 2019 and 2023. *See, e.g.*, Dkt. No. 3459-1 at 12, 16-17; Dkt 3459-2 at 12-20, 22-26;
7 Dkt 3459-4 at 20-30; Hutt Decl., Ex. 22.

8 In December 2022, the Court Expert found that “Deaf people and many hard of hearing
9 people cannot hear an audio announcement played over the intercom,” and recommended that
10 prison officials at SATF “take immediate steps to address the needs of people who are deaf or hard
11 of hearing,” including to ensure effective communication of announcements “to people who
12 cannot hear the intercom.” Dkt. No. 3446 at 37, 41-42; *see also* Dkt. No. 3467 at 2 (adopting
13 Court Expert’s undisputed findings). Eight months later, the Court Expert found that “Deaf and
14 hard-of-hearing people still do not consistently receive announcements” at SATF. Dkt. No. 3500
15 at 4.

16 Accordingly, after years of CDCR’s refusal to adopt a reliable system for the effective
17 communication of announcements on its own, the Court ordered CDCR to develop a proposal for
18 ensuring and auditing effective communication of announcements. Dkt. No. 3538 at 5 (Item 7). A
19 complete and durable solution to this problem requires a system that accounts for the different
20 types and locations of audible announcements, for variation in the audience’s hearing disabilities
21 and communication needs, and for the need for back-up measures when certain accommodations
22 are not available. Such a solution requires adoption of assistive technology widely available in
23 other prison systems, effective and ongoing training, and robust monitoring and self-correction
24 mechanisms.

25 CDCR has never proposed such a solution—or even come close. CDCR’s proposal in
26 response to the Court’s order does nothing to ensure effective communication of announcements
27 to 99% of people with hearing disabilities at SATF (those designated DNH), and offering only a
28 facially inadequate auditing system for the remaining 1% (those designated DPH). In particular,

1 after having three months to develop a proposal, and after six months of subsequent negotiations,
 2 CDCR offers in addition to the status quo only the following:

- 3 1. Individual announcements: For only four of the 403 people at SATF with
 4 documented hearing disabilities (namely, those designated DPH):
 - 5 a. Staff will maintain and review a manual log of when staff or another
 6 incarcerated person provided face-to-face notification of an announcement
 7 to the class member; and
 - 8 b. an Assistive Technology Professional will individually assess the class
 9 member and if approved the class member may be provided with as-yet
 10 unidentified accommodations.
- 11 2. Group announcements: Staff will send general daily schedules—as opposed to
 12 real-time announcements—twice a day, as well as changes to the schedule, to
 13 incarcerated people on their tablets, which do not notify a person in real-time
 14 when an announcement has been received, are not allowed outside of the
 15 housing units, and are not always available and working.

16 As explained below, this is not remotely close to a policy that will ensure effective
 17 communication. CDCR’s failure “to suggest—let alone implement—any viable” solution, “despite
 18 ample time and opportunity to do so,” necessitates more specific relief. *Armstrong v. Brown*, 768
 19 F.3d 975, 986 (9th Cir. 2014).

20 **(a) CDCR offers no plan to provide effective communication of
 21 announcements to 99% of people with hearing disabilities at
 22 SATF.**

23 This Court found in February 2023, based on the Court Expert’s December 2022 findings,
 24 that “Deaf people *and many hard of hearing people* cannot hear an audio announcement played
 25 over the intercom.” Dkt. No. 3446 at 37 (emphasis added); *see also* Dkt. No. 3467 at 2. The Court
 26 Expert found again in August 2023 that “Deaf *and hard-of-hearing people* still do not
 27 consistently receive announcements[.]” Dkt. No. 3500 at 4 (emphasis added). That is why the
 28 Court’s subsequent order required CDCR to develop a proposal to ensure effective communication
 of announcements “to deaf *and hard-of-hearing people*.” Dkt. No. 3538 at 5 (Item 7) (emphasis
 added).

But hard-of-hearing class members are entirely excluded from CDCR’s proposal to ensure
 effective communication of individual announcements. As explained below, there is no legal or

1 factual basis to exclude hard-of-hearing people from any proposal,⁶ and the current
2 accommodations provided by Defendants are grossly inadequate to provide effective
3 communication of announcements to all hard-of-hearing people.

4 **(1) People not assigned a DPH code may require**
5 **accommodations to ensure effective communication of**
6 **announcements.**

7 CDCR classifies people with hearing disabilities as either DNH or DPH. In CDCR's
8 classification system, people with a DNH code "have residual hearing at a functional level with
9 hearing aids" and those with DPH code, who are deaf or severely hard-of-hearing, require written
10 notes, sign language, or lip reading accommodation. *See Armstrong Remedial Plan* at p. 3-4, 18
11 (amended Jan. 3, 2001). But as this Court found over two decades ago, "[h]earing aids may
12 improve an individual's ability to hear sound, but do not fully restore hearing, and may be
13 rendered ineffective by background noise or poor acoustics." Dkt. No. 523 at 11. In other words,
14 as Dr. Andrea Bourne, a licensed audiologist and Chief of Rehabilitation Service, Department of
15 Veterans Affairs Health Care System, San Francisco, has explained, "[a] hearing aid *aids* a
16 person's ability to hear" but "even with hearing aids, a person with hearing loss will likely still
17 struggle to understand speech" and may require additional accommodations. Hutt Decl., Ex. 76 at
18 6-7.

19 At SATF, 99% of those with documented hearing disabilities have a DNH code (399
20 people), and only 1% (four people) have a DPH code. Lorey Decl. ¶ 27 (as of October 9, 2024).
21 But inexplicably, CDCR's proposal for an Assistive Technology Professional to conduct
22 individual assessments and its proposal to require and audit effective communication of individual
23 announcements applies *only* to class members designated DPH, not those designated DNH.

24 CDCR has never explained the basis for excluding people designated DNH from its
25 proposal. As Dr. Bourne has explained, a system that premises accommodations "based on

26 ⁶ CDCR inaccurately states that Plaintiffs claim that there is no legal or factual basis to
27 differentiate between class members who are deaf and those who are hard-of-hearing. That is
28 plainly not Plaintiffs' argument. Obviously, deaf people and hard-of-hearing people may need
different individualized accommodations. Plaintiffs' argument is that CDCR should not exclude
hard-of-hearing people from individualized consideration altogether.

1 whether someone is designated DNH or DPH” is “flawed”: “In the community, we do not divide
2 people with hearing disabilities and determine accommodation needs in that binary manner – it
3 simply does not take into account someone’s true disability and individual accommodation needs.”
4 Hutt Decl., Ex. 77 at 2. In fact, Dr. Bourne reviewed audiology records for a 10% sample of the
5 DNH population at SATF and found “a substantial percentage of people whose hearing loss is
6 significant enough that they need non-auditory accommodations for announcements.” *Id.*, Ex. 76
7 at 9. Over half had severe or profound sensorineural hearing loss, indicating that the person had
8 “considerable damage to their inner ear and will very likely require more than just hearing aids or
9 a pocket talker for effective communication of announcements.” *Id.* at 9-10. Even those with mild
10 or moderate sensorineural hearing loss, Dr. Bourne found, should receive an in-depth, individual
11 assessment “to understand their environments, their communicative needs in those environments,
12 and the challenges they are experiencing.” *Id.* at 10-11, 17.

13 CDCR has never offered anything to dispute Dr. Bourne’s opinion. In fact, CDCR’s own
14 expert Dr. Swett seems to agree with the critical importance of individual assessments for “an
15 individual with disabilities”:

16 I cannot emphasize strongly enough that conducting individualized assessments is
17 crucial to determine the specific needs, preferred communication modes, and
18 required Assistive Technology for an individual with disabilities. This is no less
19 true in the carceral setting and adds another layer of complexity on top of the
20 challenges described above. Individual assessments involve identifying and
21 confirming preferred forms of communication, determining effective accessibility
22 systems for the individual, and evaluating the environment to ensure the selected
23 communication methods are accessible and usable. It is essential to ensure that the
24 chosen technology aligns with the user’s specific needs and environment through
25 feature matching for Assistive Technology.

26 Swett Decl. ¶ 20. CDCR’s steadfast refusal to extend its proposal to individually assess *all*
27 individuals with hearing disabilities (including those designated DNH) therefore appears to
28 contradict its own expert’s opinion.

CDCR’s refusal to assess DNH class members’ announcement-related needs is also
inconsistent with its own policy, which provides that “[s]taff should not rely on . . . DPP/DDP
codes in order to determine the necessary accommodation.” Dkt. No. 3453-1 at 180 (memorandum
entitled, “Reiteration of Reasonable Accommodation Requirements,” and dated October 28,

1 2022). And it is inconsistent with this Court’s prior order as it related to people with vision
 2 disabilities: Earlier this year, this Court found that “Defendants are on notice that DNV class
 3 members require accommodations by virtue of their DNV code” and “by virtue of the advocacy of
 4 Plaintiffs’ counsel (which includes the present motion).” Dkt. No. 3583 at 22 & n.16; *see also* Dkt.
 5 No. 3584 at 2 (ordering CDCR to conduct “individualized assessments of DNV class members”).
 6 The same is true regarding people designated DNH.

7 Even when people at SATF with a DNH code or no hearing code have filed requests for
 8 accommodations to help them understand announcements, they have been summarily denied each
 9 time without being individually assessed or receiving primary consideration for their preference.
 10 For example, C.M., who has documented symmetrical moderate to mild sensorineural hearing
 11 loss, submitted a request for disability accommodation, stating, “I am missing Pill Call and
 12 Appointments” and “I do not always hear the announcements due to DNH. I do wear my hearing
 13 aids, but they don’t always help.” Hutt Decl., Ex. 31 at 2. Prison officials denied his request
 14 without interviewing him and sent him a written denial that said: “A review of Strategic Offender
 15 Management System (SOMS) indicates you are designated DNH and are accommodated with
 16 hearing aids and a pocket talker.” *Id.*, Ex. 31 at 1. The written denial also listed dates on which
 17 C.M. received medication, missed medications, attended appointments, and allegedly refused
 18 appointments. *Id.* As C.M. explains:

19 I was upset when I got that response. No one interviewed me to ask how I was
 20 doing, how I get announcements, how hard it is to manage with my disability in
 21 prison. No one asked me if I might be missing other appointments as well – which I
 am. . . . Instead, the written response seemed to say I was a liar and that I could
 hear because I attend some medical appointments. . . .

22 What I would have told ADA staff if they had asked me about it is that every day is
 23 made stressful because I have to be constantly vigilant for any announcement, and
 24 there are a lot made throughout the day. If I know I may have an appointment that
 25 day, or even if I do not know if I may have an appointment, any time an
 26 announcement is made, I have a feeling of increased anxiety; I have to put myself
 27 in extra alert mode. I can’t even rest on my bed in my cell – every time I hear an
 announcement, I have to strain to make sure they are not calling me because I am
 scared to miss something. My whole body tenses up—it’s like a reflex—trying to
 make sure I am paying attention to what an announcement is to make sure I’m not
 being called for something. It’s exhausting to live every day like that.

28 *Id.*, Ex. 12 ¶¶ 12-13. Prison officials at SATF regularly deny similar requests for announcement-

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1 related accommodations from people with hearing loss. For example:

- 2 • D.T., who was designated DNH, submitted a disability accommodation request
3 stating, “I cannot understand what the Public Announcement System is saying,”
4 and requesting “effective communication of announcements. It would be helpful to
5 have a banner reader somewhere that captions what the announcement is saying.”
6 Hutt Decl., Ex. 34 at 2.

7 Prison officials at SATF did not interview D.T. and instead inexplicably told him in
8 a written denial that “your claim . . . does not fit within the scope of a request for
9 reasonable accommodation.” *Id.* at 1.

- 10 • L.B., who has documented profound hearing loss in both ears, submitted a
11 disability accommodation request stating, “I am DNH and I have problems
12 communicating with staff and understanding the instructions that they are giving
13 me over the P.A. system or directly. I also regularly miss announcements for
14 yard/exercise, medical appointments/dental, religious services, etc.” Hutt Decl., Ex.
15 24 at 2; *id.*, Ex. 77 at 5. L.B. requested a speech-to-text iPad, “an officer to come to
16 my door to make individual announcements for medical appointments, yard, etc.,”
17 and a vibrating watch “so I can notify myself of appointments and start/end times
18 for yard.” *Id.*, Ex. 24 at 2.

19 Prison officials at SATF denied his requests without interviewing him, something
20 Dr. Bourne found reflected “a gross misunderstanding and lack of appreciation of
21 the disabling impact of hearing loss.” *Id.*, Ex. 77 at 6 (“If one of my students
22 responded to a patient in the manner describe above, I would doubt whether they
23 had grasped the fundamental principles of audiological care and I would have
24 serious concerns about their apparent lack of empathy for the patient.”).

- 25 • L.J., a wheelchair user at SATF with serious health concerns, filed two requests for
26 help, the first saying he had recently returned from a five-day stay in a hospital and
27 had trouble moving around, can “rarely understand” announcements, and has a hard
28 time getting to the podium when called. Hutt Decl., Ex. 37 at 2. Five days later, he
wrote that he was denied his afternoon medication because he was late for pill call.
Id., Ex. 38 at 2. He explained that he “did not hear . . . the call for pill call”: “This
is at least the 3d x I’ve requested help being notified of podium announcements
ANY and ALL. I DO NOT hear them, or understand whats said. I need some kind
of remedy for not being able to hear or understand PA announcements. . . [Pill call
can be] Anytime from 11:40 to 12:45. It VARIABLES that much! I ask AGAIN, can I
please get assistance for responding to announcements.” *Id.*

Prison officials at SATF sent L.J. a written denial confirming that he “failed to
show up to medication line,” but admonishing him that: “It is your responsibility to
listen for announcements.” *Id.* at 1. Although healthcare staff put in a request for
him to receive a hearing test, he did not receive one before he died several months
later. Hutt Decl. ¶ 30.

- J.F., who was designated DNH, submitted a request for a vibrating mattress to help
wake him “early enough to start my day without issue or rushing @ the last
minute” because “due to my hearing I can’t hear when breakfast release is called.
Furthermore I can’t hear when diabetics are call[ed] on Wednesday when I get my
shot. I can’t hear when everyone is up giving me time to get ready for the above
mentioned. My hearing is really bad and getting worse.” *Id.*, Ex. 43 at 2.

Prison officials denied his request. In the written response, prison officials said:

1 “You currently have an DPP verification code of DNH with hearing aids noted as
 2 your primary method of disability assistance, and an alternate method of disability
 3 assistance which requires staff to speak loudly and clearly. A[s] such, your hearing
 4 is restored to functional levels with the assistance and devices currently provided.
 A vibrating bed shaker is not indicated at this time, as you do not have profound
 hearing loss impacting your placement”—that is, he did not have a DPH code.⁷ *Id.*
 at 1.

5 This repeated denial of requested accommodations to ensure effective communication of
 6 announcements has resulted in people with disabilities at SATF getting discouraged and simply
 7 giving up. *See* Hutt Decl., Ex. 1 ¶ 49 (Declaration of S.C., DNH, SATF), Ex. 3 ¶ 19 (Declaration
 8 of L.B., DNH, SATF), Ex. 9 ¶¶ 35-41 (Declaration of G.E., DNH, SATF), Ex. 13 ¶ 7 (Declaration
 9 of S.M., DNH, SATF).

10 **(2) Existing accommodations are inadequate to ensure**
 11 **effective communication of announcements to all hard-**
of-hearing class members at SATF.

12 CDCR represents that hard-of-hearing people have access to hearing aids, pocket talkers,
 13 ongoing access to audiologists, and vibrating watches. As discussed below, these accommodations
 14 do not address how hard-of-hearing people can receive effective communication of
 15 announcements.

16 First, as Dr. Bourne found, and as Defendants do not dispute, even with hearing aids or a
 17 pocket talker, a person with hearing loss may struggle to understand speech—particularly the type
 18 of speech at issue here, that is made over a public address system, may be unexpected, may
 19 reverberate off of ceilings and walls, and where the person is not able to receive visual cues by
 20 looking at the person speaking. Hutt Decl., Ex. 76 at 6-7. That is consistent with the Court’s
 21 previous finding that “[h]earing aids may improve an individual’s ability to hear sound, but do not
 22 fully restore hearing, and may be rendered ineffective by background noise or poor acoustics.”
 23 Dkt. No. 523 at 11. Unsurprisingly, people designated DNH at SATF report being unable to hear
 24 announcements over the public address system throughout the institution, even with their hearing
 25

26 ⁷ A DPH code is considered an “impacting placement” code. That is what the “P” in “DPH” stands for. People with “impacting placement” codes can be housed only in facilities designated for their
 27 disabilities. A DNH code is considered a “non-impacting placement” code. People with a DNH
 28 code may be housed in any facility. *See Armstrong Remedial Plan* at 3-4, 18 (amended Jan. 3, 2001).

1 aids on. Hutt Decl., Ex. 3 ¶¶ 17-25 (Declaration of L.B., DNH, SATF), Ex. 7 ¶¶ 15-16
 2 (Declaration of S.B., DNH, SATF), Ex. 6 ¶¶ 25-31, 47, 82-83 (Declaration of C.M., DNH, SATF),
 3 Ex. 1 ¶¶ 8-9, 11, 24 (Declaration of S.C., DNH, SATF), Ex. 5 ¶¶ 9-12 (Declaration of H.C., DNH,
 4 SATF), Ex. 2 ¶¶ 10-14 (Declaration of J.K., DNH, SATF), Ex. 9 ¶¶ 26-29 (Declaration of G.E.,
 5 DNH, SATF), Ex. 12 ¶¶ 11-12, 14-15, 24-28 (Declaration of C.M., DNH, SATF), Ex. 13 ¶¶ 13-
 6 15, 18 (Declaration of S.M., DNH, SATF).

7 Second, Plaintiffs are aware of no policy or procedure related to people with hearing loss
 8 seeing audiologists for accommodations specifically to address announcement-related
 9 accommodations. Declaration of Mackenzie Halter ¶¶ 2-7 (“Halter Decl.”).⁸ Indeed, even those
 10 class members designated DNH “who submitted 1824s asking for help due to problems navigating
 11 the prison environment because of their disability” were not sent to an audiologist. Hutt Decl., Ex.
 12 77 at 2.

13 Third, though Defendants propose issuing vibrating watches as “a means of tactile
 14 notification,” Hutt Decl., Ex. 83 at 2, vibrating watches are no substitute for effective
 15 communication of announcements. A vibrating watch does not communicate that an
 16 announcement has been made or the content of the announcement. Instead, a vibrating watch
 17 simply allows a person to set their watch to vibrate at a specific time, such as when they need to
 18 take medication. Dkt. No. 3529 at 7 n.3. In addition, for even this modest \$35 accommodation,
 19 prison officials at SATF systematically deny requests from hard-of-hearing people at SATF based
 20 on DPP code alone. *See* Hutt Decl., Exs. 12 ¶ 11 (Declaration of C.M., DNH, SATF), 31 at 1, 32
 21 at 1, 36 at 1, 42 at 1, 44 at 1; *see also id.*, Ex. 93. Plaintiffs’ counsel brought this problem to
 22 CDCR’s attention in April 2024, *see id.*, Ex. 78, and again in July 2024, *id.*, Ex. 79, and yet prison
 23 officials at SATF continued in August 2024 to tell people designated DNH: “As you are not
 24 designated DPH you do not qualify to be accommodated with a vibrating watch.” *Id.*, Ex. 42 at 1;

25 _____
 26 ⁸ Counsel for CCHCS informed Plaintiffs in April 2024 that a “comprehensive guide to disabilities
 27 which includes determining who needs evaluations and how they should be evaluated” would be
 28 developed, with no specific timeline. Hutt Decl., Ex. 80. We have not received an update since
 that time on the guide, when it will be completed, or whether and how it will relate to audiologists
 and/or effective communication of announcements.

1 *see also id.*, Ex. 76 at 11-12.

2 In sum, CDCR offers for the hundreds of hard-of-hearing people at SATF designated DNH
 3 at best only “a hodgepodge of whatever aids are in the prison’s possession”—hearing aids, pocket
 4 talkers, and, if they are lucky, maybe a vibrating watch. *Pierce v. District of Columbia*, 128 F.
 5 Supp. 3d 250, 271 (D.D.C. 2015) (Jackson, J.). But these aids will not necessarily be sufficient for
 6 everyone designated DNH, as Dr. Bourne has explained. *See id.* (holding that prison officials are
 7 “sorely mistaken” if they believe they are permitted under the ADA “to engage in this sort of
 8 gamble with respect to the accommodation needs of disabled individuals whom they are required
 9 to serve”).

10 **(b) CDCR’s proposal for the remaining 1% also is inadequate.**

11 Next, even for the 1% of people with hearing disabilities at SATF who are assigned a DPH
 12 code, CDCR’s proposal falls well short of what is necessary for effective communication of both
 13 group and individual announcements.

14 **(1) Group announcements**

15 For group announcements (*i.e.*, announcements that apply to more than one person),
 16 CDCR offers only a plan to have a plan at some unknown time. After being ordered by the Court
 17 to develop a proposal within three months, and after six months of subsequent negotiations,
 18 CDCR stated on August 7, 2024, that it and its assistive technology consultant still “are exploring
 19 viable options for providing general announcements to deaf and hard-of-hearing class members at
 20 SATF in congregate settings[.]” Hutt Decl., Ex. 85 at 1. That delay is unacceptable.

21 At this time, Defendants propose only (1) individual assessments of three class members
 22 by an assistive technology professional for unspecified accommodations that CDCR has not
 23 committed to funding, and (2) a schedule of events sent to personal tablets that are not allowed and
 24 do not work in most areas of the prison, do not provide real-time notification that a message has
 25 been received, and that people with disabilities may not even have. That falls well short of what is
 26 needed.

27 **A) Individual assessments**

28 CDCR’s proposal to conduct individual assessments is an empty act unless it commits to

1 proposes that if the schedule is modified, an amended notice should be sent “before the event
2 when possible.” *Id.* at 10. This proposal falls well short of a complete and durable solution.

3 First, notification that a daily or amended notice has been received “will only appear at the
4 time the individual logs into the device,” and does not appear when a tablet is not in use or when
5 the tablet is in use. Hutt Decl., Ex. 92 at 1. Therefore, CDCR’s proposal does not provide real-time
6 effective communication of announcements; if someone is not using their tablet, or if they are
7 using an application on their tablet (for example, if they are writing an email, reading a book,
8 watching an educational program, or talking on the phone), they will not know that a notice has
9 been sent.

10 Second, CDCR will audit only whether the schedule was sent at the start of second and
11 third watches, and not whether modifications to the schedule were timely sent to people. Because
12 programs at SATF often do not run as scheduled, this is the information people with hearing
13 disabilities most need. *See, e.g.*, Hutt Decl., Ex. 6 ¶¶ 40-44 (Declaration of C.M., DNH, SATF),
14 Ex. 4 ¶ 10 (Declaration of M.M., DNH, SATF), Ex. 1 ¶ 22 (Declaration of S.C., DNH, SATF), Ex.
15 7 ¶ 20 (Declaration of S.B., DNH, SATF).

16 Third, tablets are allowed only in the housing units and do not work on the yards.⁹ *See* Hutt
17 Decl., Ex. 85 at 1, Ex. 6 ¶¶ 97-99 (Declaration of C.M., DNH, SATF). But people must receive
18 effective communication of announcements in all locations, and hard-of-hearing people at SATF
19 report that it is difficult or impossible to hear announcements on the yard. *See, e.g., id.*, Ex. 6
20 ¶¶ 82-88 (Declaration of C.M., DNH, SATF) (reporting missing appointment for hearing aid while
21 on the yard), Ex. 5 ¶ 12 (Declaration of H.C., DNH, SATF) (reporting missing announcement that
22 he should go inside because the outside temperature had risen to a dangerous level for people like

23 _____
24 ⁹ Defendants, *infra*, ask the Court to ignore their lack of any system for effectively communicating
25 announcements *outside* the housing units because the Court Expert’s past reports did not explicitly
26 discuss this topic. This is a distraction. Defendants do not dispute the fact, as set forth in
27 numerous, unchallenged class member declarations, *see supra*, that Defendants neither have a
28 system nor a proposed solution for how to effectively communicate announcements to deaf and
hard-of-hearing people *outside* the housing units. And the Court’s December 7, 2023 Order
requiring CDCR to develop an effective-communication-of-announcements system does not limit
this requirement to announcements that occur inside housing units. *See* Dkt. No. 3538 at 5.

1 him on heat-sensitive psychiatric medications), Ex. 7 ¶¶ 30-30.5 (Declaration of S.B., DNH,
2 SATF) (reporting missing announcements regarding his medical appointments while on the yard).

3 Fourth, CDCR has not addressed longstanding concerns about delays in the provision,
4 repair, and replacement of tablets. It can take people a month or more to get a tablet and even if
5 they have a tablet, sometimes the tablet does not work. Hutt Decl., Ex. 6 ¶¶ 92-94 (Declaration of
6 C.M., DNH, SATF), Ex. 5 ¶ 14 (Declaration of H.C., DNH, SATF), Ex. 1 ¶ 26 (Declaration of
7 S.C., DNH, SATF), Ex. 2 ¶ 21 (Declaration of J.K., DNH, SATF); Dkt. No. 3510-3 ¶ 30. When
8 people with disabilities have reported problems with tablet, staff at SATF have told them that
9 CDCR “is not responsible for issuing, servicing, or maintaining Via Path tablets,” *see* Hutt Decl.,
10 Ex. 39 at 1; or that “tablets remain on back order,” *id.*, Ex. 40 at 1.

11 Finally, reliance on the current ViaPath tablets is not a durable solution. CDCR has posted
12 an RFP and addenda for a new tablet contract, which do not require the functionality necessary to
13 ensure accessible real-time notification of announcements—namely, that the tablets function on
14 yards and other areas outside of housing units, provide tactile and visual alerts, and send alerts
15 when the tablet is not in use or another application is open. Halter Decl. ¶¶ 10-12, 16-19; Dumalig
16 Decl. Exs. F-H (tablet RFP addenda not requiring these functions). The contract also does not
17 require tablets to be repaired or replaced immediately, meaning people can be without a working
18 tablet, and therefore without effective communication of announcements, for more than a week.
19 *Id.* ¶ 20.

20 (2) Individual announcements

21 CDCR’s proposal for effective communication of *individual* announcements to people
22 designated DPH is as follows: “In the event housing unit staff are notified of an individual
23 announcement pertaining to a DPH class member, housing unit staff or Americans with
24 Disabilities Act (ADA) workers will provide a face-to-face notification to the DPH incarcerated
25 population.” Hutt Decl., Ex. 83 at 10 (internal parenthetical omitted). Because it relies on
26 correctional staff and ADA workers, CDCR therefore was required to develop “a draft proposal
27 regarding how CDCR will audit whether officers at SATF effectively communicate
28 announcements to deaf and hard-of-hearing people, and how CDCR will take corrective action

1 when officers are found to fail to communicate such announcements[.]” Dkt. No. 3538 at 5 (Item
2 7(1)). Defendants propose to audit as follows:

- 3 1. Housing unit staff shall manually log each time an officer or ADA worker provides
4 an individual announcement to a DPH class member, including the date, time,
5 appointment type. The DPH class member shall be required to sign the log
6 “indicating they received and understood the notification.”
- 7 2. Facility sergeants will review the logs during daily housing unit tours and initial the
8 log. If notifications are not documented, the sergeant “shall provide remedial
9 training” and document it on a “Training Participation Sign-In Sheet.” Defendants
10 will also “conduct monthly audits of the logs,” although what that audit consists of
11 and how it differs from the daily review by the sergeant is not explained.
- 12 3. “DPH class members will review the logs weekly and confirm receipt and
13 understanding of the announcement(s).” They also will be interviewed by
14 compliance sergeants “to evaluate the occurrence and effectiveness of the face-to-
15 face communication and log these within the ADA checklist,” which will be
16 reviewed weekly by the Compliance Lieutenant or ADA Coordinator, who will
17 “address the non-compliant items through corrective action” that is not identified.

18 Hutt Decl., Ex. 83 at 6-7.

19 This proposal falls far short of an audit that ensures timeliness, accessibility, and accuracy
20 and completeness—the very issues that the Court Expert identified. In particular, the Court Expert
21 found that deaf class members reported that the system of individual personal notification does not
22 “consistently result in them getting accurate or timely announcements, either because ADA
23 workers do not come to their cell as directed, they do not accurately communicate the
24 announcement, or they refuse to write down the announcement for the deaf person to read.” Dkt.
25 No. 3500 at 12; *see also id.* at 4 (recommending “that CDCR devise a system that is *not* reliant on
26 staff or ADA workers having to personally communicate announcements to the deaf population”)
27 (emphasis added); Hutt Decl., Ex. 7 ¶ 26 (Declaration of S.B., DNH, SATF), Ex. 4 ¶ 6
28 (Declaration of M.M., DNH, SATF), Ex. 5 ¶¶ 10-12 (Declaration of H.C., DNH, SATF), Ex. 6
¶¶ 86-87 (Declaration of C.M., DNH, SATF). Defendants’ proposal will not catch any of those
problems.

First, the log itself lists only when face-to-face notification of an announcement was
provided, and not when face-to-face notification should have been provided but was not. The
sergeant may initial the log daily, and the facility manager may “audit” it monthly, but how will
they know if staff or an ADA worker failed to provide face-to-face notification of an

1 announcement (and therefore it is not listed on the log)? How will they know if staff or an ADA
2 worker provided face-to-face notification of an announcement only after failing to provide it
3 timely the first time and only after the deaf person was late for the appointment, as deaf and hard-
4 of-hearing class members report currently is the practice? *See, e.g.*, Hutt Decl., Ex. 5 ¶¶ 10-11
5 (Declaration of H.C., DNH, SATF). And how will they ensure that the deaf person received the
6 full message that should have been conveyed, in an accessible manner? *Id.*, Ex. 8 ¶ 57
7 (Declaration of R.W., DPH, SQ) (noting that ADA workers “rarely brought a whiteboard with
8 them to explain what the announcement was for—they would just expect me to hear them or read
9 their lips”).

10 Second, reliance on deaf people to identify failures by custody staff and their incarcerated
11 peers is inappropriate. Deaf people may not know what announcements were not communicated to
12 them (because they did not hear them), they may not feel comfortable reporting that custody staff
13 or other incarcerated people are not doing their jobs, and they may not believe that reporting or
14 continuing to report failures to provide effective communication will result in improvement. Hutt
15 Decl., Ex. 3 ¶ 28 (Declaration of L.B., DNH, SATF), Ex. 1 ¶¶ 15-17 (Declaration of S.C., DNH,
16 SATF), Ex. 6 ¶¶ 103-04 (Declaration of C.M., DNH, SATF), Ex. 8 ¶¶ 58 (Declaration of R.W.,
17 DPH, SQ) (Person E report that “nothing changed” and “[s]ometimes things even got worse”
18 when he told staff he had not received announcements). It also is not clear how feasible this labor-
19 intensive auditing proposal will be if extended beyond the four DPH class members currently at
20 SATF, to include class members designated DNH who also require individual notification as a
21 reasonable accommodation for their hearing disabilities. That would significantly increase the
22 workload of the compliance sergeants and CAMU CCII.

23 Finally, CDCR fails to explain whether and “*how* [it] will take corrective action when
24 officers are found to fail to communicate such announcements,” Dkt. No. 3538 at 5 (emphasis
25 added), beyond simply providing unidentified training. Hutt Decl., Ex. 83 at 6-7. Training alone
26 has been insufficient and at times even counterproductive to resolving this longstanding issue at
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28

1 SATF.¹⁰ *See, e.g.*, Dkt. No. 3510-1 ¶¶ 29-32, 38 & Exs. 12-14, 17 at 17; *Thomas v. Bryant*, 614
 2 F.3d 1288, 1320-21 (11th Cir. 2010) (affirming injunctive relief even though prison officials
 3 conducted additional training where, among other things, “the record calls into question whether
 4 the . . . training has had any success”). Yet Defendants seem unable to recognize when a problem
 5 cannot be corrected by training alone and that progressive disciplinary action is necessary. *See*
 6 Dkt. No. 3446 at 42 (Court Expert report that “[c]ustody staff who do not comply with this
 7 requirement [for individualized announcements to people who cannot hear the intercom] should
 8 receive training followed by progressive discipline”).

9 CDCR provides no response to these obvious flaws. Inexplicably, CDCR’s assistive
 10 technology consultant asserts that CDCR’s proposal is “a robust system to log and audit the
 11 provision of individual announcements via face-to-face communication, as well as corrective
 12 action to reinforce the system.” Swett Decl. ¶ 26. Such a conclusory and self-serving statement is
 13 entitled to no weight; Dr. Swett has no relevant background or experience in this area (indeed, he
 14 has no background in prison management or operations and, before being retained by CDCR in
 15 June 2024, he had never set foot inside a prison, Hutt Decl. ¶ 83); and applies no clear
 16 methodology to reach his conclusion, which, as noted above, is flawed on its face. *See* Fed. R.
 17 Evid. 702 advisory committee’s note to 2000 amendments (“The expert’s testimony must be
 18 grounded in an accepted body of learning or experience in the expert’s field, and the expert must
 19 explain how the conclusion is so grounded.”); *Lust By & Through Lust v. Merrell Dow Pharms.,*
 20 *Inc.*, 89 F.3d 594, 598 (9th Cir. 1996) (holding that “the district court can exclude the opinion if
 21 the expert fails to identify and defend the reasons that his conclusions are anomalous”).

22 Perhaps recognizing the flaws in its proposed auditing system, CDCR leans heavily on the
 23 existence of a ducating system for certain individual appointments, contending that “the ducating
 24

25 ¹⁰ Following the Court Expert’s subsequent report, for example, CDCR reported that they had
 26 developed “augmented training” on effective communication of announcements. Dkt. No. 3515-1
 27 ¶ 11. CDCR then produced two grossly inadequate training videos which excluded hard-of-
 28 hearing people and depicted precisely how *not* to effectively communicate announcements to class
 members designated DPH. Hutt Decl., Exs. 87-88. Defendants did not report removing the videos
 until five months later, despite repeated objections by Plaintiffs’ counsel and the Court Expert. *See*
id., Exs. 89-90.

1 system, as a whole, works, and ensures class members receive individualized notice of important
 2 appointments.” *See* page 49, below. As an initial matter, and as was briefed last year, the ducating
 3 system was in place at the time of the Court Expert’s investigation (and long before) (*see* Dkt. No.
 4 3510 at 11-12 (citing Dkt. No. 3510-1 ¶¶ 21-24)); simply pointing to existing systems (*i.e.*, the
 5 status quo) cannot solve problems that have remained endemic within those systems. In any event,
 6 people with disabilities at SATF have explained that they do not always receive ducats and, when
 7 they do, they often do not include the correct time, and they are expected to wait for officers to tell
 8 them via the announcement system to report to an appointment. Hutt Decl., Ex. 7 ¶¶ 19-20
 9 (Declaration of S.B., DNH, SATF), Ex. 4 ¶ 9 (Declaration of M.M., DNH, SATF), Ex. 1 ¶ 13
 10 (Declaration of S.C., DNH, SATF), Ex. 6 ¶¶ 32-38, 51-52 (Declaration of C.M., DNH, SATF).

11 In response, CDCR dismisses reports of class members, and offers a conclusory statement
 12 regarding how the ducating system is supposed to work. Mebane Decl. ¶ 7. But the underlying
 13 data specific to SATF confirms class member accounts. Patients at SATF often are called to the
 14 medical clinic without first receiving a ducat. In fact, in a single week in September 2024 alone,
 15 hundreds of patients were seen by nurses without first receiving a ducat. Declaration of Sara
 16 Norman ¶¶ 9-12 (“Norman Decl.”) (discussing same-day appointments); *see also* Mebane Decl.
 17 ¶ 7 (ducats are distributed a day before scheduled appointments). And even when someone has
 18 received (or should have received) a ducat, CCHCS’s own audits have found that over half of
 19 medical appointments at SATF occur at a significantly different time than what was written on the
 20 ducat, something CCHCS’s Health Care Access Unit has identified as an “unresolved critical
 21 issue” at SATF. Norman Decl. ¶¶ 13-15, Ex. B; *see also id.* ¶ 18 (based on check in/check out logs
 22 from SATF for the week of September 2-6, 2024, “medical encounters continue to be frequently
 23 more than an hour before or after the ducated time, and sometimes many hours different.”).

24 (c) **CDCR’s failure to offer a viable plan necessitates more specific**
 25 **relief.**

26 CDCR states below that its proposal “is not the result of productive, good-faith
 27 negotiations with Plaintiffs.” Defendants’ Item 7 Statement at 35. On this point, the parties agree.
 28 CDCR has inexplicably refused throughout negotiations to commit to making available any

1 auditable accommodation that will deliver real-time visual and tactile notification of
2 announcements. A careful review of CDCR’s statement below reveals that it amounts to a list of
3 existing systems—which this Court has already found to be inadequate—and a handful of
4 discredited ideas: a tablet that will not communicate announcements, hearing assessments for only
5 1% of the hearing-disabled population (with no commitment to provide reasonable assistive
6 technologies, such as pagers, where indicated), and a manual log that facially will not audit
7 whether staff failed to deliver an announcement.

8 CDCR’s failure “to suggest—let alone implement—any viable” plan to ensure effective
9 communication of announcements to deaf and hard-of-hearing people at SATF after being on
10 notice of the problem for years and being ordered by the Court over ten months ago to develop a
11 plan necessitates more specific relief. *See Armstrong v. Brown*, 768 F.3d 975, 986 (9th Cir. 2014);
12 *see also Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004) (“Federal courts are not reduced
13 to . . . hoping for compliance.”). The Court should order the plan offered by Plaintiffs, which
14 would meet the criteria the Court set forth in its December 7, 2023 Order, as well as the Court
15 Expert’s recommendation “that CDCR devise a solution that is *not* reliant on staff or ADA
16 workers having to personally communicate announcements to the deaf population,” Dkt. No. 3500
17 at 4 (emphasis added), and leverages technology used in other state prison systems to address this
18 very issue.

19 **(1) The Court should order CDCR to implement paging**
20 **systems that provide real-time, non-auditory notification**
21 **of announcements and that are used in prison system**
22 **nationwide.**

22 The Court should order CDCR to implement a pager system at SATF that provides people
23 with hearing disabilities real-time visual and tactile notifications whenever an individual or group
24 announcement is made. Paging systems include the features necessary to both effectively
25 communicate and audit announcements—real-time, non-auditory notification of an announcement
26 and the content of that announcement sent to a wearable and portable device, which can be worn
27 throughout the institution (including on the yard) and which stores a record of all transmitted
28 messages for auditing later. Hutt Decl., Ex. 76 at 15-16 & 77-80 (User Manual for MMSCall’s

1 Watch Pager User Manual).

2 “Wearable paging devices are standard accommodations for deaf and hard-of-hearing
3 people to receive real-time notifications of other people communicating with them.” Hutt Decl.,
4 Ex. 76 at 15. Federal courts across the country have ordered prison officials to adopt paging
5 systems to ensure effective communication of announcements to people with hearing disabilities,
6 and prison officials in other jurisdictions have adopted such systems on their own. For example,
7 consider the policy adopted by prison officials in **Minnesota**:

8 Incarcerated persons/residents who are deaf or hard of hearing and who have been
9 approved to use a pager must be sent a preprogrammed or customized message
10 notifying them of every general announcement made over the public address
11 system in their living units, including those related to security counts and large
12 group movements or mass movements for meals, recreation, pill window, canteen,
13 programming assignments, lockdown, tornado warning, etc. Except in emergencies,
14 pages for general announcements must be made immediately after the general
15 announcement is made over the public address system. A pager message must also
16 be sent for any individual appointments they have that require movement (for
17 example, medical appointments, legal calls, or visits).

18 *Id.*, Ex. 94 at 1. Other examples include:

- 19 • A district court ordered the **Colorado** prison system to provide “MMCall [a vibrating
20 pager device] or substantially similar technology (including similar length and intensity of
21 vibration upon receipt of a notification)” to ensure notification of announcements to deaf
22 and hard-of-hearing incarcerated people. *Id.*, Ex. 95 at 11.
- 23 • Under a court-ordered settlement, the **Illinois** prison system has installed a tactile
24 notification system statewide for deaf and hard-of-hearing residents, which may consist of
25 a watch that vibrates when it is receiving an announcement. *Id.*, Ex. 97 at 3-5.
- 26 • In response to a court order, the **Kentucky** prison system made pagers available as a “non-
27 auditory alert” for deaf and hard-of-hearing incarcerated people at several facilities. *See*
28 *id.*, Exs. 99 at 13 (requiring “an effective non-auditory alert system that will notify Deaf
Inmates of both prison-wide events . . . and events specific to Deaf Inmates” and requiring
such alerts to be “in real time.”). 101 at 8 (listing pagers among the available “[n]on-
auditory alerts”).
- In **Maryland**, prison officials were required to provide “functional personal pagers” that
“include visual as well as vibrating functions” to alert residents with disabilities to
announcements. *Id.*, Ex. 158 at 22.
- In **Massachusetts**, prison officials distributed pager devices to convey announcements to
the deaf and hard-of-hearing population in its facilities after being ordered to “provide an
effective non-auditory alert system that will be used to notify deaf and hard-of-hearing
inmates of prison-wide events (including but not limited to announcements, visitations, and
count) and events specific to deaf and hard-of-hearing inmates,” and which will effectively
communicate announcements “in real time.” *Id.*, Ex. 102 at 43.

