



KeyCite Blue Flag – Appeal Notification

Appeal Filed by [JOHN ARMSTRONG, ET AL v. GAVIN NEWSOM, ET AL](#), 9th Cir., October 2, 2020

484 F.Supp.3d 808

United States District Court, N.D. California.

John ARMSTRONG, et al., Plaintiffs,

v.

Gavin C. NEWSOM, et al., Defendants.

Case No. 94-cv-02307 CW

Signed 09/08/2020

Synopsis

Background: Class of state prison inmates with disabilities brought an action against state prison officials alleging violations of the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA). Inmates moved for order requiring officials to implement new policies and procedures at prison to prevent further violations of inmates' rights under the ADA, RA, and prior court orders.

Holdings: The District Court, [Claudia Wilken](#), Senior District Judge, held that:

[1] officials interfered with inmates' rights under the ADA and district court's amended remedial plan (ARP);

[2] officials violated court order modifying injunction requiring officials to comply with the ADA and RA;

[3] modification of prior remedial orders and injunctions to require officials to track allegations of violations of the ADA's anti-retaliation and anti-interference provisions was warranted;

[4] additional remedial measures were necessary to end prison officials' ongoing violations of the ADA and the ARP;

[5] officials failed to show that district court's order requiring compliance with the ADA's anti-discrimination and access provisions did not meet the requirement of the Prison Litigation Reform Act (PLRA) that the order be drawn as narrowly as possible;

[6] officials failed to show that district court's order requiring compliance with the ADA's anti-discrimination and access provisions did not meet the requirement of the PLRA that the order be drawn with minimal impact or intrusion on officials' discretion over their policies and procedures.

Motion granted in part and denied in part.

West Headnotes (30)

[1] Evidence 🔑 Tendency to mislead or confuse

Declarations from 66 current or former state prison inmates describing dozens of incidents in which prison staff denied them reasonable accommodations for their disabilities were not substantially more prejudicial than probative, and thus were admissible, in remedial phase of inmates' class action against state prison officials for violations of the ADA and Rehabilitation Act (RA), seeking modification of prior orders and injunctions to require implementation of new remedial measures at prison to prevent further violations of inmates' rights, where there was no danger of unfair prejudice, as the district court, not the jury, was making factual determinations. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132; Fed. R. Evid. 403.

[2] Evidence 🔑 Nature and Admissibility

Declarations from 66 current or former state prison inmates describing dozens of incidents in which prison staff denied them reasonable accommodations for their disabilities were not hearsay, and thus were admissible, in remedial phase of inmates' class action against state prison officials for violations of the ADA and Rehabilitation Act (RA), seeking modification of prior orders and injunctions to require implementation of new remedial measures at prison to prevent further violations of inmates' rights, since declarations were either not made for the truth of the matter asserted therein or fell within one of the hearsay exceptions. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132; Fed. R. Evid. 803.

[3] **Civil Rights** 🔑 Criminal law enforcement; prisons

Declarations from 66 current or former state prison inmates describing dozens of incidents in which prison staff denied them reasonable accommodations for their disabilities were relevant and probative as to whether inmates' rights under the district court's amended remedial plan (ARP) and the ADA were violated, regardless of whether the declarant was currently a class member, in remedial phase of inmates' class action against prison officials for violation of the ADA; many of the inmates who were not class members described incidents they observed in which prison officials denied class members reasonable accommodations or otherwise discriminated against class members, and prison officials did not provide any support for their assertions that the declarations lacked merit. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[4] **Civil Rights** 🔑 Prisons
Civil Rights 🔑 Enforcement

State prison officials interfered with state prison inmates' rights under the ADA and district court's amended remedial plan (ARP), by intimidating, threatening, or coercing inmates with disabilities into abstaining from making requests for reasonable accommodations or filing ADA grievances; evidence detailed numerous accounts of officers' intimidation, coercion, and threats, including when one officer yelled at a deaf inmate and punched him in the face instead of finding another way to communicate, causing that inmate not to ask for an accommodation for fear of being assaulted again, when inmates who requested handcuffing accommodations were thrown to the ground or kicked, and were afraid of requesting accommodations or filing grievances afterwards. Americans with Disabilities Act of 1990 § 503, 42 U.S.C.A. § 12203(b).

[5] **Civil Rights** 🔑 Enforcement

State prison officials failed to log instances of non-compliance with the district court's amended remedial plan (ARP) and the ADA in court-ordered accountability logs, and thus violated court order modifying injunction requiring officials to comply with the ADA and Rehabilitation Act, in state prison inmates' class action against officials; modified injunction required officials to log allegations to the extent that they involved denial of or failure to receive access to services, programs, accommodations, or assistive devices, and most of the allegations that inmates' contended were not logged involved failures to provide reasonable accommodations, such as by denying inmates with mobility disabilities alternative handcuffing methods, wheelchairs, and additional to enter or leave a cell. Americans with Disabilities Act of 1990 § 503, 42 U.S.C.A. §§ 12203(a), 12203(b); Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[6] **Civil Rights** 🔑 Property and housing
Civil Rights 🔑 Enforcement

Modification of prior remedial orders and injunctions to require state prison officials to track allegations of violations of the ADA's anti-retaliation and anti-interference provisions was warranted, in remedial phase of state prison inmate's class action against officials for violations of the ADA and Rehabilitation Act, where district court's intent at remedial phase of litigation was to require officials to operate their facilities and programs in accordance with the ADA and RA, and tracking alleged violations of ADA's anti-retaliation and anti-interference provisions would be consistent with that intent, as it would promote officials' compliance with all provisions of the ADA. Americans with Disabilities Act of 1990 § 503, 42 U.S.C.A. §§ 12203(a), 12203(b); Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[7] **Civil Rights** 🔑 Judgment and relief in general

Civil Rights 🔑 Enforcement

Additional remedial measures were necessary to end prison officials' ongoing violations of the ADA and the district court's amended remedial plan (ARP) issued in action brought by class of state inmates with disabilities against officials, where evidence showed that current policies and procedures were ineffective at bringing officials into compliance with the ADA or ARP, as staff culture at prison of looking the other way, so to speak, whenever staff misconduct occurred or was alleged by an inmate, notwithstanding any official requirements to report and investigate the misconduct, was deeply ingrained, and inmates and staff were reluctant to assist with documentation and investigation of acts of misconduct by staff for fear of retaliation. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[8] **Civil Rights** 🔑 Judgment and relief in general
Civil Rights 🔑 Enforcement

Requiring state prison officials to design, and ultimately implement, a plan that required them to install additional surveillance cameras in all areas at prison to which incarcerated people had access, that policies and procedures regarding the use of camera footage be adopted, and that officials be trained regarding how and when to request camera footage, was necessary to end officials' ongoing violations of the ADA and district court's amended remedial plan (ARP) issued in action brought by class of state inmates with disabilities against officials; video footage provided objective evidence that could not easily be disregarded and was critical in achieving accountability, and violations of inmates' rights were likely to continue in absence of additional surveillance cameras. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[9] **Civil Rights** 🔑 Judgment and relief in general
Civil Rights 🔑 Enforcement

Requiring state prison officials to design, and ultimately implement, a plan that required them

to purchase and begin using body-worn cameras within 60 days was necessary to end officials' ongoing violations of the ADA and district court's amended remedial plan (ARP) issued in action brought by class of state inmates with disabilities against prison officials; body cameras were likely to improve investigations of misconduct by prison officials and to reduce incidence of violations of inmates' rights under the ADA and ARP, and officials did not show that procuring the body-worn camera within 60 days would not be feasible, even in light of the COVID-19 pandemic. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[10] **Civil Rights** 🔑 Judgment and relief in general
Civil Rights 🔑 Enforcement

Requiring state prison officials to design, and ultimately implement, a plan that required them to modify current policies, procedures, and oversight of staff complaints to achieve compliance with the ADA and the district court's amended remedial plan (ARP), issued in action brought by class of state inmates with disabilities against prison officials, was necessary to end ongoing violations of the ADA and ARP; current policies and procedures had failed to prevent further violations of the ARP and of inmates' rights under the ADA at prison. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[11] **Civil Rights** 🔑 Judgment and relief in general
Civil Rights 🔑 Enforcement

Requiring that an expert be appointed to monitor state prison officials' implementation of their plan to reform the staff complaint, investigation, and discipline policies and procedures, and that the expert have access to documents necessary to conduct its monitoring was necessary to end prison officials' ongoing violations of the ADA and district court's amended remedial plan (ARP) issued in action brought by class of state inmates with disabilities against prison officials; appointment of an expert would make

implementation of the plan required more effective and would assist prison officials in achieving compliance with the ARP and ADA. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132; Fed. R. Evid. 706.

[12] Civil Rights ➡ Enforcement

Requiring state prison officials to share with state prison inmates' class counsel and the court-appointed expert all documents related to staff complaints at prison in which the alleged victim was disabled, as well as monthly written updates regarding the implementation of any additional remedial measures, was necessary for the effective monitoring of prison officials' implementation of the additional remedial measures ordered in action brought by class of inmates with disabilities against officials for violations of the ADA. Americans with Disabilities Act of 1990 §§ 202, 503, 42 U.S.C.A. §§ 12132, 12203(a), 12203(b).

[13] Civil Rights ➡ Judgment and relief in general
Civil Rights ➡ Enforcement

Requiring state prison officials to increase managerial presence at prison in the form of additional sergeants was necessary to end prison officials' ongoing violations of the ADA and district court's amended remedial plan (ARP), issued in action brought by class of state inmates with disabilities against prison officials; managerial presence at prison in form of sergeants was not any higher than it was almost two years after a strike team was sent to prison to investigate allegations of staff misconduct, and report was filed recommending, among other things, additional sergeants, and the presence of a full-time ombudsman at prison was not an adequate replacement for the additional managerial presence recommended by experts. Americans with Disabilities Act of 1990 §§ 202, 503, 42 U.S.C.A. §§ 12132, 12203(a), 12203(b).

[14] Civil Rights ➡ Judgment and relief in general
Civil Rights ➡ Enforcement

There was insufficient evidence as to whether non-uniformed supervisory positions were needed at prison in order to end prison officials' ongoing violations of the ADA and district court's amended remedial plan (ARP) issued in action brought by class of state inmates with disabilities against prison officials, where parties' experts disagreed about the effectiveness of non-uniformed positions within prison. Americans with Disabilities Act of 1990 §§ 202, 503, 42 U.S.C.A. §§ 12132, 12203(a), 12203(b).

[15] Civil Rights ➡ Judgment and relief in general
Civil Rights ➡ Enforcement

Requiring prison officials to develop and implement human rights, de-escalation, and cultural training for all custody, mental health, and medical staff at prison to include discussion of reporting requirements, whistleblowing, non-retaliation, and treatment of incarcerated people as patients, was necessary to end prison officials' ongoing violations of the ADA and district court's amended remedial plan (ARP), issued in action brought by class of state inmates with disabilities against prison officials; measures previously taken by prison officials to train staff had proven ineffective at stopping violations of the ADA and ARP. Americans with Disabilities Act of 1990 §§ 202, 503, 42 U.S.C.A. §§ 12132, 12203(a), 12203(b).

[16] Civil Rights ➡ Judgment and relief in general
Civil Rights ➡ Enforcement

There was insufficient evidence as to whether an additional electronic system for tracking all incidents at prison by date, time, location, staff involved, incarcerated people involved, that included information about whether inmates were class members participating in action against prison officials for violations of the ADA, was necessary to end prison officials' ongoing violations of the ADA and district court's amended remedial plan (ARP); officials had created a data-collection and early-warning system that addressed inmates' concerns, and inmates did not argue that new system was

not operational or was insufficient to achieve level of tracking that they requested. Americans with Disabilities Act of 1990 §§ 202, 503, 42 U.S.C.A. §§ 12132, 12203(a), 12203(b).

[17] **Civil Rights** ➡ Judgment and relief in general

Civil Rights ➡ Enforcement

Requiring state prison officials to craft and implement a policy requiring that all pepper spray canisters at prison be weighed before and after use, was necessary to end prison officials' ongoing violations of the ADA and district court's amended remedial plan (ARP), issued in action brought by class of state inmates with disabilities against prison officials, where pepper spray was used on multiple occasions against class members when there was no evidence that class members posed an imminent threat to prison officials or other inmates, or that the use of pepper spray served a legitimate penological interest. Americans with Disabilities Act of 1990 §§ 202, 503, 42 U.S.C.A. §§ 12132, 12203(a), 12203(b).

[18] **Civil Rights** ➡ Judgment and relief in general

Requiring state prison officials to craft and implement policies and procedures to put an end to retaliation against state prison inmates involved in class action against prison officials for violating the ADA and Rehabilitation Act, and prison staff who also reported misconduct, was necessary to stop retaliation in violation of the ADA against class members at prison. Americans with Disabilities Act of 1990 §§ 202, 503, 42 U.S.C.A. §§ 12132, 12203(a), 12203(b); Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[19] **Federal Civil Procedure** ➡ Amending, opening, or vacating

Federal Civil Procedure ➡ Compliance; enforcement

The district court has the inherent authority to enforce compliance with a consent decree that it has entered in an order, to hold parties in

contempt for violating the terms therein, and to modify a decree.

[20] **Injunction** ➡ Grounds in general

A district court has wide discretion to modify its own injunctions if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.

[21] **Federal Civil Procedure** ➡ Construction and operation

The interpretation of a consent decree is for the court, and not the parties subject to the decree.

[22] **Federal Civil Procedure** ➡ Construction and operation

The court's discretion in interpreting a consent decree is particularly wide where the court has been overseeing a remedial decree for many years.

[23] **Civil Rights** ➡ Discrimination by reason of handicap, disability, or illness

To prove that a public program or service violated the ADA, a plaintiff must show: (1) that he is a "qualified individual with a disability," (2) that he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity, and (3) that such exclusion, denial of benefits, or discrimination was by reason of his disability. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[24] **Civil Rights** ➡ Use of force; protection from violence

When applied in the prison context, the failure to provide a reasonable accommodation, as required by the ADA, can occur when a correctional officer could have used less force or no force during the performance of his

penological duties with respect to a person with a disability. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[25] Civil Rights 🔑 Prisons

State prison officials denied reasonable accommodations to state prison inmates with disabilities on numerous occasions, in violation of district court's amended remedial plan (ARP), which incorporated the ADA's anti-discrimination and access provisions, issued in inmates' class action against officials; after entry of the ARP, prison staff refused requests made by deaf inmates for alternative methods for communication, prison staff refused requests made by inmates with mobility disabilities for alternative handcuffing methods, for assistance with operating wheelchairs, for additional time to safely enter and exit cells, and for alternative transportation methods, and prison staff refused requests made by inmates with incontinence problems for showers and cleaning supplies. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[26] Civil Rights 🔑 Use of force; protection from violence

State prison officials failed to provide reasonable accommodations to state prison inmates with mobility disabilities when they failed to use less force or no force when performing their penological duties, in violation of district court's amended remedial plan (ARP), which incorporated the ADA's anti-discrimination and access provisions, issued in inmates' class action against officials; after entry of the ARP, prison staff used excessive force against inmates with mobility disabilities, by throwing them out of wheelchairs, punching them, kicking them, or using pepper spray when they posed no threat to staff that would have warranted the use of such force. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[27] Civil Rights 🔑 Prisons

Failure by state prison officials to provide reasonable accommodations to inmates with disabilities was by reason of their disabilities, in violation of district court's amended remedial plan (ARP), which incorporated the ADA's anti-discrimination and access provisions, in inmates' class action against officials; after entry of the ARP, prison officials targeted inmates with disabilities and other vulnerable inmates for mistreatment, and there was not a legitimate penological interest for the lack of reasonable accommodations that prison officials could have provided. Americans with Disabilities Act of 1990 § 202, 42 U.S.C.A. § 12132.

[28] Prisons 🔑 Judgment and relief

Whether prospective relief is appropriate in light of the Prison Litigation Reform Act (PLRA) depends on whether the district court finds, in light of the order as a whole, that the set of reforms being ordered corrects the violations of prisoners' rights with minimal impact on prison officials' discretion over their policies and procedures. 18 U.S.C.A. § 3626(a)(1)(A).

