

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,
Plaintiffs,
v.
GAVIN C. NEWSOM, et al.,
Defendants.

Case No. 94-cv-02307 CW
ORDER GRANTING IN PART MOTION
FOR A PRELIMINARY INJUNCTION
(Re: Dkt. Nos. 2978, 2979)

Before the Court is Plaintiffs' motion for a preliminary injunction to continue in effect the transfer of Inmate 1¹ and Inmate 2 (Witnesses) from R.J. Donovan Correctional Facility (RJD) to another facility in light of the Witnesses' concerns for their safety at RJD. Having carefully considered the parties' submissions, and the argument presented at the hearing held on July 16, 2020, the Court GRANTS IN PART the motion for a preliminary injunction.

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¹ The Court finds that the parties have shown that compelling reasons exist for using pseudonyms to maintain the names of the inmates discussed in this order as confidential. The real names of the inmates will be listed in a separate order that will be filed under seal.

FINDINGS OF FACT

I. Procedural History

In 1994, Plaintiffs, “a class of all present and future California state prison inmates and parolees with certain disabilities, sued defendants, California state officials with responsibility for the operation of the Department of Corrections and Rehabilitation (the CDCR) and the Board of Parole Hearings (BPH), challenging the State’s treatment of disabled prisoners and parolees.” Armstrong v. Schwarzenegger, 622 F.3d 1058, 1063 (9th Cir. 2010) (internal quotation marks omitted). A series of orders by this Court and the Ninth Circuit “established that the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131–34, and the Rehabilitation Act (RA), 29 U.S.C. § 794, applied to state prisoners, and that defendants’ policies and procedures with regard to disabled prisoners and parolees were inadequate and violative of” the ADA and the RA. Id. (citations and internal quotation marks omitted); Armstrong v. Wilson, 124 F.3d 1019, 1023 (9th Cir. 1997) (“[W]e conclude that the plain language of the ADA and RA, and our prior interpretations of that language, support application of the statutes to state prisons.”).

CDCR Defendants produced a remedial plan in January 2001 intended to “ensure that disabled inmates had access to programs and facilities in California’s prisons.” Armstrong v. Schwarzenegger, 622 F.3d at 1063 (citation omitted). In March 2001, the Court entered a permanent injunction directing enforcement of that plan. Id. (citation omitted). The Court entered a comparable permanent injunction with respect to the BPH defendants in 1999 and a revised permanent injunction in 2002. Id. (citation omitted).

1 "By 2007, however, the State had failed to bring its
2 correctional facilities into compliance with the remedial plan
3 and the 2001 Injunction." Armstrong v. Brown, 768 F.3d 975, 978
4 (9th Cir. 2014) (citation omitted). Accordingly, the Court
5 issued another injunction in 2007, which required Defendants to
6 develop accountability procedures to track their non-compliance
7 with the remedial plan and the Court's orders. The Court has
8 modified the 2007 injunction several times to clarify Defendants'
9 obligations regarding accountability. Id.

10 Since then, the litigation has been in a remedial phase,
11 with Defendants evaluating and modifying their procedures and
12 policies and Plaintiffs monitoring Defendants' compliance with
13 the injunctions and the remedial plan and at times seeking
14 enforcement. Id.

15 In February and June 2020, respectively, Plaintiffs filed
16 two motions (enforcement motions) in which they argue that
17 Defendants' employees have engaged and continue to engage in
18 adverse actions against Armstrong class members that violate the
19 ADA, the RA, the remedial plan, and this Court's prior orders,
20 including the 2007 injunction and the Court's subsequent orders
21 regarding accountability. Docket Nos. 2922, 2948. The conduct
22 alleged involves abuse specifically directed at class members,
23 who are more vulnerable to abuse and less able to defend
24 themselves in light of their disabilities, as well as acts of
25 retaliation against class members who report the abuse. This
26 conduct has allegedly deterred class members from requesting
27 disability accommodations, either informally or through the
28 Court-ordered disability grievance process, because class members

1 fear that such requests will invite more abuse. The first
2 enforcement motion addresses alleged abuse and retaliation
3 against class members at RJD (RJD enforcement motion), and the
4 second enforcement motion addresses alleged abuse and retaliation
5 at other prisons throughout California (state-wide enforcement
6 motion). The enforcement motions have not been fully briefed and
7 remain pending. Part of the support for the motions consists of
8 112 declarations of inmates (inmate-declarants) who are or were
9 incarcerated at RJD and other prisons and who suffered or
10 witnessed the conduct at issue.

11 The Witnesses are two of the inmate-declarants who filed
12 declarations in support of the enforcement motions. In the
13 present proceeding, the Witnesses claim that staff at RJD have
14 retaliated against them, on multiple occasions, for submitting
15 declarations in support of the enforcement motions and, in
16 particular, for describing in such declarations that a certain
17 officer, Officer Rucker, ignored the requests of Inmate 4,
18 another inmate-declarant, to be transferred to another cell
19 because of safety concerns related to his cellmate. On February
20 4, 2020, Inmate 4 was attacked by his cellmate and died on
21 February 19, 2020. The Witnesses believe that at least some of
22 the retaliation they have suffered since they filed declarations
23 in support of the enforcement motions is the result of having
24 made statements in such declarations that implicate Officer
25 Rucker in Inmate 4's death.

26 Plaintiffs argue that the alleged retaliation against the
27 Witnesses has continued to occur despite this Court's stipulated
28 order of March 17, 2020, which provides, "Defendants and their

1 employees are prohibited from retaliating against the Declarants,
2 Armstrong class members at RJD, or incarcerated people at RJD for
3 participating in the [RJD motion]." Order at 1, Docket No. 2931.
4 The order also provides, "If the Court finds that retaliation has
5 occurred, the Court will issue appropriate relief." Id. at 4.

6 In light of the continued alleged acts of retaliation
7 against the Witnesses, Plaintiffs moved for a temporary
8 restraining order and preliminary and permanent injunction
9 requiring Defendants to transfer the Witnesses out of RJD. On
10 July 2, 2020, the Court issued an order granting this motion in
11 part and deferring it in part. Order, Docket No. 2972. The
12 Court ordered Defendants to propose a plan for transferring the
13 Witnesses to another placement that satisfied certain criteria.
14 The criteria were based on the Witnesses' disabilities, the pre-
15 existing conditions that make them vulnerable to Covid-19
16 complications, their security level, and their vulnerability to
17 acts of retaliation because of their assistance with the
18 enforcement motions. Id. at 3-5. The Court also ordered the
19 parties to meet and confer and to file by July 9, 2020, a joint
20 statement describing their positions as to the appropriate
21 placement for the Witnesses. Id. The parties did so.

22 On July 10, 2020, the Court granted Plaintiffs' motion for a
23 temporary restraining order to transfer the Witnesses out of RJD.
24 The Court ordered that, no later than July 12, 2020, (1) Inmate 2
25 be transferred to a Mental Health Crisis Bed (MHCB) at the
26 California Health Care Facility (CHCF), Docket No. 2979; and (2)
27 Inmate 1 be transferred to an Enhanced Outpatient Program Housing
28 unit on Facility D or E at Mule Creek State Prison (MCSP) or to

CHCF, Docket No. 2978. On July 12, 2020, the parties stipulated to a different placement, with the transfer of each Witness to take place the morning after each Witness received a negative Covid-19 test result. Docket No. 2987. Inmate 2 would be transferred to the MHC B at California Men's Colony (CMC) on a temporary basis pending placement at CHCF once it is open for transfers, and Inmate 1 would be transferred to an Enhanced Outpatient Program housing unit on Facility D at MCSP. Id. The Court approved this stipulation on July 13, 2020. Docket No. 2991.

The Court ordered Defendants to show cause why a preliminary injunction should not issue to continue in effect the order to transfer the Witnesses out of RJD and retain the Witnesses at a suitable non-RJD facility, and it held a hearing on July 16, 2020.

II. Factual Findings on Current Motion²

A. Protected Activity

As noted, Plaintiffs argue in the RJD enforcement motion that Defendants' employees abuse and retaliate against class

² Both sides have submitted materials that do not strictly comply with the Federal Rules of Evidence. The Court will exercise its discretion to consider these materials in light of the difficulties created by the present pandemic. Herb Reed Enterprises, LLC v. Fla. Entm't Mgmt., Inc., 736 F.3d 1239, 1250 n.5 (9th Cir. 2013) ("Due to the urgency of obtaining a preliminary injunction . . . when there has been limited factual development, the rules of evidence do not apply strictly to preliminary injunction proceedings."); Republic of the Philippines v. Marcos, 862 F.2d 1355, 1363 (9th Cir. 1988) ("It was within the discretion of the district court to accept . . . hearsay for purposes of deciding . . . the preliminary injunction."). Questions as to the submitted materials' reliability will go to their weight rather than to their admissibility.

1 members at RJD in violation of the ADA, the RA, the remedial
2 plan, and this Court's prior orders, including the 2007
3 injunction and the Court's subsequent orders regarding
4 accountability. Docket No. 2922. Assisting with such a motion
5 is protected activity. Defendants filed their response to this
6 enforcement motion on July 15, 2020. Docket No. 3006.
7 Plaintiffs have not yet filed their reply. The Court has
8 reviewed the evidence filed to date by both sides in connection
9 with the enforcement motion and finds it relevant to the present
10 motion.

11 RJD has the second largest population of incarcerated people
12 with disabilities in CDCR, with nearly 1,000 Armstrong class
13 members, including 297 people who use wheelchairs, 217 people who
14 are deaf or hard of hearing, and thirteen people who are blind.
15 Grunfeld Decl., Ex. II at 184-89, Docket No. 2922-1.