- 1 • In response to a court order, **Michigan** prison officials implemented “[a] pager-based, facility-wide, one-way communication system controlled from the State of Michigan (SOM) Network. The [Page Alert Broadcast System] is set up to allow staff to send messages to a pager(s) through their computer.” *Id.*, Ex. 106 at 1.
- 2
- 3
- 4 • Prison officials in **Vermont** developed a policy that provides: “An incarcerated individual with a hearing disability may be provided a personal pager, that includes visual as well as vibrating functions to supplement any alerts, notifications or protocols put into place to ensure they receive normal and customary announcements. . . . Staff will be trained on the use of the pagers and responsible for transmitting messages and alerts at the same time messages and alerts are broadcast to incarcerated people without a hearing disability.” *Id.*, Ex. 107 at 8-9.
- 5
- 6
- 7 • In **Wisconsin**, the Department of Corrections entered into a settlement agreement with the U.S. Department of Justice that requires the Department to “provide personal pagers, watches, or another similar device, that include visual as well as vibrating functions . . . to aid in daily notification of routine announcements and protocols, including wake-up calls, mealtimes, recreational times, and other normal and customary notifications.” *Id.*, Ex. 159 at 17.¹¹
- 8
- 9
- 10

11 Given the widespread adoption of paging systems for people with hearing disabilities in
 12 other state prison systems, it is no surprise that CDCR does not challenge the feasibility of such a
 13 system.¹² Indeed, CDCR’s head technologist, Sylvia Dumalig, identifies no technological barriers
 14

15 ¹¹ Paragraphs 11-13 of Captain Mebane’s declaration—paraphrasing out-of-court statements
 16 supposedly made by unnamed prison officials in Massachusetts, Minnesota, and Wisconsin about
 17 pagers—contain textbook hearsay. *See* Fed. R. Evid. 801(c). All discussion of these out-of-court
 18 conversations in these paragraphs is inadmissible and must be excluded. Fed. R. Evid. 802.
 19 Defendants, below, concede that these unreliable statements are hearsay, but argue that this
 20 hearsay problem could be cured later on. Defendants have not established, however, that they can
 21 cure this hearsay problem. *See Iribe v. Toyota Motor Sales USA Inc*, No. CV105966GAFPLAX,
 22 2011 WL 13217474, at *3 (C.D. Cal. Feb. 28, 2011) (finding that an “unnamed appraiser’s”
 23 hearsay statement was inadmissible “because it is not in the form of a sworn affidavit or
 24 declaration attesting that the declarant could testify at trial to the matters asserted”); *Blackshire v.*
 25 *Cnty. of Yuba*, 648 F. Supp. 3d 1221, 1232 (E.D. Cal. 2023) (“The Court does not find this hearsay
 26 evidence could be provided in an admissible form at trial because no individual is identified as the
 27 declarant and no hearsay exception applies.”); *Stonefire Grill, Inc. v. FGF Brands, Inc.*, 987 F.
 28 Supp. 2d 1023, 1037 (C.D. Cal. 2013) (noting the declarant of a hearsay statement was
 unidentified, so the contents of the statement were “not admissible in any form”).

23 Regardless of their currently inadmissible form, the content of these paraphrased statements in
 24 Captain Mebane’s declaration merit careful scrutiny by the Court.

25 ¹² CDCR’s assistive technology professional, Dr. Swett, alludes generally to “the stringent security
 26 and operational requirements of correctional facilities,” current infrastructure, and “financial
 27 constraints.” Swett Decl. ¶¶ 17-18, 30-31. It is well-settled that a “vague assertion” that “some
 28 accommodations might be costly cannot be construed as a legitimate basis for failing to comply
 with the ADA (whether through structural modifications or other reasonable methods),” *see Pierce*
v. County of Orange, 526 F.3d 1190, 1220 (9th Cir. 2008), and security concerns are a fact-
 intensive inquiry. *Chisolm v. McManimon*, 275 F.3d 315, 329 (3d Cir. 2001). Dr. Swett certainly
 cannot speak to those concerns; he has no experience in prison operations or management. In fact,
 (footnote continued)

1 to making pagers available at SATF. Instead, Ms. Dumalig outlines the “planning, coordination . .
 2 . . , testing, and training” that CDCR would need to undertake “to ensure a reliable and effective
 3 pager system.” Dumalig Decl. ¶ 7.

4 What remains unclear is why CDCR has not undertaken those steps on its own. Plaintiffs
 5 have recommended since at least July 2021 that Defendants adopt a pager system at SATF. *See*
 6 Dkt. No. 3459-5, Exs. 77-87 (meeting agendas including requests for pagers for effective
 7 communication of announcements); Hutt Decl., Ex. 81 at 19-22. In addition, Plaintiffs informed
 8 CDCR of other prison systems that entered settlement agreements in which they agreed to use
 9 paging systems to accommodate deaf and hard-of-hearing people. *See, e.g.*, Dkt. No. 3459-5 at 16;
 10 Hutt Decl., Ex. 81 at 21-22.

11 CDCR provides no explanation and instead attacks a straw man in its half-hearted and
 12 indirect challenges to a pager system. First, CDCR states that a pager system is Plaintiffs’
 13 “preferred method for the effective communication of announcements without conducting a direct
 14 assessment of their clients’ individualized needs.” Defendants’ Statement at 53, *infra*. That is
 15 false. It is not—and has never been—Plaintiffs’ position that *all* incarcerated people with hearing
 16 disabilities necessarily would require a pager as a reasonable accommodation. *See* Hutt Decl., Ex.
 17 81 at 11. Instead, as explained by Plaintiffs’ expert Dr. Bourne:

18 Both DNH and DPH class members—and anyone who reports difficulty hearing—
 19 should be individually assessed by a hearing healthcare professional with assistive
 20 listening technology experience or an assistive technology professional who has
 21 knowledge of the impact of hearing loss, experience evaluating people who are
 22 deaf and hard of hearing, and expertise with accommodations available to deaf and
 hard-of-hearing people to determine what non-auditory accommodation, if any,
 they need in different prison settings and for different types of communication. The
 assessor should consider both wearable paging devices and congregate visual
 paging systems.

23 Hutt Decl., Ex. 76 at 17.

24
 25 before he was retained by CDCR in June 2024, Dr. Swett had never been in a prison. Hutt Decl.
 26 ¶ 83; *Nale v. Finley*, 505 F. Supp. 3d 635, 644-45 (W.D. La. 2020) (excluding nurse expert from
 27 testifying about “the conduct and actions of law enforcement officers” because she “has no
 28 experience or training as a law enforcement officer or as an officer at a correctional
 facility”); *Hessler v. Cnty. of St. Croix*, No. 08-CV-166-BBC, 2009 WL 728451, at *1 (W.D. Wis.
 Mar. 16, 2009) (excluding proposed expert whose testimony would relate to jail management
 because he had “no real experience in the correctional setting”).

[4548807.6]

1 Second, CDCR speculates that the jurisdictions that have adopted pagers “likely” do not
 2 provide the “multifaceted and comprehensive accommodations” that CDCR supposedly provides.
 3 Defendants’ Item 7 Statement at 36. Not only does CDCR fail to present any evidence from these
 4 jurisdictions to support this claim, but CDCR also fails to comprehend that it was the Court’s
 5 *rejection* of CDCR’s so-called “multifaceted and comprehensive” status quo that led the Court to
 6 order CDCR ten months ago to develop a working announcements system.

7 Third, CDCR contends that these jurisdictions’ pager systems “only function within
 8 housing units.” *Id.* at 46. CDCR’s support for this broad contention is just one line of inadmissible
 9 hearsay, *see supra* note 9, from a single jurisdiction. Contrary to CDCR’s misrepresentation,
 10 documentation from the vast majority of jurisdictions cited above indicates that they do not limit
 11 pagers to functioning only within housing units. *See, e.g.*, Hutt Decl., Ex. 95 at 13 (Colorado); *id.*,
 12 Ex. 96 at 12 (Illinois); *id.*, Ex. 101 at 12 (Kentucky); *id.*, Ex. 102 at 44 (Massachusetts); *id.*, Ex.
 13 106 at 1, 7 (Michigan); *id.*, Ex. 107 at 8 (Vermont); *id.*, Ex. 159 at 17 (Wisconsin).

14 Fourth, CDCR asserts that a pager system “would simply be a digital version” of the
 15 existing ducating system. This is mistaken. As discussed *supra*, ducats tell an incarcerated person
 16 the (usually incorrect) time that an event specific to that person might occur. It is the real-time
 17 announcement, by contrast, that tells the incarcerated person that they must immediately report to
 18 a given location; pagers are an accommodation for these critical announcements, not a substitute
 19 for ducats. *See id.*, Ex. 7 ¶ 20 (Declaration of S.B., DNH, SATF) (“Staff won’t let you out at the
 20 time on the ducat. When I have told staff that I have a ducat, the officer has responded, ‘They’ll
 21 call for you.’”).

22 Because CDCR will not act on its own, the Court should order CDCR to follow the steps
 23 outlined in Ms. Dumalig’s declaration to ensure a reliable and effective pager system at SATF. *See*
 24 Dumalig Decl. ¶¶ 3-7.

25 (2) **The Court should order that CDCR implement video**
 26 **display boards and evaluate and upgrade PA and visual**
alarm systems.

27 The Court should order additional relief to ensure a robust system for effective
 28 communication of announcements. First, the Court should order CDCR to install video display

1 boards in appropriate common locations, including in the housing units and on the yard, to
 2 communicate the content of announcements in real-time to deaf and hard-of-hearing class
 3 members. Hutt Decl., Ex. 76 at 16; Godbold Decl. ¶ 29 (the parties have discussed such displays
 4 since at least 2019). Such visual displays are widespread in the community, including in airports,
 5 DMVs, and pharmacies, Hutt Decl., Ex. 76 at 16, and people with disabilities have reported that
 6 such displays would be useful. *Id.*, Ex. 1 ¶ 23 (Declaration of S.C., DNH, SATF); *id.*, Ex. 4 ¶ 10
 7 (Declaration of M.M., DNH, SATF); *id.*, Ex. 5 ¶ 8 (Declaration of H.C., DNH, SATF); *id.*, Ex. 9
 8 ¶ 27 (Declaration of G. E., DNH, SATF); *id.*, Ex. 13 ¶ 20 (Declaration of S.M., DNH, SATF).
 9 These displays also would help avoid any disruptions in effective communication when other
 10 technologies, like the pagers, experience disruptions, and could help communicate longer
 11 announcements in a more accessible manner. Prison officials at SATF installed electronic
 12 messaging displays that remain in housing units (see photograph below) but appear to have never
 13 been used to communicate announcements. *See id.*, Ex. 1 ¶¶ 19-20 (Declaration of S.C., DNH,
 14 SATF); *id.*, Ex. 6 ¶¶ 63-64 (Declaration of C.M., DNH, SATF). A more accessible version of that
 15 technology (*e.g.*, one with a larger screen that can show more text and is viewable from more
 16 angles in the unit) would be appropriate as one part of a complete accommodation system at
 17 SATF. Hutt Decl. ¶ 41; *id.*, Ex. 6 ¶ 64 (Declaration of C.M., DNH, SATF).



23 CDCR’s statement that video displays “would serve the exact same function that the
 24 whiteboards currently do” is inaccurate. Defendants’ Item 7 Statement at 44. The whiteboards, as
 25 class members’ declarations set forth, often serve no announcement-related function, or a deeply
 26 deficient one. *See* Hutt Decl., Ex. 12 ¶ 52 (Declaration of C.M., DNH, SATF) (“Staff in my unit
 27 never update the whiteboard. I have to take it on myself to do that.”); *id.*, Ex. 1 ¶ 22 (Declaration
 28 of S.C., DNH, SATF) (“[T]he whiteboard doesn’t give me very much information. It isn’t changed

1 for different programs or when the time of a program (like yard or chow) changes.”); *id.*, Ex. 6
2 ¶ 54 (Declaration of C.M., DNH, SATF) (“[The whiteboard] is not updated regularly and does not
3 record all the announcements made in the unit throughout the day.”). Video display boards, by
4 contrast, would visually alert people with hearing-disabilities of an announcement in real time.

5 Second, the Court should order CDCR to evaluate and upgrade its PA announcement
6 system and visual alarm system. People with disabilities at SATF frequently report that the PA
7 system at SATF is difficult to hear. Hutt Decl., Ex. 3 ¶¶ 17-25 (Declaration of L.B., DNH, SATF),
8 Ex. 7 ¶¶ 15-16 (Declaration of S.B., DNH, SATF), Ex. 6 ¶¶ 25, 47, 82 (Declaration of C.M.,
9 DNH, SATF), Ex. 1 ¶¶ 8, 11, 24 (Declaration of S.C., DNH, SATF), Ex. 5 ¶¶ 9-12 (Declaration of
10 H.C., DNH, SATF), Ex. 2 ¶¶ 11-16 (Declaration of J.K., DNH, SATF), Ex. 9 ¶¶ 26, 29
11 (Declaration of G.E., DNH, SATF), Ex. 12 ¶¶ 12-28 (Declaration of C.M., DNH, SATF), Ex. 13
12 ¶¶ 13-20 (Declaration of S.M., DNH, SATF). And people with disabilities at SATF routinely
13 report that the visual alarm system does not work because the lights are not noticeable. *See, e.g.*,
14 *id.*, Ex. 3 ¶¶ 30-31 (Declaration of L.B., DNH, SATF). C.M., for example, reported that the lights
15 for alarms on the yard “are pretty small and hard to see even when they are ‘on’ during the day.”
16 *Id.*, Ex. 6 ¶¶ 80, 89 (noting that light is circled in red in the photograph of the yard below).

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In sum, SATF for decades has failed to develop the policies, procedures, and infrastructure necessary to ensure effective communication of the many and varied auditory announcements that regulate prison life. This has resulted in people with hearing disabilities living diminished lives. They miss critical information and are late to or miss programs, services, and activities, including medical appointments, pill call, canteen, yard, dayroom, emergency alarms, and mental health programming. In light of CDCR's failure to offer a meaningful proposal to ensure effective communication of announcements to deaf and hard-of-hearing people at SATF, more specific relief is required from the Court. A proposed order is attached.

2. Defendants' Statement

Defendants are keenly aware of the importance of effectively communicating auditory announcements to all individuals in CDCR's custody, including deaf and hard-of-hearing class members at SATF. With the assistance of a RESNA-certified Assistive Technology Professional,

[4548807.6]

1 Defendants devised a comprehensive proposal to ensure effective communication of
2 announcements to these class members that leverages existing technologies, implements a robust
3 auditing system, and incentivizes staff compliance. Defendants’ proposal is the result of months
4 of factual and legal research, exchanges of information with other jurisdictions, internal
5 stakeholder discussions, and broad consideration of the limitations presented by a carceral
6 environment. Unfortunately, and unlike the vast majority of items at issue in this Stipulation,
7 Defendants’ proposal is not the result of productive, good-faith negotiations with Plaintiffs.
8 Ultimately, Plaintiffs rejected every aspect of Defendants’ multifaceted proposal when Defendants
9 declined to acquiesce to their inadequately supported demand for a specific technology—even
10 when the multifaceted proposal incorporated some of Plaintiffs’ earlier demands.

11 Plaintiffs claim that Defendants’ proposal fails to ensure effective communication of
12 announcements for deaf and hard-of-hearing class members at SATF. Not so. Despite Plaintiffs’
13 increasingly unreasonable demands, Defendants have worked collaboratively with Plaintiffs to
14 ensure these class members have access to multiple accommodations depending on their
15 individualized needs and the extent of their disability, including sign language interpreters, written
16 communication, state-of-the-art hearing aids, Personal Sound Amplification Devices (*i.e.*, pocket
17 talkers), vibrating watches, and personal iPads and iPhones equipped with speech-to-text software.

18 Now, contrary to their own previous advocacy,¹³ Plaintiffs disparage these
19 accommodations, *supra*, as “inadequate” and “insufficient.” Plaintiffs’ have no direct support for
20

21 ¹³ See, e.g., Garske Decl., Ex. A (6/30/2015 Letter from K. Stone-Manista to CDCR) (advocating
22 for a pocket talker for a class member “in outdoor environments, such as the yard, because it
23 ‘helps reduce wind noise’” and “‘makes it possible for the patient to be in a noisy environment
24 with multiple conversations and still be able to understand a person in front of them.’”); Lorey
25 Decl., Ex. N (1/11/2023 Letter from C. Jackson to CDCR) (advocating for pocket talker as “a
26 reasonable accommodation that benefits deaf and hard of hearing individuals, including those who
27 already have hearing aids.” (citing Ltr from C. Jackson to T. Davis, A. Powell, & B. Beland,
28 Expert Report regarding Poor Quality of Hearing Accommodations for Deaf and Hard of Hearing
Class Members and Request for Action, dated July 13, 2022; Ltr. From C. Jackson to T. Davis &
A. Powell, Plaintiffs’ Comments regarding Pocket Talker Memo, dated January 6, 2022)); Lorey
Decl., Ex. O (10/8/2021 Letter from P. Godbold to CDCR) (advocating for vibrating watches for
hard-of-hearing class members based on the device’s ability “to notify [class members] that it is
time for chow, programs, yard and other programs and activities.”).

(footnote continued)

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1 these assertions, and instead complain about the federal-court approved ducating system,¹⁴ as well
 2 as the 1824 process and individual class members’ audiology results,¹⁵ which are outside the scope
 3 of this stipulation item.¹⁶ Plaintiffs advocate for the installation and implementation of a pager
 4 system based solely on an audiologist’s opinion that CDCR “should consider” a pager system
 5 (Hutt Decl., Ex. 76 at 17), and their incongruent analogizing to the implementation of such
 6 systems in a handful of vastly different jurisdictions that likely do not provide the multifaceted and
 7 comprehensive accommodations provided by CDCR (*see* Hutt Decl., Exs. 94-107). The Court
 8 should deny Plaintiffs’ inappropriate request.

9 Plaintiffs further contend, *supra*, that “there is no legal or factual basis” to differentiate
 10 between class members who are deaf and those who are hard-of-hearing, and that hard-of-hearing
 11 class members “are entirely excluded” from Defendants’ proposal to ensure effective
 12 communication of announcements. Plaintiffs are wrong on both counts and have no direct support
 13 for these assertions that are inconsistent with the court-ordered remedial plan and incorrect as a
 14 matter of law and fact. The *Armstrong* Remedial Plan (ARP) and the Court Expert’s findings and
 15 recommendations, not to mention common sense, provide the legal and factual basis to
 16 differentiate between deaf and hard-of-hearing class members, as set forth below. Moreover,
 17 Defendants have successfully addressed the Court Expert’s key concern regarding hard-of-hearing
 18 class members’ access to better hearing aids and have proposed technology-based solutions for
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 21 ¹⁴ The *Plata* Receiver’s Turnaround Plan of Action, approved by the Court in 2008, included
 22 developing and implementing policies and procedures for timely access to health care, which
 23 required establishing a scheduling and patient tracking system to ensure patients are escorted to
 24 those scheduled appointments. The priority ducat system falls under this objective. *Plata v.*
 25 *Schwarzenegger*, et al., No. C01-1351, ECF No. 1245.

26 ¹⁵ *See, e.g.*, Hutt Decl., Ex. 12 ¶¶ 4 (complaining about the ducating system), 11-13 (complaining
 27 about the 1824 process); *id.*, Ex. 3 ¶¶ 33-40 (complaining about the 1824 process); *id.*, Ex. 1 ¶¶
 28 30-35 (complaining about the 1824 process); *id.*, Ex. 4 ¶ 15 (complaining about the 1824 process);
 29 *id.*, Ex. 7 ¶¶ 19-22 (complaining about the ducating system), 27-37 (complaining about the 1824
 30 process); *id.*, Exs. 18-62 (1824 forms); *id.*, Ex. 93 (advocacy letter regarding the 1824 process);
 31 *id.*, Exs. 76 and 77 (referencing audiology results).

32 ¹⁶ Despite these issues being outside the scope of this stipulation item, in an abundance of caution
 33 and to ensure an accurate record, Defendants have responded to many of the allegations regarding
 34 these issues that were set forth in the class member declarations submitted by Plaintiffs. (*See*
 35 *generally* Declaration of A. Banerjee, M.D. (Banerjee Decl.))

1 effectively communicating general announcements that will directly benefit hard-of-hearing class
2 members.

3 Defendants have complied with the stipulation and addressed the Court Expert’s key
4 findings on this issue by carefully considering those findings and crafting a proposal to ensure
5 “deaf class members,” and particularly “deaf people who do not know sign language,” are
6 reasonably accommodated and receive effective communication of announcements (ECF
7 No. 3500 at 12), while also leveraging existing technologies to improve the communication of
8 general announcements to hard-of-hearing class members and the entire population at SATF. No
9 further Court intervention is necessary. This Court should reject Plaintiffs’ unsupported assertions
10 and Defendants should be permitted to implement their proposal immediately.

11 **(a) Background**

12 **(1) The *Armstrong* Remedial Plan**

13 The ARP, as amended on January 3, 2001, is the operative remedial plan. (*See* ECF
14 No. 681.) The ARP was negotiated with and stipulated to by Plaintiffs. (*See* ECF No. 684 at 4
15 (referencing the “extended meet and confer” in which the parties engaged to revise and amend the
16 ARP).) With respect to verbal announcements and alarms, the ARP specifically requires
17 Defendants to “ensure that effective communication is made” with class members “who have
18 hearing impairments impacting placement regarding public address announcements and reporting
19 instructions, including those regarding visiting, yard release and recall, count, lock-up, unlock,
20 etc.” (ARP at 23.) The ARP defines “hearing impairments impacting placement” as permanent
21 deafness or permanent “hearing impairment so severe that” the class member “must rely on
22 written communication, lip reading, or signing because their residual hearing, with aids, does not
23 enable them either to communicate effectively or hear an emergency warning.” (*Id.* at 3.) These
24 class members are designated as “DPH,” whereas class members “who have residual hearing at a
25 functional level with hearing aids” are designated “DNH.”¹⁷ (*Id.*) Verbal announcements must be

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27 ¹⁷ The DPH and DNH designations are an essential part of the Disability Placement Program and
28 assist Defendants in placing class members at appropriate facilities based on the severity of the
class members’ disabilities. (ARP at 1.) These designations are not static and take into account
(footnote continued)

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1 communicated to DPH-designated class members in the housing units via a public address (PA)
2 system and flicking lights and may be effectively communicated via written messages and
3 personal notifications. (*Id.* at 23.)

4 The ARP does not include a similar provision for DNH-designated class members. (*See*
5 *id.*) However, the ARP generally requires Defendants to provide all class members with
6 reasonable accommodations “to ensure equally effective communication with staff, other inmates,
7 and, where applicable, the public” through the provision of “auxiliary aids,” if necessary, when
8 “simple written or oral communication is not effective.” (*Id.* at 4.) The ARP also provides that
9 while “[i]dentification of disabilities affecting placement shall usually occur” when an individual
10 is first received into CDCR’s custody, an individual may be referred at any time for verification.
11 (*Id.* at 14.) This ensures that class members whose disabilities become more severe can be
12 reassessed and rehoused if necessary.

13 (2) The Court Expert’s Reports

14 In December 2022, the Court Expert found that “hard of hearing people who use hearing
15 aids at SATF consistently reported, in surveys and in interviews, that the hearing aids they
16 received were of poor quality and did not work well.” (ECF No. 3446 at 37.) The Court Expert
17 also noted that hard-of-hearing class members reported difficulties hearing “an audio
18 announcement played over the intercom” systems in housing units at SATF. (*Id.*) The Court
19 Expert recommended auditing “staff compliance with the requirement to make individualized
20 announcements to people who cannot hear the intercom.” (*Id.* at 42.) With respect to the
21 difficulties experienced by deaf class members at SATF who cannot understand sign language, the
22 Court Expert found that SATF was not ensuring “access to written communication for these
23 individuals.” (*Id.* at 38.)

24 In August 2023, the Court Expert found that “deaf class members” were still “not receiving
25 announcements,” (ECF No. 3500 at 12); deaf and hard-of-hearing class members had continued

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28 that, over time, an individual’s degree of hearing loss may change, impacting access to programs,
services, and activities.

1 “complaints about low-quality hearing aids,” (*id.* at 13); and a continued “lack of accommodations
2 for deaf people who do not know sign language,” (*id.* at 12). Following his investigation, the
3 Court Expert found that: hard-of-hearing class members do not receive effective communication
4 of announcements via the housing units’ PA systems and need better quality hearing aids, and deaf
5 class members who do not understand sign language need reliable, consistent, audited
6 communication of announcements. (*Id.* at 12-13; ECF No. 3446 at 42.)

7 In a November 2023 Addendum, the Court Expert noted that the parties had reached
8 agreement on the hearing aid issue and new, higher quality hearing aids would be available to
9 class members. (ECF No. 3529 at 6.) The Court Expert had previously noted that “[d]eaf class
10 members who use sign language and responded to our surveys or spoke with us in interviews had
11 nearly uniformly positive things to say about the quality and availability of SATF staff sign
12 language interpreters.” (ECF No. 3446 at 34.) Accordingly, the Court Expert’s findings with
13 respect to effective communication of announcements focused on deaf class members who cannot
14 understand sign language. (*Id.* at 34-35.) In the Addendum, the Court Expert recommended that
15 Defendants develop a draft proposal to address the otherwise unresolved issues regarding effective
16 communication of announcements to deaf and hard-of-hearing class members. (ECF No. 3529 at
17 8.) The parties stipulated to this recommendation and the Court ordered Defendants to draft either
18 a proposal for auditing face-to-face communication of announcements or a proposal for an
19 alternative, auditable method of ensuring effective communication of announcements. (ECF
20 No. 3538 at 5.)

21 **(b) Meet-and-Confer Process**

22 On March 6, 2024, Defendants provided to Plaintiffs for review and comment a proposed
23 “alternative, auditable method of ensuring effective communication . . . that does not rely on staff
24 or ADA workers to communicate announcements to deaf and hard-of-hearing people,” (ECF
25 No. 3538 at 5), specifically, the “Implementation of Public Address Announcements via ViaPath
26 Technology Tablets” policy memorandum (tablet notification policy) and attachments; on March
27 20, 2024, Plaintiffs rejected Defendants’ proposal. (*See generally* Hutt Decl., Ex. 81.) Plaintiffs’
28 counter-proposal included seven components: (1) “real-time” notification of announcements;

1 (2) effective communication of the “content of both individualized and group announcements in a
2 timely manner;” (3) “accessible, non-auditory alarms for emergency announcements;” (4) use of
3 “multiple technologies;” (5) accommodations for “all people with hearing disabilities—including
4 DNH class members;” (6) “training for staff and incarcerated people on how the system’s
5 technologies work;” and (7) auditing and corrective action for staff. (*Id.* at 5.)

6 On May 8, 2024, Defendants provided Plaintiffs with a revised version of the tablet
7 notification policy and additional attachments addressing staff training and proof of practice. (*See*
8 Lorey Decl., Ex. P.) The parties met and conferred with the assistance of the Court Expert on
9 May 9, 2024. On May 31, 2024, Plaintiffs identified multiple areas of disagreement between the
10 parties regarding effective communication of general and individual announcements to deaf and
11 hard-of-hearing class members at SATF, and further identified, in their view, the actions required
12 by Defendants to address Plaintiffs’ concerns. (*See generally* Hutt Decl., Ex. 82.)

13 On July 3, 2024, Defendants responded and presented a significantly revised, multifaceted
14 proposal, discussed in detail below, that addressed each of Plaintiffs’ concerns. (*See* Hutt Decl.,
15 Ex. 83.) On July 10, 2024, Plaintiffs requested additional information regarding several aspects of
16 Defendants’ revised proposal, Defendants responded on July 18, 2024, and the parties met and
17 conferred on that same date. (*See* Hutt Decl., Ex. 84.) At the close of the meeting, Plaintiffs
18 maintained that the disagreements identified in their May 31, 2024, letter remained unresolved.
19 On July 31, 2024, Defendants met separately with the Court Expert to discuss Defendants’
20 proposal and the disputed issues.

21 (c) Evidentiary Issues

22 Defendants object to the numerous hearsay statements contained in Plaintiffs’ supporting
23 class member declarations, cited and quoted *supra* and *infra*. Fed. R. Evid. 801(c) (defining
24 hearsay); Fed. R. Evid. 802 (providing that hearsay is generally not admissible). The following
25 paragraphs contain hearsay that would not be admissible in a court proceeding under any
26 exemption contained in Federal Rule of Evidence 801(d) or any exception set forth in Federal
27 Rule of Evidence 803: Hutt Decl., Ex. 5 ¶ 12 (“Then another incarcerated person came up to me
28 and said that they had called out UHT (“Uniform Heat Trigger”) awhile back and that I should go

1 inside.”); Ex. 7 ¶ 31 (“She told me there was a new program for captioning that might help me
2 understand lectures and videos that she’d show us.”); Ex. 6 ¶ 13 (“I was told that they did not have
3 any left-ear hearing aids available at that time. The hearing aid dispenser told me that he would put
4 in a follow-up request to provide a left-ear hearing aid and that if I transferred before it arrived the
5 request would follow me to my new institution.”), ¶ 15 (“Another resident told me it had been
6 found and turned-in to an officer working in the medical clinic at the time.”), ¶ 86 (“Another
7 resident told me that I was being called in the building for CTC.”), ¶ 104 (“The RAC here had to
8 talk to the sergeant and told her that she’s intimidating people by doing that.”), ¶ 107 (“Other
9 residents have told the RAC that they did not receive an orientation manual either.”); Ex. 3 ¶ 19
10 (“The canteen manager . . . said something like, “Do you hear me now?” about three times.”); Ex.
11 ¶ 7 (“All three times, the nurse I talked to told me that they were out of stock.”), ¶ 15 (“They just
12 tell me that I don’t have enough of a hearing impairment for them to do that.”), ¶ 24 (“[M]edical
13 staff tell me, “We’ve been trying to call you.”), ¶ 47 (“The ViaPath representative who had come
14 several months before said that we should buy over-ear headphones with no microphone from
15 canteen.”); Ex. 12 ¶ 4 (“The RAC chairman told healthcare leadership that members of the RAC
16 receive many complaints about alleged refusals, where residents report that they were not called or
17 given an opportunity to sign a refusal form.”), ¶ 5 (“[P]eople continued to tell me that they were
18 told they had refused when they had not.”), ¶ 18 (“The provider told me that I had refused. He
19 insisted that custody staff would not lie about me refusing an appointment.”), ¶ 23 (“Nursing staff
20 later told me that the request for the MRI to be rescheduled was denied by the chief physician and
21 surgeon.”), ¶ 25 (“[A]n incarcerated person told me that staff had made an announcement for
22 me.”), ¶ 32 (“Here’s part of what my friend wrote about how hard it is to visit in person: If I
23 choose to visit Chris in person, it costs me a couple of hundred dollars in gas, around eight hours
24 in the car, and an entire day away from my child. During the visit I only get two hugs, I feel like
25 I’m incarcerated, I feel like I’m being watched and judged by the Correctional Officers and other
26 inmates. I have to bring money so Chris can get food and drinks from the vending machines and
27 in the end, I have a long and emotional drive home where I feel more alone than I have most times
28 in my life. All of that for only a few hours spent face-to-face with my friend. Yet I don’t attend a

1 face-to-face visit for me, I go so he remembers he has someone who cares, someone who misses
2 him on the outside, who is praying this will be the last time he is behind those walls.”), ¶ 47 (“[H]e
3 said he didn’t hear me until he turned towards my cell when he was going to talk to the officer.”),
4 and Exs. A and B; Ex. 9 ¶ 8 (“He told me that there may be other things that can help me, like a
5 speech-to-text iPad.”), ¶ 14 (“They tell me they’re out of stock or on back order;” “The nurse told
6 me not to put in anymore requests, because I won’t be seen any sooner.”), ¶ 24 (“[I]nmates will
7 tell me stuff like, “Dude, relax, back-up.”) and Ex. A; Ex. 13 ¶ 11 (“[S]ome ADAs came to my
8 building to tell me again that canteen wasn’t running in an accessible way.”), ¶ 12 (“[H]e said he
9 thought the canteen manager had allowed ADAs to cut in line because I talked to him.”), ¶ 17
10 (“[M]y cellmate came back from the dayroom to tell me that staff had been calling for me to go to
11 the clinic.”); and Ex. 8 ¶ 14 (“[S]omeone from the Inmate Advisory Council (IAC) on my yard at
12 SATF told me there was a captioned phone in the chapel on that yard (G yard).”).

13 **(d) Multimodal Communication Systems in a Carceral Setting**
14 **Present Significant Challenges.**

15 Effectively communicating announcements to individuals with communication disabilities
16 in a carceral setting poses unique and significant challenges due to the limitations on available
17 assistive technologies. (Declaration of Nathan Swett, ATP, Ed.D. (Swett Decl.) ¶ 17.) Necessary
18 precautions taken to ensure the safety and security of employees, the incarcerated individuals and
19 the public serve to limit and restrict the available options to accommodate these class members.
20 As a result, this environment requires a comprehensive approach to balance the benefits of
21 assistive technology with the stringent security and operational requirements of correctional
22 facilities (*see id.*), that Plaintiffs refuse to acknowledge.

23 From a technology standpoint, restricted internet access, which is essential to prevent
24 unauthorized communications and activities, limits the use of many communication and
25 transcription applications and devices. (Swett Decl. ¶ 18.) The need for closed system devices
26 and applications for security and monitoring restricts the installation and use of third-party
27 applications, which can be essential for providing a full range of accessibility features. (*Id.*)
28 Additionally, infrastructure limitations, such as adequate electrical wiring and sufficient network

1 capacity, pose an additional challenge. (Swett Decl. ¶ 18; *see also* Declaration of S. Dimalig
 2 (Dimalig Decl.) ¶ 4 (“Ensuring pagers will work effectively throughout the facility involves
 3 calculating the number of transmitters required based on a potential vendor’s specific
 4 technological design as well as the number of users, physical layout and size of the institution,
 5 including installing equipment and infrastructure at strategic locations to ensure coverage.”).)

6 Fortunately, accordingly to Defendants’ RESNA-certified Assistive Technology Profes-
 7 sional Dr. Swett, mid- and high-tech Assistive Technology systems are not always necessary.
 8 (Swett Decl. ¶ 19.) Low-tech solutions can provide a reliable and straightforward means of
 9 communication that may be more accessible and practical in certain situations. (*Id.*) These
 10 methods, including the use of handwritten notes or visual aids, can be easily implemented and are
 11 less likely to face technical issues or require extensive training. (*Id.*) By utilizing the entire
 12 spectrum of technology-based approaches, institutions can ensure comprehensive and adaptable
 13 communication strategies that cater to the diverse needs of the individuals they serve. (*Id.*)

14 (e) **Despite the Challenges of a Carceral Setting, Defendants’
 15 Revised Proposal Creates a Robust Multifaceted System for
 16 Effective Communication of Announcements to the Deaf
 17 Population at SATF.**

17 (1) **General Announcements**

18 Defendants’ proposal incorporates the various methods of communication currently used
 19 to communicate general announcements, including Public Address systems (*i.e.*, loudspeakers) in
 20 housing units and on facility yards; visual dry-erase whiteboards, currently placed at key locations
 21 in housing units where deaf class members reside; and visual cues and aids such as opening cell
 22 doors, flashlights, and flicking lights, as well as flashing red lights to alert incarcerated persons of
 23 emergencies. (*See* Hutt Decl., Ex. 83; Declaration of D. Mebane (Mebane Decl.) ¶¶ 7, 9-10.)
 24 Therefore, Plaintiffs’ faulty assertion, *supra*, that “CDCR offers only a plan to have a plan at some
 25 unknown time” for effectively communicating general announcements is demonstrably untrue.
 26 (*See generally* Hutt Decl., Ex. 83 (setting forth detailed proposal).)

27 Without any support from a RESNA-certified Assistive Technology Professional,
 28 Plaintiffs discount these low-tech solutions for effectively communicating general announcements

1 to deaf class members at SATF. However, these communication methods were negotiated by the
2 parties, have been in place for more than two decades, and are effective with substantial staff
3 compliance. (*See* ARP at 23 (providing for the effective communication of verbal announcements
4 to DPH-designated class members through the use of written messages, chalkboards, flicking
5 lights, and the use of PA systems).) As detailed *infra*, Defendants’ proposal addresses and
6 incentivizes staff compliance, including progressive discipline—Plaintiffs’ statement to the
7 contrary, *supra*, not only demonstrates a fundamental misunderstanding of the state-employee
8 disciplinary process, but is flatly inaccurate. (*See* Hutt Decl., Ex. 83 at 7 (explaining that “if it is
9 discovered that documentation of individual announcements to DPH class members [i]s not
10 occurring,” then corrective action will be taken in accordance with CDCR’s Department
11 Operations Manual section 33030.8.1, and “may include in-service training, on-the-job training,
12 counseling, or letters of instruction.”).)

13 Further, Plaintiffs’ request, *supra*, that the Court “order CDCR to evaluate and upgrade its
14 PA announcement system and visual alarm system” is a nonstarter. First, the request for different
15 technology is unsupported by a qualified expert’s opinion. The same is true of Plaintiffs’ request
16 for electronic display boards, which would serve the exact same function that the whiteboards
17 currently do. Second, SATF Plant Operations ensures the PA systems function properly, which
18 includes regular checks of the sound quality. (Mebane Decl. ¶ 9.) SATF has confirmed that all
19 public-address systems in the different housing units are functioning properly. (*Id.*) With respect
20 to visible alarms, flashing fire and emergency alarms are placed in high visibility areas throughout
21 the institution. (*Id.* ¶ 10.) Incarcerated people are educated regarding the emergency alarm
22 process during the orientation they receive upon arrival, this includes the directive to follow staff
23 members’ instructions during an emergency. (*Id.*) All staff members receive training on how to
24 account for and communicate with the hearing-impaired population during various emergencies,
25 including emergency evacuation procedures. (*Id.*)

26 Defendants’ proposal for effective communication of general announcements builds upon
27 these fundamental low- and mid-tech methods in two ways. (Swett Decl. ¶ 22.) First, the
28 proposal incorporates electronic communication of general announcements through the

1 incarcerated population’s ViaPath tablets, which are capable of displaying notifications upon
 2 logging in that the user must acknowledge. (*Id.*; *see also* Hutt Decl., Ex. 83, Attach. A; Lorey
 3 Decl., Ex. P.) Second, vibrating watches are available for issuance to serve as personal alerts.
 4 (*Id.*; *see also* Hutt Decl., Ex. 83, Attach. B.)

5 Defendants have proposed a revised system for effectively communicating general
 6 announcements that relies on more than one means of communication to ensure timely and
 7 consistent notification of important information throughout the day. (*See generally* Hutt Decl.,
 8 Ex. 83.) In addition to the methods specifically contemplated by the ARP, including whiteboards,
 9 flicking lights, and public address systems, Dr. Swett has confirmed that mid-tech and high-tech
 10 Assistive Technology can play a key role in Defendants’ proposed system. (*See* ARP at 23; *see*
 11 *also* Swett Decl. ¶¶ 22-24.) Defendants’ proposal to use ViaPath tablets for communicating
 12 general announcements is set forth in the memorandum titled “Implementation of Public Address
 13 Announcements Via ViaPath Technology Tablets at Substance Abuse Treatment Facility.”¹⁸
 14 (Hutt Decl., Ex. 83, Attach. A.) The ViaPath tablets will display notifications that the incarcerated
 15 individual must acknowledge when logging into their device, ensuring they read the message.
 16 Notices of Schedule of Events will be sent via the ViaPath tablets twice daily at the beginning of
 17 second and third watches. (*Id.*) Notices will also be sent via the ViaPath tablets regarding any
 18 changes to the Schedule of Events. (*Id.*) Class members will be educated regarding the
 19 notification process, including how to locate the notices on the tablet and when to expect the
 20 notices to further instill in them autonomy and independence. (*See id.*; *see also* Swett Decl. ¶ 23
 21 (noting that education is essential to the effective deployment of any Assistive Technology).)

22 Plaintiffs’ argument, *supra*, that Defendants’ proposal is insufficient because the ViaPath
 23 tablets’ connectivity is limited to the incarcerated individual’s housing unit should be rejected by
 24 the Court because it seeks to expand the parameters of the Court Expert’s report. Specifically,
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26 _____
 27 ¹⁸ As discussed *infra*, the California Department of Technology is in the process of soliciting bids
 for a new tablet contract. (*See* Dimalig Decl. ¶ 14.) Accordingly, incarcerated individuals will
 have ongoing access to tablets as a means of communication. (*See id.* ¶¶ 8-9.)

28 (footnote continued)

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1 Plaintiffs fail to acknowledge that the Court Expert’s findings on this issue were limited to the
 2 effective communication of announcements in the housing units.¹⁹ (See ECF No. 3446 at 34
 3 (discussing intercom system in the housing unit); ECF No. 3500 at 12 (discussing announcements
 4 provided to deaf class members in their cell).) And, despite Plaintiffs’ demand for installation and
 5 implementation of a pager system to communicate announcements outside of housing units, pager
 6 systems implemented in other jurisdictions only function within housing units. (See Mebane Decl.
 7 ¶ 11 (noting that the Massachusetts Department of Corrections’ pager system only functions
 8 within the housing units).)²⁰

9 Regarding Plaintiffs’ request that Defendants provide training for staff and incarcerated
 10 people on the technology, Defendants’ tablet notification policy includes a robust training
 11 component for staff, and Defendants’ qualified expert will provide DPH class members

12 _____
 13 ¹⁹ Plaintiffs further complain about “delays in the provision, repair, and replacement of tablets,”
 14 *supra*, but fail to acknowledge that these issues might arise with any technological device—
 15 including pagers.

16 ²⁰ Plaintiffs’ objection, *supra*, to portions of the Mebane Declaration as inadmissible hearsay
 17 should be overruled. It is well settled that a district court may consider hearsay evidence
 18 submitted in an inadmissible form, so long as the underlying evidence could be provided in an
 19 admissible form at trial, such as by live testimony. See *Fraser v. Goodale*, 342 F.3d 1032, 1036–
 20 37 (9th Cir. 2003); see also *Hodges v. Hertz Corp.*, 351 F. Supp. 3d 1227, 1232 (N.D. Cal. 2018)
 21 (“Accordingly, district courts in this circuit have routinely overruled authentication and hearsay
 22 challenges at the summary stage where the evidence could be presented in an admissible form at
 23 trial[.]”); *Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 666 (9th Cir. 2021) (explaining that “[i]f
 24 the contents of a document can be presented in a form that would be admissible at trial—for
 25 example, through live testimony by the author of the document—the mere fact that the document
 26 itself might be excludable hearsay provides no basis for refusing to consider it” when ruling on a
 27 dispositive motion); *JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1110 (9th
 28 Cir. 2016) (noting that a district court may consider hearsay evidence so long as the underlying
 evidence could be provided in an admissible form at trial); *Cherewick v. State Farm Fire & Cas.*,
 578 F. Supp. 3d 1136, 1157 (S.D. Cal. 2022) (holding that “[t]he [hearsay] contents of the
 declaration may be admissible through Gonzalez’s live testimony at trial.”). Here, unlike the
 statements to which Defendants object in various class member declarations, *supra*, the statements
 to which Plaintiffs object in the Mebane Declaration would be admissible in a court proceeding.
 The hearsay declarant would be available to testify at trial, and the hearsay statements identified
 by Plaintiffs would be admissible at trial in some other form, *i.e.*, through the direct testimony of
 the individuals who made the statements. Contrary to Plaintiffs’ assertion, these individuals are
 identifiable and in fact have been identified and *spoken with directly* by Captain Mebane, who has
 attested to the substance of these individuals’ statements under penalty of perjury. The case law
 Plaintiffs cite is completely inapposite. For example, the *Blackshire* case, cited by Plaintiffs
supra, 648 F. Supp. at 1232, involved a hearsay statement attributed to a “Soccer Club,” rather
 than an actual individual, and *Stonefire Grill, supra*, 987 F. Supp. 2d at 1037, involved multiple
 layers of hearsay under circumstances indicating that the identity of the hearsay declarant was
 unknown.

