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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**DECLARATION OF GAY
CROTHWAIT GRUNFELD IN
SUPPORT OF PLAINTIFFS' MOTION
TO STOP DEFENDANTS FROM
ASSAULTING, ABUSING AND
RETALIATING AGAINST PEOPLE
WITH DISABILITIES AT R.J.
DONOVAN CORRECTIONAL
FACILITY**

Judge: Hon. Claudia Wilken
Date: May 19, 2020
Time: 2:00 p.m.
Crtrm.: TBD, Oakland

Case No. C94 2307 CW

DECL. OF GAY CROTHWAIT GRUNFELD ISO PLS.' MOTION TO STOP DEFS. FROM ASSAULTING,
ABUSING & RETALIATING AGAINST PEOPLE W/ DISABILITIES AT R.J. DONOVAN CORR. FACILITY

1 I, Gay Crosthwait Grunfeld, declare:

2 1. I am an attorney duly admitted to practice before this Court. I am a partner
3 in the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel of record for Plaintiffs. I
4 have personal knowledge of the facts set forth herein, and if called as a witness, I could
5 competently so testify. I make this declaration in support of Plaintiffs' Motion to Stop
6 Defendants From Assaulting, Abusing and Retaliating Against People With Disabilities at
7 R.J. Donovan Correctional Facility ("RJD").

8 2. I have worked on the *Armstrong* case since September 2005, monitoring
9 Defendants' compliance with the Americans with Disabilities Act ("ADA"), the
10 Rehabilitation Act ("RA"), and the *Armstrong* Remedial Plan ("ARP"), and working to
11 enforce this Court's orders. I and other attorneys from my firm have been monitoring
12 Defendants' *Armstrong* compliance at RJD for a number of years. As part of our
13 monitoring of RJD, we have typically conducted one or two monitoring tours at the prison
14 per year. During those tours, we always interview a significant number of *Armstrong* class
15 members. Nearly four years ago, our clients at RJD began to report to us that officers were
16 assaulting and retaliating against people with disabilities. Since that time, we have been
17 investigating staff misconduct at RJD and advocating for our clients and other vulnerable
18 people with disabilities who have been victimized, including *Coleman* and *Clark* class
19 members. *Coleman v. Newsom*, Case No. 2:90-cv-00520-KJM-DB (E.D. Cal.); *Clark v.*
20 *California*, Case No. 3:96-cv-01486-CRB (N.D. Cal.).

21 **The Court's Orders Regarding Accountability**

22 3. The correctional officers' abuse of people with disabilities—discussed in
23 more detail below and in the fifty-four declarations from people with disabilities attached
24 as exhibits to the Declaration of Michael Freedman in Support of Motion to Stop
25 Defendants from Assaulting, Abusing and Retaliating Against People with Disabilities at
26 RJD ("Freedman Decl.")—occurs against the background of prior orders of this Court
27 mandating that Defendants identify and investigate non-compliance with the ADA, RA,
28 ARP, and prior Court orders.

4. Attached hereto as **Exhibit A** is a true and correct copy of the ARP issued by the California Department of Corrections and Rehabilitation (“CDCR”) in 2001, and amended in 2006 to address parole issues. The ARP is Defendants’ plan for ensuring that its operations comply with the ADA.

5. In the fall of 2006, in light of significant evidence of multiple violations of the ARP, I was part of a team of Plaintiffs’ counsel who on November 15, 2006 filed a Motion for Enforcement and Further Remedial Orders. On January 18, 2007, the Court issued an injunction (the “2007 Injunction”) that addressed these violations and ordered Defendants to comply with multiple sections of the ARP. Attached hereto as **Exhibit B** is a true and correct copy of the 2007 Injunction. A key aspect of the 2007 Injunction was a section on accountability. The Court ordered that

[D]efendants, in cooperation with the Office of the Inspector General and the Receiver in *Plata v. Schwarzenegger*, shall develop a system for holding wardens and prison medical administrators accountable for compliance with the Armstrong Remedial Plan and the orders of this Court. This system shall track the record of each institution and the conduct of individual staff members who are not complying with these requirements. Defendants shall refer individuals with repeated instances of non-compliance to the Office of Internal Affairs for investigation and discipline, if appropriate.

Id. at 7.

6. On March 22, 2012, Plaintiffs filed a Request for an Order to Show Cause and Notice of Motion and Motion for an Order Holding Defendants in Contempt of Court (the “Accountability Motion”). *See* Dkt. 2024. Plaintiffs argued in the Accountability Motion that Defendants were violating the accountability section of the 2007 Injunction by “fail[ing] to take any action to track ... reported instances of staff member non-compliance, or to refer repeated instance of non-compliance to the [Office of Internal Affairs].” *Id.* at 3.

7. On August 22, 2012, this Court issued an Order Denying Motion for Contempt, Denying as Moot Motion to Strike, and Modifying Permanent Injunction (“Accountability Order”), Dkt. 2180, a true and correct copy of which is attached hereto as **Exhibit C**. As the Court explained in this Order, the accountability provisions of the 2007

1 Injunction “required Defendants to develop effective internal oversight and accountability
 2 procedures to ensure that Defendants learned what was taking place in their facilities, in
 3 order to find violations, rectify them and prevent them from recurring in the future, without
 4 involvement by Plaintiffs’ counsel or the Court.” *Id.* at 10. The Court further explained
 5 that “investigations, including the documentation of the results, are necessary to ensure
 6 that grievances are addressed and to identify staff error or misconduct and institutional
 7 deficiencies that violate class members’ rights.” *Id.* at 11. The Court found that
 8 Defendants had failed to track or investigate “numerous ... incidents” of violations of the
 9 ARP and Court orders. *Id.* at 12. The Court further held that “Defendants’ accountability
 10 system ... has not been effective.” *Id.* at 15-16.

11 8. While denying Plaintiffs’ motion to hold defendants in contempt, the “Court
 12 f[ound] the 2007 Injunction should be clarified and made more detailed, to make clear
 13 what is expected of Defendants and to allow Defendants to conform their future behavior
 14 to its terms.” *Id.* at 16. The Court modified the Injunction to

15 require Defendants to track all allegations of non-compliance with the ARP
 16 and the orders of this Court.... This must be done regardless of the source of
 17 the allegations. The only difference is that this order also requires
 18 Defendants to list when the investigation was initiated, the name and title of
 the investigator, the date the investigation was completed, the results of the
 investigation, and the number of prior allegations of non-compliance against
 the involved employee[.]

19 *Id.* at 16-17. The Court further held that Defendants would be required to initiate a timely
 20 investigation, within 10 business days,

21 to ensure that allegations are investigated while memories are fresh, the facts
 22 surrounding the allegations are still in existence and the violation can be
 23 remedied. Further, in order to reconcile disagreements between the parties
 24 resulting from investigations, th[e] Court finds that Plaintiffs’ counsel must
 have access to the results of the investigation, including all sources of
 information relied on to substantiate or refute the allegations.

25 *Id.* at 18. The Court went on to hold that with referrals to the Office of Internal Affairs
 26 (“OIA”) for investigation and discipline of non-complying employees, Defendants would
 27 be required to “comply with the Employee Disciplinary Matrix set forth in the CDCR
 28 Departmental Operations Manual, Chapter 3, Article 22.” *Id.* The Court further found “it

1 necessary to create a process for resolving disputes between the parties regarding whether
2 an incident constitutes a violation of the ARP and this Court's orders[]" *Id.* at 19.

3 9. Defendants appealed the Accountability Order. The Ninth Circuit affirmed
4 the Court's order in all respects except with regard to the dispute resolution process. *See*
5 *Armstrong v. Brown*, 768 F.3d 975 (2014). On remand, on December 29, 2014, the Court
6 issued an Order Modifying January 18, 2007 Injunction ("Modified Injunction"), Dkt.
7 2479, a true and correct copy of which is attached hereto as **Exhibit D**. The Modified
8 Injunction, as implemented by CDCR through internal memoranda and software purchased
9 from Salesforce, governs accountability for CDCR staff misconduct and violations of the
10 ARP and Court orders.

11 **The Parties' Ongoing Efforts to Develop a Joint Monitoring Tool and to Jointly**
12 **Monitor Defendants' ADA Compliance**

13 10. In 2013, the Court ordered the parties to work together to develop better
14 means for monitoring Defendants' compliance with the ADA, the ARP, and this Court's
15 orders. *See* Order Regarding Monitoring, Dkt. 2344, a true and correct copy of which is
16 attached hereto as **Exhibit E**. The Court directed "the parties to meet and confer, with the
17 assistance of the court's expert as needed, on how to resolve [monitoring] issues and
18 improvements that might be made on the monitoring process." *Id.* at 2.

19 11. On July 11, 2013, the parties convened the first small working group to
20 improve monitoring. I was present at that meeting for Plaintiffs, along with my co-counsel
21 Penny Godbold. Since that date, the parties have met regularly under the supervision and
22 with the guidance of the Court Expert to draft and refine a joint monitoring tool. The
23 parties have also conducted a number of joint audits of Defendants' prisons for compliance
24 with the ARP and this Court's orders. The thrust of both the Joint Audit Process and the
25 accountability plan are to share information to allow Defendants to monitor their own
26 performance and create a sustainable, ADA-compliant system.

**Plaintiffs' Counsel Has been Documenting Serious Staff Misconduct
at RJD Since 2016**

12. Plaintiffs' counsel have been notifying Defendants of incidents of staff misconduct and violence against *Armstrong* class members at RJD in tour reports, letters, and Case Management Statements for three-and-a-half years. Plaintiffs' counsel first sounded the alarm following a September 2016 *Armstrong* monitoring tour, in a section of a November 2016 monitoring report entitled "Abusive Staff Conduct Towards Disabled Prisoners." *See* Freedman Decl., Ex. 67, at 11.

13. In April 2017, following another monitoring tour, Plaintiffs issued another report that included allegations of pervasive, excessive, and targeted force against people with disabilities, utter humiliation of incarcerated people, and intimidation and threats by staff resulting in fear of retaliation by class members who overwhelmingly refused to agree to use their names in reports. *Id.*, Ex. 69, at 3-6, 8-9. Plaintiffs' counsel issued two additional *Armstrong* monitoring tour reports in 2017 and 2019 that included numerous, similar allegations of staff abusing class members at RJD. *Id.*, Exs. 71, 73.

14. In July 2017, Plaintiffs raised similar concerns regarding officers assaulting people with disabilities at RJD in their section of the Joint Case Status Statement. *See* Dkt. 2688, at 4-6.

15. In addition, during the period from 2017 to late-2019, Plaintiffs' counsel sent Defendants in *Armstrong* and *Coleman* twenty-one advocacy letters documenting serious allegations of staff members attacking, assaulting, threatening to attack and assault, and retaliating against *Armstrong* class members. Freedman Decl., Exs. 11b, 15b, 21b, 27b, 38b, 41b, 41c, 43b, 45b, 47b, 51b, 57b, 57c, 59, 60, 61, 62, 63, 64, 65, 66.

16. A joint monitoring audit at RJD in August 2018 brought greater attention to the widespread assaults by staff on *Armstrong* class members and other vulnerable incarcerated people. In response to prisoner interviews conducted by Plaintiffs' counsel, the Court Expert, and Defendants during the joint audit, Ms. Godbold wrote the Secretary

1 of CDCR, Ralph Diaz. Attached hereto as **Exhibit F** is a true and correct copy of the
 2 September 20, 2018, letter to Secretary Diaz from Ms. Godbold.

