

United States District Court
Northern District of California

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

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

Case No. 94-cv-02307 CW
ORDER FOR ADDITIONAL REMEDIAL
MEASURES AT LAC, COR, SATF,
CIW, AND KVSP
Re: Dkt. No. 2948

For the reasons set forth in the Court's order granting in part Plaintiffs' motion to modify its prior remedial orders and injunctions to require the implementation of new remedial measures to prevent further violations of the ARP and ADA at California State Prison, Los Angeles County (LAC); California State Prison, Corcoran (COR); Substance Abuse Treatment Facility (SATF); California Institute for Women (CIW); and Kern Valley State Prison (KVSP) (collectively, the five prisons), the Court hereby orders as follows:

1. No later than twenty-one days of the date this Order is filed, Defendants must draft and present to Plaintiffs for their review a plan for achieving compliance with the Armstrong

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1 Remedial Plan (ARP) and the Americans with Disabilities Act (ADA)
2 that includes the components described below (the Five Prisons
3 Remedial Plan). To the extent possible, Defendants shall provide
4 to Plaintiffs drafts of the components that must be included in
5 the Five Prisons Remedial Plan on a rolling basis prior to
6 twenty-one days of the date this Order is filed.

7 2. Plaintiffs shall provide comments to Defendants as to
8 the drafts within seven days of receiving them.¹

9 3. The parties shall meet and confer promptly to resolve
10 any disagreements as to the adequacy of the Five Prisons Remedial
11 Plan or any of its components. Defendants shall ensure that
12 staff with sufficient authority to amend and approve any plans,
13 policies, and procedures in the Five Prisons Remedial Plan attend
14 all meet-and-confer sessions.

15 4. In the event that a disagreement is not resolved within
16 forty-two days of the date this Order is filed, Plaintiffs shall
17 file objections with the Court no later than forty-nine days of
18 the date this Order is filed in a brief of no more than ten
19 pages; Defendants may respond to the objections within seven days
20 thereafter in a brief of no more than fifteen pages; and
21 Plaintiffs may file a reply of no more than five pages within
22 four days thereafter. The Court will rule on the objections and
23 issue any necessary order, consistent with its rulings in its
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26 ¹ Each side shall, respectively, provide copies of any drafts
27 and comments to the same to counsel for the parties in Coleman v.
28 Newsom, Case No. 90-cv-00529 (E.D. Cal.), and Plata v. Newsom,
Case No. 01-cv-01351 (N.D. Cal.), as well as to the special
master and receiver in those actions.

1 Order granting in part Plaintiffs' motion to modify its prior
2 remedial orders and injunctions.

3 5. Within fourteen days of reaching agreement with
4 Plaintiffs, or receiving this Court's order resolving any
5 disagreements, Defendants shall issue the Five Prisons Remedial
6 Plan in final form and implement its provisions pursuant to the
7 terms described below, unless the Five Prisons Remedial Plan sets
8 a different date for the implementation of a component of the
9 Five Prisons Remedial Plan.

10 a. Cameras. Within ninety days of the finalization
11 of the Five Prisons Remedial Plan, CDCR shall install operational
12 surveillance cameras that cover all areas of LAC, COR, SATF, CIW,
13 and KVSP to which disabled inmates have access, including, but
14 not limited to, all exercise yards, housing units, sally-ports,
15 dining halls, program areas, and gyms. Within sixty days of the
16 finalization of the Five Prisons Remedial Plan, CDCR must begin
17 using body-worn cameras for all correctional officers at LAC,
18 COR, SATF, CIW, and KVSP who may have any interactions with
19 disabled inmates. The Five Prisons Remedial Plan shall describe
20 the steps that Defendants will take to achieve these deadlines.

21 b. The Five Prisons Remedial Plan must contain
22 policies and procedures regarding the use of body-worn cameras
23 and the use of camera footage at LAC, COR, SATF, CIW, and KVSP
24 from any type of camera, including requirements that all footage
25 be retained for a minimum of ninety days, that footage of use of
26 force and other triggering events involving disabled inmates at
27 LAC, COR, SATF, CIW, and KVSP be retained indefinitely, and that
28 footage, when available, be reviewed and considered as part of

1 the investigation of any incident. The Five Prisons Remedial
2 Plan also must contain policies and procedures for training staff
3 at LAC, COR, SATF, CIW, and KVSP regarding how and when to use a
4 body-worn camera and how to ensure that footage is retained and
5 reviewed.