[29] Civil Rights 🔑 Judgment and relief in general

State prison officials failed to show that district court's order requiring compliance with the ADA's anti-discrimination and access provisions did not meet the requirement of the Prison Litigation Reform Act (PLRA) that the order be drawn as narrowly as possible, in action brought by class of state inmates with disabilities against prison officials for violating the ADA and Rehabilitation Act; officials failed to refute substantial evidence that their violations of inmates' rights, under the district court's amended remedial plan (ARP) and the ADA, were not limited to isolated incidents, and that the incidents were a result of a persistent failure to adequately supervise and hold prison officials accountable for violations of class members ARP and ADA rights. 18 U.S.C.A. § 3626(a)(1)(A); Americans with Disabilities Act of 1990 § 503, 42 U.S.C.A. §§ 12203(a), 12203(b);

Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

[30] Civil Rights ➔ Judgment and relief in general
Civil Rights ➔ Enforcement

State prison officials failed to show that district court's order requiring compliance with the ADA's anti-discrimination and access provisions did not meet the requirement of the Prison Litigation Reform Act (PLRA) that the order be drawn with minimal impact or intrusion on prison officials' discretion over their policies and procedures, in action brought by class of state inmates with disabilities against prison officials; the additional remedial measures ordered did not micromanage prison's operations or have any adverse impact on public safety, officials did not advance any viable alternative means to protect class members at prison that were narrower or less intrusive, and officials were not yet in compliance with the court's remedial order and injunction issued at the outset of the remedial phase of litigation. 18 U.S.C.A. § 3626(a)(1) (A); Americans with Disabilities Act of 1990 § 503, 42 U.S.C.A. §§ 12203(a), 12203(b); Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794.

Attorneys and Law Firms

*814 Donald H. Specter, Sara Linda Norman, Alison Hardy, Corene T. Kendrick, Rita Katherine Lomio, Prison Law Office, Arlene Brynne Mayerson, Linda D. Kilb, Disability Rights Education & Defense Fund, Inc., Berkeley, CA, Michael William Bien, Benjamin Joseph Bien-Kahn, Ernest James Galvan, Gay Crosthwait Grunfeld, Lisa Adrienne Ells, Thomas Bengt Nolan, Krista Michelle Stone-Manista, Margot Knight Mendelson, Penny Marie Godbold, Rosen Bien Galvan & Grunfeld LLP, Geoffrey T. Holtz, Morgan, Lewis & Bockius LLP, Kenneth Michael Walczak, Nassiri & Jung LLP, Shawn Hanson, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA, Mark Raymond Feeser, Mark R. Feeser - Attorney at Law, San Luis Obispo, CA, for Plaintiff John Armstrong.

Donald H. Specter, Sara Linda Norman, Prison Law Office, Arlene Brynne Mayerson, Disability Rights Education & Defense Fund, Inc., Berkeley, CA, Benjamin Joseph Bien-Kahn, Ernest James Galvan, Gay Crosthwait Grunfeld, Thomas Bengt Nolan, Krista Michelle Stone-Manista, Rosen Bien Galvan and Grunfeld LLP, Shawn Hanson, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA, for Plaintiffs James Amauric, Richard Ponciano, Jack Swensen.

Donald H. Specter, Sara Linda Norman, Prison Law Office, Arlene Brynne Mayerson, Disability Rights Education & Defense Fund, Inc., Berkeley, CA, Michael William Bien, Benjamin Joseph Bien-Kahn, Ernest James Galvan, Gay Crosthwait Grunfeld, Thomas Bengt Nolan, Krista Michelle Stone-Manista, Rosen Bien Galvan & Grunfeld LLP, Shawn Hanson, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA, for Plaintiffs Billy Beck, Judy Fendt, Walter Fratus, Gregory Sandoval, Darlene Madison, Peter Richardson.

Donald H. Specter, Sara Linda Norman, Prison Law Office, Arlene Brynne Mayerson, Disability Rights Education & Defense Fund, Inc., Berkeley, CA, Michael William Bien, Benjamin Joseph Bien-Kahn, Ernest James Galvan, Gay Crosthwait Grunfeld, Krista Michelle Stone-Manista, Rosen Bien Galvan & Grunfeld LLP, Shawn Hanson, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA, for Plaintiff Steven Hill.

Donald H. Specter, Sara Linda Norman, Prison Law Office, Arlene Brynne Mayerson, Disability Rights Education & Defense Fund, Inc., Berkeley, CA, Benjamin Joseph Bien-Kahn, Ernest James Galvan, Gay Crosthwait Grunfeld, Michael William Bien, Thomas Bengt Nolan, Krista Michelle Stone-Manista, Rosen Bien Galvan and Grunfeld LLP, Caroline Nason Mitchell, Jones Day, Shawn Hanson, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA, Jennifer Lee Jonak, Jonak Law Group, P.C., Eugene, OR, for Plaintiffs David Rose, David Blessing, Elio Castro, Elmer Umbenhowe, Raymond Hayes, Gene Horrocks, Kiah Mincey, Clifton Feathers, Willie Johnson, David Badillo, James Simmons.

Donald H. Specter, Prison Law Office, Arlene Brynne Mayerson, Disability Rights Education & Defense Fund, Inc., Berkeley, CA, Benjamin Joseph Bien-Kahn, Ernest James Galvan, Gay Crosthwait Grunfeld, Michael William Bien, Thomas Bengt Nolan, Krista Michelle Stone-Manista, Rosen Bien Galvan and Grunfeld LLP, Caroline Nason Mitchell, Jones Day, Shawn Hanson, Akin Gump Strauss Hauer &

Feld LLP, San Francisco, CA, [Jennifer Lee Jonak](#), Jonak Law Group, P.C., Eugene, OR, for Plaintiffs Flora Abrams, Joey Gough.

[Donald H. Specter](#), Prison Law Office, Arlene Brynne Mayerson, Disability Rights Education & Defense Fund, Inc., Berkeley, CA, [Caroline Nason Mitchell](#), Jones Day, [Ernest James Galvan](#), [Gay Crosthwait Grunfeld](#), [Michael William Bien](#), [Thomas Bengt Nolan](#), [Krista Michelle Stone-Manista](#), [Rosen Bien Galvan & Grunfeld LLP](#), [Shawn Hanson](#), [Akin Gump Strauss Hauer & Feld LLP](#), San Francisco, CA, [Jennifer Lee Jonak](#), Jonak Law Group, P.C., Eugene, OR, for Plaintiff [Timothy Whisman](#).

[Paul Brian Mello](#), Hanson Bridgett LLP, [Jay Craig Russell](#), Office of the Attorney General, San Francisco, CA, for Defendants [Joseph C. Sandoval](#), Dir Dept. of Corr. James Gomez, Kyle McKinsey, Kevin Carruth, Marisela Montes, Robert Presley, California Board of Prison Term, Chairman James Nielsen, Gray Davis.

Alicia Anne Bower, [Sharon Anne Garske](#), Office of the Attorney General, Oakland, CA, [Anthony James Tartaglio](#), California Department of Justice, [Trace O. Maiorino](#), California State Attorney General's Office, [Damon Grant McClain](#), [Jay Craig Russell](#), Office of the Attorney General, San Francisco, CA, [Jeremy Michael Duggan](#), Sean Walter Lodholz, Annakarina de la Torre-Fennell, Erick Joseph Rhoan, Joanna Breiden Hood, Office of the Attorney General, Sacramento, CA, for Defendant California Department of Corrections and Rehabilitation.

[Jay Craig Russell](#), Office of the Attorney General, San Francisco, CA, for Defendants Secretary James Tilton, Executive Director John Monday.

Alicia Anne Bower, [Sharon Anne Garske](#), Office of the Attorney General, Oakland, CA, [Anthony James Tartaglio](#), California Department of Justice, [Trace O. Maiorino](#), [Jay Craig Russell](#), California State Attorney General's Office, San Francisco, CA, [Jeremy Michael Duggan](#), Sean Walter Lodholz, Annakarina de la Torre-Fennell, Joanna Breiden Hood, Office of the Attorney General Sacramento, CA, for Defendant Gavin C. Newsom.

ORDER GRANTING IN PART MOTION TO MODIFY REMEDIAL ORDERS AND INJUNCTIONS

(Re: Dkt. No. 2922)

[CLAUDIA WILKEN](#), United States District Judge

***816** In this class action for violations of disabled prisoners' rights under the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act (RA), which is in the remedial phase, Plaintiffs contend that staff at R.J. Donovan Correctional Facility (RJD) continue to deprive class members of their rights under the ADA in violation of this Court's prior remedial orders and injunctions. Docket No. 2922. Plaintiffs seek an order modifying the Court's prior remedial orders and injunctions to require the implementation of new remedial measures at RJD to prevent further violations of class members' rights. Defendants oppose the motion. Having carefully considered the parties' submissions, and the argument presented at the hearing held on August 11, 2020, the Court GRANTS IN PART Plaintiffs' motion to modify the Court's remedial orders and injunctions.

FINDINGS OF FACT^{1,2}

I. Procedural history

In 1994, Plaintiffs, “a class of all present and future California state prison inmates ***817** and parolees with certain disabilities, sued defendants, California state officials with responsibility for the operation of the Department of Corrections and Rehabilitation (the CDCR) and the Board of Parole Hearings (BPH), challenging the State's treatment of disabled prisoners and parolees.” [Armstrong v. Schwarzenegger](#), 622 F.3d 1058, 1063 (9th Cir. 2010) (internal quotation marks omitted). The claims against the CDCR were litigated separately from the claims against the BPH; only the former claims are relevant to the present motion.

On July 9, 1996, on the eve of trial, Plaintiffs and CDCR Defendants reached an agreement on a Stipulation and Order for Procedures to Determine Liability and Remedy. Docket No. 148. The Stipulation and Order provides:

It is the intent of this Stipulation to require defendants to operate programs, activities, services and facilities of the California Department of Corrections in accordance with the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, if the Court determines that

the ADA and § 504 apply to the California Department of Corrections.

Stipulation and Order ¶ 12, Docket No. 148.

On September 20, 1996, this Court held that the ADA and RA apply to state prisoners, Docket No. 157, and that Defendants' policies and procedures with regard to disabled prisoners were inadequate and violative of the ADA and the RA, Docket No. 159. See also [Armstrong v. Wilson](#), 942 F. Supp. 1252, 1258 (N.D. Cal. 1996), aff'd, 124 F.3d 1019 (9th Cir. 1997).

On the same date, the Court entered a Remedial Order and Injunction, which required CDCR Defendants to develop plans, policies, and procedures, including disability-grievance procedures, to ensure that their facilities and programs were compliant with the ADA and RA. Remedial Order and Injunction at 1-4, Docket No. 158. The Court retained jurisdiction to enforce the terms of the Remedial Order and Injunction, as well as to issue “any order permitted by law, including contempt, necessary to ensure that defendants comply with the guidelines, policies, procedures, plans and evaluations” required by the Remedial Order and Injunction. Id. at 5.

In accordance with the Remedial Order and Injunction, Defendants produced a remedial plan in 1998, Docket No. 337, which they amended in January 2001, Docket No. 681. The Amended Remedial Plan of January 2001 (ARP), Section I, incorporates the ADA's anti-discrimination and access provisions, 42 U.S.C. § 12132, by providing as follows:

No qualified inmate or parolee with a disability as defined in [Title 42 of the United States Code, Section 12102](#) shall, because of that disability, be excluded from participation in or denied the benefits of services, programs, or activities of the Department or be subjected to discrimination.

ARP at 1, Docket No. 681. Section II.F. of the ARP requires CDCR to “provide reasonable accommodations or modifications for known physical or [mental disabilities](#) of qualified inmates/parolees.” Id. at 7. The remainder of the ARP describes various types of accommodations that CDCR must provide, such as “staff assistance,” sign language interpreters, alternative methods for restraining inmates who cannot be restrained with traditional restraint equipment in the ordinary prescribed manner, *818 and accessible vehicles for transporting inmates. Id. at 22-34. The ARP requires each institution to take steps to ensure that staff are aware at all times of which inmates have disabilities that require accommodations. Id. For example, the ARP requires each institution to issue an identifying vest to each inmate who

has vision or hearing disabilities, which the inmate must wear over his clothing when outside of his cell or bed area. Id. Defendants used the ARP as a model to craft remedial plans that were specifically tailored to each CDCR institution. See Individual Remedial Plans, Docket Nos. 782, 783, 784. The Court approved the remedial plans for each institution, including RJD, on February 6, 2002. Docket No. 781; RJD Remedial Plan, Docket No. 784-2.

In November 2006, Plaintiffs filed a motion for a further remedial order, in which they argued that Defendants were in violation of the ARP and the Court's orders. Docket No. 950. As a result of this motion, the Court issued another injunction in 2007 (2007 injunction), which required Defendants, in relevant part, to comply with the ARP, including Section I, and to develop accountability procedures to track their noncompliance with the ARP and the Court's orders. 2007 Injunction at 7, 9, Docket No. 1045. Since then, the Court has modified the 2007 injunction several times to clarify Defendants' obligations regarding reporting and accountability. See [Armstrong v. Brown](#), 768 F.3d 975, 979 (9th Cir. 2014); see also Order Modifying Permanent Injunction of August 2, 2012, Docket No. 2180; Order Modifying 2007 Injunction of December 29, 2014, Docket No. 2479.

In February and June 2020, respectively, Plaintiffs filed two motions (enforcement motions) in which they argue that Defendants' employees have engaged and continue to engage in conduct that violates class members' rights under the ARP and ADA contrary to this Court's prior orders and injunctions. Docket Nos. 2922, 2948. The conduct alleged involves misconduct directed at class members, who are more vulnerable to abuse and less able to defend themselves in light of their disabilities, as well as acts that have served to discourage class members from requesting reasonable accommodations for their disabilities, either through the formal grievance process or otherwise.

The first enforcement motion is the one now before the Court, which seeks relief for alleged violations of class members' rights under the ARP and ADA at RJD (RJD enforcement motion), and the second enforcement motion seeks relief for alleged violations of class members' rights at other prisons throughout California (state-wide enforcement motion). The state-wide enforcement motion has not been fully briefed and remains pending.

II. The continued lack of accountability for staff at RJD enables violations of the ARP and the Court's remedial orders and injunctions

RJD has the second largest population of incarcerated people with disabilities in CDCR, with nearly 1,000 Armstrong class members, including 297 people who use wheelchairs, 217 people who are deaf or hard of hearing, and thirteen people who are blind. Grunfeld Decl., Ex. II at 184-89, Docket No. 2922-1.³

*819 Beginning in September 2016, Plaintiffs' counsel notified Defendants of allegations of noncompliance with the ARP and the Court's orders and injunctions based on claims that RJD staff were denying class members reasonable accommodations and were using excessive force against class members. See, e.g., Freedman Decl., Ex. 67, 69, 71, 73, Docket No. 2921-2.⁴

In August 2018, auditors from the Office of Audits and Court Compliance (OACC) and Plaintiffs' counsel conducted a joint compliance review of the Disability Placement Program at RJD, during which the joint team interviewed twelve class members. Grunfeld Decl. ¶ 16 & Ex. G at 1-2, Docket No. 2922-1. After the joint review, the OACC wrote a letter to CDCR's Division of Adult Institutions (DAI) dated September 20, 2018, in which the OACC reported that seven of the interviewees made allegations of "staff members forcefully removing some inmates from wheelchairs; staff members assaulting inmates that were already secured with restraint equipment; and inmates being accused of assaulting officers when, in fact, it was the staff member who had assaulted the inmate." Grunfeld Decl., Ex. G at 1, Docket No. 2922-1.⁵ The OACC recommended, based "on the nature and consistency of the allegations," that CDCR and RJD management "promptly take all reasonable actions to ensure that these incidents do not occur in the future, and that the historical allegations are thoroughly investigated." Id. (emphasis added). The OACC requested that CDCR provide it with a "Corrective Action Plan (CAP) to address these allegations," identifying steps RJD and CDCR plan to take to "mitigate these issues and address confirmed violations, along with projected completion dates for each task," by October 5, 2018. Id.; Miller Decl. ¶¶ 4, 5, 10. As of January 2020, CDCR had not produced the Corrective Action Plan that OACC requested in September 2018. CDCR's Rule 30(b)(6) Designee (Seibel) Dep. Tr. at 30, Docket No. 2922-1.

