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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.

Plaintiffs,

v.

GAVIN NEWSOM, et al.

Defendants.

Case No. C94 2307 CW

JOINT CASE STATUS STATEMENT

Judge: Hon. Claudia Wilken

The parties submit this Joint Case Status Statement pursuant to the Stipulation and Order entered March 28, 2011 (ECF No. 1868), which provides that "[t]he parties will file periodic joint statements describing the status of the litigation" every other month, beginning on May 16, 2011.

CURRENT ISSUES[1]

A. Allegations of Abuse and Violence by CDCR Staff Against Class Members

Plaintiffs' Statement

Plaintiffs' counsel has presented evidence of a hostile environment at some institutions that discourages people from asking for disability accommodations and discriminates against people with disabilities. Plaintiffs' counsel has also documented allegations of widespread abuse and violations of the rights of people with disabilities.[2] On November 13, 2019, Plaintiffs sent a letter cataloguing multiple incidents of staff misconduct against *Armstrong* and *Coleman* class members at Richard J. Donovan Correctional Facility ("RJD") over the past two and a half years and demanding that CDCR implement remedial measures by January 1, 2020. *See* Exhibit A to Doc. 2896. Plaintiffs' counsel recently toured RJD and continued to receive reports of ongoing abuse. To obtain more information, Plaintiffs' counsel are taking Rule 30(b)(6) depositions of the CDCR staff member "Person Most Knowledgeable" on January 29, 2020, and of Roy Wesley, Inspector General, on January 22, 2020. Defendants have also agreed to meet with Plaintiffs' counsel on January 6-7, 2020, at the prison to provide information on investigations conducted into allegations of staff misconduct at RJD.

Staff misconduct issues are not limited to RJD. Plaintiffs' counsel has sent Defendants in *Armstrong* and/or *Coleman* numerous complaints about excessive or improper use of force and other staff misconduct at California State Prison – Los Angeles County (LAC) in Lancaster, California. Plaintiffs' March 2019 monitoring tour report

[1] Statements are joint unless otherwise delineated as either *Plaintiffs' Statement* or *Defendants' Statement*.

[2] For a detailed recitation of Plaintiffs' allegations, see Doc. 2680 at 5-9.

included one complaint that an officer had denied food to a class member, one complaint that officers purposely did not strap a class member down during outside transport, three complaints that officers did not let people with disabilities out of their cells to shower after they had accidents, and three complaints about excessive use of force. Similarly, Plaintiffs' July 2019 monitoring tour report shared nine complaints of disability-based harassment or indifference to disability/medical needs, seven use of force complaints, and three complaints about retaliation at the hands of officers for speaking out. The parties continue to have a dispute about which allegations of misconduct should be placed on *Armstrong* accountability logs. For example, the majority of the staff misconduct issues raised by class members at RJD that affirmatively allege a close nexus between the misconduct and the disability were not included in the *Armstrong* accountability process. This includes an allegation that staff misconduct arose as a direct result of the class member's participation in the Joint Audit process.

The parties also are in negotiations about changes to Defendants' practices for investigating staff complaints. The Inspector General issued a number of recommendations based on his findings after a review of the staff complaint process at Salinas Valley State Prison (SVSP). *See* Joint Case Status Statement, March 15, 2019, Doc. 2844, Ex. A. Plaintiffs strongly support the OIG's recommendations. As set forth in Plaintiffs' counsel's prior statement, the changes proposed by Defendants thus far are insufficient to end the widespread and pernicious abuse of *Armstrong* class members, which is creating an atmosphere in which they are afraid to seek disability accommodations. In particular, the decision about whether to refer a staff complaint for investigation by the Office of Internal Affairs (OIA) Central Intake Panel should be made by the independent investigators who conduct the initial inquiries, not by wardens. Further, allegations of excessive force must be subject to the new independent inquiry process. Cameras should be deployed, activated, and monitored on all yards at high security prisons. These and other remedial actions are long overdue.

Defendants' Statement

Defendants generally accept the Inspector General's findings and are in the process of developing regulations that will change CDCR's appeals and grievance process.

As detailed in the previous joint status statement, Defendants have developed a new framework for handling administrative grievances concerning staff misconduct that includes organizational changes and staff training to improve upon and address issues identified by the Inspector General. Defendants provided the OIG and Prison Law Office a draft of the newly proposed regulations and met with the parities on October 25, 2019, during which Plaintiffs provided comments and feedback. Defendants presented an overview of the draft regulations to the Wardens responsible for implementing these regulatory changes on November 5, 2019, and five Wardens were provided drafts of the regulations in advance of the meeting to provide comments and feedback. Throughout the month of December 2019 and concluding on January 2, 2020, Defendants conducted three regional trainings; attendees included a wide range of classifications, ranging from appeals staff and administrative staff to institutional Grievance Coordinators, Associate Wardens, and Wardens.[3] Additional, formal training, will occur once the new regulations are adopted. As a final step, the proposed regulations were presented to various labor unions as required by state law. Notwithstanding these pending regulatory changes, Defendants' position remains that the decision about whether to refer a staff complaint for investigation by the OIA Central Intake Panel shall be made by the hiring authority.

Defendants received Plaintiffs' November 13, 2019 letter about allegations of staff misconduct at Richard J. Donovan. Defendants subsequently received Plaintiffs' Federal Rule of Civil Procedure 30(B)(6) deposition notice and corresponding document requests and have served their objections to the same. Defendants have engaged in ongoing discussions with Plaintiffs' counsel in efforts to address their concerns, and are working

[3] Central Regional training occurred on December 3-4 at Kern Valley State Prison; Southern Regional training occurred on December 10-11 at California Institution for Women; Northern Regional training occurred on December 16-17 in Rancho Cordova, and Sacramento's Office of Appeals training occurred on January 2, 2020, in Rancho Cordova.

diligently with Plaintiffs to provide requested information. The deposition of Kim Seibel, Deputy Director for Facility Operations, Division of Adult Institutions, is set for January 29, 2020, and the deposition of Tricia Ramos, Acting Chief of the Office of Appeals, Division of Correctional Policy Research and Internal Oversight, is set for February 4, 2020. The parties, including Plaintiffs' counsel Penny Godbold and Michael Freedman, and Defendants counsel Joanna Hood, jointly traveled to Richard J. Donovan on January 6 and 7, 2020, regarding the investigations into allegations of staff misconduct at Richard J. Donovan, and are continuing to discuss additional changes that Plaintiffs believe are necessary to remedy confirmed incidents of staff misconduct.

Defendants have engaged in these discussions with Plaintiffs' counsel, but still disagree that all of Plaintiffs' allegations of staff misconduct, and the Inspector General's Report necessarily implicate the *Armstrong class* or are appropriately before the *Armstrong* Court. The Inspector General's report did not specially look at staff misconduct in conjunction with the rights of disabled inmates, nor did the report examine or make findings related to Defendants' compliance with the ADA, the Rehabilitative Act, or this Court's orders. Allegations made by non-class members and allegations not related to violations of the ADA or the Remedial Plan are processed and addressed through CDCR's staff disciplinary process, as set forth in the Department Operations Manual. (*See* CDCR Department Operations Manual, Chapter 3, Art. 22.) This process was developed as a result of the *Madrid* litigation, and the Prison Law Office was significantly involved in its development. There simply is no nexus between some of the allegations of staff misconduct and an inmate's disability that would warrant inclusion of the alleged incidents in the *Armstrong* accountability logs. And some of the allegations presented by Plaintiffs' counsel attempt to draw a nexus between disability and staff misconduct based on pure speculation but without any supporting evidence.

Defendants will continue to work with Plaintiffs regarding their allegations of staff misconduct at Richard J. Donovan. While Defendants take all allegations of misconduct

seriously, Defendants do not, however, concede the veracity of all of the allegations that have been raised by Plaintiffs.

B. Discrimination Against Deaf Class Members

Plaintiffs' Statement

As Plaintiffs have reported for over a decade, D/deaf people in California prisons have been and are denied access to many programs, services, and activities, including rehabilitative programming, because Defendants have failed to provide sign language interpretation (SLI).[4] Plaintiffs are particularly concerned with Defendants' heavy reliance on video remote interpretation (VRI), which Plaintiffs' counsel have observed (and D/deaf class members have reported) to be faulty and inadequate in many group settings, in violation of the Americans with Disabilities Act and court orders.[5] As has been documented in previous joint case status statements, Defendants, among other things, are in the process of hiring twelve additional staff sign language interpreters and plan to transfer some D/deaf class members to San Quentin State Prison, a more program-rich environment. Plaintiffs hope that this will be completed soon, so the parties can determine whether, and what, additional corrective actions are necessary.

In addition, Plaintiffs are deeply concerned by Defendants' failure to ensure that sign language interpretation is provided to D/deaf class members during off-site medical appointments. D/deaf class members have been hospitalized, undergone surgery, and

[4] *See* Doc. 2874 Exhibit A (Letter from Caroline Jackson, RBGG, to Kelly Mitchell, Brantley Choate, and Russa Boyd, (July 1, 2019) (describing concerns with deaf education at CDCR); Doc. 2680 at 3-4; Doc. 2671 at 14; Doc. 2749 at 25-31 (Letter from Rita Lomio, Prison Law Office, to Russa Boyd, Office of Legal Affairs (June 19, 2018) (documenting allegations regarding CDCR's failure to provide SLIs for AA and NA meetings, lifer groups, religious services, educational programming, and vocational programming at SATF)); Doc. 2728 (Letter from Rita Lomio, Prison Law Office, to Russa Boyd, Office of Legal Affairs (Nov. 7, 2017)) (same)); Doc 2863 at 6-8 (summarizing concerns); Doc. 2863 at 24-33 (Letter from Don Specter, Prison Law Office, to Ralph Diaz, CDCR Secretary (May 3, 2019)).

[5] *See* 28 C.F.R. § 35.160(d); Doc. 2345 at 24; Doc. 2844 at 177-79 (Email from Rita Lomio, Prison Law Office, to Russa Boyd, CDCR Office of Legal Affairs (Feb. 2, 2019) (outlining problems observed during monitoring tour with VRI)); Doc. 2863 at 27-29 (Letter from Don Specter, Prison Law Office, to Ralph Diaz, CDCR Secretary (May 3, 2019) (same)).

received other medical treatment without interpretation services. Defendants currently do not require that the off-site medical providers they contract with document whether and how effective communication was achieved during the medical appointment (including whether sign language interpretation was provided), and Defendants do not otherwise review or track whether effective communication was in fact achieved during off-site appointments. While Plaintiffs are pleased that Defendants are beginning to look for solutions to this longstanding problem, any durable and complete solution must include a monitoring and accountability system. Defendants cannot contract away their obligations to ensure effective communication under the Americans with Disabilities Act. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010).

