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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

Case No. C94 2307 CW

JOINT CASE STATUS STATEMENT

Judge: Hon. Claudia Wilken

1 The parties submit this Joint Case Status Statement pursuant to the Stipulation and
 2 Order entered March 28, 2011 (Doc. 1868), which provides that “[t]he parties will file
 3 periodic joint statements describing the status of the litigation” every other month,
 4 beginning on May 16, 2011.

5 **CURRENT ISSUES**

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

7 *Plaintiffs’ Statement*

8 As detailed at length in prior case management statements, Plaintiffs’ counsel has
 9 documented allegations of widespread abuse and violations of the rights of people with
 10 disabilities at High Desert State Prison (High Desert), Central California Women’s Facility
 11 (CCWF), and Salinas Valley State Prison (SVSP).¹ Plaintiffs’ counsel has also
 12 documented similar problems regarding staff harassment, discrimination, and intimidation
 13 of class members at California State Prison Sacramento (SAC), California State Prison Los
 14 Angeles County (LAC), and Richard J. Donovan Correctional Facility (RJD). Plaintiffs’
 15 counsel has detailed these allegations in monitoring tour reports and advocacy letters
 16 directed to CDCR over the past two years.

17 Plaintiffs’ allegations constitute evidence of an environment fostered by staff
 18 members at some institutions that discourages people from asking for assistance and
 19 discriminates against people with disabilities in CDCR prisons. Many of the allegations of
 20 abuse, violence, and retaliation documented in Plaintiffs’ counsel’s reports and letters are
 21 directed at class members. How staff members treat people with disabilities and whether
 22 staff engage in intimidation and retaliation against people with disabilities are of central
 23 importance to this case.

24 Plaintiffs’ counsel has raised concerns about CDCR’s process for investigating
 25 allegations of violence, misconduct, discrimination, and harassment of class members by
 26 staff. Plaintiffs’ counsel has met with institution staff at CCWF and SVSP, CDCR

27 _____
 28 ¹ For a detailed recitation of Plaintiffs’ allegations, see Doc. 2680 at 5-9.

1 headquarters staff, and representatives from the Office of Internal Affairs and the Office of
2 Inspector General about this issue. The meetings have been collaborative, but Plaintiffs’
3 counsel remains concerned about profound shortcomings in CDCR’s investigative process.

4 In November 2017, Plaintiffs’ counsel sent a letter to CDCR expressing concern
5 about various aspects of CDCR’s processes for investigating staff misconduct allegations.
6 See **Exhibit A**: Letter from R. Lomio and M. Lynch, Prison Law Office, to P. McKinney,
7 CDCR, Investigations at Salinas Valley State Prison (Nov. 14, 2017), at 3. Plaintiffs’
8 counsel documented a range of unprofessional practices that diminish the effectiveness of
9 staff misconduct investigations and accountability measures, such as conducting interviews
10 about staff misconduct allegations in the presence of custody officers and announcing
11 individuals’ interviews with ISU officers by loudspeaker in housing units. *Id.* at 2.
12 Plaintiffs’ counsel objected to CDCR’s practice of interviewing randomly selected
13 prisoners about allegations of staff misconduct made by other incarcerated people, on the
14 grounds that it exposes individuals who make staff misconduct allegations to harm and
15 chills participation in the staff complaint process. *Id.* at 3. Plaintiffs’ counsel called upon
16 CDCR to take concrete, corrective action to address the widespread allegations of staff
17 misconduct at SVSP and other institutions, including by deploying video cameras and
18 implementing a meaningful early warning system to identify problematic behavior by staff
19 and identify trends in staff misconduct allegations. *Id.* at 7-8. Plaintiffs’ counsel is
20 troubled by CDCR’s pattern of dismissing highly consistent and very serious allegations of
21 staff misconduct simply because its current investigation system is unable to substantiate
22 them. Plaintiffs’ counsel is also concerned about the lack of independence of ISU officers,
23 who play the critical role of conducting initial investigations into allegations of staff
24 misconduct at the institutions.

25 In response to these concerns, the Office of the Inspector General (OIG) is
26 conducting an assessment of the effectiveness of SVSP’s process for handling complaints
27 about staff misconduct. In particular, the OIG is monitoring all staff complaints submitted
28

1 at SVSP from March 1, 2018 through May 31, 2018. Plaintiffs' counsel hopes that the
2 OIG's review will identify areas for improvement in CDCR's investigation of staff
3 complaints.

4 Plaintiffs' counsel also has raised concerns about the quality of investigations by
5 CDCR's Office of Internal Affairs (OIA). In its recent Semi-Annual Report, the OIG
6 found that "speculative opinions as to motivation behind potential misconduct still
7 negatively influence decisions" made by OIA's special agents. Office of Inspector
8 General, Semi-Annual Report, July – December 2017 (Mar. 2018), *available at*
9 [https://www.oig.ca.gov/media/reports/SAR/2018/OIG_Semi_Annual_Report_July_-](https://www.oig.ca.gov/media/reports/SAR/2018/OIG_Semi_Annual_Report_July_-_December_2017.pdf)
10 [December_2017.pdf](https://www.oig.ca.gov/media/reports/SAR/2018/OIG_Semi_Annual_Report_July_-_December_2017.pdf)), at 11. According to the OIG, OIA special agents are "often
11 satisfied to address the surface misconduct ... [while] showing unwillingness to look
12 deeper at failure of supervision, other contributing causes, or misconduct of wider scope
13 than initially identified" *Id.* The OIG's concerns about excessively narrow and
14 superficial investigations by CDCR are consistent with the observations of Plaintiffs'
15 counsel.

16 In the Semi-Annual Report, the OIG expressly recommended that CDCR change
17 its policy whereby the special agent in charge of OIA's central intake has authority to deny
18 requests to initiate investigations or interview staff members in connection with staff
19 misconduct allegations. *Id.* at 15. Under the current system, the special agent, who is not
20 an attorney, can decline to investigate an allegation against the express recommendations
21 of attorneys for the OIG or the Employment Advocacy and Prosecution Team (EAPT).
22 The OIG cited 58 instances between July and December 2017 in which the OIA rejected
23 recommendations to open investigations or interview employees. *Id.* at 13. The OIG
24 found that in 82% of these cases, the failure to accept the recommendation to investigate
25 the allegations affected the outcome. *Id.* The report details a number of troubling
26 instances in which the OIA special agent declined to investigate allegations of serious staff
27 misconduct, against the recommendation of OIG attorneys. *Id.* at 13-14.

1 CDCR, thus far, has declined to accept the express recommendation of the OIG to
2 change its policy regarding the authority of OIA special agents. On April 4, 2018,
3 Plaintiffs' counsel sent CDCR a letter outlining our objections to this decision. *See*
4 **Exhibit B**: Letter from D. Specter, Prison Law Office, to S. Kernan, Central Intake Panel
5 policies (April 4, 2018). Plaintiffs' counsel, Defendants, Inspector General Roy Wesley,
6 and Mr. Swanson met on May 2, 2018. Given the parties' ongoing dispute about the
7 effectiveness of CDCR's investigative processes, the parties will confer about whether to
8 identify a neutral party to evaluate aspects of the OIA system.

9 *Defendants' Statement*

10 Defendants investigate all allegations of staff misconduct made by *Armstrong* class
11 members. Allegations made by non-class members and allegations not related to
12 violations of the ADA or the Remedial Plan are processed and addressed through CDCR's
13 staff disciplinary process, as set forth in the Department Operations Manual. (*See* CDCR
14 Department Operations Manual, Chapter 3, Art. 22.) Defendants deny Plaintiffs' assertion
15 of "profound shortcomings" in the investigation process. To the contrary, CDCR has one,
16 if not the most, comprehensive systems for identifying and addressing valid allegations of
17 staff misconduct. This process was developed as a result of the *Madrid* litigation, in which
18 the Prison Law Office served as Plaintiffs' counsel and, were involved in the development
19 of CDCR's staff disciplinary process. Defendants also dispute Plaintiffs' assertion that
20 CDCR has a "pattern of dismissing highly consistent and very serious allegations of staff
21 misconduct simply because its current investigation system is unable to substantiate them."
22 CDCR does not dismiss allegations of staff misconduct, nor does it operate a system in
23 which allegations cannot be substantiated.

24 Furthermore, the OIG also monitors and assesses CDCR's internal affairs
25 investigations of alleged employee misconduct and subsequent appeals. All allegations
26 presented by Plaintiffs are consistently addressed through the appropriate channels. And
27 Defendants have disciplined their employees for confirmed violations.

1 Defendants have engaged in an extraordinary level of cooperation with Plaintiffs’
 2 counsel, including joint visits to prisons in excess of the annual tour schedule and
 3 providing enhanced access to investigative details and documents².

4 Defendants remain willing to work with Plaintiffs’ counsel to develop standards or
 5 guidelines to determine how an allegation should be addressed. However, Plaintiffs’
 6 counsel is attempting to reargue *Madrid* and suggest that any allegation by a class member
 7 implicates the ADA. Defendants disagree. Not every complaint implicates the ADA or
 8 this Court’s accountability orders. The OIG’s July-August 2017 Semi-Annual Report does
 9 not specifically address ADA issues or complaints. Rather, it is a comprehensive review
 10 of CDCR’s investigative process, and Plaintiffs’ reliance upon it as evidence that CDCR is
 11 failing to comply with the ADA is misplaced and inappropriate.

12 In addition to having no relationship to the *Armstrong* case, Plaintiffs have
 13 misinterpreted the OIG report. The OIG has recently clarified to the Department that the
 14 82% percent figure mentioned in the report is not connected to the 58 referenced cases. In
 15 fact, only 6 of the 58 cases cited were assessed in the Semi-Annual Report. Instead, the
 16 OIG analyzed 33 cases during the reporting period in which it claims the OIG disagreed
 17 with the Office of Internal Affairs’ decision. (Semi-Annual Report at 13.) Of those 33
 18 cases, the OIG found in the Semi-Annual Report the investigation “sufficient” or agreed
 19 with the outcome in 31 of the 33 cases. (*Id.* at Appendix A.)

20 Plaintiffs’ request is misinformed for a number of other reasons. First, the small
 21 number of legitimate disputes that arose from the 33 cases closed during the reporting
 22 period must be placed in context of the 979 total cases considered by the Central Intake
 23 Panel during this timeframe. Second, in more than 50% of the cases where the OIG
 24 disagreed, a CDCR attorney agreed with the decision made by the agent which would have
 25 resulted in the same outcome. When an attorney and agent disagree, an Employment
 26

27 ² For detailed summaries of past actions, see ECF No. 2688, p. 5-8; ECF No. 2697, p. 4-5;
 28 ECF No. 2704, p. 3-4.

1 Advocacy and Prosecution Team (EAPT) attorney monitors the case 65% of the time and
2 can recommend changes. Third, eight of the 58 cases remain pending in the disciplinary
3 process and the outcome cannot be known until discipline is imposed and appeals are
4 completed. Fourth, in 32 of the 58 cases where the process is complete, five cases resulted
5 in terminations or resignations without an appeal, 13 salary reductions, two suspensions,
6 and other types of discipline. Fifth, the OIG utilized the existing process for elevating
7 disagreements only 7 times out of the 93 total cases; this process is the appropriate
8 mechanism for raising significant disputes. Accordingly, even if this issue were
9 tangentially related to any part of this case (which it is not), Plaintiffs fail to identify a
10 substantive problem with the intake or investigatory process.

11 Defendants dispute Plaintiffs' inclusion of non-ADA issues because they are not
12 within the scope of this lawsuit. Defendants will continue to assert objections to all billing
13 associated with issues Defendants deem are outside the scope of this case. Plaintiffs'
14 monitoring has strayed far from verifying CDCR's compliance with the ADA. For
15 example, Plaintiffs have begun sending letters on behalf of non-class members regarding
16 issues unrelated to CDCR's compliance with the ADA while inappropriately labeling and
17 billing such correspondence under *Armstrong*. Plaintiffs' counsel has also significantly
18 expanded their number of interviews with non-class members during *Armstrong*
19 monitoring tours and reporting on allegations that Defendants believe are not related to
20 CDCR's compliance with the ADA or the remedial plan.

