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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17

18 JOHN ARMSTRONG, et al.,  
19 Plaintiffs,  
20 v.  
21 EDMUND G. BROWN, JR., et al.,  
22 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 7 Members

#### 8 *Plaintiffs’ Statement*

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

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

25 Plaintiffs’ counsel has raised concerns about CDCR’s process for investigating  
26 allegations of violence, misconduct, discrimination, and harassment of class members by  
27 \_\_\_\_\_

28 <sup>1</sup> For a detailed recitation of Plaintiffs’ allegations, see Doc. 2680 at 5-9.

1 staff. Plaintiffs' counsel has met with institution staff at CCWF and SVSP, CDCR  
2 headquarters staff, and representatives from the Office of Internal Affairs and the Office of  
3 Inspector General about this issue. The meetings have been collaborative, but Plaintiffs'  
4 counsel remains concerned about profound shortcomings in CDCR's investigative process.

5 In November 2017, Plaintiffs' counsel sent a letter to CDCR expressing concern  
6 about various aspects of CDCR's processes for investigating staff misconduct allegations  
7 and calling upon CDCR to take concrete, corrective action to address the widespread  
8 allegations of staff misconduct at SVSP and other institutions. Plaintiffs' counsel  
9 requested that CDCR take steps such as deploying video cameras and implementing a  
10 meaningful early warning system to identify problematic behavior by staff and identify  
11 trends in staff misconduct allegations. Plaintiffs' counsel is troubled by CDCR's pattern of  
12 dismissing highly consistent and very serious allegations of staff misconduct simply  
13 because its current investigation system is unable to substantiate them. Plaintiffs' counsel  
14 is also concerned about the lack of independence of ISU officers, who play the critical role  
15 of conducting initial investigations into allegations of staff misconduct at the institutions.

16 In response to these concerns, the Office of the Inspector General (OIG) conducted  
17 an assessment of the effectiveness of SVSP's process for handling complaints about staff  
18 misconduct. The OIG is monitored all staff complaints submitted at SVSP from March 1,  
19 2018 through May 31, 2018. Plaintiffs' counsel hopes that the OIG's review will identify  
20 areas for improvement in CDCR's investigation of staff complaints.

21 Plaintiffs' counsel also has raised concerns about the quality of investigations by  
22 CDCR's Office of Internal Affairs (OIA). As detailed in Plaintiffs' prior statement, the  
23 OIG cited concerns about the quality and scope of OIA investigations its recent Semi-  
24 Annual Report. Office of Inspector General, Semi-Annual Report, July – December 2017  
25 (Mar. 2018), *available at*  
26 [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)  
27 [December\\_2017.pdf](https://www.oig.ca.gov/media/reports/SAR/2018/OIG_Semi_Annual_Report_July_-_December_2017.pdf)). The Semi-Annual Report, expressly recommended that CDCR  
28

1 change its policy whereby the special agent in charge of OIA’s central intake has authority  
2 to deny requests to initiate investigations or interview staff members in connection with  
3 staff misconduct allegations. *Id.* at 15. The report details a number of troubling instances  
4 in which the OIA special agent declined to investigate allegations of serious staff  
5 misconduct, against the recommendation of OIG attorneys and found that in 82% of these  
6 cases, the failure to accept the recommendation to investigate the allegations affected the  
7 outcome. *Id.* at 13-14.

8 CDCR, thus far, has declined to accept the express recommendation of the OIG to  
9 change its policy regarding the authority of OIA special agents. On April 4, 2018,  
10 Plaintiffs’ counsel sent CDCR a letter outlining our objections to this decision. Plaintiffs’  
11 counsel, Defendants, Inspector General Roy Wesley, and Mr. Swanson met on May 2,  
12 2018. Given the parties’ ongoing dispute about the effectiveness of CDCR’s investigative  
13 processes, the parties will confer about whether to identify a neutral party to evaluate  
14 aspects of the OIA system.

15 *Defendants’ Statement*

16 Defendants investigate all allegations of staff misconduct made by *Armstrong* class  
17 members. Allegations made by non-class members and allegations not related to  
18 violations of the ADA or the Remedial Plan are processed and addressed through CDCR’s  
19 staff disciplinary process, as set forth in the Department Operations Manual. (*See* CDCR  
20 Department Operations Manual, Chapter 3, Art. 22.) Defendants deny Plaintiffs’ assertion  
21 of “profound shortcomings” in the investigation process. Defendants also dispute  
22 Plaintiffs’ assertion that CDCR has a “pattern of dismissing highly consistent and very  
23 serious allegations of staff misconduct simply because its current investigation system is  
24 unable to substantiate them.” To the contrary, CDCR has a comprehensive system for  
25 identifying and addressing valid allegations of staff misconduct unmatched by any other  
26 correctional system. This process was developed in the *Madrid* litigation, and the Prison  
27 Law Office was significantly involved in its development.

28

1 CDCR does not dismiss allegations of staff misconduct, nor does it operate a system  
2 in which allegations cannot be substantiated. All allegations presented by Plaintiffs are  
3 consistently addressed through the appropriate channels. Furthermore, the OIG monitors  
4 and assesses CDCR's internal affairs investigations of alleged employee misconduct and  
5 subsequent appeals. And Defendants have disciplined their employees for confirmed  
6 violations.

7 Defendants have engaged in an extraordinary level of cooperation with Plaintiffs'  
8 counsel, including joint visits to prisons in excess of the annual tour schedule and  
9 providing enhanced access to investigative details and documents<sup>2</sup>.

10 Defendants remain willing to work with Plaintiffs' counsel to develop standards or  
11 guidelines to determine how an allegation should be addressed. However, Plaintiffs'  
12 counsel is attempting to reargue *Madrid* and suggests that any allegation by a class  
13 member implicates the ADA. Defendants disagree. Not every complaint implicates the  
14 ADA or this Court's accountability orders. The OIG's July-August 2017 Semi-Annual  
15 Report does not specifically address ADA issues or complaints. Rather, it is a  
16 comprehensive review of CDCR's investigative process, and Plaintiffs' reliance upon it as  
17 evidence that CDCR is failing to comply with the ADA is misplaced and inappropriate.  
18 The OIG's investigation is not conducted under *Armstrong*, and Plaintiffs misinterpret its  
19 findings as Defendants explained in the May 2018 joint status conference statement<sup>3</sup>.

20 Plaintiffs' monitoring has strayed far from verifying CDCR's ADA compliance.  
21 For example, Plaintiffs have begun sending letters on behalf of non-class members  
22 regarding issues unrelated to CDCR's ADA compliance while inappropriately labeling and  
23 billing such correspondence under *Armstrong*. Plaintiffs' counsel has also significantly  
24 increased interviews with non-class members during *Armstrong* monitoring tours and are  
25

26 \_\_\_\_\_  
27 <sup>2</sup> For detailed summaries of past actions, see ECF No. 2688, p. 5-8; ECF No. 2697, p. 4-5; ECF No. 2704,  
p. 3-4.