Finally, Plaintiffs are concerned that deaf people who do *not* know sign language also have been denied access to programs, services, and activities. Notably, Defendants do not appear to provide real-time captioning services. *See* **Exhibit A**, Letter from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, Accommodations for Deaf and Hard of Hearing Class Members Who Do Not Know Sign Language at 3-6 (Nov. 27, 2019). "Real-time captioning (also known as computer-assisted real-time transcription, or CART) is a service … in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language." U.S. Dep't of Justice, ADA Requirements: Effective Communication (Jan. 2014), https://www.ada.gov/effective-comm.htm. The parties have agreed to meet and discuss this issue in January 2020.

Defendants' Statement

Defendants are committed to ensuring that Deaf and hard-of-hearing class members who require sign language interpretation are provided equal access to programs, services, and activities, and assignments. Defendants are considering the information and requests contained in Plaintiffs' November 27, 2019 letter, as well as possible solutions, and the

parties are scheduled to meet about issues related to the provision of accommodations for Deaf class members on January 21, 2020.

As reported during the meet and confer on December 19, 2019, CCHCS has been tasked with developing potential alternatives to solely relying on external providers to ensure interpreters are present for off-site encounters. CCHCS will keep Plaintiffs informed on progress through the meet and confer process.

C. Problems Regarding Access to Assignments for Class Members

With regard to the broader problem of equal access to job and program assignments for people with disabilities, the parties convened a small work group to address Plaintiffs' concerns, as documented in multiple tour reports and letters. *See* Doc. 2680, at 13-14. The parties agreed to exchange data on a quarterly basis. The data continues to show significant disparities both statewide and at the institutional level—with class members receiving assignments at a lower rate than non-class members. Defendants assert that the data is misleading and that the disparities result from individual, custody-related case factors rather than from discrimination based on disability. Plaintiffs assert that, even if Defendants could demonstrate that facially non-discriminatory case factors, such as release date, account for the ongoing disparities, Defendants would still face liability due to the disparate impact of their program assignment practices. *See, e.g.*, 28 C.F.R. § 35.130(b)(3)(i), (ii); § 35.130(b)(8).

Ongoing disparities in assignments are a major problem for *Armstrong* class members. The fact that the parties still do not have agreement on the source of the disparities is especially concerning given CDCR's plan to roll out a statewide integrated substance use disorder treatment ("ISUDT") program in January 2020, whereby a significant number[6] of incarcerated people will be required to participate in this part-time program. The parties anticipate this new development will have a significant impact on

[6] Although previous statements indicated that 80% of incarcerated people would be required to participate in ISUDT, the parties now understand that the exact percentage is not certain, but the number of participants will be significant.

their analysis of the program assignment data.

The parties continue to work cooperatively towards ensuring equal access in program assignments for people with disabilities.

D. Effective Communication for Parolees Who Are Deaf

Plaintiffs' Statement

Plaintiffs continue to identify problems with Defendants' provision of effective communication to parolees who are deaf. Plaintiffs also continue to identify issues regarding the provision of sign language interpreters. Plaintiffs have documented ongoing problems with the use of VRI during initial interviews and deficiencies in DAPO's SLI contracts. Finally, the parties continue to have a disagreement regarding the provision of SLI during field encounters. Notwithstanding this disagreement, Defendants have agreed to provide SLI through VRI software on tablets during field encounters. Defendants have not yet demonstrated the effectiveness of VRI as used by DAPO agents in the more variable conditions in the field. Plaintiffs' counsel is continuing to monitor these issues, and most recently has proposed guidelines for the use of VRI and has requested production of field files for deaf class members in an effort to review potential progress reported by Defendants in this area.

Defendants' Statement

DAPO Headquarters staff works closely with staff supervising parolees whose primary method of communication is sign language. This allows DAPO's Parole Litigation Management Unit to resolve problems identified while utilizing the VRI system. Although the current process has proven to be effective in resolving and troubleshooting VRI technical-communication problems, DAPO has implemented a formal tracking process that allows staff to report connectivity issues through the use of a Service Report. Defendants agreed to produce these Service Reports to Plaintiffs on a monthly basis.

Defendants are moving forward with a new on-demand VRI contract that includes provisions for penalties associated with breach of contract and failure to timely notify

CDCR about the inability to provide requested interpretation services. DAPO also implemented a new in-person sign-language-interpreter contract for DAPO Headquarters and DAPO parole offices, which became effective July 1, 2019. The contract includes provisions for penalties associated with breach of contract and failure to timely notify CDCR about the inability to provide requested or scheduled interpretation services. The contract shortened the timeframe in which an interpreter can cancel.

DAPO remains concerned that using a civilian in-person sign-language interpreter during parole field encounters presents safety and security issues. The U.S. Department of Justice has recognized that agencies can use advanced technology, such as tablets, to provide sign-language interpretation to individuals in areas where it is difficult or impossible to provide an in-person interpreter.[7] DAPO purchased and implemented the use of VRI tablets, high-speed connectivity, and expanded SLI contract providers.

E. Statewide Durable Medical Equipment Reconciliation and Accuracy of Disability Tracking Information

Defendants completed a physical, statewide durable-medical-equipment ("DME") reconciliation encompassing all 35 institutions in early January 2019. The audit revealed: (1) that 7,346 class members were missing one or more items of durable medical equipment that their custody and medical records indicated they should have had in their possession; and (2) that 2,349 class members' durable-medical-equipment records had errors. The audit results were distributed to the institutions, which have begun to resolve individual patient discrepancies. Defendants are in the process of developing an electronic, real-time system that will reconcile DME orders with DME receipts. CCHCS intends to implement this DME reconciliation application in late January 2020, to include a webinar, conference call, policy memo, and job aids. This is an important first step in the long-term resolution of identified problems because it will enable Defendants to identify tracking discrepancies. Defendants are also evaluating how, as part of this process,

[7] For more information see, ECF No. 2874 Exhibit C.

incarcerated people may be interviewed to determine whether the documentation reflecting orders/receipt of DME is consistent with their possession of the DME. CCHCS acknowledges Plaintiffs' concerns regarding patients who have prescribed DME or restrictions that would typically comport to a specific DPP code. Defendants plan to develop a Learning Management System (LMS) for providers, specifically targeted towards assessing patients for potential inclusion in the Disability Placement Program.

Plaintiffs also remain concerned about the persistent presence of a significant number of individuals who have vests, housing restrictions, or durable medical equipment that would generally indicate permanent disabilities, but who do not have verified permanent disability codes in the CDCR tracking system, or who have a code that does not match their other factors. The parties are currently working towards a collaborative solution to this problem and, at this time, have agreed that Defendants will produce data to allow the parties to identify and evaluate potential systemic problems at specific institutions and by specific health care providers.

F. Parole Planning and Working with Class Members Preparing for Release

Plaintiffs' Statement

Plaintiffs' counsel contends that CDCR and DAPO fail to ensure that parolees with severe and impacting placement disabilities receive adequate planning for parole and adequate transitional housing, transportation, and other transitional services. *See* Doc. 2680 at 11-12; Doc. 2655 at 11-13. Plaintiffs are still awaiting a response to their April 5, 2019, letter to Defendants describing inadequate parole planning services and the need for better linkage to transitional housing, transportation, and other supportive services for paroling class members.

As described in the prior statement, Plaintiffs' counsel remains concerned that many CDCR Division of Rehabilitation Programing (DRP) subcontractors do not accept individuals with certain disabilities. Plaintiffs and Defendants have cooperatively agreed to make a number of changes in how these programs are surveyed for accessibility issues

and to collaborate on developing a training video for subcontractors about working with disabled individuals. Plaintiffs also have ongoing concerns about the benefit application process for paroling class members, including the adequacy of the medical documentation provided by CDCR clinicians as part of the Transitional Case Management Program ("TCMP") benefit application process.

Defendants' Statement

Plaintiffs' assertion that "CDCR and DAPO fail to ensure that parolees with severe and placement-impacting disabilities receive adequate planning for parole and adequate transitional housing, transportation, and other transitional services" is wrong. *See* ECF No. 2786, at 19-21. Defendants' responses to Plaintiffs' transition-to-parole advocacy letters consistently demonstrate that pre-parole services are regularly and adequately provided to class members and that class members are not reporting information accurately to Plaintiffs' counsel. Plaintiffs' counsel continue to send advocacy letters that demonstrate no nexus between their allegations and Defendants' compliance with the ADA, Rehabilitation Act, the Remedial Plan, or this Court's orders. Rather, the letters imply that CDCR has an obligation to provide housing for every inmate who is disabled and paroling.

The law does not require Defendants to fund and secure housing for every disabled inmate who is paroling, nor does it require CDCR to create and fund new programs. As part of the pre-release process, CDCR staff complete an assessment for each inmate who is paroling that identifies their individual needs. Once the needs are determined, the staff and inmate/parolee work collaboratively to complete a case plan identifying community-based programs that receive federal, state or other local funding to provide housing and other services to disabled citizens. The CDCR-funded programs that do provide housing are consistently full and have waiting lists.

CDCR and the Division of Rehabilitative Programs' processes are detailed in the

July 2019 joint case management conference statement.[8] Defendants maintain that their comprehensive system for providing services to paroling individuals is appropriate. Defendants continue to work collaboratively with Plaintiffs in response to the matters raised in Plaintiffs' April 5, 2019 letter.

The parties developed disability definitions to educate providers and to help them decide whether they can accept persons with certain disabilities. The parties are also collaborating on the Division of Rehabilitative Programs' education video for providers. The parties will continue to work together on the development of this initiative.

G. Accommodations for Blind and Low Vision Class Members

The parties are working cooperatively to expand the accommodations available to class members who are blind or have low vision. *See* Doc. 2786 at 20. The parties conducted joint interviews of blind and low-vision class members at the Substance Abuse Treatment Facility and State Prison, Corcoran ("SATF") in June 2019 with a representative from LightHouse for the Blind and Visually Impaired. SATF houses the largest population of people designated DPV (disability impacting placement vision) within the California prison system.[9] Plaintiffs raised a number of program-access concerns following the visit, including concerns about orientation and mobility training, sighted-guide training, braille-literacy programs, access to braille and large-print material, accessibility of the Offender Tablet Pilot Program, and accommodations in education and self-help programming. The parties have agreed to convene a working group to discuss issues related to blind and low-vision class members. *See* **Exhibit B**, Letter from Rita Lomio, Prison Law Office, to Tamiya Davis, CDCR Office of Legal Affairs, Topics for Blind/Low Vision Working Group (Dec. 12, 2019) (without exhibits). The first meeting

[8] See ECF No. 2874 at 17-18.