21 Defendants will continue to meet and discuss issues related CDCR's compliance
22 with the ADA, Rehabilitation Act, and orders in this case. But Defendants are unwilling
23 to allow this action to stray from addressing ADA compliance.

24
25 **B. Shortage of Accessible and Appropriate Housing Placements**

26 Defendants are required to house people with disabilities in accessible placements.
27 If people are in placements that do not accommodate their disabilities, CDCR must
28

1 expedite their transfer to an appropriate prison. *See* Armstrong Remedial Plan § IV.D.
2 Plaintiffs’ counsel’s February 2018 letter and numerous monitoring reports over the last
3 year document that Defendants are failing to expeditiously transfer all impacted class
4 members. *See* Doc. 2721, Exhibit A (Letter from M. Mendelson, Prison Law Office, to R.
5 Boyd, Office of Legal Affairs, Failure to Expeditiously Transfer Class Members to Safe
6 and Appropriate Housing Settings (Feb. 12, 2018)). Plaintiffs’ counsel asserts that people
7 with disabilities are at great risk of injury trying to access beds, cells, showers, yard and
8 other programs while housed in prisons that do not accommodate their disabilities.
9 Plaintiffs’ counsel also contends that housing individuals for prolonged periods in unsafe
10 and inaccessible housing placements violates the *Armstrong* court’s 2007 Injunction,
11 which prohibits CDCR from “hous[ing] [class members] at any placements without
12 adequate accessible housing” Permanent Injunction (“2007 Injunction”), Jan. 18,
13 2007, Doc. 1045 at 6.

14 Similarly, dozens of other class members remain in Reception Centers for up to
15 several months on extended stay status for an accessible placement to become available at
16 a mainline prison. While in Reception, class members do not have access to mainline
17 programs, including Proposition 57 Rehabilitative Achievement Programs, that enable
18 them to earn sentence-reducing credits for participation. People with disabilities who
19 remain in Reception Centers because of a lack of accessible placement could serve longer
20 prison sentences as a result.

21 Plaintiffs’ counsel also has raised concerns regarding class members who are
22 housed for long periods of time at higher security levels than their classification points
23 warrant. Plaintiffs’ counsel contends that many of these class members are exposed to
24 significant safety risks and excluded from programming opportunities by virtue of their
25 inappropriate custodial placements. Plaintiffs’ counsel contends that housing class
26 members out of level because of a dearth of accessible placements at the appropriate
27 security levels violates this Court’s orders and federal disability law. *See* 2007 Injunction,
28

1 at 6, 9 (requiring that CDCR adhere to the ARP requirement that no prisoner with a
2 disability “shall, because of that disability, be excluded from participation in or denied the
3 benefits of services, programs, or activities of the Department or be subjected to
4 discrimination.”); 28 C.F.R. 35.152(b)(2) (prisons “[s]hall not place inmates or detainees
5 with disabilities in inappropriate security classifications because no accessible cells or beds
6 are available” and “[s]hall not place inmates or detainees with disabilities in facilities that
7 do not offer the same programs as the facilities where they would otherwise be housed.”).

8 Defendants acknowledge that they face challenges in moving some class members
9 to accessible housing placements and have taken action at the headquarters level to attempt
10 to facilitate transfers of class members. For example, headquarters staff currently monitors
11 class members awaiting transfer and oversees bed moves of class members on a statewide
12 basis. In addition, Defendants assert that many class members are not expeditiously
13 transferred for reasons unrelated to their disability and the lack of an appropriate bed; for
14 example, if an inmate has a medical hold he or she cannot be transferred until that hold is
15 released.

16 Nonetheless and despite these efforts, Plaintiffs remain concerned that CDCR staff
17 members who are responsible for endorsing class members for transfer lack adequate
18 information about current bed availability that matches each class member’s custody,
19 medical, mental health, and other classification factors. Defendants acknowledge that
20 transfer decisions are made without knowing whether a bed is actually available at a given
21 prison. Plaintiffs have documented that when beds are unavailable, class members may
22 wait for months in unsafe housing placements after being endorsed for transfer. Moreover,
23 CDCR continues to endorse people to transfer to prisons that are known to be full or
24 otherwise have delays and long waitlists. Although Defendants are working on addressing
25 this issue by creating a headquarters process to ensure that people are re-endorsed to other
26 prisons, Plaintiffs assert that the problem continues to occur at the institution level.

27 Plaintiffs’ counsel is currently working with Defendants to try to develop a long-
28

term solution. Defendants produced a first set of data regarding expedited transfer delays, Reception Center delays, and out-of-level housing on February 28, 2018. Initially, Defendants were unable to provide lengths of stay for class members in those settings. At the request of Plaintiffs' counsel, Defendants recently produced a second set of data—based on manual computation—that reflects class members' lengths of stay in Reception Centers, out-of-level housing, and non-designated housing. The parties met on April 26, 2018 and discussed the data Defendants produced and the broader issues involved. The parties agreed to produce a refined set of data for the month of May 2018, and meet thereafter to continue to identify the scope of the problem and develop solutions to any additional issues identified. If this issue is not resolved quickly, Plaintiffs will seek the Court's assistance.

C. Discrimination in Program Assignments

Plaintiffs' Statement

Problems Regarding Access for Deaf Class Members

As detailed in the May 15, 2017 statement and Exhibit 1 to the statement, (Doc. 2680 at 3-4), as well as the March 15, 2017 statement (Doc. 2671 at 14), deaf people in the CDCR have been and are being denied access to many programs such as education and self-help programs that would improve their chances of being parole—including those that have been expressly recommended by the Board of Parole Hearings—because CDCR failed to make sign language interpreters (“SLIs”) available for these programs and classes. With limited access to Proposition 57 programs, deaf class members run the risk of serving longer prison sentences or being denied parole, and are denied access to the rehabilitative programs that could improve the probability of community reintegration without recidivism.

Plaintiffs' counsel has extensively documented CDCR's persistent failure to

1 provide SLI services to class members who require them. *See Exhibit C: Letter from R.*
2 *Lomio, Prison Law Office, to R. Boyd, Office of Legal Affairs, October 2017 Armstrong*
3 *Monitoring Tour at SATF Issues Related to Deaf Prisoners (Nov. 7, 2017)* (documenting
4 CDCR's failure to provide SLIs for AA and NA meetings, lifer groups, religious services,
5 educational programming, and vocational programming at SATF). Deaf class members
6 continue to report significant deprivations of access to prison programs, services, and
7 activities on account of lack of interpretation services.

8 Although Defendants agree that in-person interpreters should serve as the primary
9 means of providing interpretation, problems remain in scheduling live interpreters.
10 Defendants proposed utilizing an Outlook calendar to manage all SLI appointments
11 statewide, to provide a complete and accurate basis for auditing provision of SLIs, and to
12 identify any need for additional staff SLIs. A master calendar will solve the current
13 problem of no centralized scheduling system for all custody and health care encounters
14 that require SLI. However, Plaintiffs' counsel is concerned that the Outlook procedure
15 developed by Defendants will not be sophisticated (or user-friendly) enough to reliably
16 manage all required SLI encounters for 75 people in multiple prisons, many of whom have
17 multiple encounters daily. Further, it is unclear how the parties can utilize Outlook to
18 identify gaps in coverage where additional sign language interpreters may be needed, or
19 how the parties can use Outlook to audit SLI encounters to determine instances where
20 Defendants failed to provide an SLI and the reasons therefor.

21 Defendants and Plaintiffs' counsel will conduct a site visit at SATF in May 2018 to
22 try to identify the source of the institution's ongoing failure to comply with this Court's
23 orders regarding the provision of SLI services and to identify solutions. Although
24 Plaintiffs' strong preference is to resolve the issue without litigation, if the issue is not
25 promptly resolved, Plaintiffs will seek Court intervention.

Problems Regarding Access to Assignments for All People with Disabilities

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 raised in multiple tour reports and letters. *See* Doc. 2680 at 13-14. The parties agreed to exchange data on a quarterly basis and recently met to review and discuss the data regarding assignments. The parties have a potential dispute about the appropriate method for analyzing the program assignment data; they are in the process of meeting and conferring about that issue.

The parties will conduct three site visits in the coming months, at Salinas Valley State Prison, Kern Valley State Prison, and SATF, to investigate the causes of disparities in access to programming. The parties also plan to incorporate questions regarding disparities in assignment rates in the Joint Audit Tool.

Defendants' Statement

Access to Programs for Deaf Class Members

Defendants are committed to ensuring that deaf prisoners who require SLI are provided equal access to program assignments. Defendants developed multiple methods to provide program access for the approximately 75 class members who use sign language as their primary means of communication. The methods include using CDCR staff interpreters, contract in-person interpreters, and video remote interpretation (VRI). Overall, Defendants' policy for providing interpreters in person and via VRI provides a reasonable level of access to enable deaf inmates to meaningfully participate in programs and complies with ADA regulations.

Defendants continue to work to identify and implement a solution to schedule, log and track SLI encounters. While Defendants explore a long-term solution, Outlook calendaring will serve as the interim process for scheduling and tracking SLI encounters. The parties are reviewing and discussing proposed draft regulation and local operating procedures were provided to Plaintiffs' counsel. The parties and Mr. Swanson continue to

1 collaboratively work on these issues and therefore Court intervention is not necessary.

2 Access to Programs for Class Members Generally

3 Defendants continue to monitor institutions with the highest level of program
4 assignment disparities and are seeing improvements at all of them. The development and
5 implementation of inmate assignment reports and monitoring has greatly enhanced the
6 depth of data available and improved management oversight on this issue. Improvements
7 are also attributed to the training that Defendants provided to the Chiefs of Mental Health
8 and the Inmate Assignment Lieutenants. Defendants established a full-time Headquarters
9 Inmate Assignment Lieutenant position, which is responsible for training, monitoring, and
10 reporting inmate assignment data. The position is filled and became effective November
11 2017.

12 Defendants continue to provide Plaintiffs with data regarding class member
13 assignments. The parties met on April 12, 2018, to discuss the data and will jointly visit
14 Salinas Valley, Kern Valley, and SATF to further inquire as to possible disparities in
15 program assignments and their causes. The parties will continue to meet about this matter
16 to address any disparities found in evaluating the data, and ensure that class members have
17 access to CDCR programs.

18 **D. Video Remote Interpreting/Sign Language Interpretation for Parolees
19 Who Are Deaf**

20 *Plaintiffs' Statement*

21 Following a comprehensive review by Plaintiffs' counsel of parole field files,
22 Defendants were found to deny SLI services to deaf parolees on multiple occasions. On
23 May 30, 2017, Plaintiffs provided a detailed letter describing examples of denials of due
24 process and violations of the Remedial Plan and this Court's numerous SLI orders in deaf
25 parolee field files. These files show that deaf parolees are repeatedly denied access to
26 programs and services and are not able to effectively communicate with their parole agents
27 during due process encounters because of DAPO's failures to provide sign language
28

1 interpretation services.

2 Defendants responded in a July 14, 2017 letter acknowledging the historical failure
3 to provide SLI to parolees in specific encounters. Despite this, the results of Plaintiffs'
4 review of the SLI tracking logs for the third quarter, as detailed in a December 11, 2017
5 letter, show that SLIs were documented as being used only twice in the Northern Region,
6 though there were approximately 11 deaf parolees under DAPO supervision in that region
7 during that quarter. Defendants claim that the data they provided did not accurately reflect
8 the provision of SLI services and state they will respond to Plaintiffs' letter in writing.

9 At the request of Plaintiffs' counsel, Defendants have revised their VRI policy such
10 that in-person SLI, and not VRI, will serve as the first option for providing SLI services.
11 The policy is part of a revised version of DAPO's effective communication policy.
12 Plaintiffs' counsel has reviewed the new effective communication policy and provided
13 Defendants with a series of recommended revisions. Plaintiffs await Defendants'
14 response.