28 <sup>3</sup> For detailed explanation of the OIG report findings and CDCR response, see ECF No. 2726, p. 5-6.

1 reporting allegations that Defendants believe are not related to the ADA or the Remedial  
2 Plan.

3 Defendants will continue to meet and discuss issues related to CDCR's compliance  
4 with the ADA, Rehabilitation Act, and orders in this case. But Defendants are unwilling to  
5 allow this action to stray from addressing the rights of disabled inmates.

6 **B. Shortage of Accessible and Appropriate Housing Placements**

7 Defendants are required to house people with disabilities in accessible placements.  
8 If people are in placements that do not accommodate their disabilities, CDCR must  
9 expedite their transfer to an appropriate prison. *See Armstrong* Remedial Plan § IV.D.  
10 Plaintiffs' counsel's February 2018 letter and numerous monitoring reports over the last  
11 year document that Defendants are failing to expeditiously transfer all impacted class  
12 members. *See* Doc. 2721, Exhibit A (Letter from M. Mendelson, Prison Law Office, to R.  
13 Boyd, Office of Legal Affairs, Failure to Expeditiously Transfer Class Members to Safe  
14 and Appropriate Housing Settings (Feb. 12, 2018)). Plaintiffs' counsel asserts that people  
15 with disabilities are at great risk of injury trying to access beds, cells, showers, yard and  
16 other programs while housed in prisons that do not accommodate their disabilities.  
17 Plaintiffs' counsel also contends that housing individuals for prolonged periods in unsafe  
18 and inaccessible housing placements violates the *Armstrong* court's 2007 Injunction,  
19 which prohibits CDCR from "hous[ing] [class members] at any placements without  
20 adequate accessible housing ...." Permanent Injunction ("2007 Injunction"), Jan. 18,  
21 2007, Doc. 1045 at 6.

22 Similarly, dozens of other class members remain in Reception Centers for up to  
23 several months on extended stay status for an accessible placement to become available at  
24 a mainline prison. While in Reception, class members do not have access to mainline  
25 programs, including Proposition 57 Rehabilitative Achievement Programs, that enable  
26 them to earn sentence-reducing credits for participation. People with disabilities who  
27 remain in Reception Centers because of a lack of accessible placement could serve longer  
28

1 prison sentences as a result.

2 Plaintiffs' counsel also has raised concerns regarding class members who are  
3 housed for long periods of time at higher security levels than their classification points  
4 warrant. Plaintiffs' counsel contends that many of these class members are exposed to  
5 significant safety risks and excluded from programming opportunities by virtue of their  
6 inappropriate custodial placements. Plaintiffs' counsel contends that housing class  
7 members out of level because of a dearth of accessible placements at the appropriate  
8 security levels violates this Court's orders and federal disability law. *See* 2007 Injunction,  
9 at 6, 9 (requiring that CDCR adhere to the ARP requirement that no prisoner with a  
10 disability "shall, because of that disability, be excluded from participation in or denied the  
11 benefits of services, programs, or activities of the Department or be subjected to  
12 discrimination."); 28 C.F.R. 35.152(b)(2) (prisons "[s]hall not place inmates or detainees  
13 with disabilities in inappropriate security classifications because no accessible cells or beds  
14 are available" and "[s]hall not place inmates or detainees with disabilities in facilities that  
15 do not offer the same programs as the facilities where they would otherwise be housed.").

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

24 Nonetheless and despite these efforts, Plaintiffs remain concerned that CDCR staff  
25 members who are responsible for endorsing class members for transfer lack adequate  
26 information about current bed availability that matches each class member's custody,  
27 medical, mental health, and other classification factors. Defendants acknowledge that  
28



1 transfer decisions are made without knowing whether a bed is actually available at a given  
2 prison. Plaintiffs have documented that when beds are unavailable, class members may  
3 wait for months in unsafe housing placements after being endorsed for transfer. Moreover,  
4 CDCR continues to endorse people to transfer to prisons that are known to be full or  
5 otherwise have delays and long waitlists. Although Defendants are working on addressing  
6 this issue by creating a headquarters process to ensure that people are re-endorsed to other  
7 prisons, Plaintiffs assert that the problem continues to occur at the institution level.

8 Plaintiffs' counsel is currently working with Defendants to try to develop a long-  
9 term solution. Defendants produced a first set of data regarding expedited transfer delays,  
10 Reception Center delays, and out-of-level housing on February 28, 2018. Initially,  
11 Defendants were unable to provide lengths of stay for class members in those settings. At  
12 the request of Plaintiffs' counsel, Defendants recently produced a second set of data—  
13 based on manual computation—that reflects class members' lengths of stay in Reception  
14 Centers, out-of-level housing, and non-designated housing. The parties met on April 26,  
15 2018 and discussed the data Defendants produced and the broader issues involved. The  
16 parties agreed to produce a refined set of data for the month of May 2018, and meet  
17 thereafter to continue to identify the scope of the problem and develop solutions to any  
18 additional issues identified. If this issue is not resolved quickly, Plaintiffs will seek the  
19 Court's assistance.

### 20 **C. Discrimination in Program Assignments**

#### 21 *Plaintiffs' Statement*

#### 22 **Problems Regarding Access for Deaf Class Members**

23 As detailed in the May 15, 2017 statement and Exhibit 1 to the statement,  
24 (Doc. 2680 at 3-4), as well as the March 15, 2017 statement (Doc. 2671 at 14), deaf people  
25 in the CDCR have been and are being denied access to many programs such as education  
26 and self-help programs that would improve their chances of being parole—including those  
27 that have been expressly recommended by the Board of Parole Hearings—because CDCR  
28



1 failed to make sign language interpreters (“SLIs”) available for these programs and  
2 classes. With limited access to Proposition 57 programs, deaf class members run the risk  
3 of serving longer prison sentences or being denied parole, and are denied access to the  
4 rehabilitative programs that could improve the probability of community reintegration  
5 without recidivism.

6 Plaintiffs’ counsel has extensively documented CDCR’s persistent failure to  
7 provide SLI services to class members who require them. *See Exhibit A*: June 19, 2018,  
8 Letter from R. Lomio, Prison Law Office, to R. Boyd, Office of Legal Affairs  
9 (documenting allegations regarding CDCR’s failure to provide SLIs for AA and NA  
10 meetings, lifer groups, religious services, educational programming, and vocational  
11 programming at SATF). Deaf class members, especially at SATF and RJD, continue to  
12 report significant deprivations of access to prison programs, services, and activities on  
13 account of lack of interpretation services. Plaintiffs’ counsel has undertaken one site visit  
14 to SATF and will also be visiting RJD in the coming weeks in an effort to identify the  
15 source of ongoing failure to comply with this Court’s orders regarding the provision of SLI  
16 services and to identify solutions.