3 17. Defendants' auditors from the Office of Audits and Court Compliance
 4 ("OACC") also wrote to CDCR to report the consistent allegations of misconduct that the
 5 interviewees had made. Attached hereto as **Exhibit G** is a true and correct copy of the
 6 September 20, 2018 memorandum to Connie Gipson, Director of CDCR's Division of
 7 Adult Institutions ("DAI"), from Matt Espenshade, Deputy Director of OACC.

8 **In Late-2018 and Early-2019 Defendants Identified Horrific Allegations of Staff**
 9 **Misconduct Against People With Disabilities on Facility C at RJD Through More**
 10 **than One Hundred Interviews with Incarcerated People**

11 18. Although not informed in advance or at the time, I later learned that
 12 Defendants sent a strike team of investigators from outside of RJD to conduct interviews
 13 with incarcerated people on Facility C at RJD on December 4-5, 2018. *See* Freedman
 14 Decl., Ex. 2. The strike team, which was led by Associate Warden Jason Bishop,
 15 randomly selected 150 people from Facility C to interview. *Id.* at 2. Forty-eight of the
 16 people selected refused to participate in the interviews. *Id.* at 3. Those who did participate
 17 reported horrific allegations of staff misconduct on Facility C that were summarized in a
 18 memorandum (the "Bishop Report") sent on December 10, 2018 by AW Bishop to Kim
 19 Seibel, the Associate Director at CDCR with responsibility for RJD. *See generally id.* The
 20 Bishop Report was not produced to Plaintiffs' counsel until January 24, 2020 in response
 21 to a discovery request.

22 19. The investigators found that interviewees consistently reported that: staff
 23 work with and hire incarcerated people, including members of prison gangs (which CDCR
 24 calls security threat groups ("STGs"), to assault other incarcerated people; that staff give
 25 incarcerated people permission to assault or to steal the property of other incarcerated
 26 people; that staff intentionally delay in responding to fights between incarcerated people
 27 and then use excessive force when they do; that staff set up incarcerated people to fight
 28 one another, with the loser being assaulted further; that staff viewed the "procession of
 inmates coming out of the dining hall as a target rich environment to pick victims from and

1 harass them”; and that staff deny medical care to incarcerated people who have been
 2 involved in incidents. Freedman Decl., Ex. 2, at 4-6. The investigators also found that
 3 “custody staff actively retaliat[e] against inmates for filing appeals or staff complaints, or
 4 requesting assistance with safety concerns.” *Id.* at 4; *see also id.* at 9 (“[W]ithin 24 hours
 5 of an inmate dropping off an appeal ... retaliation begins.”). According to the Bishop
 6 Report, the retaliation took a number of forms, including assaulting the complainant in a
 7 place with limited visibility; arranging for incarcerated people in STGs to assault the
 8 complainant; seizing complainant’s property, announcing to other incarcerated people that
 9 the complainant had a disfavored commitment offense (e.g., rape or child molestation); or
 10 announcing that the complainant was responsible for other incarcerated people not
 11 receiving programs (i.e., television, dayroom, showers, etc.). *Id.* at 4, 9. Thirty-eight
 12 percent of interviewees reported knowing of someone who received an intentionally
 13 falsified Rules Violation Report (“RVR”) and forty-four percent reported knowing
 14 someone who had been charged with resisting or assaulting staff when staff had, in fact,
 15 assaulted the incarcerated person. *Id.* at 10.

16 20. The Bishop Report also included conclusions specifically regarding officers’
 17 treatment of people with disabilities. The investigators found that that “[m]entally
 18 disordered offenders, developmentally disabled offenders, sex offenders, and
 19 homosexual/transgender offenders [are] being targeted for assault and/or abuse by staff.”
 20 Freedman Decl., Ex. 2 at 1; *see also id.* at 4-5 (“Interviewees alleged custody staff largely
 21 target inmates who are participants in the Mental Health Services Delivery System
 22 (MHSDS), inmates who are developmentally disabled (DDP), inmates who identify as
 23 transgender or homosexual, and inmates who have committed sex offenses.”). In addition,
 24 the Bishop Report listed specific allegations of misconduct raised by incarcerated people.
 25 *Id.* at 14-17. Six of the allegations involved incidents where staff stomped on, jumped on,
 26 pepper sprayed, or otherwise assaulted people in wheelchairs. *Id.*

27 21. The Bishop Report included eight recommendations: (1) Installation of
 28 cameras “in all areas of limited or obstructed visibility, including the blind spots ...”;

(2) “prompt review” of all specific staff misconduct allegations made by the interviewees; (3) a comprehensive review of STGs on Facility C; (4) “Increased supervisory and managerial presence on Facility C during all hours”; (5) restricting rank-and-file officers from have access to areas of low visibility by removing their access to keys to gain entry to such areas; (6) enforcement of CDCR’s policy regarding uniforms; (7) mandatory remedial training for officers and supervisors regarding “effective communication techniques for mentally disordered and developmentally disabled offenders, and equal employment opportunity policy”; and (8) changing the practice for collecting appeals on Facility C to ensure confidentiality. *Id.* at 12-13.

22. According to other documents recently produced by Defendants, Sara Malone, who is the Chief Ombudsman for CDCR and who reports to CDCR Secretary Diaz, was part of the strike team and participated in the interviews conducted on December 4-5, 2018. After the interviews concluded on December 5, 2018, she wrote the following in an email, a true and correct copy of which is attached as **Exhibit H**, to Ms. Seibel and Ms. Gipson, the Director of DAI:

We completed the interviews today and what 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. I have two of my Ombudsman staying back to provide support on that yard for tomorrow. I have not told anyone that as of yet and will inform [Acting Warden] Pat[rick Covello] in the morning. **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.** We will provide any help you need.

Id. at DOJ00013202 (emphasis added). Ms. Seibel responded a few minutes later, writing, in part: “During our exit [interview] today I was informed of a lot of the same and should have a complete report by January which really doesn’t address camera’s [sic], or additional strike teams today but is movement in a forward direction.” *Id.* at DOJ00013201. The next morning, Ms. Malone wrote:

The results of these interviews were no different than the results of my teams

1 tour 9/11-14. If you refer to that report and/or the information provided to
 2 you by Eric Joe in his exit, **there has been little to no progress since**
 3 **September**.... Additionally, a poem was provided to one of the teams that
 4 speaks to the desperation of the inmate and future action toward staff. I am
 5 not typically an alarmist, but again, **I have never heard such despair,**
 6 **hopelessness, and fear from inmates** and I have been on quite a few of
 7 these teams to review and interview inmates. The CIW tour results don't
 8 come close to this and CIW was very bad.

9 *Id.* at DOJ00013200-3201 (emphasis added).

10 23. Documents produced by Defendants show that in January and February
 11 2019, investigators from outside RJD conducted follow up interviews with some of the
 12 interviewees from December 2014 who had reported specific allegations of misconduct.
 13 See Freedman Decl., Exs. 3, 4. Following those interviews, a sergeant produced two
 14 memoranda. Freedman Decl., Exs. 3, 4. The memoranda included identical conclusions:

15 Throughout this investigation, a common trend has been identified of areas
 16 and types of inmates that are being utilized and or subject to harassment or
 17 unnecessary or excessive uses of force. It has been determined that the gym,
 18 rotundas, chow hall and blind spots ... are regularly used for either inmate on
 19 inmate assaults or staff on inmates excessive force. **Majority of these**
 20 **allegations are being made by the Enhanced Outpatient inmate**
 21 **population or wheelchair designated inmates.** Allegations received
 22 indicate the existence of a custody gang ... and custody staff utilize
 23 [incarcerated people in Security Threat Groups], to carry out assaults on
 24 other inmates for retaliation purposes. This information has not yet been
 25 proven, but has been brought up in numerous interviews by different
 26 inmates, and even by an inmate who claims to have assaulted inmates on
 27 behalf of custody staff. The inmate population appears to be in fear of
 28 retaliation when submitting inmate appeals, stating correctional officers have
 access to the appeal boxes and throw away appeals and retaliate against the
 submitter. There is also a common trend of inmates either withdrawing
 appeals or refusing to participate in the videotaped interview process due to
 fear or being retaliated against.

21 *Id.*, Ex. 3, at DOJ00000057 (emphasis added); *Id.*, Ex. 4, at DOJ00000425 (emphasis
 22 added). The sergeant discussed one case in which an *Armstrong* class member who uses a
 23 wheelchair alleged that, after he threatened to report an officer for not following policy, the
 24 officer pepper sprayed him in the face, pulled him out of his wheelchair, and beat him up.
 25 *Id.*, Ex. 3, at DOJ00000051-52. He also discussed another case where staff threw a person
 26 sitting on his walker to the ground. *Id.* at DOJ00000050-51. The sergeant made a number
 27 of recommendations in his Reports, including that CDCR should install cameras inside
 28 housing units and sally-ports, change the leadership on Facility C, and restrict officers'

1 access to the gymnasium and to the appeals boxes. *Id.* at DOJ00000057.

2 **CDCR Fails to Inform Plaintiffs' Counsel or the Court of the Epidemic of Staff**
 3 **Misconduct Against People With Disabilities**

4 24. As reflected in the Bishop Report, the sergeant's memoranda, and the email
 5 from the Chief Ombudsman, by December 5, 2018, CDCR was aware that there was an
 6 epidemic of violence and retaliation against people with disabilities at RJD. Over the
 7 course of the next year, however, Defendants never notified Plaintiffs' counsel or the
 8 Court of the abuses they had uncovered.

9 25. Defendants did not include any allegations of misconduct discovered during
 10 the strike team interviews on their *Armstrong* non-compliance logs. *See* Freedman Decl.,
 11 ¶ 282 & Ex. 75.

12 26. On December 10, 2018, following the case-wide meet and confer meeting,
 13 Plaintiffs' counsel requested an update on the status of Defendants' response to Ms.
 14 Godbold's September 20, 2018 letter and OACC's September 20, 2018 memorandum.
 15 Representatives from the CDCR Office of Legal Affairs reported that Defendants had sent
 16 the strike team to RJD. Decl. of Penny Godbold in Supp. of Pls.' Mot. to Stop Defs. From
 17 Assaulting, Abusing and Retaliating Against People With Disabilities at RJD ("Godbold
 18 Decl."), filed herewith, ¶ 10. Defendants described the methodology of the strike team
 19 interviews, but did not provide any information regarding the strike team's findings. *Id.*
 20 Defendants did, however, state that they would share the interview results with Plaintiffs'
 21 counsel at a later date. *Id.* As discussed in more detail below, that never happened.

22 27. On February 6, 2019, Ursula Stuter, an attorney in CDCR's Office of Legal
 23 Affairs, sent Ms. Godbold a letter, a true and correct copy of which is attached hereto as
 24 **Exhibit I**. The letter ostensibly was a response to Ms. Godbold's September 20, 2018
 25 letter. *Id.* at 1. It described changes that CDCR had made at RJD to respond to the
 26 allegations in Ms. Godbold's letter, including cultural leadership training, review by non-
 27 RJD staff of RJD's appeals and investigatory documents, directives to increase training for
 28 line staff, staffing changes in "key positions," physical relocation of Facility C supervisory

1 staff onto the yard, the redirection of three employees off of Facility C, and referrals to the
2 OIA. *Id.* at 1-2. The letter also reiterated the methodology for the December 4-5, 2018
3 strike team interviews. *Id.* at 2-3. The letter did not provide any information about the
4 findings of the strike team interviews, including the findings regarding staff abuses of
5 people with disabilities, or share the Bishop Report or sergeant's memoranda with us.