15 The parties continue to have a disagreement regarding the provision of SLI during
16 field encounters. Plaintiffs continue to object to DAPO's reliance on written notes to
17 communicate with parolees in the field. Notwithstanding this disagreement, Defendants
18 have agreed to pursue the possibility of obtaining an SLI through VRI software on agents'
19 phones during field encounters.

20 *Defendants' Statement*

21 Defendants assert that sign language interpretation is not mandated for every parole
22 encounter. DAPO revised its effective communication and sign language policy and has
23 shared it with Plaintiffs' counsel. Under the revised policy, an in-person SLI will be
24 provided as the first option. VRI will only be used when a live interpreter is unavailable.
25 Defendants also plan to provide additional training to ensure staff is familiar with the
26 policy and the technology. To further ensure that SLI services are provided when needed,
27 Defendants assigned all deaf parolees, who require SLI, to a Parole Agent II Supervisor.

1 Defendants are concerned that using a civilian in-person SLI during parolee field
 2 encounters presents safety and security issues. Therefore, Defendants are exploring ways
 3 for parole agents to obtain VRI services on their state-issued cell phones or laptops/tablets
 4 so that SLI services can be provided while in the field for mandated parole encounters.

5 Defendants assert that the alleged lack or limited use of SLI is not evidence that SLI
 6 was required and not provided. In the third and fourth quarters of 2017, there were 64
 7 appointments for SLI scheduled for parolees, but 21 were cancelled. Fifteen appointments
 8 were cancelled because parolees did not show up for their scheduled appointments. Three
 9 appointments were cancelled because the parolee was in jail, on one occasion the
 10 interpreter was refused entry into the county jail due to improper identification, and only
 11 one appointment was cancelled because the interpreter was not available. Defendants
 12 recently obtained authorization to hire a SLI at CDCR Headquarters who will be able to
 13 assist parole offices in providing interpretive services for the field. Defendants will
 14 continue to work to provide SLI services to parolees.

15 **E. Accommodating Deaf Class Members with Videophones**

16
 17 The installation of the videophones at all institutions that house deaf and hearing
 18 impaired class members is complete. Defendants installed 69 videophones at 11
 19 institutions.

20 Installation of videophones has had tremendous impact on the ability of deaf class
 21 members to communicate with family and friends outside of prison. Nevertheless,
 22 obstacles to access remain. The Voice Carry-Over (VCO) feature of the videophones has
 23 been disabled since on or around May 25, 2017. As a result, multiple hard of hearing class
 24 members who use VCO have chosen not to use the videophones. Plaintiffs reported this
 25 concern to Defendants in a June 29, 2017, email. Defendants confirmed that they disabled
 26 the VCO feature on all videophones statewide pursuant to an agreement made with the
 27 California Correctional Peace Officers Association (CCPOA). Defendants stated via letter
 28

1 on January 3, 2018, that CDCR declined to reactivate the VCO feature.

2 Plaintiffs' counsel contends that without VCO, class members who use sign
3 language to understand but can speak in their own words to communicate, are forced to
4 rely on an interpreter to speak for them and are therefore denied equal access to telephone
5 communication with friends and family. *See, e.g.,*
6 <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Defendants
7 claim the VCO feature is not required for an inmate to communicate with family and
8 friends and that inmates retain the ability to communicate without the VCO feature.
9 Defendants also do not agree that VCO is an ADA requirement. Finally, Defendants
10 allege that safety and security concerns override the need for the VCO feature. Placement
11 of the videophones allow for the unavoidable viewing of group activities that may occur in
12 the background while an inmate is using the videophone. This jeopardizes the anonymity
13 of other inmates, staff, and volunteers, and may reveal confidential information such as
14 other inmates' level of care. Although the VCO feature allows the inmate to use a handset,
15 it does not eliminate background noise and viewing. Further, the VCO feature puts staff at
16 risk for facial-name recognition and allows for potential video recording of the prison. If
17 an inmate would like to facilitate a call to a loved one, they may make a request to the
18 prison's ADA Coordinator, who will consider whether the call can be facilitated using the
19 VRI system in a secure setting, if appropriate. Because of the security concerns,
20 Defendants will not reactivate the VCO feature at this time. Plaintiffs disagree and will be
21 responding to Defendants.

22 Further, some institutions placed videophones in public areas where family
23 members of deaf class members are visible on the screen to people in prison. In some
24 cases, family members can see inside of dayroom restrooms and showers. The parties are
25 identifying the scope of their disagreement related to the locations and privacy of the
26 videophones and are exploring solutions, including the potential installation of privacy
27 screens.

F. Dangerous Conditions as a Result of Leaking Roofs

For years, Plaintiffs' counsel, class members, and even the Department of Public Health have reported on dangerous conditions in prison as a result of leaking due to rain. Plaintiffs have reported water damage and its natural consequences—falls resulting in loss of consciousness and other injuries, elderly people trapped in soaking wet beds, the inability of people with vision and mobility disabilities to safely traverse the prison, mold, electrical outages, and falling ceiling tiles. Plaintiffs have observed standing water in light fixtures and have heard reports from staff members of electrical outages caused by water in light fixtures, leaving some areas dark and particularly hazardous for people with vision impairments. Plaintiffs observed mold in many areas of institutions where water had soaked through walls—including in dining halls, immediately above sleeping areas, and in visitation areas where children may be present.

The Governor's proposed 2018-19 budget includes \$140 million for roof replacements with \$60.7 million earmarked for repair of roofs at three specified prisons (SATF, SVSP, Ventura Youth), plus \$20 million for mold remediation at various prisons. *See* <http://www.ebudget.ca.gov/2018-19/pdf/BudgetSummary/FullBudgetSummary.pdf> at 75. Plaintiffs will continue to monitor efforts to alleviate leaking at prisons.

At the April 12, 2018, all-party meeting, Defendants updated the parties on the status of facilities repairs at throughout the prison system. Defendants will continue to provide construction repair updates.

Defendants do not believe that every complaint raised about facilities repairs implicates the ADA or the *Armstrong* remedial Plan. However, Defendants will update Plaintiffs regarding facilities repairs as new information is provided.

G. 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

1 severe and impacting placement disabilities receive adequate planning for parole and
 2 adequate transitional housing, transportation, and other transitional services. *See* Doc.
 3 2680 at 11-12; Doc. 2655 at 11-13. Plaintiffs argue that Defendants violate the ADA and
 4 Remedial Plan by excluding people who use wheelchairs and other class members from
 5 CDCR-funded community placements. When the CDCR fails to provide people with
 6 disabilities adequate assistance in obtaining benefits or other transition services before they
 7 parole, “CDCR is operating its services, programs and activities in a manner that
 8 inevitably channels person with disabilities into repeated institutional confinement with no
 9 realistic opportunity to establish independent living in the community, in violation of the
 10 ADA and of the principles set forth in *Olmstead L.C. ex. Rel. Zimring*, 527 U.S. 581
 11 (1999).” Doc. 2655 at 12.

12 The parties have been working cooperatively for the last year to understand the
 13 extent of the problem and to explore possible remedies, such as the development of a
 14 memorandum or procedure setting forth a unified set of policies and resources for parole
 15 agents to use in assisting *Armstrong* class members as they navigate their transitions from
 16 prison to parole.

17 Plaintiffs have ongoing concerns about the benefit application process and the
 18 adequacy of resources for this process under the Transitional Case Management Program
 19 (TCMP). State legislators are also concerned and in October 2017 passed Senate Bill 776,
 20 which requires the CDCR to hire one employee for every five prisons to assist incarcerated
 21 veterans in applying for and receiving any federal or other veterans’ benefits for which
 22 they or their families may be eligible. *See, e.g.*,
 23 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB776.

24 The parties have discussed the plan for California Correctional Health Care
 25 Services (CCHCS) to provide a new policy in the near future. The policy would address
 26 past problems with CDCR medical staff failing to provide follow-up medical information
 27 when requested by the Social Security Administration during its processing of applications
 28

1 for Social Security Disability benefits.

2 The parties also plan to meet soon regarding Defendants' plans to follow up on a
3 recent survey of the transitional housing placements managed by CDCR's Division of
4 Rehabilitative Programs ("DRP"), which showed that many providers do not accept
5 hearing impaired, mobility impaired, and vision impaired individuals. DRP officials agree
6 that the programs should accept parolees with these disabilities and plan to follow up with
7 the contractors explaining their duties under the ADA and their contracts with DRP. (The
8 DRP contract purportedly provides for extra payment for any parolees who require sign
9 language interpretation to cover the cost of these services.)

10 Plaintiffs' counsel appreciates that DRP surveyed its contractors about the
11 accessibility of their programs. Plaintiffs are concerned because the results document
12 various exclusions of vision, mobility and hearing impaired individuals from transitional
13 housing programs that contract with DRP. Plaintiffs do not agree that giving housing
14 program priority or extra targeted resources to assist severely disabled individuals whose
15 disability places them at higher risk of failing on parole if they are homeless constitutes
16 improper "preferential treatment."

17 Plaintiffs believe that a unified memorandum on transition to parole resources and
18 procedures, as well as improvements to the system for completing medical information
19 required on benefits applications, would help CDCR and DAPO staff better meet their
20 obligations under the ADA and the *Armstrong* Remedial Plan.

21 *Defendants' Statement*

22 Recognizing that successful reintegration reduces a parolee's chance of reoffending
23 and returning to prison, Defendants currently offer pre-parole planning services to all
24 prisoners before release from prison. Defendants provide these services in a manner that is
25 consistent with the ADA and the *Armstrong* Remedial Plan.

26 Defendants contract with third parties to provide transitional housing in the
27 community, and the providers are contractually required to provide housing in accordance
28

1 with the ADA and state and federal laws. Defendants do not “exclude” persons with
2 wheelchairs and other class members from CDCR-funded community placements by
3 reason of their disability. In fact, Defendants have provided data to Plaintiffs evidencing
4 that approximately 17% of contracted beds are wheelchair accessible, which far exceeds
5 the needs of the current parolee population. Defendants acknowledge that denial of a
6 housing placement based on inaccessible housing is inappropriate, but disagree that they
7 are obligated to find transitional housing for every disabled parolee upon release from
8 prison, or that disabled parolees should be given preferential treatment with respect to
9 placement in transitional housing. The parties met on January 26, 2018, to discuss a
10 survey conducted by the Division of Rehabilitative Programs identifying ADA capacity for
11 all CDCR funded community programs that house parolees, including STOP, Residential
12 Multi Service Centers, Parolee Service Centers, Transitional Housing Program, Female
13 Offender Treatment and Employment Program and Day Reporting Center-Transitional
14 Housing.

15 Defendants also provide assistance with applying for medical benefits, via social
16 workers under the Transitional Case Management Program (TCMP) contract, to prisoners
17 prior to their release from prison. Defendants continually assess the number of TCMP
18 benefits workers at each prison and believe that current staffing levels are adequate to meet
19 each prison’s needs. Defendants provide this service to all inmates and do not discriminate
20 against disabled inmates when providing this service. Defendants do not control the
21 timelines by which outside agencies process and approve or deny benefits. Defendants
22 will continue to work with Plaintiffs’ counsel and the Court expert to address transition to
23 parole issues as they relate to the *Armstrong* litigation.

24 CCHCS continues to evaluate the issue of medical staff providing follow up
25 medical information requested by the Social Security Administration.

1 **H. Accommodations for Blind and Low Vision Class Members**

2 On September 7, 2017, Plaintiffs' counsel sent Defendants a letter outlining a series
3 of concerns about inadequate accommodations to ensure equal access for class members
4 who are blind or have low vision. Defendants have responded favorably to most of the
5 issues raised by Plaintiffs' counsel, and the parties are working cooperatively to expand the
6 accommodations available to class members with vision impairments.