1 comprehensive training on how to use selected assistive devices effectively. (*See* Hutt Decl., Ex.
2 83, Attach. A.) Defendants’ revised proposal also addresses auditing and corrective action for
3 staff. (*Id.*) With respect to general announcements, monthly audits will be conducted to ensure
4 substantial compliance with the tablet notification policy. (*Id.*) This includes auditing whether
5 Notices of Schedule of Events were sent at the start of each second and third watch shift during the
6 preceding month. (*Id.*) By the fifth day of the month, the Warden or designee will complete a
7 proof of practice memorandum, confirming the monthly audit was completed. (*Id.*) The proof of
8 practice memorandum will be addressed to SATF’s Associate Director and will document any
9 corrective action that was taken if it is discovered that the Notices were not sent. (*Id.*)
10 Additionally, the Office of Audits and Court Compliance Audit Tool will continue to collect
11 information directly from class members regarding effective communication of announcements
12 through inclusion of the following question: “Do incarcerated persons with hearing disabilities
13 state they are made aware of announcements and alarms throughout the institution?” (Hutt Decl.,
14 Ex. 83 at 4.)

15 To address the need for a means of tactile notification, Defendants are issuing vibrating
16 watches as a reasonable accommodation to all DPH-designated class members and to other class
17 members on a case-by-case basis through the 1824 reasonable accommodation request process.
18 (*See* Hutt Decl., Ex. 83, Attach. B.) Incarcerated persons can independently use the vibrating
19 watch to customize personal alarm notifications, coinciding with anticipated announcements and
20 key daily events such as meals, yard time, and programs. (Swett Decl. ¶ 24.) Defendants’
21 proposal ensures that individuals who receive vibrating watches will be trained to use the watches
22 and educated on how to set personal alarm notifications. (*Id.*)

23 (2) Individual Announcements

24 Defendants’ proposal incorporates both high- and low-tech solutions to ensure deaf class
25 members at SATF receive individual announcements; these solutions work symbiotically to
26 greatly enhance the communication between the class members and staff. (Swett Decl. ¶ 25.) The
27 proposal builds upon existing, effective low-tech methods of communicating individual
28 announcements to deaf class members, including CDCR’s robust educating (*i.e.*, written

1 notification) system for medical, legal, and visitation appointments. (Mebane Decl. ¶ 7.) The
2 ducating system is extremely effective and provides class members with notice a day in advance
3 of an appointment, while also requiring signature and acknowledgment of receipt of the ducat at
4 the time of issuance. (*Id.*) An assigned custody staff member is responsible for providing the
5 incarcerated person with a written notification in advance, known as a “ducat,” indicating the time
6 for their appointment. (*Id.*) Once the written notice is received, the incarcerated person then signs
7 the log along with the staff member, and this record is forwarded to the appropriate management
8 team for tracking purposes. (*Id.*) CDCR has a robust tracking system called the Access Quality
9 Report Database, which logs all medical appointments, including appointments that the
10 incarcerated person attended, refused to attend, or failed to appear at the appointment. (*Id.*) If a
11 custody staff member is unable to locate the incarcerated person, CDCR has a mechanism in place
12 that provides for the initiation of an emergency count to locate the incarcerated person. (*Id.*) The
13 system provides all incarcerated persons, including class members, with notice of the appointment
14 one day in advance of the scheduled appointment. (*Id.*) Upon receipt of this notice, the
15 incarcerated person is required to provide his signature to acknowledge receipt of the ducat. (*Id.*)
16 If a schedule change occurs, staff receive notice and convey that information to the class member
17 via face-to-face communication. (*Id.*) If a class member does not appear for a ducated
18 appointment on time, and the class member is not in their assigned cell, staff are required to locate
19 the class member. (*Id.*) If a class member refuses to attend an appointment, staff must document
20 the refusal. (*Id.*) As part of this documentation, if a class member refuses a medical appointment
21 a nursing staff member is required to report to the class member’s location and interview the class
22 member regarding their refusal. (*Id.*)

23 Missed appointments happen—it is a fact of life both in and outside of a carceral setting.
24 Plaintiffs have spent considerable time and effort challenging the efficacy of the ducating system
25 at SATF (*see, e.g.*, Hutt Decl., Ex. 7 ¶¶ 19-20, Ex. 4 ¶ 9, Ex. 1 ¶ 13, Ex. 6 ¶¶ 32-38, 51-52; *see*
26 *also* Norman Decl. ¶¶ 9-15), while seemingly failing to realize that their requested pager system
27 would simply be a digital version of the same system. And, due to the limitations on how many
28 alphanumeric characters a pager can display, common sense suggests that a pager system would

1 likely provide class members with less information than a paper ducat. The ducating system, as a
2 whole, works, and ensures class members receive individualized notice of important appointments
3 and that class members attend those appointments.²¹ (Mebane Decl. ¶ 7; *see also* Banerjee Decl.
4 ¶¶ 4-14.)

5 With respect to high-tech solutions, deaf class members have been provided iPads or
6 iPhones with speech-to-text technology to assist in effectively communicating with staff,
7 incarcerated individuals, visitors, and others. (Lorey Decl. ¶ 14.) And Defendants are working to
8 ensure that the next tablet contract includes more robust accessibility features, which Defendants
9 anticipate will further enhance the ability to effectively communicate information to these class
10 members. (Swett Decl. ¶ 27; Dumalig Decl., Exs. F-H.)

11 Based on feedback from both incarcerated persons and staff, Defendants continue to
12 believe that a human element is equally important to ensure that individual announcements are
13 timely and effectively communicated, and Defendants' RESNA-certified Assistive Technology
14 Professional Dr. Swett endorses this approach. (*See* Swett Decl. ¶ 28 ("Face-to-face
15 communication is a universally appropriate low-tech method of effectively communicating with
16 deaf incarcerated persons.")) To that end, Defendants' proposal requires staff, with the assistance
17 of ADA workers, to use face-to-face communication when conveying individualized information
18 to deaf incarcerated persons. (*Id.* ¶ 26.) Face-to-face communication facilitated and made
19 effective with visual aids, such as written notes, is admittedly low-tech, but this method is suitable
20 as a reasonable accommodation in a restrictive setting. (*Id.*)

21 Moreover, Plaintiffs demand a technology solution that simply will not eliminate the
22 critical need for face-to-face communication between staff and class members, as demonstrated by
23 the experience of other jurisdictions who have implemented such systems. (*See* Mebane Decl.
24 ¶¶ 11-12.) This is illustrated by the relevant operating procedures of the Massachusetts
25 Department of Corrections, where a pager will emit a flashing light, or display a short, typed
26

27 _____
28 ²¹ The ducating system is being considered as an alternative to pagers in at least one jurisdiction
that previously implemented a pager system. (*See* Mebane Decl. ¶ 12.)

1 message when manually triggered. (Mebane Decl. ¶ 11 (referencing Mebane Decl., Ex. B).)
2 When the receiver or pager unit has been activated, the deaf or hard-of-hearing incarcerated
3 person may seek additional information regarding the announcement or non-emergency alert from
4 the custody staff in the housing unit. (*Id.*) The custody staff must then convey any information to
5 the inmate using simple written English, flash cards containing simple pictures and words, or other
6 such means of simple communication to effectively convey to the deaf or hard-of-hearing
7 incarcerated person the substance of the announcement or non-emergency alert. (*Id.*)
8 Additionally, the Minnesota Department of Corrections' pager system fails to provide effective
9 assistance when staff are unavailable in the housing unit. (*Id.* ¶ 12.)

10 Defendants' proposal correctly anticipates the flaws inherent in any solution that relies on
11 a human element by providing for a robust system to log and audit the provision of individual
12 announcements via face-to-face communication, as well as corrective action to reinforce the
13 system.²² (Swett Decl. ¶ 26; *See also* Hutt Decl., Ex. 83 at 7.) If housing unit staff are notified of
14 an individual announcement pertaining to a DPH-designated class member at SATF (*e.g.*, medical
15 or legal add-on appointments, etc.), housing unit staff or ADA workers will provide a face-to-face
16 notification to the class member. (*See* Hutt Decl., Ex. 83 at 5.) Notably, face-to-face
17 communication between deaf incarcerated persons and staff or ADA workers is now capable of
18 being more effective than ever due to the accompanying high-tech solution mentioned above:
19 iPads equipped with Text-to-Speech (TTS) and Speech-to-Text (STT) functionality, which
20 empowers deaf incarcerated persons to communicate independently with various communication

21 _____
22 ²² Plaintiffs' challenge to Dr. Swett's qualification to render this opinion should be rejected
23 wholesale. Plaintiffs claim that Dr. Swett "has no relevant background or experience" in prison
24 management or operations, *supra*. However, since his retention by CDCR in June 2024 and prior
25 to providing his expert opinion on these issues, Dr. Swett has had in-depth exposure to and
26 experience with prison operations and management, including visiting prison facilities, interviews
27 with management and staff members. (*See* Swett Decl. ¶¶ 11-13.) An expert can be qualified to
28 provide an opinion based solely on experience. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137,
156 (1999) (stating that "no one denies that an expert might draw a conclusion from a set of
observations based on extensive and specialized experience."). And even discounting Dr. Swett's
firsthand experience gained over the course of the past four months, "a witness offered as an
expert need not have personal experience in every area on which he or she will testify." *United
States v. Liew*, No. CR 11-00573-1 JSW, 2013 U.S. Dist. LEXIS 172893, at *14-15 (N.D. Cal.
Dec. 9, 2013).

1 partners. (Swett Decl. ¶ 27; *see also* Lorey Decl. ¶ 14.)

2 Defendants will audit the effective communication of individual announcements to DPH-
3 designated class members at SATF with a manual log each time an officer or ADA worker
4 provides an individual announcement to a DPH class member. (*See* Hutt. Decl., Ex. 83, Attach.
5 A.) Housing unit staff will be required to ensure the notification (specifically date, time,
6 appointment type) and the class member’s signature indicating they received and understood the
7 notification, has been recorded on the Documentation of Individual Face-to-Face Announcements
8 log at the time the announcement is provided. (*Id.*) Facility sergeants will then ensure these
9 personal notifications are being logged during their daily housing unit tours. (*Id.*) DPH-
10 designated class members will review the logs weekly and confirm receipt and understanding of
11 the announcement(s). (*Id.*) Additionally, Defendants will conduct monthly audits of the logs and
12 will provide proof of practice, to include any corrective action taken, when face-to-face
13 announcements are not occurring or are not being documented. (*Id.*) Compliance Sergeants or
14 CAMU CC II will interview DPH-designated class members to evaluate the occurrence and
15 effectiveness of the face-to-face communication and log these interviews within the ADA
16 checklist or other informal mechanisms established. (*Id.*) The Compliance Lieutenant or ADAC
17 reviews the checklists weekly and addresses the non-compliant items through corrective action.
18 (*Id.*)

19 With respect to Plaintiffs’ concern regarding “accessible, non-auditory alarms for
20 emergency announcements,” (Hutt Decl., Ex. 81 at 5), Defendants will continue to use visual
21 alarms (flashing red lights) to alert incarcerated individuals at SATF of emergencies. (Mebane
22 Decl. ¶ 10.) This system has been in place and effectively communicates the existence of an
23 emergency to the entire population, including deaf and hard-of-hearing class members, who are
24 educated regarding the emergency alarm process. (*Id.*)

25 Early in the negotiations, Plaintiffs expressed concern that Defendants did not contemplate
26 the use of specific “multiple technologies” (*i.e.*, pagers). (*Id.*) But, as explained above,
27 Defendants spent months working and creating a proposal that includes multiple technologies to
28 the extent feasible in a restricted setting. Implementing more advanced Assistive Technology

1 solutions must be based on individualized assessments to create a tailored plan for use of specific
2 devices appropriate to the unique needs of each individual. (Swett Decl. ¶¶ 20, 28.) Defendants
3 have incorporated this solution and Defendants’ retained RESNA-certified Assistive Technology
4 Professional Dr. Swett has completed individual assessments of all DPH-designated class
5 members housed at SATF. (*Id.* ¶ 14.) These individual assessments involve a structured approach
6 that includes identifying the individual’s communication needs and challenges, reviewing their
7 medical and audiological history, assessing their environment, choosing the appropriate
8 technologies, and ultimately providing comprehensive training on how to use selected devices
9 effectively. (*Id.* ¶ 28.)

10 Incredibly, and questionably, after specifically advocating for individualized assessments
11 (*see, e.g.*, Hutt Decl., Ex. 81 at 24), Plaintiffs criticize this aspect of Defendants’ proposal, *supra*,
12 and claim that Dr. Swett’s assessments are “an empty act”—unless Defendants agree to install a
13 pager system.²³ This claim is baseless, ignores the fact that high-tech Assistive Technology
14 systems do not always need to replace low-tech solutions (Swett Decl. ¶ 19), and puts the
15 proverbial cart before the horse. Individual assessments involve identifying and confirming
16 preferred forms of communication, determining effective accessibility systems for the individual,
17 and evaluating the environment to ensure the selected communication methods are accessible and
18 usable. (*Id.* ¶ 20.) They do not involve pre-selecting the technology to match the individual’s
19 needs, simply because counsel demands it. (*See id.*)

20 Defendants are working collaboratively with Dr. Swett to ensure appropriate
21 accommodations and secure assistive devices are provided based on careful assessment and
22 feature matching.

23
24
25 _____
26 ²³ Plaintiffs’ claims, *supra*, that CDCR “refuses to develop this infrastructure or policies, thus
27 undermining the entire point of an individual assessment,” is incorrect. Defendants have not
28 refused anything but to capitulate to Plaintiffs’ inadequately supported demand for a pager system.
Rather, Defendants have relied on a RESNA-certified Assistive Technology Professional to
indicate the most beneficial way to accommodate class members, which at this time does not
include the installation of a pager system. (*See Swett Decl.* ¶¶ 19-20.)

1 (e) **Plaintiffs’ Flawed Proposal Fails to Acknowledge the Need for**
2 **Individualized Assistive Technology Solutions.**

3 Plaintiffs have proposed installment and implementation of a pager system as their
4 preferred method for the effective communication of announcements without conducting a direct
5 assessment of their clients’ individualized needs. (See Plaintiffs’ statement *supra*.) Plaintiffs rely
6 on the opinion of Andrea L. Bourne, an audiologist, who does not appear to be a RESNA-certified
7 Assistive Technology Professional—like Dr. Swett, does not appear to have conducted an on-site
8 visit at SATF before rendering her opinion—like Dr. Swett, and relies primarily on audiology
9 records of incarcerated persons whom she does not appear to have personally interacted with or
10 individually assessed. (See Hutt Decl., Exs. 76 and 77; see also Swett Decl. ¶ 30; see also
11 Banerjee Decl. ¶¶ 8-11 (addressing issues raised in the supplemental Bourne report).) Aside from
12 being insufficiently supported and non-individualized, Dr. Bourne’s recommendations fail to
13 recognize or to take into consideration the unique restrictions of the carceral environment. (*Id.*)
14 Moreover, despite identifying challenges such as poor acoustics, reverberation, and background
15 noise, Dr. Bourne ignores the fact that high-tech solutions are not always required or preferred to
16 achieve effective communication in a carceral setting. (*Id.*)

17 Dr. Bourne’s recommendation for a paging system that requires access to operating system
18 settings, Internet, or Bluetooth wireless connectivity, fails to consider whether such devices are
19 even feasible in a restrictive setting. (Swett Decl. ¶ 31.) Feasibility depends upon multiple
20 factors, including physical layout, potential obstacles that might affect signal strength, and
21 installation of additional necessary infrastructure—none of which Dr. Bourne has appeared to
22 even consider before offering her opinions. (See Dumalig Decl. ¶¶ 4-6 (explaining obstacles).)
23 Implementing a pager system would require a detailed survey of the facility, infrastructure setup,
24 equipment installation, extensive testing to ensure complete coverage, additional staff to operate
25 the system, training staff on using the pager system and handling any troubleshooting with the
26 system, and ongoing maintenance to address issues that may arise with the system. (Dumalig
27 Decl. ¶¶ 5-6.) Plaintiffs’ claim that pager technology will be effective regardless of the user’s
28 location is misguided and a simplistic view on a complex process. (*Id.* ¶ 4.)

1 While Dr. Bourne agrees that individualized assessments are appropriate, she inexplicably
2 insists that the assessor should specifically consider a pager system. (Hutt Decl., Ex. 76 at 17.)
3 Dr. Bourne’s willingness to make a generalized recommendation about the most appropriate
4 Assistive Technology for an entire group of individuals based on indirect assessment procedures
5 is, at best, problematic (Swett Decl. ¶ 31), and highlights her lack of expertise in this area.
6 Assistive Technology solutions, particularly those based on more advanced technology, must only
7 be deployed based on individualized assessments that take into consideration the specific facts and
8 circumstances of each person with disabilities (*id.*). This individualized approach not only ensures
9 compliance with Assistive Technology standards but also avoids device abandonment and
10 misuse—thereby, serves the prudent utilization of limited resources. (*Id.*) High-tech consumer-
11 based solutions are not always realistically plausible, not always preferred by the end users, and
12 should never be foisted upon an individual without considering low-tech accommodations, as they
13 may offer a more effective and practical solution, especially within a restrictive environment. (*Id.*)

14 Finally, Plaintiffs point to other jurisdictions where pager systems have been court-ordered
15 (*see* Hutt Decl., Exs. 94-107) but fail to demonstrate why this Court in this case should order the
16 installation and implementation of a pager system in the absence of sufficient evidence
17 demonstrating that any class member at SATF would accrue any meaningful benefit from such a
18 device and despite a comprehensive, multifaceted proposal that ensures class-member
19 accommodation. Meanwhile, some of these jurisdictions have implemented a pager system only
20 to see it function poorly or fail altogether, or have decided not to implement a pager system: the
21 Minnesota Department of Corrections’ pager system has failed multiple audits due to factors such
22 as staff shortages or prison incidents, including fights, riots, or emergency alarms when staff are
23 required to respond to incident sites (Mebane Decl. ¶ 12), while the Wisconsin Department of
24 Corrections has opted not implement a pager system at all (*id.* ¶ 13).

25 **(f) Conclusion**

26 In sum, Defendants carefully considered the Court Expert’s findings, retained a RESNA-
27 certified Assistive Technology Professional expert consultant, and worked for months on crafting,
28 revising, and finalizing a multifaceted proposal to effectively communicate announcements to the

1 deaf population at SATF. Accordingly, Defendants have complied with the requirements of the
2 Stipulation, should be allowed to implement their proposal without delay, and no further Court
3 intervention is necessary.

4 **B. TTY/TDD and Captioned Phones (Item 8)**

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

9 SATF shall replace all nonfunctional TTY/TDDs and captioned phones within 48 hours.
10 While the replacement of a TTY/TDD phone or captioned phone is being done, and/or if a
11 replacement TTY/TDD phone or captioned phone does not resolve the issue and a repair is
12 necessary (for example, if there is an issue with the phone line), as an interim accommodation
13 until the phone is replaced or repair is completed, SATF shall provide the class member
14 immediate access to another TTY/TDD phone, captioned phone, or equivalent technology on their
15 facility or another facility at the institution at the same times, and with the same frequency, as they
16 would have been able to access the nonfunctional TTY/TDD or captioned phone.

17 SATF shall log each non-functional TTY/TDD and captioned phone, its location, the date
18 it was reported non-functional, the class member(s) who require interim accommodation because
19 the phone is non-functional, what repair is needed, and when the repair was completed.
20 Defendants shall provide Plaintiffs and the Court Expert with this log on a monthly basis.

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

27 * * * * *

28 This stipulation item has been resolved. On March 6, 2024, Defendants notified Plaintiffs’

1 counsel and the Court Expert that as of February 22, 2024, CDCR confirmed receipt of nine new
 2 TTY/TDD phones and provided photographs of the phones. As of March 1, 2024, CDCR
 3 confirmed receipt of five new replacement CapTel phones and has provided to Plaintiffs
 4 photographs of the phones. CDCR believes that this is enough stock to replace a non-functional
 5 phone within 48 hours of such phone being reported by an incarcerated person or discovered by
 6 staff to be broken.

7 CDCR drafted SATF's Operational Procedure 403, which details the process for
 8 replacement of these phones and interim accommodations for class members while the phones are
 9 being replaced. Operational Procedure 403 Attachment Q is the monthly log SATF will complete
 10 to identify non-functional TTY/TDD and CapTel phones. The log will be provided to the ADAC
 11 each month for production to Plaintiffs and the Court Expert by the 10th of each month.

12 **C. Class Member Training (Item 9)**

13 **(Item 9)** Within 60 days of the Court's order on this stipulation, Defendants must provide
 14 to Plaintiffs and the Court Expert a draft proposal regarding how and by when CDCR will provide
 15 training directly to deaf and hard-of-hearing class members at SATF regarding how to sign up for
 16 captioned phones and how to operate captioned phones.

17 * * * * *

18 **1. Plaintiffs' Statement**

19 The parties have worked together to develop training for class members on captioned
 20 phones. Two disputes remain: whether and how that training will be captioned for class members
 21 designated DNH, and how Defendants will monitor the efficacy of class member training.

22 **(a) Defendants must affirmatively provide speech-to-text
 23 accommodations during training on captioned phones to DNH
 class members who require captioning to understand speech.**

24 The parties have agreed that people with documented hearing and speech disabilities will
 25 be offered small-group, in-person training on captioned phones in housing units where the phones
 26 are located. So long as the Compliance Sergeant position remains at SATF, Compliance Sergeants
 27 will provide this training. In the event that the Compliance Sergeant position no longer exists,
 28 other supervisory staff will assume all duties and responsibilities in the parties' negotiated policy.

1 Plaintiffs’ counsel initially requested that CART be provided during training in the absence
 2 of an alternative proven to be equally effective to ensure that the training is accessible to people
 3 who cannot rely on their hearing alone—that is, the very population that will most benefit from a
 4 captioned phone. This is necessary because currently there is no reliable way to identify in
 5 advance who may require captioning to fully understand the training.

6 CDCR refused to provide CART and instead said that people who already have iPads with
 7 speech-to-text applications may use those iPads at the training.²⁴ In light of Plaintiffs’ concerns
 8 with the accuracy of speech-to-text on iPads, *see* Hutt Decl., Ex. 8 ¶¶ 30-39 (Declaration of R.W.,
 9 DPH, SQ), the parties agreed that people who use an iPad for captioning will be trained by the
 10 Compliance Sergeant one-on-one, and that the Compliance Sergeant will monitor the iPad
 11 captioning for accuracy, correct errors, and check for understanding during training.

12 But simply allowing people who already possess an iPad to use it during training is not
 13 enough. That is because prison officials at SATF have for at least a year systematically denied
 14 requests by people designated DNH for speech-to-text accommodations, including iPads, without
 15 conducting an individualized assessment. In fact, Plaintiffs’ counsel provided CDCR with a list of
 16 at least 26 such denials, and noted that the list likely underrepresented the scope of the problem.²⁵
 17 Hutt Decl., Ex. 91; *see also id.*, Exs. 19-20, 23-24, 29, 35, 41, 44-62 (denials).

18 For example, in recent months, SATF has denied captioning to hard-of-hearing people
 19 requesting it based on assumptions about their disability and disability needs, including because
 20 “you are not designated DPH,” Hutt Decl., Ex. 24, “you have residual hearing at a functional level

21 _____
 22 ²⁴ These iPads provide only automated speech-to-text functionality. Lorey Decl. ¶ 14. The devices
 23 are not connected to a network or phone service. They are offered to “[i]ncarcerated person who
 24 have a disability code of DPH and whose primary or alternate method of effective communication
 25 is written notes.” *Id.* As of October 9, 2024, SATF housed four people designated DPH. *Id.* ¶ 27.

26 ²⁵ This was not the first time Plaintiffs’ counsel informed CDCR of the problem. In fact, Plaintiffs’
 27 counsel repeatedly raised concerns with how prison officials at SATF were denying requests for
 28 speech-to-text accommodations, and CDCR failed to correct the problem. *See, e.g.*, Hutt Decl.,
 Exs. 112, 113 (Plaintiffs’ October 2023 advocacy and Defendants’ February 2024 response); Exs.
 114, 115 (Plaintiffs’ November 2023 advocacy and Defendants’ February 2024 response); Exs.
 110, 111 (Plaintiffs’ May 2024 advocacy and Defendants’ September 2024 response); Exs. 78, 79
 (Plaintiffs’ unanswered April and July 2024 advocacy). That CDCR has provided an iPad to two
 class members not designated DPH at SATF following months of Plaintiffs’ advocacy, Lorey
 Decl. ¶ 15, does not resolve these concerns.

1 with hearing aids,” *id.*, Ex. 46, “[y]ou do not have a severe hearing impairment,” *id.*, Ex. 49, you
2 “are currently accommodated with hearing aids and a Personal Sound Amplification Device,” *id.*,
3 Ex. 51, and “[y]our current Effective Communication (EC) methods of hearing aids and need staff
4 to speak loudly and clearly are sufficient to maintain EC during due process and all general
5 communication.” *Id.*, Ex. 61. Inexplicably, prison officials at SATF even denied a speech-to-text
6 iPad to those few DNH class members who CDCR recognized as requiring speech-to-text (here,
7 CART) for due process encounters. *See, e.g., id.*, Ex. 56 (“You are accommodated with. . .
8 [CART] during due process events. . . You do not require an iPad or iPhone with live captioning
9 to access PSAs.”); *id.*, Exs. 58, 41. That is simply illogical.

10 But as Dr. Bourne has explained, many people assigned a DNH code may require
11 additional accommodations, including speech-to-text technology. *See* Hutt Decl., Ex. 76 at 10-12
12 (“Hearing handicap is highly variable, and people should be individually assessed” to determine
13 non-auditory accommodations, particularly in light of the “wide range of hearing disabilities”
14 represented by the DNH code); *id.*, Ex. 77 at 6 (“Speech-to-text technology can be used as a
15 support for residual hearing.”). This is especially true in the locations where the training will take
16 place—the housing units—which are challenging listening environments even for those DNH
17 class members who use hearing aids. *See id.*, Ex. 76 at 2 (Plaintiffs’ audiology expert, Dr. Bourne,
18 finding that prison housing units present “challenging listening environments” for “anyone with
19 hearing loss”); *id.*, Ex. 3 ¶ 10 (Declaration of L.B., DNH, SATF); *id.*, Ex. 5 ¶ 9 (Declaration of
20 H.C., DNH, SATF); *id.*, Ex. 2 ¶ 10 (Declaration of J.K., DNH, SATF); *id.*, Ex. 7 ¶ 6 (Declaration
21 of S.B., DNH, SATF); *id.*, Ex. 17 ¶ 5 (Declaration of J.S., DNH, MCSP). As this Court has found,
22 hearing aids “may improve an individual’s ability to hear sound, but do not fully restore hearing,
23 and may be rendered ineffective by background noise or poor acoustics.” Dkt. No. 523 at 11
24 (methods of communication “may be more or less appropriate, or effective, depending on the
25 individual and the situation”).

26 Put differently, because of these widespread denials, Plaintiffs have no confidence that
27 everyone who would benefit from a speech-to-text iPad has received one. Indeed, when a team
28 from California Correctional Health Care Services (CCHCS) observed the SATF RAP in July

1 2024 in a Special Review, the CCHCS team identified “serious concerns regarding SATF’s RAP
2 process,” including that the RAP was no longer interviewing people with disabilities about their
3 concerns and that the SATF RAP “now automatically denies” requests for accommodation if
4 medical staff “deems a requested item is not medically necessary,” “without considering the
5 reasonable accommodation criteria.” Hutt Decl., Ex. 73. This is a clear violation of the ADA and
6 *Armstrong Remedial Plan*.²⁶ It also is inconsistent with the views of both parties’ experts. *See id.*,
7 Ex. 76 at 10 (Dr. Bourne) (“Hearing handicap is highly variable, and people should be
8 individually assessed” to determine non-auditory accommodations, particularly in light of the
9 “wide range of hearing disabilities” represented by the DNH code); Swett Decl. ¶ 16 (the need for
10 people with disabilities to be individually assessed so that they can be provided with appropriate
11 devices is “well-established”).

12 Defendants’ proposal that custody staff “determine” if a class member is “not
13 understanding the training” is no substitute for individual assessment. Whether correctional staff
14 think a person can hear is not dispositive of whether they need accommodation; as this Court
15 found over two decades ago, hard-of-hearing people “develop coping strategies . . . to mask their
16 lack of hearing,” and “[s]uch masking behavior often leads hearing people mistakenly to assume
17 that the [hard-of-hearing] person understands what is being said.” Dkt. No. 523 at 10; *see also*
18 *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 272, 276 (D.D.C. 2015) (Jackson, J.) (prison
19 officials may not deny accommodations to a disabled individual “relying solely on the
20 assumptions of prison officials regarding that individual’s needs”).

21 As a compromise, Plaintiffs are willing to forgo our request for CART at trainings on
22 captioned phones at this time because CDCR has been unable to successfully implement CART, in
23 order to ensure that training begins as soon as possible. Plaintiffs instead ask the Court to order
24 that prison officials at SATF send a message out to all residents on the ViaPath tablet that tells
25

26 _____
27 ²⁶ It also is not a new issue. The Court Expert in 2022 stated that “ADA staff who sit on the RAP
28 should also be retrained on their independent duty to provide DME where it is a reasonable
accommodation, regardless of whether providers believe it is ‘medically necessary.’” Dkt. No.
3446 at 32.

1 them about the upcoming training for class members designated DNH, DPH, and DPS, and tells
2 them (a) what at speech-to-text iPad is, what features it provides (and does not provide), and what
3 disability needs it may accommodate; (b) that if they would like one-on-one training on captioned
4 phones with a speech-to-text iPad as an accommodation, they can file an 1824 or tell any staff
5 person; (c) that any resident that requests an iPad for the training will be provided one and receive
6 one-on-one training (the same training that the parties negotiated for people designated DPH who
7 use an iPad); and (d) that if the resident finds the iPad helpful to accommodate their disability,
8 they will be allowed to keep it as an interim accommodation pending an individual assessment by
9 an assistive technology professional. The Court also should order that CDCR have an iPad
10 available during all training sessions, even if a trainee did not request it in advance, in case a
11 trainee finds it would be useful as an accommodation to understand the training's content. *See*
12 Dkt. No. 3583 at 19 (Defendants are "required to affirmatively provide [a reasonable]
13 accommodation without waiting for a request.").

14 Were class members properly educated about available accommodations at SATF, and
15 were their requests appropriately considered, this compromise may not be necessary and lesser
16 measures to ensure equal access might be appropriate. But the record is clear that that has not been
17 the case at SATF. As a result, affirmative outreach and education is critical because prison
18 officials at SATF have kept DNH class members in the dark about accommodations, or worse,
19 miseducated them about what they may request. *See* Hutt Decl., Ex. 9 ¶¶ 10-11 (Declaration of
20 G.E., DNH, SATF) (learned about captioning accommodations from Plaintiffs' counsel
21 information letter and about other accommodations from another incarcerated person); *id.*, Ex. 8 ¶
22 26 (Declaration of R.W., DPH, SATF). And the repeated denials by the RAP have caused people
23 with disabilities to lose faith in the 1824 process and may have deterred people from using it to
24 request accommodations. *See, e.g.*, Hutt Decl., Ex. 2 ¶ 28 (Declaration of J.K., DNH, SATF)
25 ("That [response] is not true."); *id.*, Ex. 3 ¶ 34 (Declaration of L.B., DNH, SATF) ("Getting this
26 response made me feel that there's no hope for me or other people with disabilities to get help.");
27 *id.*, Ex. 7 ¶¶ 36-37 (Declaration of S.B., DNH, SATF) ("Why don't I need the accommodation?
28 What's the reason? I would've wanted to explain my situation at the RAP."); *id.*, Ex. 9 ¶¶ 12, 19

1 (Declaration of G.E., DNH, SATF) (“I don’t understand how SATF staff could deny me
 2 accommodations that I asked for without even talking to me.”); *see also id.* ¶¶ 36-40 (flyer posted
 3 at SATF directing people with disabilities to request accommodations from staff, who do not help,
 4 or from other incarcerated people, with “no mention at all of the CDCR 1824 process”);
 5 *Armstrong v. Newsom*, No. 94-CV-02307 CW, 2021 WL 933106, at **2-4, 7-8 (N.D. Cal.
 6 Mar. 11, 2021), *aff’d in part, vacated in part*, 58 F.4th 1283 (9th Cir. 2023) (routine denials of
 7 accommodation requests may “serve[] to discourage disabled inmates from requesting reasonable
 8 accommodations for their disabilities, either through the formal grievance process or otherwise”).

9 **(b) Defendants must take appropriate measures to ensure that class**
 10 **member training is effective.**

11 The parties have agreed that Compliance Sergeants (or other appropriate staff, in the event
 12 that the Compliance Sergeant position no longer exists) will administer surveys after class
 13 members initially have been trained to monitor the efficacy of the training and to determine
 14 whether follow-up training is needed. Lorey Decl., Ex. A at 3. The parties have not yet reached
 15 agreement regarding the content and design of that survey. Consistent with the recommendations
 16 of Jen McDonald-Peltier, Plaintiffs’ assistive technology expert, Plaintiffs have requested that the
 17 survey solicit rank measures and narrative responses, rather than binary “yes/no” questions, which
 18 “are not designed to elicit useful, actionable information.” Hutt Decl., Ex. 109 ¶¶ 53-54 (Ms.
 19 McDonald-Peltier: “For example, if you ask ‘Have you used [the phone] successfully?’, it’s not
 20 clear how the person should answer. They might think, ‘Well, it was really hard to use but I was
 21 able to get it turned on and communicate with the person, so I guess it’s a yes.’ If you just get the
 22 ‘yes,’ you’ll miss the opportunity to identify and address what made it hard.”). Monitoring
 23 whether training has had its intended effect is a necessary component of providing effective
 24 training. *See, e.g.*, Dkt. No. 523 at 101-02 (ordered relief included creation *and maintenance* of an
 25 appropriate training program); Dkt. No. 1569 at 1-2 (ordering Plaintiffs’ access to monitoring
 26 implementation of training program); Hutt Decl., Ex. 109 ¶ 51 (Ms. McDonald-Peltier:
 27 “[T]raining is only successful if it is effective. . . . Feedback is important to any trainer and is a
 28 critical part of my practice.”); Hutt Decl., Ex. 109, ¶¶ 51-55 (recommending that CDCR develop

1 outcome measures).

2 Plaintiffs' counsel have twice proposed to Defendants that, as the Court Expert suggested,
3 the parties continue to meet and confer regarding the content and design of the survey and further
4 update the Court if they are unable to resolve disputes on this critical self-monitoring tool. *See*
5 Dkt. No. 3467 at 1, 3 (sustainable compliance). Although the parties have not finalized these
6 surveys, Defendants have refused to meet further to resolve disputes. Plaintiffs accordingly request
7 that the Court order CDCR to extend the dispute resolution process outlined in this Court's
8 December 7, 2023 Order, with respect to measures for Defendants to monitor the efficacy of class
9 member training. *See Clark v. California*, 739 F. Supp. 2d 1168, 1210, 1234-35 (N.D. Cal. 2010)
10 (simply providing training, without overseeing and analyzing the training's outcomes, is not
11 adequate to implement remedial measures regarding disability accommodations).

12 2. Defendants' Statement

13 Defendants' comprehensive policy complies with the SATF stipulation requirement that
14 CDCR draft a policy establishing training for deaf and hard-of-hearing class members at SATF on
15 how to sign up for captioned phones and how to operate captioned phones. (ECF No. 3538 at 6.)
16 The remaining dispute concerns whether CDCR must provide captioning services during all class
17 member training sessions—that answer is no. Plaintiffs once again demand an inappropriate one-
18 size-fits-all technological solution, relying on their hired consultant's generalized recommendation
19 regarding the most appropriate Assistive Technology for an entire group of individuals based on
20 indirect assessment procedures. (*See Swett Decl.* ¶ 31 (discussing this issue in relation to Dr.
21 Bourne's recommendation regarding Stipulation Item No. 7).) For the reasons explained below,
22 CDCR does not agree that a blanket policy should be required as it does not address the individual
23 needs of the class members and CDCR has taken steps to ensure effective communication is
24 achieved during training.

25 (a) Caption Phone Training for Class Members.

26 The parties, with the assistance of the Court Expert, developed a policy establishing
27 training for deaf and hard-of-hearing class members at SATF on how to sign up for captioned
28 phones and how to operate captioned phones. As detailed in Plaintiffs' statement, the parties have

1 largely reached agreement on this item, but disagree on whether CDCR should be required to offer
2 every DNH-designated class member captioning during the training.

3 **(1) Policy and Related Materials**

4 The following policy documents were developed to train class members and staff, and
5 monitor the functionality of the captioned phones:

6 (2) Memorandum titled, “Training for Staff and Incarcerated Persons who are Deaf,
7 Hard-of-Hearing, or have Speech Disabilities on How to Sign Up for and Use the
TTY/TDD Phone and CapTel Captioned Phone”*

8 (a) Attachment A: TTY/TDD Monthly Testing Log

9 (b) Attachment B: Captioned Phones Monthly Testing Log

10 (c) Attachment C: Supervisory Staff Training Guidance for TTY/TDD/CapTel
11 Captioned Phone*

12 (d) Attachment D: Acknowledgement or Completion of Training for
DPH/DNH/DPS Incarcerated Person Chrono (CDC 128B)*

13 (Lorey Decl., Ex. C.)

14 (3) TTY Phone Booklet (Lorey Decl., Ex. D.)

15 (4) TTY/TDD and Captioned Phone Informational Posters (Lorey Decl., Ex. E.)

16 (5) SATF OP 403*

17 (a) Attachment O: Captioned TTY Phone Sign Up Log

18 (b) Attachment P: TTY-TDD Monthly Testing Log

19 (c) Attachment Q: TTY-TDD and Captioned Phone Non-Functional Log

20 (d) Attachment Z: Captioned Phone Monthly Testing Log

21 (e) Attachment AA: CalTel Registration-FCC Guidelines

22 (f) Attachment AB – CapTel Release of Information

23 (Lorey Decl., Ex. F.)

24 (6) CapTel Captioned Telephone Service (Lorey Decl., Ex. G.)

25 (7) CapTel 840i How to Guide (Lorey Decl., Ex. H.)

26 (8) CapTel 840i How to Guide (Spanish) (Lorey Decl., Ex. I.)

27 (9) Tablet Survey (draft) (Lorey Decl., Ex. J.)*

28 (10) TTY-TDD Disclaimer (Lorey Decl., Ex. K.)

1 (11) CapTel Disclaimer (Lorey Decl., Ex. L.)

2
3 **(2) Training Parameters**

4 The Compliance Sergeant will identify all incarcerated persons at SATF with a hearing or
5 speech disability and create a spreadsheet sorted by their housing information. (Lorey Decl. ¶ 8.)
6 The Compliance Sergeant assigned to each facility will offer in-person training to each person on
7 the spreadsheet on their facility. (*Id.*) The spreadsheet will be continuously updated to ensure
8 each person was offered training. (*Id.*) The list will also document who was offered training,
9 when training was provided, and if the training was refused. (*Id.*) The spreadsheet will be
10 updated weekly to capture new arrivals and people recently assigned a DNH, DPH, or DPS code.
11 (*Id.*) The training will be provided to these new individuals within seven calendar days of their
12 assignment of a DNH, DPH, or DPS code. (*Id.*) Each person offered the training will sign a CDC
13 Form 128B Information Chrono indicating the training was received or declined. (*Id.* ¶ 9, Ex. C at
14 Attach. D.) If a person declines training, they can still request training later. (*Id.*)

15 The Compliance Sergeants will provide DPH-designed class members training in a one-on-
16 one setting and they can use their iPad or iPhone with captioning during that training. (Decl.
17 Lorey ¶¶ 13-15, Ex. C at Attach. C.) The Compliance Sergeant will monitor the captioning for
18 accuracy, correct errors, and check for understanding during the training session. (*Id.*) Because
19 the training will be one-on-one, they will occur in a quiet setting ideal for the facilitation of
20 effective communication through use of DPH class member's iPad's captioning technology. (*Id.*)
21 This renders any concerns about challenging listening environments moot. (*Id.*) The Compliance
22 Sergeants conducting the training are to ensure that effective communication needs are met, which
23 includes the use of the class member's iPad for captioning, a sign language interpreter, hearing
24 aids, pocket talkers, written notes, and a foreign language interpreter if needed. (*Id.*) Also, the
25 one-on-one setting allows the trainer and the class member the ability to slow down or redo a
26 section of the training if necessary. (*Id.*)

27 Training for DPS- and DNH-designated class members will be done in small groups of no
28 more than six people with similar disabilities and communication needs. (Lorey Decl. ¶ 17.)

1 Compliance Sergeants will be trained by CDCR's Class Action Management Unit (CAMU) staff
2 on how to provide the training. (*Id.* ¶ 10.) The Compliance Sergeant trainers are to ensure
3 effective communication needs are met by ensuring class members have their iPads for captions,
4 sign language interpreters, hearing aids, pocket talkers, written notes, and foreign language
5 interpreters, if required. (*Id.*) This is consistent with CDCR's effective communication policy.
6 (*Id.*, Ex. M.)