[9] Defendants designate people "who have a severe vision impairment which is NOT correctable to 20/200 with corrective lenses in at least one eye and/or has a visual field of 20 degree or less" as DPV. R. Steven Tharratt, Director, CCHCS Health Care Operations, & Vincent S. Cullen, Director, CCHCS Corrections Services, Memorandum: Expansion of Vision-Impaired Patient Definition at 1 (July 17, 2018).

will be on January 14, 2020.

H. Joint Monitoring Tool

The parties continue, as they did throughout 2019, to devote a significant amount of time and resources to drafting a joint monitoring tool for measuring compliance in this case. Through this process, the parties have identified a number of substantive areas that will require further negotiation and the development of new policies. The parties' commitment to developing a strong joint monitoring tool will continue in 2020. The parties currently plan to work through mid-February 2020 on finalizing revisions to the tool sections that have been drafted thus far. The headquarters section has not yet been drafted, and some individual tool questions, including how to monitor whether class members are receiving equal access to program assignments, have not yet been fully drafted because the parties must first complete larger policy discussions. The parties plan to test the tool out at different types of prisons beginning in April 2020, and will meet after each audit to discuss if and how the tool should be updated or revised based on issues identified during each audit.

I. ADA Structural Barriers and Master Planning Process

Construction continues at several of the designated institutions with former Class Action Management Unit Manager Mike Knowles overseeing the process and reporting on construction progress and anticipated timeframes in monthly reports produced to Plaintiffs.

The parties met on December 9, 2019, to discuss a process for addressing Defendants' planned accessibility construction and program modifications at the ten institutions where the Master Plan agreements have not yet been signed. The parties agreed to a flexible, collaborative approach in which the parties will meet quarterly to discuss different institutions, joined by local ADA staff with close knowledge of the institutions. The parties also may discuss issues about a particular institution informally before or after the scheduled quarterly meeting. And the parties may elect to jointly visit an institution to review particular areas of interest, with or without Plaintiffs' expert. In

addition, Defendants are in the process of auditing whether program modifications referenced in the Master Plans have been memorialized in local operating procedures at each institution. The parties agreed that there will be an ongoing process to consider whether there are opportunities for people with disabilities to work in jobs that the parties originally thought they might not be able to do, and Defendants will make all appropriate additions to the Master Plan in response to things like program, population, and mission changes. The parties' first quarterly meeting is scheduled for January 22, 2020.

J. Investigation of County Jails

Plaintiffs continue to assert that a pattern and practice of denying disability accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680 at 22-24. Plaintiffs also assert they have identified patterns of denials of providing ADA accommodations at Kern County, San Bernardino, Orange and Fresno County jails. *See* Doc. 2786 at 26-27. Defendants disagree with Plaintiffs' assertions. Nevertheless, Defendants have agreed to conduct periodic meetings with Sheriffs from multiple counties in an effort to establish relationships and foster information sharing that Defendants believe will lead to better compliance. Defendants plan to conduct their first meeting with Sheriffs in January.

Plaintiffs' counsel will continue to monitor compliance with the County Jail Plan and orders.

K. Due Process Rights for Class Members on Parole

On July 31, 2019, Defendants agreed to suspend use of flash incarceration indefinitely as indicated in a Memorandum from CDCR Secretary Diaz entitled "Suspension of Flash Incarceration." *See* Doc. 2887, Exhibit A. Defendants have now formally discontinued flash incarceration. In a January 8, 2020 Memorandum all DAPO staff were notified that effective immediately the policy establishing flash incarceration is rescinded and that measures are under way to repeal California Code of Regulations, title 15, section 3767.

Plaintiffs continue to object to the use of Form 1527, which Plaintiffs contend is unfairly used to support revocations for parolees who have disabilities affecting their ability to communicate or understand information. Defendants have agreed to reconsider using the form and are currently evaluating the Form 1527. Defendants will need to confer with necessary stakeholders regarding the use of the Form 1527 and will continue to apprise Plaintiffs of any decisions with the incoming Director of DAPO and to Defendants have also agreed to look into additional training and possible added protections for parolees with developmental disabilities who are asked to sign these forms. Defendants have thus far failed to take any action regarding this issue.

DATED: January 15, 2019

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD

By: */s/ Penny Godbold*
Penny Godbold

Attorneys for Plaintiffs

DATED: January 15, 2019

XAVIER BECERRA
Attorney General of the State of California

By: */s/ Joanna B. Hood*
Joanna B. Hood
Deputy Attorney General

Attorneys for Defendants

As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence in the filing of this document from Joanna B. Hood, and that I have maintained records to support this concurrence.

DATED: January 15, 2019

/s/ Penny Godbold
Penny Godbold

EXHIBIT A

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VIA EMAIL ONLY

November 27, 2019

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong v. Newsom*
Accommodations for Deaf and Hard of Hearing Class Members
Who Do Not Know Sign Language

Dear Ms. Davis:

The parties have made significant progress over the past year in improving accommodations for class members whose primary form of communication is sign language. I am concerned, however, that other deaf class members are not being properly accommodated. There currently are 51 people designated DPH in California prisons whose primary form of communication is *not* sign language.[1]

California Health Care Facility, Stockton (CHCF)	8
California Institution for Men (CIM)	3
California Medical Facility (CMF)	15
Deuel Vocational Institution Reception Center (DVI)	1
High Desert State Prison (HDSP)	2
Richard J. Donovan Correctional Facility (RJD)	11
Substance Abuse Treatment Facility and State Prison, Corcoran (SATF)	11

Plaintiffs' counsel surveyed deaf class members whose primary form of communication is *not* sign language. I have shared some of their responses in this letter. Overwhelmingly, class members expressed feelings of isolation in prison due to their disabilities, an inability to fully participate in rehabilitative programs, and an unawareness of accommodations that may be able to help them. We look forward to working with you to address these issues and to ensure that this population is properly accommodated. At a minimum, Defendants should offer real-time captioning and FM systems to deaf and hard of hearing class members. Defendants also should provide captioned telephones and sign language instruction.

[1] *Armstrong* Remedial Plan § II.C.2 ("Inmates/parolees who are permanently deaf or who have a permanent hearing impairment so severe that they must rely on written communication, lip reading, or signing because their residual hearing, with aids, does not enable them either to communicate effectively or hear an emergency warning shall be designated as DPH.").

What is it like being deaf or hard of hearing in prison?

- "Very difficult. They label me as lip reading and I can't lip read. Most time only catch a fraction of word [sic] spoken if any. Often times I feel left out because I don't have interpreter to tell me what's going on. Such as the recent legionnaire [sic] water outbreak. They have no ASL learning classes. . . . I'm isolated. No can't hear announcements. No can't hear conversations. Can't lip read." (*CHCF*)
- "It's very hard to be in prison when you can't hear that well. Sometimes I get frustrated." (*CHCF*)
- "It is very difficult and frustrating. I never know if I am missing out on something or if there is an emergency I am unaware of. . . . Sometimes it is just easier to go away and keep to myself since it is so hard to communicate with others." (*CHCF*)
- "I feel frustrated and unsafe all the time." (*CMF*)
- "I've felt frustrated because I cannot hear what is being said in class/group and benefit very little. Confused because I can't hear instructions or commands. Unsafe because I have been attacked & hurt, due to inmates & officers thinking I am ignoring them. Alone because people avoid me due to me asking them to repeat themselfs [sic]." (*CMF*)
- "I often feel afraid not knowing who may come up behind me. . . . I have felt all those emotions [frustration, confusion, being unsafe and alone] in prison." (*CMF*)
- "Most inmates and staff lack the patience to try to communicate with me because I often have to have them repeat things several times. I stay to myself for the most part. . . . I don't blame people for getting frustrated with my disability as I too get frustrated with it." (*HDSP*)
- "Fill [sic] left out a lot. Don't know what is going on a lot. Because information is given out but because I cannot hear I do not know what to do." (*RJD*)
- "I'm always frustrated and confused about what it is I'm doing wrong." (*RJD*)
- "Hard to communicate or participate in programs or socialize. Never really know what is going on because everything is announced on speakers which I cannot hear. I have adapted over the years by being a recluse and reading a lot for entertainment." (*SATF*)
- "It's very hard for me to understand words. It gets very frustrated [sic] at tim [sic], but I try to keep myself under control. . . . [It] can be scare [sic] at time, if yoor [sic] not paying attion [sic] to your surround [sic]. . . . [I]t's hard to hold a conversation always misunderstand people or over hearing word, or not hearing the right words. So I get frustrate [sic], then I rathe [sic] be alone . . . . I try to stay on my bunk in [sic] watch tv alone." (*SATF*)
- "It's frustrating when you can no longer communicate with others and no longer hear music. When telling people they need to write me notes they keep on talking expecting me to read lips or if they talk louder I would hear, it's hopeless when they won't write notes, depressing. It's a silent, lonely world. Can't communicate with sign language people and the hearing. Don't know what's going on with anything." (*SATF*)
- "I felt frustrated, confused too difficult to understand." (*SATF*)

1. Real-Time Captioning and FM Systems

Deaf class members reported that they are unable to fully and meaningfully participate in programs, services, and activities because of their disabilities.

Are you able to understand what everyone is saying in programs, services, and activities?
♦ "They skip me [during self-help groups] cause I can't follow along because Deaf [sic]. . . . Most times I'm ignored or overlooked. I can't follow along because I don't read lips and in self-help, religious services no one provides written notes." (*CHCF*) ♦ "Nothing special is done and I don't catch much." (*CHCF*) ♦ "I sit in class and look stupid. I take my books and leave." (*CMF*) ♦ "I am in the E.O.P. program here in Vacaville, and I am in all of the above. The best the teacher can do is allow me to sit in the front, and sometimes give me handouts to read later in my cell to accommodate me. The class set up is, the instructor in the center of the room and us around the room. I can't hear anyone speak, and I do not understand what is being said." (*CMF*) ♦ "I would love to attend any and all services programs, and activities but under the current level of ADA compliance it is not possible." (*RJD*) ♦ "I'll [sic] love to participate [in programs]. I just hate to slow the class up on the account of my disability. When I do go to group I just sit there." (*RJD*) ♦ "No because I can't hear!" (*RJD*) ♦ "These situations are the hardest for me as I cannot follow conversation well enough to keep up and its [sic] not a situation to be constantly asking 'what.'" (*SATF*) ♦ "No. . . . Anything as a group, I would not understand. It has to be one on one with writing." (*SATF*)

Deaf class members also reported that they are unaware of accommodations that may be able to assist them, including real-time captioning. That is not surprising. "[I]t often takes late-deafened adults years to learn about coping strategies, assistive technology, and their basic rights to communication access." Marylyn Howe, Meeting the Needs of Late-Deafened Adults, 19 Am. Rehabilitation 25, *3 (Winter 1993); *see also Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 272 (D.D.C. 2015) (holding that "prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison's programs and services, without regard to whether or not the disabled individual has made a specific request for accommodation").