7 Defendants have agreed to Plaintiffs' counsel's request to implement technologies
8 to ensure equal access in prison libraries (with the exception of Braille printers, which
9 Plaintiffs' counsel requested). At the April 12, 2018 meet and confer, Defendants reported
10 that they have purchased replacement Merlin machines for distribution to the institutions.
11 They also reported that they are in communication with the National Braille Institute about
12 developing braille training opportunities for class members. Defendants agreed to explore
13 the development of a method by which blind and low vision class members can fill out
14 CDCR forms electronically.

15 At Plaintiffs' request, Defendants agreed to reinstate the DNV category for a
16 limited number of people with low vision. Defendants have developed a draft
17 memorandum providing that individuals will be designated DNV if their vision is between
18 20/70 and 20/200, when corrected (*i.e.*, when they are wearing glasses or using other
19 assistive devices) and a CDCR doctor determines that they are substantially impaired in a
20 major life activity as a consequence of their vision impairments. The memorandum also
21 requires that all individuals with DNV codes wear vision impaired vests.

22 Plaintiffs' counsel welcomes the establishment of the DNV code. Plaintiffs'
23 counsel objects to the scope of the DNV code proposed by CDCR because, as stated
24 previously, 20/70 is too high of a threshold for qualification. At minimum, individuals
25 whose vision is 20/70 *uncorrected* also should receive the DNV code. This would enable
26 CDCR to identify the disability needs of these individuals when they do not have their
27 glasses or other assistive devices and ensure that identifying vests can be readily available
28

1 in those circumstances. This approach would be consistent with CDCR's use of the DPH
2 and DNH codes for hearing impairments.

3 Notwithstanding these remaining objections, Plaintiffs' counsel has agreed that
4 CDCR should implement the new vision code as proposed. Plaintiffs' counsel will
5 monitor implementation of the new policy and bring problems to the attention of CDCR.

6
7 **I. Accommodations for People with Learning Disabilities**

8 After several years of negotiations, Defendants have issued a new policy to the field
9 regarding tracking and accommodating individuals with verified or suspected learning
10 disabilities. The parties hope that the new policy will lead to increased identification of
11 individuals with verifiable learning disabilities, better tracking of accommodations for
12 individuals with learning disabilities, and greater staff awareness of the needs of
13 individuals with learning disabilities in the CDCR.

14
15 **J. Accountability**

16 In January 2016, Plaintiffs' counsel outlined concerns about ongoing problems with
17 Defendants' accountability process. *See* Doc. No. 2604 at 2. In response, Defendants
18 developed a five-step plan, which includes additional training and improved reporting
19 procedures, to address Plaintiffs' concerns. *Id.* Defendants circulated a memorandum and
20 conducted training on the new inquiry and reporting process. Pursuant to the new plan, the
21 Review Committee meetings began in September 2016 and now are regularly held at
22 headquarters. Defendants developed an automated system to track and log the
23 accountability process, which they demonstrated for Plaintiffs' counsel during the
24 February 15, 2018, meet and confer. Defendants are currently testing new system at four
25 prisons and then will open the data from the new system up to Plaintiffs for review and
26 feedback on the reports that will be generated.

27 Based on Defendants' demonstration, Plaintiffs' counsel is impressed by the robust
28

1 search and sort features of the new accountability system. Nonetheless, Plaintiffs remain
2 concerned that Defendants' plan does not go far enough in requiring staff to analyze
3 whether individual allegations are indicative of a larger systemic problem. As explained
4 above (*see* Section A), Plaintiffs believe that CDCR is failing to adequately investigate a
5 significant number of *Armstrong* allegations concerning staff misconduct, harassment,
6 discrimination, and violence. The parties continue to meet and confer to develop a
7 sustainable and meaningful accountability system that identifies problematic institutions
8 and staff and promptly remedies violations of the ADA and *Armstrong* Remedial Plan.

9
10 **K. Training of Staff on the ADA, ARP, and Disabilities**

11 Plaintiffs believe that inadequate training of staff on ADA issues has contributed to
12 the discrimination, harassment, and misconduct by staff against prisoners with disabilities
13 uncovered at multiple institutions. Plaintiffs also attribute CDCR's failure to provide
14 adequate accommodations to insufficient staff training.

15 Defendants agree that problems exist with the database previously used to track
16 which staff require *Armstrong* training but assert that the issue is being addressed.
17 Defendants' information technology specialists are in the process of updating database
18 systems, so that information regarding which staff members have received training can be
19 tracked and monitored easily.

20 CDCR also is drafting new training modules, with the goal of revamping and
21 overhauling the *Armstrong* training. The new Learning Management System ("LMS")
22 training modules require the trainee to interact with the training materials and answer
23 questions in order to proceed through the training. Plaintiffs have expressed willingness to
24 assist with the development content for the training. Defendants have agreed to provide
25 drafts of these modules to Plaintiffs and Mr. Swanson as they are updated over the next
26 several months.

1 **L. Joint Monitoring Audit Tool**

2 The parties continue to work together on drafting a joint audit tool for measuring
3 compliance in this case. Most recently Defendants provided a revised draft of the Joint
4 Audit Tool on February 9, 2018. The latest version appears to incorporate many changes
5 based on Plaintiffs' comments. The parties conducted a series of meetings over multiple
6 weeks to attempt to finalize tool questions and identify areas of disagreement which will
7 be brought to Mr. Swanson. The parties will continue to work together to revise and
8 finalize the joint audit tool.

9 The parties have agreed on a schedule for jointly auditing 12 prisons in 2018. The
10 first joint audit was conducted at CSP-Los Angeles County in April 2018. The parties still
11 need to agree on how to score the results of the audit and need to work out a mechanism
12 for reporting audit results.

13 **M. ADA Structural Barriers and Master Planning Process**

14 Construction is well underway at several of the designated institutions. Former
15 Class Action Management Unit Director Mike Knowles is overseeing the process,
16 confirming agreed-upon changes, and reporting on construction progress and anticipated
17 timeframes in monthly reports produced to Plaintiffs. In a letter dated April 11, 2018,
18 Plaintiffs' counsel raised concerns about the lack of Master Planning with respect to the
19 some of the Psychiatric Inpatient Programs at SVSP, CMF and CHCF, and several discrete
20 Master Planning issues at LAC and DVI. Defendants provided some information about
21 these issues at the April 12, 2018 meet and confer and have agreed to respond to Plaintiffs'
22 concerns in writing.

23 **N. Investigation of Los Angeles County Jails**

24 Plaintiffs continue to assert a pattern and practice of denying disability
25 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680
26
27
28

1 at 22-24. Most recently, Plaintiffs submitted the third quarter review of DAPO documents
 2 which show that approximately 20% of all grievances filed by prisoners in county jails are
 3 coming from Los Angeles County. Defendants report that they continue to meet with Los
 4 Angeles County Jail to put pressure on Los Angeles County, which contends that it is
 5 unable to share information with CDCR due to the Confidentiality of Medical Information
 6 Act. Plaintiffs have agreed to obtain waivers from class members in an effort to avoid this
 7 conflict in the future.

8 Plaintiffs continue to assert that Defendants are required to take action in response
 9 to known violations of class members' ADA rights in the Los Angeles County Jail.
 10 Defendants deny that they have discovered a pattern of denial of disability accommoda-
 11 tions at Los Angeles County Jail and therefore do not believe an investigation is warranted.

12 Defendants recently reported that Los Angeles County Jail has dropped its blanket
 13 ban on the use of tapping canes for class members. According to Defendants, class
 14 members at Los Angeles County Jail are permitted to use tapping canes in certain housing
 15 units. Plaintiffs' counsel welcomes the change in policy and, pursuant to this Court's
 16 orders, will continue to monitor the county jails.

17
 18 DATED: May 14, 2018

Respectfully submitted,

19 PRISON LAW OFFICE

20 By: /s/Margot Mendelson
 21 Margot Mendelson

22 Attorneys for Plaintiffs
 23
 24
 25
 26
 27
 28

1 DATED: May 14, 2018

XAVIER BECERRA
Attorney General of the State of California

2 By: /s/ Sharon Garske

3 Sharon Garske

4 Deputy Attorney General

5 Attorneys for Defendants

6
7 As required by Local Rule 5-1, I, Margot Mendelson, attest that I obtained
8 concurrence in the filing of this document from Sharon Garske and that I have maintained
9 records to support this concurrence.

10
11 DATED: May 14, 2018

/s/Margot Mendelson

Margot Mendelson



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VIA EMAIL ONLY

November 14, 2017

Mr. Patrick R. McKinney II
CDCR Office of Legal Affairs

RE: Investigations at Salinas Valley State Prison

Dear Mr. McKinney:

Thank you for working with our office to review investigations into staff misconduct at Central California Women's Facility (CCWF). We understand that the joint effort was a positive step forward and that the process implemented there shows a great deal of promise. We hope that the same advances can be made at other prisons, although we recognize that prisons have differences in population, organization, and leadership.

As you may know, a team from our office conducted an *Armstrong* monitoring tour at Salinas Valley State Prison (SVSP) in September 2017. Before we turn over reports of serious staff misconduct that we received during that tour, we want to discuss a few concerns regarding the investigative process at SVSP. These concerns—which largely relate to basic investigative techniques and hopefully can be addressed through improved training—are outlined in this letter. We would like to review these concerns during an on-site visit similar to the initial joint visit that was conducted at CCWF. We also would be happy to identify clients who can share their experiences with the investigation process with representatives from both of our offices at that time.

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I. Confidentiality and Anonymity

A number of clients reported concerns with the confidentiality of interviews and their anonymity. For example, Mr. [REDACTED], reported that Sgt. [REDACTED] first began asking him questions about his staff misconduct allegations around May or June 2017. Sgt. [REDACTED] introduced himself by “popping up to [his] cell” and explaining that he used to be an officer at SVSP. On other occasions, Mr. [REDACTED] heard Sgt. [REDACTED] explain to housing staff that he was pulling people out of their cells in order to speak with them about “allegations.” He would then walk directly to peoples’ cell fronts, where he would ask to interview them. “It was not discreet,” Mr. [REDACTED] explained. Mr. [REDACTED] reported that, on at least one occasion, the tower officer would call people to interviews over the intercom; for example, “IA here to see you.” Mr. [REDACTED] reported that on multiple occasions, Sgt. [REDACTED] approached him on the patio, within plain sight of other incarcerated people and staff, and asked him “follow-up questions.” Mr. [REDACTED] reported that he finally decided to opt out of the interview process after being called out of administrative segregation to participate in the CVSA. He reported that about thirty correctional officers stood watching him as he left his cell. He explained that, instead of walking the gauntlet, he decided turn around and decline to participate in the CVSA.

Other clients reported concerns with the location of interviews. For example, clients reported that some interviews were conducted in the program office, where they were visible to other incarcerated people and officers. In one case, three or four officers reportedly stood outside the program office looking at our client; in another, a lieutenant was in the next office, with a window between the offices. Our clients reported that they felt “exposed,” “not safe,” “nervous,” and “not comfortable” in the program office. Those feelings were compounded when officers later made remarks such as, “You’re snitching on us,” or “You’re running PLO on us,” or called one client a “troublemaker.”

In at least one case, an interview reportedly was conducted on the housing unit. Mr. [REDACTED], reported that on June 9, 2017, at 1 a.m., the housing unit officer woke him up and said he had an interview with a lieutenant. Mr. [REDACTED] was taken to the building office to speak with Lt. [REDACTED]. Mr. [REDACTED] did not feel that the interview was confidential. The ceiling slot was open, so the tower officer could hear what was said. In addition, his wheelchair would not fit in the office because there were two desks in the office. As a result, the door was ajar and the housing officer, who walked back and forth outside throughout the interview, could hear. When Mr. [REDACTED] told Lt. [REDACTED] that he did not feel comfortable, she responded by saying something like, “Oh, don’t worry, they’re not listening.” Mr. [REDACTED] reported that he was nervous and stuttering during the interview because it was not a confidential interview.¹

¹

Mr. [REDACTED] reported that he was called out on June 11, 2017, to speak with another investigator in the education building. The investigator asked the same questions as the lieutenant had on June 9, 2017, and she did not seem to know that Mr. [REDACTED] already had been interviewed by Lt. [REDACTED].