6 28. On July 1, 2019, my co-counsel, Michael Freedman, had a telephone
7 conference with Ms. Stuter and Russa Boyd (both from the CDCR Office of Legal
8 Affairs), Ms. Seibel, and Patrick Covello (the then-Acting Warden at RJD). Freedman
9 Decl., ¶ 298. The CDCR participants provided an update regarding efforts to remedy staff
10 misconduct problems at RJD. *Id.* They stated that these efforts included the hiring of a
11 new captain for Facility C, the hiring of additional sergeants to conduct additional training
12 on second and third watch, the redirection of five additional employees off of Facility C,
13 the replacement of staff in the Investigative Services Unit, changes to the process for
14 collecting appeals on Facility C, the upgrading of existing cameras on Facility C, and the
15 dismissal of three employees for staff misconduct. *Id.* The CDCR participants also
16 indicated that they were investigating forty-three specific allegations of misconduct
17 discovered during the December 2018 interviews. *Id.* Lastly, Warden Covello indicated
18 that the remaining yards at RJD would be getting camera coverage in FY 2019-20. *Id.*
19 None of the CDCR participants provided any information about the specific findings of the
20 strike team interviews, including the findings regarding staff abuses of people with
21 disabilities. *Id.*

22 29. Between the July 1, 2019 telephone call and November 13, 2019—the date
23 Plaintiffs sent Defendants a demand letter regarding staff misconduct at RJD—Defendants
24 did not provide me or any other attorneys for Plaintiffs with any substantive updates
25 regarding Defendants' efforts to address or investigations into staff misconduct at RJD. In
26 addition, at no time during that period did Defendants inform me or any other attorneys for
27 Plaintiffs of the specific findings of the strike team interviews, including the findings
28 regarding staff abuses of people with disabilities, or share the Bishop Report with us.

1 30. In Joint Case Status Statements filed in this Court, Defendants repeatedly
2 represented to the Court that the allegations of staff misconduct that Plaintiffs' counsel had
3 raised and about which CDCR was aware were not related to *Armstrong* or Defendants'
4 ADA compliance. See Dkt. 2821, at 3-4, Jan. 15, 2019 ("Plaintiffs' counsel is attempting
5 to relitigate *Madrid* by suggesting that any and all allegations [of staff misconduct] by a
6 class member implicates the ADA. Defendants disagree. Not every complaint implicates
7 the ADA or this Court's accountability orders, just because it is made by a class
8 member.... [D]efendants are unwilling to allow this action to stray from addressing the
9 rights of disabled inmates under the ADA."); Dkt. 2844, at 8, Mar. 15, 2019 ("[W]hile
10 Defendants acknowledge the need for staff to foster an environment conducive to meeting
11 the needs of the inmates with disabilities, not every allegation of staff misconduct is
12 appropriately before the *Armstrong* Court, nor is every allegation of staff misconduct
13 necessarily related to the *Armstrong* Remedial Plan (ARP), the ADA, or this Court's
14 orders."); Dkt. 2863, at 3, May 15, 2019 (same); Dkt. 2874, at 3, July 15, 2019 (same);
15 Dkt. 2887, at 3, Sept. 16, 2019; Dkt. 2896, at 3-4, Nov. 15, 2019 ("Defendants do not
16 agree that all of the letters Plaintiffs send about allegations of staff misconduct allege a
17 close nexus between the misconduct and an inmate's disability; therefore, they are not
18 appropriate for inclusion on the *Armstrong* accountability logs."). Though Plaintiffs'
19 allegations regarding RJD were mentioned in multiple Statements, Defendants never
20 acknowledged that their own investigators had identified that officers at RJD were
21 targeting *Armstrong* class members with assaults and other misconduct.

22 31. Plaintiffs' counsel did not become aware of any of the findings in the Bishop
23 Report or the sergeant's memoranda regarding officers' systemic abuses of people with
24 disabilities until January 24, 2020, when Defendants produced the reports in response to
25 formal discovery requests served on Defendants by Plaintiffs.

26
27
28

CDCR Failed to Respond to Many of the Allegations of Staff Misconduct in Plaintiffs' Counsel's Advocacy Letters and Failed to Include Disability-Related Allegations on Their Non-Compliance Logs

32. Meanwhile, Defendants responded extremely slowly and, in many cases, not at all to Plaintiffs' advocacy letters regarding staff misconduct at RJD. Between November 14, 2017 (Ex. 59) and October 29, 2019, Plaintiffs' counsel sent nineteen RJD advocacy letters to Defendants in *Armstrong* and two letters to Defendants in *Coleman*. See Freedman Decl., Exs. 11b, 15b, 21b, 27b, 38b, 41b, 41c, 43b, 45b, 47b, 51b, 57b, 57c, 59, 60, 61, 62, 63, 64, 65, 66. Fourteen of those letters were sent prior to the July 1, 2019 conversation with Defendants and their counsel described in Paragraph 28, above. See *id.* As of October 15, 2019, however, Defendants had substantively responded to only four of the advocacy letters. See Freedman Decl., ¶¶ 93, 150, 258, 267 & Exs. 27c, 38c, 61a, 65a. As of the date of the filing of this declaration, Defendants still have not substantively responded to eight of Plaintiffs' counsel's letters. Freedman Decl., ¶ 70, 167, 182, 243, 256, 257, 262-3 & Exs. 21b, 41c, 45b, 57b-d, 59, 60, 63.

33. Defendants also failed to include on their non-compliance logs entries for allegations in Plaintiffs' counsel's letters and *Armstrong* monitoring reports that plainly related to Defendants' compliance with the ADA, ARP, and this Court's orders. See Freedman Decl., ¶ 280 & Ex. 75. Defendants failed to include allegations on their non-compliance logs for the incidents outlined in the Bishop Report. *Id.*, ¶ 282. For the period from September 2016 to December 2019, Defendants confirmed only a single allegation of staff misconduct. *Id.*, ¶ 283.

34. Beginning in January 2019, my office started copying the Office of the Inspector General ("OIG") on advocacy letters describing incidents of staff misconduct against people with disabilities at RJD. See Godbold Decl., ¶ 11. A year later, on January 17, 2020, Inspector General Roy Wesley, shortly before his deposition on this case, issued a letter to Secretary Diaz, a true and correct copy of which is attached hereto as **Exhibit J**. Mr. Wesley's letter, which reviews CDCR's response to Plaintiffs' counsel's advocacy letters, states that the OIG found a "pervasive lack of timely follow through by the

1 department” and that many of the allegations raised by Plaintiffs’ counsel were “**ignored.**”
 2 *Id.* at 1 (emphasis added). The OIG found that CDCR conducted inquiries in **only three**
 3 out of 31 allegations raised by Plaintiffs’ counsel that were not previously known by
 4 CDCR at the time it received the letters. *Id.* at 2-3. Of the 38 allegations that were known
 5 to CDCR, the OIG found that CDCR failed to address 10 of the allegations. *Id.* at 5. In
 6 the case of four allegations that were already being considered by the OIA, CDCR failed to
 7 refer Plaintiffs’ letters to the OIA. *Id.* at 3.

8 35. On January 16, 2020, Secretary Diaz sent a letter to the OIG, a true and
 9 correct copy of which is attached hereto as **Exhibit K**. As the letter indicates, Secretary
 10 Diaz was responding to a draft of the OIG’s letter regarding CDCR’s failure to respond to
 11 Plaintiffs’ counsel’s advocacies that the OIG had provided to Secretary Diaz in advance of
 12 making the letter public. *Id.* at 1. In Secretary Diaz’s letter, he did not dispute a single one
 13 of the OIG’s conclusions. *See generally id.* He did, however, accuse the OIG of improper
 14 motives in publicizing CDCR’s failures and requested the OIG not to publicly issue the
 15 letter. *See id.* at 1 (“I am deeply troubled about the timing of your letter.”); *id.* at 3 (“The
 16 [OIG]’s review and comment on the timing and content of the responses [to the advocacy
 17 letters] is inappropriate.”); *id.* at 4 (“That the [OIG] would stretch its oversight authority to
 18 questionable lengths to assist plaintiffs in this litigation is untenable.”).

19 **In Light of Ongoing Reports of Abuse and Retaliation Against People With**
 20 **Disabilities at RJD and Defendants’ Failure at Transparency, Plaintiffs Turned to**
 21 **Litigation to End the Relentless Staff Misconduct**

22 36. While Defendants were failing to inform Plaintiffs’ counsel of the findings
 23 from the strike team interviews and to respond to many of Plaintiffs’ counsel’s advocacy
 24 letters, attorneys in my office continued to receive many concerning reports of abuse,
 25 assaults and retaliation at RJD from our clients.

26 37. By mid-October 2019, it was clear that an epidemic of harassment,
 27 intimidation, staff misconduct, and violence was occurring at RJD. Whatever steps CDCR
 28 had taken to stop staff misconduct at RJD had been inadequate. Accordingly, at that time,
 I determined that our clients’ rights under the ADA, the ARP, and this Court’s orders

1 could not be protected without the Court's intervention or a substantial and rapid response
2 from Defendants.

3 38. On November 13, 2019, I sent a letter to Defendants that summarized in
4 significant detail the incidents of violence and retaliation documented by Plaintiffs'
5 counsel over the course of our two year investigation, and demanded that Defendants issue
6 a remedial plan no later than January 1, 2020 to address our concerns. Freedman Decl.,
7 Ex. 1. Because some of the incarcerated people attacked at RJD were *Coleman*-only class
8 members, the letter is addressed to defense counsel in *Coleman* as well. The Special
9 Master, OIG, and Court Expert were all copied on the letter.

10 39. The letter demanded the following remedies as minimum aspects of the
11 requested remedial plan:

- 12 • Full camera coverage of the institution, including on all yards and in all
13 housing and programming spaces
- 14 • Mandatory body cameras for all correctional officers
- 15 • Expedited implementation at RJD of CDCR's new investigation process
- 16 • Disciplining, terminating, and, if warranted, referring for criminal
17 prosecution officers who have violated CDCR policy and/or the law
- 18 • Suspending officers who are credibly accused of staff misconduct so that
19 they cannot continue to harass class members during the pendency of
20 investigations
- 21 • The creation of an early warning system that tracks misconduct allegations
22 by officer, shift, unit, etc.
- 23 • Improving searches of staff entering the institution to reduce the amount of
24 drugs and cell phones in the prison
- 25 • Seeking a court order to suspend state law if any provisions of state law
26 impede Defendants' ability to end staff misconduct at RJD

27 Freedman Decl., Ex. 2 at 11-13.

28 40. On November 25, 2019, my colleague Michael Freedman and I discussed the
remedial measures we demanded with Russa Boyd, counsel for CDCR, by telephone. Ms.
Boyd informed us that one of the reasons for the problems at RJD was that the institution
had a lot of "actors" in high positions. Ms. Boyd assured us that RJD was working hard to

1 install permanent employees. Ms. Boyd proposed a meeting at RJD with newly appointed
2 Associate Director Tammy Foss to discuss the prison's efforts.

3 41. On December 4, 2019 I spoke to Ms. Boyd about RJD again, this time with
4 Michael Freedman and Penny Godbold. During this call, Ms. Boyd noted that one
5 employee had been fired and two had retired to avoid termination. Ms. Boyd again cited
6 the large number of "actors" at the warden and assistant warden level as contributors to the
7 problems at RJD. Ms. Boyd confirmed that she was not aware of any criminal referrals in
8 connection with RJD staff misconduct. During the call, we went through the measures
9 requested in my November 13, 2019 demand letter. Ms. Boyd indicated that she could not
10 discuss pending budget change proposals, but expected that RJD would take steps to obtain
11 full camera coverage at some future point. Ms. Boyd also referenced CDCR's new
12 investigation process and agreed to expedite its implementation. With regard to body
13 cameras, Ms. Boyd informed us that CDCR would not consider those due to the expense.