16 In 2018, CDCR sent a strike team to investigate allegations
17 of staff misconduct on Facility C at RJD. The team was comprised
18 of fourteen investigative staff and seven ombudsmen. Bishop
19 Report at 1-3, Docket No. 2921-6. The strike team sought to
20 interview 150 inmates on Facility C, but only 102 inmates agreed
21 to be interviewed. Id. The interviewees reported, in relevant
22 part, that RJD staff specifically targeted for abuse inmates with
23 disabilities and other vulnerable inmates, that RJD staff hired
24 inmates to assault other inmates, that RJD staff engaged in gang-
25 like behavior, and that RJD staff retaliated against inmates who
26 reported the abuse with further abuse or by making false
27 allegations against them so that the inmates would be subjected
28 to disciplinary action. Id. at 4-9. Forty-eight inmates out of

1 the 102 who chose to participate in the interviews supported
2 their claims of misconduct by RJD staff with detailed and
3 “actionable” allegations. Id. at 14-17. Associate Warden
4 Bishop, who led the strike team and wrote its report based on his
5 assessment of the interviews, recommended that the allegations of
6 these forty-eight inmates be investigated “promptly.” Id.
7 Associate Warden Bishop also recommended, among other things,
8 that live-feed cameras be installed in all areas of limited or
9 obstructed visibility; that non-managerial RJD staff be
10 restricted from accessing areas of low visibility; that
11 management prohibit RJD staff from wearing non-approved clothing
12 items that could be used as gang identifiers; and that the inmate
13 appeals process be modified to ensure that staff are not able to
14 interfere with the process. Id. at 12-13.

15 Defendants have admitted that the Bishop Report “formally
16 recognized serious problems with aspects of R.J. Donovan’s
17 operations, and specifically within Facility C, and that
18 responsive action should be taken.” Defs.’ Resp. to RJD Mot. at
19 19, Docket No. 3006. As of January 29, 2020, however, Defendants
20 still had not completed their investigations of the specific and
21 “actionable” allegations of abuse made by the forty-eight strike-
22 team interviewees. See Defs.’ Rule 30(b)(6) Designee (Kimberly
23 Seibel) Dep. Tr. at 133, 156, Docket No. 2921-8; id. at 221-22,
24 Docket No. 2922-1.

25 Plaintiffs’ expert, Jeffrey Schwartz, has assisted prisons
26 and jails over the last twenty years in applying national
27 correctional standards to their operations. Schwartz Decl. ¶ 2,
28 Docket No. 2947-9. Schwartz was retained by Plaintiffs to opine

1 on CDCR's inquiry, investigation, and disciplinary process as it
2 relates to allegations of staff misconduct and the discipline of
3 staff for misconduct. Id. ¶ 9. As part of his assignment,
4 Schwartz analyzed the files of forty-three investigations of
5 allegations of staff misconduct at RJD. Id. ¶ 11. Schwartz
6 opines that the situation at RJD is "horrifying" for inmates with
7 disabilities and other vulnerable inmates, and that there is
8 "substantial evidence that these vulnerable inmates are targeted
9 and preyed upon by a significant number of staff at RJD." Id. ¶¶
10 23-27. According to Schwartz, "Inmates are afraid to file
11 grievances/complaints and afraid to provide testimony during
12 investigations. Pressure to withdraw complaints and other forms
13 of intimidation are common." Id. ¶ 60. Schwartz attributes this
14 situation to RJD's "dysfunctional staff culture," which "will not
15 be changed quickly or easily." Id. ¶ 93. According to Schwartz,
16 this dysfunctional culture stems in part from the ineffectiveness
17 of CDCR's system for investigating misconduct and disciplining
18 staff; the investigations of staff misconduct at RJD are
19 incomplete, unprofessional, and biased against incarcerated
20 complainants and witnesses. Id. ¶¶ 93, 40-47, 84, 181, 187, 273,
21 276, 327. Schwartz opines that inmate testimony is often
22 discounted or ignored and that plagiarism and other collusion in
23 staff reports is ignored. Id. ¶¶ 40-49. Schwartz notes that
24 staff is disciplined primarily when there is video evidence or
25 staff reports of misconduct. Id. ¶¶ 53, 126, 127, 172, 208, 210,
26 219.

27 Plaintiff's other expert, Eldon Vail, is a former
28 correctional administrator with thirty-five years of experience

1 working in and administering adult correctional institutions.
2 Vail Decl. ¶ 3, Docket No. 2020-5. He has served as the Warden
3 of three adult correctional institutions, and he served as the
4 Secretary of the Department of Corrections of Washington for four
5 years. Id. ¶ 4. As part of his assignment, Vail reviewed the
6 declarations of fifty-four inmate-declarants, CDCR policies, and
7 various other case materials. Id. ¶ 10. Vail concludes that
8 there is a pattern of violence against class members at RJD and
9 that staff at RJD routinely use force against class members after
10 failing to recognize and accommodate inmates' disabilities. Id.
11 ¶¶ 13, 4, 27, 30. In his opinion, the level of force used by RJD
12 staff against class members often is excessive and the frequency
13 with which such force is used is "startling." Id. According to
14 Vail, the "unnecessary and excessive use of force, including
15 closed fist punches and kicks, that result in serious injury to
16 the class members is far beyond the norm found in other
17 institutions or jurisdictions of which I am aware." Id. ¶ 13.
18 Vail also identified a pattern of retaliation against class
19 members who report abuse, and widespread fear among class members
20 of reporting allegations of staff misconduct as a result. Id. ¶¶
21 16, 59-62, 88.

22 In their response to the RJD enforcement motion, Defendants
23 argue that they have taken steps to change the culture at RJD and
24 improve staff accountability, such as providing RJD staff with
25 additional training, making changes to the personnel at RJD,
26 referring staff complaints to the Office of Internal Affairs, and
27 taking adverse action against officers found to have engaged in
28 misconduct against inmates. Defs.' Resp. to RJD Mot. at 17-20.

Defendants note that these steps have already proved effective to some extent, as the number of RJD staff who have been disciplined for misconduct against inmates has increased since 2017. Id.; see also Miller Decl. ¶¶ 34-35 (providing that RJD dismissed one officer in 2017, two in 2018, and six in 2019; RJD made one referral for criminal prosecution against an officer in 2018 and three in 2019; and that from 2017 to 2019, there were thirty-five suspensions without pay or salary reductions for staff misconduct involving an inmate). Defendants also note that the number of use-of-force incidents involving Armstrong class members has decreased. See Defs.' Resp. to RJD Mot. at 20.

Nothing in Defendants' response to the RJD enforcement motion suggests that the issues described in the Schwartz and Vail declarations have been eradicated or even substantially diminished. Defendants' response suggests that there has been some improvement in the conditions at RJD for disabled inmates. Defendants admit, however, that there is still "staff misconduct that does occur" at RJD. See Defs.' Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 267, Docket No. 2922-1.

B. Adverse Action and Causation: Inmate 2

Inmate 2 is close to seventy years old and has a mobility disability that requires him to use a wheelchair. Inmate 2 Decl. of March 27, 2020 ¶¶ 2-3, Docket No. 2969-7. He is serving a 504-month sentence for a robbery conviction and has been incarcerated since 1996. Freedman Decl. ¶ 23, Docket No. 2969-7. His California Static Risk Assessment (CSRA) score, a measure that CDCR uses to assess risk of recidivism, is "low." Id. Defendants have designated Inmate 2 as risk level 1, meaning that

1 he is at high risk of complications from Covid-19 in light of his
2 various medical conditions, which include diabetes, chronic
3 kidney disease, and cardiovascular disease. Id. ¶ 23.

4 Inmate 2 signed a declaration dated March 27, 2020, which
5 Plaintiffs filed in support of the enforcement motion. There,
6 Inmate 2 declared that, in December 2019, Inmate 4 told him that
7 he was trying to get transferred out of Building 1 on Facility A
8 at RJD because Officer Rucker and others were trying to arrange
9 an assault on him by other incarcerated people. Inmate 2 Decl.
10 of March 27, 2020 ¶ 7. Then, on or around February 17, 2020,
11 while Inmate 2 was in the hospital for surgery, Inmate 4 was
12 moved into his hospital room. Id. ¶ 8. Inmate 4 told Inmate 2
13 that he was in the hospital because of injuries that were caused
14 by an attack by his cellmate. Id. ¶ 9. Inmate 4 also said that,
15 prior to the attack, he had repeatedly asked to be moved to
16 another cell because he and his cellmate were not getting along,
17 and that Officer Rucker told him in response each time he asked
18 for a transfer to “fuck or fight,” meaning that he either had to
19 learn to get along with his cellmate or had to attack his
20 cellmate to get moved to another cell, and that he would only
21 leave his cell if he were dead. Id. ¶¶ 10-11. Inmate 4 died
22 several days later. Id. ¶ 14. When Inmate 2 returned to RJD a
23 few days thereafter, Officer Rucker asked him what Inmate 4 had
24 told him at the hospital. Id. ¶ 17.

25 In a later declaration, Inmate 2 states that, when they were
26 both in the hospital in February 2020, Inmate 4 told him that
27 Officer Rucker had attacked him and had hurt him. Inmate 2 Decl.
28 of July 13, 2020 ¶¶ 5-6, Docket No. 2998-6. Inmate 2 had assumed

1 that this attack had taken place on the same date on which Inmate
2 4 was assaulted by his cellmate. Id. Inmate 2 later realized
3 that this assumption had been incorrect when counsel for
4 Plaintiffs told him that Officer Rucker had not been working on
5 the day that Inmate 4 was attacked by his cellmate. Id. The
6 Court finds this explanation credible and that it does not damage
7 Inmate 2's credibility.

8 In another declaration, signed on June 25, 2020, Inmate 2
9 states that, after he began to speak with Plaintiffs' counsel to
10 prepare the declaration in support of the enforcement motion
11 after his release from the hospital, staff at RJD began to take
12 adverse actions against him. Inmate 2 Decl. of June 25, 2020 ¶¶
13 4-6, Docket No. 2969-7. Inmate 2 declares that RJD staff
14 repeatedly failed to release him from his cell in time to take
15 his diabetes medication and other medications, which he must take
16 several times per day. Id. These assertions are corroborated by
17 the declarations of Inmate 1 and Inmate 3, who, like Inmate 2,
18 reside in Building 1, on Facility A at RJD, and are released for
19 medications at the same time that Inmate 2 is supposed to be
20 released. Inmate 1 Decl. of June 26, 2020 ¶¶ 2, 5; Inmate 3
21 Decl. of June 30, 2020 ¶¶ 7, 9, 19.