II. Random Interviews

We previously expressed concern with the practice of interviewing “randomly-selected inmates” to determine whether allegations can be corroborated. Mr. [REDACTED], reported that on June 10, 2017, a lieutenant interviewed people regarding Mr. [REDACTED]’s allegation that he was not allowed a shower after he returned from the hospital in November 2016. Mr. [REDACTED] knows this because as they were returning from the interview, people would say, “Hey, we just got back from talking about you and your shower.” He said people told him that they had not been in the housing unit in November 2016, and two people said they were asleep at the time.

A handful of recent letters state that the randomly selected people “were assigned to [the relevant facility] *during the time of the incident.*” Letter from Michael R. Mueller, Office of Legal Affairs, to Margot Mendelson, Plaintiffs’ Counsel, Person 99 (Sept. 27, 2017) (emphasis added). We still would like clarification on when randomly selected people are interviewed, how they are (and have been) selected, and what they are told about the allegations and identity of the person reporting misconduct.

III. Interview Techniques

A number of clients were concerned about familiarity between investigators and officers at SVSP—particularly after viewing the investigator chatting or joking with those officers before an interview. Mr. [REDACTED] reported that he was first interviewed around April 2017. Mr. [REDACTED] explained that he was nervous about speaking to the interviewer because he recognized the sergeant from when he worked as an officer at SVSP. The sergeant called him into the program office and, without introducing himself, said, “You made some allegations against officers?” Mr. [REDACTED] explained that he did not trust the interviewer and reluctantly answered his questions. Mr. [REDACTED], reported that Lt. [REDACTED] conducted three interviews. Lt. [REDACTED] said, “My officer wouldn’t have done that,” “I don’t believe this,” and “It’s all made up.”

Some clients felt that they were treated as suspects, and that interviews were conducted in a hostile manner. Mr. [REDACTED], for example, also was interviewed by Lt. [REDACTED], who stated to him during the interview, “You’re under the radar; that’s a good way to stay. I don’t know how far you want to go with this.” After that, Mr. [REDACTED] decided not to appeal his 602 staff complaint. Mr. [REDACTED], reported that around June 2017, the person interviewing him started the interview by stating, in a hostile and accusatory tone, “You know you can be arrested for perjury?” Mr. [REDACTED] said that the interviewer then said, “I’m here to investigate your *Armstrong* allegations in your 602s, and if it’s perjury, you can be filed on.” Mr. [REDACTED] reported that throughout this time, the door of the room was open, and four or five custody staff were close to the entrance of the room. Mr. [REDACTED] stated that he refused to answer any questions during the interview because of the interviewer’s accusatory tone and comments.

Finally, several clients reported a lack of confidence in the investigatory process because the person conducting the interview did not take notes. When one client asked if an investigator was recording the interviews in lieu of taking notes, the investigator tapped his finger against his head and replied, “It’s all up here.”

IV. Filing History

In a number of letters, CDCR appeared to use the fact that a person had not previously reported the staff misconduct as evidence to discredit him. *See, e.g.*, Letter from Alan L. Sobel, Office of Legal Affairs, to Margot Mendelson, Plaintiffs' Counsel, Person 62 (Aug. 8, 2017) ("However, he has not filed an appeal regarding the allegation above, which casts doubt on its validity."). This seems inappropriate in light of well-documented problems with the appeals process.² Indeed, our clients report staff actively discourage them from filing appeals. One client reported that a lieutenant approached him and told him to "just stop" submitting appeals. Another client reported that, after being housed inappropriately in administrative segregation, a lieutenant called him to his office, apologized, and said, "I hope you're not trying to put in a 602." Another client reported that officers say things like, "You better not put in that 602; you got Prop 57 coming." After he filed a Form 22 requesting access to 1824s and 602s, the unit supervisor asked one client, "Why do you want to file a 602?" One client reported that an MTA told him, "You writing up staff? You're an asshole. I should throw this juice on you." Another client reported that he was told by an officer, "You don't do any paperwork on us, we won't do any paperwork on you."

Many people reported retaliation for filing appeals. Retaliation may take the form of an unprofessional cell search. One client reported that, after he filed a staff complaint, the officers named in his complaint searched his cell. While his cellmates' items had been searched and placed neatly on the bunk, his own paperwork was scattered throughout the cell, from the back wall to the front door. Papers were in the sink and toilet. Q-tips that had been in a clear plastic bag had been dumped in the floor. Food and other items were on the floor and had been stepped on. Case law and books had been confiscated. He called another housing officer to witness the destruction, and that officer visibly cringed at the state of the cell but declined to call a sergeant or lieutenant. Another client reported that, after he reported staff misconduct, his cell was left "in chaos" after a cell search. Papers were thrown throughout the cell, including on the bed and on the floor. Personal photographs were in the toilet, legal papers were torn from their closed envelopes and thrown throughout the cell, food items were opened, and his television was broken from its stand. Others reported that retaliation may take the form of unfounded or inflated 115s (including on weapons charges) or counseling chronos.

Unsurprisingly, then, people reported that they feared retaliation for requesting disability accommodations: "I've had it happen." Many people said they would not file a staff complaint: "If you write staff up, you get retaliated against." One reported that it is safer for him to say he is suicidal to get himself removed from the yard than to report staff misconduct. One person reported that, before

²

Kitty Calavita & Valerie Jenness, *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic* 46 (2015) ("[T]he extremely low rate of granted grievances across the board—for all categories and for arguably minor, serious, and convincing appeals alike—suggests an inability or unwillingness on the part of the institution to validate these appellants or take their charges seriously."); Office of the Inspector General, *Special Review: High Desert State Prison* 30-31 (Dec. 2015) (recognizing that "[t]he staff complaint process can be very frustrating for the appellant inmate" and documenting "disincentives to filing staff complaints"). In many cases where the person reporting misconduct *did* file a staff complaint, CDCR closed the inquiry on that basis and without further investigation. We do not know whether the initial investigation was reviewed to determine whether it was conducted appropriately.

submitting a written request, he would have to consider, “What is this going to lead to? What’s the severity of it?” Some things may be “so serious that I don’t care what happens.” Another reported: “The threats don’t stop, and they won’t, because I continue to file appeals.” Yet another reported that incarcerated people approached him and said, “You guys are snitching on everyone and writing 602s. The cops are mad, and [Officer] [REDACTED] is trying to get you stuck.” Another reported that, while he would file 602s and 1824s regarding medical issues, he would not file an appeal related to staff misconduct; it’s just “not worth it.” Even those who have filed 602s for staff misconduct have concerns about retaliation; “when it [retaliation] doesn’t come, I’m surprised.” A few continue to appeal because “people have to stand up.”

We note that “SVSP intends to provide In Service Training to all staff as to Inmate/Staff relations and the Appeals process.” Letter from Alan L. Sobel, Office of Legal Affairs, to Margot Mendelson, Plaintiffs’ Counsel, Mr. [REDACTED] (Oct. 13, 2017). We have concerns about the sufficiency of that measure, standing alone, to address longstanding and substantial problems with the appeals process.

V. Computer Voice Stress Analysis

Setting aside the considerable body of literature questioning the validity of Computer Voice Stress Analysis (CVSA), we are concerned with how it is being utilized at SVSP. *First*, it appears from the investigation letters that CVSA is being administered *only* on people who are incarcerated (and not on staff members), and *only* on people alleging staff misconduct (and not on those who deny staff misconduct). *See, e.g.*, Letter from James Michael Davis, Office of Legal Affairs, to Margot Mendelson, Plaintiffs’ Counsel, Mr. [REDACTED] (Oct. 18, 2017) (“A total of nine, D-1 inmates were interviewed. Based on the severity of the allegations and the responses of three inmates, those three inmates will undergo a Computer Voice Stress Analysis to see whether further inquiry is warranted.”).

Second, we are concerned about how our clients have been asked to participate in the CVSA. Several were incorrectly told that we had asked that CVSA be administered on them. Mr. [REDACTED], for example, reported that Lt. [REDACTED] who conducted the CVSA, told him that “Prison Law Office” had ordered the CVSA. Mr. [REDACTED], reported that, about a week before the September 2017 *Armstrong* monitoring tour, two investigators approached him on the yard, while he was walking with other ADA workers. They said, “We’re here for PLO,” and asked whether he would take the CVSA.

Others were asked to participate in a non-confidential manner. Mr. [REDACTED], reported that the week before the September 2017 *Armstrong* monitoring tour, the tower officer announced that he had an interview and should go to the podium. By the time Mr. [REDACTED], who uses a wheelchair, got himself ready to leave his cell, two plainclothes investigators approached his cell. They sat with him at the ADA table in the dayroom, in front of the showers (first table). They asked if he would take a voice analysis. They did not explain what that was, and seemed like they were in a hurry. Other people in their cells could hear the conversation. The officers would not let him read the entire CVSA form. Mr. [REDACTED], reported that, about a month before the September 2017 *Armstrong* monitoring tour, the tower officer said that the sergeant wanted to talk with him, Mr. [REDACTED], and another person outside. The three of them went to the bench in the yard near A5. Two plainclothes officers asked the three men (at the same time) if they would take a stress analysis over the allegations made. The officers said they were under no pressure to agree, but that they wanted to make a list. Mr. [REDACTED] did not understand what was going on, so

Mr. Patrick R. McKinney II

November 14, 2017

Page 6

Mr. [REDACTED] said that it was probably related to the Prison Law Office's staff misconduct allegations. A plainclothes officer overheard the exchanged and thanked Mr. [REDACTED] for explaining the matter to Mr. [REDACTED]. Mr. [REDACTED] and Mr. [REDACTED] signed; the other man did not because he was worried about retaliation. Until he was called out, Mr. [REDACTED] did not know Mr. [REDACTED] or the black man had made allegations that were in the Prison Law Office's staff misconduct report. When they returned to the unit, other people asked why they had been called out. Mr. [REDACTED] told them that the sergeants wanted to ask about an investigation related to *Armstrong*.

Third, two clients reported being intimidated about the manner in which the CVSA was conducted. For example, Mr. [REDACTED], reported that the person conducting the CVSA told him if Mr. [REDACTED] lied, he would pursue him to the full extent of his ability, including by issuing a 115. Mr. [REDACTED] reported that he was asked only two questions, one of which he felt that he could not answer because of the way it was asked. He reported that he was told his answer was recorded as being deceptive. Following the two questions, the lieutenant reportedly told the person administering the CVSA something to the effect of, "We need to go tell the boys and girls what we found."

Fourth, we do not know how SVSP intends to use the CVSA as part of its broader investigation strategy. "Even if polygraphs were to be used in a non-coercive manner, they cannot be the sole investigative tool." Letter from Jocelyn Samuels, Acting Assistant Attorney General, U.S. Dep't of Justice, Civil Rights Division, to Robert Bentley, Governor of Alabama, Investigation of the Julia Tutwiler Prison for Women and Notice of Expanded Investigation 19 (Jan. 17, 2014) ("U.S. Dep't of Justice Findings Letter"). "[A]n investigation" should not stop "if a prisoner's results come back as 'deceptive'" if there are "other investigative avenues available to evaluate the allegations." *Id.* This is particularly true in the prison context, where our clients have reason to be nervous for reporting staff misconduct. See *Ruhl v. Hardy*, 743 F.3d 1083, 1093 (7th Cir. 2014) (noting "there is no reason to believe the CVSA is any more reliable" than polygraph evidence, and that a person's "'nervousness' was easily attributed to [a] fact" unrelated to deception).