17 Although Defendants agree that in-person interpreters should serve as the primary  
18 means of providing interpretation, they continue to face challenges in scheduling live  
19 interpreters. Defendants maintain that a master calendar will solve the current problem of  
20 no centralized scheduling system for all custody and health care encounters that require  
21 SLI. Defendants report that they have identified a calendar solution, which they plan to  
22 have implemented by October 2018. Defendants have not yet presented the calendar  
23 solution to Plaintiffs.

24 On July 10, 2018, the parties discussed problems with provision of interpreter  
25 services at SATF. Defendants reported that deaf class members now will have a position  
26 with the Inmate Advisory Committees at SATF, captains will meet weekly with deaf class  
27 members, and ADA staff will meet monthly with deaf class members. Defendants  
28

1 reported that SATF is drafting an operating procedure for how to request a sign language  
2 interpreter to provide clear direction to staff. Defendants agreed to conduct individual case  
3 factor reviews for all deaf class members at SATF to see if they may be housed at other  
4 prisons, including prisons not currently designated for DPH-SLI class members but where  
5 there may be more access to SLI resources, so that DPH-SLI class members can  
6 meaningfully participate in programs, services, and activities. Defendants reported that  
7 headquarters staff will conduct biweekly calls with SATF staff regarding this issue. The  
8 parties will remain in close contact to evaluate whether the steps offered by Defendants are  
9 effective and to develop additional remedial solutions where necessary.

10 Plaintiffs remain hopeful that a collaborative approach to identifying problems and  
11 proposing solutions will continue during visits to SATF and RJD. Plaintiffs also look  
12 forward to receiving a demonstration of Defendants' proposed calendaring and scheduling  
13 solution. But if deaf class members continue to be denied sign language interpreters, and  
14 if Defendants do not implement a plausible plan to correct longstanding problems,  
15 Plaintiffs will have no choice but to seek Court intervention to address this longstanding  
16 deprivation of Plaintiffs' rights.

### 17 **Problems Regarding Access to Assignments for All People with Disabilities**

18 With regard to the broader problem of equal access to job and program assignments  
19 for people with disabilities, the parties convened a small work group to address Plaintiffs'  
20 concerns, as raised in multiple tour reports and letters. *See* Doc. 2680 at 13-14. The  
21 parties agreed to exchange data on a quarterly basis and recently met to review and discuss  
22 the data regarding assignments. The parties have a potential dispute about the appropriate  
23 method for analyzing the program assignment data; they are in the process of meeting and  
24 conferring about that issue.

25 The parties conducted one site visit at SATF and will conduct two additional site  
26 visits in the coming months, at Salinas Valley State Prison and Kern Valley State Prison.  
27 The parties discovered blatant barriers to program assignment access in the PIA program at  
28

1 SATF, as outlined further in Plaintiffs' June 7, 2018, letter attached as **Exhibit B**. The  
2 parties plan to continue to collaborate on solutions to program assignment disparities. The  
3 parties also plan to incorporate questions regarding disparities in assignment rates in the  
4 Joint Audit Tool.

5 *Defendants' Statement*

6 Access to Programs for Deaf Class Members

7 Defendants are committed to ensuring that hearing-impaired inmates who require  
8 SLI are provided equal access to program assignments. Defendants developed multiple  
9 methods to provide program access for the approximately 75 class members who use sign  
10 language as their primary means of communication. These include using CDCR staff  
11 interpreters, contract in-person interpreters, and video remote interpretation (VRI).

12 Overall, Defendants' policy for providing interpreters in person and via VRI provides a  
13 reasonable level of access to enable hearing-impaired inmates to meaningfully participate  
14 in programs and complies with ADA regulations.

15 Defendants have identified a scheduling process that should be implemented by  
16 October 2018. Defendants will continue to work with Plaintiffs' counsel on this process  
17 and will provide updates on its implementation. The parties are reviewing and discussing  
18 proposed draft regulations, and local operating procedures have been provided to  
19 Plaintiffs' counsel. Because the parties and the Court's expert continue to collaboratively  
20 work on these issues, Court intervention is unnecessary.

21 Access to Programs for Class Members Generally

22 Defendants continue to monitor institutions with the highest level of program  
23 assignment disparities and are seeing improvements at all of them. The development and  
24 implementation of inmate assignment reports and monitoring has greatly enhanced the  
25 depth of data available and improved management oversight on this issue. Improvements  
26 are also attributed to the training that Defendants provided to the Chiefs of Mental Health  
27 and the Inmate Assignment Lieutenants. Defendants established a full-time Headquarters  
28

1 Inmate Assignment Lieutenant position, who is responsible for training, monitoring, and  
2 reporting inmate assignment data. The position is filled and became effective November  
3 2017.

4 Defendants continue to provide Plaintiffs with data regarding class member  
5 assignments. The parties met on April 12, 2018, to discuss the data and agreed to jointly  
6 visit Salinas Valley, Kern Valley, and SATF to further inquire as to possible disparities in  
7 program assignments and their causes. The parties conducted a site visit at SATF on May  
8 14, 2018. Defendants took immediate steps to remedy one confirmed problem that  
9 presented the possibility of discrimination against class members. Defendants will  
10 continue to look into the issues presented in Plaintiffs' June 7, 2018 letter. The parties will  
11 continue to meet and confer concerning any alleged data disparities, and ensure that class  
12 members have access to CDCR programs.

13 **D. Video Remote Interpreting/Sign Language Interpretation for Parolees**  
14 **Who Are Deaf**

15 *Plaintiffs' Statement*

16 Plaintiffs continue to assert that parolees are not receiving SLIs during important  
17 due process encounters on parole. Most recently, a detailed review of the SLI tracking  
18 logs for the third quarter, as set forth in a December 11, 2017 letter from Plaintiffs'  
19 counsel, showed that SLIs were documented as being used only twice in the Northern  
20 Region, though there were approximately 11 deaf parolees under DAPO supervision in  
21 that region during that quarter. Defendants claim that the data they provided did not  
22 accurately reflect the provision of SLI services and thus provided additional data.  
23 Nevertheless, the additional data reviewed by Plaintiffs' counsel showed only one  
24 additional appointment, making it three appointments that were scheduled for 11 class  
25 members in that region during the third quarter. Plaintiffs remain extremely concerned  
26 about the low number of SLI encounters scheduled for deaf parolees. It remains unclear  
27 how agents are effectively communicating with these class members during parole  
28

1 encounters.

2 At the request of Plaintiffs' counsel, Defendants have revised their VRI policy such  
3 that in-person SLI, and not VRI, will serve as the first option for providing SLI services.  
4 The policy is part of a revised version of DAPO's effective communication policy which  
5 should take effect August 4, 2018.

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

11 *Defendants' Statement*

12 Defendants assert that sign language interpretation is not mandated for every parole  
13 encounter. DAPO revised its effective communication and sign language policy and  
14 shared it with Plaintiffs' counsel. Under the revised policy, an in-person SLI will be  
15 provided as the first option. VRI will only be used when a live interpreter is unavailable.  
16 The revised policy is under review by the California Correctional Peace Officers  
17 Association. Defendants anticipate the policy will be final and effective by August 2018.