22 On June 17, 2020, at around 8:30 p.m., RJD Officer Montreuil
23 used force against Inmate 2. According to the declarations of
24 Inmates 2, 1, and 3, Inmate 2 was not released on time for his
25 medications, and this caused him to yell and make noise to be let
26 out. Inmate 2 Decl. of June 25, 2020 ¶¶ 7-8; Inmate 1 Decl. of
27 June 26, 2020 ¶¶ 5-6; Inmate 3 Decl. of June 30, 2020 ¶¶ 7-18.
28 Once he was released, Inmate 2 travelled in his wheelchair,

1 carrying a cup of water to take his medications. Inmate 2 Decl.
2 of June 25, 2020 ¶ 8; Inmate 1 Decl. of June 26, 2020 ¶ 7; Inmate
3 3 Decl. of June 30, 2020 ¶ 21. He yelled at the officers for not
4 letting him out of his cell earlier, and the officers, including
5 Officer Montreuil, yelled back. Inmate 2 Decl. of June 25, 2020
6 ¶ 8; Inmate 1 Decl. of June 26, 2020 ¶ 7; Inmate 3 Decl. of June
7 30, 2020 ¶¶ 19-22. Even though he posed no threat to Officer
8 Montreuil, the officer grabbed him and slammed him to the ground.
9 Inmate 2 Decl. of June 25, 2020 ¶ 9; Inmate 1 Decl. of June 26,
10 2020 ¶ 8; Inmate 3 Decl. of June 30, 2020 ¶ 22. Inmate 2 landed
11 on his head and stomach, face down, and lost consciousness.
12 Inmate 2 Decl. of June 25, 2020 ¶ 9; Inmate 1 Decl. of June 26,
13 2020 ¶ 8; Inmate 3 Decl. of June 30, 2020 ¶ 24.

14 Officer Montreuil then got on top of Inmate 2 and put his
15 knee into Inmate 2's upper back and neck. Inmate 2 Decl. of June
16 25, 2020 ¶ 9; Inmate 1 Decl. of June 26, 2020 ¶ 8; Inmate 3 Decl.
17 of June 30, 2020 ¶ 24. Inmate 2 yelled that he could not breathe
18 and believed that Officer Montreuil was going to kill him.
19 Inmate 2 Decl. of June 25, 2020 ¶¶ 9, 12. After handcuffing him,
20 Officer Montreuil pressed a sharp object on Inmate 2's right arm
21 and said, "This is for my homeboy Rucker, motherfucker." Inmate
22 2 Decl. of June 25, 2020 ¶ 9. Staff escorted Inmate 2 out of the
23 building. Inmate 1 Decl. of June 26, 2020 ¶ 8; Inmate 3 Decl. of
24 June 30, 2020 ¶ 25. Inmate 1 and Inmate 3 have not seen Inmate 2
25 since the incident. Inmate 1 Decl. of June 26, 2020 ¶ 8; Inmate
26 3 Decl. of June 30, 2020 ¶ 26.

27 The Court finds the description of the June 17 incident in
28 the declarations of Inmates 2, 1, and 3 to be credible. The

1 declarations are consistent in all material respects. All three
2 inmates declared that Inmate 2 was in his wheelchair and did not
3 assault or pose a threat to Officer Montreuil. It is undisputed
4 that Inmate 1 and Inmate 3 were housed in cells that were a few
5 feet away from Inmate 2's cell and observed the entire incident.
6 Inmate 1 Decl. of June 26, 2020 ¶ 5; Inmate 3 Decl. of June 30,
7 2020 ¶¶ 7, 19. Inmate 1 and Inmate 3 have not had any contact
8 with Inmate 2 since the June 17 incident, which eliminates the
9 possibility that Inmate 2 could have colluded with Inmate 1 and
10 Inmate 3 as to the contents of their declarations.

11 The declarations of Inmates 2, 1, and 3 are further
12 corroborated by a memorandum written by a social worker named J.
13 Clayton, which states that another inmate reported to him on June
14 18, 2020, that he witnessed the June 17 incident. This inmate
15 reported that Inmate 2 did not resist the officer but two
16 officers twisted Inmate 2's arm behind his back until he started
17 "bucking in pain." Freedman Decl., Ex. 14, Docket No. 2998-6.

18 Defendants' version of the June 17 incident is based on the
19 declaration of Francisco Armenta, who is an Associate Warden at
20 RJD. Armenta Decl. of July 10, 2020, Docket No. 2984. In his
21 declaration, Associate Warden Armenta provides "a summary" of the
22 June 17 incident that is based, not on his personal knowledge,
23 but on his review of a preliminary incident report package that,
24 in turn, is based on incident reports authored by officers at
25 RJD. See id. ¶ 5 & Ex. F. The incident reports are not signed
26 under penalty of perjury, and none of the officers who filed an
27 incident report has submitted a sworn declaration describing the
28 June 17 incident.

1 Armenta declares that when Inmate 2 was released from his
2 cell for his medications in the evening of June 17, he walked out
3 of his cell without a wheelchair, yelled obscenities at Officers
4 Montreuil and Gomez, and asked to speak with the sergeant before
5 he received his medications. Id. ¶ 6. The officers told Inmate
6 2 that the sergeant was unavailable. Id. In response, Inmate 2
7 made derogatory comments about the officers and threatened to
8 throw at them the liquid in his cup, which Inmate 2 allegedly
9 claimed contained "piss, shit, and blood." Id. Inmate 2
10 allegedly moved toward Officer Montreuil and attempted to throw
11 the liquid onto him but missed. Id. Officer Montreuil then used
12 his body weight to take Inmate 2 to the ground. Id.

13 Once Inmate 2 was on the ground, Officer Montreuil
14 handcuffed him and searched him for contraband. Id. While
15 Officer Montreuil found no contraband on Inmate 2's person,
16 "staff" smelled alcohol coming from Inmate 2 and later found an
17 alcoholic substance known as "pruno" in his cell. Id. Later
18 that night, staff ordered Inmate 2 to provide a urine sample for
19 analysis, and he refused. Id. ¶ 9. Officer Montreuil sustained
20 pain, bruising, and redness on his right shoulder. Id. ¶ 10.

21 Defendants' description of the June 17 incident lacks
22 credibility. It is not at all clear that Inmate 2's cup did
23 contain bodily fluids. There are no photographs of the contents
24 or records showing that the healthcare facility maintenance (HFM)
25 team was called to clean up. Inmate 3 declares that, if the
26 spilled liquid had been bodily fluids, Defendants would have
27 called the HFM team to clean and sanitize the area, but the HFM
28 team did not respond to the incident or clean the liquid. Inmate

1 3 Decl. of June 30, 2020 ¶ 23. Inmate 3, who was a few feet
2 away, also declares that the spilled liquid appeared to be clear
3 and odor-free. Id. ¶¶ 19, 23.

4 Defendants argue that Inmate 2 stated in a video interview
5 following the June 17 incident that some of the other inmates who
6 witnessed the incident were yelling that the cup in Inmate 2's
7 hand contained bodily fluids. This does not equate to a threat
8 by Inmate 2. Further, even if he had made such a threat and even
9 if he had thrown the liquid, that would not justify the force
10 that Officer Montreuil used against him. Officer Montreuil took
11 Inmate 2 face down onto the ground using the weight of the
12 officer's body on the inmate's back, instead of using less force
13 or no force at all. The officer apparently used enough force to
14 injure his own shoulder and to render Inmate 2 unconscious.

15 Defendants have not offered any declarations to dispute the
16 sworn statements of Inmates 1, 2, and 3 that the force that
17 Officer Montreuil used against Inmate 2 was unprovoked and
18 sufficient to render him unconscious. Inmate 2 Decl. of June 25,
19 2020 ¶ 9; Inmate 1 Decl. of June 26, 2020 ¶ 8; Inmate 3 Decl. of
20 June 30, 2020 ¶ 24. Defendants also have not disputed Inmate 3's
21 declaration that, in light of his age and disabilities, Inmate 2
22 posed no physical threat to Officer Montreuil. Inmate 3 Decl. of
23 June 30, 2020 ¶ 19.

24 Defendants claim that Inmate 2 was under the influence of
25 alcohol during the June 17 incident, and that inmate-made alcohol
26 was found in his cell afterward. Some of the incident reports
27 attached to Associate Warden Armenta's declaration do state that
28 Inmate 2 had smelled of alcohol or may have been intoxicated.

1 These statements are not credible, and are of little relevance.
2 Notably, the incident report prepared by Officer Montreuil, who
3 had significant physical contact with Inmate 2, does not mention
4 that Inmate 2 smelled of alcohol, or that he appeared to be
5 intoxicated. See Incident Report, Docket No. 2984 at 41. Nor do
6 the medical records corroborate this claim. A medical note dated
7 June 17, 2020, which followed a full physical examination of
8 Inmate 2, does not mention that he was intoxicated or smelled of
9 alcohol. Freedman Decl., Ex. 10, Docket No. 2969-7. Another
10 medical note dated that day states that Inmate 2 complained to
11 first responders that he could not breathe and that the pain on
12 his neck was 9 on a 10-point scale. Freedman Decl., Ex. 5,
13 Docket No. 2996-6. This note does not say that Inmate 2 smelled
14 of alcohol or appeared to be intoxicated. Id. Finally,
15 Defendants did not photograph or retain the alcohol allegedly
16 found in Inmate 2's cell.

17 The statements in the incident report regarding alcohol are
18 contradicted by Inmate 2's declaration of July 13, 2020. There,
19 Inmate 2 denies being drunk or having had alcohol in his cell on
20 June 17, denies that he was asked to take a urine test, and
21 states that nobody on June 17 accused him of being intoxicated or
22 of possessing alcohol. Inmate 2 Decl. of July 13, 2020 ¶¶ 7-10,
23 Docket No. 2998-6. He also states that it was not until two
24 weeks after the June 17 incident that officers filed a Rules
25 Violation Report (RVR) against him for assaulting an officer and
26 another for possession of alcohol on June 17, 2020. Id. ¶ 7.
27 Defendants do not explain why these RVRs were not issued until
28 two weeks after the incident. See Armenta Decl., Ex. A & B. And

1 even if Inmate 2 was under the influence of pruno found in his
2 cell, that would not justify the force used against him.