6 c. Reforms to Staff Misconduct Complaint,
7 Investigation, and Discipline Process at LAC, COR, SATF, CIW, and
8 KVSP. CDCR must develop measures to reform the staff misconduct
9 complaint, investigation, and discipline process (Investigation
10 and Discipline Section of the Five Prisons Remedial Plan), which
11 shall be included in the Five Prisons Remedial Plan, to ensure
12 (1) that CDCR completes unbiased, comprehensive investigations
13 into all allegations of staff misconduct violative of the rights
14 of any qualified inmate with a disability under the ARP or the
15 ADA; (2) that CDCR imposes appropriate and consistent discipline
16 against employees who engage in violations of the ARP or ADA with
17 respect to disabled inmates at LAC, COR, SATF, CIW, and KVSP; and
18 (3) that employees who engage in criminal misconduct against
19 disabled inmates at LAC, COR, SATF, CIW, and KVSP in violation of
20 the ARP or ADA are appropriately investigated and, if warranted,
21 referred for prosecution or reassignment. The Investigation and
22 Discipline Section of the Five Prisons Remedial Plan also shall
23 ensure that officers accused of serial violations of the ARP or
24 ADA with respect to disabled inmates at LAC, COR, SATF, CIW, and
25 KVSP are reassigned. The Investigation and Discipline Section of
26 the Five Prisons Remedial Plan also shall provide for effective
27 mechanisms for oversight over all staff misconduct complaints,
28 use-of-force reviews, and related staff disciplinary proceedings

1 at LAC, COR, SATF, CIW, and KVSP that involve alleged violations
2 of disabled inmates' rights under the ARP or ADA. The
3 Investigation and Discipline Section of the Five Prisons Remedial
4 Plan shall require quarterly interviews of randomly-selected
5 disabled inmates at LAC, COR, SATF, CIW, and KVSP using the
6 methodology and interview questionnaire utilized by the December
7 2018 investigators in connection with the Bishop Report at
8 Richard J. Donovan Correctional Facility.

9 d. Third-Party Expert Monitoring of Defendants'
10 Investigation and Discipline Section of the Five Prisons Remedial
11 Plan. The Court delegates to Edward Swanson, its expert,
12 pursuant to Federal Rule of Evidence 706, the additional duties
13 of monitoring Defendants' implementation of their Investigation
14 and Discipline Section of the Five Prisons Remedial Plan. Mr.
15 Swanson shall have access to all documents reasonably necessary
16 for monitoring Defendants' implementation of their Investigation
17 and Discipline Section of the Five Prisons Remedial Plan. Mr.
18 Swanson shall issue quarterly reports regarding Defendants'
19 implementation of the Investigation and Discipline Section of the
20 Five Prisons Remedial Plan. Prior to the issuance of each
21 quarterly report, the parties and Mr. Swanson shall meet and
22 confer regarding his findings for the quarter.

23 e. Early-Warning System. CDCR shall develop an
24 electronic system for tracking all staff misconduct incidents
25 involving disabled inmates at LAC, COR, SATF, CIW, and KVSP by
26 date, time, location, staff involved, and disabled inmates
27 involved, that includes information about the nature of the
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1 disabled inmates' disabilities, any injuries they suffered, and
2 related medical records.

3 f. Information Sharing with Plaintiffs' counsel and
4 the Court's expert. CDCR must produce to Plaintiffs' counsel and
5 the Court's expert, Mr. Swanson, on a quarterly basis, all
6 documents related to LAC, COR, SATF, CIW, and KVSP staff
7 misconduct complaints in which the alleged victim is a qualified
8 inmate with a disability and alleges violations of his or her
9 rights under the ARP or ADA, including, but not limited to,
10 grievances, incident reports, documents from staff misconduct
11 inquiries, documents from Institutional Executive Review
12 Committee inquiries in which the qualified inmate with a
13 disability alleges excessive use of force or other staff
14 misconduct in violation of his or her rights under the ARP or
15 ADA, 989 forms and all supporting documents, responses of the
16 Central Intake Unit of OIA to 989 forms, investigation reports
17 produced by the OIA, and 402 and 403 forms issued by the hiring
18 authority. CDCR must also provide Plaintiffs' counsel with
19 monthly, written updates regarding progress on the implementation
20 of the Five Prisons Remedial Plan at LAC, COR, SATF, CIW, and
21 KVSP, including data regarding staff misconduct complaints and
22 use of force involving a qualified inmate with a disability where
23 there is a possible violation of the disabled inmate's rights
24 under the ARP or ADA.

25 g. Staffing. CDCR must significantly increase
26 supervisory staff by posting additional sergeants on all watches
27 on all yards at LAC, COR, SATF, CIW, and KVSP.

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h. Training. CDCR must develop and implement training intended to eliminate violations of the ARP and ADA at LAC, COR, SATF, CIW, and KVSP, such as human rights, de-escalation, and cultural training, for all custody, mental health, and medical staff at LAC, COR, SATF, CIW, and KVSP who interact with disabled inmates. The training must include discussion of reporting requirements, whistleblowing, non-retaliation, and treatment of incarcerated people with disabilities.

i. Anti-Retaliation. CDCR shall develop mechanisms to end and prevent any retaliation against disabled inmates who report violations of their rights under the ARP or ADA and to ensure their safety. These mechanisms shall be described in the Five Prisons Remedial Plan.

j. Other Remedies. CDCR shall develop a plan to modify its policies to more effectively monitor and control the use of pepper spray by staff at LAC, COR, SATF, CIW, and KVSP with respect to disabled inmates. This plan shall be described in the Five Prisons Remedial Plan.

6. The Court finds that these additional remedial measures are consistent with the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(a).

IT IS SO ORDERED.
Dated: March 11, 2021



CLAUDIA WILKEN
United States District Judge