18 Defendants also will provide additional training to ensure staff is familiar with the  
19 policy and the technology. To further ensure that SLI services are provided when needed,  
20 Defendants assigned all hearing-impaired parolees who use SLI to a Parole Agent II  
21 Supervisor. Defendants have also retested VRI connectivity at each parole office to ensure  
22 technological issues were addressed.

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

27 ///

28

1 Defendants assert that the alleged lack or limited use of SLI is not evidence that SLI  
2 was required and not provided. In the third and fourth quarters of 2017, 64 parole  
3 appointments with SLI were scheduled, but 21 were cancelled. Fifteen appointments were  
4 cancelled because parolees did not appear for their scheduled appointments, and another  
5 three because the parolee was in jail. In one instance, the interpreter was refused entry into  
6 the county jail due to improper identification. Only one appointment was cancelled  
7 because the interpreter was not available. Defendants recently obtained authorization to  
8 hire a SLI at CDCR Headquarters who will assist parole offices in providing interpretive  
9 services for the field. Defendants will continue to work to provide SLI services to  
10 parolees.

11 **E. Dangerous Conditions as a Result of Leaking Roofs**

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

23 The Governor's 2018-19 budget which recently passed includes a \$60.7 million  
24 General Fund to replace roofs at the California Substance Abuse Treatment Facility,  
25 Salinas Valley State Prison, and Ventura Youth Correctional Facility and a \$9 million  
26 General Fund for mold remediation efforts at various facilities in 2018-19. This continues  
27 a multi-year strategy to address failing roofs, with Calipatria State Prison, California  
28

1 Correctional Women’s Facility, and California State Prison, Corcoran being the next  
2 priorities. The Budget includes total funding of a \$153 million General Fund for roof  
3 replacements and mold remediation over the next two fiscal years.

4 See <http://www.ebudget.ca.gov/FullBudgetSummary.pdf> at 65. Plaintiffs will continue to  
5 monitor efforts to alleviate leaking at prisons.

6 At the June 20, 2018, all-party meeting, Defendants updated the parties on the status  
7 of facilities repairs throughout the prison system. Despite reported improvements,  
8 Plaintiffs continue to receive reports of flooding at SATF. Defendants will look in to those  
9 reports and will continue to provide construction repair updates.

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

13 **F. Parole Planning and Working With Class Members Preparing for**  
14 **Release**

15 *Plaintiffs’ Statement*

16 Plaintiffs’ counsel contends that CDCR and DAPO fail to ensure that parolees with  
17 severe and impacting placement disabilities receive adequate planning for parole and  
18 adequate transitional housing, transportation, and other transitional services. See Doc.  
19 2680 at 11-12; Doc. 2655 at 11-13. Plaintiffs argue that Defendants violate the ADA and  
20 Remedial Plan by excluding people who use wheelchairs and other class members from  
21 CDCR-funded community placements. When the CDCR fails to provide people with  
22 disabilities adequate assistance in obtaining benefits or other transition services before they  
23 parole, “CDCR is operating its services, programs and activities in a manner that  
24 inevitably channels person with disabilities into repeated institutional confinement with no  
25 realistic opportunity to establish independent living in the community, in violation of the  
26 ADA and of the principles set forth in *Olmstead L.C. ex. Rel. Zimring*, 527 U.S. 581  
27 (1999).” Doc. 2655 at 12.



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

6 Plaintiffs have ongoing concerns about the benefit application process and the  
7 adequacy of resources for this process under the Transitional Case Management Program  
8 (TCMP). State legislators are also concerned and in October 2017 passed Senate Bill 776,  
9 which requires the CDCR to hire one employee for every five prisons to assist incarcerated  
10 veterans in applying for and receiving any federal or other veterans' benefits for which  
11 they or their families may be eligible. *See, e.g.,*  
12 [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB776](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB776).

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

18 The parties also plan to continue to meet and share information regarding  
19 Defendants' follow up on a recent survey of the transitional housing placements managed  
20 by CDCR's Division of Rehabilitative Programs ("DRP"), which showed that many  
21 providers do not accept hearing impaired, mobility impaired, and vision impaired  
22 individuals. DRP officials agree that the programs should accept parolees with these  
23 disabilities and plan to follow up with the contractors explaining their duties under the  
24 ADA and their contracts with DRP. (The DRP contract purportedly provides for extra  
25 payment for any parolees who require sign language interpretation to cover the cost of  
26 these services.)

27 Plaintiffs' counsel appreciates that DRP surveyed its contractors about the  
28

1 accessibility of their programs. Plaintiffs are concerned because the results document  
2 various exclusions of vision, mobility and hearing impaired individuals from transitional  
3 housing programs that contract with DRP. Plaintiffs do not agree that giving housing  
4 program priority or extra targeted resources to assist severely disabled individuals whose  
5 disability places them at higher risk of failing on parole if they are homeless constitutes  
6 improper “preferential treatment.”

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

11 *Defendants’ Statement*

12 Recognizing that successful reintegration reduces a parolee’s chance of reoffending  
13 and returning to prison, Defendants currently offer pre-parole planning services to all  
14 inmates before release from prison. Defendants provide these services consistent with the  
15 ADA and the *Armstrong* Remedial Plan.

16 Defendants contract with third parties to provide transitional housing in the  
17 community, and the providers are contractually required to provide housing that complies  
18 with the ADA and state and federal laws. Defendants do not “exclude” persons with  
19 wheelchairs and other class members from CDCR-funded community placements because  
20 of their disability. In fact, Defendants have provided data to Plaintiffs showing that  
21 approximately 17 percent of contracted beds are wheelchair accessible, which far exceeds  
22 the current parolee population needs. Defendants acknowledge that denial of a housing  
23 placement based on inaccessible housing is inappropriate, but disagree that they are  
24 obligated to find transitional housing for every disabled parolee upon release from prison,  
25 or that disabled parolees should be given preferential treatment with respect to placement  
26 in transitional housing. The parties met on January 26, 2018, to discuss the Division of  
27 Rehabilitative Programs’ survey that identified ADA capacity for all CDCR funded  
28

1 community programs that house parolees, including STOP, Residential Multi Service  
2 Centers, Parolee Service Centers, Transitional Housing Program, Female Offender  
3 Treatment, and Employment Program and Day Reporting Center-Transitional Housing.

4 Defendants also provide assistance with applying for medical benefits, via social  
5 workers under the Transitional Case Management Program (TCMP) contract, to prisoners  
6 prior to their release from prison. Defendants continually assess the number of TCMP  
7 benefits workers at each prison and believe that current staffing levels are adequate to meet  
8 each prison's needs. Defendants provide this service to all inmates and do not discriminate  
9 against disabled inmates when providing this service. Defendants do not control the  
10 timelines by which outside agencies process and approve or deny benefits. At the June 20,  
11 2018 all-party meeting, CDCR advised that California State Senate Bill 776, effective July  
12 1, 2018, will provide funding to the California Department of Veterans Affairs to hire  
13 seven new staff members dedicated to work at the 35 CDCR institutions to identify and  
14 assist veteran inmates and their families with obtaining veterans' benefits. And CDCR has  
15 developed a working group to assist inmates with developing pre-parole plans.