14 42. Defendants have not produced any written remedial plan in response to the
15 November 13, 2019 demand letter.

16 **Plaintiffs Are Still Conducting Discovery Regarding Abuse, Violence and Retaliation**
17 **at RJD**

18 43. We have attempted, in several ways, to obtain documents and information
19 from CDCR regarding the epidemic of violence at RJD against people with disabilities.
20 On November 21, 2019, we served a Notice of Deposition of CDCR's Person Most
21 Knowledgeable and Request for Production of Documents, a true and correct copy of
22 which is attached hereto as **Exhibit L**. Though the parties have met and conferred
23 multiple times, Defendants' production of documents has been slow. To date, Defendants
24 have produced emails mainly for one critical custodian, Kimberly Seibel, and a very small
25 number of emails for other, less-relevant custodians. Defendants have only produced three
26 989 packets, which are used by the hiring authority to request investigations from OIA.
27 Pending discussions of an additional protective order, Defendants have also not produced
28 any investigation reports from OIA, 402 forms (used by the hiring authority to decide

1 whether to sustain allegations of misconduct), or 403 forms (used by the hiring to issue
2 discipline after sustaining allegations of misconduct). The parties are currently negotiating
3 a protective order that Defendants insist must be in place before they will produce such
4 documents related to their inquiries and investigations. Defendants have not identified any
5 timeline by when they will complete production of all documents responsive to Plaintiffs'
6 document requests.

7 44. As of February 23, 2020, Defendants had produced approximately 652
8 documents, totaling 13,650 pages, in response to Plaintiffs' counsel's document requests.
9 Defendants labelled a significant number of documents "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY – ARMSTRONG V. NEWSOM (C 94-2307)." Plaintiffs'
11 counsel met and conferred with Defendants regarding this designation, as no provisions in
12 the currently-operational protective orders issued by this Court in 2007 and 2012, Dkts.
13 1044, 2219, provide for any documents to be designated as attorneys' eyes only. On
14 February 18, 2020, Deputy Attorney General Sean Lodholz, counsel for Defendants, sent
15 me and my colleagues an email indicating that documents that Defendants had labeled as
16 attorneys' eyes only may be filed in Court so long as Plaintiffs' counsel comply with the
17 procedures set forth in the existing protective orders. A true and correct copy of the email
18 is attached hereto as **Exhibit M**. Accordingly, though some documents attached as
19 exhibits to my declaration and the Freedman Declaration bear a stamp indicating that they
20 are attorneys' eyes only, that designation was in error.

21 45. Defendants produced two persons most knowledgeable ("PMK") to testify in
22 response to Plaintiffs' Rule 30(b)(6) deposition notice: Kimberly Seibel (whose deposition
23 took place on January 29, 2020) and Patricia Ramos (whose deposition took place on
24 February 4, 2020). In an email sent to Plaintiffs' counsel on January 27, 2020, a true and
25 correct copy of which is attached hereto as **Exhibit N**, Deputy Attorney General Joanna
26 Hood, counsel for Defendants, set forth the topics on which Ms. Seibel and Ms. Ramos
27 had been designated by CDCR to testify.

28

1 46. On January 17, 2020, in light of increasing evidence that Defendants would
2 not produce documents prior to the first PMK deposition scheduled for January 29, 2020, I
3 asked them to prioritize the production of certain documents I believed were directly
4 relevant to RJD's investigation and remedial efforts. Attached hereto as **Exhibit O** is a
5 true and correct copy of my email to Defendants on this subject. After conversation with
6 the Court expert and further communications, on January 24, 2019, just five days before
7 the deposition of Ms. Seibel, Defendants produced the Bishop Report and the sergeant's
8 memoranda. *See* Freedman Decl., Exs. 2-4. As discussed above, these reports document
9 Defendants' awareness as of December 2018 of horrific incidents of staff misconduct
10 against people with disabilities as well as widespread fear by *Armstrong* class members
11 and other vulnerable people at RJD of violence and retaliation. *Id.*

12 47. Attached hereto as **Exhibit P** is a true and correct copy of the non-
13 confidential portion of the transcript of the January 29, 2020 deposition of CDCR's person
14 most knowledgeable, Kimberly Seibel, who is the Deputy Director for CDCR's Division
15 of Adult Institutions.

16 48. Plaintiffs' counsel took the deposition of Ms. Seibel prior to receiving the
17 clarification from Defendants on February 18, 2020 regarding the erroneous attorneys'-
18 eyes-only designation of certain documents. Much of the questioning of Ms. Seibel was
19 regarding the Bishop Report and the sergeant's memoranda, which Defendants had
20 designated at attorneys' eyes only. Out of an abundance of caution, Plaintiffs' counsel
21 conducted the portions of her deposition focused on those documents confidentially.
22 Following the deposition, the parties met and conferred about the portions of the
23 deposition that actually contained confidential information and agreed to redactions to
24 propose to the Court. The previously confidential portion of her deposition transcript, with
25 the redactions to which the parties agreed, is attached to the Freedman Declaration at
26 Exhibit 83. The non-confidential portion of the transcript is attached hereto as **Exhibit P**.

27 49. Attached hereto as **Exhibit Q** is a true and correct copy of a letter from Mr.
28 Freedman to Ms. Hood dated February 6, 2020, describing PMK topics about which

1 Ms. Seibel was not prepared to testify and requesting that Defendants respond to
 2 interrogatories on some of those topics instead. In particular, Ms. Seibel testified that she
 3 was not prepared to testify on topics 15-17, which were:

4 15. Current and historical data regarding the monthly number of allegations
 5 of staff misconduct at RJD between January 2017 and present for which the
 6 RJD hiring authority (a) sustained the allegations or (b) did not sustain the
 7 allegations.

8 16. Current and historical data regarding the monthly number of allegations
 9 of staff misconduct at RJD between January 2017 and present for which the
 10 RJD hiring authority sustained the allegations and imposed (a) corrective
 11 action or (b) disciplinary action.

12 17. Current and historical data regarding the monthly number of sustained
 13 allegations of staff misconduct at RJD between January 2017 and present for
 14 which the RJD hiring authority imposed disciplinary action and issued (a) a
 15 Level 1 penalty (official reprimand), (b) a Level 2 penalty (1-2 day
 16 suspension without pay), (c) a Level 3, 4, 5, 6, or 7 penalty (salary reduction
 17 or suspension without pay), (d) a Level 8 penalty (demotion), or (e) a Level 9
 18 penalty (dismissal), as those levels are defined in the Employee Disciplinary
 19 Matrix, Department of Operations Manual, § 33030.16.

20 *See* Ex. Q, at 1; Ex. L at 3.

21 50. On February 14, 2020, Mr. Freedman and I discussed his letter and the
 22 interrogatories with counsel for Defendants and the Court's Expert. During the course of
 23 that call, Defendants' counsel stated that answering all but one of the interrogatories would
 24 require hundreds of hours of work on their part. Defendants' counsel stated that providing
 25 answers would be so time consuming because CDCR does not track incidents of staff
 26 misconduct and would have to review every inquiry and investigation file at the prison to
 27 answer our interrogatories. The parties agreed, at that time, to narrow the request to
 28 include only interrogatory 7(e): "[F]or each month from January 1, 2017 to the present,
 please indicate the number of STAFF MISCONDUCT allegations in which an incarcerated
 person at RJD was an alleged victim of the STAFF MISCONDUCT where the RJD hiring
 authority sustained and issued ... (e) a Level 9 penalty (dismissal), as [that] level[] is
 defined in the Employee Disciplinary Matrix, Department Operations Manual,
 § 33030.16." *See* Ex. Q at 9. As of the filing of this declaration, we have not received a
 response to Interrogatory 7(e).

1 51. Attached hereto as **Exhibit R** is a true and correct copy of excerpts from the
2 transcript of the February 4, 2020 deposition of CDCR's person most knowledgeable,
3 Patricia Ramos, Chief of Headquarters Operations for the Office of Internal Affairs.

4 52. On February 13, 2020, Plaintiffs took the deposition of a psychologist
5 working for CDCR at RJD who, in 2018, reported misconduct in which she witnessed staff
6 engage and then faced retaliation from staff. Excerpts from the transcript of her deposition
7 are attached to the Freedman Declaration at Exhibit 84, as Plaintiffs are seeking to keep
8 her name and identifying information under seal to protect her from further retaliation.

9 53. Plaintiffs took the deposition of Inspector General Roy Wesley on January
10 22, 2020. A true and correct copy of excerpts from the transcript of the deposition of
11 Inspector General Wesley is attached hereto as **Exhibit S**. Mr. Wesley testified that "any
12 time there is staff misconduct alleged, [CDCR] is required to do an inquiry ..." and that
13 the letters submitted by Plaintiffs' counsel were serious and warranted an investigation,
14 and that he does not understand why CDCR did not do an investigation in multiple cases.
15 *Id.* at 14:14-19; 16:1-9. Inspector General Wesley testified that the current OIG budget
16 allows for only one person per region at the OIG to monitor staff misconduct complaints,
17 whereas at least three are needed to adequately conduct that function of his office. *Id.* at
18 63:5-11 & 21-24; 64:14-24.

19 54. On January 3, 2020 I sent a letter, a true and correct copy of which is
20 attached hereto as **Exhibit T**, to Russa Boyd, CDCR Office of Legal Affairs, disputing the
21 decision not to confirm allegations of staff misconduct included on Defendants'
22 accountability logs and requesting the underlying investigative files as allowed by the
23 accountability order. On January 30, 2020, I wrote a follow-up letter, requesting that
24 Defendants produce additional documents. A true and correct copy of my letter is attached
25 hereto as **Exhibit U**. In response to these requests, Defendants have now produced many
26 of the documents relevant to these incidents. However, they have not completed the
27 production.
28

1 55. Over the course of my work in this case, Defendants routinely object to any
 2 inquiry or request that does not specifically involve an *Armstrong* class member, even
 3 when it addresses violations of the ADA. For this reason, I asked my colleague Jessica
 4 Winter to obtain the investigative files for the twelve RJD victims who were only *Coleman*
 5 class members. The parties are in the process of negotiating a protective order pursuant to
 6 which Defendants in *Coleman* may produce the requested files, but none have been
 7 produced to date.

8 56. Another way in which Plaintiffs have attempted to obtain information about
 9 the violence at RJD is through Public Records Act Requests. On October 4, 2019, we
 10 served a Public Records Act Request pursuant to Government Code §§ 62560 et seq. for
 11 CDCR records regarding a number of RJD officers whom we believed had committed staff
 12 misconduct and used excessive force against *Armstrong* class members and other
 13 vulnerable people at RJD in the past three years. After multiple extensions and requests
 14 for more time, CDCR's Office of Legal Affairs wrote to us on January 17, 2020. A true
 15 and correct copy of the letter of Kathryn Clark of the Office of Legal Affairs is attached
 16 hereto as **Exhibit V**. In that letter, Ms. Clark conceded that CDCR had "identified
 17 disciplinary records from 2 cases responsive to your request." *Id.* at 2. Ms. Clark went on:
 18 "However, upon closer examination, CDCR cannot provide any responsive records at this
 19 time, but Rosen Bien Galvin & Grunfeld (RBGG) can make a future request." *Id.*

20 **Staff Misconduct and Violence against Class Members and Other People with**
 21 **Disabilities Continues Unabated at RJD**

22 57. As my colleagues gathered more and more declarations from incarcerated
 23 people documenting the violence and retaliation they had experienced, we decided to make
 24 these available to CDCR in hopes they would investigate the allegations and stop the
 25 misconduct. On January 14 and February 4, 5, 11 and 18, 2020, Plaintiffs shared fifty-five
 26 declarations from *Armstrong* and *Coleman* class members with Defendants through a
 27 secure file-sharing website. These declarations documented threats and assaults by staff
 28 against people with disabilities at RJD occurring as recently as January 2020. By letter

1 dated January 14, 2020, I asked that there be no retaliation against the declarants, and that
 2 they not be contacted without the presence of Plaintiffs' counsel. Attached hereto as
 3 **Exhibit W** is a true and correct copy of my letter.