In December 2018, CDCR sent a strike team to investigate allegations of staff misconduct on Facility C at RJD. The team was comprised of fourteen investigative staff and seven ombudsmen. Bishop Report at 1-3, Docket No. 2921-6. The strike team sought to interview 150 inmates on Facility C, but only 102 inmates agreed to be interviewed. Id. The interviewees reported, in relevant part, that RJD staff specifically targeted for abuse inmates with disabilities and other vulnerable inmates; that RJD staff hired inmates to assault other inmates; that RJD staff engaged in gang-like behavior; and that RJD staff retaliated against inmates who reported the abuse with further abuse or by making false allegations against them so *820 that the inmates would be subjected to disciplinary action. Id. at 4-9. Forty-eight inmates out of the 102 who chose to participate in the interviews supported their claims of misconduct by RJD staff with detailed and "actionable" allegations. Id. at 14-17.

At the time that these interviews were conducted, there were some fixed cameras at RJD outside of the five housing units, six cameras in the gym, and ninety cameras in Facility E, which is a newer facility that was built with cameras. CDCR's Rule 30(b)(6) Designee (Seibel) Dep. Tr. at 108-12, Docket No. 2921-8. The cameras in places other than in Facility E are "old," their "clarity is very poor," they have blind spots, and some were inoperable at the time of the December 2018 interviews. Id. Despite the presence of some cameras at RJD, CDCR does not have a written policy that requires that video footage be reviewed when an allegation of staff misconduct is investigated. Id. at 129.

The Chief Ombudsman for CDCR, and who was part of the strike team, wrote the following in an email to DAI's director and others at CDCR immediately after conducting the interviews in December 2018:

[W]hat we heard was overwhelming accusations of abuse by the Officers with Sgt's and Lt's looking in the other direction. I have never heard accusations like these in all my years. I would strongly suggest placing a strike team on this yard immediately. Many of the inmates have expressed fear of what will happen to them tomorrow when the team is not there. This is a very serious situation and needs immediate attention. If there is any means of installing cameras immediately I would strongly suggest it, at least in the blind spots and the back door by the gym. A review of the appeal process, RVR's and staff complaints off that yard also needs to take place ASAP.

Grunfeld Decl., Ex. H, Docket No. 2922-1 (emphasis added).⁶

Associate Warden Bishop, who led the strike team, wrote a report based on his assessment of the interviews and recommended that the “actionable” allegations of forty-eight inmates be investigated “promptly.” Bishop Report at 14-17, Docket No. 2921-6. Yet, it is undisputed that the investigations of some of these “actionable” allegations made in December 2018 were not complete as of January 2020. See Defs.’ Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 133, 156, Docket No. 2921-8; id. at 221-22, Docket No. 2922-1.

Associate Warden Bishop also recommended, among other things, that live-feed cameras be installed in all areas of limited or obstructed visibility; that CDCR conduct a comprehensive review and investigation of staff gang activity on Facility C by trained gang investigation staff; and that CDCR increase managerial presence on Facility C during all hours. Bishop Report at 12-13, Docket No. 2921-6.

Notwithstanding these recommendations, and Defendants’ acknowledgement that the Bishop Report “formally recognized serious problems with aspects of R.J. Donovan’s operations,” Defs.’ Resp. at 19, as of the date of this order, CDCR has not installed additional live-feed cameras at *821 RJD⁷; has not devoted any additional resources to investigate or address gang-like behavior among RJD staff; and has not increased managerial presence on Facility C or elsewhere at RJD.⁸ CDCR’s Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 168-69, Docket No. 2921-8.

Two correctional sergeant investigators from outside RJD conducted follow-up interviews with some of the Bishop Report interviewees in January and February 2019, and wrote memoranda in which they concluded that the majority of the allegations of staff misconduct and use of excessive force were being made by “wheelchair designated inmates” or inmates suffering from severe mental illness. Freedman Decl., Ex. 3 (DOJ0000057), Docket No. 2921-6; id., Ex. 4 (DOJ00000425). Although the allegations have “not yet been proven,” the investigators emphasized that the allegations were “brought up in numerous interviews by different inmates, and even by an inmate who claims to have assaulted inmates on behalf of custody staff.” Id. Accordingly, the investigators recommended, among other things, that CDCR install cameras inside housing units and rotundas. Id.

Plaintiffs represent, and Defendants do not dispute, that Defendants failed to disclose to Plaintiffs’ counsel the Bishop

Report from December 2018, and the memoranda of the two investigators from early 2019, until January 2020, when Defendants produced them in response to formal discovery requests by Plaintiffs. Grunfeld Decl. ¶ 31, Docket No. 2922-1.

Starting in January 2019, Plaintiffs’ counsel began to send copies of its advocacy letters to the Office of the Inspector General (OIG) regarding class members’ allegations of violations of the ARP and their ADA rights. Grunfeld Decl., Ex. J, Docket No. 2922-1.⁹ The OIG reviewed CDCR’s responses to sixteen of Plaintiffs’ advocacy letters from 2019 and concluded in January 2020 that each described “serious” misconduct that, “if true, would result in disciplinary action for the subject employees.” Id. at 1. The OIG found a “pervasive lack of timely follow through,” including that CDCR “ignored” many allegations, failed to investigate twenty-eight allegations not previously known to CDCR, and failed to refer pertinent information to the Office of Internal Affairs when appropriate. Id.

Plaintiffs’ expert, Jeffrey Schwartz, has assisted prisons and jails over the last twenty years in applying national correctional standards to their operations. Schwartz Decl. ¶ 2, Docket No. 2947-9. Schwartz was retained by Plaintiffs to *822 opine on CDCR’s inquiry, investigation, and disciplinary process as it relates to allegations of staff misconduct and the discipline of staff for misconduct. Id. ¶ 9. As part of his assignment, Schwartz analyzed the files of forty-three investigations of allegations of staff misconduct at RJD. Id. ¶ 11. Schwartz opines that the situation at RJD is “horrifying” for inmates with disabilities and other vulnerable inmates, and that there is “substantial evidence that these vulnerable inmates are targeted and preyed upon by a significant number of staff at RJD.” Id. ¶¶ 23-27. According to Schwartz, “Inmates are afraid to file grievances/complaints and afraid to provide testimony during investigations. Pressure to withdraw complaints and other forms of intimidation are common.” Id. ¶ 60. Schwartz attributes this situation to RJD’s “dysfunctional staff culture,” which “will not be changed quickly or easily.” Id. ¶ 93. According to Schwartz, this dysfunctional culture stems in part from the ineffectiveness of CDCR’s system for investigating misconduct and disciplining staff; the investigations of staff misconduct at RJD are incomplete, unprofessional, and biased against incarcerated complainants and witnesses. Id. ¶¶ 93, 40-47, 84, 181, 187, 273, 276, 327. Schwartz opines that inmate testimony is often discounted or ignored and that plagiarism and other collusion in staff

reports is disregarded. *Id.* ¶¶ 40-49. Schwartz notes that staff is disciplined primarily when there is video evidence or staff reports of misconduct. *Id.* ¶¶ 53, 126, 127, 172, 208, 210, 219.

Defendants have not proffered any evidence to dispute Schwartz's conclusions that, despite the existence of policies and procedures for investigations of and discipline in connection with staff misconduct, the policies and procedures are ineffective because they are not properly followed when it comes to staff misconduct at RJD. To the contrary, Defendants' own expert, Ken McGinnis, agrees that "there have been breakdowns and failures in the decisions of those involved in the [investigation and disciplinary] processes that have resulted in inappropriate outcomes." McGinnis Decl., Ex. B. at 8-9, Docket No. 3006-2.

Schwartz's opinions are supported by the fact that the current investigation and discipline system has resulted in only nine terminations of RJD staff since 2017 for misconduct in which the victim was an inmate; only two of these dismissals are final. *See* Miller Decl. ¶¶ 34-36, Docket No. 3006-1. One of these terminated staff members was reinstated, and another resigned before the termination became final. *Id.* Each of these terminations involved misconduct against a disabled inmate. *See* Grunfeld Decl. ¶ 39, Docket No. 3023-5. Each of the terminations was based, at least in part, on either a video or a staff report of the misconduct. *Id.* ¶ 40. Plaintiffs represent, and Defendants do not dispute, that no terminations of RJD staff have occurred where no video or staff report of misconduct was available. Further, there have been no reports of staff misconduct made by correctional staff who witnessed another correctional officer engaged in misconduct. Defs.' Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 257, Docket No. 2922-1.

Out of the forty-eight "actionable" allegations of misconduct identified in the Bishop Report, only two resulted in any discipline. *See* Grunfeld Decl., Ex. OO, Docket No. 3023-5.

Plaintiffs' other expert, Eldon Vail, is a former correctional administrator with thirty-five years of experience working in and administering adult correctional institutions. Vail Decl. ¶ 3, Docket No. 2020-5. He has served as the Warden of three adult correctional institutions, and he served as the Secretary of the Department *823 of Corrections of Washington for four years. *Id.* ¶ 4. As part of his assignment, Vail reviewed the declarations of inmate-declarants, relevant CDCR policies, and various other case materials and filings. *Id.* ¶ 10. Vail concludes that there is a pattern of violence

against class members at RJD and that staff at RJD routinely use force against class members after failing to recognize and reasonably accommodate inmates' disabilities. *Id.* ¶¶ 13, 4, 27, 30. In his opinion, the level of force used by RJD staff against class members often is excessive and the frequency with which such force is used is "startling." *Id.* According to Vail, the "unnecessary and excessive use of force, including closed fist punches and kicks, that result in serious injury to the class members is far beyond the norm found in other institutions or jurisdictions of which I am aware." *Id.* ¶ 13. Vail also identified a pattern of retaliation against class members who report abuse, and widespread fear among class members of reporting allegations of staff misconduct as a result. *Id.* ¶¶ 16, 59-62, 88.

Vail reviewed some of the confidential closure memoranda regarding the follow-up investigations of the allegations described in the Bishop Report. Vail Decl. ¶¶ 41-51, Docket No. 3023-9. He opines that these investigations were inadequate. *Id.* (concluding that "the follow-up investigations, or lack thereof, [were] shocking" and that investigators "demonstrate[d] flawed investigative techniques and bias against incarcerated people"). For example, Vail notes that investigators deemed allegations that certain RJD officers allowed inmates into certain cells to steal other inmates' property to be "unfounded" even though the inmate who made the allegations told investigators that he himself was allowed by those RJD officers to go into cells to steal property, and that he did so often. *Id.* ¶¶ 42-44. As another example, an inmate told investigators that he had been hired by an RJD officer to assault other inmates; that allegation also was deemed to be unsubstantiated. *Id.* ¶¶ 49-50.

Defendants admit that, as of 2018, RJD had "serious problems" derived from staff misconduct. *See, e.g.,* Defs.' Resp. at 1, Docket No. 3006 ("Defendants recognize that the R.J. Donovan Correctional Facility has challenges necessitating support."); *id.* at 18 (acknowledging that in 2018 "incidents of staff misconduct were occurring on [RJD]'s Facility C at an unacceptable rate"); McGinnis Decl., Ex. B at 41, Docket No. 3006-2 ("[C]DCR, by its own reports and documents, acknowledged a problem of staff misconduct at RJD and an environment that needed to change."). Defendants also admit that there is still "staff misconduct that does occur" at RJD. *See* Defs.' Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 267, Docket No. 2922-1.

In July 2020, the Court ordered the transfer of two class members out of RJD to other prisons based on evidence that these class members had suffered retaliation and were at imminent risk of suffering harm for submitting declarations in support of the enforcement motions. Orders, Docket Nos. 2978, 2979, 3025. One of these class members alleged that he received another threat on the eve of his transfer out of RJD in the form of a note that was signed with the initials of a correctional officer gang. See Godbold Decl., Ex. A-D, Docket No. 3017; Grunfeld Decl., Ex. Q-S, Docket No. 3023-5. Defendants have not submitted any evidence to dispute this new allegation, which suggests that RJD staff continue to engage in gang-like conduct. Defendants agreed to transfer a third inmate who witnessed the retaliation against the two class members who were transferred after that third inmate alleged that he faced retaliation for having assisted with the transfer of the other two class *824 members. See Grunfeld Decl. ¶ 21 & Ex. H, T, U, Docket No. 3023-5.

III. Staff at RJD violated the ARP and the Court's prior orders and injunctions

A. Staff at RJD denied class members reasonable accommodations for their disabilities

As will be discussed in the Conclusions of Law below, a violation of the ADA's anti-discrimination and access provisions, 42 U.S.C. § 12132, which are incorporated into Section I of the ARP, occurs where a disabled individual is denied a reasonable accommodation so that he can enjoy benefits of a public entity's services, programs, or activities, or is otherwise discriminated against by the public entity, by reason of his disability. ARP at 1, Docket No. 681. A failure to provide a reasonable accommodation can occur where a correctional officer could have used less force or no force during the performance of his penological duties with respect to a disabled person.

[1] [2] Plaintiffs have submitted eighty-seven declarations from sixty-six current or former inmates at RJD.¹⁰ These declarations describe dozens of incidents in which staff at RJD denied class members reasonable accommodations for their disabilities.¹¹ Some of the incidents involve the use of force against class members even though they appear to have posed no imminent threat to staff or other inmates. The incidents are from 2017, 2018, and 2019, and some are as recent as April 2020. The incidents took place at various locations at RJD and are not limited to Facility C. For none of these incidents have Defendants submitted evidence

to show that the denial of reasonable accommodations, or the use of unnecessary force, which itself can be a denial of a reasonable accommodation, was necessary for the performance of legitimate penological duties. The following are illustrative examples.

An RJD officer denied a class member a reasonable accommodation for his hearing disabilities when he tried to communicate with the class member. Freedman Decl., Ex. 7, ¶¶ 1-26, Docket No. 2921-6 (December 2019, Facility A). The class member tried to indicate to the officer that he had a hearing disability by pointing to his disability vest and his ears, and he tried to request that they should communicate in writing by making a writing motion with his hands. *Id.* Instead of using an ADA-appropriate technique for communicating with the class member, the RJD officer yelled at the class member and then *825 punched the class member in the face. *Id.* As a result of this incident, the class member is afraid to ask staff for writing supplies so that he can communicate, for fear of being assaulted again. *Id.* ¶¶ 27-28.

A class member with mobility disabilities who uses a cane and walker asked an RJD officer not to handcuff him behind his back because his disability requires a handcuffing accommodation. Freedman Decl., Ex. 10 ¶¶ 1-11, Docket No. 2921-6 (July 2019, Facility A). Instead of accommodating him, the officer body-slammed the class member to the ground, causing him to hit his head on the concrete floor and lose consciousness for several seconds. *Id.* After he regained consciousness, the officer put his knee on the class member's throat and then kneed him in the face. *Id.* ¶¶ 12-13. The class member had to be taken to the hospital, where he was diagnosed with acute contusions to the back of his neck and head; he was transported back to RJD in a van that was not accessible. *Id.* ¶ 15; Freedman Decl., Ex. 10a.

Other class members with mobility disabilities who requested a handcuffing accommodation also were thrown to the ground by RJD officers instead of accommodated. Freedman Decl., Ex. 6 ¶¶ 1-8, Docket No. 2921-6; Freedman Decl., Ex. 8 ¶¶ 1-9, 17-18, Docket No. 2921-6 (January 2020, C14 Unit); Freedman Decl., Ex. 45 ¶¶ 1-10, 17-18, Docket No. 2921-7 (September 2019, Facility A); Freedman Decl., Ex. 26 ¶¶ 1-14, Docket No. 2921-6 (July 2019, Facility A).

A class member with incontinence issues asked an RJD officer to allow an ADA shower after an incontinence incident, and the officer refused. Freedman Decl., Ex. 35 ¶¶ 1-11, Docket No. 2921-7 (February 2019, Facility A). Other

class members also report being denied requests for showers or cleaning supplies after incontinence incidents. Freedman Decl., Ex. 6 ¶ 20, Docket No. 2921-6; Freedman Decl., Ex. 14 ¶ 12, Docket No. 2921-6.

RJD officers have forced some class members to stand for long periods of time or to walk significant distances without their walkers or other assistive devices despite the class members' requests for accommodations; in some cases, this has caused the class members' disabilities to worsen. See, e.g., Freedman Decl., Ex. 11 ¶¶ 1-12, 19, Docket No. 2921-6 (September 2018, Facility A).

RJD officers also have denied class members' requests for wheelchair pushers. Freedman Decl., Ex. 6 ¶ 20, Docket No. 2921-6; Freedman Decl., Ex. 35 ¶¶ 1-11, Docket No. 2921-7 (February 2019, Facility A).