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

18 Defendants will continue to work with Plaintiffs' counsel and the Court's expert to  
19 address transition to parole issues as they relate to the *Armstrong* litigation.

#### 20 **G. Accommodations for Blind and Low Vision Class Members**

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

26 Defendants have agreed to Plaintiffs' counsel's request to implement technologies  
27 to ensure equal access in prison libraries including JAWS (with the exception of Braille  
28

1 printers, which Plaintiffs' counsel requested). Defendants reported that they have received  
2 much of the new equipment including replacement Merlin machines for distribution to the  
3 institutions. They also reported that they are in the process of working on a user manual,  
4 with audio instructions for the new equipment. Defendants are communicating with the  
5 National Braille Institute about developing Braille training opportunities for class  
6 members. Defendants are developing and will distribute a statewide memorandum,  
7 through the Department of Rehabilitative Programs, to provide clear direction to prisons  
8 regarding what technology they have and how to maintain it. Defendants agreed to  
9 explore the development of a method by which blind and low vision class members can fill  
10 out CDCR forms electronically. Once the above items are in place, the parties will discuss  
11 ways to notify inmates about the available equipment and technology and determine what  
12 additional equipment is needed.

13         At Plaintiffs' request, Defendants agreed to reinstate the DNV category for a  
14 limited number of people with low vision which Defendants anticipate will be  
15 implemented in the field in July 2018. Defendants have developed a draft memorandum  
16 providing that individuals will be designated DNV if their vision is between 20/70 and  
17 20/200, when corrected (*i.e.*, when they are wearing glasses or using other assistive  
18 devices) and a CDCR doctor determines that they are substantially impaired in a major life  
19 activity as a consequence of their vision impairments. The memorandum also requires that  
20 all individuals with DNV codes wear vision impaired vests.

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

1 and DNH codes for hearing impairments.

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

#### 5           **H. Accountability**

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

17           Based on Defendants' demonstration, Plaintiffs' counsel is impressed by the robust  
18 search and sort features of the new accountability system. Nonetheless, Plaintiffs remain  
19 concerned that Defendants' plan does not go far enough in requiring staff to analyze  
20 whether individual allegations are indicative of a larger systemic problem. As explained  
21 above (*see* Section A), Plaintiffs believe that CDCR is failing to adequately investigate a  
22 significant number of *Armstrong* allegations concerning staff misconduct, harassment,  
23 discrimination, and violence. Plaintiffs await data from Defendants' test of the new  
24 tracking software. Following the June all-party meeting, Defendants shared with  
25 Plaintiffs' counsel and the Court's expert preliminary draft accountability logs created by  
26 the new automated system. The parties continue to meet and confer to develop a  
27 sustainable and meaningful accountability system that identifies problematic institutions  
28

1 and staff and promptly remedies violations of the ADA and *Armstrong* Remedial Plan.

2 **I. Training of Staff on the ADA, ARP, and Disabilities**

3 Plaintiffs believe that inadequate training of staff on ADA issues has contributed to  
4 the discrimination, harassment, and misconduct by staff against prisoners with disabilities  
5 uncovered at multiple institutions. Plaintiffs also attribute CDCR’s failure to provide  
6 adequate accommodations to insufficient staff training.

7 Defendants agree that problems exist with the database previously used to track  
8 which staff require *Armstrong* training but assert that the issue is being addressed.  
9 Defendants’ information technology specialists are in the process of updating database  
10 systems, so that information regarding which staff members have received training can be  
11 tracked and monitored easily.

12 CDCR also is drafting new training modules, with the goal of revamping and  
13 overhauling the *Armstrong* training. The new Learning Management System (“LMS”)  
14 training modules require the trainee to interact with the training materials and answer  
15 questions in order to proceed through the training. Plaintiffs have expressed willingness to  
16 assist with the development content for the training. Defendants have agreed to provide  
17 drafts of these modules to Plaintiffs and Mr. Swanson as they are updated over the next  
18 several months.

19 **J. Joint Monitoring Audit Tool**

20 The parties continue to work together on drafting a joint audit tool for measuring  
21 compliance in this case. Defendants provided a revised draft of the Joint Audit Tool on  
22 February 9, 2018, and, while that version incorporated many changes based on Plaintiffs’  
23 comments, the parties conducted a series of meetings over multiple weeks to attempt to  
24 finalize tool questions and identify areas of disagreement which will be brought to Mr.  
25 Swanson. The parties will continue to work together to revise and finalize the joint audit  
26 tool.

27 ///

28

1 Notwithstanding progress on the individual tool questions, the parties have yet to  
2 resolve how to score and report audit results. The parties met once to discuss scoring and  
3 reporting of audit results and will meet again on September 12, 2018.

4 The first joint audit was conducted at CSP-Los Angeles County in April 2018. The  
5 next joint audit is scheduled for RJ Donovan the week of August 27, 2018.

#### 6 **K. ADA Structural Barriers and Master Planning Process**

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

#### 16 **L. Investigation of Los Angeles County Jails**

17 Plaintiffs continue to assert a pattern and practice of denying disability  
18 accommodations to class members exists at the Los Angeles County Jails. *See* Doc. 2680  
19 at 22-24. Most recently, Plaintiffs submitted the third quarter review of DAPO documents  
20 which show that approximately 20% of all grievances filed by prisoners in county jails are  
21 coming from Los Angeles County. Defendants report that they continue to meet with Los  
22 Angeles County Jail to put pressure on Los Angeles County, which contends that it is  
23 unable to share information with CDCR due to the Confidentiality of Medical Information  
24 Act. Plaintiffs have agreed to obtain waivers from class members in an effort to avoid this  
25 conflict in the future.

26 Plaintiffs continue to assert that Defendants are required to take action in response  
27 to known violations of class members' ADA rights in the Los Angeles County Jail.  
28



1 Defendants deny that they have discovered a pattern of denial of disability accommoda-  
2 tions at Los Angeles County Jail and therefore do not believe an investigation is warranted.

3 Defendants recently reported that Los Angeles County Jail has dropped its blanket  
4 ban on the use of tapping canes for class members. According to Defendants, class  
5 members at Los Angeles County Jail are permitted to use tapping canes in certain housing  
6 units. Nevertheless, a blanket ban on walking canes appears to be in effect still. Plaintiffs'  
7 counsel welcomes the change in policy and, pursuant to this Court's orders, will continue  
8 to monitor the county jails.