. . .

. . .

On July 26, 2019, I sent an advocacy letter on behalf of a deaf class member at SATF. **Exhibit A**. According to the medical record, the class member has profound sensorineural hearing loss and, even with hearing aids, can understand at best "14% of what is said." His primary form of communication is written notes. To allow him to fully participate in rehabilitative programming, including self-help groups that are primarily discussion-based, I requested that real-time captioning (also known as computer-assisted real-time transcription, or CART) be made available to him. I also requested that the institution inform deaf and hard of hearing class members who do not know sign language about accommodations that may be available to them, including CART and FM systems.

On August 20, 2019, you sent me a two-page memorandum from the ADA Coordinator at SATF, dated August 13, 2019, denying my request. **Exhibit B**. The memorandum stated that the class member currently was participating in a vocational computer course and, among other things, the instructor would give him a handout during lecture "so that [he] can follow along." The memorandum did not explain how the class member would be able to fully participate in discussion-based, self-help groups absent CART services. The memorandum stated: "SATF does not currently have this type of technology available for use." The memorandum further stated: "The Inmate Orientation Handbook provides all inmates information regarding available accommodations for disabled persons." The Handbook does not contain any information about CART or FM systems.

SATF is not the only prison that has denied a deaf class member real-time captioning. A class member at CHCF requested CART for self-help groups and religious services. The RAP response, issued September 20, 2019, stated: "Research revealed that the California Department of Corrections & Rehabilitation (CDCR) has not implemented the Computer Assisted Real Time (CART) service at this time. However, [the class member] is already accommodated by way of written notes as a primary method of communication. [The class member] was observed to be successful with reading lips during communication. If and when the CART technology is introduced into CDCR, the California Health Care Facility will pursue implementation of this at this institution."[2] 1824 Log No. CHCF-E-19-3467.

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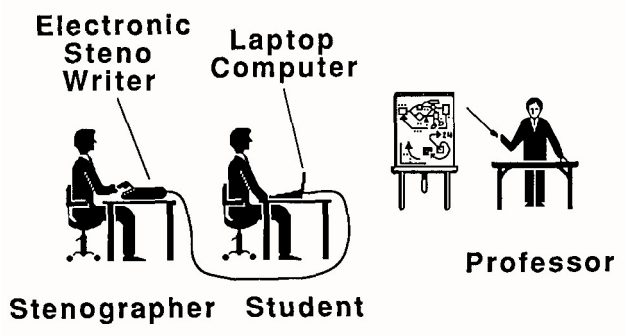
[2] Lip reading is not an adequate form of communication for most people in any setting. *See* Deirdre M. Smith, Confronting Silence, 46 Me. L. Rev. 87, 97 (1994) ("One study found that the best lipreaders (or speechreaders) could fully comprehend only twenty-six percent or what was said to them."); Anna Middleton, ed., Working with Deaf People: A Handbook for Healthcare Professionals 53 (2010) ("Lip-reading is difficult to do clearly as identical lip-patterns are often used with words which incorporate different sounds from the throat; these may be invisible to the viewer."). Even the most skilled lip-readers cannot understand group conversations for a simple reason: To read someone's lips, you must be looking at them. In group settings, participants typically use sound-based cues for turn-taking, such as a teacher calling on the next student, or a member of the group interjecting with a comment. Even people with some hearing will not be looking at the speaker when the speaker begins to talk. At best, they miss the first several seconds of every utterance, making it even more difficult to follow the conversation. At worst, they have no idea who is talking for some time, and lose the thread entirely. As the class member at CHCF explained: "[M]ost times I can't read lips effectively. Often I only understand a fraction of what is said . . . . In group I'm left out, skipped and cannot actively participate being that I'm deaf and when group members speak I don't know what they're saying."

"Real-time captioning (also known as computer-assisted real-time transcription, or CART) is a service . . . in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language."[3] U.S. Dep't of Justice, ADA Requirements: Effective Communication (Jan. 2014), https://www.ada.gov/effective-comm.htm; *see also Duvall v. County of Kitsap*, 260 F.3d 1124, 1136 (9th Cir. 2001) (discussing ADA regulations regarding transcription services and videotext displays); *Argenyi v. Creighton University*, 703 F.3d 441, 443-44, 451 (8th Cir. 2013) (concluding that "the record supports [plaintiff]'s claim that he was unable to follow lectures and classroom dialogue" absent CART, where plaintiff had "a serious hearing impairment" and "does not know sign language"); Michael S. Hood *et al.*, Classroom Captioning for Deaf and Hard of Hearing Students, J. of Eng'g Educ. 273-78, 273 (July 1997) ("This technology enables a stenographer to transcribe spoken language into written text instantaneously, and can position deaf and hard of hearing students on a near-equal playing field with other students in the classroom."). One way to determine who may benefit from CART is to ask whether a person reads well enough to follow the captioning of a movie. CART is (or very soon will be) provided in other state prisons, including in Maryland, Illinois, and Massachusetts.[4] The Board of Parole Hearings in California currently offers CART services for attorney consultations and parole hearings.



Michael S. Hood *et al.*, Classroom Captioning for Deaf and Hard of Hearing Students, J. of Eng'g Educ. 273-78, 275 (July 1997)

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3 Remote real-time captioning typically does not have the same limitations as remote sign language interpretation because it does not require a video feed and it involves transcription (and not interpretation). Remote captioning uses microphones to transmit sound to an off-site captionist and a computer to display the written transcript to the on-site deaf person.

4 *See, e.g.*, Email from Michele C. Gardner, ADA Coordinator, Maryland Dep't of Public Safety and Corr. Srvcs., to Chelsea Rinnig, Prison Law Office (July 17, 2019) (on file with PLO) ("The Maryland Department of Public Safety and Correctional Services (DPSCS) provides Communication Access Real-time Translation (CART) as an accommodation for individuals who do not know sign language. . . . The service is very beneficial for the inmates who do not use American Sign Language (ASL)."); Settlement Agreement, *Briggs v. Massachusetts Dep't of Corr.*, No. 15-CV-40162, at 31 (D. Mass. May 28, 2019); Settlement Agreement, *Holmes v. Godinez*, No. 11-2961 at 5 (N.D. Ill. Apr. 23, 2018).

Deaf class members at CHCF, CMF, HDSP, RJD, and SATF reported that CART might help them.[5] (A few others reported that it would not be helpful to them because they cannot read well.)

Do you think CART services would be helpful to you?
♦ "Tremendously helpful. I could follow along in group and not feel left out. I could actively participate in discussions." (*CHCF*)
♦ "I think that [CART] would be helpful because prisoners can read & follow along with what is being said." (*CMF*)
♦ "It would allow me to participate in more programs and activities and disallow mistakes and all types of miscommunication." (*CMF*)
♦ "Yes, yes, yes." (*CMF*)
♦ "Yes 'CART' would be very helpful because then it would allow for me to understand and keep up with all that's going on, or at least the majority of what's going on." (*RJD*)
♦ "Yes this should be used to provide people like me with the knowledge that is needed." (*RJD*)
♦ "I believe a CART services [sic] would be wonderful for the hearing impaired an [sic] deaf people." (*SATF*)
♦ "Remote captioning would work for me . . . someone talk into the microphone – it comes out in words on the screen. Then I can have all program and talk (communicate) with people." (*SATF*)
♦ "Yes. It would make it easy to communicate with me." (*SATF*)

FM systems also may help people who are hard of hearing. *See* Am. Bar Ass'n, Court Access for Individuals Who Are Deaf and Hard of Hearing at 26-27 (2017). A microphone would be provided to the instructor or placed in the center of a group of people. The microphone sends sound to a receiver, which would be worn around the class member's neck or connected to the class member's hearing aid. The class member would be able to control the volume using the receiver, and background noise can be quieter because of the microphone. This accommodation primarily should be of use to class members

[5] Real-time captioning or other typed communication also would be helpful during classification hearings, where several class members reported a lack of effective communication. *See, e.g.*, **CMF** ("I ask questions and find myself confused because I don't know what's being said, or done most of the time. I tend to have no voice in important decision [sic] that are made, so I just sit their [sic] with really no idea of what's going on."); **SATF** ("For years I go classification I never understood. I pretend that I understood but I never understood. . . . No I do not understand at all. I have been in prison for 15 years and do not understand at all because I do not know how or what to do."); **RJD** ("I am not accommodated at all."); **RJD** ("I miss a lot at committee people and staff are used to doing and acting as if you can hear, it's hard for them because they are not in my shoes."). Handwritten notes are likely to be briefer than spoken words or typed notes, given the time it takes to write information. In addition, Defendants' Deaf Culture Town Halls are not accessible to all in the deaf population because much of the content is spoken with no captioning.

designated DNH. That said, several class members designated DPH at CHCF, CMF, HDSP, RJD, and SATF reported that the FM system might be beneficial to them. (Other class members reported that it would not be helpful to them because they cannot hear spoken language at all.)