A class member was rendered unable to move his wheelchair in his own cell and was forced to sleep on the floor because an RJD officer conducted a search in the cell and left his property in disarray, rendering the cell inaccessible. Freedman Decl., Ex. 53 ¶¶ 1-16, Docket No. 2921-6 (December 2016). The class member requested assistance to restore his cell to an accessible condition, but RJD staff ignored his requests. Id. When the class member filed a grievance, the same RJD officer trashed his cell again. Id. (2007).

Many class members who use wheelchairs or walkers describe RJD officers intentionally closing cell doors on them and other class members with mobility disabilities despite requests for additional time to enter and exit cells in light of their impairments. See, e.g., Freedman Decl., Ex. 10 ¶ 21, Docket No. 2921-6 (July 2019, Facility A); Freedman Decl., Ex. 11 ¶¶ 20-21, Docket No. 2921-6 (June 2019, Facility A); Freedman Decl., Ex. 17 ¶¶ 1-12, Docket No. 2921-6 (December 2019, Facility D); Freedman Decl., Ex. 25 ¶¶ 1-23, Docket No. 2921-6 (April 2019, Facility C); Freedman Decl., Ex. 40 ¶ 7, Docket No. 2921-7; Freedman Decl., Ex. 55 ¶¶ 1-10, Docket No. 2921-6 (December 2019).

Declarants also describe RJD officers throwing class members out of their wheelchairs and then slamming them into the ground or beating them. See, e.g., Freedman Decl., Ex. 27 ¶ 16, Docket No. 2921-6 (2018); Freedman Decl., Ex. 38 ¶¶ 16-18, Docket No. 2921-6 (July 2018).

A class member asked an RJD officer for help in lifting a heavy package of mail and the officer refused. Freedman

Decl., Ex. 21 ¶¶ 1-10, Docket No. 2921-6 (August 2018, Facility C). When the class member stated that he intended to file a complaint based on the officer's refusal, the officer pepper sprayed the class member in the face, hit him in the face with the pepper spray canister, and then kicked him. Id.

A class member with a vision disability asked RJD staff to stop shining his flashlight in his eyes because it exacerbates his disability and is painful. Freedman Decl., Ex. 23 ¶¶ 1-12, Docket No. 2921-6 (November 2018, Facility A). When the officer failed to stop and the class member asked to speak with a sergeant, another officer punched the class member in the jaw, causing him to fall on the floor and lose consciousness. Id. The officer later threatened the class member to charge him with a false rules violation report (RVR) if he filed a grievance about the incident. Id.

A class member was launched from his wheelchair and onto the ground when a wheelchair pusher pushed his wheelchair into an obvious large hole in the pavement. Freedman Decl., Ex. 42 ¶¶ 1-17, Docket No. 2921-6 (August 2019). The class member hit his head and knee on the pavement because he was in handcuffs and could not break his fall. Id. After the class member filed a complaint against the wheelchair pusher, the wheelchair pusher, who was present during the class member's interview in connection with the complaint, threatened the class member. Id. ¶¶ 13-14. The class member now avoids asking staff for ADA showers or toilet paper for fear of retaliation. Id. ¶ 18.

Thirty-three of the inmate declarations describe incidents that have occurred since February 2020, when Plaintiffs filed the present enforcement motion. These are a few examples.

In March 2020, an RJD officer denied a class member with mobility and developmental disabilities a reasonable accommodation in the form of an alternative handcuffing method. Freedman Decl., Ex. 23 ¶¶ 9-10, Docket No. 2947-5 (Facility A). When the class member became upset after the officer threatened him with pepper spray, another officer activated an alarm and summoned a group of officers who, upon their arrival, tackled the class member without saying or doing anything to try to deescalate the situation without the use of force. Id. The class member hit his head on the ground and blacked out. Id. When the inmate woke up, his eyes were burning from what he suspected was pepper spray. Id. ¶ 10. The officers then put a cover over the class member's head, handcuffed his hands behind his back, shackled his legs, and carried him into a sally port, where they then dropped him

forcefully, causing him to hit his head against the wall. *Id.* ¶¶ 1-3. Another inmate who witnessed this incident submitted a declaration corroborating the class member's version of the events, adding that the class member never tried to harm any of the officers and ducked to protect himself once the group of officers arrived to tackle him. Freedman Decl., Ex. 14 ¶¶ 1-6, Docket No. 2947-5. The witness also saw the officers use pepper spray on the class member. *Id.*

In April 2020, class members with mobility disabilities had a cell door closed on *827 them. Freedman Decl., Ex. 13 ¶¶ 13-15, Docket No. 2947-5 (Facility D); Freedman Decl., Ex. 24 ¶¶ 1-5, Docket No. 2947-5 (Facility A).

The declarants believe, based on their experiences and observations at RJD, that RJD staff target inmates with disabilities for mistreatment because they are more vulnerable and are less likely to fight back. *See, e.g.*, Freedman Decl., Ex. 13 ¶ 16, Docket No. 2947-5; Freedman Decl., Ex. 10 ¶¶ 1-11, Docket No. 2921-6; Freedman Decl., Ex. 11 ¶ 39, Docket No. 2921-6; Freedman Decl., Ex. 23 ¶ 28, Docket No. 2921-6; Freedman Decl., Ex. 26 ¶ 18, Docket No. 2921-6; Freedman Decl., Ex. 25 ¶¶ 1-23, Docket No. 2921-6; Freedman Decl., Ex. 55 ¶ 11, Docket No. 2921-6; Freedman Decl., Ex. 38 ¶ 19, Docket No. 2921-6. These beliefs are consistent with the allegations described in the Bishop Report and the memoranda of the two correctional investigative sergeants, and with the opinions of Plaintiffs' experts.

The Court finds the descriptions of the incidents in the declarations submitted by Plaintiffs to be credible. The declarants paint a very consistent picture of the conduct by RJD staff that disabled inmates experience. The incidents described in the declarations also are highly consistent with those that the Bishop Report described as “actionable” and the OACC and two correctional investigative sergeants described as worthy of further investigation and immediate action. Further corroboration is found in the medical records for some of the class members who suffered injuries requiring medical attention as a result of the incidents. *See, e.g.*, Freedman Decl., Ex. 10a, Docket No. 2921-6; Freedman Decl., Ex. 23 ¶ 14 & Ex. 23a, Docket No. 2921-6; Freedman Decl., Ex. 25a, Docket No. 2921-6; Freedman Decl., Ex. 42a, Docket No. 2921-6. The descriptions also are consistent with those in declarations by other inmates. *See, e.g.*, Freedman Decl., Ex. 32 ¶¶ 15-16, Docket No. 2921-6 (witnessed incident described in Exhibit 8 to the Freedman Declaration); Freedman Decl., Ex. 14 ¶¶ 1-6, Docket No. 2947-5 (witnessed incident described in Exhibit 23 to the

Freedman Declaration). The declarations also are consistent with videos that Plaintiffs submitted, which show wheelchair-bound inmates being thrown out of their wheelchairs by RJD staff even though they appeared to pose no threat to staff or other inmates. *See* Grunfeld Decl., Ex. HH, II, JJ, Docket No. 3023-5.

The Court finds, based on the foregoing, that RJD staff have denied reasonable accommodations to class members on many occasions, and that such denials were by reason of the class members' disabilities.

Defendants have not offered any declarations or other evidence to dispute the sworn statements of the declarants with respect to the incidents in question. Notably, many of the declarations identify the officers who engaged in the conduct at issue by name, but none of the identified officers has submitted a declaration disputing the inmate's version of the events. The declarants' version of the incidents is, therefore, uncontroverted.

Defendants attack the declarations on the grounds that (1) eleven of the declarants are not class members; (2) one of the declarants was not a class member at the time the incident alleged in his declaration occurred; (3) eighteen of the declarants are no longer at RJD; (4) “many” of the declarants do not allege that the staff misconduct occurred because of their disability; (5) those who do allege that the staff misconduct was connected to their disability “provide little or no factual support” for the allegation; and (6) Defendants have sent letters to Plaintiffs' counsel in which Defendants state that certain inmate allegations of staff misconduct lack merit or *828 have been referred to the Office of Internal Affairs for investigation. Defs.' Resp. at 15.

[3] Defendants' arguments are unpersuasive. First, the Court finds that the declarations submitted are relevant and probative as to whether class members' rights under the ARP and the ADA were violated, regardless of whether the declarant is currently a class member. Many of the declarants who are not class members describe incidents they observed in which RJD staff denied class members reasonable accommodations or otherwise discriminated against class members. Second, the Court finds that Defendants have provided no support for their assertions, either in their response to the present motion or in letters they have sent to Plaintiffs' counsel, that certain of the allegations in the declarations lack merit. Defendants do not identify which of the allegations have been investigated, how they

were investigated, when, and by whom, and how such investigations demonstrated that the allegations lack merit. Further, Defendants' assertions that certain of the allegations lack merit contradict Defendants' representation in their briefs that they take each of the declarations "seriously" and for that reason have referred all of them to the Office of Internal Affairs for further investigation.

Third, Defendants challenge certain of the declarations on the ground that the declarants do not explicitly establish a causal link between the violations of the ARP and ADA that they describe and their disabilities. The Court is not persuaded. This causal link need not be expressly alleged by each of the declarants. Some of the misconduct could only be committed because the victim was disabled, such as throwing him out of a wheelchair or closing a cell door on a person who walks slowly with a walker. In addition, the causal link can be inferred from the totality of the allegations in the declarations; the allegations described and credited in the Bishop Report, the OACC letter, and the memoranda of the two correctional investigative sergeants; and from the undisputed evidence discussed in more detail above, which shows that it is a part of the staff culture at RJD to target inmates with disabilities for mistreatment, abuse, retaliation, and other improper behavior. The record supports a finding that the incidents described in the declarations are manifestations of that culture.

B. RJD staff interfered with class members' rights under the ADA

As will be discussed in the Conclusions of Law below, a violation of the ADA's anti-interference provisions, 42 U.S.C. § 12203(b), occurs where (1) a person threatens, intimidates, or coerces a person with a disability; (2) the threat, intimidation, or coercion has a nexus to the exercise or enjoyment of an ADA right; and (3) the disabled person suffers distinct and palpable injury as a result, by virtue of giving up his ADA rights or some other injury which resulted from his refusal to give up his rights, or from the threat or intimidation or coercion itself.

[4] Plaintiffs have submitted declarations by class members stating that RJD staff have threatened, intimidated, or coerced them when they have requested reasonable accommodations or have filed or stated they would file ADA-related grievances, and that this has caused them to refrain from requesting accommodations or filing ADA grievances, or to experience severe emotional distress. The declarations, which are uncontested, establish that RJD staff have violated 42 U.S.C. § 12203(b). Below, the Court describes a few

examples. Some of these incidents were also discussed in the previous section *829 of this order because they involve denials of reasonable accommodations, as well as violations of § 12203(b).

An elderly class member who uses a walker and has incontinence issues withdrew an ADA complaint about an officer who repeatedly closed his cell door on him, after another officer asked him about the complaint in an aggressive and threatening manner. Freedman Decl., Ex. 36, ¶¶ 1-10, 15 (September 2019, D20 unit). Weeks later, when a different RJD officer closed the class member's cell door on him, hurting his rib, the class member did not file a grievance against the officer because of what happened with his prior complaint. *Id.* ¶¶ 11-12 (December 2019, D20 unit). As a result of these incidents, the class member has not asked for certain accommodations, such as for an extra shower or extra linens after an incontinence incident. *Id.* ¶ 15. The class member prefers to sit in soiled clothes rather than risk retaliation by RJD staff. *Id.* ¶ 16.

An RJD officer, instead of accommodating a class member's deafness when trying to communicate with him, yelled at the class member and then punched him in the face. Freedman Decl., Ex. 7, ¶¶ 1-26, Docket No. 2921-6 (December 2019). As a result of this incident, the class member does not ask staff for writing supplies as accommodations for his deafness for fear of being assaulted again. *Id.* ¶¶ 27-28.

A class member who requested a handcuffing accommodation and was slammed to the ground and then kicked by RJD officers instead of being accommodated is now afraid of requesting disability accommodations as a result the incident. Freedman Decl., Ex. 8 ¶¶ 1-9, 17-18, Docket No. 2921-6 (January 2020, C14 Unit).

An RJD officer closed the cell door on a class member who uses a walker, trapping him between the door and the wall, and causing him to cry out in pain. Freedman Decl., Ex. 13 ¶¶ 13-15, Docket No. 2947-5. The class member did not file a grievance against the officer for fear of retaliation. *Id.* ¶ 15.

A class member with mobility disabilities who requested a handcuffing accommodation and was thrown to the ground by RJD staff instead of accommodated did not file a grievance against the officer for fear of retaliation. Freedman Decl., Ex. 6 ¶¶ 1-8, 14, Docket No. 2921-6.

A class member with a vision disability asked RJD staff to stop shining his flashlight in his eyes because it exacerbates his disability and is painful. Freedman Decl., Ex. 23 ¶¶ 1-12, Docket No. 2921-6 (November 2018, Facility A). When the class member asked to speak with a sergeant, another officer punched the class member in the jaw, causing him to fall on the floor and lose consciousness. *Id.* The officer later threatened to charge the class member with a false rules violation report if he filed a grievance about the incident. *Id.* The situation made the class member feel powerless and suicidal. *Id.* ¶ 15.

A class member who had cell doors closed on him, and who was made to walk a long distance without his walker, does not ask for accommodations such as extra toilet paper to manage his incontinence for fear of getting hurt by RJD staff. Freedman Decl., Ex. 11 ¶¶ 20-21, 37, Docket No. 2921-6 (June 2019, Facility A).

A class member who has PTSD no longer asks for accommodations for his incontinence disability because an RJD officer has repeatedly tried to trigger his PTSD by making loud noises after the class member filed grievances against the RJD officer based on the officer's failure to provide him with incontinence supplies. Freedman Decl., Ex. 14 ¶¶ 1-12, 19, Docket No. 2921-6.

***830** An older class member who uses a wheelchair and suffers from incontinence filed an ADA grievance after an officer refused to call a wheelchair pusher, denied him access to a shower to clean himself after an incontinence incident, and made derogatory comments about his use of a wheelchair. Freedman Decl., Ex. 35, ¶¶ 4, 8-11 (February 2019). The class member dropped the complaint and has stopped filing disability-related requests and complaints because, based on the RJD officer's behavior, he feels that the officer could make his life “far worse if [he] continued to speak out” about the denials of accommodations. Freedman Decl., Ex. 35, ¶¶ 4, 8-12, Docket No. 2921-7.

As discussed above, Defendants have not submitted any evidence, such as declarations by the officers who allegedly engaged in intimidation, threats, or coercion, to dispute the occurrence of these incidents and similar incidents described in the declarations that Plaintiffs submitted.

The Court finds the inmate declarants to be credible for the same reasons discussed in the prior section, and because of

the absence of any evidence that contradicts the version of the events described in these declarations.

Defendants argue that they have not violated § 12203(b) because the alleged conduct by RJD staff has not stopped class members from filing ADA requests or grievances. In support, they submitted data for the years 2017 to 2019 showing that class members, including some of the ones who filed declarations, filed ADA requests and grievances. *See* Olgin Decl., Docket No. 3006-3; Olgin Decl., Docket No. 3050. These data show that class members filed some ADA requests and grievances, but do not negate the possibility that class members refrained from filing ADA requests or grievances that they would have filed but for the threats, intimidation, or coercion by RJD staff. By definition, these data do not take into account ADA requests and grievances that class members did not make or submit, nor do they take into account requests and grievances that class members withdrew. As discussed above, some of the declarants state that they filed some ADA requests or grievances but later withdrew them, or that they decided not to make new requests because of the threats, intimidation, or coercion they experienced. Further, the data that Defendants submitted show that more than half of the class members housed at RJD from 2017 through 2019 did not file a single ADA request or grievance during that time period, which supports the inference that some class members are choosing to forgo their ADA rights as a result of threats, coercion, or intimidation by RJD staff. *See* Olgin Decl., Docket No. 3050; Grunfeld Decl. ¶¶ 28-29, Docket No. 3051-4. Accordingly, the Court finds that Defendants' data do not impact its finding that Defendants violated class members' rights under § 12203(b).