4 **Defendants' Remedial Efforts to Date Have Been Wholly Ineffective**

5 58. On January 24, 2020, CDCR counsel Russa Boyd sent an email to the Court
 6 expert and me entitled "RJD Updates," a true and correct copy of which is attached hereto
 7 as **Exhibit X**. In that email, Ms. Boyd provided "updates about additional measures
 8 implemented at RJD since Tammy Foss became the Associate Director over RJD's
 9 mission." *Id.*

10 59. Attached hereto as **Exhibit Y** is a true and correct copy of a Budget Change
 11 Proposal ("BCP") for Fiscal Year 2020-2021 submitted by CDCR regarding "Correctional
 12 Video Surveillance/Drug Interdiction Project Continuation." According to CDCR's BCP,
 13 cameras

14 provide[] evidence and transparency in allegations of staff misconduct, use
 15 of force, and sexual misconduct; and the introduction and possession of
 16 drugs and contraband. High quality visual recordings of incidents will serve
 17 as irrefutable evidence in investigations, and in administrative, civil, or
 criminal proceedings. The existence of evidence improves the institution's
 ability to conduct and conclude investigations compared to investigations
 reliant solely on eyewitness testimony.

18 *Id.* at 5. In the BCP, CDCR

19 requests \$21.6 million General Fund and 8 positions ... in 2020-21 and \$2.1
 20 million General Fund and 6 positions in 2021-22 and ongoing to enhance
 21 drug interdiction efforts by completing additional deployments of the
 22 Correctional Video Surveillance Project at three institutions—Richard J.
 Donovan Correctional Facility (RJD), Salinas Valley State Prison (SVSP),
 and the California Institution for Women (CIW).

23 *Id.* at 2. According to this BCP, the soonest video camera surveillance would be deployed
 24 at RJD would be June 2021, assuming full funding by the Legislature. *Id.*, Attach. D
 25 (attachments identified in top right-hand corner of the page).

26 60. Although CDCR has two means for seeking emergency funding to install
 27 video cameras at RJD, I do not believe it has pursued either. First, the state legislature has
 28 the authority to pass supplemental appropriations bills to provide additional funds for state

1 agencies. Attached hereto as **Exhibit Z** is a true and correct copy of Section 9840 of the
 2 Governor’s proposed 2020-21 Budget, which includes information regarding projects
 3 funded by supplemental appropriations bills in Fiscal Year 2018-19 and Fiscal Year 2019-
 4 20. In those two budget years, CDCR received substantial funding through supplemental
 5 appropriations bills, including \$17,000,000 for “Population adjustment,” \$12,675,000 for a
 6 “Medical Classification Model,” \$18,849,00 for “Pharmaceutical costs for inmates,”
 7 \$61,000,000 for “Contract medical augmentation,” \$3,070,000 for “California Correctional
 8 Health Care Services leasing augmentation,” and \$9,702,00 to remediate an outbreak of
 9 Legionnella disease at California Health Care Facility. *Id.* at GG 2-GG 3.

10 61. Second, the State Budget Act for 2019-2020, a true and correct copy of
 11 relevant excerpts of which are attached hereto as **Exhibit AA**, allocates a total of
 12 \$50,000,000 dollars to the Department of Finance (“DOF”) to fund emergency or
 13 contingency needs for any state agency. *See id.* at 851-53. According to the DOF’s
 14 guidance, any state agency can submit a request for emergency contingency funding to the
 15 DOF, provided that such funding “is for expenses incurred in response to conditions of
 16 disaster or extreme peril that threaten the immediate health or safety of persons or property
 17 in this state.” *See id.* at 852; *see also* DOF Form 580, entitled “Unanticipated Cost
 18 Funding Request”, available at
 19 http://dof.ca.gov/budget/resources_for_departments/budget_forms/index.html and attached
 20 hereto as **Exhibit BB** at 1.

21 62. To my knowledge, CDCR has not pursued either of these avenues to obtain
 22 emergency funding for cameras at RJD, despite its knowledge of the dangerous and
 23 inhumane conditions it has created at RJD and other prisons.

24 63. In January 2020, CDCR rolled out a program designed to enhance drug
 25 treatment in its prisons called the Integrated Substance Use Disorder Treatment Program
 26 (“ISUDT”). The ISUDT program is expected to cost CDCR \$71,300,000 in Fiscal Year
 27 2019-20, \$161,900,000 in Fiscal Year 2020-21, and \$164,800,000 in Fiscal Year 2021-22.
 28 *See* Budget Change Proposal for Fiscal Year 2019-21, “Integrated Substance Use Disorder

1 Treatment Program,”

2 https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG5225_BCP3149.pdf. Leading
3 up to the rollout, at the parties’ regularly scheduled meet-and-confer in December 2019,
4 CDCR shared with Plaintiffs’ counsel a PowerPoint describing the need for this program.
5 Attached hereto as **Exhibit CC** is a true and correct excerpt from the ISUDT PowerPoint
6 describing drug overdoses in CDCR. According to this slide, RJD had the fourth highest
7 number of overdoses of any institution in CDCR, with 118 overdoses between October
8 2015 and May 2019. *Id.* at 2.

9 64. Attached hereto as **Exhibit DD** is a true and correct copy of an excerpt from
10 the Legislative Analyst’s February 18, 2020 Criminal Report entitled “The 2020-21
11 Budget: Criminal Justice Proposals,” showing CDCR with an estimated budget of
12 \$13,320,000,000 in Fiscal Year 2019-20 and a proposed budget of \$13,395,000,000 in FY
13 2020-21. *Id.* at 4.

14 **Violence Against and Abuse of People With Disabilities Has Occurred and Is**
15 **Occurring at Other High-Security CDCR Prisons**

16 65. In December 2015, the OIG issued a report at the request of the California
17 Legislature and the Prison Law Office detailing numerous incidents of staff misconduct at
18 High Desert State Prison (“HDSP”). A true and correct copy of excerpts of the HDSP is
19 attached hereto as **Exhibit EE**. In light of the report and monitoring by the Prison Law
20 Office, CDCR undertook remedial measures at HDSP, including installation of cameras
21 throughout the prison.

22 66. Attached hereto as **Exhibit FF** is a true and correct copy of a report entitled
23 “The Effect of Camera Installation on Violence at High Desert State Prison,” as revised
24 May 9, 2018, issued by the Center for Evidence-Based Corrections at the University of
25 California, Irvine.

26 67. By January 2018, reports of serious misconduct were emanating from the
27 Salinas Valley State Prison (“SVSP”). In response to monitoring by the Prison Law
28 Office, the OIG issued a report in January 2019 detailing the inadequacy of CDCR’s

1 investigative process for finding and remedying staff misconduct and excessive use of
2 force. Attached hereto as **Exhibit GG** is a true and correct copy of excerpts from the
3 OIG's SVSP report.

4 68. My colleague Thomas Nolan has uncovered serious incidents of misconduct
5 based on disability against incarcerated people at California State Prison-Los Angeles
6 County. *See* Freedman Decl., Exs. 76, 78. For example, an *Armstrong* class member with
7 a mobility disability was assaulted by an officer on June 17, 2018 after a dispute over the
8 class member's durable medical equipment. *Id.*, Ex. 76, at 23-24. The officer lifted the
9 victim out of his wheelchair in his cell before slamming his head into his top bunk and
10 punching him in the face. *Id.* To date, Defendants have not provided a substantive
11 response to the staff misconduct allegations in Mr. Nolan's reports.

12 69. Plaintiffs' counsel have also reported similar problems at other institutions,
13 including the California Institution for Women ("CIW"), California State Prison –
14 Sacramento ("SAC"), Substance Abuse Treatment Facility ("SATF") and California State
15 Prison-Corcoran ("COR"). *See* Freedman Decl., Exs. 80, 81, 82, 85, 86, 87. For instance,
16 at COR, Plaintiffs' counsel reported that an *Armstrong* class member with a mobility
17 disability protested on September 24, 2019 that an officer was searching him in a way that
18 was incompatible with his disability-based limitations. *Id.*, Ex. 81, at 2. In response, the
19 officer told the class member, "I don't give a shit!" and then slammed the class member to
20 the ground, punching and kicking him in the face and ribs while he lay on the ground. *Id.*
21 After the class member was restrained in handcuffs, the officer stepped on the class
22 member's head and high-fived nearby officers. *Id.*

23 70. Attached hereto as **Exhibit HH** is a true and correct copy of the "Disability
24 Inmate Counts," showing the population of *Armstrong* class members at each CDCR
25 institution as of February 4, 2020.

26 71. Attached hereto as **Exhibit II** is a true and correct copy of excerpts of data
27 from Defendants' COMPSTAT system, which was produced to by Defendants to
28 Plaintiffs' counsel on January 13, 2020.

72. Attached hereto as **Exhibit JJ** is a true and correct copy of an excerpt from the most recent Public Dashboard for the California Correctional Health Care Services, and downloaded at <https://cchcs.ca.gov/wp-content/uploads/sites/60/QM/Public-Dashboard-2019-09.pdf>. The exhibit shows that, as of September 2019, RJD had a total population of 4,071. 16.9% of the total population, or 688 people, were classified as “High Risk Priority 1.” 20.6% percent of the total population or 839 people were classified as “High Risk Priority 2.” Adding those two figures together, as of September 2019, 1,527 people at RJD, or 38% of the population, were classified as “High Risk Priority 1” or “High Risk Priority 2.”

73. Attached hereto as **Exhibit KK** is a true and correct copy of January 10, 2020 report by the OIG, “Sentinel Case,” OIG No. 20-01. The report discusses an investigation where the hiring authority decided to dismiss six officers for misconduct, but attorneys for the Office of Legal Affairs’ Employment Advocacy and Prosecution Team (“EAPT”) decided not to pursue dismissal against two of those officers. The Office of Legal Affairs took the position that testimony of incarcerated people would be insufficient, standing alone, to sustain the dismissal of the two officers. The OIG criticized the EAPT, noting that the legal support for its position was weak and distinguishable and that, in this case, there was significant corroboration of the incarcerated person’s testimony. The OIG concluded that:

the department attorneys’ actions suggest an apparent bias and hostility against inmate testimony and evidence provided by inmates, and set a dangerous precedent in which widespread officer misconduct, which in some cases cannot be proven by any means other than evidence or testimony provided by inmates, will go undiscovered and unpunished. The OIG believes that evidence concerning staff misconduct provided by an inmate and subsequent testimony proffered in a legal proceeding should not be disregarded, based simply on the fact that it came from an inmate. The credibility of information and testimony concerning staff misconduct provided by inmates must be independently assessed for credibility, like any other witness testimony, and should not be dismissed outright because the provider of the testimony is an inmate. Furthermore, simply because an individual is incarcerated does not mean he or she can never provide credible and reliable information. Unless department attorneys change their approach and bias regarding inmate testimony, we question whether they can effectively represent the department in such cases.

1 *Id.* at 2.