VI. Interviewing People Who Have Been Transferred

It appears that at least two people reporting misconduct were not interviewed because they had been transferred to another prison. See Letter from Alan L. Sobel, Office of Legal Affairs, to Margot Mendelson, Plaintiffs' Counsel, Mr. [REDACTED] (Aug. 8, 2017) (stating that person reporting misconduct "could not be interviewed as he had transferred to another institution"); Letter from Alan L. Sobel, Office of Legal Affairs, to Margot Mendelson, Plaintiffs' Counsel, Mr. [REDACTED] (Aug. 8, 2017). People may be more comfortable speaking about staff misconduct when they no longer are at SVSP, however, and any officer misconduct should be thoroughly reviewed to prevent future misconduct.

VII. Prison Rape Elimination Act

The March 2017 *Armstrong* monitoring tour report included an allegation by a transgender woman that people have pressured her to work in a kitchen job where she could prostitute herself for \$30 a day. When she spoke with Sergeant [REDACTED], Sergeant [REDACTED] responded by telling the transgender woman to "Fuck, fight, or get along." On October 16, 2017, CDCR closed the inquiry because, "[w]ith the exception of Inmate [REDACTED], no other inmate supported any of the claims in the allegations presented in

Mr. Patrick R. McKinney II

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PLO report. . . . As such, this inquiry will be closed at this time.” Letter from Alan L. Sobel, Office of Legal Affairs, to Margot Mendelson, Plaintiffs’ Counsel, Ms. [REDACTED] (Oct. 16, 2017). We would like clarification on when an allegation is referred to the Prison Rape Elimination Act (PREA) process.

* * * * *

Finally, we note that even if the concerns reported above are resolved, the outcome of many investigations will remain unchanged. Many allegations likely will remain unsubstantiated, with conflicting accounts by different people.³ CDCR still must take concrete, corrective action to address the large number of serious allegations of staff violence, harassment, discrimination, and other forms of misconduct. *See* Office of the Inspector General, Special Review: High Desert State Prison 30-31 (Dec. 2015) (“The alarming number of complaints should have triggered HDSP management staff to look more closely at the totality of the circumstances surrounding the complaints, such as deficiencies in supervision; however, management never correlated multiple complaints against officers.”).

To improve future investigations, video cameras should be deployed at SVSP. *See* Office of the Inspector General, Special Review: High Desert State Prison 36 (Dec. 2015) (“[Video] surveillance is invaluable in capturing misconduct, documenting inmate activity, and exonerating employees who have been wrongly accused of misconduct.”); Kathleen M. Dennehy & Kelly A. Nantel, *Improving Prison Safety: Breaking the Code of Silence*, 22 Wash. U. J. L. & Pol’y 175, 183 (2006) (“Technology can be helpful in trying to break the code of silence as well. When staff and inmates know cameras are monitoring and recording their actions they tend to behave differently. Capturing behavior on tape makes it easier to hold guilty people accountable and to exonerate others when false allegations are made.”).

In addition, SVSP should implement a meaningful early warning system “to identify potentially problematic behavior, allow early intervention to correct misconduct, and assist in identifying deficiencies in supervision, management, and policies.” U.S. Dep’t of Justice Findings Letter at 26 (“The lack of a data management system has allowed [prison] officials to willfully blind themselves to the repeated and serious incidents of [misconduct].”).⁴ The system will allow SVSP to track themes and deploy its resources intelligently. For example, in response to allegations of misconduct in gyms, cameras could be prioritized there. In response to allegations of unprofessional cell searches, such searches could be overseen by a supervisor, or videotaped and later reviewed by a supervisor.

³ Of the 179 letters we have received from CDCR so far related to allegations of staff misconduct in our March 2017 *Armstrong* monitoring tour report, 153 were closed as unsubstantiated, without referral to the Office of Internal Affairs.

⁴ In at least two instances, CDCR informed us that “the warden directed the ISU Lieutenant to monitor” certain allegations. *See* Letter from Michael R. Mueller, Office of Legal Affairs, to Margot Mendelson, Plaintiffs’ Counsel, Person 62 (Sept. 25, 2017); Letter from Alan L. Sobel, Office of Legal Affairs, to Margot Mendelson, Plaintiffs’ Counsel, Mr. [REDACTED] (Aug. 8, 2017). That piecemeal and incomplete approach is no substitute for a robust early warning system. As one client wrote in a Form 602, “Warning signs abounded in SVSP. . . . Yet the signs were mainly overlooked, especially by the people in the best position to shed light on them—institution heads. The personnel protecting and propelling these staff as they rose forward [in] their jobs resembled less a team of policy advisers than an offensive blocking squad.”

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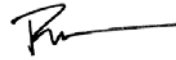
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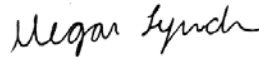
Our office is committed to improving the health and safety of our clients at SVSP. We continue to receive a disproportionate number of serious complaints from SVSP. In the last two months alone, clients reported, "We are treated like . . . animal[s]," "ADA [inmates] don't stand a chance, SOS," "Officers are at war with inmates," and "The system is broken beyond repair." We hope that we can work with CDCR toward a common goal of improving conditions at SVSP.

Thank you for your attention to this matter. We look forward to discussing how best to proceed.

Sincerely yours,



Rita Lomio
Staff Attorney



Megan Lynch
Investigator



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April 4, 2018

Scott Kernan, Secretary
California Department of Corrections and Rehabilitation
1515 S Street
Sacramento, California 95811

Dear Scott:

I was surprised to find in the OIG's latest Semi-Annual Report (attached) a recommendation that the CDCR change its central intake policy so that the EAPT or OIG attorney has the authority to require the OIA to initiate an investigation into employee misconduct or conduct an interview of an employee in connection with suspected employee misconduct. See Semi-Annual Report, at 15. I was surprised because we had discussed this issue in January in Orlando and you subsequently told me that the policy had been changed. I relied on that representation in not pursuing this issue.

As you may recall, we were informed in the fall that the special agent in charge of central intake, who is not a lawyer, has the authority to deny a request from the OIG attorney or the EAPT attorney to initiate an investigation or even to interview an employee as part of an investigation. I told you that this process is backwards; it is the lawyer who should be directing the investigation; not the investigator. The reason for this should be obvious. An investigator is not trained in the law, is unlikely to have a full understanding of the facts that will be necessary to support a case before the SPB or the superior court and is not responsible for presenting the CDCR's position in either forum. See also Report at 15 (OIA special agents "are not attorneys and have no litigation experience.") In other words, the current process is undermining the CDCR's ability to impose discipline in cases of serious employee misconduct and to exonerate employees suspected of misconduct.

The OIG's Report demonstrates this fact. From July to December 2017 the OIA rejected 58 recommendations to open an investigation or to interview an employee. The OIG found that in 82% of these cases, this failure affected the outcome. See Report at 13. "The OIG disagreements with decisions by the Office of Internal Affairs included . . . 40 cases with evidence to support adding dishonesty allegations; 12 cases that should have been opened as criminal investigations; 4

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cases in which evidence supported investigating a code of silence; and 4 cases in which additional employees were implicated in the misconduct.” *Id.*

Some of the examples provided in the Report at 13-14 show that the failure to accept the OIG’s recommendations are limiting the CDCR’s ability to hold employees accountable for misconduct.

- A captain wrote two inconsistent reports about a single incident involving the use of force and officers failed to report the force that they witnessed. No investigation was initiated.
- Witnesses gave conflicting accounts of events, but no investigation was initiated to resolve the conflicts.
- A captain dismissed a rules violation report without providing adequate justification. The OIA would not authorize an interview with the captain.
- Despite evidence showing that multiple officers engaged in misconduct and that the subject officer falsely documented the institutional count, the OIA refused to open an investigation to resolve the “multiple factual questions”.
- An officer who tested positive for barbituates was placed on ATO and dismissed, but the OIA refused a request to interview the officer who, it was later determined, had a prescription for the medication.

Even when the OIA and the EAPT agree, the OIA sometimes refuses to accept the recommendation for action. Some examples from the Report at 15:

- An informant who had previously provided reliable information gave detailed information about an officer’s gang affiliation and that he was bringing contraband into the prison. The OIA rejected the request for an investigation.
- An officer was accused of threatening an incarcerated individual with retaliation for filing an appeal, but the OIA rejected an investigation.
- A youth reported that an officer was sharing confidential information with other youths, putting him in danger. The OIA refused to investigate.
- Evidence from a civilian suggested that an officer was brandishing a gun, and other evidence corroborated the witness’s statement. The OIA refused to investigate.

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- A 32-page inmate waiting list was found in a cell and the computer generated listed showed the person whose account the report came from. The OIA would not investigate.

These and other examples contained in the Report are consistent with our experience that the OIA central intake process is not functioning properly. Unfortunately, the problem is not limited to the fact that the investigators determine whether to conduct investigations or interview employees. As the OIG report states, the Office of Internal Affairs analysis can be faulty and incomplete, “special agents’ speculative opinions as to motivation behind potential misconduct still negatively influence decisions . . . [and the OIA] is often satisfied to address the surface misconduct identified by the referring hiring authority, showing unwillingness to look deeper at failure of supervision, other contributing causes, or misconduct of wider scope than initially identified by the hiring authority.” Report at 11.

It has been over twenty years since the internal affairs process was put into place through the *Madrid* litigation. We are grateful that you have authorized the OIG to conduct a review of the ISU process at SVSP and are hopeful that that review ultimately will result in improving the accuracy and reliability of the institutional internal affairs process. It is time now to also improve the central intake process by instituting the OIG’s recommendations and instituting other measures that will ensure that investigations and interviews are initiated when the facts warrant such actions.

Please contact me to discuss how we should proceed to resolve this issue.

Sincerely,

/s/ Don

Donald Specter

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

Case No. C94 2307 CW

**CORRECTED EXHIBIT C TO JOINT
CASE STATUS STATEMENT**

Judge: Hon. Claudia Wilken



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VIA EMAIL ONLY

November 7, 2017

Ms. Russa Boyd
CDCR Office of Legal Affairs

RE: October 2017 *Armstrong* Monitoring Tour at SATF
Issues Related to Deaf Class Members

Dear Ms. Boyd:

A team from the Prison Law Office visited the Substance Abuse Treatment Facility (SATF) in October 2017 to monitor the prison's compliance with the *Armstrong* Remedial Plan, *Armstrong* court orders, and Americans with Disabilities Act. During the tour, we interviewed twenty class members whose primary form of communication is American Sign Language (ASL). After we receive and review the requested post-tour documents, we will send a formal written report to CDCR. In light of the parties' ongoing attempts to resolve problems related to the provision of sign language interpreters without litigation, we detail in this letter several problems we identified during the monitoring tour related to deaf class members. We would like to set up a meeting to discuss these problems with CDCR so that we can resolve these issues as soon as possible.

As we mentioned during the exit meeting, many deaf class members did not authorize us to disclose their names or allegations because they fear retaliation. In our last tour report, we reported that deaf class members on A2 reported that housing staff were not effectively communicating announcements. See March 2017 SATF Tour Report at 9. Class members on A2 reported that third watch officers were angry about the report and tried to uncover the identity of the class members who had spoken to the Prison Law Office and reported that information. Class members were scared by this response.¹ Fear of retaliation also has led deaf class members to use Form 22s, instead of Form 1824s, as staff reportedly view Form 22s as less adversarial. We are deeply concerned with the chilling effect third watch's actions have had on deaf class members' willingness to report problems, which makes it difficult for CDCR and Plaintiffs' counsel to identify, investigate, and resolve *Armstrong* compliance issues.

¹ This concern relates only to third watch officers. Deaf class members on A2 uniformly praised second watch officers, reporting that those officers now almost always flash the lights before an announcement, provide individual notification when necessary, and treat deaf people respectfully.

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We recommend that ADA staff at SATF regularly meet with deaf class members, with a sign language interpreter present. A number of deaf class members cannot meaningfully communicate in writing, which makes the 1824 process inadequate.² As one class member noted, “deaf people are suffering because they are not able to express themselves.” For many, “this language [English] is not normal to us.” A direct and open line of communication between the ADA office and deaf class members would go a long way to preventing issues, avoiding misunderstandings, and improving compliance.