IV. Defendants failed to log instances of non-compliance with the ARP and ADA in the Court-ordered accountability logs. As noted above, the Court ordered Defendants to track allegations of non-compliance with the ARP and the Court's remedial orders starting in 2007. *See* 2007 Injunction; Order modifying 2007 Injunction. Defendants' tracking obligations are set forth in the Court's order of December 29, 2014, which modifies the 2007 injunction and clarifies Defendants' reporting obligations with respect to the accountability log. It provides:

Defendants, their agents and employees (Defendants) shall track any allegation that any employee of the Department of Corrections and Rehabilitation was responsible ***831** for any member of the Plaintiff class not receiving access to services, programs, activities, accommodations or assistive

devices required by any of the following: the Armstrong Remedial Plan, the Americans with Disabilities Act or this Court's prior orders. Allegations to be tracked include, but are not limited to, those received from CDCR staff, prisoners, Plaintiffs' counsel, administrative appeals and third parties. All such allegations shall be tracked, even if the non-compliance was unintentional, unavoidable, done without malice, done by an unidentified actor or subsequently remedied.

Order Modifying 2007 Injunction at 1, Docket No. 2479 (emphasis added).

Plaintiffs argue that Defendants are in violation of that requirement because they failed to log certain allegations of staff misconduct at RJD, including (1) allegations that RJD staff denied class members reasonable accommodations for their disabilities; (2) allegations that class members suffered retaliation for filing complaints against RJD staff or otherwise participating in investigations regarding RJD staff misconduct; (3) allegations that class members suffered physical¹² or verbal abuse¹³ by RJD staff; and (4) allegations described in the Bishop Report that involved class members. See Freedman Decl. ¶ 280, Docket No. 2921-2.

Defendants do not dispute that they have failed to log the allegations that Plaintiffs have identified. Defendants argue that their failure to log these allegations is justified because such allegations do not involve the denial of access to services, programs, activities, accommodations, or assistive devices, which is what the Court's Order Modifying the 2007 Injunction requires.

[5] The Court finds that its Order Modifying the 2007 Injunction requires Defendants to log allegations only to the extent that they involve the denial of or failure to receive access to services, programs, activities, accommodations, or assistive devices. Order Modifying 2007 Injunction at 1, Docket No. 2479. This Order does not require Defendants to log allegations of discrimination or retaliation in violation of the ADA (or otherwise) that do not involve the denial of access to services, programs, activities, accommodations, or assistive devices.

Nonetheless, most of the allegations that Plaintiffs contend were not logged by Defendants involve failures to provide reasonable accommodations to class members, such as by denying class members alternative handcuffing methods, wheelchairs, and additional time to enter or leave a cell. See Freedman Decl. ¶ 280. Defendants do not dispute that these

allegations involve denials of reasonable accommodations required by the ARP and ADA. Defendants' failure to log these allegations constitutes a violation of the Order Modifying the 2007 Injunction.

The parties disagree as to whether allegations involving physical or verbal abuse against a class member should be logged. As discussed in more detail in the Conclusions of Law, a denial of reasonable accommodations in violation of the ADA can take place where a law enforcement officer could have used less force or no force *832 during the performance of his law-enforcement duties with respect to a disabled person. When that rule is applied in the context of correctional facilities, it follows that a denial of reasonable accommodations in violation of the ADA can take place where a correctional officer could have used less force or no force during the performance of his penological duties with respect to a disabled person. Accordingly, allegations that fall in this category must be logged by Defendants, including those that were described in the Bishop Report.

Plaintiffs have not shown that verbal abuse, without more, can qualify as a failure to provide a reasonable accommodation in violation of the ADA. Accordingly, the Court denies, without prejudice, Plaintiffs' request to find that Defendants violated the Court's prior orders and injunctions when they failed to log allegations of verbal abuse.

The parties disagree as to whether allegations of intimidation or retaliation in violation of the ADA must be logged. As noted, the Order Modifying the 2017 Injunction does not require Defendants to log such allegations if they do not involve the denial of access to services, programs, activities, accommodations, or assistive devices. Accordingly, Defendants' failure to date to log allegations of this type does not constitute a violation of that order.

[6] The parties' and the Court's intent at the outset of the remedial phase of this litigation, however, was to require Defendants to operate their facilities and programs in accordance with the ADA and RA. Stipulation and Order ¶ 12, Docket No. 148. Tracking alleged violations of the ADA's anti-retaliation and anti-interference provisions, 42 U.S.C. § 12203(a) and (b), would be consistent with that intent, as it would promote Defendants' compliance with all provisions of the ADA. Accordingly, the Court will modify its prior orders and injunctions to require Defendants to track allegations of violations of the ADA's anti-retaliation and anti-interference provisions.

V. Additional remedial measures are necessary to end the ongoing violations of the ARP and ADA

[7] The Court finds that the root cause of the violations of the ARP and class members' ADA rights is the systemic and long-term failure by CDCR to effectively investigate and discipline violations of the ARP and class members' ADA rights by RJD staff. The policies, procedures, and monitoring mechanisms currently in place, despite recent modifications made by Defendants, have proven to be ineffective at curbing the violations. This is evidenced by the multiple ARP and ADA violations that have occurred since the present enforcement motion was filed in February 2020, which are of the same nature as the ones that Plaintiffs' counsel first reported to Defendants in September 2016.

The ineffectiveness of the policies and procedures currently in place appears to be the consequence of two factors. First is the deeply ingrained staff culture at RJD of looking the other way, so to speak, whenever staff misconduct occurs or is alleged by an inmate, notwithstanding any official requirements to report and investigate the misconduct. This culture is enforced through retaliatory acts by staff who wish to maintain the culture against inmates and other staff who might report acts of misconduct, and by CDCR's failure to conduct prompt and effective investigations of allegations of misconduct, particularly where there is no video evidence or corroboration by staff of the misconduct. Second is the reluctance of inmates and staff at RJD to assist with the documentation and investigation of acts of misconduct by staff for fear of retaliation. Each of *833 these factors appears to feed the other in a cycle that has proven to be difficult to break.

Defendants make several arguments to try to show that requiring them to implement additional remedial measures is unnecessary, but these arguments are unpersuasive.

Defendants contend that further remedial measures are premature at this juncture because investigations of class members' allegations have not yet been completed. The Court is not convinced that the pendency of the investigations warrants a delay in implementing additional remedial measures. Defendants have provided no timeline for when the Court could expect the investigations to be completed; based on the record, it seems reasonable to expect that investigations could take many months, if not years. As discussed above, the OIG, in reviewing CDCR's response to class members' allegations of staff misconduct, noted that CDCR's investigations of such allegations had been

inordinately delayed or abandoned. The Court is reluctant to allow further violations of class members' rights under the ARP and ADA to occur while the investigations are pending. Further, the Chief Ombudsman, Associate Warden Bishop, the OACC, and the two correctional investigative sergeants from outside of RJD recommended that CDCR take immediate concrete actions, including installing new surveillance cameras, based on allegations of staff misconduct that had not yet been proven. Their recommended remedial measures were not contingent on the completion of investigations of the allegations. The allegations of staff misconduct alone, because of their number and consistency, were sufficient for these state officials to decide that immediate remedial actions were necessary. Here, the Court has before it actual unrefuted evidence that violations of class members' rights under the ARP and ADA have occurred, which is more than the state officials had when they recommended that CDCR take immediate remedial action.

Defendants next contend that conditions at RJD have improved since 2017 as a result of the steps they have taken to date to change the culture and improve staff accountability there, such as providing staff with additional training, replacing certain supervisors, reducing blind spots, taking disciplinary actions against nine RJD officers, assigning additional staff to address complaints about conditions at RJD, and deploying the Allegation Inquiry Management System (AIMS), which is a new system implemented at RJD in January 2020 that is intended to provide second-level review outside of RJD of staff misconduct complaints that involve serious bodily injury. Miller Decl. ¶¶ 11-16, 21-22, 34-52, 53-57; McGinnis Decl., Ex. B at 18-22, 41.

The only evidence that Defendants cite to support the proposition that conditions at RJD have improved as a result of the measures they have implemented is data showing that reported incidents involving the use of force (UOF) have decreased on Facility C by forty-four percent from 2018 to 2019, Miller Decl. ¶ 65, and that staff misconduct complaints on Facility C have decreased by forty percent over the same time period, *id.*

The Court finds that reliable inferences about whether conditions for class members at RJD have improved cannot be drawn from Defendants' data. First, Defendants have not shown that a reduction of UOF and staff misconduct incidents on Facility C, which is the focus of their analysis, indicates a similar reduction on other facilities at RJD.

The violations of class members' ARP and ADA rights have taken place throughout RJD, not just on Facility C. Plaintiffs represent, and Defendants *834 do not dispute, that UOF incidents increased from 2017 to 2019 on Facility D by fifty percent and on Facility A by almost sixteen percent. Grunfeld Decl. ¶¶ 64-65, Docket No. 3023-5. This increase, and the inmate declarations now before the Court, are consistent with the inference that the measures that Defendants have implemented have not been effective at stopping or even reducing acts of misconduct by RJD staff against class members. As discussed above, some of the incidents described in the inmate declarations took place in facilities other than Facility C in April 2020, and in the case of the two inmates who were transferred out of RJD pursuant to the Court's order, as late as June 2020.

Second, Defendants acknowledged at the August 11 hearing that the data upon which they rely capture only UOF or staff misconduct incidents that were reported. The Court cannot draw any conclusions from this data because the record shows that a significant number of UOF or staff misconduct incidents are not reported and therefore not reflected in Defendants' data. For example, the Bishop Report states that sixty-six inmates out of the 102 who were interviewed (or seventy percent) responded that they expected a negative outcome if they reported staff misconduct or the use of excessive force. Bishop Report at 9. That number may actually be higher, because the “inmates who stated they were neutral or refused to answer [the question] sometimes stated they would not answer the question for fear of reprisal.” *Id.* Additionally, many of the inmate declarations now before the Court also state that class members are reluctant to report staff misconduct or the improper use of force for fear of retaliation or further abuse.

Because Defendants' UOF and staff misconduct data likely are under-representative of the actual UOF or staff misconduct incidents that take place at RJD, the Court cannot find, based on the data, that UOF and staff misconduct incidents have decreased at RJD as a result of the measures that Defendants have implemented thus far. It is possible that the actual number of UOF or staff misconduct incidents has remained constant, or even increased, since 2017, and that the decline in reported UOF or staff misconduct incidents is merely the result of increasing unwillingness on the part of inmates to report the incidents. *See* Vail Decl. ¶ 34, Docket No. 3023-9 (“Given the history of retaliation at RJD, I am not convinced that a reduction in staff misconduct complaints at Facility C represents progress.”).

The Court does take note of the fact that Defendants' data show that twenty percent to twenty-four percent of the reported UOF incidents between 2017 and 2019 involved a class member. Because class members are in wheelchairs, have severe mobility issues, have hearing or visual impairments, or suffer from other significant impairments, common sense suggests that the proportion of reported UOF incidents involving class members should be much lower, because class members do not pose as much of a threat to staff or other inmates as other inmates who are not disabled. The relatively high incidence of reported UOF incidents involving class members is not explained by Defendants. The Court finds that this high incidence of UOF incidents involving class members lends additional credibility to the inmate declarations, and the allegations described in the Bishop Report and correctional investigative sergeants' memoranda, that staff at RJD target class members and other vulnerable inmates for physical and other forms of abuse.

Defendants and their expert also posit that no additional remedial measures are *835 necessary because the current policies and procedures “are adequate when properly utilized and applied in the review of staff misconduct including excessive use of force.” McGinnis Decl., Ex. B at 8-9, Docket No. 3006-2 (emphasis added). This argument misses the point. It fails to acknowledge that the evidence shows that the current policies and procedures are not being properly utilized and applied. As discussed above, the record shows that CDCR's investigation of staff misconduct incidents has been deficient and slow notwithstanding the current policies and procedures. Further, the implementation of the new AIMS system, which Defendants tout as one of the most significant improvements they have enacted to respond to allegations of staff misconduct, is unlikely to be a panacea, at least for class members in this case, because it provides automatic second-level review outside of RJD for allegations of staff misconduct, but only if they involve serious bodily injury. Not every alleged denial of a reasonable accommodation to a class member involves serious bodily injury, yet every such denial should be the subject of a proper, unbiased investigation. Under AIMS, alleged denials of a reasonable accommodation that do not involve serious bodily injury will not receive an automatic second-level review outside of RJD, meaning that if RJD staff determine during the first-level review that the allegations are unfounded, then the inquiry at all levels will end there.

Even with AIMS in place in addition to all of the other changes that Defendants have implemented in the last few years, class members have shown that RJD staff have continued to violate their rights under the ARP and the ADA well into 2020. Defendants themselves admit that misconduct at RJD is ongoing. See Defs.' Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 267, Docket No. 2922-1. For this reason, the Court cannot find that measures that Defendants have implemented recently have been effective or will be effective at stopping the ongoing violations of class members' rights under the ARP and ADA in the absence of additional remedial measures.

The Court finds that adopting a wait-and-see approach would be contrary to the parties' and the Court's intent for the remedial phase of this litigation, which was to bring CDCR into compliance with the ARP and ADA. Pursuant to the parties' agreement, the Court's role during the remedial phase is to give force to that intent. In light of the substantial evidence of noncompliance now before it, and the evidence showing that the current policies and procedures have already proven to be ineffective at bringing Defendants into compliance, the Court finds that requiring Defendants to implement additional remedial measures is both necessary and warranted.

Plaintiffs request that the Court require Defendants to develop a plan within thirty days to implement the additional remedial measures described in more detail below. The plan would be implemented within forty-five days after the parties meet and confer. See Revised Proposed Order at 17-21, Docket No. 3024-6.¹⁴

The Court finds that requiring Defendants to design, and ultimately implement, a plan that requires them to adopt a combination of certain of the remedial measures *836 that Plaintiffs propose, with modifications, as discussed below, is necessary to prevent further violations of the ARP and class members' ADA rights at RJD. These additional remedial measures are intended and tailored to improve policies and procedures for supervising RJD staff's interactions with inmates, investigating RJD staff misconduct, and disciplining RJD staff by enhancing the process for gathering and reviewing evidence that can be used to hold staff accountable for any violations of the ARP and class members' ADA rights. These additional measures, when considered as a whole, constitute an incremental expansion of processes and systems that are already in place pursuant to the Court's prior orders and injunctions. See, e.g., Order Modifying 2007

Injunction at 1-4, Docket No. 247 (requiring that Defendants follow certain procedures for tracking non-compliance with the ARP, the ADA, and the Court's prior orders; for conducting investigations of employee non-compliance; and for conducting disciplinary proceedings against employees who engaged in noncompliance); Remedial Order and Injunction at 5 (providing for information-sharing with Plaintiffs' counsel for monitoring purposes).

1. Surveillance cameras

[8] Plaintiffs request that (1) Defendants install additional surveillance cameras in all areas at RJD to which incarcerated people have access, including, but not limited to, all exercise yards, housing units, sally-ports, dining halls, program areas, and gyms, within ninety days; (2) CDCR adopt policies and procedures regarding the use of camera footage, including requirements that all footage be retained for a minimum of ninety days, that footage of use of force and other triggering events be retained indefinitely, and that footage, when available, be reviewed and considered as part of the investigation of the incident; and (3) CDCR train RJD staff regarding how and when to request that footage be retained and reviewed.

Both parties and their experts agree that the installation of additional surveillance cameras at RJD is necessary. See, e.g., Defs.' Resp. at 13 (admitting that “[s]urveillance systems are an effective tool to investigate incidents of violence, provide transparency in staff misconduct allegations, and reduce contraband activity”); Schwartz Decl. ¶¶ 87, 94-98; Vail Decl. ¶¶ 83, 94-101. The reason for the consensus is obvious. Video footage provides objective evidence that cannot easily be disregarded. As Defendants' expert explains, a more comprehensive surveillance system:

[W]ill substantially improve the ability of the CDCR and RJD administration to hold staff and inmate [sic] accountable for all inappropriate behavior, provide an efficient tool for internal affairs and criminal investigators to fully resolve complaints and allegations, will serve as a deterrent for inappropriate behavior by both staff and inmates, and provide the facility the ability to monitor locations that are now difficult to monitor on an ongoing basis.

McGinnis Decl., Ex. B. at 27.