Do you think an FM system would help you participate in programs, services, or activities?
♦ "It sounds like a perfect system." (*CHCF*) ♦ "Yes the FM system would be very helpful because I would have a better chance of hearing what is being said in group or class. I think this would be very helpful." (*CMF*) ♦ "I could fully understand the teacher and respond more to the subject under discussion." (*CMF*) ♦ "Yes; in classroom or groups." (*RJD*) ♦ "Yes. FM systems would help [me] participate in programs!" (*RJD*) ♦ "Yes, yes, yes, wow… in church that would help me a lote [sic] and if a teacher in school wore it wow, it would be so good to hear all of what is being said." (*SATF*) ♦ "I honestly wouldn't know, because I never had one, or use one befor [sic]. But it wouldn't hurt to try one." (*SATF*)

2. Captioned Telephones and Sign Language Instruction

As noted above, deaf people in prison often experience feelings of severe isolation due to their disabilities. *See also* Miguel O. Aguayo & Nick F. Coady, The Experience of Deafened Adults, 26 Health & Social Work 269-276, 270 (Nov. 2001) ("The psychological and social effect of adventitious hearing loss can be devastating. . . . [P]eople who experience profound hearing loss after being socialized as a hearing person must face the task of learning a new way to cope with the world without dependence on the auditory sense. . . . They no longer can function effectively among hearing people as they were accustomed to doing."); Julie H. Barlow *et al.*, Living with Late Deafness, 46 Int'l J. of Audiology 442-448 (2007) ("The inability to interact in social situations often causes social isolation resulting in problems such as anxiety and depression."); Marylyn Howe, Meeting the Needs of Late-Deafened Adults, 19 Am. Rehabilitation 25, *2 (Winter 1993) ("No longer able to communicate with their families and peers, most late-deafened adults become confined to a limited world in which they are viewed as aloof, withdrawn, depressed, passive, and/or over-reactive." (citations omitted)).

To address this, and as we have discussed before, Defendants should provide captioned telephones. *See* Settlement Agreement, *Briggs v. Massachusetts Dep't of Corr.*, No. 15-CV-40162, at 38 (D. Mass. May 28, 2019) ("DOC will make at least one CapTel device available at each DOC Facility. . . . The CapTel device shall be available during the same hours, including nights and weekends, that hearing inmates have access to traditional phones"); Settlement Agreement Between the United States of America and Elizabeth F. Arthur, in Her Official Capacity as the Arlington County Sheriff, https://www.ada.gov/arlington_co_sheriff_sa.html (Nov. 17, 2016) ("Within sixty (60) days of the effective date of this Agreement, the ACSO agrees to provide, if it has not already done so, at least three devices capable of

video telephone calls (including video relay calls), three TTYs, *three captioned telephones*, three hearing aid compatible telephones, and three volume control telephones for use by inmates and members of the public at the ACDF." (emphasis added)); Penal Code § 6350 ("Maintaining an inmate's family and community relationships is an effective correctional technique which reduces recidivism."); *In re French*, 106 Cal. App. 3d 74, 84 n.21 (1980) ("A study done for the California Department of Corrections indicated a directly proportional relationship between opportunities for contract [sic] with the outside world while in prison and parole success.").

For deaf and hard of hearing people with intelligible speech, captioned telephones provide far superior telephone access than a TDD. Captioned telephones such as CapTel are a more modern technology, are easier to use, have a faster connection, have a larger font size, and allow multiple lines of text to be viewed at one time.[6] "CapTel serves hard of hearing persons and other persons who can benefit from word-for-word captions of everything said by the other party in a telephone conversation. These word-for-word captions are generated by a CapTelCommunications Assistant (CA) using the latest voice-recognition technology. At the same time, the other caller's voice can be heard via an amplified handset. Users with intelligible speech who are Deaf or hard of hearing speak directly to the other party. The call flows like a regular telephone conversation with the added benefit of having captions. The captions appear on the bright display screen a few seconds after the other party has spoken." Cal. Public Utilities Comm'n, Deaf and Disabled Telecommunications Program: Captioned Telephone Service, https://ddtp.cpuc.ca.gov/default.aspx?id=1490 (last visited Nov. 26, 2019).

CapTel, Captioned Telephone, https://www.captel.com/
(last visited Nov. 25, 2019)

6 Class members have reported, and we have observed, issues with the TDD at certain prisons. *See, e.g.*, Letter from Shira Tevah, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs (Aug. 2, 2019) (reporting issues at CIM); Email from Shira Tevah, Plaintiffs' Counsel, to Alexander Powell, CDCR Office of Legal Affairs (Nov. 6, 2019) (same); RJD Survey Response ("The TDD system is garbled 90% of the time! California Relay . . . operators say the systems are not compatible. . . . I wish I could talk to my family and see and read what they are saying, instead of only getting a few words if that."); CHCF Survey Response ("TDD/TTY phones are often ineffective because they have too much garble [sic] distorted text. Takes long time to process, clear up garble [sic]. Call often family friends get frustrated hang up it's not real time.").

Do you think a CapTel phone would be helpful for you?
♦ "Yes, because I could see and read the text of our conversation." (*CMF*) ♦ "Yes because what I don't hear I can read." (*CMF*) ♦ "ABSOLUTELY!!!!! Please. Please. Please try to get this available. It allows my parents to hear my voice and the voice to text allows me to know what's being said without having to have them repeat everything 20 times. I only get about 5 minutes of actual conversation per 15 minute phone call. This would help dramatically." (*HDSP*) ♦ "Yes, because currently its [sic] way to [sic] difficult to communicate." (*HDSP*) ♦ "Yes the CapTel phones would help because then I would fully be able to make out all of what my folks are saying." (*RJD*) ♦ "Seems to be answer to all my deaf communication desires." (*RJD*) ♦ "I believe a CapTel phone would be very helpful. People that's hard of hearing have a hard time hearing on the phone." (*SATF*) ♦ "If I could get this it would work better than anything I can think of." (*SATF*)

Deaf class members at CHCF, CMF, HDSP, RJD, and SATF also expressed interest in in-person sign language instruction, reporting that such classes either were not offered at their institution or were offered only as college courses. At least one class member noted that he had tried and failed to learn sign language through a book. *See also* Letter from Caroline Jackson, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs at 2 (Nov. 1, 2019) ("It is not realistic to expect [a person] to learn sign language through a correspondence course. Sign language is a visual language with no written form. The most widely used ASL courses have an extensive video component."). As you know, many hearing people at the Deaf Culture Town Halls at SATF and San Quentin State Prison expressed a strong interest in learning sign language so that they could communicate with and include their deaf peers. In fact, dozens of people showed up to the town halls because they (incorrectly) believed the town halls were sign language courses. After one of the town halls at SATF, a hearing person wrote to my office:

> With all due respect to you and the staff who enlightened us about Deaf Culture. Thank you, for taking the time to have an open forum to educate those of us who have been miseducated for years. Without that open platform, most of us incarcerated males would still be in the blind about the plight of a deaf human being. For years I've been in the dark about what it means to have a disability in prison. What you and your staff did was beyond awesome and it made me realize that there are folks incarcerated who are seriously misunderstood due to being born without the gift of hearing or losing their hearing late in life. When I asked questions about ASL I was sincere. And I would love to learn more and as much as I can about deaf communities and culture.

In addition to in-person sign language instruction, Defendants should offer instructional videos in the library and program areas, as well as through the personal tablets. Defendants also should consider airing news in sign language and open captions on a state television channel. Such news videos are available through the Daily Moth. *See* Daily Moth, Deaf News, What Is It?, https://www.dailymoth.com/ (last visited Nov. 25, 2019) ("The Daily Moth delivers news in video using American Sign Language. The deaf host . . . covers trending news stories and deaf topics on new shows Monday-Fridays."). Defendants should consider incorporating d/Deaf people who already know sign language as tutors and by allowing them to create instructional and informational videos about Deaf culture and sign language. Such videos could also play on the state television channel and teach all incarcerated people how to sign simple statements. This would greatly expand the communication options for deaf class members who do not know sign language, increasing their chances for rehabilitation and successful reintegration into society, and also would generally help strengthen and build relationships between deaf and hearing people in prison—something Defendants have started to do through the Deaf Culture Town Halls.

Thank you for your attention to this matter. I look forward to discussing these issues with you.

Sincerely yours,

Rita Lomio
Staff Attorney

cc: Co-Counsel
Ed Swanson, Court Expert
Patricia Ferguson, Alexander Powell, Russa Boyd, Amber Lopez, Nicholas Meyer, Erin Anderson, OLAArmstrongCAT@cdcr.ca.gov, OLA
Brantley Choate, Hillary Iserman, Shannon Swain, Jennifer Wynn, Rod Braly, Jennifer Winistorfer, Martin Griffin, Alicia Legarda, OCE
Matt Espenshade, Lois Welch, Steven Faris, OACC
Annakarina De La Torre-Fennell, Joanna Hood, Damon McClain, OAG
Kelly Mitchell, Landon Bravo, Teauna Miranda, Laurie Hoogland, DAI
Bruce Beland, Robert Gaultney, John Dovey, Donald Meier, Robin Hart, Laurene Payne, Ceasar Aguila, Cindy Flores, Joseph (Jason) Williams, Cathy Jefferson, Vincent Cullen, Desiree Collum, Lynda Robinson, Barb Pires, Ngoc Vo, Samantha Chastain, Olga Dobrynina, Dawn Malone-Stevens, Bryan McCloughan, Alexandrea Tonis, Gently Armedo, m_CCHCSAccntLog@cdcr.ca.gov, CCHCS

EXHIBIT B

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VIA EMAIL ONLY

December 12, 2019

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong v. Newsom*
Topics for Blind/Low Vision Working Group

Dear Ms. Davis:

We appreciate Defendants' commitment to working collaboratively with Plaintiffs to improve accommodations for blind and low vision class members. In June 2019, you and Captain Miranda of the Class Action Management Unit joined Plaintiffs' counsel at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF), which houses the largest population of class members designated DPV. The parties, along with Scott Blanks, Senior Programs Director of the LightHouse for the Blind and Visually Impaired, conducted joint class member interviews and identified a number of areas for discussion. *See* **Exhibit A**, April-June 2019 SATF Tour Report. The parties visited SATF again in October, joined by my co-counsel Michael Nunez, and, among other things, examined the new auxiliary aids, including JAWS for Windows text-to-speech software and DaVinci desktop video magnifiers.

In response to the issues identified during the tours, the parties have agreed to form a blind/low vision working group. This letter outlines several issues that Plaintiffs would like to discuss at the first meeting. The issues go directly to increasing class member independence—a central tenet of the Americans with Disabilities Act (ADA) and something that will increase the likelihood of successful reintegration into society. *See Am. Council of Blind v. Paulson*, 463 F. Supp. 2d 51, 59 (D.D.C. 2006) ("There was a time when disabled people had no choice but to ask for help—to rely on the 'kindness of strangers.' It was thought to be their lot. Blind people had to ask strangers to push elevator buttons for them. . . . We have evolved, however, and Congress has made our evolution official, by enacting the Rehabilitation Act, whose stated purpose is 'to empower individuals with disabilities to maximize employment, economic self-sufficiency, *independence*, and inclusion and integration into society.'" (quoting 29 U.S.C. § 701(b) (emphasis by court)), *aff'd*, 525 F.3d 1256 (D.C. Cir. 2008); *Bragdon v. Abbott*, 524 U.S. 624, 632 (1998) (discussing relationship between the ADA and Rehabilitation Act).