9

10 DATED: July 16, 2018

Respectfully submitted,

11

ROSEN BIEN GALVAN & GRUNFELD

12

By: /s/Penny Godbold

13

Penny Godbold

14

Attorneys for Plaintiffs

15

16 DATED: July 16, 2018

XAVIER BECERRA  
Attorney General of the State of California

17

By: /s/Sharon Garske

18

Sharon Garske

19

Deputy Attorney General

20

Attorneys for Defendants

21

22 As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence  
23 in the filing of this document from Sharon Garske and that I have maintained records to  
24 support this concurrence.

25

26 DATED: July 16, 2018

/s/Penny Godbold

27

Penny Godbold

28

# **EXHIBIT A**



## PRISON LAW OFFICE

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VIA EMAIL ONLY

June 19, 2018

Ms. Russa Boyd  
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter  
Failure to Provide Sign Language Interpreters at SATF

Dear Ms. Boyd:

Below please find a summary of the allegations submitted to Defendants by email on April 6, 11, 12, and 25, 2018, related to SATF's failure to provide qualified sign language interpreters to deaf class members. Since then, the parties conducted a joint visit to SATF on May 15, and Plaintiffs' counsel reviewed Reasonable Accommodation Panel (RAP) responses and SLI logs. As requested, this letter identifies the allegations and issues in the April 2018 emails that Plaintiffs request a written response to.

1. By email dated April 6, 2018, we reported that no sign language interpreter is present for Celebrate Recovery—something we previously reported by letters dated October 11, 2017, and November 7, 2017. (We still are awaiting responses from Defendants to those letters.) We noted that, according to one deaf class member, “ADA Sanchez said that Celebration Recovery program is not sponsor it is volunteer so they can't have VRI for Deaf inmate to be at Celebration Recovery program. State allowed to state employee or sponsor use log for VRI but not allowed volunteer to log the VRI.”

During the parties' joint visit on May 15, 2018, SATF staff reported that Miguel Munoz, who ran Celebrate Recovery, had not been running the program since January 2018 due to personal circumstances. SATF staff said that another chaplain was running an unknown program at the same time, which had three deaf class members enrolled, and speculated that perhaps that chaplain had taken over the Celebrate Recovery group without notifying the CRM office. SATF staff said they would speak with the chaplain and procure qualified interpreter services.

**REQUESTS:** *Please explain whether and how qualified interpreter services currently are provided for Celebrate Recovery.*

*Please explain why qualified interpreters were not provided previously, including after Plaintiffs raised the issue on October 11, 2017, and November 7, 2017.*

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- 2. By email dated April 11, 2018, we reported that Mr. [REDACTED], reported that he started work as a line server in the kitchen in December 2017. He reported that he wanted an interpreter to explain to him what his duties were (he understands ASL better than English or Spanish), but no interpreter showed up.

On May 21, 2018, Warden Sherman issued a memorandum entitled, “Effective Communication—Sign Language Interpreters.” On June 7, 2018, Defendants informed Plaintiffs that “SATF’s In-Service Training Manager also sent out a training memo and CDCR 844 (training sign-in sheets) with a due date of June 22, 2018 for all staff to receive training on the memo.”

**REQUEST:** *Please provide a copy of the training memorandum and any training documents. Please confirm that job supervisors will receive the training.*

- 3. By email dated April 11, 2018, we reported that Mr. [REDACTED], reported that he would like to attend Jehovah’s Witnesses meetings every Saturday, but he was told that there are not enough interpreters. Plaintiffs’ counsel previously had submitted a Form 1824 on behalf of Mr. [REDACTED] on this issue on February 5, 2018.

The RAP response, sent to Mr. [REDACTED] on February 27, 2018, stated in full: “The ADA office will be working with the CRM to ensure you are provided with a Sign Language Interpreter for your religious services.” See Log No. SATF-E-18-00731.

During the parties’ joint visit on May 15, 2018, SATF staff reported that they did not know if Mr. [REDACTED] has attended, or received a qualified interpreter for, Jehovah’s Witnesses meetings. The SLI logs for January-May 2018 do not include any entries for Jehovah’s Witnesses meetings.

**REQUESTS:** *Please explain whether and how qualified interpreter services currently are provided for Jehovah’s Witnesses meetings.*

*Please explain why qualified interpreters were not provided previously, including after Plaintiffs raised the issue on February 5, 2018.*

*If Mr. [REDACTED] has received a qualified interpreter for Jehovah’s Witnesses meetings, please explain why that is not documented on the SLI logs.*

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- 4. By email dated April 11, 2018, we reported that Mr. [REDACTED], reported that he attended advanced AVP but another incarcerated person was interpreting, and it was difficult to understand. He reported that he was starting advanced AVP the week of February 12, and that the facilitator told him that the same incarcerated person would be used as an interpreter. Plaintiffs’ counsel previously had submitted a Form 1824 on behalf of Mr. [REDACTED] on this issue on February 5, 2018.

The RAP response, sent to Mr. [REDACTED] on February 15, 2018 (after the scheduled AVP program), stated: “You are enrolled the [sic] Alternatives to Violence Program, which is a one-time group scheduled for February 12, 13, and 14, 2018. The ADA Office has placed a request with the contract agency to provide a Sign Language Interpreter for your AVP group, scheduled for next week. VRI services are not available for this group because the sponsor is not a state employee and is not allowed to utilize the state computers or laptops.” See Log No. SATF-E-18-00730.

The SLI logs, however, stated that interpreter services were requested on February 1, 2018; that VRI services were scheduled; and that “No I/M in class.”

During the parties’ joint visit on May 15, 2018, Ms. Mitchell explained to SATF staff that sponsors are able to utilize VRI equipment.

**REQUESTS:** *Please explain whether qualified interpreter services were procured and provided for the AVP program on February 12, 13, and 14, and what form the services were in (VRI or in-person).*

*Please explain whether and how VRI equipment may be used for groups where the sponsor is not a state employee.*

- 5. By email dated April 11, 2018, we reported that Mr. [REDACTED], reported that there still is no interpreter for Christian services—an issue we previously reported by letters dated October 11, 2017, and November 7, 2017. (We still are awaiting responses from Defendants to those letters.) Plaintiffs’ counsel previously had submitted a Form 1824 on behalf of Mr. [REDACTED] on this issue on February 6, 2018: “I attend Christian services on Wednesday from 7-8.45 pm (sponsor: Bill). A sign language interpreter (certified) does not attend regularly. In addition, Bill sometimes shows movies that are not closed captioned. If a certified interpreter was present, I would understand the services and movies.”

The RAP response, sent to Mr. [REDACTED] on February 27, 2018, stated in full: “This inmate utilizes deaf pastor for religious services.” It is not clear what this conclusion was based on; it does not appear Mr. [REDACTED] was interviewed.

.....  
.....

The parties jointly interviewed Mr. [REDACTED] on May 15, 2018, and he reported that an incarcerated person still was interpreting Protestant services, and that the incarcerated person was not skilled with ASL and fell behind.