7 Part of the training provided by CAMU staff will be to explain to the Compliance
8 Sergeants that during class member training, their audience may not be able to look and listen at
9 the same time if they rely on captioning or sign language interpretation. (Lorey Decl. ¶ 10, Ex. C
10 at Attach. C.) Therefore, the Compliance Sergeants will first explain to class members what they
11 are doing, then show them what they are doing. (*Id.*) During the training, the ADA Compliance
12 Sergeant will go over the following training topics with the class members:

- 13 • Provide a description of what TTY/TDD and CapTel captioned phones are for and
- 14 • How they are beneficial; the differences between the technologies, and when and where the
15 phones are available.
- 16 • Provide and explain the reason for the registration and release forms to access the CapTel
17 captioned phones.
- 18 • Refer to the TTY Booklet to demonstrate all features of the TTY phones, including voice
19 carry over (VCO), hearing carry over (HCO), non-English language relay services, and
20 phone etiquette.
- 21 • Go over common mistakes and troubleshooting techniques (*e.g.*, the phone is not dialing
22 out and how to fix garbling).
- 23 • Explain to class members that they can get assistance from supervisory staff, housing unit
24 staff, or other staff present if they need help to make a call.
- 25 • Go over the instructional posters for how to operate a TTY-TDD and CapTel phone.
- 26 • Explain how to locate and access materials related to the TTY/TDD and CapTel phone on
27 the tablet.
- 28 • Explain how non-confidential calls will be monitored and how confidential calls with

1 attorneys can be made.

- 2 • Demonstrate the phones and offer each class member present at the training to test the
3 phones and features they will require (such as VCO and HCO). Each class member can
4 practice using the phone until they are able to make a successful test call whereby both
5 parties are able to communicate back and forth in a short conversation. Staff will help and
6 provide feedback, if needed, until the class member has successfully demonstrated the
7 ability to use the phone.
- 8 • Show the class members the TTY/TDD and CapTel Captioned phone sign-up sheet and
9 how to use it and explain that if the phone is not in use, that no sign up is required to use
10 the phone during normal programming hours. Also, the class members will be told that
11 they can still access the phones during modified programming.
- 12 • Go over with the class member what to do if the phone is not working, how to notify staff,
13 and that they can use another phone.
- 14 • Tell the class member that they can get additional training and how to request it.

15 (Lorey Decl. ¶ 11.)

16 In addition, CDCR has agreed to upload the TTY/TDD and Captioned Phone informational
17 posters and the TTY/TDD booklet (which provides detailed information on how to use the
18 phones) to all SATF incarcerated persons' tablets. (Lorey Decl. ¶ 12, Exs. D and E.) CDCR has a
19 video describing captioning phones and TTY/TDD phones streaming on DRP TV channel. (*Id.*
20 ¶12; Exs. K and L.)

21 **(b) Captioning Services are not required for all training.**

22 CDCR has policies in place to accommodate class members based on their individual
23 communication needs, including those who require captioning technology as a reasonable
24 accommodation. But Plaintiffs contend that simply allowing people who already possess an iPad
25 to use it during training is not enough and make demands that seem calculated to set this process
26 up for failure before it is ever implemented. Plaintiffs contend that, "CDCR should send out a
27
28

1 message to all residents²⁷ on the ViaPath tablet that tells them about the upcoming training for
2 class members designated DNH, DPH, and DPS, and tells them (1) what at speech-to-text iPad is,
3 what features it provides (and does not provide), and what disability needs it may accommodate;
4 (2) that if they would like one-on-one training on captioned phones with a speech-to-text iPad as
5 an accommodation, they can file an 1824 or tell any staff person; (2) that any “resident” that
6 requests an iPad for the training will be provided one and receive one-on-one training (the same
7 training that the parties negotiated for people designated DPH who use an iPad); and (3) that if the
8 “resident” finds the iPad helpful to accommodate their disability, they will be allowed to keep it as
9 an interim accommodation pending an individualized assessment by an assistive technology
10 professional. Further, Plaintiffs are demanding a court order to make an “iPad available during all
11 training sessions, even if a trainee did not request it in advance, in case a trainee finds it would be
12 useful as an accommodation to understand the training’s content.” (*See* Pls.’ statement *infra.*) In
13 short, these demands are overbroad, ignores the procedures and the process CDCR has developed
14 to provide the class member training, and improperly attempts—again—to implement a one-size-
15 fits-all accommodation in lieu of addressing class members’ actual needs. Moreover, it expands
16 the scope of the stipulation requirement by requiring CDCR to ignore its own established
17 procedures and distribute iPads and iPhones as interim accommodations.

18 **(1) Training for DNH-Designated Class Members**

19 As of October 9, 2024, there are 5,433 incarcerated persons at SATF on the ViaPath
20 network. (Lorey Decl. ¶ 17.) Sending out a blanket notification to 5,433 persons offering a
21 training that would include an iPad or iPhone to use at the training and then later keep as an
22 interim accommodation until assessed, as Plaintiffs suggest, would likely result in thousands of
23 people wanting to take the training, some just so that they could get an iPad or an iPhone. (*Id.*) A
24 demand of this nature would create a shortage of the assistive devices for people who actually
25 need them and prevent the Compliance Sergeants from offering the training in a timely manner.
26 (*Id.*) This blanket notification to 5,433 persons also ignores the stipulation requirement that
27

28 ²⁷ As of October 9, 2024, the population at SATF was 5,433. (Lorey Decl. ¶ 17.)

1 training be offered to deaf and hard-of-hearing class members at SATF (ECF No. 3538 at 6), not
2 the entire prison population. Even if CDCR were to send a message to the DNH class members,
3 as of October 9, 2024, there were 399 DNH-designated class members at SATF. (*Id.*) The parties
4 agreed to provide one-on-one training to DPH-designated class members who use an iPhone/iPad
5 for captioning and small group training sessions for the DNH- and DPS-designated class
6 members. (*Id.* ¶ 10.) If the Compliance Sergeants have to offer one-on-one training to all 399
7 DNH-designated class members, the Compliance Sergeants would not be able to timely offer the
8 training to these class members. (*Id.*) Moreover, the Compliance Sergeants would not be able to
9 conduct their other work, including assisting class members, touring the facilities, and surveying
10 class members. (*Id.*) CDCR also notes that the first time they saw Plaintiffs’ proposal to send out
11 a prison-wide notification about the training and then let the people keep the iPad or iPhone was in
12 a draft of this statement received effectively on October 1, 2024. (*Id.*) A mass email is also not
13 warranted because the Compliance Sergeants assigned to each facility will be offering in-person
14 training to each person on their facility identified as having a hearing or speech disability. (Lorey
15 Decl. ¶ 8.)

16 Moreover, offering to let the person keep the iPad/iPhone as an interim accommodation if
17 they find it “helpful” is not the standard under the ADA and circumvents the long-established
18 disability verification and reasonable accommodation process (CDC 1824). (Lorey Decl. ¶ 18; *see*
19 ARP at 7, 13-17, 35-40.) Allowing someone to simply state that they want an iPad or iPhone for
20 the training and then let them keep it because they find it “helpful” turns the reasonable
21 accommodation process on its head, allows people to bypass the established system, and makes it
22 useless. (Lorey Decl. ¶ 18.) If a class member believes that they need captioning, they can make
23 that request through the established reasonable accommodation process.

24 Plaintiffs’ demand to have an iPad available during all training sessions, even if a trainee
25 did not request it in advance, again because they might find it “useful” is likewise unreasonable
26 and would significantly impact the training. (Lorey Decl. ¶ 19.) The parties agreed to provide the
27 training on the iPads and iPhones in one-on-one settings to DPH-designated class members, and
28 DNH- and DPS-designated class members in small groups of no more than six people. (*Id.* ¶¶ 10

1 and 18.) If someone were to ask for the iPad or iPhone at the training, it would not have the same
2 desired effect as the one-on-one training, which is quieter and allows the Compliance Sergeant to
3 check for understanding and errors. (Lorey Decl. ¶ 18.) Further, the person receiving the iPad or
4 iPhone for the first time at the training would not know how to use it, thus further interrupting the
5 training on how to use the device. (*Id.*) Moreover, this proposed solution does not address the
6 situation when all six of the small group members want an iPad or iPhone. (*Id.*) Ultimately,
7 having the iPad or iPhone there just in case would disrupt the training for the other class members.
8 (*Id.*)

9 Plaintiffs contend that Defendants routinely deny DNH-designated class members iPhones
10 and iPads. (*See* Plaintiffs' statement at *supra*.) As of September 1, 2024, CDCR has issued eight
11 iPads and one iPhone to non-DPH class members. (Lorey Decl. ¶ 16.) During the negotiation of
12 this stipulation item, on September 19, 2024, Plaintiffs provided CDCR with a list of
13 approximately 23 class members at SATF who were reportedly denied an iPad/iPhone by the
14 Reasonable Accommodation Panel (RAP). (*Id.*) CDCR agreed to have SATF reevaluate the
15 individual cases that Plaintiffs sent as to their requests for iPads, to check RAP responses to other
16 similar requests dating back to May 20, 2024, and to reevaluate those requests as well. (*Id.*) In
17 addition, in cases where the RAP felt they would benefit from a specialist's recommendation, they
18 will consult with their assistive device specialist using the process negotiated as part of SATF 1-3.
19 (*Id.*)

20 As explained above, the DNH class member training will be conducted in small groups of
21 no more than six people. (Lorey Decl. ¶¶ 10 and 19; *see* Ex. C at Attach. C.) Therefore, the
22 Compliance Sergeant will be able to communicate and interact with each individual and determine
23 if they are not understanding the training, which is consistent with CDCR's effective
24 communication policy. (*Id.* ¶ 19; *see also* Lorey Decl., Ex. M.) If, during the small group
25 trainings, a DNH-designated class member tells the trainer that they need captioning, the trainer
26 would schedule a one-on-one training for that person using their primary method of
27 communication. (*Id.*) Further, the person will be referred to the RAP to determine if they need
28 written notes to be made their primary method of communication. (*Id.*)

1 Plaintiffs' suggestion that bypassing CDCR's established procedures and distributing iPads
2 and iPhones is the proper solution, because of alleged past poor education about available
3 accommodations, is misplaced and the remedy does not fit the problem. Here, CDCR has drafted
4 a policy and associated materials for the training and education of class members (and staff) about
5 access to the captioned phones. The Compliance Sergeants will identify all incarcerated persons
6 at SATF with a hearing or speech disability and offer them training. (Lorey Decl. ¶ 8.)
7 Informational posters about the TTD/TTY and CapTel phones will be next to the phones in the
8 housing units, CTC, BPH room, and the chapels. (Lorey Decl., Ex. E.) Also, the TTY Phone
9 Booklet that details information on how to use the phones, videos, and informational posters are
10 being sent to all incarcerated persons' tablets. (*Id.* ¶ 12, Exs. D and E.) The videos about the
11 captioned phones are being regularly shown to incarcerated people via television. (*Id.* ¶ 7.) And
12 as further explained below, Compliance Sergeants will be surveying class members about their
13 access to the phones. (*Id.* ¶ 21.) Therefore, CDCR has created numerous avenues to provide
14 education to SATF class members. Distributing iPads and iPhones without proper training is not
15 the proper remedy to address educating people on available accommodations.

16 CDCR's training for class members fully complies with the stipulation requirements, as
17 well as CDCR's established effective communication policy. Moreover, CDCR has devised a
18 comprehensive plan to ensure the content of the training sessions is effectively communicated to
19 all class members. Plaintiffs' new and unreasonable demands should be denied because they are
20 beyond the requirement of the stipulation, would circumvent the established reasonable
21 accommodation request process, negatively impact Compliance Sergeant's ability to conduct the
22 training, and interfere with providing the proposed training.

23 **(c) Monitoring Efficacy of Class Member Training**

24 Defendants do not believe a single issue remains that warrants further Court oversight or
25 continued negotiations with Plaintiffs' counsel. The stipulation requires Defendants to provide to
26 Plaintiffs and the Court Expert a draft proposal regarding how and by when CDCR will provide
27 training directly to deaf and hard-of-hearing class members at SATF regarding how to sign up for
28 captioned phones and how to operate captioned phones. (ECF No. 3538 at 6.) As demonstrated

1 above, CDCR has complied with the stipulation requirements. Requiring monitoring of the
 2 training is another attempt by Plaintiffs to expand the stipulation requirements. Although not
 3 required, after many months of negotiation on the training policy and related materials, CDCR
 4 agreed that after initial training of class members is completed, the Compliance Sergeants will
 5 administer the ADA surveys to monitor the efficacy of the training and determine if follow-up
 6 training is needed. (Lorey Decl. ¶ 21, Ex. C.) (Compliance Sergeants currently survey class
 7 members about various aspects of the ADA program. (Lorey Decl. ¶ 21.)) The Compliance
 8 Sergeants will continue to monitor and assess class members' ability to operate the phones as
 9 needed. (Lorey Decl., Ex. C.) The parties have met and conferred on the substance of the survey
 10 questions but reached an impasse when Plaintiffs proposed questions that could not be supported
 11 by Defendants' existing survey software (*i.e.*, Tableau Software) that only permits binary (yes/no)
 12 answers, and at this time there is no way to change the format. (*Id.*) CDCR advised that the
 13 survey allows staff to enter a comment at the end of the section but not after each question asked.
 14 (*Id.*) CDCR believes that the existing survey questions (*see* Lorey Decl., Ex. J.) are sufficient to
 15 monitor class member training and there is no justification to extend the dispute resolution process
 16 for something Defendants were never ordered to do.

17 **D. Staff Training (Item 10)**

18 **(Item 10)** Within 60 days of the Court's order on this stipulation, Defendants must provide
 19 to Plaintiffs and the Court Expert a draft proposal regarding how and by when CDCR will provide
 20 training to ADA and correctional housing staff at SATF regarding how class members may sign
 21 up for captioned phones and how to operate captioned phones.

22 * * * * *

23 **1. Plaintiffs' Statement**

24 "Maintaining family and community connection and economic stability while incarcerated
 25 is key to successful reentry." Keep Families Connected Act, Cal. S.B. 1008 (2021-2022), Chapter
 26 827 (Cal. Stat. 2022) (CDCR shall provide persons in custody with "accessible, functional voice
 27 communication services free of charge."). Almost two years after the Court Expert's first report,
 28 people with hearing disabilities still cannot make tablet-based phone calls because they lack

1 captioning or relay services. *See* Dkt. No. 3446 at 42. As a result, unlike their hearing peers, who
2 may place voice calls inside their cells from a tablet, deaf and hard-of-hearing class members at
3 SATF who cannot communicate with their loved ones through voice calls may only place calls on
4 standalone captioned phones and other accessible phones installed in congregate spaces. And so
5 unlike their hearing peers, who may make their tablet-based phone calls independently, these class
6 members are wholly dependent on correctional housing staff to facilitate their access to their
7 families and loved ones.

8 The record is clear that correctional housing staff at SATF have fallen well short on their
9 responsibility to ensure access, leading class members to give up on these accommodations
10 altogether. In 2021, this Court found that a class member with a hearing disability at SATF
11 “repeatedly asked for a telecommunication device for the deaf in February 2020, and staff ignored
12 his request for months, until June 2020.” Dkt. No. 3217 at 10. In February 2023, this Court found
13 that Person E at SATF lost touch with his family because he did not have access to accessible
14 phones and that custody staff in his building did not know that accessible phones were available.
15 Dkt. No. 3446 at 40 & n.64; *see also* Dkt. No. 3467 at 2 (adopting Court Expert’s undisputed
16 findings). This Court also found that “many custody staff appear to believe it is the responsibility
17 of SATF’s ADA Office, and not individual custody staff members, to ensure compliance with the
18 ADA” and that “class members report that staff often act like addressing the needs of the disabled
19 population is not part of their job but an extra burden.” Dkt. No. 3446 at 5, 51; *see also* Dkt. No.
20 3467 at 2 (adopting Court Expert’s undisputed findings). The Court Expert and Plaintiffs’ counsel
21 have reported that issues of access persisted notwithstanding these findings – in August 2023, the
22 Court Expert noted that the TDD did not work and that staff trained other incarcerated people,
23 rather than deaf people themselves, in how to use the phones. Dkt. No. 3500 at 13 (“It is not clear
24 what, if any, action SATF took in response to our recommendation that SATF ensure that the
25 phones be made available to deaf people who do not sign.”). Three months later, Plaintiffs’
26 counsel again reported that ADA and correctional housing staff did not know how to operate
27 features of the TDD, that TDD functionality was not being tested in the manner that Defendants
28 had reported, that captioned phones had been installed in a location inaccessible to class members,

1 and that staff were unaware of what a captioned phone is or how to request access. Dkt. No. 3532-
2 2 at 3-6.

3 Complete and specific training for correctional staff on when and how someone can use a
4 captioned phone could not be more critical. The parties have reached agreement on training for
5 correctional and ADA staff regarding “how to operate captioned phones.” Dkt. No. 3538 at 7.
6 Specifically, and consistent with the recommendations of Jen McDonald-Peltier, an Assistive
7 Technology and Augmentative and Alternative Communication Specialist, *see* Hutt Decl., Ex. 109
8 ¶¶ 34-36, 50, correctional staff at SATF will receive annual in-person training on captioned
9 phones and TTY/TDD in an off-post, structured environment.²⁸ The trainer will show correctional
10 staff the phones, demonstrate a call on each phone, discuss troubleshooting issues with the phones,
11 and offer correctional staff the opportunity to conduct a call on the captioned phone. The parties
12 agree that this training also will involve:

- 13 • An introduction to TTY/TDD and captioned phones, who may benefit from the
14 technologies, and who may use them upon request;
- 15 • Instruction on how to set up and use the devices, including device etiquette, VCO,
16 HCO, and all available non-English language relay;
- 17 • Information about when and how someone may use the phone, including whether
18 they must sign up in advance and for how long they can use the phone, and how
19 someone may use the phone for a confidential legal call; and
- 20 • How to request assistance with a specific call or otherwise report problems with the
21 phones, and, if a phone is out of service, how to facilitate “immediate access to
22 another TTY/TDD phone, captioned phone, or equivalent technology on their
23 facility or another facility at the institution at the same times, and with the same
24 frequency, as they would have been able to access the nonfunctional TTY/TDD or
25

26 _____
27 ²⁸ Plaintiffs are waiting for CDCR to provide information on the timing of installation of a
28 captioned phone in the In-Service Training classrooms, where Defendants report this training will
take place. Before the captioned phone is installed, CDCR has agreed to use written material and a
captioned phone to demonstrate the phone’s use.

1 captioned phone.” Dkt. No. 3538 at 6 (Item 8).

2 The parties also agree that correctional housing staff will be required to test phones
3 monthly; that CDCR will provide a one-time training for correctional housing and facility staff,
4 including yard staff, on second and third watch; and that correctional staff will be permitted to
5 observe training of class members as operational needs allow. *See* pages 79-81, below. ADA staff,
6 who then will train class members, also will be trained on how to provide effective training to
7 class members and appropriately modify the training for the learning needs of each class member.
8 *Id.* at 1; *see also* Hutt Decl., Ex. 109 ¶¶ 19-22 (diverse learning needs of class members at SATF).
9 The parties agree that, in the event the Compliance Sergeant position no longer exists at SATF,
10 other appropriate staff will receive and perform the same training described here.

11 (a) **CDCR has not gone far enough to correct correctional housing**
12 **staffs’ persistent misunderstandings of when “security**
concerns” may prohibit access to phone accommodations.

13 These strides towards correctional staff competence are significant but critically
14 incomplete without specific training regarding “how class members may sign up for captioned
15 phones” during the lockdowns and modified programming that are endemic at SATF. *See* Dkt.
16 No. 3538 at 6-7; *see also* Hutt Decl., Exs. 17 ¶¶ 9-10 (Declaration of J.S., DNH, MCSP), 16 ¶¶ 13,
17 18, 24, 32 (Declaration of A.C., DPH, SQ), 15 ¶ 9 (Declaration of H.C., DPH, RJD) (frequent
18 lockdowns elsewhere in CDCR). In this area, Defendants have not gone far enough. During
19 program modifications, which are instituted for various reasons and can last for days, hearing
20 people may continue to make phone calls from their tablets while restricted to their cells. Dkt. No.
21 3510-2 ¶ 22, Ex. 13 (program modification due to mass institutional searches and safety
22 concerns); Godbold Decl., Ex. 13 (phone calls available through tablets when staff shortages or
23 security concerns result in program modification); *see also* Hutt Decl., Exs. 17 ¶¶ 10-14
24 (Declaration of J.S., DNH, MCSP), 11 ¶¶ 9-12 (Declaration of S.R., DPH, SATF) (in-cell tablet
25 calling available to hearing people). Meanwhile, deaf and hard-of-hearing people who must be
26 released by correctional housing staff to access phones report that these staff engage in blanket
27 refusals to do so. *See, e.g.*, Hutt Decl., Exs. 10 ¶¶ 24-25 (Declaration of Z.H., DPH, SATF), 7 ¶¶

1 13-14 (Declaration of S.B., DNH, SATF).²⁹ Correctional housing staff have been insistent in
 2 denying class members these accommodations even when out-of-cell phone access is explicitly
 3 required by existing policy. *See* Godbold Decl., Ex. 13; Hutt Decl., Ex. 11 ¶ 12 (Declaration of
 4 S.R., DPH, SATF) (“officers stopped letting me out for videophone calls” despite policy requiring
 5 access).

6 Defendants propose curing denials at SATF by training staff to allow access to phones as a
 7 reasonable accommodation during modified programming “when security concerns would not
 8 otherwise prohibit access.”³⁰ Lorey Decl., Ex. F at 6. Defendants ignore that this vague standard,
 9 required in policy at SATF for nearly a year, has not ensured access. Hutt Decl., Ex. 119 at 3; *see*
 10 *also id.*, Exs. 122-24 (training to standard). Experience has shown that simply stating that deaf and
 11 hard-of-hearing people shall have access “[d]uring Modified Program” or “instances where the
 12 general population’s movement is restricted to cells” also is not sufficient. *Id.*, Exs. 120 (SQ OP 0-
 13 0901), 16 ¶¶ 17-18, 24-32 (Declaration of A.C., DPH, SQ) (“I have shown [the policy] to the
 14 officers to request permission to place a call during modified programming, but officers still refuse
 15 and tell me to wait until regular programming.”); *see also* *Braggs v. Dunn*, 383 F. Supp. 3d 1218,
 16 1249 (M.D. Ala. 2019) (a prison’s “enactment of a policy often does not translate to ground-level
 17 compliance.”).

18 The decision as to when a security concern constitutes a legitimate penological interest or
 19 direct threat that justifies denying a requested accommodation is fact-dependent and requires
 20 balancing multiple factors. *Armstrong* Remedial Plan § II.H. Defendants’ current policy, with no
 21 information regarding the fact-finding or analysis it requires, or how it applies in common
 22 scenarios, leaves this decision in the hands of each custody officer at SATF, any one of whom

23 _____
 24 ²⁹ Defendants respond to some class member declarations but provide no countervailing evidence
 25 as to class members’ ability to use accessible phones during modified programming and
 26 lockdowns. *See* Lorey Decl. ¶¶ 36-41 (responding to Declaration of C.Q., DPH, RJD), 42-45
 (responding to Declaration of H.C., DPH, RJD), 46-51 (responding to Declaration of A.C., DPH,
 SQ), 52-55 (responding to Declaration of Z.H., DPH, SATF), 56-59 (responding to Declaration of
 S.R., DPH, SATF).

27 ³⁰ Defendants also refer to existing training that CDCR staff receive at the academy and elsewhere
 28 on “how to access security threats,” Lorey Decl. ¶ 30, but have not identified any training material
 that instructs staff on how to balance security concerns with access to accommodations.

1 may be assigned to a unit housing someone who may ask to use the captioned phone during a
2 program modification. *See* Hutt Decl., Ex. 117 ¶ 4 (Undersecretary Foss: “Corrections officers
3 perform their work throughout the institution and cannot typically remain at one duty station. . . .
4 Corrections officers also frequently work overtime in housing units and yards to which they are
5 not ordinarily assigned”); *id.*, Ex. 118 ¶ 2 (Undersecretary Foss: “Every day, across all CDCR
6 institutions, there are hundreds of employees working in areas to which they are not regularly
7 assigned.”); *see also* Dkt. No. 523 at 77 (“Without training, even when staff have sufficient
8 information before them to identify and accommodate disabilities, they do not do so because they
9 lack the necessary skills.”); *cf. Chisolm v. McManimon*, 275 F.3d 315, 327 (3d Cir. 2001)
10 (“MCDC’s repetition of the word ‘security’ in its brief and general references to ‘security’ issues
11 in the warden’s deposition are not supported by any showing that ‘security’ in fact is implicated in
12 making available to an inmate at appropriate times the services and aids that Chisolm requested.”).

13 To be sure, some circumstances, like the extreme one Defendants posit—where staff must
14 provide emergency medical assistance or preserve a suspected crime scene to collect evidence,
15 Lorey Decl. ¶ 30—may be clearly understood by correctional staff to prevent access due to
16 “security concerns.” But the dispute here is not a disagreement regarding the legal standard for
17 when an accommodation may be denied due to security. *See Armstrong* Remedial Plan § II.H;
18 *Turner v. Safley*, 482 U.S. 78, 89 (1987); *see also Frost v. Agnos*, 152 F.3d 1124, 1129 (9th Cir.
19 1998) (holding that despite classification concerns, prison officials were “not excused from taking
20 reasonable measures to assist [the plaintiff] in showering safely” in an accessible shower facility).
21 Rather, class members have shown that correctional housing staff at SATF more routinely
22 interpret “safety concerns” overbroadly and in a manner that unlawfully deprives them of
23 accommodations. *See, e.g.,* Hutt Decl., Ex. 10 ¶¶ 24-26 (Declaration of Z.H., DPH, SATF)
24 (officers refuse to provide videophone access during modified programming and lockdowns, such
25 as a five-day lockdown due to a fight in another building). Barriers to access and the risks that
26 come from increased interactions with staff to access accommodations implicate “tool
27 abandonment,” when a person with a disability who potentially could benefit from an assistive
28 technology abandons that technology. Hutt Decl., Ex. 109 ¶ 39. S.R., for example, reports that

1 when an unfamiliar officer is working during modified programming, “I do not get to make
2 videophone calls because I am not willing to ask and risk the consequences of upsetting the
3 officer.” *Id.*, Ex. 11 ¶ 11. S.B. abandoned the TTY altogether because “I’ve been denied the TTY
4 so many times that I want to avoid the frustration and stress of being denied communication with
5 my family, especially as I am so close to being released. I don’t want to have any problems with
6 staff.” *Id.*, Ex. 7 ¶ 14.5 (without TTY, SB cannot “communicate with my daughter because she is
7 mute and cannot use a regular telephone to respond to me. The only way we have of
8 communicating over the tablet is using the messaging app, which costs 5 cents per message.”).

9 Defendants cannot demand that correctional housing staff, unsupported, interpret and apply
10 general legal standards each time a deaf or hard-of-hearing person asks to use the phone.
11 Defendants must provide training to correctional housing staff that is sufficiently clear and
12 specific to explain the narrow circumstances where safety concerns may supersede access, and on
13 how to ensure access when legitimate security concerns do not prohibit it. *See, e.g., id.*, Ex. 15 ¶
14 11 (Declaration of H.C., DPH, RJD) (difficult to get the attention of staff); *id.*, Ex. 12 ¶¶ 48-49
15 (Declaration of C.M., DNH, SATF). This is particularly critical in light of Defendants’ decision to
16 install captioned phones in only nine of the 32 housing units at SATF, such that people not in
17 those housing units must be allowed out of their cells and housing units, and allowed (and when
18 necessary, escorted) to travel to another housing unit, simply to use the phone. *See Lorey Decl.*
19 ¶ 28; Dkt. No. 3510-2 ¶ 23; *see also* Hutt Decl., Ex. 121 (current circumstances for escorted
20 movement only); *id.*, Ex. 7 ¶¶ 13-14 (Declaration of S.B., DNH, SATF) (class member housed in a
21 unit with no TTY denied access to the TTY in another building during modified programming).
22 That is a problem of Defendants’ own making, which cannot be resolved, as Defendants suggest,
23 by simply moving any person designated DNH who requests a captioned phone to one of the nine
24 units in which they are installed. *See Lorey Decl.* ¶ 27. Other housing factors, including disability
25 factors, may prevent a person with a hearing disability from being housed in one of these
26 buildings. As of October 1, 2024, for example, 28 people at SATF with a documented hearing
27 disability also were full-time wheelchair users, designated DPW, who can be housed only in
28 DPW-designated units and in designated cells. *See* Dkt. No. 3048 at 4 (specific DPW housing

1 needs); *see also* Norman Decl. ¶¶ 4, 7 (“Any policy that requires people in the DDP to move to
2 another building in order to obtain an accommodation, if that building is not designated and other
3 residents not appropriately screened, would run afoul of the requirements of *Clark v. California.*”).
4 Moreover, Defendants cite no policy requiring these moves that addressed denials of the same
5 accommodation to DNH class members in the past. *See* Hutt Decl., Ex. 7 ¶¶ 10-12 (Declaration of
6 S.B., DNH, SATF) (“I told officers that I wanted to be housed in D2 because I needed to use the
7 TTY. They would not allow that.”).

8 The necessity for this training will not wane with the new tablet contract even if captioning
9 is provided for calls made in-cell on the tablet, as unforeseen circumstances or the terms of the
10 contract itself may mean that class members lack consistent access to a tablet for calls. *See*
11 Godbold Decl., Ex. 24; Halter Decl. ¶ 20; *see also* Hutt Decl., Exs. 6 ¶¶ 92-93 (Declaration of
12 C.M., DNH, SATF) (significant delays in receiving a tablet), 75 at 8 (tablet provision under
13 current contract). Accordingly, two actions are needed. First, Defendants must provide clear
14 direction to staff regarding how to decide when a security concern may prohibit access to a
15 captioned phone, including based on the most common scenarios at SATF that lead to modified
16 programming or lockdowns. And second, Defendants must monitor these decisions and evaluate
17 the efficacy of training by requiring correctional staff to document their reasoning, determination,
18 and manner of providing the person with a disability with access to the captioned phone at the first
19 available opportunity. *See Clark v. California*, 739 F. Supp. 2d 1168, 1210 (N.D. Cal. 2010)
20 (simply providing training to staff on prisoners with disabilities, without overseeing and analyzing
21 the training’s outcomes, is not adequate to implement remedial measures regarding the
22 accommodations those prisoners require).

23 **(b) Standardization of phone access**

24 The parties agree to meet and confer with the assistance of the Court Expert on an
25 expedited basis to try to reach a mutually acceptable resolution to the issue of phone
26 standardization at SATF. CDCR agrees to provide to the parties and Court Expert information
27 relevant and non-privileged to the phone standardization at SATF. If the Court Expert determines
28 the parties are not able to reach agreement on the policy at SATF, the parties shall, within 30 days

1 of the Court Expert's determination that an agreement cannot be reached, submit a joint statement
 2 to the Court setting out the disputes regarding the SATF policy. The joint statement will be no
 3 more than 20 pages total (ten pages for each side). Plaintiffs will draft their position in the joint
 4 statement and then send it to Defendants for a response. The statement will then be filed with the
 5 Court. CDCR agrees that it will not implement a phone standardization plan at SATF or otherwise
 6 reduce tablet phone hours at SATF until the dispute resolution process as to SATF stipulation item
 7 10 is completed.

8 **2. Defendants' Statement**

9 Defendants' comprehensive policy complies with this SATF stipulation requirement that
 10 CDCR provide training to ADA and correctional housing staff at SATF regarding how class
 11 members may sign up for captioned phones and how to operate the phones. (ECF No. 3538 at 6.)
 12 Contrary to Plaintiffs' assertion, the policy also addresses allowing phone access during modified
 13 programming. Correctional training received when officers start at the academy, as well as during
 14 their day-to-day activities, instills in staff the ability to ascertain and evaluate a security concern
 15 that may prohibit access to certain services, like captioned phones. Plaintiffs' demand to have
 16 custody staff document their reasoning, determination, and manner of providing the person with a
 17 disability with access to the captioned phone at the first available opportunity is again beyond the
 18 scope of this stipulation item. The policy sufficiently addresses the need to provide access to
 19 captioned phones during modified programming and security threats. Therefore, Plaintiffs'
 20 additional demands should be denied. Because CDCR's policy provides required training to the
 21 ADA and correctional housing staff, no further Court action is required.

22 **(a) CDCR's Policy Provides Comprehensive Training to ADA and** 23 **Housing Staff on How Class Members May Sign Up for** 24 **Captioned Phones and How to Operate the Phones.**

24 CDCR's "Training for Staff and Incarcerated Persons who are Deaf, Hard-of-Hearing, or
 25 have Speech Disabilities on how to Sign up for and Use the TTY/TDD phone and Captel Phone"
 26 memorandum details the training for ADA and correctional housing staff at SATF. (Lorey Decl. ¶
 27 11, Ex. C.) The training includes:

- 28 • The monthly testing of all the TTY/TDD phones and CapTel captioned phones on each

1 facility by the housing unit staff, including CTC assigned staff, under the supervision of
2 the Compliance Sergeant. Staff who facilitate the confidential legal calls will conduct
3 monthly testing of the TTY/TDD and CapTel captioned phones located in the Board of
4 Parole Hearing (BPH) rooms under the supervision of the Compliance Sergeant. The
5 Compliance Sergeant will coordinate and oversee the monthly testing of the TTY/TDD
6 and CapTel captioned phones in the facility chapels. This hands-on testing by housing unit
7 staff is to reinforce their knowledge on how to operate the phones and, in turn, be able to
8 assist class members use the phones.

- 9 • The monthly tests will be documented on a testing log and the Compliance Sergeant will
10 ensure that staff know the requirements for determining, and for describing in the logs
11 whether a device has “passed” or “failed” the test, and what to do if a device fails a test.
- 12 • The Compliance Sergeant also will ensure that staff know how to provide class members
13 with access to another functioning accessible phone on their yard or another yard at the
14 same times and with the same frequency as they could access a non-functioning device.
- 15 • The Compliance Sergeant will ensure any new staff assigned to designated housing units
16 will be trained during monthly testing.

17 (*Id.*)

- 18 • Housing staff will have access to the TTY/TDD and CapTel informational posters, which
19 are posted next to the phones in the housing unit. (Lorey Decl. ¶ 23, Ex. E.) The posters
20 provide guidelines on who can use the phones, how to use the phones, and what to do if
21 they are having trouble using the phones. (*Id.*) Staff will have access to additional written
22 materials on how to use the phones, which will be kept with the phones (*i.e.*, TTY/TDD
23 booklet (*Id.*, Ex. D); GTL Captioned Telephone Service Overview; and CapTel 840i
24 (English and Spanish versions) manual). (*Id.*, Exs. H and I.)

25 CDCR also agreed to provide a one-time training to custody staff (which includes, but is
26 not limited to housing unit officers, yard officers, and search and escort officers on the second and
27 third watch). (Lorey Decl. ¶ 24.) The training would occur one time during the monthly
28 designated training days scheduled by SATF leadership. (*Id.*) The Compliance Sergeant would

1 review with custody staff the training for staff and DPH, DNH, and DPS incarcerated persons
2 training memorandum (*id.*, Ex. C); the TTY/TDD and CapTel monthly testing logs (Ex. C at
3 Attachs. P and Z); the TTY/TDD and CapTel Caption Phone informational posters (*id.*, Ex. E); the
4 SATF Operational Procedure 403, Disability Placement Program; the phone sign-up logs (*id.*, Ex.
5 F); the phone sign-up logs (*id.*, Ex. F at Attach. O); the TTY/TDD Caption Phone Non-
6 Functioning Log (*id.*, Ex. F at Attach. Q); and the Acknowledgement or Completion of training for
7 DPH/DNH/DPS incarcerated person 128B chrono (*id.*, Ex. C at Attach. D.) In addition, staff will
8 be advised that the written guidance materials (*i.e.*, TTY Booklet (*id.*, Ex. D); GTL Captioned
9 Telephone Service Overview (*id.*, Ex. G); CapTel 840i manual (English and Spanish versions)
10 (*id.*, Exs. H and I) will be available with the phones. (*Id.* ¶ 24.) Staff will also be told that videos
11 on both TTY/TDD and captioned phones is streaming on the DRP TV channel, where the phones
12 are located, and who staff can contact in case they need assistance or when further training is
13 requested by staff or the incarcerated population. (*Id.*) Housing unit staff will routinely see these
14 videos while they are present in the housing units, thus reminding them about the phones. (*Id.*)
15 CDCR also advised that it is agreeable to allowing housing staff to observe class member training
16 provided that operational needs allow them to participate. (*Id.*)

17 In addition to training ADA and correctional housing staff, CDCR has agreed to provide
18 all SATF staff a yearly training as part of their annual off-post training. (Lorey Decl. ¶ 25.)
19 Because all ADA and correctional housing staff also take this annual training, it will provide a
20 refresher training to them, thus reinforcing their knowledge of how class members may sign up for
21 captioned phones and how to operate the phones. (*Id.*) The parties also agreed that the annual in-
22 person off-post training for custody staff will include: An introduction to TTY/TDD and
23 captioned phones, who may benefit from the technologies, and who may use them upon request;
24 Instruction on how to set up and use the devices, including device etiquette, VCO, HCO, and all
25 available non-English language relay; information about when and how someone may use the
26 phone, including whether they must sign up in advance and for how long they can use the phone,
27 and how someone may use the phone for a confidential legal call; and how to request assistance
28 with a specific call or otherwise report problems with the phones, and, if a phone is out of service,

1 how to facilitate “immediate access to another TTY/TDD phone, captioned phone, or equivalent
2 technology on their facility or another facility at the institution at the same times, and with the
3 same frequency, as they would have been able to access the nonfunctional TTY/TDD or captioned
4 phone.” (*Id.*) The trainer will show custody staff the TTD/TTY and CapTel phones, demonstrate
5 a phone call on each phone, discuss troubleshooting issues with the phones (*e.g.*, clearing
6 garbling), and offer to custody staff the opportunity to conduct a call with the captioned phones if
7 they want to do so. (*Id.*) The off-post training will occur as regularly scheduled. (*Id.*) CDCR
8 also included in their policy direction to the Litigation Coordinator’s office, that all confidential
9 calls will occur in the BPH room, where the TTY/TDD and CapTel phones are located, so that an
10 incarcerated person will have access to their reasonable accommodations needed to access
11 confidential legal calls. (*Id.* ¶ 26.)

12 **(b) The Policy Addresses Access to Phones During Modified**
13 **Programming.**

14 The stipulation required Defendants to provide Plaintiffs and the Court Expert a draft
15 proposal regarding how and by when CDCR will provide training to ADA and correctional
16 housing staff at SATF regarding how class members may sign up for captioned phones and how to
17 operate captioned phones. (ECF No. 3538 at 6-7.) CDCR has complied with this requirement as
18 demonstrated by the policies and related training materials (Lorey Decl. ¶¶ 6-7 and Exs. C-L.)
19 Plaintiffs yet again attempt to expand the stipulation requirements by demanding (1) Defendants
20 provide clear direction to staff regarding how to decide when a security concern may prohibit
21 access to a captioned phone including based on the most common scenarios at SATF that lead to
22 modified programming or lockdowns; and by demanding that (2) Defendants must monitor these
23 decisions and evaluate the efficacy of training by requiring correctional staff to document their
24 reasoning, determination, and manner of providing the person with a disability with access to the
25 captioned phone at the first available opportunity. (*See* Plaintiffs’ statement *supra.*) Both items
26 are not within the scope of this stipulation item, exceed the Court Expert’s findings, and this
27 Court’s order. Accordingly, both should be denied.

28 CDCR is providing class members equal access to phone services, including during

1 modified programming. CDCR has installed captioned phones in the housing units where class
2 members who use these phones are housed. (Lorey Decl. ¶ 27.) The four DPH class members at
3 SATF are currently living in housing units where TDD/TTY and CapTel phones have been
4 installed. (*Id.*) As of October 9, 2024, there is a total of 399 DNH class members housed at
5 SATF. (*Id.*) Of those 399 class members, 131 are currently living in a housing unit where
6 TDD/TTY and CapTel phones have been installed. (*Id.*)

7 DNH class members who want to use these phones can request a cell move to a housing
8 unit where a captioned phone is located. (*Id.*) The 1824 request for reasonable accommodation
9 process can be used to request a cell move to a housing unit where a TTY/TDD and CapTel phone
10 is located. (*Id.*) CDCR installed a total of 27 TTD/TTY and CapTel phones in 9 housing units,
11 the chapels, the Correctional Treatment Center (CTC), and in the BPH room. (*Id.*) CDCR has
12 agreed to provide class members access to the phones on their facility and in these other locations
13 (CTC, BPH, chapels). (*Id.*, at Ex. H.) And CDCR's policy provides clear direction to staff to
14 provide access during modified programming. (*Id.*) CDCR has also confirmed through the
15 existing ViaPath vendor that 96% of DNH class member at SATF have used their tablets to make
16 phone calls from January 1, 2024, through September 3, 2024. (*Id.* ¶ 27.)

17 CDCR has included language in their policy related to denial of access to the phones
18 related to legitimate penological interests. (Lorey Decl., at Ex. F.) Plaintiffs now request, for the
19 first time during negotiations, that (1) Defendants provide clear direction to staff regarding how to
20 decide when a security concern may prohibit access to a captioned phone including based on the
21 most common scenarios at SATF that lead to modified programming or lockdowns; and (2)
22 Defendants must monitor these decisions and evaluate the efficacy of training by requiring
23 correctional staff to document their reasoning, determination, and manner of providing the person
24 with a disability with access to the captioned phone at the first available opportunity. (*See*
25 Plaintiffs' statement *supra.*) Neither of these items are required by the stipulation. Both requests
26 should be denied.