1. Comprehensive Accommodations and Skills Assessments

Defendants should contract with an organization that can provide comprehensive skills and accommodations assessments adapted to the prison environment. *See Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 272 (D.D.C. 2015) (holding that "prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison's programs and services, without regard to whether or not the disabled individual has made a specific request for accommodation").

Many blind and low vision class members are unaware of what accommodations may be able to help them. This is particularly true of those who have experienced a significant decrease in vision while in prison. Such class members report feelings of disorientation, vulnerability, and helplessness. *See, e.g.*, **Exhibit B**, Advocacy Letters and Responses Regarding [redacted], CHCF/SVSP.[1] They lack training on how to perform everyday tasks independently and find themselves isolated. *See id.*; Exhibit A at 5 (noting that some class members "chose not to leave their cells for fear they would be unable to safely navigate the prison"); **Exhibit C**, Letter from Shira Tevah, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [redacted], ISP (Nov. 22, 2019) (discussing housing of newly-blind class member in OHU for over a year and noting medical record entry in October 2019 that stated that class member was housed in the infirmary "for support" because "it remains difficult for him to get around and walk because he's not used to this new loss of vision and how to use a cane"); *see also* Dean W. Tuttle & Naomi R. Tuttle, Self-Esteem and Adjusting with Blindness 6 (1996) ("When sight is lost, many individuals feel particularly helpless and dependent until they can acquire appropriate adaptive behaviors and coping skills."); Steven M. Teutsch *et al.*, The Impact of Vision Loss, *in* Making Eye Health a Population Health Imperative 135, 135 (2016) ("Vision loss can affect one's quality of life, independence, and mobility and has been linked to falls, injury, and worsened status in domains spanning mental health, cognition, social function, employment, and educational attainment.").

An accommodations assessment would identify what accommodations may assist a blind or low vision class member in light of the specific nature of her disability, living environment, programming, and rehabilitation goals. This includes low-tech accommodations like bold pens, thick lined paper, stencils, sightless locks, signature guides, talking clocks, tactile bumps, magnified mirrors, binoculars, and white canes, as well as more advanced accommodations, including portable handheld video magnifiers, tablets with comprehensive screen magnification and screen reading software, and text-to-speech software.[2] *See*

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[1] Letter from Rita Lomio, Plaintiffs' Counsel, to Katie Riley, CDCR Office of Legal Affairs (May 11, 2017); Letter from Natasha Machado, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs' Counsel (June 2, 2017); Letter from Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs (June 9, 2017); Letter from Margot Mendelson & Molly Petchenik, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs (May 24, 2018); Letter from Russa Boyd, CDCR Office of Legal Affairs, to Margot Mendelson, Plaintiffs' Counsel (Jan. 2, 2019); Letter from Margot Mendelson & Megan Lynch, Plaintiffs' Counsel, to Russa Boyd and Tamiya Davis, CDCR Office of Legal Affairs (Dec. 11, 2019).

[2] There are many different types of magnifiers. A simple, low-level magnifier does not work for all

Cal. Council of the Blind v. County of Alameda, 985 F. Supp. 2d 1229, 1240 (N.D. Cal. 2013) ("The legislative history of the ADA reveals that Congress intended for accommodations provided to individuals with disabilities to 'keep pace with the rapidly changing technology of the times.'" (quoting H.R. Rep. 101-485(II), at 108 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 391)).

A skills assessment would identify and provide skills training that would help blind and low vision class members, including orientation and mobility training. *See* **Exhibit E**, Letter from Margot Mendelson & Megan Lynch, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [redacted], SVSP (Sept. 18, 2019) ("Mr. [redacted] explains that he would benefit tremendously from training or orientation about how to navigate his cell, organize his cell, dress and undress himself, and set routines of daily living."). LightHouse offers "an introductory immersion program for adults who are newly blind or have experienced a change in vision. The program introduces basic and essential skills to live confidently at home and in the community. Topics include magnification, organizational skills, time management, use of adaptive aids and accessing print materials [to] provide students solutions and strategies for living with low vision or blindness." LightHouse for the Blind and Visually Impaired, Immersion Training: Changing Vision, Changing Life, https://lighthouse-sf.org/programs/skills/ (last visited Dec. 11, 2019). LightHouse also provides training on personal hygiene, food preparation, clothing care, paper management, housekeeping, and record-keeping. "To the sighted, these skills may appear to be superficial and elementary. To the visually impaired . . . , these skills are obstacles to independence unless specifically taught and mastered." Dean W. Tuttle & Naomi R. Tuttle, Self-Esteem and Adjusting with Blindness 19 (1996); *see* Eleanor Lew, Travelers in the Dark, New York Times, https://well.blogs.nytimes.com/2016/01/25/blind-low-vision-rehabilitation-services/ (Jan. 25, 2016) (discussing experience as participant in LightHouse training and learning, among other things, to distinguish shampoo from conditioner with rubber bands, to put toothpaste on a toothbrush, and to shave).

2. JAWS Screen Reader

Defendants should install the JAWS screen reader on the ADA computers and computers available for use by incarcerated persons in other settings, including the education classrooms. Blind and low vision class members must receive meaningful access to all computer-based programs, services, and activities. During the October SATF tour, Plaintiffs' counsel observed that Defendants had installed JAWS on the library computer offering LexisNexis, but not on the ADA computer or any other computer. *See* 1824 Log No. SATF-G-19-05979 (Nov. 12, 2019) ("The Facility Librarian confers [sic] this addition would be helpful to facilitate ADA student access to information. . . . [T]he RAP determined we will work with local Information Technology (IT) to assess the capability to install JAWS on the ADA computer as there is indication it would be beneficial to you and other ADA Inmate[s].").

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people. *See* **Exhibit D**, Letter from Patrick Booth, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [redacted], SATF (Dec. 12, 2019); Peggy R. Wolfe, Vision Loss 47-48, 194-95 (2014) (discussing different types of magnifiers and how to determine which magnifier works best for a particular person).

Defendants also should retain an accessibility consultant to assess the screen reader accessibility of all computer programs that sighted incarcerated persons receive access to. If this assessment reveals that some programs are not compatible with JAWS "out of the box," Defendants should retain qualified professionals to prepare JAWS scripts to make JAWS work with these programs to the extent possible. During the October SATF tour, Plaintiffs' counsel observed that JAWS did not appear to function properly in the LexisNexis program. When JAWS does not work properly with a program "out of the box," it is possible to modify the software's behavior so that it functions properly or better with the program in question. In particular, JAWS includes a programming language that allows it to be customized to work with other programs. *See, e.g.*, Lighthouse for the Blind & Low Vision, Job Access With Speech (JAWS) Scripting, https://lighthouseblv.org/employer-services/jaws-scripting-training (last visited Dec. 12, 2019); Joe Lazarro, AccessWorld, An Introduction to JAWS Scripting (Nov. 2003), https://www.afb.org/aw/4/6/14806. Companies and consultants exist that have expertise in creating a piece of code called a JAWS script that makes JAWS work better with the program in question.

Finally, Defendants should train blind and low vision class members on JAWS. JAWS is extremely difficult to learn on one's own. In addition, during the October tour, Plaintiffs' counsel observed that, on a computer on which JAWS was installed, class members were blocked from accessing some of the free JAWS training materials. Organizations such as LightHouse offer training to help people learn to use screen readers and other assistive technology. LightHouse can provide customized one-on-one training and group workshops on a variety of topics with qualified access technology instructors.

3. Orientation and Mobility: White Canes and Training

White canes should be provided to blind and low vision class members upon request.[3] Defendants also should offer canes ranging in length because the appropriate length depends on the height and sometimes also the experience of its user.[4] Defendants also should offer rolling ball tips, which enable a blind person to more effectively use a cane on uneven surfaces such as cracked pavement and dirt.

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[3] For many blind and low vision class members, a white cane can greatly enhance their independence and ability to navigate the prison. *See* Executive Office of the President, Proclamation 7367: White Cane Safety Day, 65 Fed. Reg. 62989 (Oct. 14, 2000) ("With proper training, people using the white cane can enjoy greater mobility and safety by determining the location of curbs, steps, uneven pavement, and other physical obstacles in their path. The white cane has given them the freedom to travel independently to their schools and workplaces and to participate more fully in the life of their communities."). It is unclear what standard Defendants apply when determining whether to issue a white cane. *See* Exhibit A at 2 (noting that provider denied a DPV class member a cane with no explanation, and, in another case, the provider deferred the decision to provide a DPV class member a cane a few months while waiting for an ophthalmologist report); Exhibit B at 1 (noting that nurse reportedly told blind class member that he did not need a white cane because he had a disability vest).

[4] During the October SATF tour, staff told us that, going forward, only one length will be available on the formulary. The National Federation of the Blind recommends that people who are new to the white cane measure from their armpit to the floor and seasoned users measure from their chin.

In addition, Defendants should provide orientation and mobility training.

> Orientation is the ability to recognize and establish a position in relation to the environment, whereas mobility is the physical ability to move in an orderly, efficient and safe manner through the environment. It is important for visually-impaired older adults to learn new orientation and mobility skills to compensate for reduced visual information, in order to maintain and regain independence during everyday activities. Therefore, orientation and mobility training, which is considered a necessary component of rehabilitation for partially-sighted and blind persons, aims to help them regain their independence by teaching them to manage both simple and complex tasks of daily life safely and effectively.

Judith Ballemans *et al.*, Orientation and Mobility Training for Partially-Sighted Older Adults Using an Identification Cane: A Systemic Review, 25 Clinical Rehab. 880, 881 (Oct. 2011).

Such training also is an integral part of being able to use a white cane to travel independently. *See* Jeffrey W. Jutai *et al.*, Effectiveness of Assistive Technologies for Low Vision Rehabilitation: A Systematic Review, 103 J. of Visual Impairment & Blindness 210, 220 (Jan. 2019) ("If devices are prescribed, training in the use of the devices is usually assumed to be an integral link that must be incorporated for any amount of success with the device.").[5] During a session, a Certified Orientation and Mobility Specialist (COMS) teaches a person how to properly use her white cane. The specialist also could provide an individual assessment about appropriate cane types. The blind person also would have the opportunity to walk with the specialist to and around the yard, chow hall, library, and other areas of the prison to learn how to navigate these spaces. The skills learned through orientation and mobility training allow a person to apply what they have learned to any environment, including other yards, prisons, and the community after release from prison. Mr. Blanks explained that orientation and mobility training typically is done as one-on-one instruction over several sessions.[6]

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[5] We have raised concerns with the lack of appropriate orientation and mobility training provided to people in prison. *See* Exhibit A at 5-6 (SATF); Exhibit B (SVSP) ("He has tried to teach himself through trial and error, but he has not been able to learn how to use the white cane such that he can function with independence."); Exhibit E (SVSP) ("Although CDCR issued Mr. [redacted] a white cane a few years ago, he did not receive any training about how to use the white cane.").