3 In light of the foregoing, the Court finds that Defendants'
4 description of the June 17 incident based on Associate Warden
5 Armenta's declaration and the incident reports attached thereto
6 lacks credibility.

7 Plaintiffs allege that the adverse actions taken against
8 Inmate 2 were motivated by retaliation for his participation in
9 the motions to enforce this Court's orders originating from the
10 ADA litigation. In the declaration that Inmate 2 signed on June
11 25, 2020, he states that staff at RJD began to retaliate against
12 him after he began to speak with Plaintiffs' counsel to prepare
13 the declaration in support of the enforcement motions, after his
14 release from the hospital in February. Inmate 2 Decl. of June
15 25, 2020 ¶¶ 4-6, Docket No. 2969-7. That was the declaration
16 stating that Office Rucker failed to act on Inmate 4's requests
17 to transfer to another cell because of safety concerns about his
18 cellmate, after which Inmate 4 was fatally attacked by his
19 cellmate. Inmate 2 Decl. of June 25, 2020 ¶ 9. Inmate 2
20 believes that RJD staff are aware that he is assisting with these
21 proceedings because RJD staff set up his calls with Plaintiffs'
22 counsel. Id. ¶ 6. Inmate 2 was told by other inmates that staff
23 at RJD refer to him as a "rat" and a "snitch." Id. ¶ 4.

24 Inmate 2 asserts that officers repeatedly failed to release
25 him from his cell on a timely basis so that he could take his
26 medications, and he believes that such failures are connected to
27 his assistance with the enforcement motions. The Court finds
28 these assertions credible. In their declarations, Inmate 1 and

1 Inmate 3 state that RJD staff have regularly delayed or simply
2 failed to release Inmate 2 for his medications since on or around
3 February 2020. Inmate 1 Decl. of June 26, 2020 ¶¶ 4-5; Inmate 3
4 Decl. of June 30, 2020 ¶¶ 7, 9. This coincides with the
5 timeframe that Inmate 2 came back from the hospital after Inmate
6 4's death.

7 The Court also finds credible that Officer Montreuil's use
8 of force against Inmate 2 was in retaliation for Inmate 2
9 submitting a declaration in support of the enforcement motion.
10 As noted above, Inmate 2 heard Officer Montreuil tell him during
11 the incident, "This is for my homeboy Rucker." This connection
12 is also shown by Inmate 1's declaration that he heard Officer
13 Montreuil say to Inmate 2 something to the effect of, "Explain
14 that to the lawyers you talk to." Inmate 1 Decl. of June 26,
15 2020 ¶ 8. Defendants have not submitted a declaration by Officer
16 Montreuil denying that he made these statements. After the
17 incident, according to Inmate 3, the officer in the control
18 tower, Officer Armstead, announced over the PA system, "Yeah,
19 motherfucker, that's what you get. That's how we do it." Inmate
20 3 Decl. of June 30, 2020 ¶ 25. Defendants have not submitted a
21 declaration from Officer Armstead, nor have they submitted
22 declarations by other RJD staff who witnessed the incident.

23 After the June 17 incident, Inmate 2 reported to medical
24 staff that he was extremely upset and afraid for his safety, and
25 he was placed on suicide watch. See, e.g., Freedman Decl., Ex.
26 11, 12, 13, Docket No. 2969-7. While he was on suicide watch,
27 someone slipped nail clippers and a note stating "kill yourself"
28 under his door. Inmate 2 Decl. of July 3, 2020 ¶ 4, Docket No.

1 2998-6. Inmate 2 swallowed the nail clippers because he was
2 upset and afraid and wanted to get out of RJD. Id. Surgery was
3 required to remove the nail clippers. Freedman Decl. ¶¶ 20-22 &
4 Ex. 15, 16. Defendants do not dispute that that these events
5 occurred as Inmate 2 describes them.

6 Inmate 2 declares that the incidents of retaliation against
7 him have led him to feel unsafe at RJD, to fear for his life, and
8 to wish that he were dead. Inmate 2 Decl. of June 25, 2020 ¶ 12.
9 Inmate 2 states that, given these incidents, he “w[ill] not stick
10 [his] neck out again and try to help in the Armstrong case
11 because the harassment is not worth dying for.” Id. The Court
12 finds that these statements are credible.

13 C. Adverse Action and Causation: Inmate 1

14 Inmate 1 is in her late forties, has hearing and mobility
15 disabilities, is serving a 348-month sentence for a conviction of
16 grand theft, and has been incarcerated since 1996. Freedman
17 Decl. ¶ 24, Docket No. 2969-7. Her CSRA score, or risk of
18 recidivism, is “low.” Id. Defendants have designated Inmate 1
19 as risk level 1, meaning that she is at high risk of
20 complications from Covid-19 in light of her multiple pre-existing
21 medical conditions, which include asthma, seizures, and sleep
22 apnea. Id.

23 On January 29, 2020, Inmate 1 signed a declaration, which
24 Plaintiffs submitted in support of the RJD enforcement motion, in
25 which she states that in November 2019 she was placed in
26 administrative segregation and left in her cell in handcuffs for
27 approximately forty-eight hours in retaliation for filing a
28 Prison Rape Elimination Act (PREA) claim. See Inmate 1 Decl. of

1 January 29, 2020 ¶¶ 6-11, Docket No. 2969-7. During this
2 episode, Inmate 1 was forced to urinate and defecate in her own
3 clothing more than once. Id. ¶ 10. Inmate 1 declares that the
4 handcuffs that were used during this incident belonged to Officer
5 Toeale. Id. ¶ 12. Following the incident, Inmate 1 was
6 interviewed by the Watch Commander, who told her that it had been
7 reported that a pair of handcuffs was missing, but staff failed
8 to conduct a search for the handcuffs. Id. ¶ 13. Inmate 1
9 believes that no search was conducted because she told everyone
10 who passed by her cell during that period that she was
11 handcuffed. Id. Inmate 1 reported this incident; the
12 investigation remains pending. Id. ¶¶ 13-15. Defendants do not
13 dispute that this incident occurred and they have offered no
14 contrary evidence, such as declarations by Officer Toeale or the
15 Watch Commander.

16 Inmate 1 signed a second declaration on March 27, 2020,
17 which Plaintiffs submitted in support of the state-wide
18 injunction motion, in which she states that, on or around January
19 28, 2020, Inmate 4 told her that Inmate 4 was having problems
20 with his cellmate and that he was trying to get transferred to
21 another cell. Inmate 1 Decl. of March 27, 2020 ¶ 5, Docket No.
22 2969-7. A few days later, Inmate 1 heard Officer Rucker tell
23 Inmate 4 to “fuck or fight” and to “[g]et the fuck out of [his]
24 face.” Id. ¶ 6. Inmate 1 believes that this statement was a
25 response to a request by Inmate 4 to move to another cell,
26 because Inmate 1 had heard Officer Rucker tell other inmates who
27 asked for a cell transfer to “fuck or fight.” Id. ¶ 7. On
28 February 4, 2020, Inmate 1 heard Inmate 4’s cellmate yell, “Man

1 down!" Id. ¶¶ 10-11. Nursing staff carried Inmate 4, who
2 appeared to be unconscious, out of his cell in a gurney. Id.

3 In a declaration signed on May 21, 2020, Inmate 1 states
4 that, about a month after Inmate 4's death in February 2020, she
5 heard from multiple people at RJD that Officer Rucker had been
6 transferred to work in the mailroom, and that Officer Doyle, a
7 partner of Officer Rucker, had made comments to inmates
8 indicating that she believed that Officer Rucker's transfer was
9 the result of conversations that inmates were having with lawyers
10 or investigators regarding Inmate 4's death. Inmate 1 Decl. of
11 May 21, 2020 ¶¶ 5-6.

12 On April 8, 2020, Inmate 1 had a seizure in her cell and
13 became unconscious. Id. ¶ 7. When she woke up, she felt sharp
14 pain in her wrists and ankles and saw Officer Doyle and Officer
15 Garcia among the several people who were surrounding her as she
16 woke up. Id. Inmate 1 was taken to a Triage and Treatment Area,
17 where she reported pain in her wrists and ankles and asked to be
18 examined by a doctor. Id. While waiting for the doctor, another
19 inmate, whom Inmate 1 does not want to name because of the
20 inmate's fear of retaliation, told Inmate 1 that he saw Officer
21 Doyle and Officer Garcia enter her cell and saw Officer Garcia
22 step on her hands and Officer Doyle step on her ankles before
23 dragging her out of her cell. Id. ¶ 9. When the doctor arrived,
24 Inmate 1 reported what she heard from the inmate and asked to
25 file an excessive force complaint against Officer Doyle and
26 Officer Garcia. Id. ¶ 10. Inmate 1 recalls that, when she was
27 sent back to her cell, Officer Doyle made a comment to her about
28 officers being aware of inmates talking with lawyers or

1 investigators to complain about staff, including Officer Rucker.
2 Id. ¶ 11. Inmate 1 interpreted this comment as a warning that
3 Officer Doyle believed that Officer Rucker had been sent to the
4 mailroom because of what Inmate 1 said about Officer Rucker in
5 her declaration for these proceedings. Id. The next day, on
6 April 9, 2020, Inmate 1 filed complaints of excessive force and
7 retaliation against Officer Doyle and Officer Garcia in
8 connection with the prior day's incident. Id. ¶ 12.

9 On April 15, 2020, Inmate 1 had a conversation with
10 Plaintiffs' counsel in a room from which Inmate 1 believes the
11 Watch Commander can hear what is being said. Id. ¶¶ 13-14. When
12 Inmate 1 returned to her building after the interview, Officer
13 Doyle confronted her and told her that "the Watch Commander told
14 me every fucking thing you said, you need to find something else
15 to do besides making complaints." Id. ¶ 15.