27 As CDCR explained to Plaintiffs and the Court Expert, in a carceral setting, situations may
28 arise in which temporary denial of an accommodation is warranted because of a legitimate

1 penological interest. (Lorey Decl. ¶ 30; *see* ARP at 8.) CDCR must maintain the ability to
2 manage their institutions. *See Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998) (the court
3 afforded “wide-ranging deference in the adoption of policies and practices that in their judgment
4 are needed to preserve internal order and discipline and to maintain institutional security.”); *see*
5 *also Bell v. Wolfish*, 441 U.S. 520, 540 (1979); *Turner v. Safley*, 482 U.S. 78, 89 (1987); *Sandin v.*
6 *Connor*, 515 U.S. 472, 482 (1995) (“federal courts ought to afford appropriate deference and
7 flexibility to state officials trying to manage a volatile environment”). For example, an incident
8 (*e.g.*, fight between two incarcerated persons) in the dayroom during normal programming hours
9 may temporarily prevent access to the dayroom for all incarcerated persons where the captioned
10 phones are located or may prevent movement to another area where the captioned phones are
11 located because of a legitimate security concern (*e.g.*, providing emergency medical assistance,
12 removing the threat, collecting evidence, etc.). (Lorey Decl. ¶ 30.) As soon as the security threat
13 is cleared, the access would be restored. (*Id.*) This is a legitimate penological interest and only a
14 temporary pause in access anticipated and allowed by the remedial plan. (Lorey Decl. ¶ 30; *see*
15 ARP at 8 (providing that a request for accommodation may be denied when the denial is based on
16 legitimate penological interests; undue financial or administrative burden on the agency, or would
17 fundamentally alter the nature of the service, program, or activity. And that a request for an
18 accommodation may be denied if an equally effective access to a program, service, or activity may
19 be afforded through an alternative method which is less costly or intrusive.)) Plaintiffs’ newest
20 demand—to train officers to know how to decide when a security concern may prohibit access to a
21 captioned phone, including based on the most common scenarios at SATF that lead to modified
22 programming or lockdowns (*see* Plaintiffs’ statement *supra.*) goes beyond this stipulation and
23 injects itself directly into how an officer conducts their official law enforcement duties and
24 attempts to interfere with their discretion and formal training on accessing security threats. CDCR
25 staff receive formal training at the academy, annual off-post training, and on-the-job training on
26 various subjects. (Lorey Decl. ¶ 30.) CDCR staff are sufficiently trained on how to access
27 security threats—for example, preventing escapes, identifying and confiscating contraband,
28 assessing security threat group activities, and responding to fights. (*Id.*) Maintaining security of

1 the institution, incarcerated persons and staff is part of custody staff's daily duties. (*Id.*) Because
 2 CDCR's policy already addresses modified programming and temporary denials of
 3 accommodations, the Court should deny Plaintiffs' request to insert into the policy requirements
 4 that are contradictory to the remedial plan and established law and go beyond the scope of this
 5 stipulation item.

6 Finally, Plaintiffs request that Defendants must monitor these decisions and evaluate the
 7 efficacy of training by requiring correctional staff to document their reasoning, determination, and
 8 manner of providing the person with a disability with access to the captioned phone at the first
 9 available opportunity (*see* Plaintiffs' statement *supra*) again far exceeds the stipulation
 10 requirement related to staff training on how to sign up for phone calls and use the phone.
 11 Plaintiffs wrongfully attempt to add an unnecessary layer of administrative work for staff that is
 12 not required under the SATF stipulation. CDCR has already included in SATF's local operating
 13 procedure language to address temporary denials of access. Therefore, no further action is
 14 required by the Court.

15 **E. Installation of Captioned Phones (Item 11)**

16 **(Item 11)** Within 90 days of the Court's order on this stipulation, CDCR must provide the
 17 Court Expert and Plaintiffs a timeframe for installing captioned phones in the housing units at
 18 SATF. Defendants must make a good faith effort to complete this task by the date specified.

19 * * * * *

20 **1. Plaintiffs' Statement**

21 As Defendants explain below, Defendants installed captioned phones in nine of the 32
 22 housing units at SATF. *See* Lorey Decl. ¶ 28; Hutt Decl., Ex. 129 at 33-34. And people who
 23 require use of these phones may be housed in any housing unit at SATF. Indeed, as Defendants
 24 explain above, *see* page 83, as of October 9, 2024, two-thirds of people with a documented hearing
 25 disability were not housed in a unit where Defendants installed a captioned phone. And while
 26 many of these class members may use tablets to make phone calls, *see* Lorey Decl. ¶ 29, they may
 27 do so even when they cannot fully understand what is said, on the principle that "some
 28 communication is better than nothing." Hutt Decl., Ex. 17 ¶¶ 6-8 (Declaration of J.S., DNH,

1 MCSP); *id.*, Ex. 9 ¶ 34 (Declaration of G.E., DNH, SATF). Because accessing captioned and other
 2 accessible phones requires interfacing with correctional housing staff, making phone calls on the
 3 tablets in fact may be “the obvious choice” to many, despite problems. *Id.*, Ex. 17 ¶ 9 (Declaration
 4 of J.S., DNH, MCSP); *see also id.* ¶ 13 (“[W]hile 96% of people designated DNH may make calls
 5 on the tablets, not all of us necessarily have the accommodations we need to make phone calls
 6 effectively, but place calls on the tablet regardless of complications because there are no other
 7 options or services provided to accommodate [us].”).

8 Plaintiffs are concerned that people who require use of a captioned phone will not have
 9 equal access to phone services when there is no captioned phone in their building, particularly
 10 during modified programming, or when multiple people on their yard want to use the phone at the
 11 same time. Defendants claim that class members may simply request a housing move, but do not
 12 explain where that policy is documented nor how it will be effectuated uniformly, particularly
 13 since bedrock legal protections prohibit such moves for some people with disabilities. *See, e.g.*,
 14 Norman Decl. ¶¶ 4, 7. Consider, for example, the experience of one class member at SATF when
 15 he was housed in a building without a TTY:

16 The TTY on D yard is in D2, so I wanted to move to D2. I told officers that I
 17 wanted to be housed in D2 because I needed to use the TTY. They would not allow
 18 that, and I ended up agreeing to move to D4 because the officers threatened me
 19 with a 115 (Rule Violation Report) if I didn’t.

20 In order to access the TTY while I was housed in D4, I would have to get the tower
 21 office in my building to unlock my cell and let me out of the building so I could go
 22 to D2 where the TTY was. When I asked the tower officer directly, he wouldn’t let
 23 me out. There were two regularly assigned floor officers who got me let out most
 24 of the time I asked – they would talk to the tower officer for me. But the tower
 25 officer would only let me out if the regular floor staff told him to.

26 I asked a few times to be allowed to use the TTY during modified programming but
 27 staff wouldn’t usually let me out. I was told, “We don’t do phone calls during
 28 lockdowns.”

Hutt Decl., Ex. 7 ¶¶ 12-14 (Declaration of S.B., DNH, SATF).³¹

³¹ Defendants below argue that declarations like this one lack sufficient specificity for Defendants to respond, but that simply is not the case. *See, e.g., id.* ¶¶ 10, 14 (locations and date ranges); *id.*, Ex. 8 ¶¶ 14-16 (Declaration of R.W., DPH, SQ) (location, dates, and times); *see also* Dkt. No. 3510-3 at 122-124 (Plaintiffs’ advocacy letter raising the same concerns identified in the declaration of R.W. in September 2023). Defendants have given neither Plaintiffs’ counsel nor the Court sufficient information to evaluate their objections.

1 Plaintiffs will continue to monitor this issue.

2 **2. Defendants' Statement**

3 Defendants contend that this stipulation item is resolved. On March 6, 2024, Defendants
4 notified Plaintiffs' counsel and the Court Expert that the timeline for installing captioned phones
5 in the housing units at SATF was July 1, 2024. Defendants confirmed the installation of captioned
6 phones on July 1, 2024, at the following SATF locations: Facility A housing unit 2 (Bldg. 322);
7 Facility B housing unit 2 (Bldg. 332); Facility C housing unit 8 (Bldg. 344, Room 184); Facility D
8 housing unit 2 (Bldg. 352); Facility E housing unit 3 (Bldg. 363); Facility F housing unit 1 (Bldg.
9 371, Room 138); Facility G housing unit 3 (Bldg. 383, Room A-150); the Correctional Treatment
10 Center Dayroom (Bldg. 448, Room 240); Restricted Housing Unit Committee Room (Bldg. 366);
11 and the BPH room.

12 Plaintiffs submitted declarations from class members who made vague allegations of being
13 denied access to captioned phones without providing Defendants sufficient dates, times, and
14 locations to evaluate the veracity of such claims. Such self-serving conclusory declarations do not
15 demonstrate a systemic issue and should not be considered by the Court. Further, Plaintiffs
16 continue to condemn Defendants because of past policies without giving them an opportunity to
17 deploy the recently created policies, procedures, training, and equipment to the field. Defendants
18 have negotiated in good faith for almost a year on the captioned phone policies and procedures.
19 Defendants believe that once they have an opportunity to provide the new policies and training
20 materials to staff and class members, most of Plaintiffs' complaints will be resolved. Class
21 members continue to have access the reasonable accommodation request process (CDC 1824) to
22 ask for a reasonable accommodation to accommodate their disabilities, which includes requesting
23 a housing transfer to a unit where the TTD/TTY and CapTel phones are installed. (Lorey Decl. ¶
24 27.) Further, the proposed Local Operating Procedure 403 and related training includes direction
25 to staff on how to provide access to class members during modified programming: "If dayroom
26 program is modified, class members shall still be able to access the TTY/TDD and CapTel
27 captioned phones on their own, or other designated housing units and chapels by requesting access
28 from housing unit staff." (See Lorey Decl., Ex. F.) Moreover, class member training and written

1 materials they will be provided on their tablets and posted and kept with the captioning phones
2 provide instruction on how class members can request access to the phones during modified
3 programming or if a phone is not operational. (*See* Lorey Decl., Ex. C at Attach. C, and Ex. D.)
4 Phone access during modified programming is also discussed during training with the Compliance
5 Sergeant. (*Id.*, at Ex. C at Attach. C.) In addition, due to the fact that 96% of DNH class member
6 at SATF have used their tablets to make phone calls, CDCR does not believe there is a need to
7 install additional TDD/TTY or CapTel Phones. (Lorey Decl. ¶ 29.) The evidence is clear that
8 DNH class member prefer to utilize the tablets for making phone calls and do not require
9 captioning. (*Id.*)

10 Lastly, Plaintiffs were provided the locations where CDCR would install captioned phones
11 during the parties' negotiation process on June 28, 2024. (*Id.*) At no time, over the next few
12 months while the parties continued to negotiate the training materials, including the informational
13 posters that list each location of the captioned phones (*id.*, Ex. E) did Plaintiffs raise an issue about
14 the number or location of the CapTel phones. (*Id.* ¶ 28.)

15 **F. Tablet Accessibility (Item 12)**

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

24 * * * * *

25 **1. Plaintiffs' Statement**

26 The parties have two disputes regarding the statewide contract for communications which
27 includes tablets: access to videophones and how to resolve disputes in this process.

1 (a) Videophone access

2 The parties have a dispute regarding how to ensure equal access to phone calls for people
3 with disabilities who communicate using sign language.

4 Currently, CDCR issues tablet computers to every incarcerated person. Dimalig Decl. ¶ 8;
5 Kojima Decl. ¶ 5. The tablet computers allow incarcerated people to place phone calls, at their
6 own will. Dimalig Decl. ¶¶ 8-10. In contrast, anyone who uses sign language in order to place a
7 phone call, must gain access to a videophone kiosk located outside of their cell or dorm, typically
8 in the communal dayrooms of housing units. *Id.* ¶ 11;³² Hutt Decl., Exs. 15 ¶ 6 (Declaration of
9 H.C., DPH, RJD), 14 ¶¶ 6, 8 (Declaration of C.Q., DPH, RJD), 16 ¶ 16 (Declaration of A.C.,
10 DPH, SQ), 11 ¶ 5 (Declaration of S.R., DPH, SATF), 10 ¶ 6 (Declaration of Z.H., DPH, SATF).
11 Existing CDCR tablets do not have videophone capabilities and, as explained by multiple class
12 members below, the videophones are difficult to access.

13 For years, Plaintiffs' counsel have requested that Defendants ensure equal access by
14 providing videophone access on tablets for in-cell use. *See* Dkt. No. 3510-3 at 22. In-cell access
15 would satisfy Defendants' ADA requirement to provide class members who use sign language "an
16 opportunity to participate in or benefit from" phone calls in prison "equal to that afforded others"
17 and to provide a service that is "as effective at affording equal opportunity" as is provided to
18 others. 28 C.F.R. § 35.130(b)(1)(ii)-(iii); *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d
19 1088, 1097 (9th Cir. 2013) ("Title II and its implementing regulations, taken together, require
20 public entities to take steps towards making existing services not just accessible, but *equally*
21 accessible[.]"). To provide equal opportunity, Title II requires public entities to offer auxiliary
22 aids or services that protect the privacy and independence of people with disabilities who
23 communicate using sign language, and to ensure that these individuals shall not be discriminated
24 against, excluded from participation in, or denied the benefits of, any services, programs, or

25 _____
26 ³² Defendants' evidence conflates "video calls" with videophone access. Plaintiffs are seeking
27 access to videophones, not "video calls" which are not designed for communication via sign
28 language. *See* Dimalig Decl ¶ 11; Hutt Decl., Exs. 14 ¶ 11 (Declaration of C.Q., DPH, RJD), 16 ¶
58 (Declaration of A.C., DPH, SQ), 10 ¶¶ 9-11 (Declaration of Z.H., DPH, SATF), 11 ¶ 6
(Declaration of S.R., DPH, SATF).

1 activities. 28 C.F.R. §§ 35.152(b)(1), 35.160(b)(1)-(2).

2 CDCR videophones do not currently afford class members equal opportunity to place
 3 phone calls for multiple reasons. The primary reason is that videophones are not available inside
 4 cells and dorms, and tablets are. Hutt Decl., Exs. 15 ¶¶ 6-8 (Declaration of H.C., DPH, RJD), 14
 5 ¶¶ 6-10 (Declaration of C.Q., DPH, RJD), 16 ¶¶ 7-19, 21-22 (Declaration of A.C., DPH, SQ), 10
 6 ¶¶ 12-15 (Declaration of Z.H., DPH, SATF), 11 ¶¶ 7-9 (Declaration of S.R., DPH, SATF). Sign
 7 language users must rely on custody staff to gain access to videophones typically located in
 8 dayrooms and other public areas, which is not always easy. *Id.*, Exs. 15 ¶¶ 9-11 (Declaration of
 9 H.C., DPH, RJD), 14 ¶¶ 13-14 (Declaration of C.Q., DPH, RJD), 16 ¶¶ 10, 15-17, 22, 24-27, 29-
 10 31 (Declaration of A.C., DPH, SQ), 10 ¶¶ 14-19, 24, 27 (Declaration of Z.H., DPH, SATF), 11 ¶¶
 11 10-13, 16 (Declaration of S.R., DPH, SATF). One class member at SATF reports that, because
 12 the videophone he has access to is located in the dayroom area of a different dorm pod, he has to
 13 flag staff down, wait to be let out, sometimes ask multiple times, and that still certain officers will
 14 not let him out, even if they are supposed to per policy. *Id.*, Ex. 11 ¶¶ 14-16 (Declaration of S.R.,
 15 DPH, SATF). Because custody staff are in a position to serve as gatekeepers to videophone
 16 access, these interactions heighten the risk of tension between sign language users and custody
 17 staff. *Id.*, Exs. 14 ¶¶ 14 (Declaration of C.Q., DPH, RJD), 10 ¶¶ 24 (Declaration of Z.H., DPH,
 18 SATF), 11 ¶¶ 10-12 (Declaration of S.R., DPH, SATF), 16 ¶¶ 27, 29 (Declaration of A.C., DPH,
 19 SQ). One class member reports that he worries he will annoy staff simply by asking to be let out.
 20 *Id.*, Ex. 11 ¶ 10 (Declaration of S.R., DPH, SATF). Others worry that standing up for their rights,
 21 if an officer refuses their request to be let out, will lead to retaliation and more restrictive housing
 22 or extending their prison term. *Id.*, Ex. 16 ¶¶ 27-28 (Declaration of A.C., DPH, SQ). Requiring
 23 class members who use sign language as their primary method of communication – and therefore
 24 already are at a disadvantage communicating – to rely on custody staff for phone access places
 25 them at increased risk of conflict including greater potential for disciplinary action or physical
 26 harm. *Id.*, Exs. 16 ¶ 28 (Declaration of A.C., DPH, SQ), 11 ¶ 13 (Declaration of S.R., DPH,
 27 SATF); Dkt. No. 2921-3 (Freedman Decl.), Ex. 7 ¶¶ 1-28 (Deaf class member describing how he
 28 foregoes requesting accommodations after an officer punched him in the face during a

1 miscommunication).

2 The prison environment itself presents inevitable challenges that prevent equal access to
3 videophones including modified programming and lockdowns which, as explained above, impact
4 the ability of class members to gain access phones outside of their cells/dorms. Plaintiffs’
5 Statement, Item 10; Hutt Decl., Exs. 15 ¶ 11 (Declaration of H.C., DPH, RJD), 14 ¶ 14
6 (Declaration of C.Q., DPH, RJD), 16 ¶¶ 25-26, 28-29 (Declaration of A.C., DPH, SQ), 10 ¶¶ 18-
7 24 (Declaration of Z.H., DPH, SATF) 11 ¶¶ 9-12 (Declaration of S.R., DPH, SATF).

8 Even when class members do gain access to videophones, that access is still not equal to
9 those who are able to place calls on their own tablet because sign language users must compete
10 with other sign language users for a limited number of videophones. *Id.*, Exs. 14 ¶ 14 (Declaration
11 of C.Q., DPH, RJD), 16 ¶¶ 18, 36-41 (Declaration of A.C., DPH, SQ). Though Defendants report
12 that there are 84 videophones throughout nine CDCR prisons, that number is misleading because
13 videophones are spread throughout the prison system whereas sign language users are clustered on
14 certain yards. Godbold Decl. ¶ 31, Ex. 20 at 2. In one case, on San Quentin’s South Block, there
15 is a single videophone device for the entire yard, with seven people on that yard approved to use
16 the phone. Hutt Decl., Ex. 16 ¶¶ 36-41 (Declaration of A.C., DPH, SQ). In another, building 24
17 on E-yard at RJD, there are six deaf signers who share a single videophone. Class members report
18 having to wait for access to phones. *Id.*, Exs. 14 ¶ 14 (Declaration of C.Q., DPH, RJD), 16 ¶¶ 18,
19 36-41 (Declaration of A.C., DPH, SQ). Despite already having such limited access to phone calls
20 with friends and family, some class members feel pressure to cut their calls short so that other
21 class members can use the phone. *Id.*, Ex. 16 ¶ 38 (Declaration of A.C., DPH, SQ).

22 Further, with tablet calls an incarcerated person can make multiple attempts to reach a
23 loved one; but videophone users may have to wait hours or days before they can access to the
24 videophone again to make another attempt. *Id.* ¶¶ 39, 41 (Declaration of A.C., DPH, SQ). The
25 limitations in videophone access make contact with loved ones difficult and place an additional
26 burden on users to attempt to pre-arrange calls videophone appointments around their loved ones’
27 schedules, which is nearly impossible given the inherent unpredictability of daily life in prison.
28 *Id.*, Exs. 10 ¶ 30 (Declaration of Z.H., DPH, SATF), 11 ¶¶ 8-10 (Declaration of S.R., DPH,

1 SATF). Class members report that the significant barriers they face to connecting with their
2 friends and family severely impacts their mental health and emotional well-being. *Id.*, Exs. 16 ¶¶
3 40-41 (Declaration of A.C., DPH, SQ), 10 ¶¶ 28-30 (Declaration of Z.H., DPH, SATF), 11 ¶ 14
4 (Declaration of S.R., DPH, SATF).

5 Class members also report that, because they are required to make their phone calls in
6 public areas, such as busy dayrooms and rotundas, privacy is a concern. *Id.*, Exs. 15 ¶ 6
7 (Declaration of H.C., DPH, RJD), 14 ¶¶ 6, 8 (Declaration of C.Q., DPH, RJD), 16 ¶ 16
8 (Declaration of A.C., DPH, SQ), 11 ¶¶ 5, 15 (Declaration of S.R., DPH, SATF), 10 ¶ 6
9 (Declaration of Z.H., DPH, SATF). During their calls, they have to contend with others passing
10 by and creating constant distractions. *Id.*, Ex. 16 ¶ 46 (Declaration of A.C., DPH, SQ). And they
11 have to contend with others staring at them or their loved ones, sometimes in an appropriate
12 manner. *Id.*, Exs. 16 ¶¶ 43-45 (Declaration of A.C., DPH, SQ), 11 ¶ 15 (Declaration of S.R.,
13 DPH, SATF).

14 When CDCR provides non-sign language users benefits and opportunities, such as the
15 opportunity to make phone calls privately and independently with flexibility and convenience,
16 Title II and Section 504 require that sign language users receive no less. *Guy v. LeBlanc*, 400 F.
17 Supp. 3d 536, 543 (M.D. La. 2019) (deaf incarcerated individuals entitled to phone access to the
18 same extent as phones are available to non-deaf individuals). This includes the ability to access a
19 personal phone device (such as a videophone) in their own time without waiting and having to get
20 permission from custody staff to leave their cells and travel to the dayroom, which is often
21 inaccessible due to modified programming or staffing shortages. *See, e.g., Trivette v. Tenn. Dep't*
22 *of Corr.*, No. 3:20-CV-00276, 2021 WL 10366330, at *12 (M.D. Tenn. May 5, 2021) (deaf
23 incarcerated individuals should not have to get an official's permission each time they use the
24 videophone and require assistance to be escorted to a room where videophones are available). The
25 *Armstrong* Court has already found, in a similar context, that in-cell access to equipment was
26 required to in order to ensure that class members could independently participate in completing
27 reading and writing tasks for parole preparation. Dkt. No. 3584 at 4.

28 To address the inequality, Defendants report that they can install new videophones to

1 improve access, subject to space limitations. Godbold Decl., Ex. 20 at 2. Defendants have also
2 stated that they intend to ensure phone times for people who use videophones will be the same as
3 for other phone calls. *See* page 99. Plaintiffs' counsel disagree that, as a result of these measures,
4 class member concerns are therefore "moot." *See* Godbold Decl., Ex. 24 at 2. Simply equalizing
5 the hours of access will not eliminate the other barriers described by class members, above, that
6 are inherent in any prison setting when one group is required to gain access to a device through
7 custody staff. Also, the possibility of more videophones being installed remains uncertain and,
8 even if it did occur, a few new videophone kiosks in the same public spaces is unlikely to result in
9 equal access when all others can place calls on individually issued tablets. *See id.*; Exs. 20 at 2, 24
10 at 2; Dumalig Decl. ¶ 8.

11 It is not necessary, at this time, to reach the issue of whether Defendants' refusal to provide
12 in-cell videophone access on the tablet amounts to a violation of the ADA because the parties
13 agree, the factual record is not yet fully developed. As such, the parties have entered into the
14 following agreement:

15 The parties agree to continue to meet and confer for a limited period, with the
16 assistance of the Court Expert, to identify a solution, required by the ADA, that
17 enables equal access to phone calls for people whose primary method of effective
18 communication is sign language. This solution will address the situation when
19 incarcerated people are not permitted to leave their cells during modified
20 programming and in-cell phone access is available to incarcerated people without
21 hearing impairments.

19 The meet and confer period shall commence after the filing of the Joint Statement
20 due on October 16, 2024 and shall end no later than February 17, 2025. The parties
21 agree to work, in conjunction with any technology experts engaged by the parties,
22 on identifying all practicable solutions that could address Plaintiffs' stated equal
23 access concerns and address Defendants' stated security concerns, including the
24 need to passively observe and monitor an incarcerated person's video
25 communication with third parties, to disable camera access when the tablet is not
26 plugged into the docking station, to prevent any modification to the tablet that may
27 enable unauthorized use, and to prevent the transmission or possession of
28 unauthorized images; unauthorized written, video or audio content; or
29 contraband. The solution(s) considered by the parties must consider operational
30 and infrastructural limitations present in the carceral setting.

26 The parties agree to gather all information to identify practicable solutions by
27 February 1, 2025. If a solution is identified and it is feasible to implement the
28 agreed-upon solution alongside the rollout of the new tablet contract, the parties
29 agree to work to ensure implementation of the agreed-upon solution at the time of
30 the rollout of the new tablets. If the parties are unable to agree on a solution that
31 provides deaf signers equal access to phone call service, the Court Expert will

1 certify disagreement. If the Court Expert determines the parties are not able to
2 reach agreement, the parties shall, within 30 days of the Court Expert's
3 determination that an agreement cannot be reached, submit a joint statement limited
4 to 30 pages, with each party having 15 pages each, to the Court discussing the
5 unresolved disputes.

6 Although the parties agree to take this additional time to identify feasible solutions, there is
7 no reason to delay in implementing a policy to ensure that class members are afforded access
8 during modified programming and lockdowns, as discussed in Item 10, above. This Court should
9 order the parties to engage in this process on an expedited basis.

10 **(b) Dispute resolution process**

11 The parties have been going around in circles regarding how to resolve disputes that might
12 arise regarding the ADA accessibility features of the statewide tablets. Plaintiffs' counsel asked
13 multiple times, and in multiple different ways, how Defendants plan to ensure – given the specific
14 timelines and process for moving forward with the large-scale statewide communications contract,
15 of which tablets are only one piece – that the proposed statewide contract addresses the ADA
16 accessibility features class members require on tablets. *See* Godbold Decl. ¶¶ 5, 7, 9, 12, 19. Thus
17 far, Plaintiffs' counsel have not received a meaningful response to this question.

18 Defendants have claimed that “[t]here is no requirement in the language [of the Court’s
19 order, Dkt. No. 3538] to resolve disputes before a contract is finalized.” *Id.* ¶ 13, Ex. 9 at 2. As
20 such, Defendants have been unwilling to meet with Plaintiffs to discuss their concerns and have
21 claimed that such concerns are premature at this stage. *See id.* ¶ 18, Ex. 14 at 5 (“Plaintiffs’
22 request to describe our technology solution as concluded (when one has not been reached) is
23 premature. It is especially premature considering there have thus far been no proposals placed
24 under consideration by the State”); *see also id.* ¶¶ 16, 18, 20, 21, 22 (describing Plaintiffs’
25 attempts to meet with Defendants); *id.* ¶ 28, Ex. 24 (stating, “it is up to the vendors to come up
26 with a solution on how to comply with the RFP requirements.”)

27 Generally, the competitive bidding process requires the state to provide all potential
28 bidders with the same opportunity to submit proposals on the same terms. *See id.* ¶ 13, Ex. 9 at 4
(noting that any modifications to the solicitation are communicated to all parties who have
identified themselves as bidders). Thus it is essential to capture contract requirements in the

1 solicitation document. Defendants themselves acknowledge that they are bound by the solicitation
2 document: “If there is a need for modification to the solicitation, as was discussed with Plaintiffs
3 and the Court Expert at the meeting on May 10, 2024, modifications will be made by addenda
4 issued *pursuant to terms within the solicitation document.*” *Id.* ¶ 13, Ex. 9 at 4 (emphasis added).

5 Despite the clear requirement to ensure that the solicitation document contain the required
6 terms of the contract, Defendants claim that it is possible to resolve disputes at multiple points in
7 the future. First they claim it is possible to resolve disputes through negotiations after the
8 submission of final proposals deadline. *See id.* ¶ 13, Ex. 9 at 4 (“The State may also, through the
9 negotiation process, discuss a Bidder’s proposal in areas that are determined to materially enhance
10 the proposal’s potential for award”). While it is true that such negotiations can occur at later
11 stages in the process, they are not open to covering every aspect of potential bids and can only
12 occur under certain conditions. *See* PUB. CONT. § 6611(a), (c), (e) (limiting the ability of the State
13 to negotiate only when certain conditions exist). Defendants also claim that modifications can
14 also occur after the award of the contract. *See* Dimalig Decl. ¶ 17 (“If the next tablet contract
15 needs to be modified following the award, modifications can be made by amendment(s) issued
16 pursuant to the terms of the solicitation document”). This possibility is also limited, as it is clear
17 these modifications are still subject to the solicitation document.

18 While it remains unclear whether these are viable options for resolving future disputes that
19 might arise – disputes where the RFP covers the requested ADA feature but the contract fails to
20 deliver – it is clear these are not options for resolving disputes that may arise prior to the
21 solicitation document being finalized.

22 This Court should act now, given Defendants’ position that they are not required to resolve
23 disputes prior to the award of the contract, and Defendants’ reluctance to meet with Plaintiffs’
24 counsel to discuss concerns, to clarify that Defendants are required to “meet to discuss the issues”
25 if “Plaintiffs’ counsel believe that the proposed statewide contract for tablets does not comply with
26 the ADA and remedial plans” pursuant to SATF Stipulation Item 12. This Court should further
27 clarify that the purpose of meeting is to resolve disputes at the earliest stage possible in this
28 process.

1 This Court should also Order Defendants to develop a plan, including a proposed schedule
2 for immediately sharing all information that is made public regarding the statewide RFP through
3 the state contracting process, and meeting with Plaintiffs' counsel shortly thereafter, including
4 after the award of the contract on December 31, 2024. The purpose is to determine whether the
5 state can and shall negotiate with bidders regarding the resolution to ADA issues that arise in this
6 process. PUB. CONT. § 6611(a), (c), (e).

7 **2. Defendants' Statement**

8 Defendants believe this item is resolved and does not require additional briefing to the
9 Court. SATF stipulation item 12 requires that: (1) Defendants ensure that the Court Expert and
10 Plaintiffs have an opportunity to offer input to Defendants about what accessibility features should
11 be required in the next statewide contract for tablets; (2) the parties meet and confer to discuss the
12 recommendations; (3) the parties and the Court Expert meet to discuss the issues if Plaintiffs'
13 counsel believe that the proposed statewide contract for tablets does not comply with the ADA and
14 the remedial plan; and (4) if the Court Expert determines the parties are not able to reach
15 agreement on the proposal, the parties submit a joint statement to the Court discussing the disputes
16 regarding the proposal. (ECF No. 3538 at 7.) Defendants have fully complied with the
17 requirements of this portion of the SATF stipulation.

18 The Court should deny Plaintiffs' invitation to expand the parameters of the stipulation.
19 Plaintiffs contend that this portion of the stipulation has not been resolved because the parties were
20 unable to reach an agreement regarding deaf signers' access to phone calls and class members'
21 access to tablets with larger screens (*see* Plaintiffs' Statement at *supra*), but that is not what the
22 stipulation required.

23 Defendants have complied with the requirements of this stipulation item by providing
24 Plaintiffs and the Court Expert an opportunity to offer input on accessibility feature requirements
25 in the next statewide contract for tablets; engaging in an extensive meet and confer discussions
26 with Plaintiffs' counsel to address their concerns regarding Request for Proposal (RFP)
27 compliance with the ADA and the remedial plan; amending the RFP requirements to address
28 Plaintiffs' concerns; and agreeing to work with Plaintiffs to identify a solution, required by the

1 ADA, that enables equal access to phone calls for people whose primary method of effective
2 communication is sign language, to address Plaintiffs' concerns regarding phone access for deaf
3 signers. Because nothing more was required, this portion of the stipulation is fully resolved.

4 (a) **Defendants Complied with the Requirements of the SATF**
5 **Stipulation Item 12**

6 Defendants fully complied with the requirements of the stipulation after engaging in nearly
7 ten months of negotiations with Plaintiffs. On January 5, 2024, Plaintiffs provided Defendants
8 their written recommendations on what accessibility features should be required in the next
9 statewide contract for tablets. (See Godbold Decl., Ex. 2.) The parties met to discuss those
10 recommendations on February 16, 2024. Thereafter, the parties discussed Plaintiffs' concerns
11 regarding tablet accessibility features and Defendants explained in minute detail the State
12 contracting process to Plaintiffs' counsel and the Court Expert. (See Godbold Decl. ¶¶ 7-13 and
13 Ex. 9.)

14 On July 15, 2024, the [Request for Proposal C5611826](#) (RFP) containing accessibility
15 feature requirements recommended by Plaintiffs' counsel was posted to the Cal eProcure platform.
16 The RFP contained multiple ADA compliance requirements, including requirements for ADA
17 general technology, accessibility compliance assessment, ADA contractor obligations, ADA
18 corrective action, ADA continued compliance, and termination for ADA non-compliance. (See
19 Dumalig Decl., Ex. B at 9-10.) This RFP underwent an extensive Question and Answer (Q&A)
20 process, where potential bidders presented their questions and received answers regarding RFP
21 requirements. Plaintiffs also had an opportunity to offer their input during this Q&A process.
22 (Dumalig Decl. ¶ 14.) The Q&A set and the resulting RFP Addendum was posted on September
23 25, 2024, and is publicly available, on the [Cal eProcure platform](#). (*Id.*)

24 On October 9, 2024, California Department of Technology issued another RFP Addendum
25 to address, in part, Plaintiffs' concerns that the screen size of the tablet created by potential bidders
26 would be insufficient to accommodate the needs of certain class members. This RFP Addendum
27 adds a new requirement that the contractor agree to work with CDCR to develop mutually agreed
28 upon ADA-compliant solutions for incarcerated persons with disabilities when certain

1 accommodations have been recommended for those persons by a specialist. (*See* Dumalig Decl. ¶
2 14 and *see* Dumalig Decl., Ex. H at ADA-606.)

3 Despite the lengthy negotiations completed to date, the parties have agreed to meet and
4 confer for a limited period of time, with the assistance of the Court Expert, to identify a solution,
5 required by the ADA, that enables equal access to phone calls for people whose primary method
6 of effective communication is sign language. (*See* Plaintiffs' Statement at *supra*.)

7 **(b) Critical Safety and Security Concerns Prohibit In-Cell Access to**
8 **Video Communication.**

9 To ensure safety and security of CDCR institutions, all video communication by
10 incarcerated people with third parties requires passive observation by custody staff. (Lorey Decl.
11 ¶¶ 32-34; Kojima Decl. ¶¶ 5-7.) Passive observation of video communication while the tablet user
12 is inside of their cell is not feasible, especially during the modified programming events. (Lorey
13 Decl. ¶ 35.) Providing incarcerated people in-cell access to video communication presents
14 significant safety and security concerns in the carceral setting, as further detailed in the declaration
15 of CDCR's Assistant Deputy Director Dawn Lorey and CDCR's Chief Information Security
16 Officer Ken Kojima (*see* Lorey Decl. ¶¶ 32-35; and *see* Kojima Decl. ¶¶ 5-7). Therefore, devices
17 that enable video communication (including kiosk stations, docking stations, and VRS stations)
18 are all located in the common areas of the housing units, which allows this passive observation.
19 (Lorey Decl. ¶ 34; Kojima Decl. ¶ 5.) Because of these security concerns, CDCR will not agree to
20 permit in-cell access to video communication to any incarcerated person, including VRS. (*See*
21 ARP at 8 (stating that a request for accommodation may be denied based on a legitimate
22 penological interest; undue financial or administrative burden; fundamental alteration of the
23 service, program, or activity; and direct threat of substantial harm to the health or safety of the
24 incarcerated person or anyone else, including the public.))

25 Even with this legitimate security restriction, abundant technology exists and provides
26 incarcerated people with ample opportunity to connect with the non-incarcerated third parties.
27 Incarcerated people at SATF can make video calls via dedicated kiosk stations or by docking their
28 tablets into tablet docking stations. (Kojima Decl. ¶ 5.) There are currently 93 kiosk stations and

1 179 docking stations at SATF located in the common areas of the housing units. (Dumalig Decl.
2 ¶ 11.) All incarcerated people at SATF, regardless of their DPP designation, have the same access
3 to video calls via kiosks and docking stations. (*Id.*)

4 Deaf class members who use ASL as their primary method of communication (DPH
5 signers) can also place phone calls using one of the 11 Video Relay Service (VRS) stations at
6 SATF exclusively designated for those class members' use. (Dumalig Decl. ¶ 12.) These VRS
7 stations, located at SATF dayrooms, allow DPH signers to interact with a communication assistant
8 by video, while the communication assistant is also connected to another user on the voice side of
9 the call. (*Id.*) And CDCR is working on a solution that would allow the VRS station user to see
10 the person they are contacting in addition to the communication assistant. (*Id.*) Deaf class
11 members also have access to captioned telephone calls, and all incarcerated people, including deaf
12 class members, have access to an email and a messaging app on their tablets that allow them to
13 communicate with non-incarcerated third parties 24 hours a day, 7 days a week, including during
14 modified programming events. (Lorey Decl. ¶ 60.)

15 Despite advocating for in-cell access to "videophones" for deaf signer class members
16 because incarcerated people without hearing impairments can place calls on their tablets inside of
17 their cells while deaf signers are required to use dedicated VRS stations located in public areas
18 such as dayrooms, Plaintiffs admit that "[i]t is not necessary, at this time, to reach the issue of
19 whether Defendants' refusal to provide in-cell videophone access on the tablet amounts to a
20 violation of the ADA." (*See* Plaintiffs' Statement at *supra.*)

21 Defendants are also in the process of standardizing access to every type of phone call.
22 (Lorey Decl. ¶ 60.) Once standardized, deaf signer class members will have access to VRS
23 stations during the hours that non-hearing-impaired people have access to out-of-cell calls via wall
24 phones and kiosks, as well as in-cell tablet phone calls. (*Id.*) Defendants will work with Plaintiffs
25 and the Court Expert to address Plaintiffs' stated concerns about deaf signers' access to phone
26 calls during modified programming when other incarcerated people are able to make phone calls
27 on their tablets inside of their cells and DPH signers require staff assistance to access VRS stations
28 during modified programming.

1 (c) **Dispute Resolution Process.**

2 There is no current dispute between the parties requiring Court intervention on this issue
3 because the RFP Addendum 2 addresses Plaintiffs' stated concerns regarding the proposed
4 contract's compliance with the ADA and the remedial plan. RFP for the new tablet contract
5 already requires bidders to comply with the ADA in creating tablets for the incarcerated
6 population. (*See* Dumalig Decl., Ex. B at 9-10; and *see* Dumalig Decl., Ex. D at 10-11.) The
7 amended RFP now also contains a requirement for the contractor to work collaboratively with
8 CDCR to develop a mutually agreed upon ADA-compliant solution for incarcerated people with
9 disabilities when certain accommodations have been recommended for those persons by a
10 specialist. (*See* Dumalig Decl. ¶ 14; and *see* Dumalig Decl., Ex. H at ADA-606).

11 After the bidders submit their proposals, the evaluation team will evaluate and score those
12 proposals based on compliance with the RFP requirements, will select the highest-ranking bidder,
13 and will publish a Notification of Award. (Dumalig Decl. ¶ 16.) This process is confidential.
14 (*Id.*; and *see* [California State Contracting Manual, § 1402.1](#).) After the Notification of Award is
15 published, Plaintiffs will have an opportunity to offer their input regarding any modifications they
16 believe to be needed in connection with the tablet accessibility feature requirements in the
17 statewide contract for tablets, as identified in the RFP Statement of Work, section 5.3.4 titled
18 "Accessibility Corrective Action" and Exhibit 20, Business Requirements, ADA-606. (Dumalig
19 Decl. ¶ 17; and *see* Dumalig Decl., Exs. D and H.) If the next tablet contract needs to be modified
20 following the award, modifications can be made by amendment(s) issued pursuant to the terms of
21 the solicitation document. (Dumalig Decl. ¶ 17.)

22 Since the plain language of the SATF stipulation item 12 requires the parties to meet and
23 confer, and, in the event of disagreement, to brief their dispute on the "proposed" contract's
24 compliance with the ADA and the remedial plan, Plaintiffs' request that this Court order
25 Defendants to meet with Plaintiffs' counsel following award of the contract should be denied. The
26 Court should likewise deny Plaintiffs' request for an order directing Defendants to immediately
27 share with Plaintiffs' counsel all publicly available information regarding RFP because Plaintiffs
28 already have independent access to all publicly posted information related to the RFP.

1 **G. CART (Item 13)**

2 **(Item 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.

6 * * * * *

7 **1. Plaintiffs’ Statement**

8 More than a year ago, this Court found that deaf people who do not know sign language
9 have been for over a decade excluded from programs at SATF and ordered CDCR to make CART
10 or an alternative reasonable accommodation available for due process events, programming, and
11 education “as soon as possible.” Dkt. Nos. 3446 at 14, 37-41, 3467 at 3. CDCR initially assured
12 Plaintiffs and the Court Expert that it would implement CART to provide captioning
13 accommodations for programming and education at SATF and other designated institutions, but
14 suddenly abandoned plans to do so in favor of myViewBoard from ViewSonic (“ViewSonic”), a
15 software that produces captions with artificial intelligence. Dkt. No. 3529 at 10-11. CDCR
16 demonstrated ViewSonic alongside remote CART (that is, no human transcriptionist was present)
17 at the San Quentin Rehabilitation Center on March 27, 2024, and produced videos showing the
18 two technologies at San Quentin and the California Institution for Men in programs on June 21,
19 2024, again with the CART transcriptionist located off-site.

20 From these demonstrations and the opinions of both parties’ experts, three things are clear:
21 (a) neither ViewSonic nor CART with a remote transcriptionist performed during the
22 demonstrations with sufficient accuracy to afford meaningful access to people with disabilities,
23 (b) even if its accuracy were improved, ViewSonic’s built-in display limitations renders it
24 inaccessible to people with disabilities, and (c) CART’s failure to accurately transcribe during the
25 demonstration could be remedied by improved equipment and infrastructure or in-person
26 transcription.

27 CDCR, in its rush to ask the Court to approve an inadequate technology, ignores its own
28 expert’s words of caution. In particular, Dr. Swett explains that “[t]he limited demonstrations of

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1 the two captioning services that were performed suffer from several drawbacks” and that where a
2 demonstration “does not include observation by and input from the individuals the services are
3 meant to accommodate,” it “cannot produce valid or comprehensive results regarding
4 effectiveness[.]” Swett Decl. ¶ 45 (detailing “an important caveat”). Dr. Swett explained that
5 “comprehensive feedback” from deaf and hard-of-hearing individuals “is critical in evaluating the
6 overall effectiveness of and user satisfaction with the technology.” *Id.* Dr. Swett explained that
7 “[a] limited demonstration test cannot gather this valuable data, leading to incomplete or
8 potentially misleading conclusions.” *Id.*

9 It hard to understand, then, how Dr. Swett, who did not incorporate the views of deaf end-
10 users in developing his opinion, *in the very next sentence* can assert: “Nevertheless, I have
11 reviewed the video demonstrations of CART and ViewSonic and can attest to the fact that
12 ViewSonic is an equally effective alternative to CART.” *Id.* That opinion, which contradicts his
13 own methodology, is entitled to no weight. *See Sw. Fair Hous. Council v. WG Chandler Villas SH*
14 *LLC*, 562 F. Supp. 3d 18, 26 (D. Ariz. 2021) (excluding expert testimony where “there is no way
15 that [the expert] could have properly applied his methodology to the facts at issue” where he
16 conceded that he did not “have enough information” about the deaf end-user).

17 Here, only Plaintiffs’ assistive technology expert, Jen McDonald-Peltier, consulted with a
18 deaf end-user in arriving at her conclusions:

19 In addition, my methodology for assessing the ViewBoard against CART involved
20 consulting an end-user—in other words, a deaf person for whom the technology is
21 made—to fill gaps in my perception of the technology. For instance, features that
22 may seem preferable to a hearing person (such as transcription speed that is almost
23 simultaneous with extempore speech) may actually be seen as a detriment by an
end user (as is the case with the ViewBoard, which was considered too fast for the
end user). The preferences and experiences of end users are vital for assessing
assistive technology, and consultation with an end user is essential for forming a
reliable opinion on assistive technology.