SATF staff explained that they did not know that a qualified interpreter (as opposed to an inmate interpreter) was required for all programs, services, and activities, and stated that Mr. [REDACTED] was not ducated for Protestant services, although three other deaf people were. Ms. Mitchell explained that statewide policy is that people are not ducated for religious services and that qualified interpreters are required for all programs, services, and activities.

The SLI logs for January-May 2018 do not include any entries for religious services.

**REQUESTS:** *Please explain how the RAP determined that Mr. [REDACTED] “utilizes a deaf pastor for religious services.”*

*Please explain whether and how qualified interpreter services currently are being provided for Mr. [REDACTED]’s religious services.*

*Please explain why qualified interpreters were not provided previously, including after Plaintiffs raised the issue on October 11, 2017, and November 7, 2017.*

*If Mr. [REDACTED] or any other deaf class member has received a qualified interpreter for religious services, please explain why that is not documented on the SLI logs.*

6. By email dated April 11, 2018, we reported that Ms. [REDACTED], reported that sometimes there is no interpreter available for the transgender group. Plaintiffs’ counsel previously had submitted a Form 1824 on behalf of Ms. [REDACTED] on this issue on February 6, 2018.

The RAP response, sent to the class member on February 27, 2018, stated: “A certified Sign Language Interpreter is scheduled for the Transgender Lifestyle Group that is held on a weekly basis. The VRI System that is currently being utilized on your assigned yard encountered some connection issues when trying to connect to the Jabber Program. The VRI connection was resolved on 2/6/2018.”

**REQUEST:** *None.*

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.....  
.....

Ms. Russa Boyd

Re: Failure to Provide Sign Language Interpreters at SATF

June 19, 2018

Page 5

7. By email dated April 12, 2018, we reported that Mr. [REDACTED], reported that he was not provided with a qualified sign language interpreter for vocational programming in January, February, and March 2018:

Vocational Programming: January 17\*, 19, 22, 23, 24\*, 25, 30\*  
 February 1\*, 2\*, 6\*, 8\*, 9, 16\*, 20\*, 21\*, 22\*, 26\*  
 March 9, between 10-22\*

The asterisk (\*) indicates that an interpreter left early or was present for only half the time.

According to the SLI logs, 50 of the 68 entries for Mr. [REDACTED]'s morning vocational programming list an end time of 11:00 am, although the class ends at 11:30 am, according to the assignments data provided by Defendants. Other entries are marked "No Interpreter," "No I/M in class," "No Teacher," and "No Instructor."

We previously reported problems with provision of sign language interpreters for Mr. [REDACTED]'s vocational programming by letter dated November 7, 2017. (We still are awaiting a response from Defendants to that letter.)

**REQUESTS:** *Please explain whether Mr. [REDACTED] was provided with a qualified sign language interpreter for the full duration of his vocational programming on the dates listed above.*

*If a qualified sign language interpreter was not provided for the full duration of his vocational programming, please explain why not and what remedial efforts have been made.*

8. By emails dated April 11, 2018, and April 25, 2018, we reported that class members on B yard had requested a sign language interpreter for a three-day AVP program on April 13, 14, and 15, 2018. We attached a copy of an unanswered Form 22, directed to CRM Moore and dated February 8, 2018, requesting a sign language interpreter for this program.

Mr. [REDACTED] submitted a Form 1824 on April 24, 2018, noting that no sign language interpreter had been provided. The RAP response, sent to Mr. [REDACTED] on May 16, 2018, stated in full: "In-person interpreters were requested for the workshop named in this request." See Log No. SATF-B-18-02240. A second RAP response, sent to Mr. [REDACTED] on May 31, 2018, stated: "An inquiry was initiated into your allegations. It was confirmed, SLI interpreters were not present for this workshop due to unavailability. Your concerns will be address [sic] through the inquiry process."\*

---

\* Mr. [REDACTED] housed on E yard, submitted a similar 1824 on March 24, 2018: "I am participating in the Alternatives to Violence Project (AVP) Workshop on April 12th, 13th, and 14th. The program requires inmates to communicate with each other, and I will have difficulties



Ms. Russa Boyd  
Re: Failure to Provide Sign Language Interpreters at SATF  
June 19, 2018  
Page 6

On May 15, 2018, the parties jointly interviewed Mr. [REDACTED], and Mr. [REDACTED] both housed on B yard, who confirmed that when they arrived to the AVP program, they were told that no sign language interpreter was available—either in-person or through VRI.

The parties also jointly interviewed the CRM and ADA OTs, who reported that the CRM was notified of the confirmed roster for the AVP program only a few days before the program, which did not provide enough time to secure an interpreter. The ADA OT said that, to avoid the problem in the future, she would schedule interpreters two weeks out—regardless of whether a deaf person had been confirmed to be in the class at that time—and would cancel as necessary if the final roster did not include a deaf class member.

**REQUEST:** *Please explain SATF's policy for scheduling qualified sign language interpreters for programs, services, and activities, before a roster is finalized, including whether deaf class members are responsible for notifying ADA staff of their possible participation.*

\* \* \* \* \*

Plaintiffs appreciate the open dialogue between the parties during the joint visit to SATF in May. Plaintiffs remain deeply concerned, however, that the longstanding, systemic problems at SATF have not yet been resolved, and that deaf class members continue to be denied access to programs, services, and activities, in violation of federal court orders. Although Plaintiffs agreed in November 2017 to withdraw their deposition notice, they did so with the understanding that reported failures to provide interpreters would be promptly responded to and resolved. SATF, however, still has not provided written responses to noncompliance allegations submitted over 250 days ago. More importantly, the problems reported in October and November 2017 do not appear to have been investigated or addressed. We are particularly concerned with inadequate RAP responses, including to Form 1824s that Plaintiffs' counsel filed on behalf of deaf class members. The ADA and *Armstrong* Remedial Plan require a grievance procedure that provides prompt and equitable resolution of disability-related complaints. It is difficult to encourage our clients to utilize the 1824 process when their concerns do not appear to be meaningfully considered.

Plaintiffs are scheduled to visit SATF for an *Armstrong* monitoring tour next week. We hope that a collaborative approach to identifying problems and proposing solutions will continue during that tour. We also look forward to Defendants' demonstration of their proposed calendaring and scheduling solution during tomorrow's meet and confer. But if deaf class members continue to be denied sign language interpreters, and if Defendants do not implement a plausible plan to correct longstanding problems, Plaintiffs will have no choice but to proceed to litigation.


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communicating with hearing people.” The first RAP response, sent to Mr. [REDACTED] on April 6, 2018, stated in full: “A roster for the Alternatives to Violence Program has been request [sic] from the CRM.” See Log No. SATF-E-18-01615. The second RAP response, sent on April 13 (the first day of the AVP workshop), stated in full: “An SLI will be requested once your name has been added to the Alternatives to Violence Group roster.”

Ms. Russa Boyd  
Re: Failure to Provide Sign Language Interpreters at SATF  
June 19, 2018  
Page 7

Please let me know if you have any questions or concerns.