Defendants nevertheless oppose Plaintiffs' request to require them to install additional surveillance cameras at RJD for two reasons: (1) they intend to submit a funding request to install them in the future, so an order requiring them to install them now is unnecessary; and (2) installing a video surveillance system at RJD in ninety days as Plaintiffs request is not feasible because, in Defendants' view, it would take at least a year to install and deploy the system. Macomber Decl. ¶¶ 9-13; McGinnis Decl. Ex. B at 27.

The Court is not persuaded. Defendants' arguments fail to acknowledge that violations *837 of class members' rights under the ARP and ADA are likely to continue to take place in the absence of the additional surveillance cameras, and that such a scenario is unacceptable. Because cameras are critical in achieving true accountability and compliance at RJD for the reasons set forth above, the Court finds that the installation of additional surveillance cameras is necessary and that it must be done as soon as possible. Plaintiffs have submitted evidence, which Defendants have not rebutted, showing that surveillance cameras could be installed and fully deployed at RJD within four months. Vail Decl. ¶¶ 59-61, Docket No. 3023-9. In light of the pressing need for additional surveillance cameras at RJD, the Court finds that any burdens associated with installing them on a time frame that is shorter than what Defendants initially anticipated are outweighed by the significant benefits of having additional surveillance cameras at RJD. Defendants already have a contract in place with a vendor for the installation of surveillance cameras at CDCR institutions through June 2023. Diaz Decl. ¶ 42; Macomber Decl. ¶ 12. This existing contract should facilitate the installation and deployment process.

Defendants have not raised an objection in their briefs to Plaintiffs' request that their plan include policies and procedures regarding the use of camera footage and training for RJD staff regarding the same, as discussed in more detail above. In the absence of a showing to the contrary, the Court finds that policies, procedures, and training on the use of camera footage are necessary and should be a part of Defendants' plan.

2. Body cameras

[9] Plaintiffs request that CDCR purchase and begin using body-worn cameras for all correctional officers at RJD within sixty days.

Defendants oppose the request on the grounds that (1) body cameras are not typically used in correctional facilities and jails, and CDCR lacks enough information to determine whether the use of body cameras would be effective, both in terms of the footage they would capture and their cost; (2) Defendants' expert opines that body cameras may not be as effective as surveillance cameras because they require the user to turn them on and off at the appropriate times, and because body cameras may not capture certain incidents that would be captured by fixed cameras as a result of the angle and perspective of their lenses, McGinnis Decl., Ex. B at 28-29; (3) procuring hundreds of body cameras in sixty days may not be feasible in light of the logistical issues raised by the present pandemic and the procurement procedures that CDCR must follow, Defs.' Supp. Resp. at 4-5; and (4) policies for the use of body cameras must be in place before they are used at RJD.

The Court finds that body cameras are likely to improve investigations of misconduct by RJD staff and to reduce the incidence of violations of class members' rights under the ARP and ADA. They are, therefore, necessary and should be deployed at RJD as soon as possible. The Court finds the opinions of Plaintiffs' expert, which Defendants have not rebutted with any evidence, to be persuasive. Eldon Vail opines, based on research and studies on the topic, that the use of body cameras in correctional facilities has resulted in "increased officer and inmate safety, fewer uses of force," and improved investigations of internal misconduct by officers, particularly when used in conjunction with surveillance cameras. Vail Decl. ¶¶ 64-66, Docket No. 3023-9. He further opines that issues about when cameras should be turned on or off, and privacy concerns, can be addressed through policymaking and *838 training. *Id.* ¶¶ 67-68. Vail also opines that body cameras can be procured and deployed at RJD in two months. *Id.* ¶ 70.

Defendants have not shown that procuring the body-worn cameras in the time frame that Plaintiffs have proposed would not be feasible. Defendants note that the pandemic has "disrupt[ed] manufacturing centers and supply chains across the globe," Supp. Resp. at 4, but they do not point to any evidence showing that these disruptions would prevent them from procuring the body-worn cameras in the time frame that Plaintiffs have proposed. They also speculate that "[r]equiring Defendants to rush to award a sizeable contract on such short notice would risk thwarting" the state's policies with respect to government procurement, which Defendants represent are intended to eliminate favoritism, fraud, and corruption in the

award of public contracts. *Id.* (emphasis added). Defendants have not proffered any evidence showing that requiring them to procure body-worn cameras in the time frame that Plaintiffs have proposed would require them to violate these policies.

In light of the foregoing, the Court finds that body-worn cameras can be procured and deployed in the time frame that Plaintiffs have proposed.

The Court agrees with Defendants that having policies and procedures in place before body cameras are deployed at RJD is sensible, and it will incorporate this sequence into its order describing the additional remedial measures required herein.

3. Processes for complaints, investigations, discipline, and oversight

[10] Plaintiffs request that Defendants be required to develop a plan to reform the staff complaint, investigation, and discipline process to ensure (1) that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct in which the victim was a class member; (2) that CDCR imposes appropriate and consistent discipline against employees who engage in misconduct against class members; and (3) that employees who engage in criminal misconduct against class members are appropriately investigated and, if warranted, referred for prosecution. Plaintiffs also request that CDCR headquarters be required to exercise oversight over all staff complaints, use of force reviews, and related staff disciplinary proceedings at RJD in which an employee is accused of engaging in misconduct against an incarcerated person, and to conduct quarterly interviews of randomly-selected incarcerated people at RJD using the methodology and interview questionnaire utilized by the December 2018 investigators.

Defendants oppose these requests, arguing that CDCR already has existing processes, policies, and oversight systems in place to investigate misconduct and discipline employees who commit it, which they contend are effective mechanisms because (1) the Inspector General testified that CDCR does well in assessing UOF incidents handled at the local level, and he agrees with CDCR's assessment about UOF incidents ninety-five percent of the time; (2) the current policies and procedures were developed in response to unrelated litigation, namely *Madrid v. Gomez*, Case No. 90-3094 (N.D. Cal.), and they balance the interests of multiple

stakeholders, including CDCR staff. Defs.' Resp. at 34-35; Diaz Decl. ¶ 11.

Defendants' arguments miss the point. First, Defendants fail to acknowledge that, based on the evidence discussed above, the current policies and procedures have failed to prevent violations of the ARP and of class members' rights under the ADA at *839 RJD. These violations did not all involve the use of force. Defendants rely on the Inspector General's testimony that the OIG monitors forty percent of CDCR's assessments as to use-of-force incidents state-wide, and that, of those, it agrees with CDCR's assessments ninety-five percent of the time. Roy Wesley Dep. Tr. at 38, Grunfeld Decl., Ex. S, Docket No. 2922-1. This testimony, however, speaks to CDCR's assessments on a state-wide basis and says nothing about whether the current policies and procedures are effective in preventing violations of the ARP and class members' ADA rights at RJD, whether the violations involve the use of force or not. As discussed above, when it comes to investigations of alleged violations of class members' ADA rights and other staff abuse at RJD, the OIG has been critical of CDCR's performance. Grunfeld Decl., Ex. J, Docket No. 2922-1.

Second, that the current policies and procedures were developed in connection with the *Madrid* litigation, which involved, in relevant part, the review of CDCR's policies and procedures with respect to the use of force and CDCR's investigation and enforcement of violations of the same, also says nothing about whether such policies and procedures are adequate to prevent further violations of the ARP and class members' ADA rights at RJD.

Here, the Court has found that it is necessary to stop ongoing violations of the ARP and class members' ADA rights at RJD, and that the current policies and procedures are incapable of achieving that. Accordingly, the Court finds that requiring Defendants to craft a plan to modify the current policies, procedures, and oversight of staff complaints to achieve compliance with the ARP and ADA at RJD is necessary and appropriate. By providing Defendants with discretion to craft this plan, the Court gives them the opportunity to balance the interests of any stakeholders who would be impacted by the modifications.

4. Third-party monitoring

[11] Plaintiffs request that the additional remedial measures include the appointment of an expert pursuant to [Federal Rule of Evidence 706](#) to monitor Defendants' implementation of their plan to reform the staff complaint, investigation, and discipline policies and procedures, and that the expert have access to documents necessary to conduct its monitoring.

Defendants have not raised an objection in their briefs to this request. In the absence of a showing to the contrary, the Court finds that requiring the appointment of an expert for monitoring purposes would make the implementation of the plan required herein more effective, and would assist Defendants in achieving compliance with the ARP and ADA. Accordingly, the Court finds that the appointment of an expert is necessary and appropriate.

5. Information-sharing with Plaintiffs' counsel and the Court Expert

[12] Plaintiffs request that Defendants share with Plaintiffs' counsel and the court expert all documents related to staff complaints at RJD in which the alleged victim is a class member, as well as monthly written updates regarding the implementation of any additional remedial measures.

Defendants have not raised an objection in their briefs to this request. In the absence of a showing to the contrary, the Court finds that requiring the sharing of documents as described above is necessary for the effective monitoring of Defendants' implementation of the additional remedial measures and is appropriate.

6. Supervisory staffing

Plaintiffs request that CDCR significantly increase supervisory staff on all watches on all yards at RJD and create ***840** non-uniformed supervisory positions in each housing unit.

Defendants argue that no changes to their staffing structure are necessary in light of the changes they already have made to their staffing policies and procedures. Defs.' Resp. at 36-37. Defendants note that CDCR has dedicated a full-time ombudsman at RJD for six months.

[13] The Court finds that additional supervisory staff in the form of additional sergeants is necessary at RJD. The Bishop

Report, which Defendants have endorsed, and Defendants' own expert, recommended increasing supervisory staff on Facility C at RJD in light of the allegations of misconduct that were made with respect to that facility. [See](#) Bishop Report at 12-13, Docket No. 2921-6; McGinnis Decl., Ex. B at 34, Docket No. 3024-6. Those recommendations can be extrapolated to the rest of RJD in light of the evidence discussed above, which shows that violations of the ARP and class members' ADA rights are taking place throughout RJD under circumstances similar to those that formed the basis of the recommendations in the Bishop Report. As discussed above, at present, the managerial presence at RJD in the form of sergeants, whether at Facility C or otherwise, is not any higher than it was in December 2018. CDCR's Rule 30(b) (6) Designee (Kimberly Seibel) Dep. Tr. at 168-69, Docket No. 2921-8. The Court cannot conclude that the presence of a full-time ombudsman at RJD is an adequate replacement for the additional managerial presence that the Bishop Report recommended, as Defendants have not shown that the full-time ombudsman performs functions that are equivalent to those that supervisory staff, such as sergeants, perform at RJD. Accordingly, the Court finds that requiring CDCR to increase managerial presence at RJD in the form of additional sergeants is necessary.

[14] The Court declines at this time to require CDCR to create non-uniformed supervisory positions at RJD. The parties' experts disagree about the effectiveness of such non-uniformed positions, McGinnis Decl., Ex. B at 32; Vail Decl. ¶ 79, and the Court finds that there is insufficient evidence in the record outside of the experts' conflicting declarations to make a determination as to whether non-uniformed supervisory positions are needed.

7. Training

[15] Plaintiffs request that CDCR develop and implement human rights, de-escalation, and cultural training for all custody, mental health, and medical staff at RJD to include discussion of reporting requirements, whistleblowing, non-retaliation, and treatment of incarcerated people as patients.

Defendants object to requiring them to provide RJD staff with additional training beyond what they already provide.

In light of the evidence discussed above showing that the measures that CDCR has implemented to date, including providing staff with additional training, have proven to be

ineffective at stopping violations of the ARP and class members' ADA rights, the Court finds that it is necessary to require Defendants to develop additional training programs for RJD staff and supervisors that are tailored to achieving staff compliance with the ARP and ADA.

8. Data collection and early-warning system

[16] Plaintiffs request that CDCR develop an electronic system for tracking all incidents at RJD by date, time, location, staff involved, incarcerated people involved, that includes information about whether inmates are class members, any injuries they suffered, and related medical records.

*841 Defendants oppose this request, on the grounds that the newly created Enterprise Risk Management Branch, within the Office of Audits and Court Compliance, is responsible for a data-collection and early-warning system that appropriately addresses Plaintiffs' concerns. Diaz Decl. ¶ 32. This system collects, compiles, and analyzes information, evidence, and data from multiple CDCR offices, databases, and other tracking tools. *Id.*

In their reply, Plaintiffs argue that this new system is not operational and is insufficient to achieve the level of tracking that they request, but do not explain why. In the absence of sufficient evidence in the record to make a determination as to whether additional tracking by CDCR is necessary with respect to incidents involving class members at RJD, the Court declines to require additional tracking at this time.

9. Pepper spray

[17] Plaintiffs request a policy requiring that all pepper spray canisters at RJD be weighed before and after use.

Defendants and their expert oppose this request on the grounds that it would be unnecessarily burdensome and could potentially delay the movement of officers to their posts.

In light of the evidence discussed above, which shows that pepper spray was used on multiple occasions against class members where there was no evidence that the class members posed an imminent threat to RJD staff or other inmates, or that the use of pepper spray served a legitimate penological interest, the Court finds that it is necessary to require CDCR to

craft a plan to modify its policies to more effectively monitor and control the use of pepper spray by RJD staff with respect to class members.

10. Anti-retaliation

[18] Plaintiffs request that CDCR be required to put an end to retaliation against class members and staff at RJD who report staff misconduct and to ensure complainants' safety.

Defendants did not object to this request in their briefs.

The Court finds that requiring CDCR to take steps to stop retaliation against class members at RJD in violation of the ADA is necessary.

LEGAL STANDARD

[19] [20] “It is well established that the district court has the inherent authority to enforce compliance with a consent decree that it has entered in an order, to hold parties in contempt for violating the terms therein, and to modify a decree.” [Nehmer v. U.S. Dep't of Veterans Affairs](#), 494 F.3d 846, 860 (9th Cir. 2007); [Frew ex rel. Frew v. Hawkins](#), 540 U.S. 431, 441, 124 S.Ct. 899, 157 L.Ed.2d 855 (2004) (“Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced.”). Further, a district court has “wide discretion” to modify its own injunctions “if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.” [Sys. Fed'n No. 91, Ry. Emp. Dep't, AFL-CIO v. Wright](#), 364 U.S. 642, 647, 81 S.Ct. 368, 5 L.Ed.2d 349 (1961); *see also* [United States v. Swift & Co.](#), 286 U.S. 106, 114, 52 S.Ct. 460, 76 L.Ed. 999 (1932) (“A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need”).

[21] [22] The interpretation of a consent decree is for the court, and not the parties subject to the decree. [Nehmer](#), 494 F.3d at 860 (“Although a party may ask the district *842 court to issue an order clarifying, enforcing, or modifying a decree and suggest a favored interpretation, a party—whether a private or public entity—cannot dictate the meaning of the decree to the court or relieve itself of its obligations under the decree without the district court's approval.”) The court's discretion in interpreting a consent decree is particularly wide

where the court has been overseeing a remedial decree for many years. Id.; Armstrong v. Schwarzenegger, 622 F.3d at 1073 (holding that a court that has been “overseeing complex institutional reform litigation for a long period of time” is entitled to “heightened deference”).

CONCLUSIONS OF LAW

I. Plaintiffs have shown that Defendants violated the ARP and the Court's prior orders and injunctions¹⁵

A. Denial of reasonable accommodations for class members' disabilities

Section I of the ARP requires Defendants to comply with the ADA's anti-discrimination and access provisions, 42 U.S.C. § 12132¹⁶. It provides, “No qualified inmate or parolee with a disability as defined in Title 42 of the United States Code, Section 12102 shall, because of that disability, be excluded from participation in or denied the benefits of services, programs, or activities of the Department or be subjected to discrimination.” ARP at 1, Docket No. 681. As discussed above, the Court retained jurisdiction to enforce Defendants' compliance with the ARP. Remedial Order and Injunction at 5, Docket No. 158.

[23] To prove that a public program or service violated § 12132, a plaintiff must show: (1) that he is a “qualified individual with a disability”; (2) that he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination was by reason of his disability. Duvall v. Cty. of Kitsap, 260 F.3d 1124, 1135 (9th Cir. 2001), as amended on denial of reh'g (Oct. 11, 2001).