24 Hutt Decl., Ex. 133 at 2.

25 And it was only Plaintiffs who produced comprehensive feedback from two deaf end-
26 users: Etienne Harvey, an adventitiously deaf adult and retired professor of ASL and Deaf culture,
27 and Tremmel Watson, who became profoundly deaf in 2020, while incarcerated in CDCR. *See*
28 Hutt Decl., Ex. 132 (Harvey); *id.*, Ex. 134 (Watson). Both Mr. Harvey and Mr. Watson explain in

1 great detail why, based on CDCR’s demonstrations and their prior experience with the
2 technologies, ViewSonic is ineffective and not equal to CART.³³

3 Instead of disputing the opinions of Plaintiffs’ deaf experts, Mr. Harvey and Mr. Watson,
4 CDCR asserts that they are not experts and asks the Court to ignore their analysis. *See* pages 127-
5 28, below. The Court should reject this argument. Under Rule 702, expert testimony must “rest[]
6 on a reliable foundation.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993). And
7 the Ninth Circuit has made clear that “[w]hen evaluating specialized or technical expert opinion
8 testimony, ‘the relevant reliability concerns may focus upon personal knowledge or experience.’”
9 *United States v. Sandoval-Mendoza*, 472 F.3d 645, 655 (9th Cir. 2006) (quoting *Kumho Tire Co.*
10 *v. Carmichael*, 526 U.S. 137, 150 (1999)).

11 Both Mr. Harvey and Mr. Watson have extensive, specialized knowledge of deaf
12 communication and captioning technology based on both personal and professional experience.
13 Mr. Harvey is a retired, deaf professor of ASL and certified sign language interpreter who has
14 worked for over four decades in the D/deaf and hard-of-hearing community and uses captioning
15 technologies extensively with his students and clients and in his personal life. CDCR tries to
16 ascribe significance to Mr. Harvey’s statement that he had not previously heard of “Microsoft AI”
17 but does not explain how this detracts from his expertise in observing and analyzing ViewSonic,
18 the technology at issue, particularly as Mr. Harvey also has experience consulting on other
19 artificial intelligence-generated captions. Mr. Watson is a deaf, formerly incarcerated technology
20 entrepreneur who has used CART, ViewSonic, and other captioning technologies in a variety of
21 personal and professional contexts. He is an “every day” user of captioning and relies on captions
22 and written notes as his primary means of communication. Both experts have developed deep,
23 specialized knowledge that allows them to make “specialized observations,” *Kumho Tire*, 526

24
25 _____
26 ³³ *See* Hutt Decl., Ex. 132 ¶ 8 (Harvey) (“I found the transcription of ViewSonic to be, simply put,
27 overwhelming. This is primarily due to the fact that the computer would adjust individual words
28 and phrases multiple times, meaning that words might appear, disappear, and be replaced rapidly,
sometimes mid-word.”); *id.*, Ex. 134 ¶ 17 (Watson) (“CART beats ViewSonic hands down in
accuracy, context, reliability, visual format, human touch, safety, and transcript retention.”).

(footnote continued)

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1 U.S. at 149, about CART and ViewSonic. That their specialized knowledge derives, in part, from
2 being end-users of captioning technology themselves is not a legitimate basis to exclude their
3 testimony.³⁴ See *Millay v. Surry Sch. Dep't*, No. 1:07-CV-00178-JAW, 2011 WL 1122132, at *7
4 (D. Me. Mar. 24, 2011) (“The Federal Rules are not blind to the fact that expertise is often gained
5 by practical experience.”).

6 Besides its attempt to exclude the only deaf experts who have offered testimony on these
7 technologies, CDCR offers no response to the thoughtful and detailed views of deaf end-users.
8 Instead, CDCR says it should be allowed to provide the accommodation it already has on hand and
9 that it believes is easier to provide—ViewSonic. That decision is not appropriate under CDCR’s
10 own expert’s methodology or the ADA. In fact, Dr. Swett states that “it is crucial for CDCR to
11 have access to a variety of captioning services to address different needs and preferences across
12 the diverse incarcerated population and institutional settings,” that “utilization of any of these
13 technologies should be based on individualized assessments of the end users,” and that some
14 people “may prefer CART.” Swett Decl. ¶¶ 45, 49; see also Dkt. No. 3583 at 19 (“the public entity
15 is required under the ADA to undertake an investigation to determine what constitutes a
16 reasonable accommodation while giving primary consideration to the disabled person’s
17 preference”); *Updike v. Multnomah Cnty*, 870 F.3d 939, 958 (9th Cir. 2017) (“If the public entity
18 does not defer to the deaf individual’s request, then the burden is on the entity to demonstrate that
19 another effective means of communication exists or that the requested auxiliary aid would
20 otherwise not be required.”); *Reaves v. Dep’t of Corr.*, 195 F. Supp. 3d 383, 426 (D. Mass. 2016)
21 (holding that “burden—so long as it is not undue—is a necessary component of reasonable
22 accommodation”).

23 Because people with hearing disabilities remain excluded from prison programs, services,
24 and activities through CDCR’s failure to implement reliable real-time captioning for programming
25 and education, Court intervention is needed.

26
27 ³⁴ In the alternative, should the Court accept Defendants’ argument that Mr. Watson and Mr.
28 Harvey are not Rule 702 experts, the Court should consider non-specialized observations in their
declarations as lay opinion testimony. Fed. R. Evid. 701.

1 (a) **The CDCR demonstrations establish that neither ViewSonic nor**
2 **“remote” CART perform adequately with existing prison**
3 **equipment and infrastructure.**

4 “As to persons with a hearing disability, implementing regulations for Title II provide that
5 a public entity must ‘take appropriate steps to ensure that communications’ with disabled persons
6 ‘are as effective as communication with others.’” *Updike*, 870 F.3d at 949 (quoting 28 C.F.R.
7 § 35.160(a)(1)).

8 It is clear that neither ViewSonic nor “remote” CART (*i.e.*, CART provided through a
9 remote transcriptionist) performed adequately during the demonstrations to meet that standard. As
10 Ms. McDonald-Peltier, Plaintiffs’ assistive technology expert, explained, “neither tool met the
11 effectiveness standard,” and in particular neither displayed sufficient accuracy, “but each for
12 different reasons”:

13 CART was ineffective during the visit due to what seemed to be connectivity issues
14 and microphone issues. At one point during the demonstration, we were told that
15 the receiver for the CART microphone had been lost. The ViewBoard, on the other
16 hand, seemed to be transcribing most of the time. The issue was that the *substance*
17 of the transcription was incorrect, and its visual presentation was difficult to
18 decipher.

19 Hutt Decl., Ex. 133 at 4-5.

20 Ms. McDonald-Peltier, who attended the San Quentin demonstration in-person, further
21 observed: “It was apparent that neither technology could pick up all words spoken in any
22 environment, particularly the larger chapel where a self-help group was being held.” *Id.* at 5.
23 Similarly, Mr. Watson, a deaf end-user, explained: “When I reviewed the videos, I was not able to
24 understand what was going on in the room by looking at either technology.” Hutt Decl., Ex. 134
25 ¶ 28.

26 CDCR acknowledges that ViewSonic was “not perfect” during the demonstrations. *See*
27 page 134, below. That is an understatement. CDCR states that ViewSonic “at least conveyed
28 substantive information.” *Id.* But such faint praise proves the point; under the ADA, it is not “a
sufficient defense for a defendant merely to show that a plaintiff could participate in the most
basic elements of” the exchange. *Silva v. Baptist Health South Florida, Inc.*, 856 F.3d 824, 829,
835 (11th Cir. 2017) (holding that “limiting the required level of communication to that necessary

1 to convey the primary symptoms, treatment plan, and discharge instructions may still result in deaf
 2 patients receiving an unequal opportunity to participate in healthcare services in comparison to
 3 non-disabled patients”).

4 CDCR’s assistive technology consultant does not contend that ViewSonic was accurate,
 5 but only that it was in his view *more accurate* than CART. Swett Decl. ¶¶ 46-47. But even the
 6 examples cherry picked by Dr. Swett show that ViewSonic was not sufficiently accurate to be “as
 7 effective as communication with” hearing people. 28 C.F.R. § 35.160(a)(1).

8 For example, Dr. Swett lists the following ViewSonic transcription in an attempt to show
 9 that ViewSonic “performed far better at accurately captioning the live program than CART”:

10 You guys are sad. No. Yay. Everybody away. Did you hear me? Going to have a
 11 break.no yeah no actual are you justin over here messed you all up change your seat
 12 huh you’ll be all right yeah you know we have a break coming up. Let that provide
 13 me something. like rake is coming up june 24th through july 8th no education so
 14 we’re checking yourself for BA7 there to get that multiple choice and demand is
 down in after these investments you get credit more for this quarter.this is the last
 chapter i think i’ll be opening up before we go on brand so we’re here to support
 your completion of each assessment to support you learning these P curves. What’s
 the goal of spelling into the key? passing for your test For your final Test.

15 Swett Decl. ¶ 46 (2:08-3:17).³⁵

16 Whether ViewSonic was “far better” than CART during this one minute, nine second
 17 exchange is debatable. What is not debatable is that the ViewSonic transcription was inaccurate
 18 and ineffective; among other things, it introduces words and phrases—like “justin,” “Everybody
 19 away,” “BA7,” “P curves,” “investments,” and “brand”—that no one said, that have no meaning in
 20 this context, and that distort the message entirely. *See* Swett Decl. ¶ 46. Although CDCR faults
 21 CART for stopping transcription at times, *see* page 136, below, from the perspective of a formerly
 22 incarcerated deaf end-user, that is more desirable and respectful to the disabled person than
 23 transcribing nonsensical information, as ViewSonic did here:

24 In the CDCR videos I observed, CART transcriptionists frequently indicate
 25 ‘inaudible’ or ‘away from microphone’ multiple times. This was far more effective
 than ViewSonic, which kept transcribing nonsensical information. As a matter of

26 _____
 27 ³⁵ Dr. Swett’s transcriptions of ViewSonic do not reflect that in many instances, words and
 punctuation changed. Pelsinger Decl. ¶¶ 6-9, 11-14, 16-18, 21-24, 26, 30-31, 36-38, 40-42, 44-46;
see also id. ¶ 14, 19 (Dr. Swett introduces capitalization that never appeared on screen).

28 (footnote continued)

1 basic respect, it is better to tell a deaf person that audio is not reliable, rather than
2 have them try to decipher and understand nonsensical information.

3 Hutt Decl., Ex. 134 ¶ 38 (Watson).³⁶

4 To address concerns with inaccuracy, CDCR's consultant Dr. Swett states: "If an
5 individual relying upon the captioning technology is confused about what has been said, they can
6 use low-tech communication repair strategies by asking the person to clarify or repeat
7 themselves." Swett Decl. ¶ 48. That is not the ADA standard and improperly places the person
8 with a disability in an untenable position. It is CDCR's responsibility "'to ensure that
9 communications' with disabled persons 'are as effective as communication with others.'" *Updike*,
10 870 F.3d at 949 (quoting 28 C.F.R. § 35.160(a)). CDCR cannot offer a transcription technology
11 known to be inadequate and put the burden on the person with the hearing disability to constantly
12 interrupt in an attempt to understand what is being spoken aloud and ask people to repeat
13 themselves, in the hopes that the technology will somehow get it right the next time.

14 As an initial matter, the person may not know what information was not accurately
15 transcribed, by virtue of their disability. *Cf. Silva*, 856 F.3d at 835 ("we reject a requirement that a
16 disabled patient explain exactly what was poorly communicated when that patient could not know
17 that information precisely because of the disability."). In any event, Dr. Swett entirely fails to
18 consider the perspective of the disabled person. As G.E., a hard-of-hearing class member at SATF,
19 explains:

20 I'd sit in the front row to try to hear [in programs], but even then I couldn't follow.
21 I had to constantly disrupt the class, asking in front of everyone for the inmate
22 facilitator or the instructor to stop, say it again, look in my direction, just to try to
23 follow along. I felt like a burden. I could tell other participants were getting
24 frustrated with me. They would look at me when I had to interrupt and roll their
25 eyes or otherwise express frustration. I wouldn't want me in class if I were them; I
26 understand that when I have to stop the class to ask for information to be repeated, I
27 interrupt the flow and slow things down. A lot of people in these classes to try to
28 earn milestone or other credits so they can get out of prison faster; I didn't want to
be the guy with a disability slowing everyone down. I could feel their eyes on me. I
am part of the CCCMS program, and when everyone is staring at me like that, I can
feel my PTSD, my anxiety, and my depression kicking in. I feel like I'm bothering

³⁶ In some cases, Dr. Swett and CDCR fault CART for delays or stoppages where it in fact appears that the display screen was not properly situated (i.e., user error by prison officials) or the transcriptionist paused transcription to speak with prison officials. *See Pelsinger Decl.* ¶¶ 5, 15, 20, 25, 27, 33-35.

1 people. . . .

2 That left me with a choice of whether to keep interrupting, slowing down the class,
3 and frustrating other inmates, or just keeping my mouth shut and smile and nod as
4 if I understood what was happening in the group, even though I didn't. I stopped
interjecting and either stopped going to class or just sat in class without being able
to understand what anyone was saying.

5 Hutt Decl., Ex. 9 ¶¶ 21-22.

6 Indeed, CDCR itself suggests that incarcerated people may “seek retaliation against”
7 people with disabilities if they think their accommodations are “preventing them from fully
8 participating in group activities.” Mebane Decl. ¶ 5.

9 As CDCR acknowledges, the subject matter of many programs involves “discussion of
10 sensitive topics,” including sexual assault. *Id.* It is hard to understand how Dr. Swett can expect a
11 person with a disability to interrupt a program discussing addiction and sobriety to ask for
12 clarification of what another participant meant by “Chinese to fight,” a ViewSonic transcription
13 for “planning sobriety” during one demonstration. *See* Pelsinger Decl. ¶¶ 40-42; *see also id.* ¶¶ 44-
14 45 (ViewSonic improperly transcribed “I started doing more. in the same big bugs” when someone
15 was discussing their path to addiction).

16 As A.C., a deaf class member who communicates through sign language, explains:

17 When I do not understand the interpreter, I do not want to interrupt to ask for
clarification, because it would be too disruptive in such a sensitive conversation.
18 But when I do not understand the interpreter, I might not react appropriately – I
might think someone is being funny when they are being serious, or vice versa. The
19 other people in my groups can get offended when I do not react in an appropriate
way, which can cause conflicts between us. It is also embarrassing for me to realize
20 that I have laughed when I shouldn't, or to see that everyone else is laughing and
not understand why.

21 Hutt Decl., Ex. 16 ¶ 61.

22 A.C. explained that when there is an in-person interpreter, the interpreter “can be the one to
23 ask someone to repeat what they did not hear or to ask people to slow down when they are talking
24 too fast.” *Id.* ¶ 62.

25
26 **(b) Problems with CART during CDCR's demonstration are
attributable to a lack of adequate equipment and infrastructure
and would be addressed through an in-person transcriptionist.**

27 CART is a well-recognized accommodation “for people who are deaf or have hearing loss
28

1 but do not use sign language.” U.S. Dep’t of Justice, Civil Rights Division, *ADA Requirements:*
2 *Effective Communication*, ADA.gov, <https://www.ada.gov/resources/effective-communication/>
3 (last updated Feb. 28, 2020). It “can be provided on-site or remotely.” *Id.* CART can and has been
4 used effectively in many contexts. Mr. Watson, for example, explained: “I have seen CART work
5 effectively in judicial settings and the community. I have relied on CART over a dozen times in
6 legal litigation and meetings, particularly in courtrooms with a diversity of speakers, some of
7 whom speak very quickly or mumble. . . . Up until I watched the videos provided by CDCR, every
8 experience I had with CART showed it to be an accurate, complete, and effective way of
9 captioning.” Hutt Decl., Ex. 134 ¶ 31; *see also id.* at 6 (“During my criminal court proceedings, I
10 relied heavily on CART. In one particular case, I was able to follow the fast-paced dialogue of
11 multiple attorneys because the CART transcriptionist accurately indicated who was speaking and
12 provided essential context cues. This made a significant difference in my understanding and ability
13 to participate.”). Similarly, Mr. Harvey explained:

14 Communication Access Realtime Translation, or CART, is used regularly in the
15 D/deaf community. I have seen the effectiveness of CART during teaching and
16 professional conferences, where CART captioning is provided alongside an ASL
17 interpreter. I have seen the effectiveness of CART in meetings with rehabilitation
18 counselors when working as an interpreter during meetings held in the State of
19 California Department of Rehabilitation. When a non-signer with hearing loss is
20 impaneled for a jury, CART services have been offered to allow equal access.
21 CART services have also been offered to class members going before board panels.
22 In both these instances, I have observed the effectiveness of CART as both an
23 interpreter and a consultant.

24 Hutt Decl., Ex. 132 ¶ 13.

25 Put differently, contrary to CDCR’s contention, the limitations of remote CART during its
26 demonstrations does not mean that CART itself is flawed. Instead, it means that CDCR failed to
27 provide sufficient equipment and infrastructure during the demonstrations to facilitate CART
28 remotely. *See Silva*, 856 F.3d at 838 (holding that “technological failures” in provision of remote
sign language interpretation can result in a finding that a deaf person “could not communicate
effectively with hospital staff”). As Ms. McDonald-Peltier explained, during the San Quentin
demonstration that she attended, there were “substandard microphones and audio feed,” “CART
appeared to have connectivity issues,” and “we were told that the receiver for the CART

1 microphone had been lost.” Hutt Decl., Ex. 133 at 4-5.

2 CDCR’s assertion that “during a BPH hearing involving a deaf signer, the parole candidate
3 and their assigned panel attorney ultimately waived CART because the service was so inaccurate”
4 proves too much. *See* page 134, below (citing Doetsch Decl., Ex. A.). In fact, in that case, both
5 sign language interpreters and a CART transcriptionist appeared remotely. The connection was so
6 bad that neither the sign language interpreters nor the transcriptionists could provide effective
7 services remotely, and the hearing had to be continued. Doetsch Decl., Ex. A at 27-28. In other
8 words, a deaf class member may spend more time in prison than he otherwise would have simply
9 because CDCR did not have the equipment necessary to facilitate remote provision of a common
10 accommodation for people with hearing disabilities.

11 That, of course, does not mean that the Board no longer uses CART. The Board as far back
12 as July 2019 has successfully provided CART through *in-person* transcriptionists. Hutt Decl., Ex.
13 116 at 1-9. In addition, five months after the parole hearing where remote CART was
14 unsuccessful, the Board filed with the Court training materials that explained that captioning still
15 is provided via CART. *See* Dkt. No. 3607-2 at 29, 117 (“For BPH proceedings, including attorney
16 interviews, BPH utilizes Communication Access Real-time Translation (CART) or ‘Real-Time
17 Captioning’ to accommodate someone with a hearing disability who does not use sign language.
18 This involves a live captioner listening to the communication and typing out what is said, so the
19 text can be read by the person being accommodated.”).

20 CDCR offers nothing to explain how the obvious equipment and infrastructure limitations
21 revealed during its demonstrations will be addressed to facilitate remote captioning, and has
22 refused altogether to engage with Plaintiffs’ counsel’s requests to discuss the matter or ensure
23 better microphones for the demonstrations. Declaration of Skye Lovett (“Lovett Decl.”), Ex. 1.
24 CDCR offers only a paragraph in the declaration of its Chief Information Security Officer, Ken
25 Kojima:

26 Plaintiffs are requesting CDCR provide Communication Access Realtime
27 Translation (CART) captioning services in all group programming at SATF. This
28 would constitute a massive expansion of these services. . . . Expanding CART to
hundreds of programs will have a significant negative impact on network speed
(frequently referred to as “bandwidth”), which in turn will impede CART’s

1 capability of providing real time captioning.

2 Kojima Decl. ¶ 9.

3 As an initial matter, Mr. Kojima overstates the need; only programs in which someone
4 who requires captioning as a reasonable accommodation must have captioning. Mr. Kojima
5 provides no estimate as to the number of people who may require CART at SATF, how
6 specifically that will affect network speed, and what steps CDCR will take to improve network
7 speed to facilitate remote CART at SATF.

8 CDCR's suggestion now that remote CART may pose network speed and "scheduling
9 challenges," *see* Mebane ¶ 6, without providing specific information about how these challenges
10 can and will be overcome, is surprising in light of CDCR's representations to the Court last year
11 that it could and would implement CART for programming. In particular, in a sworn declaration,
12 the Assistant Deputy Director of Program Operations responsible for compliance with Court
13 orders in *Armstrong* told the Court in September 2023 that "CART implementation has begun
14 with all due process events and will be incrementally expanded to rehabilitative sponsor led
15 programs, religious services, mental health treatment groups, and substance use abuse [sic]
16 treatment[.]" Dkt. No. 3504-1 ¶ 1, 3, 18. The Assistant Deputy Director again assured the Court on
17 October 5, 2023:

18 Phase Two will expand CART to all programming areas at SATF and at the ten
19 other institutions. Defendants completed the process of identifying these
20 programming areas and testing them for internet and Wi-Fi access, which are
21 required for CART service and which are, anticipated, to be available. Defendants
22 are testing two new devices to deploy in these areas at SATF. Testing in the
23 correctional setting was completed by October 4, 2023 by Enterprise Information
24 Services (EIS) and EIS will conduct further security testing on the actual devices to
25 be used, with CART service available in those areas two weeks later.

26 Dkt. No. 3515-1 ¶ 19.

27 Notwithstanding these representations, over a year later, CDCR has made no further
28 progress in implementing remote CART for programming and education at SATF or elsewhere,
cannot provide details of what must be done to implement CART remotely, and has made no
effort to provide in-person CART in the interim.

1 (c) **CART does not raise privacy concerns simply because it**
2 **involves a human transcriptionist.**

3 One of the benefits of CART is that it includes a human transcriptionist who “has
4 awareness and can better indicate errors and problems,” “can provide an accurate description of
5 who is speaking,” “can convey emotion in voice, intonation, and context,” and “can inform the
6 reader of environmental noises.” Hutt Decl., Ex. 132 ¶¶ 23, 27 (Harvey). Oddly, CDCR contends
7 that CART is undesirable because it requires a human transcriptionist, and that the presence of a
8 transcriptionist may make non-disabled people uncomfortable. CDCR does not explain why the
9 hypothetical discomfort of others should limit accommodations available to people with
10 disabilities. Nor can it. CDCR relies on the declaration of a regional prison official who states:
11 “The introduction of new technologies or services, such as CART, that rely, in part, on
12 unidentified or ever-changing individuals who are transcribing everything being said can
13 discourage incarcerated people from being as candid or frank as they need to be to achieve
14 individual growth.” Mebane Decl. ¶ 4. That position is not supported by the record and flies in the
15 face of the ADA.

16 First, CDCR is required, by Court order and the ADA, to provide sign language
17 interpreters for similar programs. Dkt. No. 1045 at 8; Dkt. No. 2345 at 24; 28 C.F.R. § 35.104(1)
18 (listing “Qualified interpreters” as an example of an auxiliary aid and service). CDCR does not
19 explain why its concern about CART has not manifested with respect to provision of sign
20 language interpreters, and why its concern could not be cured by simple education to program
21 participants about what the technology is and how confidentiality will be maintained. *Compare*
22 Mebane Decl. ¶ 4, *with* Hutt Decl., Ex. 16 ¶ 60 (Declaration of A.C., DPH, SQ) (“I use sign
23 language interpreters to access rehabilitative programming and other programs, services, and
24 activities in prison. Usually, the interpreters sometimes appear in person and sometimes on a
25 computer. I have never had anyone else in my rehabilitative groups say or do anything that makes
26 me think they are not comfortable participating because there is a sign language interpreter
27 present.”); *see generally* Hutt Decl., Ex. 136 at 7 (confidentiality provisions in current CART
28 contract); *id.*, Ex. 137 at 13 (confidentiality provisions in current sign language interpreter

1 contract).

2 Second, “[t]he legislative history of the ADA reveals that Congress intended for
3 accommodations provided to individuals with disabilities to ‘keep pace with the rapidly changing
4 technology of the times[.]’” *California Council of the Blind v. Cnty. of Alameda*, 985 F. Supp. 2d
5 1229, 1240 (N.D. Cal. 2013) (quoting H.R. Rep. 101-485(II), at 108 (1990), reprinted in 1990
6 U.S.C.C.A.N. 303, 391). The suggestion that such reasoning does not apply in prisons is simply
7 wrong. *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 213 (1998) (holding that “the plain
8 text of Title II of the ADA unambiguously extends to state prison inmates”). (Of course, CART is
9 not a new technology; it is new only in California state prisons because prison officials refused to
10 offer it without Court intervention.)

11 Next, the regional prison official states: “I have learned that there is a generalized fear that
12 if a transcript is created from the discussion of sensitive topics, that it will be used against
13 [incarcerated persons] in some manner.” Mebane Decl. ¶ 5. That statement is so vague as to be
14 meaningless. CDCR does not explain how that “generalized fear” could not be addressed by
15 requiring transcriptionists to abide by their code of ethics, informing program participants of the
16 confidentiality provisions that bind the transcriptionists, and explaining to participants whether or
17 not a transcript will be generated for a specific program.

18 **(d) Even if its accuracy were improved, ViewSonic’s built-in display**
19 **limitations renders it inaccessible to people with disabilities.**

20 Setting aside whether the content transcribed by either technology is sufficiently
21 decipherable to constitute effective communication, *see Updike*, 870 F.3d at 949, the effect of the
22 built-in display features of ViewSonic is clear: Plaintiffs’ experts, including two who themselves
23 are deaf, found that the ViewSonic display and visual presentation actually may *impede*
24 comprehension. *See also* Hutt Decl., Ex. 133 at 5 (McDonald-Peltier) (“[W]e were able to
25 comprehensively and conclusively assess during the demonstration . . . each technology’s display
26 and visual presentation,” which are “inherent features in a technology’s design.”). In particular,
27 the technology shows only two lines of text that are deleted and overwritten erratically, forces
28 users who cannot hear the material being captioned to interpret incorrect or nonsensical captions

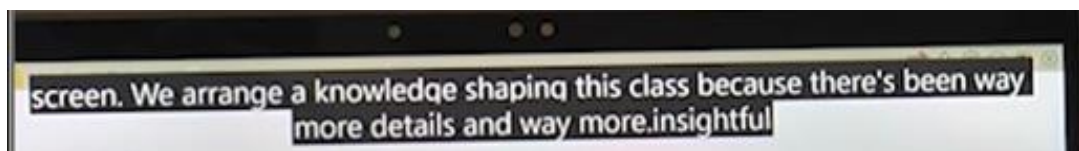
1 without error indicators, appears as a single run-on sentence with no change in speaker, cannot be
 2 customized for users who require larger font or higher contrast, and does not generate a transcript.
 3 *See generally* Hutt Decl., Exs. 131-134. Person E, whose situation the Court Expert found
 4 “demonstrates the severity of this problem,” reported similar concerns with ViewSonic. *See* Hutt
 5 Decl., Ex. 8 ¶¶ 46-52 (Declaration of R.W., DPH, SQ); Dkt. No. 3446 at 38-40 (finding that
 6 without CART, Person E “gave up attempting to participate in self-help groups or other classes,”
 7 including religious services and a veterans group).

8 Both parties’ experts agree that the relevant inquiry is whether a technology is effective for
 9 people with disabilities. Hutt Decl., Ex. 133 at 2 (McDonald-Peltier); Swett Decl. ¶ 45; *see Silva*,
 10 856 F.3d at 835 (communication is ineffective where person “experiences a real hindrance,
 11 because of her disability, which affects her ability to exchange material medical information”).
 12 But CDCR and its consultant Dr. Swett have not adequately addressed any of the concerns raised
 13 by Plaintiffs’ assistive technology expert and deaf end-users regarding ViewSonic, summarized
 14 below, which Plaintiffs produced to CDCR in July 2024. *See* Hutt Decl., Ex. 131.

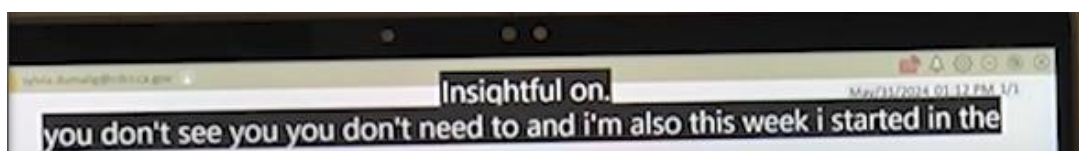
15 (1) **ViewSonic is visually overwhelming due to “false starts,”**
 16 **word changes, and error overwriting that make the**
 17 **visual display erratic and unpredictable.**

18 As a preliminary matter, ViewSonic does not scroll. Rather, the software flashes two lines
 19 of text at a time, such that words do not move “up” the screen at a consistent rate or stay in the
 20 same place within a given line of text, as shown in the following example:

21 May 31, 2024, CIM, at 0:05:15:



23
 24 May 31, 2024, CIM, at 0:05:21:



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 27
 28 Pelsinger Decl. ¶ 37; *see also* Hutt Decl., Ex. 133 at 6 (McDonald-Peltier). In this example, the

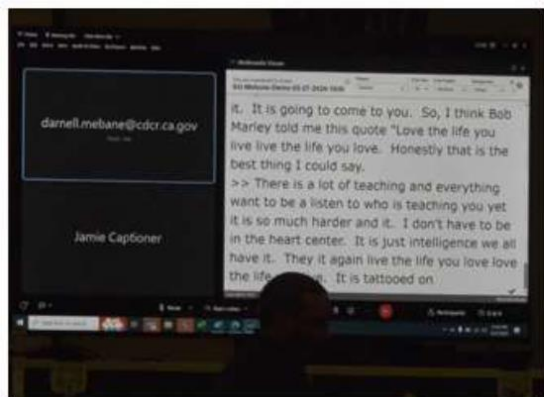
1 word “insightful” first appeared at the bottom right of the transcription, but five seconds later,
2 flashed to the top left. As Ms. McDonald Peltier explains, “[r]eading fluency is a function of both
3 scanning (reading ahead and coming back) and also reading the sequential words to understand
4 them.” *Id.* at 8. The ViewSonic display therefore requires “both horizontal and vertical saccades
5 [rapid eye movements] as words move and change along the long lines of text and from one line to
6 another. Not only is this hard to accomplish quickly enough to decode text, it is incredibly tiring
7 for readers, which will impact their reading comprehension, and ultimately, their ability to
8 participate in the environment.” *Id.*; *see also id.*, Ex. 132 ¶ 19 (Harvey) (“[I]t is much easier to
9 focus my eyes to a designated place on the screen where new words should be appearing,” which
10 is not possible with ViewSonic). Consequently, “the display rate change of the ViewBoard is an
11 impediment to reading comprehension.” *Id.*, Ex. 133 at 8 (McDonald-Peltier).

12 In addition to position changes, the ViewSonic software rapidly withdraws and overwrites
13 text as it “corrects” the initial speech. *Id.*, Ex. 132 ¶ 28 (Harvey). Identifying and re-reading these
14 “false starts” often is not possible because text remains on the screen for only a few seconds, and
15 sometimes less. The result is not communication, but “visual distraction.” *Id.*, Ex. 132 ¶ 29
16 (Harvey) (“The sheer number of ‘false starts’ and movement of words in ViewSonic’s
17 transcription is mind-boggling for a deaf person to try to follow along with.”); *see also* Pelsinger
18 Decl. ¶¶ 22-23 (during a 25 second period also reviewed by Defendants’ expert, ViewSonic made
19 six different word changes to “correct” its initial transcriptions).

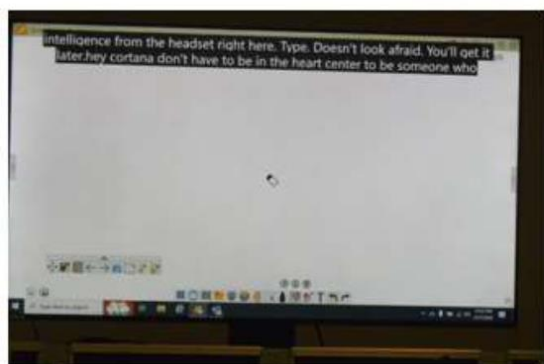
20 **(2) The text grouping and speed of transcription make**
21 **reading difficult or impossible.**

22 Unlike CART, ViewSonic displays only two lines of text at a time. Swett Decl. ¶ 42. The
23 lines vary unpredictably in length, as shown above, but can stretch across the entire screen.
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Large vertical text
display on CART



Limited, two-line text
display on ViewSonic

Hutt Decl., Ex. 131 at 10. Availability of only two lines of text “does not provide enough context for readers to figure out what has happened when errors are made.” *Id.*, Ex. 134 ¶ 54 (Watson). Said differently, “[w]ith such long lines of text, a reader has visual access to fewer words at a time, because they have to move their eyes much more to visually recognize and decode all the words. . . a reader has less context to help them understand as they decode.” *Id.*, Ex. 133 at 6 (McDonald-Peltier).

The challenges posed by the horizontal, two-line display of text are compounded by the reading rate of ViewSonic, which exceeds recommended transcription speeds in the deaf community and according to Mr. Harvey is “too fast to be effective for anyone, including myself.” *Id.*, Ex. 132 ¶ 32 (“The transcription speed of ViewSonic was a major detriment to reading comprehension.”); *see also id.*, Ex. 133 at 11 (Ms. McDonald-Peltier’s analysis of transcription rate and relevant community standards). Nor is Mr. Harvey’s literacy representative of deaf and hard-of-hearing people in CDCR, many of whom are “slow readers or have below-average literacy.” *Id.*, Ex. 134 ¶ 57 (Watson) (“For these people, ViewSonic will not be effective at all.”);

1 *see also id.*, Ex. 109 ¶¶ 17-18, 21 (“Many [people assigned a DNH, DPH, and/or DPS code at
2 SATF] also have low literacy.”). Person E similarly noted regarding the amount of text available
3 and speed of transcription:

4 The larger board with two or three lines of text showed captions way too quickly
5 for me to read. I preferred the board with complete sentences and multiple lines of
6 text, so that I could follow along. Without multiple lines of text to orient myself to
7 the conversation, I was worried that I missed important information. I have the
8 same problem with the iPad – it might transcribe a full screen of text, but
9 sometimes when it gets to the end, everything disappears instead of scrolling, so
10 I’m lost if I didn’t read to the end quickly enough. During the demonstration, I
11 turned to watch the screen with more lines of text to understand what was going on,
12 then looked at the screen with fewer lines of text and my iPad to see how much
13 they were actually picking up.

14 Hutt Decl., Ex. 8 ¶ 46 (Declaration of R.W., DPH, SQ).

15 Finally, CDCR’s consultant states, without responding to the concerns and views of deaf
16 end-users, that “ViewSonic updates at a reasonable reading rate.” Swett Decl. ¶ 42. Even setting
17 aside the contrary opinions of Plaintiffs’ consultants, this opinion still omits consideration of the
18 limitations resulting from a two-line display in a prison environment. Mr. Watson explains:

19 D/deaf people in prion are hypervigilant about their surroundings, and need
20 assistive technology that allows them to use their eyes for reading captions *and* that
21 gives them the flexibility and freedom to check their surroundings for safety. Since
22 D/deaf individuals cannot hear alarms, yelling, officers’ directions, people
23 approaching behind them, or other auditory cues that signal danger, they develop a
24 heightened sense of visual awareness to compensate. This can manifest as being
25 extremely attentive to their surroundings, constantly scanning for potential hazards
26 or changes in their environment. Technology that does not allow D/deaf people to
27 visually scan their environment, such as captions that are too fast and disappear off
28 the screen, will always leave D/deaf people in prison at a disadvantage.

 Additionally, D/deaf people in prison frequently have to take their eyes off the
screen to ensure their safety by observing their surroundings. This would make
ViewSonic’s speed even more challenging to keep up with, and a reader can easily
miss important context if they have only two lines of quickly-disappearing text
provided at a time.

24 Hutt Decl., Ex. 134 ¶¶ 9, 56. There are many other reasons why a deaf or hard-of-hearing user
25 might take their eyes away from a screen—for example, to look at the teacher or other students, to
26 look at their textbook, or to read the expressions and body language of a speaker. In each of these
27 moments, the deaf or hard-of-hearing user loses out on ViewSonic transcription because the
28 display is “moving too quickly” and “difficult to comprehend. *Id.* ¶ 57 (Watson).

1 Dr. Swett’s assertion that ViewSonic “adheres to FCC guidelines, offering a consistent
2 two-line text display similar to TV captions,” misses the mark entirely. Swett Decl. ¶ 48. The
3 Federal Communications Commission (FCC) regulation titled “Closed captioning of televised
4 video programming” sets forth guidelines for “[v]ideo programming,” defined as “[p]rogramming
5 provided by [or comparable to] a television broadcast station that is distributed and exhibited for
6 residential use.” 47 C.F.R. § 79.1(a)(10). There, the FCC lays out their only standards for captions,
7 which are that they be “accurate, synchronous, complete, and appropriately placed.” *Id.*
8 § 79.1(j)(2). These standards were adopted “to improve the accessibility of *television*
9 *programming* for people who are deaf and hard of hearing.” *In the Matter of Closed Captioning of*
10 *Video Programming Telecomms. for the Deaf & Hard of Hearing, Inc. Petition for Rulemaking,*
11 29 FCC Rcd. 2221, 2223 (2014) (emphasis added). In discussion of captioning for live television
12 programming, where “there is little or no opportunity to edit the captioning for accuracy,
13 synchronicity, program completeness, and placement prior to airing,” the FCC recognized that
14 “[u]sually two to three lines of text appear at one time.” *Id.* at 2249. In television, caption
15 placement is important because when “captions appear[] in the middle of the television screen”
16 they can “block[] faces and other important information on the screen.” *Id.* at 2230. Because
17 “[c]onsumers do not have the technical capability to relocate captions on their screens when
18 captions cause these obstructions,” FCC regulations require captions do “not block other important
19 visual content on the screen, including . . . character faces, featured text (*e.g.*, weather or other
20 news updates, graphics and credits), and other information that is essential to understanding a
21 program’s content.” *Id.* at 2244-45; *see* 47 C.F.R. § 79.1(j)(2)(iv). These concerns regarding
22 placement are not applicable where captions are not superimposed atop visual content.

23 **(3) ViewSonic lacks error indicators, forcing deaf people to**
24 **try to make sense of nonsense.**

25 “When captions specify audio problems such as ‘no sound,’ ‘audio unclear,’ or ‘audio
26 distorted,’ it helps D/deaf viewers understand why they might not be hearing any dialogue. This
27 prevents confusion and frustration.” Hutt Decl., Ex. 134 ¶ 36 (Watson). While CART provides
28 these “hazard lights,” or indicators of problems with audio, ViewSonic does not.

1 Captions should alert viewers to the fact that there is an audio problem. Without
2 these alerts, deaf viewers might not immediately realize there is an issue,
3 potentially missing out on important information or context, or trying to make
4 sense out of captions that are incorrect and based on faulty audio.

5 “Hazard lights” are not just about conveying information; they are about ensuring
6 inclusivity, providing clarity, and enhancing the overall accessibility of content for
7 all viewers. . . .

8 It is important to note that not only does ViewSonic lack the capacity to visually
9 indicate audio problems the way that CART can, but that when ViewSonic
10 encounters audio issues, it *makes up* inaccurate and false captions instead of going
11 silent. ViewSonic engages in a continuous, unbroken set of captions seemingly
12 based on any audio that it can pick up, even if that audio is poor quality, and even
13 when the words being transcribed make no sense. In self-help groups where people
14 share sensitive information, it is better for a deaf user to see a caption indicating an
15 audio problem such as “away from microphone,” rather than to receive a
16 completely made-up caption, falsely attributed to someone, with no indication that
17 there was a problem. Made-up captions can lead to misunderstandings, which
18 hinder a deaf person’s rehabilitation at best, and can lead to safety and security
19 problems at worst.

20 *Id.* ¶¶ 37, 41-42 (Watson); *see also id.*, Ex. 131 at 12-13 (ViewSonic transcription in English of an
21 incarcerated person’s story in Spanish, producing for the speech, “¿Como sa[b]es que tu eres
22 amado?” the text, “call start schedule i’m out with you please don’t know”); Pelsinger Decl. ¶¶ 36-
23 39 (during a period with unreliable audio, CART indicated “[Away from Mic]” while ViewSonic
24 transcribed “you don’t see you you don’t need to and i’m also this week i started in the lighthouse
25 and i’m by the way”).

26 **(4) ViewSonic does not distinguish between speakers.**

27 CART transcriptionists are able to “[d]istinguish[] between different speakers by starting
28 text on a new line and including <<< at the beginning of the new speaker line.” Hutt Decl., Ex.
29 135 at 4. ViewSonic, however, “lacks even the most rudimentary form of visual cuing to indicate
30 different speakers.” *Id.*, Ex. 132 ¶ 40 (Harvey). Consequently, “ViewSonic present[s] multi-person
31 conversation as one long continuous sentence without breaks,” without indicating through speaker
32 change whether “what was being said was a question, an answer, or just a thought.” *Id.* ¶ 42; *see*
33 *also* Pelsinger Decl. ¶¶ 40-41 (ViewSonic transcription of a group conversation was incoherent
34 and failed to distinguish between speakers). Lack of speaker identification renders ViewSonic
35 fundamentally inadequate for programming, where, “[f]rom a D/deaf person’s point of view, []
36 heartfelt, sensitive, and collaborative conversations appear to be one single person giving a long

1 and incoherent speech. Hutt Decl., Ex. 134 ¶ 47 (Watson).

2 Near-synchronous transcription does not rehabilitate absence of speaker identification for
 3 ViewSonic. As Mr. Watson has explained, the ViewSonic display moves too quickly to
 4 comprehend, particularly if the deaf or hard-of-hearing user looks away from the screen for any
 5 period of time—including if they do so in an attempt to identify who is speaking. *Id.* ¶¶ 9, 56-57
 6 (Watson). It is simply not feasible for a deaf or hard-of-hearing person to be expected to visually
 7 track fast-moving, erratic captions alongside the movement of a conversation that they cannot
 8 hear. And CDCR’s suggestion that, using ViewSonic, a speaker or moderator could identify the
 9 speaker before they begin speaking would not get around the fundamental problem that
 10 ViewSonic does not accurately transcribe what people say out loud, as discussed at length *supra*.