16 On May 13, 2020, Officer Mesa called Inmate 1 by name over
17 the public-announcement system, saying, "Internal Affairs is here
18 to see you in One Building." This made Inmate 1 afraid for her
19 safety because it is known among staff and inmates that inmates
20 who talk with Internal Affairs do so to report misconduct by
21 staff or other inmates, which in turn can invite acts of violence
22 or other forms of retaliation against the person reporting
23 misconduct. Id. ¶ 17. Inmate 3 heard Officer Mesa call out
24 Inmate 1 over the public-announcement system. Inmate 3 Decl. of
25 June 30, 2020 ¶ 18.

26 When Inmate 1 reported to the building as directed, she was
27 told that staff from the Appeal Inquiry Management System (AIMS)
28 were there to talk with her about the complaints she had filed

1 against Officer Doyle and Officer Garcia. Inmate 1 Decl. of May
2 21, 2020 ¶ 18. Inmate 1 saw that Officer Doyle and Officer
3 Garcia were standing outside of the room where the interview
4 would take place. Id. Further, Inmate 1 believes that there is
5 a slot in the room, which the Tower Officer can open to listen to
6 what is being said in the room. Id. ¶ 22. Inmate 1 suspects
7 that Officer Mesa had opened the slot during the interview
8 because other inmates told her that they had seen Officer Mesa
9 talking to Officer Doyle and Officer Garcia after the interview.
10 Id.

11 Later that day, Officer Mesa opened Inmate 1's cell and
12 allowed four other inmates to enter, one of whom told Inmate 1,
13 "Doyle don't want no problems with you, we work with her, so we
14 need you not to make any more complaints about her," and told her
15 to let the complaints she had already filed against Officer Doyle
16 "go." Id. ¶ 23. Inmate 3 saw a group of inmates speak to Inmate
17 1 but could not hear what was said. Inmate 3 Decl. of June 25,
18 2020 ¶ 18.

19 On May 19, 2020, another inmate told Inmate 1 that Officer
20 Mesa and Officer Doyle had told a group of inmates that a new
21 rule limiting telephone calls and showers to every other day was
22 caused by the complaints that Inmate 1 had filed. Inmate 1 Decl.
23 of May 21, 2020 ¶ 24. Inmate 1 believes that these officers
24 blamed Inmate 1 for these unpopular rule changes in order to put
25 a target on her back. Id.

26 On June 17, 2020, Inmate 1 observed the incident during
27 which Officer Montreuil used force against Inmate 2. Inmate 1
28 Decl. of June 26, 2020 ¶¶ 4-8. Inmate 1 declares that she lives

1 in "great fear" following what happened to Inmate 2 on June 17.
2 Id. ¶ 9. Inmate 1 believes that RJD staff know that she is
3 assisting in this litigation because staff routinely call her a
4 "snitch" and announce over the speaker system that she has phone
5 calls with Plaintiffs' counsel. Id. Inmate 1 declares that it
6 is very "dangerous" to be publicly called out for talking with
7 Plaintiffs' counsel because "[t]alking to the Armstrong attorneys
8 is considered the equivalent of snitching on staff[.]" Id.

9 On June 25, 2020, Inmate 1 had an interview with Internal
10 Affairs about a complaint she filed and Officer Mesa called out
11 Inmate 1 by name over the public-announcement system and
12 announced, "[I]t's time for you to go talk to Internal Affairs."
13 Inmate 1 Decl. of June 26, 2020 ¶ 10. As Inmate 1 passed by
14 Officer Sanchez's door on the way to this meeting, Officer
15 Sanchez said to Inmate 1, "I know you are snitching, make sure
16 you spell my name right." Id. The interview with Internal
17 Affairs took place in the chapel on the prison yard, which means
18 that everyone on the yard saw the Internal Affairs officer and
19 Inmate 1 go to the chapel for the interview. Id. Inmate 1 is
20 "very afraid for [her] safety" as a result. Id.

21 On or around June 29, 2020, Inmate 3 heard Officer Mesa
22 announce over the public-announcement system that Inmate 1 was
23 meeting with Internal Affairs. Inmate 3 Decl. of June 30, 2020
24 ¶ 29.

25 The Court finds Inmate 1's allegations of retaliation for
26 assisting Plaintiffs' counsel with these proceedings, and of
27 living in fear for her safety at RJD, to be credible. Most of
28 the incidents Inmate 1 describes in her declarations involve

1 Officer Doyle, who she claims is Officer Rucker's partner, which
2 Defendants do not dispute. Inmate 1 Decl. of June 26, 2020 ¶ 9.
3 Inmate 1 believes that a connection exists between Officer
4 Doyle's actions and Inmate 1's participation in this litigation
5 because her participation has involved complaining about Officer
6 Rucker's involvement in the events leading up to Inmate 4's
7 death. Id.

8 Defendants have offered no affirmative evidence to dispute
9 that any of the incidents that Inmate 1 describes in her
10 declaration occurred, including the multiple instances of being
11 called out over the public-announcement system as having meetings
12 with Plaintiffs' counsel and Internal Affairs, and the multiple
13 instances in which an officer approached Inmate 1 to say
14 something to discourage her from complaining about staff or to
15 make her aware that staff know about her discussions with
16 Plaintiffs' counsel or complaints about staff. Inmate 3's
17 declaration corroborates some of these incidents.

18 Instead, Defendants argue that Inmate 1's declarations are
19 not credible because she stated during a videotaped interview on
20 July 7, 2020, that she had no safety concerns on Facility A,
21 which is inconsistent with the statement in her declaration of
22 June 26, 2020, that she was "very afraid for [her] safety." See
23 Inmate 1 Decl. of June 26, 2020 ¶ 10, Docket No. 2969-7.

24 Associate Warden Scott Anderson conducted the July 7 video
25 interview of Inmate 1 for the purpose of determining whether she
26
27
28

1 had any safety concerns on Facility A.³ See Armenta Decl., Ex. E,
2 Docket No. 2984. During the interview, Associate Warden Anderson
3 states that he and staff were “made aware” that Inmate 1 “might
4 have safety concerns on the facility,” and asks Inmate 1 whether
5 she has “any safety concerns staying in Facility A.” Id. Inmate
6 1 responds that she does not have safety concerns and that, if
7 she had any, she would say so. Id.

8 Inmate 1 signed a declaration dated July 11, 2020, in which
9 she explains her statements during the video interview of July 7.
10 Inmate 1 states that, starting in May 2020, she had been
11 interviewed by various RJD staff about whether she had any safety
12 concerns. Inmate 1 Decl. of July 11, 2020 ¶ 4. Even though
13 Inmate 1 did “fear for [her] safety” because “officers on
14 Facility A have engaged in a campaign of harassment and
15 retaliation against [her] for complaining about staff misconduct
16 and participating in Plaintiffs’ motions,” Inmate 1 “denied
17 having safety concerns when asked because [she] did not want to
18 go to administrative segregation,” as she had been left in
19 handcuffs for forty-eight hours the last time she was there. Id.

20 On July 7, 2020, before the videotaped interview with
21 Associate Warden Anderson, four officers, Officers Torrones,
22 Lacroix, Silkk, and another officer whose name Inmate 1 does not
23

24 ³ Plaintiffs move to strike this video on the grounds that it
25 violates the Court’s order of March 17, 2020, and California Rule
26 of Professional Conduct 4.2, because Defendants conducted the
27 video interview without first obtaining consent from Plaintiffs’
28 counsel. Defendants represented during the hearing on July 16,
2020, that they questioned Inmate 1 about her safety concerns in
order to ensure her safety. In an abundance of caution, the
Court will consider the video and weigh it in light of the
circumstances.

1 know, and two sergeants whose names Inmate 1 does not know, came
2 to Inmate 1's cell and told her that she was being taken to
3 administrative segregation for safety concerns. Id. ¶ 5. Inmate
4 1 refused to go to administrative segregation and said that she
5 did not have any safety concerns. Id. ¶¶ 5-7. About an hour
6 later, Sergeant Jackson and a female lieutenant told Inmate 1,
7 "Your lawyer called and said that you have safety concerns." Id.
8 ¶ 8. Inmate 1 responded that she never told her lawyer that she
9 wanted to be placed in administrative segregation for safety, and
10 that it was "safer for [her] in Building 1 than in ad-seg." Id.

11 Defendants have not filed any declarations by Officers
12 Torrones, Lacroix, and Silkk, or Sergeant Jackson, to dispute
13 Inmate 1's version of these events.

14 About an hour and a half later, Associate Warden Anderson
15 and Counselor Belmares came to Inmate 1's cell and Anderson told
16 Inmate 1 that she had to go to the mental health building to sign
17 a chrono stating that she did not want to go to administrative
18 segregation. Id. ¶¶ 8-9. Associate Warden Anderson then took
19 Inmate 1 to Associate Warden Armenta's office in the mental
20 health building and filmed the interview discussed above. Id. ¶
21 9. After the end of the videotaped interview, Inmate 1 told
22 Anderson and Armenta about the time she was left in handcuffs for
23 forty-eight hours in administrative segregation to explain why
24 she did not want to go to administrative segregation. Id. The
25 Associate Wardens have not filed a declaration that contradicts
26 Inmate 1's version of the events.

27 Inmate 1 declares that she remains afraid for her safety on
28 Facility A but is "terrified" of being sent to administrative

1 segregation, where she “fears staff would hurt [her]” like they
2 did during the handcuffs incident and where staff could also
3 allow other incarcerated people to hurt her. Id. ¶ 10.

4 The Court does not find the videotaped interview of July 7
5 to be probative of whether Inmate 1 did, in fact, have concerns
6 for her safety at RJD. Nor does this video undermine Inmate 1’s
7 credibility.