[6] *See* Grace P. Soong *et al.*, Does Mobility Performance of Visually Impaired Adults Improve Immediately After Orientation and Mobility Training? 78 Optometry & Vision Science 658, 664-65 (Sept. 2001) ("When new mobility skills are practiced many times, visually impaired adults are then able to perform these skills in the future because they can retrieve them from long-term memory, as a result requiring less mental effort. . . . Given the short duration of training and limited post-training practice, the subjects in the current study may not have developed their sensory and motor skills adequately for using their mobility devices. . . . Practice is important for visually impaired people to develop sensory and motor skills to use new mobility devices proficiently for independent travel."); Patricia Souder, Blindness and Vision Impairment 98 (2015) ("[L]earning to use a white cane takes courage, determination, a sense of humor, and lots of time

We understand that Defendants have provided (or plan to provide) orientation and mobility training to at least a few class members at the California Medical Facility (CMF) and the California Health Care Facility, Stockton (CHCF). We request that such training be provided to all interested people who are blind or low vision at all prisons. *See* Steven M. Teutsch *et al.*, The Impact of Vision Loss, *in* Making Eye Health a Population Health Imperative 135, 139 (2016) ("Mobility is . . . greatly affected by vision loss, whether resulting from changes in visual acuity, visual fields, depth perception, or contrast sensitivity."). As Mr. Blanks explained, white canes and orientation and mobility training should be provided to people with degenerative vision loss who may use a white cane in the near future because it is easier to train a person who still has some vision.

Defendants also should provide adaptive physical education classes for blind and low vision class members. *See* Exhibit A at 31; Meridith Griffin *et al.*, Physical Activity Among Older People with Sight Loss: A Qualitative Research Study to Inform Policy and Practice 25 (June 2014) ("Many participants spoke of not having the confidence to participate in activities. Often this lack of confidence was linked to fear associated with their impaired vision."); Charles E. Buell, Physical Education and Recreation for the Visually Handicapped 49 (1982) (noting that blind people "should be encouraged to become permanent participants in programs that promote vigorous physical activity"). Coach Holland at CMF offers a weekly Wellness and Sports Skills class for DPV class members. As he explained, the class will begin with chair exercises with the goal of getting class members confident in being on their feet and moving around. This program should be expanded to other institutions with blind and low vision class members.

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and patience."); Dean W. Tuttle & Naomi R. Tuttle, Self-Esteem and Adjusting with Blindness 22 (1996) ("A majority of blind persons use the white cane as their mode of independent travel. To be a competent cane traveler, one must participate in a rigorous sequence of instruction taught by a trained orientation and mobility specialist.").

4. Braille Literacy

Defendants should provide in-person braille literacy instruction and tutoring to blind and low vision class members.[7]

As Defendants have recognized, the Governor's "renewed focus on inmate education and literacy demands that CDCR—and OCE specifically—make all efforts to ensure that inmates are provided support necessary to progress in education, and that they be expected to progress in education to improve their chances of success upon reintegration into the community." Letter from Russa Boyd, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs' Counsel, [redacted], SATF (July 23, 2019) (noting Governor's approved budget that "included $5.5 million for a statewide initiative to improve literacy among the prison population through the use of multiple strategies, including peer literacy mentors, expansion of online learning tools, and specialized training for academic instructors"); *see also* Cal. Penal Code § 2053.1(a) ("The Secretary . . . shall implement in every state prison literacy programs that are designed to ensure that upon parole inmates are able to achieve the goals contained in this section."). Defendants do not appear to offer any in-person braille literacy courses to blind and low vision class members, with the exception of an Inmate Activity Group that recently started at CMF. *See, e.g.*, Exhibit A at 13-14 (SATF); Exhibit D at 5 (SVSP). And class members report that it is difficult to learn braille only through a correspondence course with the Hadley School for the Blind.

Braille can provide a blind person independence when reading and writing. Braille is the only system that allows blind people to read and write independently. Although text-to-speech technology and audiobooks can help people gain information, they do not teach reading and writing skills. People who rely solely on text-to-speech and audiobooks find themselves deficient in areas like spelling and composition. Nat'l Fed'n of the Blind, The Braille Literacy Crisis in America at 12 (Mar. 2009), https://nfb.org/images/nfb/documents/pdf/braille_literacy_report_web.pdf. Studies show that people who are braille literate have higher employment rates, are better educated, and are more financially self-sufficient. *See id.* at 2 ("Undoubtedly the ability to read and write Braille competently and efficiently is the key to success for the blind."); *id.* at 13 ("In a comparison between two groups of blind people, one consisting of Braille readers and the other of print readers, the study revealed that those who were taught Braille from the beginning had higher employment rates, were better educated and more financially self-sufficient, and spent more time engaged in leisure and other reading than the print users."); *see also* Patricia Souder, Blindness and Vision Impairment 55 (2015) ("For those with severe visual loss, Braille opens up the worlds of literature, philosophy, history, and religion and becomes a tool for studying math, science, spelling, foreign languages, law, music, and many other disciplines."); C. Edwin Vaughan, Social and Cultural Perspectives on Blindness: Barriers to Community Integration 113-118 (1998) (discussing the importance of braille literacy).

[7] Not all blind people may want or be able to learn braille. Some people, including those who are blind as a result of diabetic retinopathy, may not have the requisite feeling in their fingertips to distinguish the braille dots.

5. Large Print, Braille, and Audio Materials

Defendants should document what reading accommodations blind and low vision class members prefer, including braille, large print (of various font sizes), and audio formats, and should provide materials in the appropriate format.

Defendants do not appear to have a statewide policy regarding when documents are provided in accessible formats. *See* ARP §§ II.E.1, II.F. Notably, the former Community Resource Manager (CRM) at SATF reported that he did not have the budget to provide materials in braille or large print. Exhibit A at 30 ("[T]he CRM said that he could not provide material in accessible formats because his annual budget for printing material is only $115"). It appears that Defendants do not provide materials to blind class members in braille, including disciplinary paperwork and educational and self-help materials. *See id.* at A at 14-15, 30, 33-34; Appeal Log No. SATF-A-19-01620 at 3 (Apr. 23, 2019) (Second Level Response) ("Your suggestion that all academic, vocational, and VEP courses should be in Braille has been given to the Office of Correctional Education for consideration, but *at this time there are no Braille curriculums for all of these programs*." (emphasis added)).[8] It also appears that Defendants do not typically develop or provide audio materials.[9] And it appears that Defendants inconsistently provide documents in large print to some class members. *See* Exhibit A at 24-25. As a result, blind and low vision class members often rely on other incarcerated people to help them read or must wait until they can access the library to use electronic magnifiers or text-to-speech equipment. Neither method is an adequate alternative; they do not allow blind people to maintain privacy of certain matters, including related to their conviction or rule violations, and do not provide them equal access to written materials.[10]

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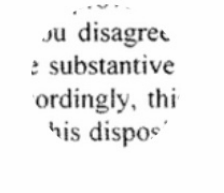
[8] In the absence of accessible materials for all educational and rehabilitative programs, blind class members may be incarcerated longer than their sighted peers. *See* Cal. Code Regs., tit. 15, § 3043(a) ("all inmates who participate in approved rehabilitative programs and activities . . . shall be eligible to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit . . . . The award of these credits . . . shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date . . . if sentenced to an indeterminate term with the possibility of parole"); Milestone Completion Credit Schedule (rev. July 2018); *Serventi v. Bucks Tech. High Sch.*, 225 F.R.D. 159, 167-68 (E.D. Pa. 2004) (approving settlement agreement that required support for "the full range of vocational programs," not just a subset of them).

[9] Defendants do produce braille materials for blind people in the outside community through braille transcription programs, including The Blind Project at CMF. Defendants also have produced audio materials for blind people in the outside community through that program.

[10] *See* Letter from Penny Godbold, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, Request for DPV Equipment at 3-4 (Mar. 22, 2019) (noting concerns with library access at SATF, CMF, and SVSP); Exhibit A at 19-21 (reporting difficulties with access to the library and auxiliary aids at SATF); *cf. In re Martinez*, 157 Cal. Rptr. 3d 701, 709 (Cal. App. 2013) (noting that "the Legislature has specifically guaranteed to inmates in California's prisons . . . the right to read"); Cal. Penal Code § 2601(b) (noting that people in prison have the right "[t]o

We note that very few DPV class members know braille, and not all of the remaining DPV class members necessarily will want large print. This is because some class members may have significant impairments in peripheral visual function and a narrowed central field. Mr. [redacted], who has retinitis pigmentosa, for example, describes his vision as looking through a straw and prefers regular print text at this time so that he can see more letters at one time. *See* Patricia Souder, Blindness and Vision Impairment 58 (2015) ("Retinitis pigmentosa involves night blindness and a severe loss of peripheral and side vision due to congenital degeneration of cells in the retina."); Dean W. Tuttle & Naomi R. Tuttle, Self-Esteem and Adjusting with Blindness 14 (1996) ("someone with tunnel vision may be legally blind but have a central visual acuity of 20/20, enabling the reading of regular print at normal distances").