11 **(5) The ViewSonic display cannot be customized for**
 12 **accessibility.**

13 The ViewSonic display cannot be customized except by providing a larger monitor and has
 14 only two color-change modes. Hutt Decl., Ex. 135 at 3-4. Ms. McDonald-Peltier explains that the
 15 **“availability of display customization options** is an important metric for effective assistive
 16 technologies,” because “[v]isual presentation, such as font size, color, and contrast, can be
 17 important for decoding and recognition.” *Id.*, Ex. 133 at 12. The absence of these features, in
 18 contrast to CART, may not be “adequate for classroom involvement.” *Id.*, Ex. 132 ¶ 25 (Harvey).

19 **(6) ViewSonic has no ability to generate a transcript.**

20 Finally, ViewSonic cannot produce a transcript. Hutt Decl., Ex. 135 at 4. While providing
 21 a transcript to deaf and hard-of-hearing class members is not appropriate for every program
 22 setting, it is necessary in settings where hearing students can take their own notes:

23 [A] transcript is a massive advantage for D/deaf students in any context where
 24 hearing students would be allowed to take their own notes. Indeed, transcripts and
 25 written supplements produced by teachers are the norm in the D/deaf community,
 26 because if a student relies on visually intaking information instead of hearing it, it
 27 is impossible for them to both read captions and look at a keyboard or screen to
 28 take notes. An impossible task for a D/deaf person is to simultaneously watch
 captions or learn through visual cues while *also* taking their own notes. This is why
 professional note-takers are commonly offered as a reasonable accommodation. In
 any situation where hearing students would be allowed to be able to take their own
 notes and review them later, a D/deaf student should be provided access to a
 transcript to review later. If ViewSonic does not provide a written transcript of a

1 lesson and it is used in situations where hearing people can take notes, then it is
2 categorically ineffective and discriminatory towards D/deaf students.

3 Hutt Decl., Ex. 132 ¶ 24 (Harvey). The ability of CART to provide a corrected transcript too is a
4 benefit to clarify any inaccuracies during *in situ* transcription. *See id.*, Ex. 134 ¶ 58 (Watson).

5 * * * * *

6 CDCR’s failure to identify and implement a reliable real-time captioning technology
7 continues to harm people with disabilities in its care. More than eighteen months after this Court
8 ordered CART or an alternative reasonable accommodation “as soon as possible” at SATF for
9 programming and education, CDCR has not identified or provided any captioning for
10 programming or education at SATF—or anywhere else. *See* Dkt. No. 3467 at 3; Godbold Decl.,
11 Ex. 25 at 4 (CDCR statement regarding placement of deaf nonsigners: “It would be contrary to the
12 spirit of the ADA to arbitrarily exclude an entire class of disabled inmates from being housed at a
13 location.”). Assuring the Court and Plaintiffs of its intent to provide CART, only to unilaterally
14 announce plans to implement an inadequate alternative, is a now-familiar pattern in CDCR’s
15 approach to captioning accommodations. *See* Dkt. No. 3266 at 24, 26 (Defendants’ funding
16 requests for CART in 2021); Dkt. No. 3296 at 19 (funding for CART approved); Dkt. No. 3440 at
17 14-15 (incomplete testing of alternatives to CART over a year later); Lorey Decl., Ex. Q at 4-5
18 (summarizing CDCR’s own findings that alternatives tested were “not accurate,” “confusing,”
19 “couldn’t keep up,” “words missing, many misspelling [sic] or scrambled words”); Dkt. No. 3510-
20 1 ¶¶ 60-61, Ex. 29 (incomprehensible transcript generated by Defendants’ chosen alternative at
21 town hall intended to educate on CART). CDCR has not meaningfully engaged with, or even
22 responded to, concerns raised by Plaintiffs’ counsel regarding implementation of captioning
23 accommodations while evaluating this most recent proposed alternative. *See* Lovett Decl., Ex. 1
24 (Defendants refused to meet regarding eligibility, scope, and implementation of captioning
25 program).

26 As a result, people with hearing disabilities who require captioning to fully understand
27 speech remain excluded from programs, services, and activities. *See, e.g.*, Hutt Decl., Ex. 8 ¶¶ 31-
28 39, 53-55 (Declaration of R.W., DPH, SQ); Swett Decl. ¶ 40 (“Without timely transcription

1 services, these individuals face barriers to accessing important instructional content, disrupting
2 their educational progress and rehabilitation efforts.”).

3 The “lonely and frustrating existence” of Person E that was documented in the Court
4 Expert’s first report in December 2022 continues. In August 2024, Person E explained:

5 I feel that it’s hopeless to continue trying to get something that I’ve been fighting
6 for since I learned about it, years ago. It’s hopeless to keep trying to get something
7 that will help me get in programs. I’m fatigued and I’m frustrated. I’m tired of
8 getting my hopes up. I don’t have any more moxie, no more get up and go energy.
9 It’s the same thing again and again – dead end, brick wall. I don’t want to keep
10 filing 1824s. I shouldn’t have to wait for something I need now. I can’t go to
11 veteran groups, I can’t go to church, I’m not getting anything. I feel defeated. If it
12 happens, it happens. If it don’t, then it don’t.

13 I’ll keep going to programs whether I learn something or not. But I have the parole
14 board in a few years, and I feel like I’m behind. I don’t know what I’ll tell them
15 when they ask what I learned in my groups. I worry about not being able to explain
16 myself and being criticized, like people often do when I try to explain that I’m deaf,
17 I don’t know sign language, and I can’t read lips. I read in the San Quentin
18 newspaper about people who have been here for years and keep doing all kinds of
19 programming. They’re old and they keep getting denied at the parole board. I see
20 them, and I think, that could be me.

21 Hutt Decl., Ex. 8 ¶¶ 54-55 (Declaration of R.W., DPH, SQ).

22 Immediate relief is needed. The Court should adapt its previous orders as to sign language
23 interpretation to this context and order that CDCR employ, through whatever salary is necessary,
24 sufficient qualified transcriptionists to serve the needs of people with hearing disabilities in its
25 custody. *See* Dkt. No. 1045 at 8-9; Dkt. No. 2345 at 24-25. The Court should order that CDCR
26 may seek relief from this provision at a particular institution when it has demonstrated that it has
27 the necessary infrastructure and equipment to provide an equally effective alternative. *See id.* That
28 allows CDCR to continue to look for an equally effective alternative, including potentially the
“multiple types of AI-generated captioning technologies” that its consultant states “can provide an
array of visual displays and transcriptions,” *see* Swett Decl. ¶ 49, without delaying provision of a
needed accommodation any longer.

Simply put, people with disabilities cannot wait for CDCR to identify and test another
technology; every day without CART or an equally effective alternative is a day CDCR excludes
people with disabilities from programs, services, and activities. A proposed order is attached.

2. Defendants' Statement

One of SATF's primary missions is providing "educational, vocational, re-entry, and self-help programs" to assist its population in acquiring life skills and work skills "that can be used in support of their efforts at reintegration into society." (SATF Details & History (available at <https://www.cdcr.ca.gov/facility-locator/satf/>.) Defendants understand the importance of meaningful access to group programming for all incarcerated persons, including deaf class members who do not know sign language (deaf non-signers). For months, if not years, Defendants tried to work with Plaintiffs to accomplish the goal of expanding real time captioning for these class members at SATF. That work was futile, and these class members have limited captioning accommodations because of their counsel's myopic insistence on and fixation with a single captioning technology.

Defendants complied with this Stipulation and demonstrated a reasonable alternative accommodation to CART services in a side-by-side comparison of captioning technologies. Having viewed the demonstrations, Plaintiffs essentially concede that CART is ineffective in settings where group programming actually takes place. Not to be deterred, however, Plaintiffs now claim that CART is still the only possible accommodation and demand that CART services be provided by on-site, salaried transcriptionists—a demand that was not made or contemplated during the months-long negotiations, and for which Plaintiffs have provided no evidence to support. The Court should deny Plaintiffs' request because it exceeds the scope of the stipulation requirement and is unprecedented and unsupported by any evidence.

To be clear, contrary to Plaintiffs' assertion, *supra*, Defendants are *not* "rush[ing] to ask the Court to approve an inadequate technology." Defendants tested multiple captioning technologies years ago, implemented CART services for due process events almost 16 months ago, proposed ViewSonic as a reasonable alternative accommodation a year ago, demonstrated that technology multiple times over the course of several months, and hired a RESNA-certified Assistive Technology Professional to provide expert guidance on effective captioning technology. As a result of these efforts, for non-due process events, such as education and group programming, Defendants identified the Live Captions feature of the mvViewBoard by ViewSonic (hereafter

1 “ViewSonic”), an Artificial Intelligence (AI) generated captioning technology, as an equally
2 effective accommodation because it outperforms CART in a carceral setting in terms of accuracy,
3 timing, completeness, placement of captions, scheduling availability, and versatility. The Court
4 should permit Defendants to deploy this technology forthwith.

5 **(a) Background**

6 **(1) Past Advocacy**

7 Plaintiffs initially advocated for Defendants to provide CART services to enable equal
8 access to programming for an individual then-housed at SATF who would ultimately be referred
9 to in the Court Expert’s filings on these issues as “Person E.” (*See* Garske Decl., Ex. B at 1; *see*
10 *also* ECF No. 3446.) Plaintiffs’ counsel were quick to point out that CART services could “be
11 provided on-site or remotely” and “[r]emote real-time captioning . . . does not require a video
12 feed” and “uses microphones to transmit sound to an off-site captionist...” (Garske Decl., Ex. B
13 at 1, n.2.)

14 Several months later, Plaintiffs’ counsel notified Defendants that they “surveyed deaf class
15 members whose primary form of communication is not sign language” and asked those class
16 members if they thought CART services would be helpful to them. (Garske Decl., Ex. C at 1, 6.)
17 Plaintiffs’ counsel once again noted the feasibility of remote CART services (*id.* at 5, n.3) and did
18 not indicate whether they asked class members regarding any other type of captioning technology
19 (*see id.* at 6).

20 Ultimately, in response to Plaintiffs’ advocacy and over the course of several months,
21 Defendants tested three different captioning technologies, including CART, Microsoft Teams
22 auto-captioning, and Microsoft Ease of Access dictation software, as reasonable accommodations
23 for deaf non-signers. (*See* Lorey Decl., Ex. Q at 2.) Meanwhile, Plaintiffs’ counsel continued to
24 insist that “CART is the only viable option” to accommodate these class members. (*Id.* at 6.)

25 At no time in their written advocacy, nor during the extended period of meeting and
26 conferring with Defendants and the Court Expert, have Plaintiffs’ counsel ever advocated for the
27 exclusive provision of on-site CART transcriptionists, much less that CDCR create salaried
28 positions to provide such services. (Lorey Decl. ¶ 73.) And, as recently as July 31, 2024,

1 Plaintiffs’ counsel represented in writing that “[i]t’s important to underscore that Plaintiffs’
2 opposition has not been to the use of AI in general for transcription,” but rather to ViewSonic’s
3 “specific display.” (Lorey Decl., Ex. S.)

4 (2) The Court Expert’s Reports

5 In December 2022, the Court Expert recommended that SATF “provide CART or another
6 reasonable accommodation that would allow deaf people who cannot sign to meaningfully
7 participate in hearings, educations, and programs” and further recommended that SATF
8 “immediately provide automated captioning via Microsoft Teams whenever possible.” (ECF No.
9 3446 at 41-42.) The Court agreed, and ordered Defendants to “make CART or an alternative
10 reasonable accommodation available at SATF. . .as soon as possible...” (ECF No. 3467 at 3.)

11 In July 2023, Defendants began providing CART services to deaf non-signer class
12 members during due process events, including classification committee hearings, administrative
13 segregation unit placement notice hearings, rules violation report hearings, and biannual
14 interviews covered by the staff misconduct orders. (Mebane Decl. ¶ 3.)

15 In August 2023, the Court Expert reported Defendants’ progress in providing the
16 recommended accommodations while noting that “the CART roll-out at SATF” was “a work in
17 progress” and the expansion of CART services to “all programs, services, and activities” would be
18 contingent on a connectivity survey and procurement of additional equipment. (See ECF No.
19 3500 at 11-12.)

20 In November 2023, CDCR began deploying iPhones or iPads as a real time captioning
21 accommodation to DPH-designated class members whose primary or alternate method of effective
22 communication is written notes. (Lorey Decl. ¶ 14.) That month, the Court Expert updated the
23 Court regarding the “logistical challenges” that Defendants had faced when attempting to plan an
24 expansion of CART services to all programs, services, and activities. (ECF No. 3529 at 10.) The
25 Court Expert also reported on Defendants’ plan to “begin using the captioning functionality on
26 View Sonic whiteboards that are already found in classrooms at SATF” and Defendants’ provision
27 of iPhones or iPads with captioning technology to certain DPH-designated class members. (*Id.* at
28 10-11.) The Court Expert noted Plaintiffs’ counsel’s concern that “Defendants were abandoning

1 plans to use CART” and recommended that the Court order Defendants to “provide Plaintiffs with
2 a demonstration of the whiteboard captioning technology in various institutional settings.” (*Id.* at
3 11.) Following the demonstration, the Court Expert recommended that the parties meet and confer
4 “to resolve any outstanding disputes regarding whether the whiteboard captioning technology is an
5 adequate accommodation” and the Court Expert would ultimately report to the Court “on the
6 resolution of these issues.” (*Id.*) The parties stipulated to this recommendation and the Court
7 ordered Defendants to provide the demonstration of the whiteboard captioning technology within
8 60 days of the Court’s order. (ECF No. 3538 at 8.)

9 **(b) Meet-and-Confer Process**

10 On March 27, 2024, in compliance with the stipulated order to demonstrate the whiteboard
11 captioning technology, Defendants conducted a side-by-side demonstration of CART and
12 ViewSonic in multiple settings at San Quentin Rehabilitation Center, including mental health
13 groups, the chapel, gym, and education.³⁷ (Lorey Decl. ¶ 64.) Following the demonstration,
14 Plaintiffs praised Defendants’ efforts in setting up the demonstration and stated they were
15 optimistic that a resolution was attainable. (*Id.* ¶ 67.) Nonetheless, on April 10, 2024, Plaintiffs
16 demanded an additional side-by-side demonstration of CART and ViewSonic in “multiple
17 locations” and “several different programs,” alleging that the demonstration which took place on
18 March 27, 2024, was ineffective due to improper equipment/microphones. (Lorey Decl. ¶ 68; *see*
19 Lorey Decl., Ex. R.) Defendants contend this characterization was inaccurate, as both CART and
20 ViewSonic utilized the same laptop and microphones, allowing for an unbiased comparison of the
21 two technologies. (Lorey Decl. ¶ 69.) Yet, CART was completely unreliable and riddled with
22 technical difficulties and connectivity issues, from the human transcriptionist not being able to
23 hear to completely disappearing; not captioning the last programming event scheduled in the
24 chapel; and needing constant staff attention and assistance to be functional. (*Id.*) Conversely,

25
26
27 ³⁷ On May 3, 2024, Defendants provided Plaintiffs’ counsel with documents and information
28 related to the March 27, 2024, demonstration, including raw and corrected transcripts for CART
from the demonstration and the makes and models of equipment used during the demonstration.
(*See* Lorey Decl. ¶ 66; Lorey Decl., Lodgment A.)

1 ViewSonic had no issue capturing and transcribing regardless of the quality of the microphone.

2 (*Id.*)

3 Despite fulfilling the stipulation obligation to provide a demonstration of ViewSonic
4 captioning technology, on April 19, 2024, Defendants agreed to conduct additional
5 demonstrations, and to video-record and produce those demonstrations to Plaintiffs. (*Id.* ¶ 70.)
6 Defendants also tested and identified additional microphones at Plaintiffs' request. (*Id.*) On May
7 31, 2024, and June 5, 2024, Defendants completed the additional side-by-side demonstrations of
8 CART and ViewSonic, and produced video-recordings of the demonstrations to Plaintiffs on June
9 21, 2024. (Lorey Decl. ¶ 71; *see also* Lorey Decl., Lodgment A.)

10 On July 22, 2024, Plaintiffs provided their position on captioning technology to
11 Defendants and the Court Expert. (Hutt Decl., Ex. 131.) Defendants responded on July 29, 2024.
12 (Hutt Decl., Ex. 135.) On August 1, 2024, Defendants met separately with the Court Expert to
13 discuss the captioning technologies and to identify any issues for possible resolution.

14 (c) **Evidentiary Issues**

15 (1) **Declarations**

16 Plaintiffs submit two declarations in support of their statement on this issue executed by
17 individuals Plaintiffs refer to, *supra*, as “deaf end users” of captioning technology and
18 “consultants,” Etienne Harvey and Tremmel Watson. (*See* Hutt Decl., Exs. 132 and 134.) When
19 Plaintiffs originally produced these declarations, they identified these individuals as experts. (*See*
20 Garske Decl., Ex. D.) Accordingly, Defendants object to certain portions of the Harvey and
21 Watson declarations as improper expert opinion on CART and ViewSonic captioning
22 technologies.

23 Federal Rule of Evidence 702 “contemplates a broad conception of expert qualifications,”
24 but still requires that “an expert be qualified either by ‘knowledge, skill, experience, training, or
25 education.’” *Thomas v. Newton Int’l Enters.*, 42 F.3d 1266, 1269 (9th Cir. 1994) (quoting Fed. R.
26 Evid. 702). The Court should disregard paragraphs 35 through 60 of Watson’s declaration, as well
27 as the “Conclusion” and “Summary” sections on pages 16 and 17, and Plaintiffs’ reliance thereon,
28 *supra*, as Watson has not established that he is qualified to opine on the critical specifications of

1 the captioning technologies at issue. (*See generally* Hutt Decl., Ex. 134.) Watson has not shown
2 that he has any specialized knowledge in assistive technology, and he fails to provide any facts
3 that would demonstrate that his status as an end-user of captioning technology qualifies him as an
4 expert in the purported deficiencies of that technology. (*See id.*) Watson’s testimony on these
5 issues, and those portions of Plaintiffs’ statement, *supra*, which rely on his testimony, should be
6 disregarded.

7 Likewise, the Court should disregard paragraphs 18 through 48 of Harvey’s declaration, as
8 well as the “Conclusion” section on page 13 of that declaration, and Plaintiffs’ reliance thereon,
9 *supra*, as improper expert opinion, as Harvey has not established that he has the requisite expertise
10 to opine on the captioning technologies at issue. (*See generally* Hutt Decl., Ex. 132.) Moreover,
11 Harvey states that “I understand that CDCR has represented that the ViewSonic whiteboard relies
12 on ‘Microsoft AI.’ I have not previously heard of ‘Microsoft AI.’” (*Id.* ¶ 3.) Because Harvey
13 admittedly has no knowledge of or experience with this technology, he is not qualified to provide
14 an expert opinion on the specifications or characteristics of the technology at issue. *See Thomas*,
15 42 F.3d at 1269.

16 (2) Methodology

17 Plaintiffs challenge the methodology employed by Defendants’ RESNA-certified Assistive
18 Technology Professional to reach his ultimate opinion regarding the effectiveness of ViewSonic
19 and its capacity to provide a reasonable alternative accommodation to CART. (*See* Plaintiffs’
20 Statement, *supra*.) Plaintiffs first point to Dr. Swett’s observation that “[t]he limited
21 demonstrations of the two captioning services that were performed suffer from several drawbacks”
22 and that where a demonstration “does not include observation by and input from the individuals
23 the services are meant to accommodate,” it “cannot produce valid or comprehensive results
24 regarding effectiveness[.]” (Swett Decl. ¶ 45), and then ask the Court to give his expert opinion
25 “no weight” because he failed to consider “the views of deaf end-users in developing his opinion”
26 (*See* Plaintiffs’ Statement, *supra*.) Plaintiffs’ challenge is baseless.

27 In reaching his opinion on the captioning technologies at issue, Dr. Swett properly relied
28 on his substantial knowledge, skills, education, and years of experience matching “assistive

1 technology solutions with the needs of individuals with disabilities across various settings,
2 including those with hearing disabilities.” (Swett Decl. ¶ 5.) Dr. Swett was also completely
3 transparent regarding the basis of his opinion, and forthrightly acknowledged its limitations.
4 Moreover, in assailing Dr. Swett’s methodology, Plaintiffs point solely to their own expert’s
5 statement that she consulted end users “to fill gaps in [her] perception of the technology.” (Hutt
6 Decl., Ex. 133 at 2.) The fact that Plaintiffs’ expert felt the need to speak to end users to formulate
7 an opinion on the objectively observable output of competing assistive technologies is a factor that
8 goes to the weight of her own opinion, not Dr. Swett’s.

9 **(d) ViewSonic Is an Equally Effective Accommodation.**

10 **(1) ViewSonic AI-Generated Captioning Technology**
11 **Satisfies General Captioning Quality Standards and Is**
More Widely Available than CART.

12 Captioning quality depends on four key factors: accuracy, timing, completeness, and
13 placement of captions. (Swett Decl. ¶ 35.) To be accurate, captions must match the spoken words
14 in the dialogue, in the original language, to the fullest extent possible. (*Id.*) This means that
15 captions need to contain all words in the order spoken, without paraphrasing or substituting words,
16 contain proper spelling and appropriate homophones (*e.g.*, “their” not “there”), including the
17 proper tense, and to accurately represent numbers. (*Id.*) However, quality standards must take
18 into consideration that errors (both human and AI) can occur with real-time captioning, and that
19 perfection of such captions cannot be guaranteed. (*Id.*)

20 Even if captions are accurate, a significant delay in the display of captions between the
21 appearance of captions and the time that words are spoken can make the program difficult to
22 understand and participate in. (*Id.*) While recognizing that some delay is inevitable during live
23 programming, a captioning service should be able to produce corresponding text that displays in 3-
24 4 seconds of the voicing. (*Id.*) For a program to be fully accessible to viewers, captioning must
25 be complete. (*Id.*) In other words, captioning must fully run from the beginning to the end of the
26 program. (*Id.*) Finally, captions must be placed on the screen to avoid obscuring on-screen
27 information and graphics to the extent possible. (*Id.*) Appropriate caption placement also dictates
28 that the caption font be sized appropriately for legibility and that captions be adequately positioned

1 so they do not run off the edge of the video screen. (*Id.*)

2 With respect to timing, ViewSonic updates at a reasonable reading rate, ensuring that users
3 receive current information without lag and allowing users to follow conversations as they happen.
4 (Swett Decl. ¶ 42.) With respect to placement, ViewSonic’s design reduces screen clutter and
5 allows users to focus on essential information or content, which is beneficial in dynamic settings
6 such as classrooms. (*Id.*) ViewSonic displays two lines of text and uses “roll-up” live captions.
7 (*Id.*) Contrary to Plaintiffs’ claim that the captions are “deleted and overwritten erratically,” the
8 captions move up and leave the screen as new lines are added, which is considered an industry
9 standard approved by the Federal Communications Commission. (*Id.*) Additionally, AI
10 technology improves accuracy and completeness. (*Id.* ¶ 43.) ViewSonic utilizes advanced AI to
11 generate captions nearly instantaneously with high accuracy for the entire length of a program and
12 without the need for breaks or the risk of missing portions of the programming. (*Id.*)

13 In addition to these technical specifications, captioning technology has to be available to be
14 effective and AI-generated captioning technology, such as ViewSonic, allows for wide
15 implementation across various facilities, ensuring that class members receive necessary captioning
16 support in the environments where they program regularly. (Swett Decl. ¶ 39.) The broader
17 availability of AI-generated captioning technology is a critical feature, as broad availability allows
18 a technology to be used in a variety of settings and situations. (*Id.*) Adaptability is crucial where
19 different scenarios require varied captioning support solutions, including spontaneous captioning
20 attempts. (*Id.*) The integration of AI captioning technologies for transcription and captioning
21 presents numerous advantages over traditional CART services. (*Id.* ¶ 40.)

22 AI technologies offer scalability, flexibility, and improved availability, making them a
23 reasonable accommodation for deaf and hard-of-hearing individuals. (*Id.* ¶ 38.) One of the
24 primary barriers to using CART is the limited availability of qualified transcriptionists. (*Id.* ¶ 40.)
25 Scheduling a live CART service requires advance notice, and there may be a shortage of
26 professionals based on this request. (Swett Decl. ¶ 40; Mebane Decl. ¶ 6.) Also, the numerous
27 requests can lead to delays or an inability to provide transcription services when needed—CART
28 is simply unavailable to provide this high volume of service all day long. (Swett Decl. ¶ 40.)

1 Coordinating the schedules of CART transcriptionists with the needs of deaf and hard-of-hearing
2 individuals can be challenging. (Swett Decl. ¶ 40; *see also* Mebane Decl. ¶ 6.) Events or
3 meetings that are scheduled on short notice may not be able to secure a CART transcriptionist in
4 time, leading to gaps in accessibility. (Swett Decl. ¶ 40.) This issue is compounded in settings
5 with frequent, unpredictable events that require real-time transcription. (*Id.*) Situational
6 circumstances can also impact schedule consistencies around CART services. (*Id.*)

7 An additional technological issue with CART is that a massive expansion of its use will
8 have a significant negative impact on network speed, which in turn will impede CART's
9 capability of providing real time captioning. (Kojima Decl. ¶ 9.) Whenever new services are
10 added to the enterprise network, it is customary to anticipate an increase in network bandwidth
11 consumption. (*Id.*) According to CDCR's Chief Information Security Officer, the issue impacting
12 the CART service would not be network connectivity and signal attenuation, or strength, of where
13 these services would be consumed. (*Id.*) CDCR does not have wireless network connectivity in
14 all areas within the incarcerated perimeter and expanding CART to hundreds of programs will
15 have a significant negative impact on network speed (frequently referred to as "bandwidth"),
16 which in turn will impede CART's capability of providing real time captioning. (*Id.*) Audio and
17 video data transmissions require stable network connections or there will be data or quality loss.
18 Without the proper infrastructure to provide adequate connectivity within proximity of locations
19 where the CART service would be consumed, the service would likely experience instability,
20 quality degradation, or complete loss. (*Id.*) Simply put, the service is going to be slow. (*Id.*) AI-
21 generated captioning technologies do not similarly encumber the network and captioning speed is
22 not impacted even if captioning services are expanded on a broad scale. (*Id.*)

23 **(2) During the Side-By-Side Demonstrations, ViewSonic**
24 **Outperformed CART.**

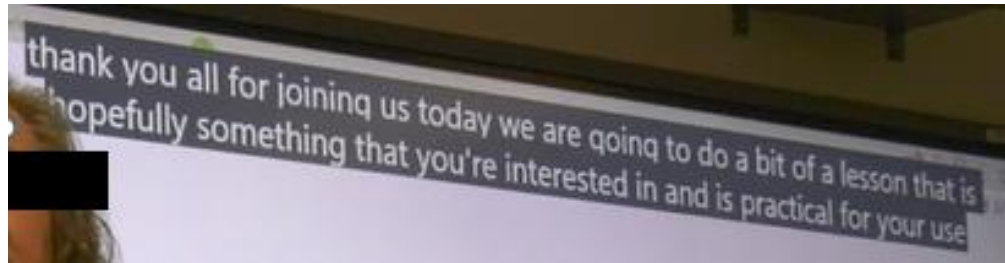
25 When comparing ViewSonic to CART, ViewSonic generally outperformed CART during
26 the side-by-side demonstrations, in terms of accuracy, completeness, and speed. (*See* Swett Decl.
27 ¶¶ 46-48.) On average, ViewSonic demonstrated a higher level of precision in generating
28 captions, while CART was prone to errors, even though both systems were using the same

1 microphones.

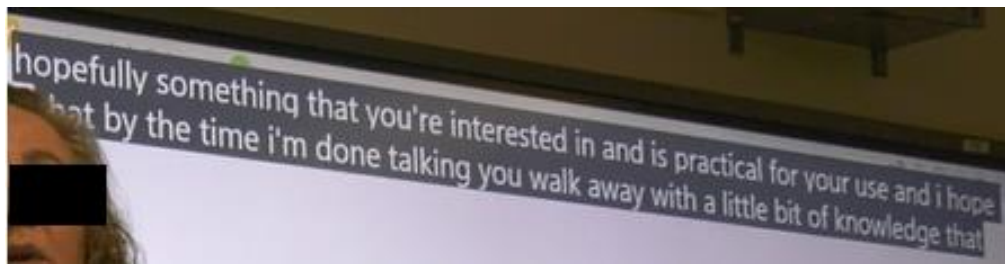
2 **A) Accuracy: San Quentin Demonstration**

3 During a staff-led demonstration in an educational setting at San Quentin, the speaker
4 stated *“We are going to do a bit of a lesson that is hopefully something that you are interested in*
5 *and is practical for your use, and I hope that by the time I’m done talking you walk away with a*
6 *little bit of knowledge that adds to what you knew when you came.”* As shown below, ViewSonic
7 captured what was said verbatim, whereas CART only managed to transcribe gibberish, (“We are
8 going to keep that open. [indiscernible], I hope by the time I”) even though both technologies were
9 using the same microphone and both laptops were placed near the speaker.

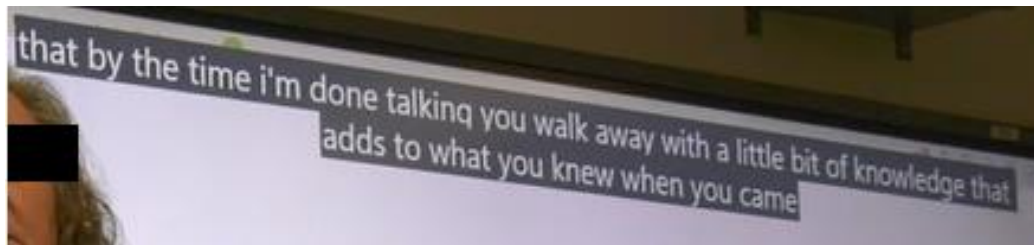
10 **Fig. 1: ViewSonic, March 27, 2024, SQ at 11:11**



16 **Fig. 2: ViewSonic, March 27, 2024, SQ at 11:16**

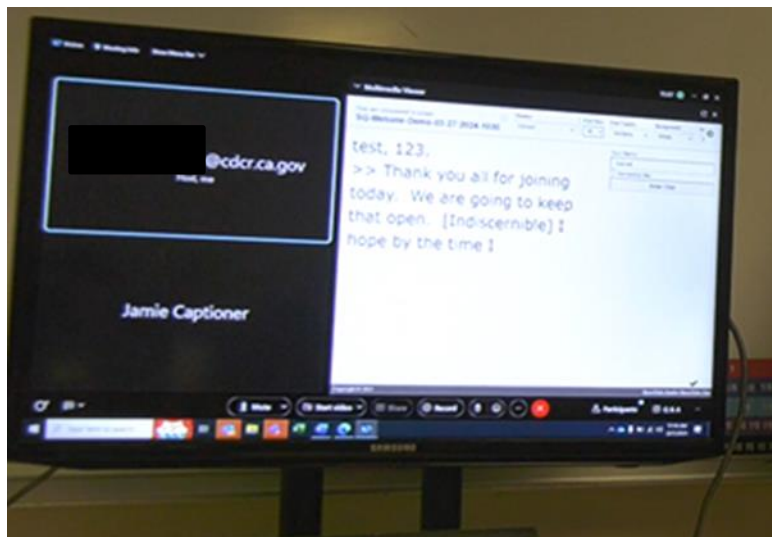


22 **Fig. 3: ViewSonic, March 27, 2024, SQ at 11:18**



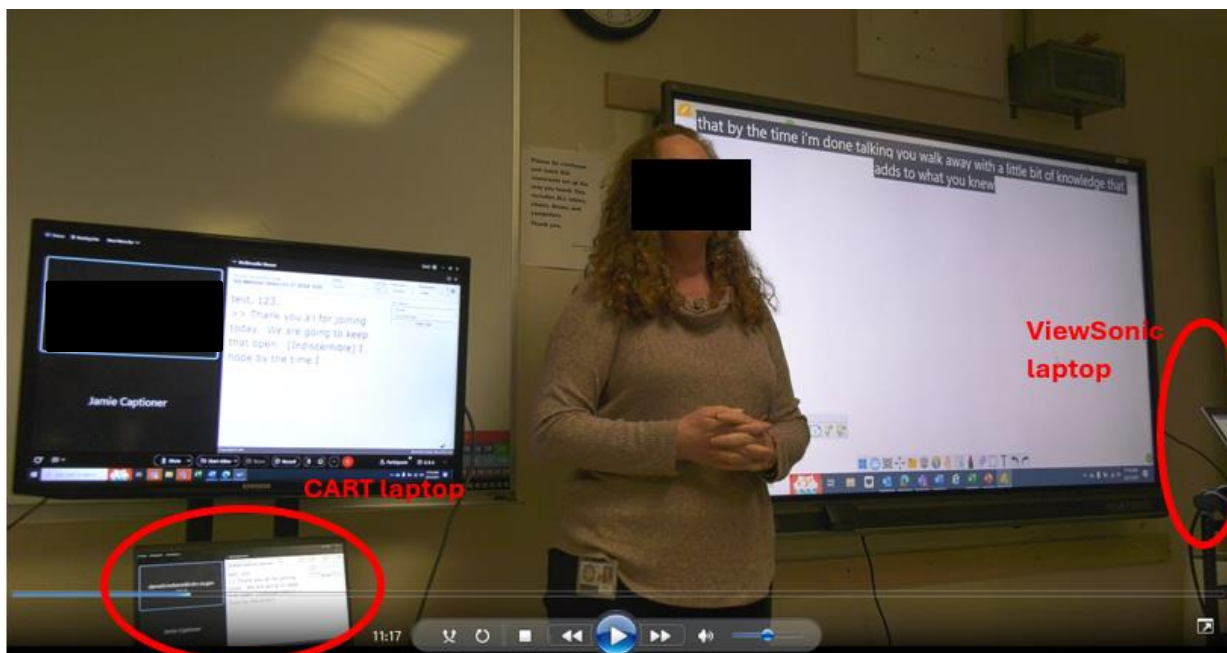
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1 **Fig. 4: CART, March 27, 2024, SQ at 11:18**



11 Additionally, the laptop microphone that was used to capture audio for ViewSonic was
12 farther away from the speaker than the laptop microphone for CART, but ViewSonic still
13 outperformed CART.

14 **Fig. 5: Laptop Configuration**



27 **B) Completeness: CIM Demonstration**

28 The CIM demonstration showed that ViewSonic performed better than CART with respect

1 to producing complete captioning. For instance, during the CIM demonstration in the classroom,
2 the teacher stated,

3 *“So real quick class, pay one quick attention to this. Everybody has this tracking*
4 *log. Yours is in color. We keep a copy of this and we come by and we check and*
5 *make sure that we’re recording all of your assessments, alright? You want to be*
6 *able to show participation and get credit for these assessments, so you should be*
7 *writing them on the back. Small keeps very good records. Let him know if you need*
8 *any help. He wrote (chuckles), he wrote everything.”*

9 ViewSonic stated the following:

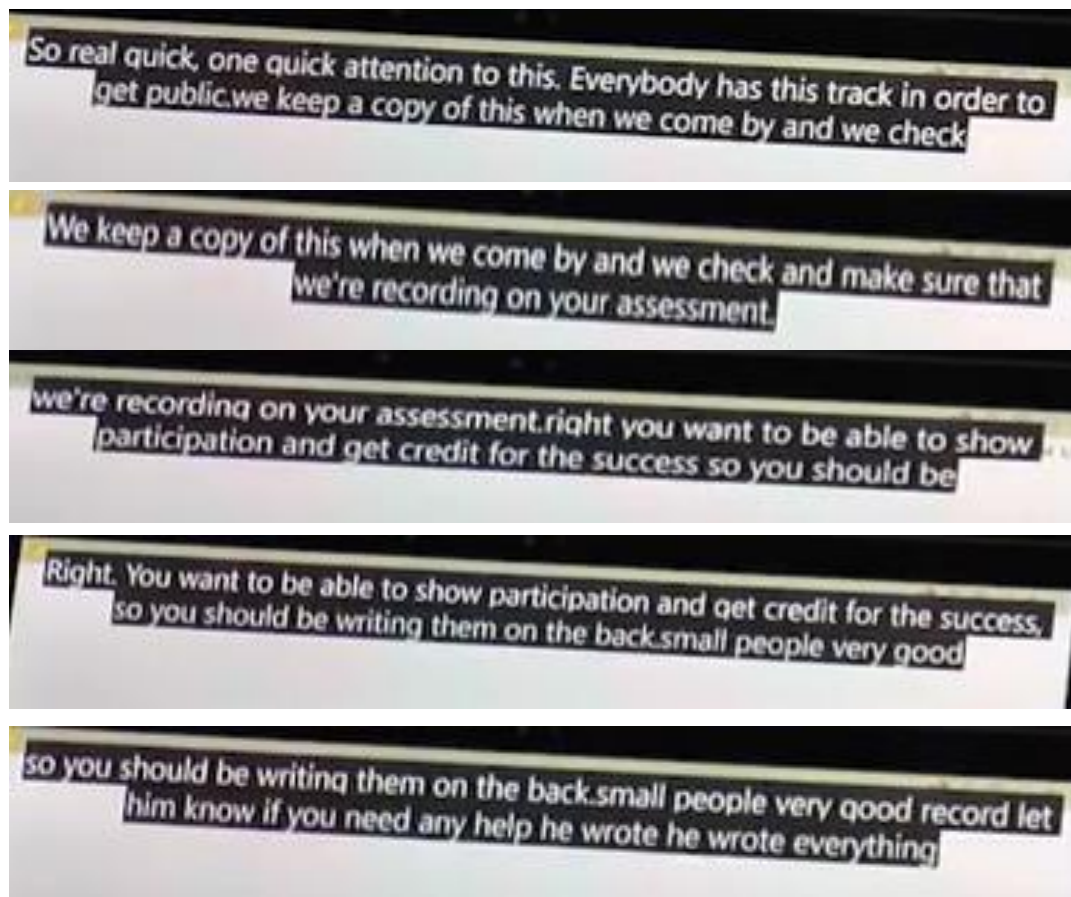
10 *“So real quick, one quick attention to this. Everybody has this track in order to get*
11 *public. We keep a copy of this when we come by and we check and make sure that*
12 *we’re recording on your assessment. right you want to be able to show participation*
13 *and get credit for the success so you should be writing them on the back. small*
14 *people very good record let him know if you need any help he wrote he wrote*
15 *everything”*

16 CART stated the following:

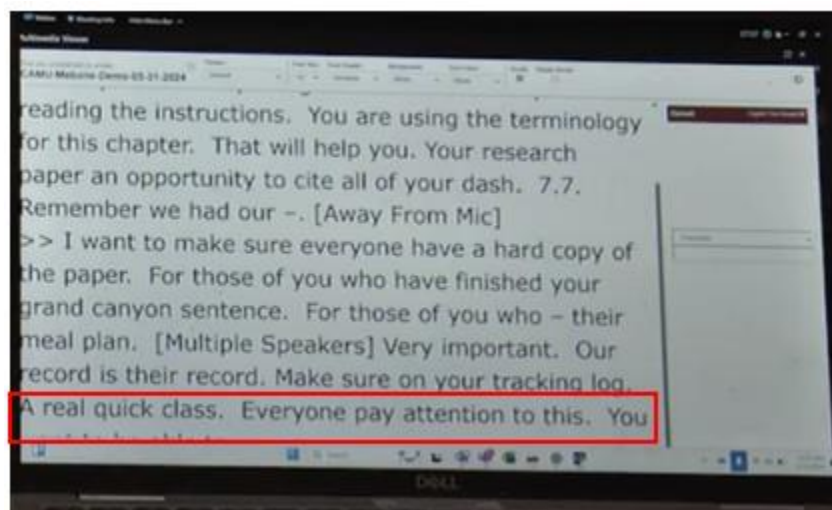
17 *“A real quick class. Everyone pay attention to this. You want to be able to – . We*
18 *don’t need anything else. He”*

19 While ViewSonic was not perfect, it at least conveyed substantive information, whereas
20 CART omitted most of the conversation, leaving students guessing as to what was said and
21 missing important information about recording their assessments and showing participation by
22 writing those assessments on the back to get credit. This occurrence is not an anomaly; many
23 users of CART have consistently found it to be inaccurate and often fail to capture much of what
24 was said. For instance, during a BPH hearing involving a deaf signer, the parole candidate and
25 their assigned panel attorney ultimately waived CART because the service was so inaccurate. (See
26 Doetsch Decl., Ex. A.) Overall, the demonstration at CIM provided further reason to doubt
27 CART’s ability to provide quality captioning in real time for group programming. Below are
28 screenshots showing a comparison of the speech captured by ViewSonic and CART during the
demonstration in the classroom at CIM:

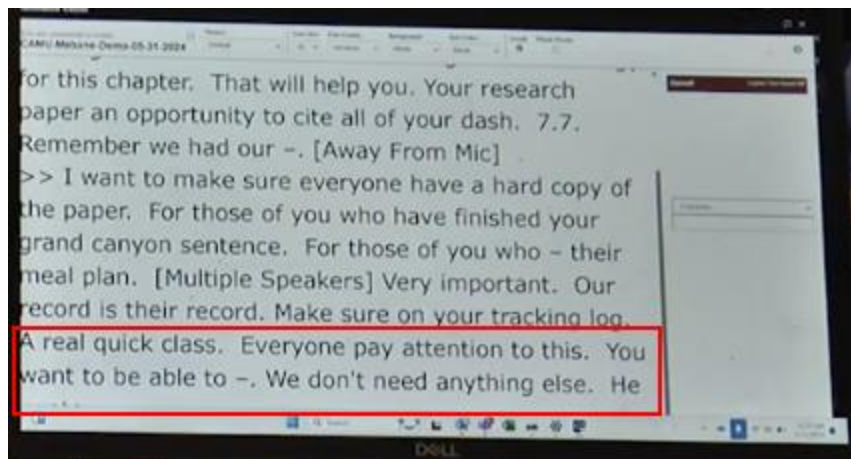
1 Fig. 6: ViewSonic, May 31, 2024, CIM at 0:50 to 1:10



17 Fig. 7: CART, May 31, 2024, CIM at 1:10



1 **Fig. 8: CART, May 31, 2024, CIM at 1:17**



10 As shown above, the CART transcriptionist practically omitted the entire conversation.
 11 (*Compare* Fig. 6 with Fig. 7 and Fig. 8.) Meanwhile, ViewSonic continued to caption what
 12 everyone was saying. (*See* Fig. 6.) Hence, the demonstration showed that CART is ineffective
 13 according to basic captioning standards because the transcriptionist struggled to caption from the
 14 beginning to the end of the program and omitted significant portions of conversations, leaving
 15 deaf participants in the dark and denying equal access to programming. Plaintiffs' response to
 16 these issues consists of selectively extracting parts of Defendants' statement to make Defendants
 17 appear to imply something that was untrue. The full context makes it clear that Defendants are not
 18 suggesting that ViewSonic is only able to convey "the most basic elements of exchange," but that
 19 it conveyed substantive information *relative to* CART.