2 74. Attached hereto as **Exhibit LL** is a true and correct copy of relevant sections
3 from CDCR's Operations Manual. Sections 31140.5 and 33030.3.1 require that staff
4 report all "misconduct or any unethical or illegal activity." Section 33030.19 establishes
5 that officers can be disciplined for failing to report misconduct.

6 I declare under penalty of perjury under the laws of the United States of America
7 that the foregoing is true and correct, and that this declaration is executed at San Francisco,
8 California this 28th day of February, 2020.

9
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11 Gay Crosthwait Grunfeld
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Exhibit A

ARMSTRONG

v.

DAVIS



*COURT ORDERED
REMEDIAL PLAN*

**Amended
January 3, 2001**

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REMEDIAL PLAN

I. POLICY

It is the policy of the California Department of Corrections (CDC) to provide access to its programs and services to inmates and parolees with disabilities, with or without reasonable accommodation, consistent with legitimate penological interests. 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. All institutions/facilities housing inmates with disabilities will ensure that housing and programming are reasonable and appropriate in a manner consistent with their mission and Department policy.

A. SCOPE

The Disability Placement Program (DPP) is the Department's set of plans, policies, and procedures to assure nondiscrimination against inmates/parolees with disabilities. The DPP applies to all of the Department's institutions/facilities, all programs that the Department provides or operates, and to all inmates who have disabilities that affect a major life activity whether or not the disabilities impact placement.

Although the program covers all inmates/parolees with disabilities, whether or not they require special placement or other accommodation, it is facilitated in part through "clustering" or designating accessible sites (designated facilities) for qualified inmates requiring special placement. Inmates with permanent mobility, hearing, vision, and speech impairments, or other disability or compound conditions severe enough to require special housing and programming, will be assigned to special placement in a designated DPP facility. Inmates with a permanent impairment of lesser severity, learning disability, or a kidney disability, may be assigned to any of the Department's institutions/facilities (designated DPP institutions or nondesignated DPP institutions) consistent with existing case factors.

II. STANDARDS

A. QUALIFIED INMATE/PAROLEE

A "qualified inmate/parolee" is one with a permanent physical or mental impairment which substantially limits the inmate/parolee's ability to perform a major life activity. Major life activities are functions such as caring for one's self, performing essential manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

B. PERMANENT DISABILITY

A "permanent disability or impairment" is one which is not expected to improve within six months. Temporary impairments such as a broken leg or hernia operation do not constitute a permanent disability or impairment.

C. CATEGORIES AND CRITERIA FOR SPECIAL PLACEMENT

The following categories and criteria apply to inmates with Disabilities Impacting Placement as identified via the CDC Form 1845 (Section C):

I. PERMANENT MOBILITY IMPAIRMENTS

- a) **PERMANENT WHEELCHAIR:** Inmates/parolees who use wheelchairs full or part time due to a permanent disability.

Wheelchair Category Designations

- ❖ **DPW -- Wheelchair Dependent:** Inmates/parolees who are medically prescribed a wheelchair for full time use both within and outside the assigned cell due to a permanent disability shall be designated as DPW. All designated DPW inmates/parolees must be housed in a designated facility and require housing in a wheelchair accessible cell.
- ❖ **DPM -- Mobility Impaired:** Inmates/parolees who do not require a wheelchair full time but are medically prescribed a wheelchair for use outside of the assigned cell, due to a permanent lower extremity mobility impairment that substantially limits walking, shall be designated as DPM. All designated DPM inmates/parolees require housing in a designated facility but do not require housing in a wheelchair accessible cell. However, these inmates may require in-cell accommodation, e.g., grab bars or raised toilet seats as documented on a CDC Form 1845 or 128C.
- ❖ **DPO -- Other:** Inmates/parolees who do not require a wheelchair full time but are medically prescribed a wheelchair for use outside of the assigned cell, due to a disability other than a lower extremity mobility impairment, i.e., emphysema, serious heart condition, etc., who, due to the severity of their disability, require placement in a designated facility, shall be designated as DPO. All designated DPO inmates/parolees require housing in a designated facility but do not require housing in a wheelchair accessible cell. However, these inmates may require in-cell accommodation, e.g., grab bars or raised toilet seats as documented on a CDC Form 1845 or 128C.

The above criteria will also be applied to inmates currently undergoing RC processing and those inmates housed in dormitory settings as they may be placed in Administrative Segregation for factors as defined by the California Code of Regulations (CCR), Title 15, Section 3335 or subsequently endorsed for transfer to a celled environment as outlined in CCR, Title 15, Section 3375; et. seq.

- b) PERMANENT MOBILITY IMPAIRMENT (NONWHEELCHAIR):** Inmates/parolees who do not require a wheelchair but who have a permanent lower extremity mobility impairment that substantially limits walking; i.e., an inmate who cannot walk 100 yards on a level surface or climb a flight of stairs without pausing with the use of aids, i.e., crutches, prosthesis, or walker, shall also be designated as DPM. These inmates may also require in-cell accommodation, e.g., grab bars or raised toilet seats, as documented on a CDC Form 1845 or 128C.

2. PERMANENT HEARING IMPAIRMENTS

Inmates/parolees who are permanently deaf or who have a permanent hearing impairment so severe that they must rely on written communication, lip reading, or signing because their residual hearing, with aids, does not enable them either to communicate effectively or hear an emergency warning shall be designated as DPH.

3. PERMANENT VISION IMPAIRMENTS

Inmates/parolees who are permanently blind or who have a vision impairment not correctable to central vision acuity of 20/200 or better, even with corrective lenses, shall be designated as DPV.

4. PERMANENT SPEECH IMPAIRMENTS

Inmates/parolees who have a permanent speech impairment, such as a difficult speech pattern or no speech, and do not communicate effectively in writing shall be designated as DPS.

5. OTHER

Inmates/parolees with a disability other than those specified above, e.g., emphysema or other upper respiratory condition, which due to the severity of their disability may require special placement in a designated DPP facility. These inmates shall also be designated as DPO.

D. CATEGORIES AND CRITERIA WHICH DO NOT REQUIRE SPECIAL PLACEMENT

The following categories and criteria apply to inmates with disabilities that do not impact placement as identified via the CDC Form 1845 (Section D):

1. PERMANENT MOBILITY IMPAIRMENTS

Inmates/parolees with permanent lower extremity mobility impairments who can walk 100 yards and up a flight of stairs without pausing, with or without aids, shall be designated as DNM.

2. PERMANENT NONAMBULATORY IMPAIRMENTS

Inmates/parolees who have an arm or hand prosthesis, or missing digits. These inmates do not have a specific category code.

3. PERMANENT HEARING IMPAIRMENTS

Inmates/parolees who have residual hearing at a functional level with hearing aids shall be designated as DNH.

4. PERMANENT VISION IMPAIRMENTS

Inmates/parolees who have a vision impairment correctable to central vision acuity better than 20/200 with corrective lenses shall be designated as DNV.

5. PERMANENT SPEECH IMPAIRMENTS

Inmates/parolees who have a permanent speech impairment, such as a difficult speech pattern or no speech, and communicate effectively in writing shall be designated as DNS.

E. EFFECTIVE COMMUNICATION

1. GENERAL

Reasonable accommodation shall be afforded inmates/parolees with disabilities, e.g., vision, speech, hearing impaired, and learning disabled inmates, to ensure equally effective communication with staff, other inmates, and, where applicable, the public. Auxiliary aids which are reasonable, effective, and appropriate to the needs of the inmate/parolee shall be provided when simple written or oral communication is not effective. Such aids may include bilingual aides (inmates, parolees, or staff), qualified interpreters, readers, sound amplification devices, captioned television/video text displays, Telecommunication Devices for the Deaf (TDD), audiotaped texts, Braille materials, large print materials, and signage.

2. COMMUNICATION IMPLICATING DUE PROCESS AND DELIVERY OF HEALTH CARE

Because of the critical importance of communication involving due process or health care, the standard for equally effective communication is higher when these interests are involved. It is the obligation of CDC staff to provide

effective communication under all circumstances, but the degree of accommodation that is required under these special circumstances shall be determined on a case-by-case basis and is subject to the following requirements:

a) *Space reserved for Test of Adult Basic Education (TABE)*

b) *Space reserved for Test of Adult Basic Education (TABE)*

c) Staff shall document the determination that the inmate understood the process and shall record the basis for that determination and how the determination was made. For example, "the responsive written notes generated by a hearing impaired inmate indicated that he/she understood the process," "the sign language interpreter, e.g., American Sign Language (ASL) interpreter appeared to communicate effectively with the hearing impaired inmate as indicated by the inmate's substantive response via sign language," *Space reserved for Test of Adult Basic Education (TABE)*

d) Qualified sign language interpreters, as defined below, will be provided for all due process functions and medical consultations that fall within the scope of those described below when sign language is the inmate's primary or only means of effective communication, unless the inmate waives the assistance of an interpreter, reasonable attempts to obtain one are not successful, and/or

delay would pose a safety or security risk. In the event a qualified sign language interpreter is not available, or is waived by the inmate, and communication is attempted, staff shall employ the most effective form of communication available, using written notes; staff interpreters who are able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary; or any other appropriate means.

Medical consultations for which qualified sign language interpreters will be provided include those pertaining to:

- ❖ Determination of the inmate patient's medical history or description of ailment or injury;
- ❖ Provision of the inmate patient's rights, informed consent or permission for treatment;
- ❖ Diagnosis or prognosis of ailment or injury;
- ❖ Explanation of procedures, tests, treatment, treatment options, or surgery;
- ❖ Explanation of medications prescribed (such a dosage, instructions for how and when to be taken, side effects, food or drug interactions);
- ❖ Blood donations and apheresis;
- ❖ Discharge instructions;
- ❖ Provision of mental health evaluations, group and individual therapy, counseling and other therapeutic activities;
- ❖ Educational counseling.

The foregoing list is neither exhaustive nor mandatory, and shall not imply that there are no other circumstances when it may be appropriate to provide interpreters for effective communication nor that an interpreter must always be provided in these circumstances.

- e) Videoconferencing is an appropriate and acceptable means of providing qualified sign language interpretive services, and may be employed when available.
- f) An inmate's ability to lip read shall not be the sole source used by staff as a means of effective communication involving due process or medical consultations, unless the inmate has no other means of communication.

3. QUALIFIED INTERPRETERS

A qualified sign language interpreter includes a person adept at American Sign Language. To qualify as an ASL interpreter, an individual must pass a test and qualify in one of the five categories established by the National Association for the Deaf (NAD), one of the three categories established by the Registry of Interpreters for the Deaf (RID), or as a Support Services Assistant Interpreter from the California Department of Rehabilitation.

Staff who are able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary may be utilized as an interpreter, in the event a qualified sign language interpreter/ASL interpreter is not reasonably available, or is waived by the inmate.

Each institution (designated DPP, nondesignated DPP, and reception center) and Parole Region is to establish a contract or service agreement with a local signing interpreter service organization in order to provide interpretive services for hearing impaired inmates during due process functions and medical consultations.

F. REASONABLE ACCOMMODATION/MODIFICATION

The Department shall provide reasonable accommodations or modifications for known physical or mental disabilities of qualified inmates/parolees. The Department shall consider, on a case-by-case basis, accommodations for inmates/parolees with impairments that are temporary in nature. Examples of reasonable accommodations include special equipment (such as readers, sound amplification devices, or Braille materials), inmate or staff assistance, bilingual or qualified sign language interpreters, modifying work or program schedules, or grab bars installed for mobility impaired inmates who require such (including mobility impaired inmates whose disability does not impact placement).

G. EQUAL ACCESS

Accommodations shall be made to afford equal access to the court, to legal representation, and to health care services, for inmates/parolees with disabilities, e.g., vision, speech, hearing, and learning disabled.