8 In sum, Inmate 1’s sworn statements regarding multiple acts
9 by RJD staff, which Inmate 1 believes were intended to intimidate
10 her, threaten her, and discourage her from cooperating with
11 Plaintiffs’ counsel in these proceedings and from complaining
12 about staff in general, are uncontroverted. Inmate 1 has
13 connected these incidents to her assistance with the enforcement
14 motions by declaring that, during some of the incidents, officers
15 have made references to Officer Rucker and to Inmate 1 talking
16 with Plaintiffs’ counsel. Further, Defendants’ attack on Inmate
17 1’s credibility is ineffective. Accordingly, the Court finds
18 that Inmate 1’s statements regarding the incidents described
19 above, and their connection to her assistance with the
20 enforcement motions, are credible.

21 D. Findings Related to Winter Factors

22 As will be discussed below, the issuance of a preliminary
23 injunction requires findings (1) that the movant is likely to
24 succeed on the merits; (2) that he is likely to suffer
25 irreparable harm in the absence of preliminary relief; (3) that
26 the balance of the equities tips in his favor; and (4) that a
27 preliminary injunction is in the public interest. The Court’s
28

1 factual findings with respect to each of these factors are as
2 follows.

3 1. Likelihood of Success on the Merits

4 Based on the evidence detailed above, the Court finds that
5 Plaintiffs have shown that they are likely to succeed on the
6 merits of their claims that the Witnesses have suffered adverse
7 actions due to retaliation, in violation of the ADA, or that, at
8 the very least, Plaintiffs have raised serious questions as to
9 such claims.

10 The Court finds that the enforcement motions are ADA
11 proceedings because they seek to enforce class members' rights
12 under the ADA. In their enforcement motions, Plaintiffs argue
13 that Defendants' employees have violated class members' rights
14 under the ADA and the RA, and have violated the Court's
15 injunctions and orders in this action, by attacking and
16 retaliating against class members on account of their
17 disabilities or for exercising their statutory rights.

18 The Witnesses have filed declarations in support of the
19 enforcement motions, and such declarations, as well as the
20 Witnesses' assistance to Plaintiffs' counsel, are protected
21 activity under the ADA.

22 The Court further finds that Plaintiffs have shown that they
23 are likely to succeed on their claims that the Witnesses suffered
24 adverse actions that were retaliatory, in that they were caused
25 by the Witnesses' assistance with the enforcement motions.

26 //

2. Irreparable Harm

The Court finds that Plaintiffs have shown that they are likely to suffer irreparable harm absent a preliminary injunction.

The situation for inmates with disabilities and otherwise vulnerable to abuse at RJD has been described by Plaintiffs' expert as "horrifying" in light of the "substantial evidence that these vulnerable inmates are targeted and preyed upon by a significant number of staff at RJD." Schwartz Decl. ¶¶ 23-27. The alleged misconduct by RJD staff includes the use of excessive force, which is employed against RJD inmates at a "startling" rate that is "far beyond the norm[.]" Vail Decl. ¶ 13. The Bishop Report of December 2018 describes allegations by inmates of violence and retaliation by RJD staff aimed at vulnerable populations, including disabled inmates.

Defendants have acknowledged that the Bishop Report "formally recognized serious problems with aspects of R.J. Donovan's operations . . . and that responsive action should be taken." Defs.' Resp. to RJD Mot. at 19. But, as Plaintiffs' expert noted and Defendants have not disputed, the situation at RJD is the result of the "dysfunctional staff culture," which "will not be changed quickly or easily." Schwartz Decl. ¶ 93. Thus, while Defendants have taken steps to improve the conditions for class members housed at RJD since the Bishop Report, the Court finds a likelihood that the Witnesses who now seek injunctive relief will suffer from acts of retaliation and abuse that could cause them great bodily or psychological injury, and violations of their statutory rights, absent injunctive relief.

1 As noted, the Court finds that Plaintiffs have shown a
2 likelihood that the Witnesses have suffered acts of retaliation
3 even after Defendants, pursuant to the Court's order of March 17,
4 2020, posted anti-retaliation notices in the housing units at
5 RJD, provided RJD staff with additional anti-retaliation
6 training, and took other steps to ensure that inmate-declarants
7 would suffer no retaliation as a result of having provided
8 assistance to Plaintiffs' counsel in connection with the
9 enforcement motions. The incidents of retaliation at issue took
10 place even after Defendants began to report allegations of staff
11 misconduct to AIMS. Each of these incidents put the Witnesses in
12 danger of bodily or psychological harm, or of further violations
13 of their rights under the ADA to participate or assist in these
14 proceedings.

15 The fact that these incidents likely occurred as Inmate 2
16 and Inmate 1 describe them in their declarations, which, as
17 discussed above, the Court finds to be credible in light of the
18 totality of the record now before it, shows that nothing the
19 Court or Defendants have done so far has been effective at
20 preventing retaliation against the Witnesses. There is no
21 indication in the record that any effective mechanism is in place
22 to guarantee that this conduct against the Witnesses will stop if
23 the Witnesses remain at RJD. As Defendants have admitted, there
24 is still "staff misconduct that does occur" at RJD. See Defs.'
25 Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 267, Docket
26 No. 2922-1. Accordingly, Plaintiffs have shown that further
27 retaliatory conduct against the Witnesses is likely to occur
28 absent an injunction.

1 The Court therefore finds that Plaintiffs have shown that
2 the Witnesses are at risk of suffering irreparable harm and that
3 their participation as witnesses in this litigation could be at
4 risk absent a preliminary injunction that continues in effect the
5 order requiring that they be transferred to and housed in a
6 suitable place outside of RJD.

7 3. Balance of the Equities

8 The Court finds that the balance of the equities tips
9 sharply in Plaintiffs' favor. Plaintiffs have shown that, in the
10 absence of a preliminary injunction, they would suffer
11 significant burdens, which include serious bodily and
12 psychological harm, and violations of their rights under the ADA
13 in the form of further retaliation for their assistance in these
14 proceedings.

15 On the other hand, Defendants have not pointed to any
16 burdens that the issuance of a preliminary injunction, continuing
17 in effect the transfer to and housing of the Witnesses at a
18 suitable non-RJD facility, would impose upon them. The only
19 burdens that Defendants have identified do not appear to be
20 related to such a transfer. Defendants argue that a preliminary
21 injunction could result in future requests for transfer by other
22 inmates, and that it would be burdensome to remove officers each
23 time an allegation of misconduct is lodged against such officers.
24 Defendants, however, do not explain how these matters relate to
25 the preliminary injunction at issue here. Defendants' arguments
26 are unpersuasive for the additional reasons that Plaintiffs have
27 not yet requested to remove any officers and that, in the lengthy
28

1 history of this action, Plaintiffs have never before moved to
2 transfer particular inmates from one prison to another.

3 The present pandemic presents special challenges to prison
4 management, but such challenges affect every aspect of the prison
5 system. The Court finds that any such challenges in the context
6 of the preliminary injunctive relief at issue here, which is
7 limited to the transfer and housing of two inmates at a suitable
8 non-RJD facility, are slight when weighed against the burdens
9 that the Witnesses would suffer in the absence of a preliminary
10 injunction.

11 Accordingly, the Court finds that the burden on Defendants
12 and on prison administration of transferring and housing the two
13 Witnesses in a suitable facility other than RJD is minimal, and
14 that any such burdens are heavily outweighed by the burdens that
15 the Witnesses could face if they continue to be housed at RJD.

16 4. Public interest

17 The Court finds that Plaintiffs have shown that a
18 preliminary injunction is in the public interest.

19 After experiencing various incidents involving threats,
20 intimidation, and even violence, Inmate 2 and Inmate 1 believe
21 that reporting misconduct by RJD staff and assisting with these
22 proceedings has placed their personal safety at risk. Inmate 2
23 Decl. of June 26, 2020 ¶ 12; Inmate 1 Decl. of June 26, 2020 ¶
24 10. If such incidents continue, the ability or willingness of
25 the Witnesses and other inmates to assist with or participate in
26 these proceedings could be negatively impacted. Inmate 2, for
27 one, has stated that he "will not stick out [his] neck out again
28 and try to help in the Armstrong case because the harassment is

1 not worth dying for." Inmate 2 Decl. of June 26, 2020 ¶ 12.
2 Inmate 1, for another, has refused to ask other inmates to come
3 forward to corroborate the incidents she describes in her
4 declarations because she "know[s] that they will not be protected
5 from retaliation." Inmate 1 Decl. of May 21, 2020 ¶ 26. In
6 light of these sworn statements, which the Court deems credible,
7 the Court finds that the integrity of these proceedings would
8 deteriorate in the absence of a preliminary injunction. The
9 Court further finds that a preliminary injunction would promote
10 the enforcement of the ADA's anti-interference and anti-
11 retaliation provisions, which is in the public interest.

12 Defendants argue that the public interest weighs in favor of
13 non-interference with prison administration. As discussed above,
14 Defendants have not shown how the preliminary injunction at issue
15 here would burden the prison system or would otherwise improperly
16 interfere with prison administration.

17 Accordingly, the Court finds that a preliminary injunction
18 that would continue in effect the order to transfer and house the
19 inmates at a suitable non-RJD facility is in the public interest.

20 LEGAL STANDARD

21 "A plaintiff seeking a preliminary injunction must establish
22 that he is likely to succeed on the merits, that he is likely to
23 suffer irreparable harm in the absence of preliminary relief,
24 that the balance of equities tips in his favor, and that an
25 injunction is in the public interest." Winter v. Natural Res.
26 Def. Council, Inc., 555 U.S. 7, 20 (2008).

27 Alternatively, "a preliminary injunction could issue where
28 the likelihood of success is such that serious questions going to

1 the merits were raised and the balance of hardships tips sharply
2 in plaintiff's favor," so long as the plaintiff demonstrates
3 irreparable harm and shows that the injunction is in the public
4 interest. Alliance for the Wild Rockies v. Cottrell, 632 F.3d
5 1127, 1131 (9th Cir. 2011) (citation and internal quotation and
6 editing marks omitted). A court employs a sliding scale when
7 considering a plaintiff's showing as to the likelihood of success
8 on the merits and the likelihood of irreparable harm. Id.
9 "Under this approach, the elements of the preliminary injunction
10 test are balanced, so that a stronger showing of one element may
11 offset a weaker showing of another." Id.