[24] The Ninth Circuit has held that the second element of this test can be satisfied where a law enforcement officer could have used less force or no force during the performance of his law-enforcement duties with respect to a disabled person. See *843 Sheehan v. City & Cty. of San Francisco, 743 F.3d 1211, 1232-33 (9th Cir. 2014), rev'd on other grounds sub nom., City & Cty. of San Francisco, Calif. v. Sheehan, 575 U.S. 600, 135 S.Ct. 1765, 191 L.Ed.2d 856 (2015) (holding that a failure to reasonably accommodate a person's disability in the course of an investigation or arrest by using unnecessary force, causing the person to suffer “greater injury or indignity in that process than other arrestees,” gives rise to a claim under § 12132, and that a reasonable jury could

conclude that a police officer's failure to use less force or no force during an arrest of a person with mental illness could constitute a failure to provide a reasonable accommodation in violation of § 12132); Vos v. City of Newport Beach, 892 F.3d 1024, 1037 (9th Cir. 2018), cert. denied sub nom. City of Newport Beach, Cal. v. Vos, — U.S. —, 139 S. Ct. 2613, 204 L.Ed.2d 263 (2019) (same). When applied in the prison context, it follows that the second element of a § 12132 claim can be satisfied where a correctional officer could have used less force or no force during the performance of his penological duties with respect to a disabled person.¹⁷

Defendants did not address, much less distinguish, these authorities in their briefs, nor did they dispute that the second element of a § 12132 claim can be satisfied in the manner just described.

Here, it is undisputed that class members are “qualified individuals with a disability” within the meaning of the ADA, and that the first element is met. At issue is whether Plaintiffs have shown, as required by the second and third elements of a claim under § 12132, that RJD staff denied class members the benefits of RJD's services, programs, or activities, or otherwise discriminated against them, by reason of their disabilities.

[25] As discussed in more detail in the Findings of Fact, the Court has found that RJD staff failed on numerous occasions to reasonably accommodate the disabilities of class members. RJD staff refused class members' requests for alternative methods for communication (in the case of deaf inmates); for the use alternative handcuffing methods (in the case of mobility-impaired inmates); for assistance with operating wheelchairs (in the case of wheelchair-bound inmates); for showers and cleaning supplies (for inmates with incontinence problems); for additional time to safely enter and exit cells (for mobility-impaired inmates); and for adequate transportation methods (for mobility-impaired inmates). Defendants do not dispute that these class members required, and that RJD staff failed to provide them with, reasonable accommodations, nor do they dispute that these failures constitute denials of the benefits of CDCR's services, programs, or activities or discrimination within the meaning of § 12132. Accordingly, the second element is met as to these incidents.

[26] The Court also has found that RJD staff failed to provide reasonable accommodations for class members' disabilities *844 when RJD staff failed to use less force or no force when

performing their penological duties, such as by throwing class members out of wheelchairs, punching them, kicking them, or using pepper spray where the undisputed evidence shows that the class members posed no threat to RJD staff that would warrant the use of such force. The second element also is met as to these incidents.

[27] As to the third element, whether these failures to provide reasonable accommodations were due to the class members' disabilities, the Court found that this element is met based on the totality of the evidence. Inmates state in their declarations that they believe, based on their own experiences and observations, that RJD staff targets people with disabilities and other vulnerable inmates for mistreatment. These beliefs are consistent with the allegations credited in the Bishop Report and the memoranda by the two sergeant investigators, and the opinions of Plaintiffs' experts, which Defendants have not disputed.

Defendants have not proffered any evidence from which the Court could infer an alternative cause for the incidents in question, such as a legitimate penological interest or the lack of a reasonable accommodation that RJD staff could have provided to the class members.

Accordingly, the Court finds that Defendants have violated Section I of the ARP and the Court's prior orders by violating § 12132.

B. Interference with class members' ADA rights

Plaintiffs contend that staff at RJD have interfered with class members' exercise of their rights under the ADA in violation of the ADA's anti-interference provision, 42 U.S.C. § 12203(b), which provides:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

Section 12203(b) was not expressly incorporated into the ARP. Nevertheless, the Court concludes that Defendants are required to comply with § 12203(b), which is a part of the ADA. The stipulated order that the Court entered at the outset of the remedial phase of this litigation makes clear that “the intent” of the parties was “to require defendants to operate programs, activities, services and facilities of

the California Department of Corrections in accordance with the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973[.]” Stipulation and Order ¶ 12, Docket No. 148. The purpose of the ARP was to set forth specific actions that Defendants would take to bring their programs, activities, services, and facilities into compliance with the ADA and the RA. One of such action was to set up a system to facilitate class members' requests for reasonable accommodations and ADA-related grievances. When RJD staff frustrate the effectiveness of that system by threatening, coercing, or intimidating class members into foregoing their rights to request reasonable accommodations or file ADA-related grievances, that constitutes a violation of the ARP and the Court's prior orders and injunctions regarding the same.

The Ninth Circuit has not specifically described the elements required to establish a violation of § 12203(b), nor has it defined what “intimidation” or “coercion” mean in the context of § 12203(b). The Court finds [Brown v. City of Tucson](#) to be instructive. *845 336 F.3d 1181, 1191-93 (9th Cir. 2003). There, the Ninth Circuit held that the plaintiff had stated a claim for a violation of § 12203(b) by alleging facts showing that (1) her employer threatened her with an adverse action; (2) the threat had a nexus to her exercise or enjoyment of an ADA right; and (3) she suffered “distinct and palpable” injury as a result of the threat. [Id.](#) The Ninth Circuit held that the requisite injury “could consist of either the giving up of her ADA rights, or some other injury which resulted from her refusal to give up her rights, or from the threat itself.” [Id.](#)

As discussed in more detail in the Findings of Fact, the Court has found that staff members at RJD have interfered with certain class members' enjoyment of their rights under the ADA and ARP in violation of § 12203(b) by intimidating, threatening, or coercing them into abstaining from making requests for reasonable accommodations or filing ADA grievances. As a result of the intimidation, threats, and coercion, these class members suffered injury in the form of giving up their rights to make requests for reasonable accommodations or to file ADA grievances, or in the form of severe emotional distress. See [Brown](#), 336 F.3d at 1193 (holding that the plaintiff alleged an injury within the meaning of § 12203(b) by alleging that she “suffered short-term memory problems and felt extremely stressed, harassed, and pressured” by her employer's threats).

These violations of § 12203(b) constitute violations of the ARP and the Court's prior orders and injunctions regarding the same.

II. Plaintiffs have shown that Defendants failed to comply with their Court-ordered tracking and accountability obligations

As discussed above, the Court has found that its Order Modifying the 2007 Injunction requires Defendants to log allegations only to the extent that they involve the denial of or failure to receive “access to services, programs, activities, accommodations or assistive devices required by any of the following: the Armstrong Remedial Plan, the Americans with Disabilities Act or this Court’s prior orders.” Order Modifying 2007 Injunction at 1, Docket No. 2479 (emphasis added).

It is undisputed that Defendants failed to log alleged failures to provide reasonable accommodations to class members, such as by denying class members alternative handcuffing methods, wheelchairs, and additional time to enter or leave a cell. See Freedman Decl. ¶ 280. It is also undisputed that Defendants failed to log alleged failures by RJD staff to provide reasonable accommodations to class members where the reasonable accommodation would have been the use of less force or no force during the performance of penological duties. The Court has found that Defendants violated the Court’s prior orders and injunctions by failing to log these allegations.

The Court will modify its prior orders and injunctions to require Defendants to track allegations of retaliation and interference in violation of the ADA’s anti-retaliation and anti-interference provisions, 42 U.S.C. §§ 12203(a) and (b). The Court has found that including such allegations in the accountability log is consistent with the parties’ intent to require Defendants, during the remedial phase of this litigation, to operate their facilities and programs in accordance with the ADA and RA. See Stipulation and Order ¶ 12, Docket No. 148.

III. The implementation of additional remedial measures is necessary to ensure compliance with the ARP and ADA

The Court retained jurisdiction to enforce the terms of the Remedial Order and *846 Injunction, as well as to issue “any order permitted by law, including contempt, necessary to ensure that defendants comply with the guidelines, policies, procedures, plans and evaluations” required by the Remedial Order and Injunction. Remedial Order and Injunction at 5, Docket No. 158. The Court has found that the additional remedial measures discussed above are necessary to ensure that Defendants comply with their obligation under the

ARP and ADA to provide reasonable accommodations for class members’ disabilities and to otherwise refrain from discriminating against class members by reason of their disabilities. They also are necessary to effectuate the parties’ and the Court’s intent “to require defendants to operate programs, activities, services and facilities of the California Department of Corrections in accordance with the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973[.]” Stipulation and Order ¶ 12, Docket No. 148. Accordingly, the Court will modify its prior orders and injunctions to require Defendants to develop a plan to implement the additional remedial measures that the Court has found to be necessary to bring Defendants into compliance with the ARP and ADA.¹⁸

IV. The additional remedial measures ordered herein are consistent with the PLRA

[28] The Prison Litigation Reform Act (PLRA) provides that courts “shall not grant or approve any prospective relief [with respect to prison conditions] unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the *847 Federal right.” 18 U.S.C. § 3626(a)(1)(A). The Court is required to give substantial weight to “any adverse impact on public safety or the operation of a criminal justice system caused by” the prospective relief. Id. Whether prospective relief is appropriate in light of the PLRA¹⁹ depends on whether the Court finds, in light of the “order as a whole,” “that the set of reforms being ordered—the ‘relief’—corrects the violations of prisoners’ rights with the minimal impact possible on defendants’ discretion over their policies and procedures.” Armstrong v. Schwarzenegger, 622 F.3d at 1071.

A. Narrowly tailored

[29] The Court concludes that the additional remedial measures discussed above meet the requirements of the PLRA. They are narrowly tailored because they require action only with respect to RJD, which is where violations of the ARP and class members’ ADA rights have been established, and because they are the least that can be done to protect class members at RJD from further violations of their rights under the ARP and ADA. Id. at 1072 (holding that the scope of permissible injunctive relief “is dictated by the extent of the violation established”) (citation and internal quotation marks omitted). As discussed above, the substantial

evidence that Plaintiffs have presented, and that Defendants have not successfully refuted, shows that the violations of class members' rights are not limited to isolated incidents. The dozens of ARP and ADA violations described in the inmates' declarations were widespread in every sense of the word; they affected class members who suffer from a wide range of disabilities; they were caused by many identified RJD staff members; and they took place at a variety of locations at RJD.

As discussed, the incidents appear to be the result of a persistent failure to adequately supervise and hold RJD staff accountable for violations of class members' ARP and ADA rights. It remains possible, under the current policies and procedures, for RJD staff members to continue to violate class members' ARP and ADA rights while potentially avoiding accountability for their actions. The additional remedial measures in question are specifically designed to remedy this, and they are therefore necessary to prevent further violations of the ARP and class members' ADA rights. *See, e.g., Armstrong v. Brown*, 768 F.3d at 984 (affirming order requiring CDCR Defendants to implement remedial measures intended to enhance CDCR's accountability); *Armstrong v. Schwarzenegger*, 622 F.3d at 1073-74 (noting the importance of accountability measures in ensuring ADA compliance); *Morales Feliciano v. Rullan*, 378 F.3d 42, 55-56 (1st Cir. 2004) (noting the importance of accountability in ensuring the long-term success of the health care system in Puerto Rico's prisons).

B. Least Intrusive

[30] The additional remedial measures ordered herein are not impermissibly intrusive because they do not micromanage RJD's operations. Defendants have the discretion to craft policies and procedures to implement the additional remedial measures. *Armstrong v. Schwarzenegger*, 622 F.3d at 1071 (“Intrusiveness is a particularly difficult issue for defendants to *848 argue, as by ordering them to draft and promulgate a plan, the district court left to defendants' discretion as many of the particulars regarding how to deliver the relief as it deemed possible. Allowing defendants to develop policies and procedures to meet the ADA's requirements is precisely the type of process that the Supreme Court has indicated is appropriate for devising a suitable remedial plan in a prison litigation case.”). That the Court describes the additional remedial measures with some specificity does not change this conclusion. *See Armstrong v. Brown*, 768 F.3d at 986 (holding that “[a] court may, as the district court did here, provide specific instructions to the State without running afoul of the PLRA”).

Critically, Defendants have not advanced any viable alternative means to protect class members at RJD that are narrower or less intrusive. As discussed, Defendants suggest that the appropriate course is to wait and see whether the steps that they have taken in the last few years eventually will end the ongoing violations of the ARP and class members' ADA rights. The Court finds that such a proposal is not a viable alternative to the additional remedial measures ordered herein, because the record shows that the rights of class members are likely to continue to be violated under the current policies and procedures.

The goal and intent of the parties and Court's Remedial Order and Injunction at the outset of the remedial phase of this litigation was to bring all of CDCR's prisons into compliance with the ADA and the RA. Almost twenty-four years after the issuance of that order and injunction, Defendants are not yet in compliance. This is so even though the parties and the Court have attempted various iterations of remedial measures that are narrower and less intrusive than the ones now ordered. The Court has found, as discussed in more detail above, that the policies and systems currently in place at RJD, which are the product of the parties' and the Court's prior efforts to bring Defendants into full compliance, are insufficient to end the ongoing violations of class members' rights. Accordingly, the Court's implementation of additional and broader remedial measures is warranted. *Armstrong v. Brown*, 768 F.3d at 986 (noting that, where the “the district court has attempted narrower, less intrusive alternatives—and those alternatives have failed,” the court has discretion to order relief that might have raised concerns about breadth and intrusiveness under the PLRA in the first instance) (citation and internal quotation marks omitted).

The Court has carefully considered and weighed the arguments and evidence presented by Defendants, and it has found that Defendants have not shown that the additional remedial measures would have any adverse impact on public safety or the operation of a criminal justice system. *Id.* Defendants object to the additional remedial measures on the ground that they are unnecessary. The Court disagrees with Defendants on this point based on the evidence discussed at length above. Defendants also object to the additional measures on the ground that they would be burdensome to implement in the time frame that Plaintiffs have proposed. Even if it were the case that implementing the additional remedial measures in the time frame that Plaintiffs have proposed would be burdensome for

Defendants, “[a] demonstration that an order is burdensome does nothing to prove that it was overly intrusive” or otherwise inconsistent with the requirements of the PLRA. [Armstrong v. Schwarzenegger](#), 622 F.3d at 1071. Where, as here, the Court has found that the additional remedial measures are necessary to ensure Defendants' compliance with the ARP and ADA, and that no viable *849 less restrictive alternative exists, the question of whether the additional remedial measures require some expenditure of resources by Defendants is not determinative. See [id.](#) (“With Congress having made the decision to recognize the rights of disabled persons, the question is not whether the relief the court ordered to vindicate those rights is expensive, or difficult to achieve, but whether the same vindication of federal rights could have been achieved with less involvement by the court in directing the details of defendants' operations.”).

Defendants argue that the additional remedial measures do not comply with the PLRA because they are overly intrusive in light of their specificity. Defendants rely on [Lewis v. Casey](#), 518 U.S. 343, 347-61, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) to support that argument.

[Lewis](#) is distinguishable. There, the Supreme Court reversed an injunction that the district court issued after it found, at summary judgment, that the State of Arizona Department of Corrections (ADOC) had failed to provide prisoners with access to the courts and legal services. The injunction required ADOC to make changes to its library and legal assistance policies for inmates, which were “specified in minute detail.” [Id.](#) The Supreme Court held that the injunction could not stand, in relevant part, because the district court had “failed to accord adequate deference to the judgment of the prison authorities,” and because the court had allowed a special master to craft the injunction. [Id.](#) at 361-62, 116 S.Ct. 2174. The Supreme Court reasoned that the “proper procedure” would have been for the district court to charge ADOC “with the task of devising a Constitutionally sound program to assure inmate access to the courts.” [Id.](#) at 362, 116 S.Ct. 2174 (citation and internal quotation marks omitted).

Here, in contrast to [Lewis](#), the Court will charge Defendants with the task of crafting a remedial plan. Requiring Defendants to comply with certain conditions when crafting the plan does not violate the PLRA, for the reasons discussed above.

In light of the foregoing, the Court finds that the additional remedial measures ordered here are necessary and consistent with the PLRA.

CONCLUSION

The Court GRANTS IN PART Plaintiffs' motion to modify its prior orders and injunctions to require Defendants to design, and then implement, a plan that requires additional remedial measures at RJD. The Court will issue a separate order describing the additional remedial measures that Defendants' plan must include. The Court also will modify its prior orders and injunctions to require Defendants to log alleged violations of the ADA's anti-interference and anti-retaliation provisions. The Court defers ruling on Plaintiffs' request to order the implementation of additional remedial measures at other CDCR prisons pending the resolution of the pending state-wide enforcement motion. The Court also defers ruling on Plaintiffs' request to set aside Inmate 2's RVRs from the incident on June 17, 2020. Defendants shall provide the Court immediately with the written report of the RVR hearing and any materials relied upon that have not been provided. Defendants shall also diligently pursue a determination of whether a video of the June 17, 2020, incident exists, and if it does, shall provide a copy immediately. Defendants shall report on their progress in this regard within fourteen days of the date of this order.