Accommodations may include but are not limited to access to magnifiers, electronic readers, and sound amplification devices.

To assist in accommodating an inmate's equal access to the court, the institutions shall provide a letter to the court identifying the nature and severity of the inmate's disability and limitation(s), including a brief description of the inmate's request for accommodation by the court.

H. JUSTIFICATION FOR DENIAL OF REQUESTS FOR REASONABLE ACCOMMODATION

1. LEGITIMATE PENOLOGICAL INTEREST

A request for accommodation may be denied when the denial is based on legitimate penological interests. The factors to be considered in determining whether the accommodation can be denied on this basis are those four factors articulated by the Supreme Court in *Turner v. Safley* (1987) 482 U.S. 78. They are: 1) whether there is a valid, rational connection between the denial and a legitimate governmental interest; 2) whether there are alternative means for the inmate to exercise his rights; 3) the impact of accommodating the request on security, staff, other inmates and the allocation of prison resources generally; and 4) whether the denial represents an exaggerated response to prison concerns. In all evaluations of requests for reasonable accommodation, public safety and the health, safety, and security of all inmates and staff shall remain the overriding consideration.

2. UNDUE BURDEN AND FUNDAMENTAL ALTERATION DEFENSES

A request for accommodation may be denied when the requested accommodation would impose an undue financial or administrative burden on the agency, or would fundamentally alter the nature of the service, program, or activity. An accommodation is an undue financial burden when, in a cost-benefit analysis, its cost would be an unjustifiable waste of public funds. The Warden, Regional Parole Administrator, or (in the case of some medical accommodations) the Health Care Manager or designee, will make the determination that an accommodation would result in an undue burden or fundamental alteration.

3. DIRECT THREAT

A request for accommodation may be denied when it poses a direct threat of substantial harm to the health or safety of the inmate, parolee, or anyone else, including the public.

4. EQUALLY EFFECTIVE MEANS

A request for accommodation may be denied if equally effective access to a program, service, or activity may be afforded through an alternate method which is less costly or intrusive. Alternative methods, which may be less costly or intrusive to the existing operation/program, may be utilized to provide reasonable access in lieu of modifications requested by the inmate/parolee, so long as they are effective.

I. EQUIVALENT PROGRAMMING

The designated DPP facilities shall offer disabled inmates a range of programming equivalent to that available to nondisabled inmates. For example, a DPP facility for women shall offer an acceptable long-term substance abuse treatment program equivalent to the Forever Free Program at the California Institution for Women.

III. RECEPTION CENTER PROCESSING

All reception center (RC) facilities are designated to provide temporary housing and processing for inmates/parolees identified as meeting DPP criteria with the exception of the following, whose responsibility for processing DPP inmates is limited:

- ❖ **California State Prison, San Quentin** All inmates (except condemned cases) who arrive at California State Prison, San Quentin's RC preliminarily identified with a permanent disability that may impact placement, shall be transferred within seven days to Deuel Vocational Institution's RC for processing.
- ❖ **California Correctional Institution** All inmates who arrive at California Correctional Institution's RC preliminarily identified with a permanent disability that may impact placement, shall be transferred within seven days to North Kern State Prison's (NKSP) RC for processing. Wheelchair users may also be transferred to Wasco State Prison's (WSP) RC.
- ❖ **Wasco State Prison** All inmates who arrive at WSP preliminarily identified as mobility impaired nonwheelchair, as defined in Section II, C, 1, b), hearing, vision, or speech impaired, the severity of which impacts placement, shall be transferred within seven days to NKSP's RC for processing. The WSP's RC is designated with a wheelchair-only mission, as defined in Section II, C, 1, a).
- ❖ **California Rehabilitation Center** Refer to Section IV, I, 24, b) of this plan, Civil Addict Program, for CDC's Policy on DPP civil addict cases.
- ❖ **Northern California Women's Facility** All female parole violators/pending revocation or parole violators/return-to-custody who arrive at the Northern California Women's Facility (NCWF) RC preliminarily identified with a permanent disability that may impact placement, shall be transferred within seven days to the Central California Women's Facility (CCWF) RC. Wheelchair users may also be transferred to Valley State Prison for Women's (VSPW) RC. These cases shall be transported back to NCWF as needed for parole revocation hearings, on out-to-court/hearing status and returned the same day.

- ❖ **Valley State Prison for Women** All inmates who arrive at VSPW's RC preliminarily identified as mobility impaired nonwheelchair, as defined in Section II, C, 1, b), hearing, vision, or speech impaired, the severity of which impacts placement, shall be transferred within seven days to CCWF's RC for processing. The VSPW's RC is designated with a wheelchair-only mission, as defined in Section II, C, 1, a).

All RC's, however, will have sufficient accessible beds to accommodate disabled inmates awaiting transfer to a DPP RC.

Generally, inmates with disabilities shall be processed out of RC's in a timely manner, no more than 60 days from the date they are received by the Department, unless detained by factors not attributable to the Department's delay; e.g., medical necessity, court appearances, disciplinary proceedings, no documented in-level bed availability systemwide, etc.

A. ADJUSTMENTS DUE TO EXTENDED RECEPTION CENTER STAY

Inmates with disabilities will be processed out of RC's in a timely manner, in no more than 60 days from the date they are received by the Department, unless detained due to factors not attributable to the Department's delay; e.g., medical necessity, court appearance, disciplinary proceedings, no documented in-level bed availability systemwide, etc. Any period of time beyond the initial 60 days of a disabled inmate's stay at an RC shall be referred to as the inmate's extended stay.

If a disabled inmate remains at a RC for more than 60 days, a presumption arises that the extended stay is solely due to the inmate's disability. To overcome this presumption, CDC must demonstrate that the inmate's transfer out of the RC was at no time delayed solely due to the inmate's disability. In this case, CDC need not accommodate the inmate for the extended stay. Alternatively, CDC may demonstrate that the cumulative period of all disability-related delays was shorter than the inmate's extended stay, in which case CDC need only accommodate the inmate for the cumulative period of disability-related delays.

Verification that the inmate's extended stay in the RC was not due to the disability may be demonstrated by documentation reflecting that the inmate's disability does not impact placement, i.e., CDC Forms 1845 (Section D), 128C, or 128G. This provision does not apply to inmates undergoing dialysis treatment.

When it comes to CDC's attention that a disabled inmate's RC stay has been extended beyond 60 days solely due to the inmate's disability that impacts placement (Section C inmates) or the inmate's undergoing dialysis treatment, CDC shall accommodate the inmate as described below. The below provisions for an extended RC stay are only available to inmates whose disability impacts placement and those who are undergoing dialysis treatment. Qualifying inmates may file a CDC Form 1824, Reasonable Accommodation or Modification Request, to request accommodation for an extended stay.

B. ACCOMMODATIONS**I. PRIVILEGES**

Disabled inmates with disabilities severe enough to impact placement as documented on CDC Forms 1845 (Section C), 128G, or 128C (or inmates undergoing dialysis treatment), who remain at RC's for extended stays solely due to the inmate's disability shall be granted, during their extended stays, privileges that are available at mainline institutions, as outlined in CCR, Title 15, Section 3044(d), Privilege Group A.

When it comes to the RC's attention that the RC stay of an inmate with a disability severe enough to impact placement, as documented on a CDC Form 1845 (Section C), 128G or 128C (or inmates undergoing dialysis treatment), has been extended beyond 60 days, the inmate's case will be presented to a classification committee on the 61st day for determination whether the extended stay is solely due to the disability. The determination by the classification committee shall be documented on a CDC Form 128G. If the classification committee determines that the extended stay is solely due to the disability, the corresponding CDC Form 128G granting Privilege Group A shall be forwarded to appropriate custody staff to ensure privileges are provided as required.

If the classification committee determines that the extended RC stay is not solely due to the disability, the CDC Form 128G shall document the decision and reflect that determination and the fact that the inmate is not eligible for Privilege Group A during his/her extended stay in the RC.

2. WORK GROUP CREDITS

- a) Disabled inmates with disabilities severe enough to impact placement who remain at RC's for extended stays solely due to their disability and who are serving sentences of less than one year, or have less than one year remaining on their sentence while undergoing RC processing, shall, pursuant to the procedures described below, receive sentencing credits that they could have earned if they had been transferred to a mainline institution on the 61st day of RC stay.

When it comes to the RC's attention that an inmate with a disability severe enough to impact placement as documented on CDC Forms 1845 (Section C), 128G or 128C, (or inmates undergoing dialysis treatment), has an RC stay that has been extended beyond 60 days, and who are serving sentences of less than one year, or have less than one year remaining on their sentence while undergoing RC processing, the inmate's case will be presented to a classification committee on the 61st day for determination whether the extended stay is solely due to the disability. The determination by the classification committee shall be documented on a CDC Form 128G.

If the classification committee determines that the extended stay is solely due to the disability, the corresponding CDC Form 128G granting work time credits shall be forwarded to the Case Records manager to apply the applicable credits as outlined in CCR, Title 15, Section 3044(b)(1), Work Group A1. Inmates with disabilities, who are, by law, ineligible to earn worktime credits are exempt from this requirement.

If the classification committee determines that the extended RC stay is not solely due to the disability, the CDC Form 128G shall document the decision and reflect that determination and the fact that the inmate is not eligible for worktime credits during his extended stay in the RC.

- b) The receiving program institution shall review the central file of all inmates with disabilities severe enough to impact placement and those who required dialysis treatment at the RC's to determine if their stay exceeded 60 days. If so, the inmate's extended stay shall be presumed to be solely due to the inmate's disability unless CDC can overcome this presumption as provided above, i.e., detained by factors not attributable to the Department's delay or classification committee determination that extended stay was not due to the disability. If the inmate's disability was the sole cause, adjustment to the inmate's worktime credits will be made, once the inmate is received at the program institution, to reflect credits as if the inmate were engaged in the work program on the 61st day, as outlined in CCR, Title 15, Section 3044(b)(1), Work Group A1.

Once the inmate is received by the program institution, the RC extended stay time period ends and the inmate's work/privilege group reverts to U/U (unclassified) until the date of the initial classification committee. The initial classification committee will then designate an appropriate work/privilege group for the inmate and place him/her on an assignment waiting list.

Credit relief shall be accomplished by a statement from the classification committee on the CDC Form 128G, similar to that used in a time gap chrono covering the period(s) of disability related delays. At no time shall the credit relief exceed the total period of the extended stay. Inmates with disabilities who are, by law, ineligible to earn worktime credit are exempt from this requirement.

IV. FIELD OPERATIONS

A. DESIGNATED DPP FACILITIES

The institutions identified below are designated DPP facilities:

MALE INSTITUTIONS	
Avenal State Prison	
California Institution for Men	
California Medical Facility	
California State Prison, Corcoran	
California Substance Abuse Treatment Facility & State Prison Corcoran	
High Desert State Prison	
Pleasant Valley State Prison	
Salinas Valley State Prison	

FEMALE INSTITUTIONS	
Central California Women's Facility	
Valley State Prison for Women	

Designated DPP institutions may be added or deleted as needed. The CDC shall notify plaintiffs 60 days in advance of any action to add or delete designated institutions.

B. VERIFICATION PROCESS

It is the mutual responsibility of the inmate/parolee and CDC to verify disabilities that might affect their placement in the prison system, and of verifying credible claims of disability in response to requests for accommodation or complaints about disability-based discrimination. The CDC is not required to automatically screen all inmates/parolees to identify disabilities. Inmates/parolees must cooperate with staff in the staff's efforts to obtain documents or other information necessary to verify a disability.