12 CONCLUSIONS OF LAW

13 I. Plaintiffs Have Shown that a Preliminary Injunction is 14 Warranted

15 As discussed below, and based on the factual findings above,
16 the Court concludes that Plaintiffs have met their burden to show
17 that the issuance of a preliminary injunction to transfer and
18 maintain the Witnesses out of RJD is warranted because they have
19 shown that each of the four factors of the Winter framework is
20 met. However, even if Plaintiffs had, instead of showing a
21 likelihood of success on the merits of their claims of
22 retaliation in violation of the ADA, only shown that serious
23 questions exist as to such claims, the preliminary injunction
24 would be justified under the alternative sliding-scale standard
25 based on the Court's factual findings, and conclusions below,
26 that the balance of hardships tips sharply in Plaintiffs' favor,
27 that Plaintiffs have demonstrated a likelihood of irreparable
28

1 harm, and that the injunction is in the public interest. See
2 Alliance for the Wild Rockies, 632 F.3d at 1131.

3 That the preliminary injunction at issue here is a mandatory,
4 and not a prohibitory, injunction does not undermine the Court's
5 conclusion. A court can issue a mandatory injunction where, as
6 here, the facts and law clearly favor the moving party. See
7 Stanley v. Univ. of S. California, 13 F.3d 1313, 1320 (9th Cir.
8 1994); see also Charles A. Wright & Arthur R. Miller, 11A Fed.
9 Prac. & Proc. Civ. § 2942 (3d ed.) ("It has been said that courts
10 are more reluctant to grant a mandatory, or affirmative,
11 injunction than a prohibitory, or negative, one. Nonetheless,
12 injunctions compelling the doing of some act, as opposed to
13 forbidding the continuation of a course of conduct, are an ancient
14 and familiar tool of equity courts and will be used whenever the
15 circumstances warrant.").

16 A. Likelihood of Success on the Merits

17 The Court first must determine what legal standard governs
18 the Witnesses' claims of retaliation. Defendants argue that the
19 standard is that for proving retaliation in violation of the First
20 Amendment, and Plaintiffs argue that the standard is that for
21 proving retaliation in violation of the ADA.

22 The retaliation about which the Witnesses complain is
23 allegedly connected to their assistance with or participation in
24 Plaintiffs' enforcement motions, which in turn seek redress for
25 violations of the ADA, the RA, the remedial plan, and the Court's
26 injunctions and related orders. Plaintiffs do not argue that the
27 retaliation that underlies their request for preliminary
28 injunctive relief was in violation of the Witnesses' First

1 Amendment rights. Accordingly, the Court concludes that the
2 relevant standard here is the standard for proving retaliation in
3 violation of the ADA.

4 A claim for retaliation in violation of the ADA requires a
5 showing "that (1) [the plaintiff] engaged in statutorily
6 protected activity; (2) adverse action was taken against him; and
7 (3) a causal connection exists between the adverse action and
8 protected activity." Rinehart v. Weitzell, __F.3d__, No. 18-
9 3263, 2020 WL 3579862, at *4 (8th Cir. July 2, 2020) (applying
10 test for retaliation in violation of the ADA to claim brought by
11 incarcerated person).

12 As discussed below, and based on the facts found above,
13 Plaintiffs are likely to show that all three prongs for a claim
14 of retaliation in violation of the ADA have been met with respect
15 to each Witness. Accordingly, Plaintiffs have shown that they
16 are likely to succeed on the merits of their claims for
17 retaliation in violation of the ADA as to each Witness, as well
18 as their claims for violations of the Court's order of March 17,
19 2020. In the alternative, the Court concludes that, at the very
20 least, Plaintiffs have raised serious questions with respect to
21 the merits of their retaliation claims.

22 1. Protected Activity Under the ADA

23 Title II of the ADA provides that "no qualified individual
24 with a disability shall, by reason of such disability, be
25 excluded from participation in or be denied the benefits of the
26 services, programs, or activities of a public entity, or be
27 subjected to discrimination by any such entity." 42 U.S.C.
28 § 12132. The ADA applies to state prisons. Armstrong v. Wilson,

1 124 F.3d at 1023 (“[W]e conclude that the plain language of the
2 ADA and RA, and our prior interpretations of that language,
3 support application of the statutes to state prisons.”).

4 In their enforcement motions, Plaintiffs argue that
5 Defendants’ employees have violated class members’ rights under
6 the ADA and the RA, and have violated the remedial plan and the
7 Court’s injunctions and orders in this action, by attacking and
8 retaliating against class members on account of their
9 disabilities or for exercising their rights under the ADA and the
10 RA. Because the enforcement motions are brought to protect class
11 members’ rights under the ADA, such motions are ADA proceedings.

12 The ADA prohibits retaliation for or interference with
13 assisting or testifying in connection with an ADA proceeding.
14 Specifically, 42 U.S.C. § 12203(a) provides, “No person shall
15 discriminate against any individual because such individual has
16 opposed any act or practice made unlawful by this chapter or
17 because such individual made a charge, testified, assisted, or
18 participated in any manner in an investigation, proceeding, or
19 hearing under this chapter.” Additionally, 42 U.S.C. § 12203(b)
20 provides, “It shall be unlawful to coerce, intimidate, threaten,
21 or interfere with any individual in the exercise or enjoyment of,
22 or on account of his or her having exercised or enjoyed, or on
23 account of his or her having aided or encouraged any other
24 individual in the exercise or enjoyment of, any right granted or
25 protected by this chapter.”

26 Here, the Witnesses have filed declarations in support of
27 the enforcement motions, which, as found and concluded, are ADA
28 proceedings. The Witnesses’ assistance with the enforcement

1 motions, therefore, is protected activity under the ADA, 42
2 U.S.C. §§ 12203(a) and (b). Accordingly, the first prong of a
3 claim for retaliation in violation of the ADA is met.

4 2. Adverse Action and Causation

5 The Court next addresses the second and third prongs of a
6 claim for retaliation in violation of the ADA, which here require
7 a showing that adverse action related to the Witnesses'
8 declarations in support of the enforcement motions was taken
9 against the Witnesses. After carefully reviewing all of the
10 materials presented by both sides, the Court has found and
11 concludes that Plaintiffs are likely to show that the Witnesses
12 suffered adverse actions that were caused by their assistance
13 with the enforcement motions.

14 Specifically, as discussed in more detail in the Findings of
15 Fact, the Court has found that Plaintiffs are likely to show that
16 Inmate 2 suffered several adverse actions by staff at RJD that
17 have a causal nexus to his assistance with the enforcement
18 motions. These actions include: that RJD staff delayed in
19 providing, or failed to provide, Inmate 2 with his medications on
20 multiple occasions; that Officer Montreuil used excessive force
21 against Inmate 2 on June 17, 2020; and that RJD staff allowed
22 nail clippers in Inmate 2's cell and a note encouraging him to
23 kill himself while he was on suicide watch.

24 The Court also has found that Plaintiffs are likely to show
25 that Inmate 1 suffered several adverse actions by staff at RJD
26 that have a causal nexus to her assistance with the enforcement
27 motions. These actions include: that staff at RJD, on multiple
28 instances, stated over the public-announcement system that Inmate

1 1 was meeting with Plaintiffs' counsel and internal
2 investigators; and that officers made statements or otherwise
3 behaved in a way intended to intimidate, threaten, or discourage
4 Inmate 1 from assisting Plaintiffs' counsel in these proceedings
5 or otherwise complaining about staff misconduct.

6 Defendants argue that the June 17 incident involving Inmate
7 2 is not an act of retaliation because Officer Montreuil's use of
8 force against him "was not because of Inmate 2's protected
9 conduct, but instead advanced a legitimate correctional goal."
10 Defs.' Resp. at 5, Docket No. 2981-3. But Defendants have cited
11 no case showing that a claim for retaliation in violation of the
12 ADA fails where the adverse action in question "advanced a
13 legitimate correctional goal." The cases upon which Defendants
14 rely to support that proposition are inapposite, because they
15 address claims for retaliation in violation of the First
16 Amendment, which require proof of an additional element not
17 required for a retaliation claim under the ADA, namely that the
18 adverse conduct in question did not advance a legitimate
19 correctional goal. See, e.g., Pratt v. Rowland, 65 F.3d 802, 806
20 (9th Cir. 1995) (holding that, "[b]ecause a prisoner's First
21 Amendment rights are necessarily curtailed" while in custody, "a
22 successful retaliation claim [under the First Amendment] requires
23 a finding that the prison authorities' retaliatory action did not
24 advance legitimate goals of the correctional institution or was
25 not tailored narrowly enough to achieve such goals").

26 Further, the record does not support a finding that Officer
27 Montreuil's use of force advanced a legitimate correctional goal
28 in any case. As discussed above, Defendants have not shown that

1 level of force that Officer Montreuil used against Inmate 2,
2 which was enough to render him unconscious, was appropriate even
3 if Inmate 2 had, in fact, been walking toward Officer Montreuil
4 and had tried to throw bodily fluids at the officer.

5 With respect to Inmate 1, Defendants argue that she has no
6 actionable retaliation claim because the acts about which she
7 complains amount to “bad mouthing” and verbal threats that do not
8 violate her First Amendment rights. Defs.’ Resp. at 9-10, Docket
9 No. 2981-3. As discussed above, however, the relevant standard
10 for proving retaliation here is the one under the ADA, not the
11 First Amendment.

12 Accordingly, the first factor under the Winter framework
13 weighs in favor of issuing a preliminary injunction.

14 B. Irreparable Harm

15 The Court finds that Plaintiffs have made a strong showing
16 that the Witnesses are likely to suffer irreparable harm absent a
17 preliminary injunction. As discussed in more detail in the
18 Findings of Fact, it is undisputed that staff misconduct at RJD
19 continues to occur notwithstanding the Court’s orders and the
20 steps that Defendants have taken. The Court has found that the
21 Witnesses likely have suffered acts of retaliation despite the
22 efforts that the Court and the parties have taken to protect
23 class members from retaliation. In the absence of any indication
24 in the record that there is any effective mechanism in place to
25 guarantee that retaliatory conduct against the Witnesses will
26 stop, the Court has found that the Witnesses are likely to suffer
27 irreparable harm in the form of serious physical or psychological
28 injury, and further retaliation in violation of their rights

1 under the ADA, absent a preliminary injunction. Cf. Goldie's
2 Bookstore, Inc. v. Superior Court of State of Cal., 739 F.2d 466,
3 472 (9th Cir. 1984) (holding that finding of potential injury
4 that was "not based on any factual allegations" was insufficient
5 because "[s]peculative injury does not constitute irreparable
6 injury").