IT IS SO ORDERED.

*850 ORDER FOR ADDITIONAL REMEDIAL MEASURES

For the reasons set forth in the Court's order granting in part Plaintiffs' motion to modify its prior remedial orders and injunctions, 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 Remedial Plan \(ARP\)](#) and the Americans with Disabilities Act (ADA) that includes the components described below (the RJD Remedial Plan). To the extent possible, Defendants shall provide to Plaintiffs drafts of the components that must be included in the RJD Remedial Plan on a rolling basis prior to twenty-one days of the date this Order is filed.

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

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

4. In the event that a disagreement is not resolved within forty-two days of the date this Order is filed, Plaintiffs shall file objections with the Court no later than forty-nine days of the date this Order is filed in a brief of no more than ten pages; Defendants may respond to the objections within seven days thereafter in a brief of no more than fifteen pages; and Plaintiffs may file a reply of no more than five pages within four days thereafter. The Court will rule on the objections and issue any necessary order, consistent with its rulings in its Order granting in part Plaintiffs' motion to modify its prior remedial orders and injunctions.

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

a. Cameras. Within ninety days of the finalization of the RJD Remedial Plan, CDCR shall install operational surveillance cameras that cover all areas of RJD to which class members have access, including, but not limited to, all exercise yards, housing units, sally-ports, dining halls, program areas, and gyms. Within sixty days of the finalization of the RJD Remedial Plan, CDCR must begin using body-worn cameras for all correctional officers at RJD who may have any interactions with class members. The RJD Remedial Plan shall describe the steps that Defendants will take to achieve these deadlines.

b. The RJD Remedial Plan must contain policies and procedures regarding the use of body-worn cameras and the use of camera footage at RJD from any type of camera, including requirements that all footage be retained for a minimum of ninety days, that footage of use of force and other triggering events involving class members at RJD be retained indefinitely, and that footage, *851 when available, be reviewed and considered as part of the

investigation of any incident. The RJD Remedial Plan also must contain policies and procedures for training RJD staff regarding how and when to use a body-worn camera and how to ensure that footage is retained and reviewed.

c. Reforms to Staff Complaint, Investigation, and Discipline Process at RJD. CDCR must develop measures to reform the staff complaint, investigation, and discipline process (Investigation and Discipline Section of the RJD Remedial Plan), which shall be included in the RJD Remedial Plan, to ensure (1) that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct violative of the rights of any class member under the ARP or the ADA; (2) that CDCR imposes appropriate and consistent discipline against employees who engage in violations of the ARP or ADA with respect to class members at RJD; and (3) that employees who engage in criminal misconduct against class members at RJD in violation of the ARP or ADA are appropriately investigated and, if warranted, referred for prosecution. The Investigation and Discipline Section of the RJD Remedial Plan also shall ensure that officers accused of serial violations of the ARP or ADA with respect to class members at RJD are reassigned. The Investigation and Discipline Section of the RJD Remedial Plan also shall provide for effective mechanisms for oversight over all staff complaints, use-of-force reviews, and related staff disciplinary proceedings at RJD that involve alleged violations of class members' rights under the ARP or ADA. The Investigation and Discipline Section of the RJD Remedial Plan shall require quarterly interviews of randomly-selected class members at RJD using the methodology and interview questionnaire utilized by the December 2018 investigators.

d. Third-Party Expert Monitoring of Defendants' Investigation and Discipline Section of the RJD Remedial Plan. The Court delegates to Edward Swanson, its court expert, pursuant to [Federal Rule of Evidence 706](#), the additional duties of monitoring Defendants' implementation of their Investigation and Discipline Section of the RJD Remedial Plan. Mr. Swanson shall have access to all documents reasonably necessary for monitoring Defendants' implementation of their Investigation and Discipline Section of the RJD Remedial Plan. Mr. Swanson shall issue quarterly reports regarding Defendants' implementation of the Investigation and Discipline Section of the RJD Remedial Plan. Prior to the issuance of each quarterly report, the parties and Mr.

Swanson shall meet and confer regarding his findings for the quarter.

e. Information Sharing with Plaintiffs' counsel and the court expert. CDCR must produce to Plaintiffs' counsel and the court expert, Mr. Swanson, on a quarterly basis, all documents related to RJD staff complaints in which the alleged victim is a class member and alleges violations of his or her rights under the ARP or ADA, including, but not limited to, grievances, incident reports, documents from staff misconduct inquiries, documents from Institutional Executive Review Committee inquiries in which the class member alleges excessive use of force or other staff misconduct in violation of his or her rights under the ARP or ADA, 989 forms and all supporting documents, responses of the Central Intake Unit of OIA to 989 forms, investigation reports produced by the OIA, and 402 and 403 forms issued by the hiring authority. CDCR must also *852 provide Plaintiffs' counsel with monthly, written updates regarding progress on the implementation of the RJD Remedial Plan at RJD, including data regarding staff complaints and use of force involving a class member where there is a possible violation of the class member's rights under the ARP or ADA.

f. Staffing. CDCR must significantly increase supervisory staff by posting additional sergeants on all watches on all yards at RJD.

g. Training. CDCR must develop and implement training intended to eliminate violations of the ARP and ADA at RJD, such as human rights, de-escalation,

and cultural training, for all custody, mental health, and medical staff at RJD who interact with class members. The training must include discussion of reporting requirements, whistleblowing, non-retaliation, and treatment of incarcerated people with disabilities.

h. Anti-Retaliation. CDCR shall develop mechanisms to end and prevent any retaliation against class members who report violations of their rights under the ARP or ADA and to ensure their safety. These mechanisms shall be described in the RJD Remedial Plan.

i. Other Remedies. CDCR shall develop a plan to modify its policies to more effectively monitor and control the use of pepper spray by RJD staff with respect to class members. This plan shall be described in the RJD Remedial Plan.

6. Starting on the date this Order is filed, Defendants shall include in the Court-ordered accountability log any allegations of violations of class members' rights under the ADA's anti-retaliation and anti-interference provisions.

7. 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.

All Citations

484 F.Supp.3d 808

Footnotes

- 1 Defendants objected to the Court's consideration of new matters that were raised and attached to Plaintiffs' reply on the ground that Defendants did not have an opportunity to respond to them. Objections 1-3, Docket No. 3033. The Court permitted Defendants to file a supplemental brief to respond. Defendants filed a supplemental brief, but it contains no response to most of the matters to which Defendants originally objected. *See* Defs.' Supp. Resp., Docket No. 3045. Defendants have thus waived these objections.
- 2 Defendants object to certain portions of the declarations of Gay Grunfeld and Michael Freedman, upon which the Court has not relied. The Court overrules these objections as moot.
- 3 Defendants object to this exhibit on the ground that it was not properly authenticated. The Court overrules this objection. Gay Grunfeld declares that this exhibit is a true and correct copy of excerpts of data from Defendants' COMPSTAT system, which Defendants produced to Plaintiffs' counsel on January 13, 2020. Grunfeld Decl. ¶ 71, Docket No. 2922-1. That is sufficient to find that the exhibit is what Ms. Grunfeld claims it is. Moreover, Defendants do not argue that the exhibit is not authentic.
- 4 Defendants object to Exhibits 67, 69, and 71 to the Freedman Declaration on the ground that the declarant lacks personal knowledge. These exhibits are copies of the monitoring reports written by Plaintiffs' counsel, and the declarant is counsel for Plaintiffs. These documents are being offered to show that Plaintiffs' counsel alerted Defendants to allegations of noncompliance with the ARP and the Court's orders. The objections are, therefore, overruled.

- 5 Defendants object to Exhibit G on the ground that it was not properly authenticated. The Court overrules this objection. Gay Grunfeld declares that this exhibit is a true and correct copy of the September 20, 2018, memorandum to Connie Gipson, Director of DAI, from Matt Espenshade, Deputy Director of OACC, regarding the joint interviews. Grunfeld Decl. ¶ 17, Docket No. 2922-1. That is sufficient to find that the exhibit is what Ms. Grunfeld claims it is. Moreover, Defendants do not argue that the exhibit is not authentic.
- 6 Defendants object to this exhibit on the ground that it was not properly authenticated. The Court overrules this objection. Gay Grunfeld declares that this exhibit is a true and correct copy of an email sent by Sara Malone, who is the Chief Ombudsman for CDCR, to Kimberly Seibel and Connie Gipson of CDCR. Grunfeld Decl. ¶ 22, Docket No. 2922-1. That is sufficient to find that the exhibit is what Ms. Grunfeld claims it is. Moreover, Defendants do not argue that the exhibit is not authentic.
- 7 CDCR had requested funds for the installation of additional cameras at RJD during the 2020-2021 fiscal year as part of its Audio Video Surveillance Solution system. Macomber Decl. ¶ 8. Because of the Covid-19 pandemic, the Governor of California withdrew CDCR's request from the state's budget proposal without prejudice in May 2020. Req. for Judicial Notice, Ex. K. Defendants represent that they remain committed to installing additional cameras at RJD in the future.
- 8 Two field training sergeants provided additional managerial presence at RJD for about a year, but neither of these field sergeants is currently at RJD. CDCR's Rule 30(b)(6) Designee (Kimberly Seibel) Dep. Tr. at 168-69, Docket No. 2921-8. Accordingly, there is no additional managerial presence at RJD at this time.
- 9 Defendants object to this exhibit on the ground that it was not properly authenticated. The Court overrules this objection. Gay Grunfeld declares that this exhibit is a true and correct copy of a letter sent on January 17, 2020, by Inspector General Roy Wesley to CDCR Secretary Ralph Diaz. Grunfeld Decl. ¶ 34, Docket No. 2922-1. That is sufficient to find that the exhibit is what Ms. Grunfeld claims it is. Moreover, Defendants do not argue that the exhibit is not authentic.
- 10 See Freedman Decl., Ex. 6-58, 88, Docket No. 2922-2 to Docket No. 2922-5; Freedman Decl., Ex. 3-5, 9-24, Docket No. 2947-5; Freedman Decl. Ex. 3, 5, 9, Docket No. 2970-1; Freedman Decl. Ex. 1-4, 11, Docket No. 2999-1; Grunfeld Decl., Ex. H, M-P, Docket No. 3023-5; Godbold Decl., Ex. B, Docket 3023-7.
- 11 Defendants object to certain portions of these declarations on the grounds that: (1) they contain evidence the probative value of which is substantially outweighed by the danger of unfair prejudice under [Federal Rule of Evidence 403](#); (2) they contain hearsay; (3) the declarants lack personal knowledge; or (4) the declarants improperly offer testimony that requires medical or mental-health expertise. See Defs.' Resp. at 42-45; Objections at 4-5, Docket No. 3033. The Court overrules these objections. The Court declines to exclude any portions of the inmate declarations on the basis of [Federal Rule of Evidence 403](#), because there is no danger of unfair prejudice as the Court, not a jury, is making factual determinations. The Court finds that the rest of Defendants' objections lack merit. The statements in the inmate declarations at issue are not subject to exclusion because they (1) are not hearsay, as they are not made for the truth of the matter asserted or fall within one of the hearsay exceptions under [Federal Rule of Evidence 803](#); (2) are based on the declarants' personal knowledge and perceptions.
- 12 These allegations include that RJD officers flipped over a class member while he was in his wheelchair, and that an RJD officer grabbed a class member's hand and cane and caused him to lose balance before slamming the class member's head into a table.
- 13 These allegations include that RJD staff make remarks to people with disabilities such as, "go sit your crippled ass down."
- 14 Defendants object to Plaintiffs' revised proposed order on the ground that Plaintiffs filed it after they filed their initial brief in support of their enforcement motion. The Court overrules Defendants' objection because the Court provided Defendants with the opportunity to file a supplemental brief in which they could respond to any new matters raised in or attached to Plaintiffs' reply.
- 15 Defendants argue that the allegations of staff misconduct addressed herein fall outside of the scope of this litigation because the operative complaint "does not allege that officers or other prison staff are using excessive force or retaliating against disabled inmates." Defs.' Resp. at 24-25. The Court is not persuaded. Every iteration of the complaint has made the same key allegation, namely that "[s]tate officials have discriminated against plaintiffs and the class they represent by reason of their disability." See, e.g., Compl. ¶ 1, Docket No. 1. The incidents now at issue are alleged to be instances of discrimination against class members by reason of their disability; accordingly, such allegations are well within the scope of this action. Further, the ARP expressly requires Defendants to abstain from denying class members reasonable accommodations or discriminating against them by reason of their disability. The Court retained jurisdiction to enforce Defendants' compliance with the ARP and any orders issued in connection with the same. The allegations of discrimination and denials of reasonable accommodations now before the Court fall within the scope of that jurisdiction.

- 16 The language in Section 1 of ARP mirrors the language of Title II of the ADA, [42 U.S.C. § 12132](#), which provides, “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”
- 17 The OIG's interpretation of CDCR's use-of-force policy is consistent with the notion that correctional officers have an obligation under the ADA to reasonably accommodate an inmate's disabilities when considering the use of force in the performance of their penological duties. See OIG Report, [Monitoring the Use-of-Force Review Process of the California Department of Corrections and Rehabilitation](#) (July 13, 2020) at 5, Grunfeld Decl., Ex. VV (“According to departmental policy, when determining the best course of action to resolve a particular situation, staff must evaluate the totality of the circumstances, including an inmate's demeanor, mental health status and medical concerns (if known), and the inmate's ability to understand and comply with orders. Policy further states that staff should attempt to verbally persuade, whenever possible, to mitigate the need for force.”).
- 18 Defendants contend that the modification of an injunction requires new findings of (1) irreparable injury; (2) unavailability of adequate remedies at law; (3) balance of hardships; and (4) consideration of the public interest. To support that proposition, Defendants rely on [Arizona Dream Act Coal. v. Brewer](#), [855 F.3d 957, 963 \(9th Cir. 2017\)](#). [Brewer](#) is distinguishable, because the permanent injunction there was issued after the district court granted summary judgment in favor of the plaintiffs. There was no modification of a prior injunction in [Brewer](#). Here, by contrast, the Court entered the Remedial Order and Injunction pursuant to the parties' agreement after they settled this action. Stipulation and Order Re: Liability and Remedy ¶ 6, Docket No. 148. During the remedial phase of this litigation, the Court has modified its injunctions several times in response to enforcement motions such as the present one pursuant to the jurisdiction it retained to enter “any order permitted by law, including contempt, necessary to ensure that defendants comply” with the ARP. Remedial Order and Injunction at 5, Docket No. 158. Defendants cite no authority showing that the Court must make any specific findings when enforcing the ARP under the terms of the parties' settlement agreement. In an abundance of caution, however, the Court finds and concludes that the record amply supports the modification of the Court's prior injunctions to require Defendants to implement the remedial measures ordered here based on the four factors described in [Brewer](#). Class members would suffer irreparable harm in the absence of the additional remedial measures, because RJD staff are likely to continue to violate the ARP and class members' ADA rights in the absence of such measures. The balance of hardships tips strongly in the class members' favor, because their physical and mental health, as well as their ability to request and obtain reasonable accommodations for their disabilities and exercise their ADA rights, would be at risk absent the additional remedial measures. The burden on Defendants of implementing such measures is severely outweighed by the hardship that the class members would suffer in the absence of the measures. Class members do not have an adequate remedy of law because damages for past violations of their ADA rights would do nothing to prevent further violations, which are likely. Finally, the public has a strong interest in the enforcement of the ADA.
- 19 The PLRA, [18 U.S.C. § 3626\(a\)\(1\)\(B\)](#), also requires that the Court make certain findings to the extent that any prospective relief requires a government official to exceed his or her authority under state or local law. Defendants have not identified any state or local law that they must violate to implement the additional remedial measures ordered herein. Accordingly, the Court need not make any findings under [18 U.S.C. § 3626\(a\)\(1\)\(B\)](#).
- 1 Each side shall, respectively, provide copies of any drafts and comments to the same to counsel for the parties in [Coleman v. 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.