6. Tablet Pilot Program

Defendants should ensure that their tablet pilot programs are accessible to blind and low vision class members by, among other things, installing screen readers and screen magnifiers on the tablets and kiosks. If the tablets provided cannot support screen reading technology, Defendants must make an alternative comparable tablet available that can provide class members with comprehensive screen reading and screen magnification. Defendants also should train blind and low vision class members on how to use their tablets for notetaking

All yards on SATF are participating in the Offender Tablet Pilot Project, with J-Pay tablets available to incarcerated people. In response to a previous tour report, Defendants stated: "The J-Pay program is only a pilot program and the features requested will not be added to the J-Pay Tablet at this time. One of the purposes of the Pilot Project . . . is to . . . identify additional features that will allow all inmates, including those with disabilities, to equally avail themselves of the technology to ensure we include these types of requirements. The ability to zoom in and out, as well as text-to-speech features, and other ADA accessibility features are included in our request and have already been identified through the pilot requirements. The Pilot Program is scheduled to conclude on April 30, 2019." SATF Response

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correspond, *confidentially*, with any member of the State Bar or holder of public office" (emphasis added)); *Am. Council of Blind v. Astrue*, No. C-05-04696 WHA, 2009 WL 3400686, at *7 (N.D. Cal. Oct. 20, 2009) ("Having someone read over the telephone does not compare to being able to absorb the information independently in order to study it, review it, and comprehend at one's own speed and mode of 'reading.' . . . Everyone who receives an important notice needs to be able to store it and retrieve it for later use. The blind and visually impaired need to do so as well. When a blind individual prepares a response to an important notice, he or she must, under the [Special Notice Policy], wait until a . . . reader can re-read the document to them or wait to reach an employee on the toll-free number, which is only available weekdays and only from 7 a.m. to 7 p.m. In addition, a person cannot earmark key passages in the standard print notices.").

to October 2017 SATF Tour Report at 17 (Oct. 17, 2018). Defendants subsequently reported that the pilot program has been extended to April 30, 2022. The fact that Defendants have labeled their multi-year tablet program a "pilot" does not provide an exemption from the Americans with Disabilities Act. Title II of the ADA applies to everything that public agencies do, *see Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001), including operating pilot programs. By failing to provide accessible features, Defendants also are losing the opportunity to get feedback from people with disabilities about specific types of accessibility features.

7. Electronic Forms

"Plaintiffs are . . . awaiting confirmation as to how and when Defendants will be providing copies of CDCR forms electronically in accessible formats. Defendants have discussed with Plaintiffs that the first phase to evaluating accessible formats was the identification of equipment. With the recent rollout of new equipment, a workgroup is being formed to evaluate how this equipment can be maximized to provide accessibility to CDCR forms. Recommendations from this workgroup are expected by the end of 2019." *Armstrong v. Newsom*, Joint Case Status Statement at 19 (July 15, 2019). Plaintiffs request the recommendations of the workgroup and the timeline for implementing electronic forms.

8. Medications, Medical Devices, and Sunglasses

Defendants should offer a variety of accommodations to address the diverse needs of blind and low vision patients, including color-coded pill boxes, clip-on pill bottle rings or rubber bands, pill organizers, braille labels, and accessible glucose test meters. In one case, it appears that a blind class member was not permitted KOP (keep-on-person) medications by medical staff due to his disability. **Exhibit F**, Letter from Shira Tevah, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [redacted], CIM (Nov. 22, 2019). And another blind class member mixed up his medications and may have taken double the prescribed dosage, resulting in vertigo. **Exhibit G**, Outpatient Progress Note, [redacted], SATF (Nov. 19, 2019) (noting that patient "is instructed to mark the 10 mg packet so that he knows which pills he is taking").[11]

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[11] Mr. [redacted] told Plaintiffs' counsel that he had attempted to distinguish the previous medication blister packs by folding down the edge of one of them, but that the edge of the other pack must have inadvertently been folded, leading to the confusion. Plaintiffs' counsel asked whether it would help if the institution procured a braille label maker and marked the blister packs in braille with the name and dosage of the medication. Mr. [redacted] reported that this would help and that there was sufficient room on the blister pack to place such a label.

Defendants also denied a blind class member the ability to use an accessible blood glucose test meter because the specific meter was not listed in the existing local operating procedure.[12] Exhibit A at 35-36. Blind people outside of prison, however, for decades have utilized accessible glucose monitoring systems and have administered insulin independently.[13]

In addition, Defendants should develop guidelines for when tinted prescription glasses or sunglasses are provided to people who are blind or have low vision.[14] Among other things, sunglasses may help some people who are light-sensitive make better use of their residual vision. We are concerned that in at least one case, providers overruled an ophthalmologist's recommendation of tinted glasses "due to lack of medical indication" as there was "no etiology" or "objective evidence" of photophobia and the class member was able to complete his activities of daily living. **Exhibit H**, Letter from Michael Felder, Chief Executive Officer, to Rita Lomio, Plaintiffs' Counsel (July 17, 2019). An ophthalmologist we consulted informed us that photophobia is a symptom and not a disease, that often it is hard if not impossible to isolate the cause, and that tinted glasses may be appropriate accommodations even if they are not medically necessary.

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12 It does not appear that Defendants considered whether the local operating procedure should or could be modified to accommodate a blind person. *See* 28 C.F.R. § 35.130(b)(7) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.").

13 *See, e.g.*, Nat'l Fed'n of the Blind, Serving Individuals with Diabetes Who Are Blind or Visually Impaired 29-110 (1997) (discussing self-management, including sections entitled, "Blind Diabetics Can Draw Insulin Without Difficulty" and "Talking Blood Glucose Monitoring Systems"); Am. Found. for the Blind, Blood Glucose Meters, https://www.afb.org/about-afb/what-we-do/afb-consulting/published-results/blood-glucose-meters (last visited Aug. 12, 2019) ("Although blood glucose meters have allowed people with diabetes to manage the disease independently, visual readouts that are hard to see have made many of the devices incredibly difficult for people with vision loss to use. Not just a matter of convenience, these devices can mean the difference between life and death."); Morgan V. Blubaugh & Mark M. Uslan, Accessibility Attributes of Blood Glucose Meter and Home Blood Pressure Monitor Displays for Visually Impaired Persons, 6 J. of Diabetes Science & Tech. 246, 247 (March 2012) ("The ability to use home diabetes-related self-management technology properly is recognized as of critical importance for persons with both type 1 and type 2 diabetes. The American Diabetes Association recommends self-monitoring of blood glucose for all persons with type 1 and type 2 diabetes being treated with insulin to be carried out three or more times daily.").

14 *See* Patricia Souder, Blindness and Vision Impairment 71 (2015) (recommending "UV absorbing lenses" because "prolonged exposure to the sun may damage the macula"); Marshall E. Flax *et al.*, Coping with Low Vision 150 (1993) ("As we age, most of us develop photophobia—an increased sensitivity to bright sunlight. Sunglasses that filter the infrared and ultraviolent light have been found to relieve the irritation.").

9. Enhanced Outpatient Program Groups

Defendants should ensure that Enhanced Outpatient Program (EOP) groups are designed to include and support blind and low vision class members. *See* Lisa C. Barry *et al.*, Disability in Prison Activities of Daily Living and Likelihood of Depression and Suicidal Ideation in Older Prisoners, 32 Int'l J. of Geriatric Psychiatry 1141, 1145, 1147 (2017) ("[P]articipants with poor vision . . . were significantly more likely to be depressed . . . . Older prisoners with poor vision . . . may find it especially difficult to navigate the often physically and psychologically demanding prison environment . . . ."); Steven M. Teutsch *et al.*, The Impact of Vision Loss, *in* Making Eye Health a Population Health Imperative 135, 143 (2016) ("Compared to people with normal vision, those with vision impairments are at a higher risk for depression, anxiety, and other psychological problems. . . . Distress related to vision loss is more strongly correlated with depression than other key risk factors such as negative life events or poor health status."); **Exhibit I**, Letter from Margot Mendelson & Megan Lynch, Plaintiffs' Counsel, to Joanne Chen, CDCR Office of Legal Affairs, November 2018 SVSP Joint Site Visit (Nov. 13, 2018) (noting "the paramount importance [of] providing . . . appropriate mental health care to DPV class members, in part because DPV class members statewide have higher rates of serious mental health concerns, including depression and anxiety"). At a minimum, this should include audio description for movies, accessible exercise equipment, braille and large print games, and thoughtful design of activities (such as sculpture instead of painting). Defendants also should train recreational therapists about blind and low-vision accommodations and program design strategies.

It does not appear that recreational therapists are provided with sufficient resources and training to accommodate blind and low vision class members. For example, a recreational therapist at Salinas Valley State Prison (SVSP) informed Plaintiffs' counsel during the October 2019 monitoring tour that she is unable to accommodate blind and low vision patients because she does not have resources to do so. She reported that many EOP groups at SVSP are yard groups due to limited indoor group treatment space—a common problem in California prisons. The recreational therapist reported that, during yard groups, patients may, among other things, play cards, dominos, frisbee, or basketball. She acknowledged that blind people often are unable to meaningfully participate in such groups; she explained that most blind people have an ADA worker escort them to check in, but have no way to participate other than by saying hello or asking a general question. She reported that she had not been provided any supplies at all, much less accessible games and materials, in the last two years. She described the task of trying to accommodate blind people in recreation therapy as "very difficult." *See* Exhibit E ("Medical records show that the vast majority of the EOP groups that Mr. [redacted] has been offered since returning to SVSP from Atascadero are yard groups. Mr. [redacted] reports that he ends up 'essentially sitting on the bench on the yard' because he cannot take part in the recreational activities."); Exhibit B ("Mr. [redacted] reports that the vast majority of the EOP groups that [he] has been offered since returning to SVSP . . . are 'yard groups.' CDCR provides no accommodations to facilitate Mr. [redacted]'s meaningful participation in the groups. Mr. [redacted] reports that he ends up sitting on the bench on the yard because he cannot take part in the recreational activities."); May 2019 SVSP Tour Report at 23 (same). In addition, during the October 2019 visit to SATF, we spoke with recreational therapists. They reported that, at that time, there were no blind or low vision patients who required accommodations, but that they would appreciate training on disability accommodations that may be available in case they later received a blind patient.

The recreational therapist at SVSP also reported that there are movie groups, in which patients watch a movie and, at the conclusion of the movie, discuss what they have seen. At the time of the tour, there was no audio description on any of the movies available.[15] *See* Exhibit E at 3 ("Previously, Mr. [redacted] was also assigned to movie groups for his EOP treatment. No audio description technology was provided, so Mr. [redacted] simply had to sit in a room listening to movies without understanding what was happening."); Exhibit B ("Mr. [redacted] has had similar concerns about EOP 'movie groups,' in which no audio description technology is provided to enable people with vision disabilities to access the material.").

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Thank you for your attention to this matter. We look forward to addressing these issues with you. Plaintiffs will follow-up shortly with proposed dates for a meeting in January. We also welcome members of the working group to join us at the next SATF monitoring tour, which is scheduled for February 3-6, 2020.

Sincerely yours,

Rita Lomio
Staff Attorney

cc: Co-Counsel
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[15] The Audio Description Project has a comprehensive list of movies for which audio description is available. *See* Am. Council of the Blind, The Audio Description Project, https://www.acb.org/adp/ (last visited Dec. 10, 2019).