7 Defendants argue that the Witnesses have not shown that they
8 are likely to suffer irreparable harm because their declarations
9 are not credible. Defendants note that Inmate 1 changed her
10 story about having safety concerns as shown in the July 7 video
11 interview, and that Inmate 2 changed his story about Officer
12 Rucker's physical involvement in Inmate 4's death. For the
13 reasons discussed above, the Court has found that these attacks
14 on the Witnesses' credibility are ineffective.

15 Accordingly, this factor weighs strongly in favor of issuing
16 a preliminary injunction.⁴

17 C. Balance of the Equities

18 Plaintiffs have shown that the balance of the equities
19 weighs heavily in the Witnesses' favor. As discussed in more
20 detail in the Findings of Fact, the Court has found that the
21 burden, if any, on Defendants and on prison administration of
22 transferring and housing the Witnesses in a suitable facility
23 other than RJD is minimal, and that any such burden is heavily
24 outweighed by the burdens that the Witnesses could face if they
25

26 ⁴ The strong showing that Plaintiffs have made with respect
27 to the factor of irreparable harm would more than offset any
28 weakness in Plaintiffs' showing with respect to the likelihood of
success on the merits. See Alliance for the Wild Rockies, 632
F.3d at 1131.

1 continue to be housed at RJD, which include the possibility of
2 serious bodily injury, psychological harm, and ongoing violations
3 of their rights. See Hernandez v. Sessions, 872 F.3d 976, 996
4 (9th Cir. 2017) ("Faced with . . . preventable human suffering,
5 [the Ninth Circuit] ha[s] little difficulty concluding that the
6 balance of hardships tips decidedly in plaintiffs' favor.")
7 (citation and internal quotation marks omitted).

8 Accordingly, this factor weighs in favor of issuing a
9 preliminary injunction.

10 D. Public Interest

11 Plaintiffs have shown that issuing a preliminary injunction
12 is in the public interest.

13 As discussed in the Findings of Fact, the Court has found
14 that a preliminary injunction would preserve the integrity of
15 these proceedings by protecting the Witnesses from retaliation
16 for assisting Plaintiffs' counsel with the enforcement motions.
17 This is in the public interest and is consistent with Defendants'
18 legal obligations. See, e.g., 15 Cal. Code Regs. § 3270 ("The
19 requirement of custodial security and of staff, inmate and public
20 safety must take precedence over all other consideration in the
21 operation of all the programs and activities of the institutions
22 of the department."); 15 Cal. Code Regs. § 3271 ("Every employee,
23 regardless of his or her assignment, is responsible for the safe
24 custody of the inmates confined in the institutions of the
25 department.").

26 The Court also has found that a preliminary injunction would
27 protect the Witnesses' rights under the ADA, which also is in the
28

1 public interest. See Enyart v. Nat'l Conference of Bar
2 Examiners, Inc., 630 F.3d 1153, 1167 (9th Cir. 2011).

3 The Court also has found that Defendants have not shown that
4 the preliminary injunction at issue would improperly interfere
5 with prison administration.

6 Accordingly, this factor also weighs in favor of issuing a
7 preliminary injunction.

8 II. The Preliminary Injunction Is Consistent with the Prison
9 Litigation Reform Act

10 The Prison Litigation Reform Act (PLRA) provides that courts
11 "shall not grant or approve any prospective relief [with respect
12 to prison conditions] unless the court finds that such relief is
13 narrowly drawn, extends no further than necessary to correct the
14 violation of the Federal right, and is the least intrusive means
15 necessary to correct the violation of the Federal right." 18
16 U.S.C. § 3626(a)(1)(A). Whether prospective relief is
17 appropriate in light of the PLRA depends on whether the court
18 finds, in light of the "order as a whole," "that the set of
19 reforms being ordered—the 'relief'—corrects the violations of
20 prisoners' rights with the minimal impact possible on defendants'
21 discretion over their policies and procedures." Armstrong v.
22 Schwarzenegger, 622 F.3d at 1071.

23 The Court concludes that a preliminary injunction that
24 continues in effect the transfer to and housing of the Witnesses
25 at a suitable facility that is not RJD meets the requirements of
26 the PLRA. The preliminary injunction is narrowly tailored
27 because it requires action only with respect to the two inmates
28 who have shown a likelihood of success on their claims of

1 retaliation, and because the transfer of the Witnesses is the
2 least that can be done to keep the Witnesses safe from further
3 incidents that could cause them serious bodily or psychological
4 injury and violations of their rights under the ADA. Id. at 1072
5 (holding that the scope of permissible injunctive relief “is
6 dictated by the extent of the violation established”) (citation
7 and internal quotation marks omitted).

8 The preliminary injunction is not overly intrusive because
9 it does not micromanage the process of transferring the Witnesses
10 out of RJD. That the Court has required that the new placements
11 for the Witnesses meet certain criteria in light of the
12 Witnesses’ disabilities, medical conditions, security level, and
13 vulnerability to acts of retaliation in violation of the ADA does
14 not change this conclusion. See Armstrong v. Brown, 768 F.3d at
15 986 (holding that “[a] court may, as the district court did here,
16 provide specific instructions to the State without running afoul
17 of the PLRA”). Such criteria are necessary to ensure that the
18 Witnesses are not deprived of their rights at the new location.
19 As the Ninth Circuit has held, “the defendants have the
20 responsibility of ensuring that their prisoners are afforded
21 their rights under the ADA, regardless of where the State
22 incarcerates them[.]” See Armstrong v. Schwarzenegger, 622 F.3d
23 at 1072.

24 Critically, Defendants have not advanced any viable
25 alternative means to protect the Witnesses’ rights that are
26 narrower or less intrusive. Ordering that the Witnesses remain
27 at RJD is not a viable alternative to the preliminary injunction
28 at issue because the record shows that prior orders by the Court
and prior actions by Defendants to protect class members at RJD

1 from retaliation have been ineffective. See Armstrong v. Brown,
2 768 at 986 (noting that, where the “the district court has
3 attempted narrower, less intrusive alternatives—and those
4 alternatives have failed,” the court has discretion to order
5 relief that might have raised concerns about breadth and
6 intrusiveness under the PLRA in the first instance) (citation and
7 internal quotation marks omitted).

8 Further, the Court has considered Defendants’ arguments
9 regarding the potential burdens that the preliminary injunction
10 would impose on them, and it has found that the potential
11 burdens, if any, would be minimal. Even if complying with the
12 preliminary injunction were burdensome for Defendants, however,
13 “[a] demonstration that an order is burdensome does nothing to
14 prove that it was overly intrusive,” which is the relevant
15 consideration under the PLRA. Armstrong v. Schwarzenegger, 622
16 F.3d at 1071 (“With Congress having made the decision to
17 recognize the rights of disabled persons, the question is not
18 whether the relief the court ordered to vindicate those rights is
19 expensive, or difficult to achieve, but whether the same
20 vindication of federal rights could have been achieved with less
21 involvement by the court in directing the details of defendants’
22 operations.”).

23 Accordingly, the Court finds that the issuance of the
24 preliminary injunction at issue is appropriate.

25 CONCLUSION

26 The Court GRANTS IN PART Plaintiffs’ motion for a
27 preliminary injunction. The preliminary injunction will issue as
28 a separate order. The Witnesses have been transferred out of RJD

1 pursuant to the Court's temporary restraining order. Inmate 2
2 shall remain housed at the MHCBC at CMC on a temporary basis
3 pending placement at CHCF once it is open for transfers, and
4 Inmate 1 shall remain housed at an Enhanced Outpatient Program
5 housing unit on Facility D at Mule Creek State Prison, subject to
6 the exceptions set forth in the preliminary injunction. While
7 the Witnesses are housed at these facilities, Defendants shall
8 have the ADA coordinator meet with each Witness on a regular
9 basis to discuss whether the Witness has any safety concerns or
10 has faced retaliation, and Defendants shall arrange for regular
11 confidential telephone calls between each Witness and Plaintiffs'
12 counsel.

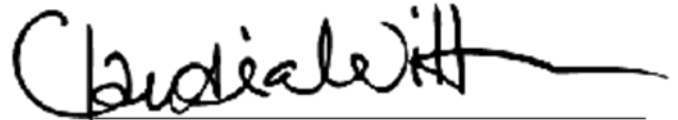
13 No security shall be required because the Witnesses are
14 incarcerated and presumably indigent.

15 The preliminary injunction shall remain in effect for ninety
16 days of the date of this order. See 18 U.S.C. § 3626(a)(2). The
17 Court will make the injunction final before the expiration of the
18 ninety-day period based on the findings set forth herein, unless
19 Defendants make a further factual showing that they were unable
20 to make in opposition to the issuance of a preliminary injunction
21 in light of the expedited schedule for that proceeding. No later
22 than September 21, 2020, Defendants may submit a brief of not
23 more than ten pages and supporting evidentiary materials showing
24 that a final injunction should not issue. Plaintiffs may file a
25 response of equal length no later than October 5, 2020. The
26 Court defers ruling on Plaintiffs' request to strike Inmate 2's
27 RVRs from the incident on June 17, 2020, pending the results of
28 the internal RVR hearings. Defendants shall report on the

1 results of these hearings in their next brief and Plaintiffs may
2 respond.

3 IT IS SO ORDERED.

4 Dated: July 30, 2020

A handwritten signature in black ink, appearing to read 'Claudia Wilken', with a long horizontal flourish extending to the right.

CLAUDIA WILKEN
United States District Judge

United States District Court
Northern District of California

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