Sincerely yours,



Rita Lomio  
Staff Attorney

cc: Ed Swanson, Court Expert  
Joanne Chen, Tamiya Davis, OLA  
Kelly Mitchell, DAI  
Vince Cullen, CCHCS  
Co-Counsel

# **EXHIBIT B**



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June 7, 2018

VIA ELECTRONIC MAIL ONLY

**PRIVILEGED AND  
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**SUBJECT TO  
PROTECTIVE ORDERS**

Russa Boyd  
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Re: *Armstrong v. Brown*:  
SATF Program Assignment Discrimination Task Force Meeting  
Our File No. 581-3

Dear Russa and Kelly:

I write regarding the parties' recent visit to SATF on May 14, 2018, for the Program Assignment Discrimination Task Force. Plaintiffs appreciate the time and effort of all staff members at SATF and the headquarters staff who took part in the visit.

**I. Discrimination in PIA**

As you know, during the course of our visit to SATF, the parties uncovered blatant discrimination in the PIA. The two PIA supervisors interviewed by the task force made clear that, although people with disabilities could apply for positions, they would not be considered for these jobs if they had assistive devices or equipment or were classified as "light duty" showing they would be unable to stand for long periods of time. The supervisor in the bread factory stated that, "I don't have a lot of time to be very accommodating" in response to questions about whether he would hire a person with a disability. Both supervisors we spoke with stated they needed people who would not be difficult. The bread supervisor stated he was "not interested in bringing on a problem child." Both stated that, in addition to the separate application process for PIA, they rely heavily on other prisoners who are already working in the factory to tell them who could work hard and who should be hired. It was not surprising then, to either party, that the

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Russa Boyd  
Kelly Mitchell  
June 7, 2018  
Page 2

data reviewed prior to the visit showed that no DNH, DPH, DPM, DPO, DPW, DNM, or LD class members held an industry assignment at SATF. Industry Assignments are the only positions in the prison that carry the highest possible pay grades. PIA's discrimination violates the ADA and the *Armstrong* Remedial Plan.

Staff at SATF appeared to take this issue seriously. By the exit meeting the manager of PIA at SATF and Corcoran had been notified of problems and had reportedly stepped in to oversee all hiring and job changes for those facilities. This is an important first step, since one supervisor responsible for hiring indicated that, even though there are distinct duties for positions, including clerical, anyone might be asked to work the line such that only people who are able to do the line work are hired. PIA should review the specific job duties and ensure that hiring is consistent with the duties of the position, not just the most strenuous line duties in the factory. Plaintiffs also request that PIA evaluate whether additional positions might be added to ensure that enough positions for people with disabilities exist in the coveted PIA facilities. The PIA supervisors who made the discriminatory statements should be placed on the *Armstrong* accountability log.

Statewide data shows that people with disabilities in prison do not have access to the highest paying positions, including PIA positions, throughout the state. Remedies identified at SATF should be implemented statewide.

Also, as discussed by the parties during the Task Force meeting, if a representative from PIA is necessary to make statewide changes, that person should be identified and brought into this process. Defendants stated that they would work on this issue.

Lastly, Plaintiffs are concerned about TABE requirements for PIA positions which might prevent certain class members from getting hired. Plaintiffs would like to discuss what accommodations are available in the PIA hiring process for class members with learning or developmental disabilities.

**II. Lack of EOP Prisoners' Assigned on Facilities F and G**

Prior to the Task Force, the parties agreed that data showed disparities in assignments on facilities F and G for EOP class members. For example, 85.4 percent of non-MHSDS prisoners on F and 88.9 percent on G had assignments compared to only 44.4 percent of EOP class members on F and 54.8 percent on G. During the Task Force, the parties explored possible reasons for the disparity including the recent influx of EOP class members to those yards and the closed nature of the yards, which eliminates programming opportunities off the yard. Nevertheless, because we discovered that assignments turnover frequently on F and G, the assignment rates should be more equal

**PRIVILEGED AND CONFIDENTIAL**

Russa Boyd  
Kelly Mitchell  
June 7, 2018  
Page 3

despite any influx of EOP class members in the last year. Further, according to staff, direct hire of workers (hiring people outside of the inmate assignments process and regardless of their place on the waitlist) still occurs at SATF.

Addressing the lack of EOP assignments on F and G presented no apparent easy fix during the Task Force visit. One way to address the problem would be to create additional assignments. Staff stated this would be difficult because programming space is limited on the yards. Yet, none of the programming spaces were in use during the Task Force visit. Further, programs could be run in day rooms and other open locations. Plaintiffs' counsel requested an additional meeting with Defendants to discuss proposed remedies and next steps.

Defendants reported that they would look further in to the problem and requested program schedule. Plaintiffs request to see a copy of the program schedule being reviewed by Defendants.

Staff further reported problems with IDTT wait times, which could potentially increase wait times for program assignments. Defendants reported they would be addressing this issue. Plaintiffs request an update.

Lastly, the parties agreed that with the current data set, it is impossible to determine whether class members are waiting longer than non-class members for assignments. Defendants agreed to run a report of un-assigned prisoners by yard, by priority code to determine what the average wait time to assignment is, and then overlay with ADA information. The parties agreed to look at Facility G and include 2 EOP buildings and one Clark building as well as Armstrong class members on the yard. Plaintiffs request an update on the status of this data.

**III. Lack of DPW Prisoners Assigned Throughout the Prison**

The data reviewed by the parties prior to the Task Force meeting showed DPW class members assigned at much lower rates than non-class members. For example, the percentage of non-class members assigned at SATF was 78.8 compared to only 50.9 percent of DPW class members. During the Task Force we isolated the cases of all 24 class members who appeared "unassigned" according to the data. On closer look at the individual cases, Defendants reported that 11 of those 24 DPW class members were "medically unassigned." The category of "medical assignment" is relevant to the data analysis and should be considered prior to counting these class members as "unassigned." Plaintiffs were concerned they inadvertently overlooked this issue in calculating totals of unassigned class members but, following the visit, determined that it was not apparent

**PRIVILEGED AND CONFIDENTIAL**

Russa Boyd  
Kelly Mitchell  
June 7, 2018  
Page 4

from the February data that the 11 DPW class members were “medically unassigned.” Plaintiffs would like to discuss this issue further with Defendants. Specifically, is “medical assignment” still a field in the data that we can isolate? If so, how? Do the parties agree on how to handle “medically unassigned” class members in the data?

These questions must be answered in order to determine the scope of assignment disparities for DPW class members at SATF.

We look forward to discussing these issues with you further. Given busy summer schedules, we are anxious to calendar a meeting. Plaintiffs are available June 25, July 2 or 3. Please let us know if any of these dates work for you or please propose alternative dates.

Sincerely,

ROSEN BIEN  
GALVAN & GRUNFELD LLP

*/s/ Penny Godbold*

Penny Godbold

By: Of Counsel

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