20 **C) Reliability: San Quentin Demonstration**

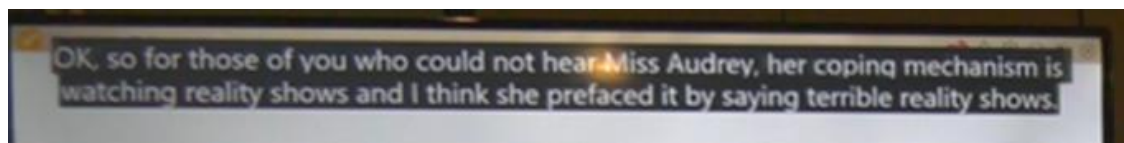
21 CART is unreliable because it may stop transcribing without warning or reason. During
 22 the March 27, 2024, San Quentin demonstration in education, the transcriptionist suddenly lost
 23 audio from 11:40 to 13:29, and the facilitator had to put the class on pause while staff worked to
 24 restore the transcriptionist's audio. Then, about 20 minutes later, the CART transcriptionist
 25 suddenly lost audio again for no apparent reason and staff had to troubleshoot again. By contrast,
 26 ViewSonic worked seamlessly the entire time and did not require staff intervention or
 27 troubleshooting. Even the Court Expert stated that he was struggling to understand why CART
 28 was having microphone issues because, presumably, the two technologies had to be getting at least

1 the same quality of sound. Yet, the CART captionist could not hear what the Court Expert was
 2 saying, whereas ViewSonic had no problem captioning what he said. CDCR's subject matter
 3 expert explained that the ViewSonic software is very sensitive, enabling it to pick up different
 4 voices at a distance, whereas she was unsure which software the CART transcriptionist was using.

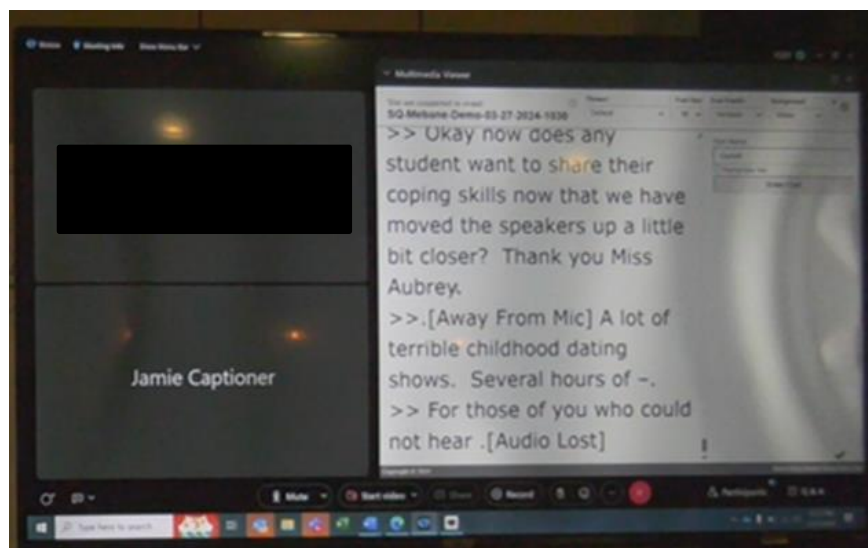
5 This was not an isolated incident but rather indicative of a recurring pattern. During the
 6 San Quentin demonstration at the gym, the CART transcriptionist lost audio while the speaker said
 7 the following: *"OK, so for those of you who could not hear Ms. Audrey, her coping mechanism is*
 8 *watching reality shows and I think she prefaced it by saying terrible reality shows, but at the same*
 9 *time, she laughed, and what have we learned about laughter? It produces a very healthy response*
 10 *from her, gets our healthy endorphins going, so no matter how terrible the reality show is, it did*
 11 *produce some happiness in her and that is very positive."*

12 As shown below, ViewSonic had no issues captioning everything that was said verbatim.
 13 By contrast, CART only managed to capture "For those of you who could not hear" before
 14 completely losing audio.

15 **Fig. 9: ViewSonic, March 27, 2024, SQ gym, at 57:42**



19 **Fig. 10: CART, March 27, 2024, SQ gym, at 57:42**



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Fig. 11: ViewSonic, March 27, 2024, SQ gym, at 57:49

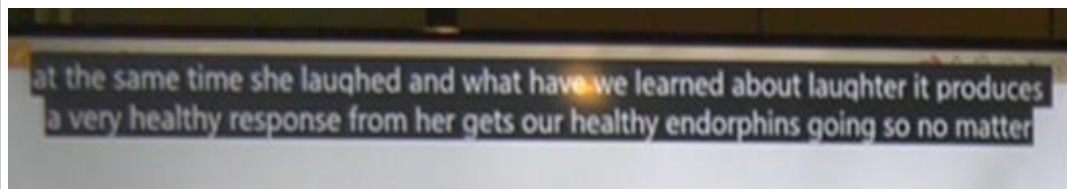


Fig. 12: CART, March 27, 2024, SQ gym, at 57:49

Fig. 12: ViewSonic, March 27, 2024, SQ gym, at 57:56

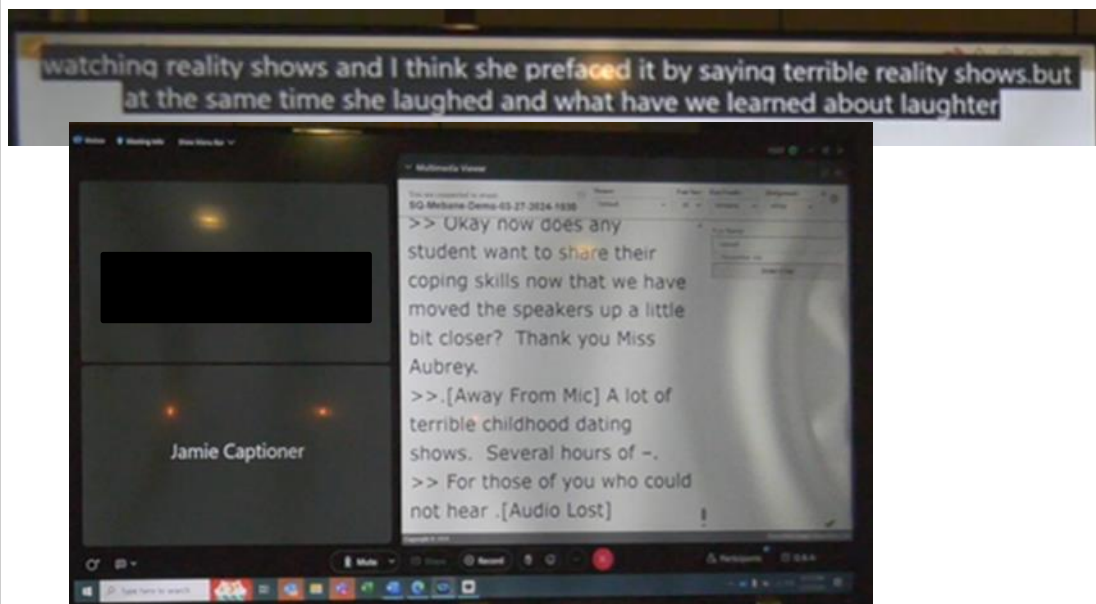


Fig. 14: ViewSonic, March 27, 2024, SQ gym, at 58:04

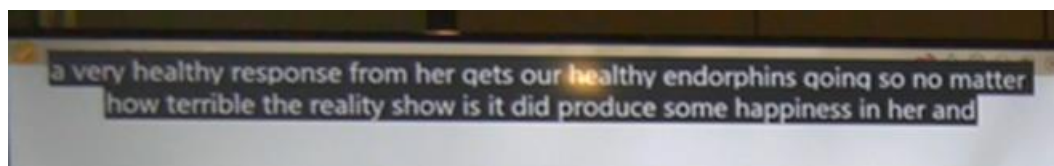
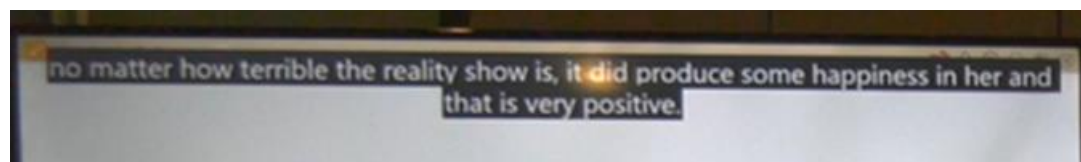
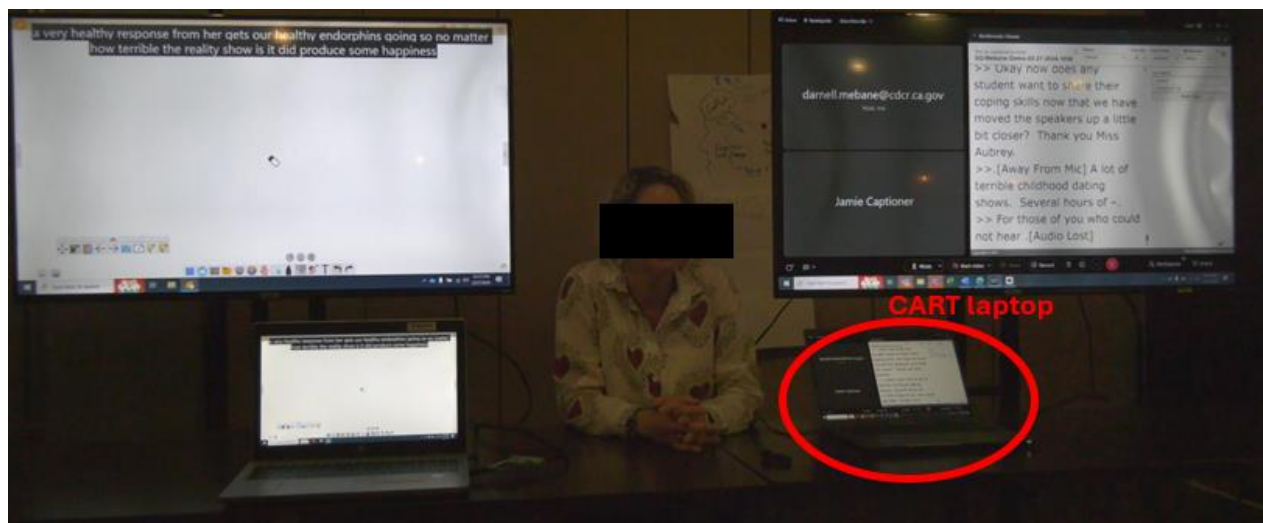


Fig. 15: ViewSonic, March 27, 2024, SQ gym, at 58:07



1 **Fig. 16: CART, March 27, 2024, SQ gym, at 58:07**



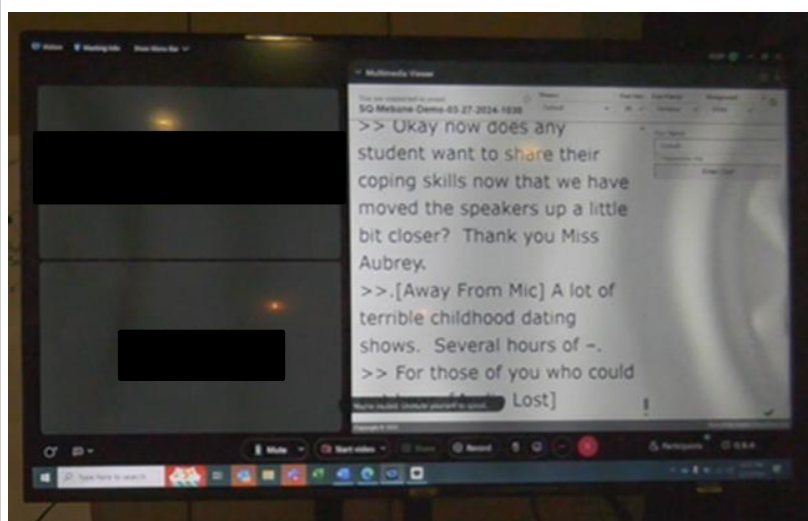
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At 58:07, staff is trying to get CART’s audio back. This happened not once, but at least three times during the demonstration. As mentioned above, the facilitator had to stop the class to troubleshoot CART during an earlier demonstration in the classroom. The CART transcriptionist told staff the audio was not good and then was lost completely. However, the CART laptop microphone was just as close to the speaker as the ViewSonic laptop microphone.

17
18

During the demonstration, the speaker sat in the middle of the room the entire time as shown below.

19 **Fig. 17: Setup, March 27, 2024, SQ gym, at 58:02**



28
Yet, CART suddenly lost audio for seemingly no reason. It could not have been a

1 connectivity issue on San Quentin’s end, because ViewSonic also relies on WiFi, but continued to
2 function.

3 **D) Synchronicity**

4 The third factor used to determine effectiveness of an assistive captioning technology is
5 synchronicity, meaning that the display of captions must match the pace of speakers. (Swett Decl.
6 ¶ 42.) Dr. Swett explained that even if captions are accurate, a significant delay in the display of
7 captions between the appearance of captions and the time that words are spoken can make the
8 program very difficult to understand, and a good captioning technology should be able to produce
9 corresponding text that displays within 3-4 seconds of voicing, with a maximum latency of 7
10 seconds for any specific word. (*Id.* ¶ 48.)

11 Plaintiffs have claimed that CART transcriptions contain an approximate five-second lag,
12 but in practice this was not the case. (Hutt Decl., Ex. 131 at 7.) A review of the video-taped
13 demonstration provided to Plaintiffs shows that, on average, the delay is closer to 20 seconds.
14 (*See, e.g.*, Lodgment A (video files).) The CART transcriptionist’s delay consistently exceeded 7
15 seconds. (*See id.*) For example, during the demonstration at CIM, the classroom instructor stated,
16 “So real quick class, pay one quick attention to this,” between 0:38-0:39. (*Id.*, CIM Video.)
17 Within 2-3 seconds, or by 0:41, ViewSonic had captioned the entire sentence “so real quick class
18 take one quick attention to this.” (*Id.*) By contrast, CART had captioned “A real quick class.
19 Everyone pay attention to this,” at the 1:00 mark, which is a 21-22 second delay. (*Id.*) Under
20 basic captioning standards, such a delay is unacceptable, in part, because it impairs accessibility,
21 making it challenging for those who rely on captions to follow along and stay engaged, whereas
22 ViewSonic’s near-simultaneous captioning ensures that deaf class members are not left behind in
23 conversations.

24 When it comes to speaker identification, Plaintiffs note that the CART transcriptionist will
25 use “>>” to indicate speaker change; however, the “>>” symbol does not indicate the speaker’s
26 name and does not assist the deaf class member in identifying who the speaker is. (*Id.*) In fact,
27 the “>>” indication is essentially useless because, by the time spoken content is displayed, the
28 speaker is no longer talking, or another speaker has started speaking due to CART’s significant

1 captioning delays. Furthermore, the transcriptionist uses “>>” even when the same speaker is
2 talking the entire time, causing more confusion than serving its intended purpose. (*Id.*) For a deaf
3 person, the “>>” has no meaning due to CART’s delayed transcriptions. On the other hand,
4 ViewSonic’s simultaneous captioning allows deaf class members to visually identify the speaker,
5 which is more effective than the using the “>>” symbol inconsistently.

6 Additionally, CDCR staff may employ other measures to ensure speakers are identified by
7 asking them to state their names before speaking, including by the moderator identifying each
8 speaker before they speak, or asking the speakers to state their names before they say what they
9 want to say. This occurred during one of demonstrations at CIM, where participants started their
10 check-ins by stating their names (*e.g.* “Jason checking in”), before speaking. (*Id.*) Implementing
11 these measures consistently would resolve the speaker identification issue for ViewSonic.

12 **(e) CART Raises Privacy Concerns.**

13 An additional factor that must be considered is the privacy concern implicated by the
14 virtual presence of a human transcriptionist. Institutions offer a wide variety of rehabilitative
15 programs that include educational, cognitive behavioral, religious, and other activity groups that
16 each incorporate different objectives. (Mebane Decl. ¶ 4.) Rehabilitative programs encourage
17 candid and frank discussions amongst its participants to foster individual growth. (*Id.*) At times,
18 this requires incarcerated people to talk about their past criminal behavior and to engage in
19 discussion about this behavior with their peers. (*Id.*) Revealing individual vulnerabilities to
20 achieve the personal growth rehabilitative programs seek to encourage is difficult in a carceral
21 environment, and many incarcerated people are inclined to not disclose personal information,
22 acknowledge weaknesses, or display any vulnerabilities whatsoever. (*Id.*)

23 The introduction of new technologies or services, such as CART, that rely, in part, on
24 unidentified or ever-changing individuals who are transcribing everything being said can
25 discourage incarcerated people from being as candid or frank as they need to achieve individual
26 growth. (*Id.*) CART services provide a written transcript to the scheduler within 24 hours via
27 email. Incarcerated individuals who are deaf or hard of hearing are entitled to obtain a copy of the
28 full transcript, ensuring they have access to the information shared during the session. (*Id.*)

1 However, in a prison environment, this can potentially place the safety of other incarcerated
2 individuals in jeopardy, as sensitive information could be disseminated more widely. (*Id.*) In past
3 experiences, incarcerated persons have received severe physical injury, or have even been fatally
4 injured, by other incarcerated persons due to written documentation that revealed details about
5 their crimes. CDCR has a duty to protect all incarcerated individuals from harm. (*Id.*) This
6 responsibility includes ensuring that any services provided are implemented in a way that
7 prioritizes safety and confidentiality, preventing any potential risks that could jeopardize the well-
8 being of our incarcerated population. (*Id.*) The knowledge that a transcript is available—or even
9 the possibility of a transcript being made available—can deter the incarcerated population from
10 participating in programs. (*Id.*) Many incarcerated individuals may be reluctant to engage fully
11 due to concerns that written documentation of their discussion could potentially put their safety in
12 jeopardy. (*Id.*) To foster a more secure and safe institutional environment, CDCR believes that it
13 is crucial to use captioning alternatives, such as non-recorded AI-based captioning, that provide
14 equal access without creating additional or unnecessary safety concerns, an approach fully
15 endorsed by Defendants’ RESNA-certified Assistive Technology Professional. (*Id.*)

16 For example, one instructor at CIM expressed discomfort and concern about the presence
17 of a live operator who was not present, listening in on the group program, and creating a transcript
18 of everything that was said during the group discussion, including the discussion of sensitive
19 topics. (*Id.* ¶ 5.) These sensitive group discussions can include the discussion of previously
20 undisclosed criminal activity, physical injury, violence, sexual assault, or other topics either
21 perpetrated or sustained by the incarcerated persons. (*Id.*) In addition, there is a generalized fear
22 that if a transcript is created from the discussion of sensitive topics, that it will be used against the
23 disclosing party in some manner. (*Id.*) Because CART requires a live operator, either remotely or
24 on site, to transcribe the discussion, this will inhibit the type of group discussion that is most
25 beneficial and conducive to the personal growth of incarcerated people, regardless of whether a
26 transcript is ever actually produced. (*Id.*) This also raises additional safety and security concerns
27 because if non-class members determine, even if falsely, that the presence of CART is preventing
28 them from fully participating in group activities, these class members may then seek retaliation

1 against the class members who require CART. (*Id.*) Meanwhile, Plaintiffs have no meaningful
2 response to these legitimate concerns of both staff and incarcerated individuals—concerns that
3 would be completely alleviated through the use of AI-generated captioning technology such as
4 ViewSonic as a reasonable alternative accommodation to CART.

5 **(f) Plaintiffs Completely Fail to Support Their Novel Request for**
6 **On-Site CART Transcriptionists.**

7 Plaintiffs have conceded that CART did not perform adequately during the side-by-side
8 comparison that Plaintiffs demanded, largely under the conditions that Plaintiffs demanded. (*See*
9 *Pl.’s Statement, supra.*) They have no response to the evidence Defendants present regarding the
10 logistical difficulties posed by CART, nor to the evidence Defendants have presented regarding
11 the advantages of ViewSonic in terms of flexibility, availability, and scalability. Plaintiffs
12 inexplicably continue to insist on CART and eschew the accommodation of their clients through
13 the use of state-of-the-art AI-generated captioning technology. Rather than acknowledge CART’s
14 obvious issues and work with Defendants on the implementation of a reasonable, effective
15 alternative captioning technology, Plaintiffs now insist—for the first time—that CART services be
16 provided by on-site transcriptionists employed by Defendants. This is an incredible demand that
17 was never discussed by the parties during the many years of negotiating this issue and seeks to
18 deny CDCR the opportunity to implement new technologies in its institutions. It is a demand for
19 which Plaintiffs have no evidentiary support. It is a demand that, because it was never made until
20 now, Defendants’ RESNA-certified Assistive Technology Professional did not have the
21 opportunity to consider or opine upon. It is the equivalent of sandbagging and emblematic of bad
22 faith negotiation tactics. It is also a request that would result in the Court issuing, in effect, a
23 staffing order, based on a dearth of supporting evidence and in violation of the Prison Litigation
24 Reform Act’s stringent requirements for the issuance of injunctive relief. Moreover, this first-time
25 demand is beyond the scope of the stipulation requirement. For these reasons, the Court should
26 deny Plaintiffs’ requested relief.

27 **(g) Conclusion**

28 It is well established that a public entity need not provide “every device or all new

1 technology at all times as long as the communication that is provided is as effective as
2 communication with others.” (28 C.F.R. § 35.104.) It is not possible to provide an exhaustive list
3 of auxiliary aids and “an attempt to do so would omit the new devices that will become available
4 with emerging technology.” (28 C.F.R. § 35, app. A.) Moreover, there is no one-size-fits-all
5 technology. The reality is that CART is not fool-proof and is not suitable for every situation.
6 Prohibiting Defendants from using an alternative technology such as ViewSonic in situations
7 where CART fails to work or is unavailable, will result in the interruption of programs services
8 and activities for deaf non-signer class members. It would also be inconsistent with the ARP,
9 which states that alternative methods which may be less costly or intrusive to the existing
10 operation or program, may be utilized to provide reasonable access, so long as they are equally
11 effective. (See ARP at 8.) ViewSonic is an equally effective accommodation that will “ensure
12 that communications with” deaf individuals “are as effective as communications with others.” (28
13 C.F.R. § 35160(a)(1)). Additionally, ViewSonic will provide class members at SATF an equal
14 opportunity to participate in and enjoy the benefits of group programming. Therefore, no further
15 Court intervention is necessary.

16 **IV. HEALTHCARE ISSUES**

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

21 **A. RVR Policy (Item 14)**

22 **(Item 14)** Within 30 days of receiving from CCHCS the final policy regarding RVRs, the
23 parties shall meet and confer with the Court Expert regarding the adequacy of the policy.

24 * * * * *

25 The Court Expert reported that healthcare staff at SATF were issuing RVRs to incarcerated
26 people, often for “minor administrative rules violations . . . such as for not bringing a water cup to
27 the pill line.” (ECF No. 3446 at 49.) As the Court Expert recognized, “receiving an RVR, even
28 for minor infractions, can have negative consequences for incarcerated people, particularly those

1 being considered for parole.” (*Id.* at 49 n.77.) The Court Expert emphasized that “nursing staff’s
2 issuance of RVRs has damaged relationships with incarcerated people” by turning “care
3 providers” into “imposers of discipline.” (*Id.* at 47.) The Court Expert reported CCHCS had
4 “[r]ecogniz[ed] this problem” and had “recently conducted additional training to clarify that
5 healthcare staff are not permitted to write RVRs.” (*Id.*)

6 The Court adopted these undisputed findings and ordered the Court Expert to continue to
7 monitor Defendants’ efforts to remedy the ongoing violations of the ADA and ARP at SATF.
8 (ECF No. 3467.) In his second report, the Court Expert noted that CCHCS had “ma[d]e clear” to
9 “all healthcare staff at SATF” that “their job duties did not include authoring RVRs” and stated
10 that CCHCS would “soon be altering SOMS so that most healthcare staff will not be able to author
11 RVRs.” (ECF No. 3500 at 16.) The Court Expert subsequently reported that CCHCS would
12 “issue a final policy reflecting these changes.” (ECF No. 3529 at 12.)

13 On July 18, 2024, CCHCS provided Plaintiffs and the Court Expert with their policy,
14 “Limiting Licensed Health Care Staff Access to Rules Violations Reports.” (Williams Decl. ¶ 4.)
15 The parties and the Court Expert met on July 19, 2024, to discuss the policy. (*Id.*) On July 22,
16 2024, in response to Plaintiffs’ counsel’s request, CCHCS provided a list of the types of incidents
17 included in Strategic Offender Management System (SOMS) for incident reports. (*Id.*) CCHCS
18 created training materials to educate CCHCS staff about the new policy and their responsibilities
19 related to the RVRs. (*Id.* ¶ 5.) On August 15, 2024, CCHCS provided Plaintiffs’ counsel and the
20 Court Expert the eLearning training course materials titled, “Health Care Providers Role in the
21 Rules Violation Report (RVR) Process” that they created to educate their staff about the new
22 policy. (*Id.*) CCHCS updated their policy and training materials to address Plaintiffs’ and the
23 Court Expert’s feedback. (*Id.* ¶ 6.) Updated drafts of the policy and training materials were
24 provided to Plaintiffs’ counsel and the Court Expert through the Attorney General’s Office on
25 October 4, 2024. (*Id.*)

26 CCHCS’s policy and related training materials limits SOMS RVR writing access to only
27 the Chief Executive Officer (CEO), the Chief Support Executive (CSE), and the CEO’s designee.
28 (Williams Decl., Ex. A.) This significantly limits the health care staff who could draft an RVR

1 and limits this to only senior management staff. (*Id.*)

2 The Court Expert previously acknowledged that health care staff would retain the ability to
3 “report serious incidents (such as when they are the victim of violence or witness a crime) by
4 authoring an incident report.” (ECF No. 3500 at 16.) The draft policy describes this process.
5 (*Id.*) If a health care staff member is the victim of or a witness to an incarcerated person’s
6 misconduct of a serious nature necessitating an incident report (e.g., use of force, indecent
7 exposure, assault, battery, threat of serious/great bodily injury) the health care staff shall complete
8 an incident report (via SOMS Incident Report or CDCR Form 837-C Crime/Incident Report Part
9 C Staff Report) within established timeframes. (Williams Decl., Ex. A.) The completed incident
10 report shall be submitted to the Incident Commander for review, and if necessary, a custody
11 supervisor will generate an RVR in SOMS. (*Id.*) The CEO review of the incident report or the
12 associated RVR is not required in these circumstances. (*Id.*)

13 The policy also provides a process to handle incidents of an incarcerated person’s
14 misconduct of a serious nature that do not involve use of force, indecent exposure, assault, battery,
15 threat of serious/great bodily injury. (*See* Williams Decl., Ex. A.) In those situations, the health
16 care staff shall document and route their concerns to the immediate health care supervisor for
17 review. (*Id.*) After reviewing the concerns of health care staff and the circumstances for
18 appropriateness, the immediate health care supervisor shall consult with the area custody
19 supervisor to ensure the circumstances documented are not a reportable incident. (*Id.*) The
20 immediate health care supervisor will then, if deemed necessary, implement alternative behavioral
21 interventions. (*Id.*) If, after implementing alternate behavioral interventions, the incarcerated
22 person’s misconduct of a serious nature continues, the health care supervisor will elevate the
23 matter to the CEO for review. (*Id.*) The CEO may determine that additional or alternate
24 behavioral interventions are indicated. (*Id.*) If the CEO determines an RVR is necessary, the
25 CEO will work with the health care SOMS designee to create the RVR in SOMS within three
26 business days. (*Id.*) If the CEO, CSE, or designee, should have any questions regarding the RVR
27 or the RVR process, they should consult the Health Care Access Lieutenant. (*Id.*) Health care
28 supervisors will work with custody to ensure all required timeframes are met. (*Id.*) A tracking

1 system will be developed for all RVRs generated and uploaded on behalf of health care staff. (*Id.*)
2 These RVRs shall be tracked by the CEO or their designee (*id.*), which provides a mechanism for
3 CCHCS to track all RVRs generated and uploaded by the CEO or their designee on behalf of
4 health care staff.

5 Finally, the policy provides that all health care staff are required to take the training.
6 (Williams Decl., Ex. A at Attach. A.) CCHCS's training materials educate health care staff about
7 the new policy and their responsibilities related to the RVRs. (*Id.* ¶ 5.) The training is
8 approximately 30 minutes long and covers topics including: focusing on patient health and safety,
9 mandatory reporting requirements, an overview of the RVR process and the health care staff
10 members' role in the RVR process, documentation of observations in an incident report and other
11 medical forms and reporting staff use of force. (*Id.*) These steps address staff reporting their
12 observations when required, ensure their health care supervisor and custody staff are aware of
13 incidents, and provides for the evaluation of whether implementation of alternative behavioral
14 interventions is appropriate. (*Id.*, Ex. A.)

15 The parties agree that CCHCS will issue their policy to the field now and train their staff.
16 CCHCS is in the process of developing a tracking system to monitor the adequacy of this policy.
17 CCHCS will then work with the *Armstrong* Court Expert to identify information sufficient to
18 allow *Armstrong* Plaintiffs' Counsel to review the adequacy of CCHCS's policy as to *Armstrong*
19 class members at SATF. The identified information will then be produced to the *Armstrong* Court
20 Expert who may, at his discretion, provide the information to the *Armstrong* Plaintiffs' counsel.

21 **B. 7362 Process (Item 15)**

22 **(Item 15)** Defendants shall request that CCHCS inform the Court Expert and Plaintiffs
23 within 60 days of the Court's order of whether an electronic system for submitting 7362s has been
24 implemented or when it expects to implement such a system, as well as whether CCHCS will
25 implement any interim measures to communicate with patients regarding their requests for
26 medical care.

27 * * * * *

1 **1. Plaintiffs' Statement**

2 Eighteen months ago, the Court found that patients with disabilities at SATF were denied
3 DME when their 7362 requests went unanswered by medical staff; that patients received no
4 communication regarding their 7362 requests regarding DME, leaving them unsure as to whether
5 their requests had been received, what response they could expect, and when they could expect it;
6 and that failure to timely respond to these requests had created a “cascade of problems,” including
7 a greater burden on the SATF RAP. Dkt. No. 3446 at 27-30, 32; Dkt. No. 3467 at 2 (adopting
8 undisputed findings of Court Expert).

9 In response, CCHCS offered a plan to develop an electronic system for submitting 7362s.
10 *See* Dkt. No. 3453-1, Ex. A; *see also* Dkt. No. 3529 at 13. Plaintiffs hope that this initiative,
11 though not new, will be positive, as it will ensure patients at least receive confirmation that their
12 7362 requests for DME or other supplies for disabilities have been sent to staff. Defendants report,
13 however, that CCHCS does not yet have a timeframe for completion, although they informed the
14 parties eight months ago that they would not pursue an interim solution because the electronic
15 process was expected to be completed before an interim measure could be implemented. Hutt
16 Decl., Exs. 152, 157.

17 As this remedy remains incomplete, Defendants have reported that CCHCS will provide
18 further updates regarding the development of its electronic system for submitting 7362s. The
19 parties will continue to meet with CCHCS to finalize this process. Plaintiffs' counsel have shared,
20 for example, recommendations on the accessibility of the electronic system to users who are blind,
21 severely low-vision, have learning disabilities, or otherwise have difficulty communicating in
22 writing. *Id.*, Ex. 153. Plaintiffs look forward to discussing these recommendations further with
23 Defendants and CCHCS as CCHCS continues to develop the electronic submission platform.

24 The forthcoming system for electronic submission of 7362s will not, however, address this
25 Court's findings regarding the failure of existing policy and practice to ensure that patients who
26 submit 7362s requesting provision or repair of DME are seen promptly in response to their
27
28

1 requests.³⁸ Following the Court Expert’s initial report, SATF healthcare leadership began auditing
2 the 7362 process and encouraged nursing staff to treat 7362 requests regarding DME as
3 “symptomatic” so that patients would be seen promptly, in accordance with policy timelines for
4 “symptomatic” 7362s. *See* Dkt. No. 3500 at 8; *id.* at 10 n.6. Plaintiffs at that time raised concerns
5 that any gains resulting from these processes, which had not been codified in written policy and
6 were unenforceable, would not be durable. Dkt. No. 3510 at 25-26. They have proven not to be.
7 Just months after the Court Expert’s subsequent report, CCHCS reported that encouragement to
8 triage 7362 requests for DME as “symptomatic” had been rescinded in deference to a statewide
9 policy that provides no timeframes for addressing DME concerns, and which CCHCS reported
10 having no plans to change. *See* Hutt Decl., Ex. 151; Dkt. No. 3529 at 12-13; CCHCS Health Care
11 Dep’t Operations Manual § 3.1.5, available at [https://www.cdcr.ca.gov/hcdom/dom/chapter-3-](https://www.cdcr.ca.gov/hcdom/dom/chapter-3-health-care-operations/article-1-complete-care-model/3-1-5-scheduling-and-access-to-care/)
12 [health-care-operations/article-1-complete-care-model/3-1-5-scheduling-and-access-to-care/](https://www.cdcr.ca.gov/hcdom/dom/chapter-3-health-care-operations/article-1-complete-care-model/3-1-5-scheduling-and-access-to-care/)
13 (providing no timeframes for addressing DME concerns). Despite justifying this reversal by citing
14 concern for “impact [to] the ability of SATF’s medical department to timely deliver services,”
15 CCHCS did not report a concrete plan to conduct a staffing analysis to determine what staffing
16 resources they would need to make these policy changes feasible, nor did CCHCS propose an
17 alternate solution. Hutt Decl., Ex. 151; *id.*, Ex. 149 at 1-2 (existing monitoring and accountability
18 measures and CCHCS process for conducting staffing analysis in response to Plaintiffs’ counsel’s
19 concerns). CCHCS further reported it would conduct DME-focused 7362 audits at SATF for only

20 _____
21 ³⁸ Defendants below argue that policy requirements are “not related” to this provision of the
22 Court’s order, requiring further reporting on CCHCS’s proposal to develop a system for electronic
23 submission of 7362s. We disagree. The issue of how and when staff will be required to respond to
24 7362s submitted electronically is critical to resolving whether the proposed electronic system will
25 fix the serious problems identified by Plaintiffs and the Court Expert. Indeed, Defendants and
26 CCHCS previously have addressed both the policy for timely responding to 7362s regarding DME
27 and the system for electronic submission of 7362s in response to the Court’s findings. *See, e.g.*,
28 Dkt. No. 3453-1, Ex. A at 2 (Receiver’s December 2022 SATF Status Report); Dkt. No. 3500 at 8-
9 (Court Expert’s Second SATF Report, noting SATF provided updated guidance on processing
7362s pending development of electronic system); Dkt. No. 3529 at 12-13 (Court Expert updates
from CCHCS discussing both policy change and development of the electronic system for
submitting 7362s); *see also* Dkt. No. 3446 at 27 (“There is currently no system at SATF—or . . .
any institution—requiring healthcare staff to inform patients that their request for DME
assessment or the like has been received, what response they can expect, and when they can expect
it.”); Dkt. No. 3467 at 2 (adopting undisputed findings of Court Expert).

1 six months in 2023. *Id.*, Ex. 149 at 2. Patients with disabilities at SATF continue to be denied
2 timely accommodation for their disabilities when they submit their requests by 7362. *See, e.g.*,
3 Hutt Decl., Ex. 154 (no action taken to re-order wipes for a class member who has limited use of
4 his hands and cannot grasp objects or clean himself after defecating); *id.*, Exs. 155-56 (class
5 member requests).

6 The parties, with the assistance of the Court Expert, have agreed to meet and confer to
7 address Plaintiffs' concerns with the statewide policy for triaging and responding to 7362s related
8 to DME and disability accommodations. Plaintiffs request the attendance of representatives from
9 CCHCS to aid in negotiations.

10 **2. Defendants' Statement**

11 This stipulation item required Defendants to coordinate with CCHCS to inform the Court
12 Expert and Plaintiffs' Counsel, within 60 days of the Court's order, whether an electronic system
13 for submitting 7362s has been implemented or when it expects to implement such a system, as
14 well as whether CCHCS will implement any interim measures to communicate with patients
15 regarding their requests for medical care. (ECF No. 3538 at 8.) As explained below, CCHCS has
16 complied with this stipulation item. CCHCS agrees to continue to provide updates to the parties
17 and the Court Experts on their progress with implementing an electronic system for submitting
18 7362 forms.

19 **(a) Electronic System for Submitting 7362 Forms.**

20 On February 5, 2024, Defendants reported to Plaintiffs and the Court Expert that, CCHCS
21 advised that they are working on implementing an electronic system for submitting 7362 forms
22 instead of an intermediary system. (Williams Decl. ¶ 9.) Specifically, CCHCS is working with
23 CERNER to develop the CERNER Health Life Application Portal. (*Id.*) When completed, the
24 goal would be to allow patients to submit items to their medical providers, including 7362 forms,
25 electronically via a kiosk. (*Id.*) CCHCS has advanced to the testing stage and is developing the
26 infrastructure to incorporate patient information into the platform, which will allow them to create
27 a proof of concept. (*Id.*) In addition, CCHCS is exploring options to allow for 7362 forms to be
28 submitted via the tablets used by the incarcerated population. (*Id.*) CCHCS is encouraged by the

1 progress made to date and expects positive results from their efforts. (*Id.*) Because the electronic
2 process is expected to be completed before an interim measure could be developed, implemented,
3 and approved by Labor, an interim measure is not being pursued at this time. (*Id.*) CCHCS has
4 advised that it will provide an update on the status of the Healthe Life Application Portal to the
5 *Armstrong* parties and the Court Expert in 60 days, or sooner if one is available. (*Id.*) The parties
6 and the Court Expert agreed to wait to meet and confer until CCHCS provided more information.
7 (*Id.*)

8 On March 20, 2024, CDCR provided an update in which CCHCS advised that it is working
9 collaboratively with CDCR EIS to develop a proof-of-concept for the Healthe Life application to
10 include the 7362 form. (Williams Decl. ¶ 10.) CCHCS remains hopeful that they will have an
11 update on their progress with more definitive information soon. (*Id.*) Once CCHCS completes the
12 technology portion of the application, CCHCS will work to make the product accessible. (*Id.*) As
13 for the tablet-based proposal, CCHCS requested to include the final version of the Healthe Life
14 application on the tablet. (*Id.*) At this time, CCHCS does not know what the tablet will include
15 but will be evaluating accessibility features as part of the implementation process and looks
16 forward to providing timely updates. (*Id.*)

17 At the July 19, 2024, meeting, and then subsequently via an email on July 22, 2024,
18 CCHCS provided the below update to Plaintiffs' counsel and the Court Expert on the electronic
19 system for submitting 7362s:

- 20 • **7362 Automated Process:** The 7362 automated process will be located with the
21 Oracle Health "Healthe Life" application. The workflows for the 7362 process are
22 currently being worked on by CCHCS's information technology (IT) team. A
23 proof-of-concept will be reviewed once the screens are completed, and the Healthe
24 Life application is ready to test. The IT team is waiting on the Healthe Life
25 application to be in a state where they can conduct a test.
- 26 • **Healthe Life Application Patient Portal:** CDCR's Enterprise Information
27 Services continues to work on the registration functionality with CCHCS's IT team
28 and Oracle Health. The registration functionality is what will allow the

1 incarcerated person to log into their account. The registration security required for
2 CDCR/CCHCS is more stringent than what is found in the patient portal in the
3 consumer market, so this step is taking longer than expected. There is no estimated
4 time from the Enterprise Information Services yet as to when they believe they will
5 finish their piece. CCHCS continues to meet with Enterprise Information Services
6 to address this item. The parties will continue to meet with CCHCS to finalize this
7 process.

8 (Williams Decl. ¶ 11.)

9 On August 23, 2024, CCHCS provided an update to the Court Expert and Plaintiffs'
10 counsel on the HealtheLife / automated 7362 process. (Williams Decl. ¶ 12.) The registration
11 work with CDCR, CCHCS, and Oracle Health is working. (*Id.*) CCHCS IT and Program staff are
12 working to complete their respective workflows for the 7362 automation. (*Id.*) Barring any
13 unforeseen obstacles, the estimated time for completion of the 7362 workflow is the end of
14 November 2024. (*Id.*) CCHCS will provide an update by the end of November as to when a proof
15 of concept with the workflow for the 7362 forms was completed. (*Id.*)

16 **(b) Form 7362s Related to Provision or Repair of DME.**

17 Although not related to SATF stipulation 15, Plaintiffs unilaterally decided to use SATF
18 stipulation 15 as their forum to report issues with the failure of existing policy and practice to
19 ensure that patients who submit 7362s requesting provision or repair of DME are seen promptly in
20 response to their requests. Because the parties, with the assistance of the Court Expert, agreed to
21 meet and confer about Plaintiffs' concerns with the statewide policy for triaging and responding to
22 7362s related to DME and disability accommodations, CDCR and CCHCS will not address their
23 statements above. By doing so, CDCR and CCHCS are not agreeing with Plaintiffs'
24 characterization of the issues, legal arguments, or evidence. Rather, because this matter is not
25 related to SATF stipulation 15, there is already an agreement to meet and confer with Plaintiffs'
26 counsel about their concerns and the matter has not been fully evaluated, they cannot report on the
27 status of these issues. CCHCS looks forward to future conversations about this issue.

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Respectfully submitted,
ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/Penny Godbold
Penny Godbold

Attorneys for Plaintiffs

DATED: October 16, 2024

PRISON LAW OFFICE

By: /s/Jacob J. Hutt
Jacob J. Hutt

Attorneys for Plaintiffs

DATED: October 16, 2024

ROB BONTA
Attorney General of the State of California

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

Attorneys for Defendants

FILER'S ATTESTATION

As required by Local Rule 5-1, I, Jacob J. Hutt, attest that I obtained concurrence in the filing of this document from Penny Godbold and Trace O. Maiorino, and that I have maintained records to support this concurrence.

DATED: October 16, 2024

/s/Jacob J. Hutt
Jacob J. Hutt

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