I. PROVISION OF SIGN LANGUAGE INTERPRETERS

CDCR is required to “employ, through whatever salary is necessary, sufficient qualified interpreters to serve the needs of the DPH prisoners housed at SATF, including at all educational and vocational classes in which a DPH inmate is enrolled, barring unforeseen circumstances.” Dkt. 2345, Order at 24 (June 4, 2013); *see also id.* (“Defendants shall implement their plan regarding sign language interpretation in educational and substance abuse programs”); Dkt. 1661, Enforcement Order at 2 (Oct. 20, 2009) (“Defendants have violated the rights of prisoners with disabilities under the ADA and Section 504 . . . by denying sign language interpreters to prisoners who need them in educational and substance abuse programs”); Dkt. 1045, Injunction at 3 (Jan. 18, 2007) (deaf prisoners denied access to “education, work, and other programming” due to failure to provide SLIs).

Deaf class members continue to be precluded from meaningfully participating in programs, services, and activities because no sign language interpreter is provided.³ It is critical, however, that deaf

² See Matthew S. Moore & Linda Levitan, eds., *For Hearing People Only* 67 (2016) (“ASL is not a written language. In everyday usage, it is never written.”); John W. Adams & Pamela S. Rohring, *Handbook to Service the Deaf and Hard of Hearing: A Bridge to Accessibility* 76 (2004) (“ASL’s structure is different from that of English, making it a unique and independent language. It is not a manual representation of English, with individual signs corresponding to English words. For example, the phonology of spoken language involves the use of vocal organs to produce vowels and consonants to provide auditory input. ASL involves manual articulation and movement vital to the visual system with four basic articulatory parameters: hand configuration, placement, orientation, and movement. . . . ASL, as a natural language, has its own rules for generating grammatically sound phonological, morphological, and syntactical structures.”); *id.* at 125 (“People assume that deaf people are literate in English because the printed word is visually accessible What most hearing people do not recognize is that hearing persons are typically fluent in (spoken) English by the time they arrive in kindergarten. . . . [R]eading and writing become a lifelong struggle for many deaf people.”).

³ Plaintiffs’ counsel has documented the lack of sign language interpreters for programming at SATF for years. See, e.g., **October 2017** Letter from Rita Lomio, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter: Problems Regarding Lack of Sign Language Interpreters at SATF; **March 2017** SATF Tour Report at 4 (reporting that, in January and February 2017, “no SLI was provided for 21 education classes, including 15 for the same class member”); **October 2016** SATF Tour Report at 5 (citing RAP response that

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class members have equal access to programs, services, and activities to improve themselves and earn an earlier release, especially in light of Proposition 57.

Such programs, services, and activities are also particularly critical for deaf class members serving life terms who are eligible for parole. *In re Perez*, 212 Cal. Rptr. 3d 441, 466 (Cal. Ct. App. 2016) (vacating denial of parole where “the record reflects that [petitioner] grew in maturity and demonstrated success in a host of educational, vocational, self-help, and volunteer activities”); *In re Busch*, 201 Cal. Rptr. 3d 237, 251 (Cal. Ct. App. 2016) (noting that petitioner, who “effectively participated in rehabilitative programs,” “may be suitable for parole notwithstanding [his] claim of innocence or reduced culpability”); *In re Morganti*, 139 Cal. Rptr. 3d 430, 448 (Cal. Ct. App. 2012) (noting that petitioner’s “participation in virtually every rehabilitative program available to him” was “indicative only of suitability for parole”); *In re Aguilar*, 86 Cal. Rptr. 3d 498, 506 (Cal. Ct. App. 2008) (participation in Alcoholics Anonymous evidenced suitability for parole); *In re Singler*, 87 Cal. Rptr. 3d 319, 331 (Cal. Ct. App. 2008) (participation in “anger management and self-help programs and efforts” evidenced suitability for parole); *In re Roderick*, 65 Cal. Rptr. 3d 16, 37 (Cal. Ct. App. 2007) (recognizing that “after participating in AA and other programs, [petitioner] was able to acknowledge his responsibility and express his regret and then remorse for his action”).

acknowledged that no SLI had been available for self-help group for two months); *id.* at 4 (“According to the SLI logs, ‘various’ prisoners were not provided with an SLI for ‘Education’ or ‘Vocations’ at least 48 times between February 16, 2016, and August 31, 2016, and specifically named prisoners were not provided with an SLI 45 times during that time period.”); **March 2016** SATF Tour Report at 7 (citing RAP response that inappropriate said CDCR is not required to provide an SLI for volunteer run programming; noting that an SLI was not provided during 62 education and vocational classes between November 2015 and February 2016); **November 2015** SATF Tour Report at 14 (“SATF failed to provide an SLI during one quarter of all educational and vocational classes that were provided to deaf prisoners.”); **April 2015** SATF Tour Report at 3 (“[P]roblems remain with the provision of SLI during educational and vocational programming. The logs note that an SLI was not made available during at least 113 educational and vocational classes because no lecture occurred, the SLI was sick and/or because the contract SLI was not available. In addition, hearing impaired class members reported that SLIs often do not stay for the entirety of the class.”); **October 2014** SATF Tour Report at 1 (“The logs further indicate that an SLI was not provided during additional education classes because there was no contract SLI available. The failure to provide an SLI for the entire class is contrary to the Court’s June 2013 order requiring SLIs be present at educational and vocational classes.”); **April 2014** SATF Tour Report at 21 (noting that SLIs are not available for programs such as parenting classes or anger management, which are necessary to demonstrate suitability for parole).

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And it is not enough for deaf class members to be enrolled in programs; they must be able to understand and participate. *In re Stevenson*, 152 Cal. Rptr. 3d 457, 483 (Cal. Ct. App. 2013) (holding that it was not enough that “[p]etitioner had taken an anger management course” because, at the parole hearing, “he was unable to demonstrate what he had learned”). To provide just one illustration, consider the following statement by a deaf class member at SATF to the Board of Parole Hearings:

I’m also in a Lifer Group. . . . And the thing is they do not have—I guess they’re waiting to get an interpreter for that group as well, but I’ve been going. *So I’m really sitting in that group not understanding anything.* I mean I’m showing up.

In the Matter of Life Term Parole Consideration Hearing of [REDACTED], 11/16/16 Tr. at 23:21-24:2 (emphasis added). The Board issued a five-year denial and admonished the deaf class member for not participating in more programs: “I understand you have limitations, but I do know that they have signers, people that do sign that can help you in this prison. Whether they do it remotely I need you to get involved in understanding your behaviors.” *Id.* at 71:11-17; *see also* In the Matter of Life Term Parole Consideration Hearing of [REDACTED], 12/7/16 Tr. at 46:1-2 (“Right now, I can’t go to self-help classes because no interpreter is available.”).

A. Enrollment

There was a great deal of confusion and frustration about how deaf class members could enroll in programs such as AA/NA, lifer groups, GOGI, and AVP. Deaf class members believe they are being passed over in favor of people who do not require sign language interpreters. On November 1, 2017, Plaintiffs’ counsel provided Defendants with a comparison of program, self-help, and education programming enrollment for DPH and non-DPP people housed at SATF. *See Exhibit A.* The data raises serious questions about whether deaf class members have been (and are being) discriminated against in program enrollment.

It also appears that class members may have been removed from previous classes due to their disability. For example, Mr. [REDACTED], DPH, E3, reported that he was admitted to AA/NA in 2016, but there was no interpreter provided. The instructor advised him to submit a Form 22 requesting a sign language interpreter. He did so around October or November 2016. He did not receive a response but was instead removed from the AA/NA class without explanation.

REQUEST: Please explain how SATF is enrolling people, including persons whose primary form of communication is ASL, in programs, services, and activities. Please explain whether deaf class members who previously were unable to participate in such programs, services, and activities because no sign language interpreter was available are being prioritized in enrollment decisions. If they are not being prioritized, please explain why not.

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B. Alcoholics Anonymous/Narcotics Anonymous

Mr. [REDACTED], DPH, DPV, B2, reported that there is no sign language interpreter provided for his AA meetings on Tuesday nights. He attends the meetings, but does not understand what's going on. He reported, "I need to know what's going on. I need to understand the twelve steps. It's very frustrating for me and for the Board." A friend who is in the class tries to summarize what was said the next day in writing for Mr. [REDACTED]. Mr. [REDACTED] repeatedly has requested a sign language interpreter and been told that they do not have one. Mr. [REDACTED] reported that this has been a problem for years.

According to the Inmate Assignment Roster produced by CDCR on September 15, 2017, Mr. [REDACTED] has been assigned to the Substance Abuse Recovery Support Group since March 2017:

[REDACTED]	SATF-Facility B	Self-Help	SUBSTANCE ABUSE RECOVERY SUPPORT GROUPS	109.003.009	03/28/2017	Tuesday only	18:00:00	19:30:00	NCF	DPH	DPV
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The SLI logs produced by CDCR do not include any reference to Mr. [REDACTED]'s substance abuse recovery support group. In fact, the only AA/NA groups listed on the SLI logs are for Facilities A and G.

Unfortunately, this is not the first time that Plaintiffs' counsel has raised failure to accommodate deaf class members at AA/NA. *See, e.g., October 2017* Letter from Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, *Armstrong* Advocacy Letter: Problems Regarding Lack of Sign Language Interpreters at SATF; *March 2017* SATF Tour Report at 6; *October 2016* SATF Tour Report at 5 ("During the monitoring period, there was fluctuation in the logged attendance of Alcoholics Anonymous and Narcotics Anonymous (AA/NA), which appears to meet on a weekly, or at least semi-regular, basis. For example, the logs indicate that class members requiring SLI assistance did not attend AA/NA meetings in March and April, while those class members attended AA/NA meetings seven times during the month of May alone." (parenthetical omitted)); *March 2016* SATF Tour Report at 7 (citing RAP responses that inappropriately said an SLI would be provided for substance abuse programming only when available); *April 2014* SATF Tour Report at 21. And substance abuse programming can be critical to improving oneself and demonstrating suitability for parole. *See* Kathryn M. Young *et al.*, Predicting Parole Grants: An Analysis of Suitability Hearings for California's Lifer Inmates, 28 Fed. Sentencing Reporter 268, 272 (Apr. 2016) ("We found that substance abuse programming participation was significantly and positively associated with release; inmates who participated in substance abuse programming were more likely to obtain parole grants than inmates who had not participated.")

REQUEST: Please explain why and for how long Mr. [REDACTED], DPH, DPV, B2, was denied a sign language interpreter for substance abuse programming.

C. Educational and Vocational Programming

We received reports that some work supervisors and teachers do not request a sign language interpreter for important work-related meetings and tests. For example, Mr. [REDACTED], DPH, E3, is assigned to the building maintenance vocational program. During that program, over twenty students

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work on different projects. The teacher supervises them to make sure they are doing the projects correctly. If someone makes a mistake, the teacher will call a safety meeting. Mr. [REDACTED] estimated that a safety meeting occurs about once a week. At the safety meeting, the teacher will use the mistake as a teachable moment. For example, if someone is using a shop saw to cut short wood, the teacher will explain that a jigsaw instead is the proper equipment. Or the teacher may explain various ways to clean up the area. Most of the time, Mr. [REDACTED] reported, no sign language interpreter is provided for the safety meetings, and he relies on an incarcerated person to attempt to finger spell the instructions. Mr. [REDACTED] also reported that no sign language interpreter is provided for hands-on training, where the teacher shows a smaller group of people how to fix various things in the building.

ADA staff stated that in-person interpreters are preferred for vocational courses, which often take place in a large room and require hands-on work and explanations. Unfortunately, many contract interpreters do not want to go to the prison and instead choose other work opportunities. ADA staff at SATF prioritizes in-person interpreters for ABE classes over vocational classes.

