United States District Court
Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN C. NEWSOM, et al.,

Defendants.

Case No. 94-cv-02307 CW

ORDER FOR ADDITIONAL REMEDIAL MEASURES

Re: Dkt. No. 2922

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

[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.

United States District Court
Northern District of California

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, 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 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.

Dated: September 8, 2020

CLAUDIA WILKEN
United States District Judge