D. Housing Unit Meetings

A class member on A2 who wishes to remain anonymous reported that housing officers call the people in the unit together about once or twice a month for short unit meetings to go over rules, incidents in the building, issues related to yard, or videophones. The housing officers do not request a sign language interpreter, and although an incarcerated person attempts to sign for the deaf class members, it is not easy to understand everything being said.

E. Religious Services

RLUIPA prohibits any prison that receives federal financial assistance from imposing a substantial burden on an inmate's religious exercise, unless it demonstrates the burden is "in furtherance of a compelling government interest" and is "the least restrictive means of furthering" that compelling government interest. 42 U.S.C. § 2000cc-1. The Fourth Circuit has reinstated a federal prisoner's constitutional claim regarding the prison's failure to provide interpreters during religious programs and services. *See Heyer v. Boyd*, 849 F.3d 202, 219 (4th Cir. 2017). We continued to receive reports that sign language interpreters are not provided for religious services. For example:

1. Mr. [REDACTED], DPH, DPS, reported that he would like to attend religious services. He got discouraged, however, because SATF did not provide a sign language interpreter for such services.
2. Mr. [REDACTED], DPH, DPS, A2, reported that no sign language interpreter is provided for Christian services and Celebrate Recovery.⁴ We previously raised this problem with CDCR by letter dated October 10, 2017.

⁴ SATF staff informed us that Celebrate Recovery, which is run by a reverend, is not a religious service. It reportedly is the only volunteer-run program at SATF.

Ms. Russa Boyd
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We were concerned when ADA staff told us that deaf class members simply are not requesting sign language interpreter services. As we explained during the exit meeting, SATF previously has told deaf class members: “The institution does not provide interpreters for church groups.”⁵ March 2017 SATF Tour Report at 6 (quoting response to Form 22). Deaf class members should not be expected to continue requesting a service they have been told they will not receive. We were informed during the tour that participation in religious services at SATF now will be documented on SOMS. That is a positive development, but ADA staff should affirmatively tell class members—with and through a sign language interpreter—that interpreters now will be available for religious services and how to request one.

II. VIDEOPHONE

A. Privacy

In our March 2017 Tour Report, we noted that the videophone screen prominently displays people’s family members, approved phone numbers, a keyboard for the class member to enter his or her name and password, and red buttons for **PREA, REPORT ABUSE**, and **OIG**. Deaf class members on all yards were concerned about the lack of privacy when using videophones. During the October 2017 *Armstrong* monitoring tour, deaf class members continued to express the same concerns. One class member, for example, wants to make a PREA report, but does not feel comfortable doing so because the screen will display the PREA phone number prominently during the call (so other people will know who he is calling), and deaf class members may be able to “overhear” his report because the dayroom—including the bench area in front of the television—provides a clear line of sight to the class member using the videophone. See PREA Standards In Focus, § 115.51, Inmate Reporting, <https://www.prearesourcecenter.org/node/5261> (“Agencies should use caution with whichever reporting mechanism is utilized to ensure inmates are not identified as making reports of sexual abuse. For example, if the phone is the reporting mechanism to the outside entity, the facility should make sure the phone can be used for other purposes in addition to reporting sexual abuse so it is not obvious that an inmate may be reporting sexual abuse.”).

REQUEST: Please explain all methods available to deaf class members at SATF who want to make a confidential PREA or OIG report, and how those methods were communicated to the deaf class members.

⁵ The same is true for lifer groups. In response to a Form 22, one class member was told in October 2016: “At this time we do not provide SLI services for all voluntary self help groups.” March 2017 SATF Tour Report at 5. Another class member was told, in response to an 1824 dated March 22, 2017, that a contract sign language interpreter would be provided for a lifer group only if the Office of Correctional Education approved “use of the equipment.” *Id.* at 6. During the October 2017 *Armstrong* monitoring tour, one deaf class member said that he “gave up” after no sign language interpreter was provided for an anger management class two years ago.

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As before, the privacy screens that are provided at SATF are insufficient. *See* March 2017 SATF Tour Report at 7. In A2, for example, the privacy screen simply prevents the person on the receiving end of the videophone call from seeing people in the dayroom and shower. *See Exhibit B*. It does nothing to prevent people in the dayroom from seeing the videophone screen, including the phone number being called as well as the images of family and friends, including children.

Again as before, there is no privacy screen available in C1, C8, and G3. *See* March 2017 SATF Tour Report at 8. According to deaf class members in G3, the housing officers say that it is because the videophone is located next to the bathroom, and the officers need an unobstructed view to the bathroom. When we visited the unit, the housing officers said no one had ever asked for a privacy screen.

B. Length of Calls

Overall, deaf class members were grateful that the length of videophone calls was increased to thirty minutes. According to the November DECS report, however, twelve class members whose primary form of communication is ASL are housed in Facility A. Because only one videophone is available to those class members, there are too few time slots available during the “peak time” of between 5 pm and 9 pm, when family and friends (and class members) are likely to be back home and available for a phone call. Deaf class members in Facility A therefore would like access to another videophone. In the interim, deaf class members *on A2 only* have requested a temporary reduction to twenty minutes per call *during the peak time* as long as demand for the unit exceeds availability.

C. Chairs

We previously reported that we received a number of reports that the videophone chair is too high or too low on some units, so it is difficult to sign comfortably because you have to slouch down in the chair or stack multiple chairs on top of each other to be seen. *See* March 2017 SATF Tour Report at 8. ADA Associate Warden Sanchez said that adjustable chairs had been ordered. *Id.* The chairs were to be attached to, and swing out from, the wall. *Id.*

During the October 2017 *Armstrong* monitoring tour, we learned that adjustable chairs had been manufactured by PIA and installed in the units, but had to be removed because they placed the user directly in front of the videophone, so the signs could not be seen. ADA staff informed us they had not decided what alternative would be used. There are plastic chairs in A2, which sometimes are stacked by the class members to raise the height.

III. EFFECTIVE COMMUNICATION OF ANNOUNCEMENTS

We again received reports from class members on all yards that custody staff do not always ensure alarms and announcements are effectively communicated. *See* ARP § IV.I.2; March 2017 SATF Tour Report at 9-11; October 2016 SATF Tour Report at 7.

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A. Facility A

Class members on A2 uniformly reported that second watch staff in A2 have improved in effective communication of announcements, and now are flashing lights and making individual notifications. One class member reported, "They understand us."

Unfortunately, class members reported that third watch staff in A2 have not improved. Instead, class members reported that third watch officers chastise deaf class members. Class members reportedly sometimes are late to medical appointments because the officers did not alert them to the appointment. (Even hearing people reportedly cannot understand third watch's announcements over the intercom.) Class members reported that when the warden is on the unit, third watch staff flash the lights, indicating that they know what the rules are but choose not to follow them unless their supervisor is present.

REQUEST: Please explain what training third watch staff on A2 have been provided in how to communicate appropriately with deaf class members, and what measures have been taken to ensure that deaf class members are not retaliated against for reporting *Armstrong* compliance issues.

B. Facility B

Mr. [REDACTED], DPH, DPV, B2, previously reported that officers who are new to the unit or working on the unit through overtime do not effectively communicate announcements to deaf class members, including medical and visitation appointments, through flashing lights or personal notification. March 2017 Tour Report at 9. He reported that he has missed appointments as a result. *Id.* He reported that officers then get angry when deaf class members are late to appointments, and blame non-deaf people for not alerting deaf class members. *Id.* During the October 2017 *Armstrong* monitoring tour, Mr. [REDACTED] reported that the same problem remains; new officers are unfamiliar with the rules. He reported that he does not have any problems on third watch, because Officer [REDACTED] is aware of and follows the rules.

Mr. [REDACTED], DPM, DNH, B3, reported that he missed mail on October 23, 2017, because he could not hear the announcement. Announcements are often echoing and unclear, and officers do not flash lights to indicate announcements.

C. Facility G

A class member housed in G3, who wishes to remain anonymous because he fears retaliation, reported that officers do not flash the lights when they make announcements, even though he repeatedly has asked that they do so.

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D. Facility E

Mr. [REDACTED], DPH, E3, reported that most of the time, housing staff will provide him individual notification of announcements when necessary. One tower officer who works in the afternoon, however, is disrespectful and does not appear to understand hearing disabilities. The tower officer will threaten to give deaf class members a 115, but the class members simply did not hear or understand what the tower officer's instruction was because of their disability.

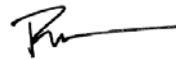
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We appreciate that CDCR met with Plaintiffs' counsel on October 10, 2017, to discuss the lack of sign language interpreters provided for programs, services, and activities. As agreed, we look forward to receiving the schedule of all deaf class members' programs, services, and activities, as well as the sign language interpreter schedule, by the end of November. We also look forward to receiving CDCR's proposed solution to address inaccurate and incomplete SLI logs, as well as draft regulations and standardized operational procedures, by the parties' next meet and confer.

To ensure that the parties are able to promptly resolve this issue, we ask for a small group meeting at the end of November to review the documents produced by CDCR and to discuss solutions to the issues raised in this letter. Plaintiffs' counsel also plans to visit SATF on January 8 and 9, 2018, to speak with deaf class members. We invite a representative from CDCR to accompany us for one day to conduct joint group meetings with all deaf class members on each yard to explain what efforts CDCR is making to ensure equal access to programs, services, and activities, and to answer any questions the class members may have.

I look forward to hearing from you soon.

Sincerely yours,



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EXHIBIT A

Assignment Percentages Breakdown

SATF	DNH (181 Inmates)	DPH (49 Inmates)	Non-DPP (4967 Inmates)
Education	30.9%	46.9%*	43.2%
Program	5.0%	2.0%	5.4%
Self-Help	19.9%	14.9%	17.7%
All Groups	43.6%	55.1%*	54.0%
All Programing	56.9%	83.7%*	74.0%

*8 of these are in the “Disability Placement Program” Group. Once they are removed, the assigned percentages are 30.6% for Education, 38.8% for All Groups, and 67.3% for All Programming.

Source: Program Access Production, as of 09-25-17

Program, Self-Help, and Education Programming and SATF (SLI vs. non-DPP Comparison)

Program	Type	DNH	DPH	Non-DPP
Adult Basic Education I, II, or III	Education	16	7	711
Anger Management (Reentry)	Program	3	0	68
Cognitive Behavior Intervention	Program	3	0	50
College (Correspondence)	Education	26	9	721
Criminal + Addictive Thinking	Self-Help / Program	7	1	266
Developmental Disabled Program	Education	0	0	14
Disability Placement Program		1	8	0
Enhanced Outpatient Program	Education	2	0	26
Every Student Succeeds Act (ESSA)	Education	0	0	34
Family Relationships	Program	3	0	78
Lifer Program	Self-Help	6	2	150
Offender Mentor	Program	0	0	1
Other Self-Help Programs	Self-Help	0	0	55
Reentry Preparation Program	Self-Help	0	0	46
Self-Awareness Groups	Self-Help	4	1	261
Substance Abuse Program	Self-Help / Program	35	11	898
Transitions	Education	0	0	66
Veteran Support Groups	Self-Help	13	0	21
Voc – Auto Body	Education	0	0	26
Voc- Auto Mechanic	Education	2	0	24
Voc – Building Maint.	Education	0	1	24
Voc - Carpentry	Education	1	0	26
Voc – Computer Literacy	Education	3	0	99
Voc – Electrical Works	Education	2	1	41
Voc - Electronics	Education	0	0	20
Voc - HVAC	Education	0	0	24
Voc - Masonry	Education	0	0	26
Voc – Office Service	Education	1	0	24
Voc - Painting	Education	1	0	24
Voc – Small Engine Repair	Education	0	1	25
Voc - Welding	Education	0	1	26
Voluntary ABE	Education	6	3	166
Voluntary GED	Education	1	2	296
Voluntary High School	Education	0	0	62
TOTAL		136	48	4399

Source: Program Access Production, as of 09-25-17

EXHIBIT B



A2 – URS Unit



A2 – URS Unit



A2 – URS Unit



A2 – URS Unit