1. VERIFICATION OF A DISABILITY (CDC FORM 1845)

Verification may be triggered by any of the following:

- a) The inmate/parolee self-identifies or claims to have a disability.
- b) Staff observe what appears to be a disability severe enough to impact placement, affect program access, or present a safety or security concern.
- c) The inmate/parolee's health care or central file contains documentation of a disability.

- d) A third party (such as a family member) requests an evaluation of the inmate/parolee for an alleged disability.

Verification of a disability that may impact placement shall be recorded on a CDC Form 1845, Inmate/Parolee Disability Verification Form (Exhibit A).

Once completed and approved, the CDC Form 1845 shall become part of the inmate's or parolee's file and shall be effective until a change in the inmate's or parolee's condition causes it to be canceled or superseded.

Identification of disabilities affecting placement shall usually occur during RC processing; however, if an inmate/parolee appears to have a disability that might affect placement, a staff member shall refer the inmate/parolee for verification of the disability. The referral is made by directing a standard CDC Form 128B, Chrono-General, to the institution/facility's health care services. Health care staff shall verify the disability using a CDC Form 1845 with appropriate CDC Form 128C documentation listing the inmate's limitations.

Responsibility for completion of Sections A through E of the CDC Form 1845 rests with institution/facility health care services licensed clinical staff. Health care staff shall follow CDC protocols for verifying disabilities. These protocols are set forth in Exhibit B to this Remedial Plan. Sections A through E shall be completed by a physician.

If an inmate is evaluated utilizing the CDC Form 1845 and it is determined the inmate/parolee does not have one of the categories of disability specified in Section II, C or D, of this plan, the physician making the decision shall check the appropriate box indicating "Disability Not Verified" and enter an explanation in the Comments Section. The physician shall then sign and date the CDC Form 1845.

If it is determined the inmate/parolee has a permanent disability specified in Section II, D, of this plan, that does not impact placement, the physician making the decision shall check the appropriate box indicating "Disabilities Not Impacting Placement." The physician shall then sign and date the CDC Form 1845.

A check in any of the boxes in Section D and no checks in Section C indicate that the inmate may be assigned to any of the Department's institutions/facilities consistent with applicable case factors.

If it is determined that an inmate has a permanent disability specified in Section II, C, of the ARP, and the disability impacts placement, the physician making the decision shall check the appropriate box in Section C indicating "Disabilities Impacting Placement." The physician shall then sign and date the CDC Form 1845.

If it is determined that an inmate has a permanent disability specified in Section II, C, 5 (Other), and the disability is severe enough that the inmate would benefit from placement in a designated DPP facility, the physician shall specify the condition/disability in the Comments Section of the CDC Form 1845. The physician shall then complete a CDC Form 128C, Chrono-Medical, Psych, Dental, listing the inmate's limitations, special health care needs, and any other information which might be pertinent to making a placement decision. The physician shall then sign and date the CDC Form 1845.

A check in any of the boxes in Section C indicates a need for placement in one of the designated DPP institutions/facilities.

Special concerns, such as documented mental or physical health care needs, are addressed on the CDC Form 1845 by checking the appropriate box(es) and completing the requested information in Section E. Assistance with daily living activities shall also be noted on the form, with appropriate CDC Form 128C documentation noting the specific need(s). Additional notes, references, explanations, and/or information not listed elsewhere on the CDC Form 1845 are to be placed in the Comments Section of the CDC Form 1845.

Once the CDC Form 1845 is completed as referenced above, the physician shall sign and date in Section E, and forward the CDC Form 1845 to the institution/facility Correctional Counselor III (CC III) for RC's or the Classification & Parole Representative (C&PR) for general population institutions, within 72 hours.

The CC III/C&PR shall log and track the CDC Form 1845 as outlined in Section IV, E. The CC III/C&PR shall route the CDC Form 1845 to the assigned CC I who shall complete Section F and add any additional information available from the inmate's Central File, e.g., uses American Sign Language, reads Braille, etc.

The CC I, upon completion of Section F, shall sign, date, and distribute the CDC Form 1845, according to the instructions on the form.

2. VERIFICATION OF A DISABILITY AS A RESULT OF A REQUEST FOR REASONABLE ACCOMMODATION (CDC FORM 1824) OR OTHERWISE

Verification of a disability may also be required for resolving requests for reasonable accommodation. Verification of a disability for this purpose may be documented on a CDC Form 1845, for disabilities that may impact placement; CDC Form 128C, for disabilities not covered by the CDC Form 1845 (i.e., mental illness, dialysis, etc.); or CDC Form 128B, for learning disabled.

If an inmate/parolee files a request for accommodation or a disability-based discrimination complaint (CDC Form 1824), but does not provide

documentation of the disability, the Appeals Coordinator shall forward all appeals requiring medical verification of the claimed disability to health care services staff as outlined in Section IV, I, 23.

C. PLACEMENT

All inmates verified to have a disability in Section C of the CDC Form 1845 (requiring special placement in a designated DPP facility) shall be referred to a Classification Staff Representative (CSR) for review and endorsement.

1. In assessing appropriate placement, the CSR shall consider the inmate's prevailing case factors, status as documented on the CDC Form 1845, and any additional health care placement concerns documented thereon. The CSR shall then endorse the inmate, with reference to the CDC Form 1845, according to the following guidelines:
 - a) Where a verified DPP Section C inmate does not have any additional significant health care concerns, the inmate shall be placed in an appropriate designated DPP facility.
 - b) Where a verified DPP Section C inmate has additional significant health care concerns, the CSR, in consultation with Health Care Population Management (HCPM) staff, shall place the inmate in an appropriate designated DPP facility that has an established health care delivery system suited to the inmate's condition.
 - c) In the exceptional case where placement cannot directly meet both the health care and DPP needs of the inmate, HCPM and Classification Services Unit staff will work together to address the inmate's dual needs for an appropriate placement.

The inmate's health care needs shall take precedence in determining placement. Overriding medical needs may dictate placement in a health care setting. When an inmate requires placement in a licensed health care facility, policies and procedures for the specific facility as noted in the CCR, Title 22, will be followed.

2. To initiate the transfer process for inmates who have overriding health care treatment needs and require special placement, the referring clinician shall prepare a CDC Form 128C identifying the health care need(s) and related conditions necessitating the transfer, including the urgency of any required treatment.
3. Designated DPP placement of an inmate verified to have a disability under Section C of the CDC Form 1845 requires endorsement by a CSR.

4. Once the inmate is endorsed for special placement, any verified change in DPP status requires subsequent CSR review and endorsement.
5. An inmate with a disability not impacting placement may be housed at any facility consistent with applicable case factors.
6. Case management for all DPP inmates shall comply with all established classification procedures.
7. The CSR shall not endorse cases where the central file indicates the inmate may have significant mobility, hearing, vision, and/or speech impairment(s), and there is no CDC Form 1845 in the central file.
8. Efforts shall be made to house inmates identified with disabilities impacting placement (Section C of the CDC Form 1845) in DPP designated institutions while on Out-to-Court status, consistent with legitimate safety and security concerns.

D. EXPEDITED TRANSFERS

All nondesignated institutions are to ensure the expeditious transfer of inmates with disabilities impacting placement to appropriate DPP designated institutions/facilities.

Once an inmate is verified as having a disability impacting placement via a CDC Form 1845 (Section C), the C&PR at nondesignated institutions shall ensure the inmate appears before an appropriate Classification Committee for referral to a CSR. All necessary committee actions and follow-up documentation, i.e., CDC Form 128G, shall be completed and available for CSR review within 14 working days of verification of the disability.

Once the inmate has been endorsed for transfer to a designated DPP institution by the CSR, the C&PR will ensure the inmate is expeditiously transferred.

Upon endorsement by a CSR, the C&PR shall be responsible to ensure that the DPP designation is entered into the comments/purpose field on the Distributed Data Processing System/Interim Transportation Scheduling System (ITSS) during the weekly bus seat request process. In the event the requested bus seat does not appear on the subsequent ITSS send and intake notice, the C&PR shall contact the Institution Standards and Operations Section (ISOS) at Headquarters to obtain the status of the requested transfer. The ISOS will then liaison with the Transportation Services Unit to expedite the transfer. Reasonable accommodations shall be provided to the inmate pending transfer.

E. TRACKING

1. Inmates assigned to DPP categories shall be tracked in the Classification Tracking System database by utilizing the CDC Form 839, Classification Score Sheet, and CDC Form 840, Reclassification Score Sheet, consistent with current policy. The codes are as follows:

Inmate Requires Special Placement at Designated DPP Facility	Inmate Does Not Require Special Placement and May be Placed in any Facility According to Case Factors
DPW - Wheelchair Dependent	DNM - Mobility Impaired
DPM - Mobility Impaired	DNH - Hearing Impaired
DPH - Hearing Impaired	DNV - Vision Impaired
DPV - Vision Impaired	DNS - Speech Impaired
DPS - Speech Impaired	
DPO - Other	

2. The C&PR's and RC CC III's shall develop institution procedures for tracking inmates with disabilities based on the CDC Form 1845. These procedures shall include annotating the disability and the section of the CDC Form 1845 in which it was verified on the following documents: Institutional Staff Recommendation Summary; CDC Form 816, RC Readmission Summary; CDC Form 128G; CDC Form 839; and CDC Form 840.
3. It is the responsibility of the C&PR and/or CC III to maintain a census of all inmates with disabilities based on the CDC Form 1845 (Section C and D).
4. Health care staff shall forward a copy of the CDC Form 1845 to the C&PR and/or CC III as expeditiously as possible, but no later than 72 hours after completion as described in Section IV, B, 1. The C&PR will then include the inmate's name on the tracking log. The tracking log will be maintained in the C&PR/CC III's office.

F. HEALTH CARE APPLIANCES**1. DEFINITION**

Health care appliances are assistive devices or medical support equipment which have been prescribed for the inmate and approved by the Correctional Captain and Health Care Manager, or their respective designees. Health care appliances include, but are not limited to, durable medical equipment, prosthetic and orthotic appliances, eyeglasses, prosthetic eyes, and other eye appliances as defined in CCR, Title 22, Section 51160 through 51162.

To ensure the safety of the inmates, health care appliances shall be provided to inmates with disabilities as noted on the CDC Form 1845 or CDC Form 128C.

2. PRESCRIPTION AND APPROVAL

Health care appliances shall be prescribed and approved for eligible inmates by licensed CDC health care providers, subject to medical necessity. Inmate health care appliances, including those belonging to the inmate prior to entry into CDC's system, must be approved by custody staff for conformance with safety and security standards. If custody staff, upon inspecting the appliance, determines there is a safety or security concern, a physician, Health Care Manager, or Chief Medical Officer shall be consulted immediately to determine appropriate action to accommodate the inmate's needs. Accommodation may include modifying the appliance or substituting a different appliance at state expense.

Once a departmental physician or dentist prescribes and/or approves an appliance, custody staff will inspect and make every effort to approve the appliance. If legitimate safety and security concerns are evident, custody staff will consult with health care staff in order to modify the appliance for approval. Only under exceptional circumstances will an appliance be rejected and an alternate means provided. All such circumstances shall be appropriately documented in the inmate's C-file and/or medical file.

3. POSSESSION OF HEALTH CARE APPLIANCES

Health care appliances shall be documented as property of the inmate and appropriately identified as such, in accord with departmental and institutional policy; however, they shall not be included in the volume limit for personal property established in CCR, Title 15, Section 3190. No inmate shall be deprived of a health care appliance that was in the inmate's possession upon entry into the CDC system or was properly obtained while in CDC custody, unless for documented safety or security reasons or a Department physician or dentist determines that the appliance is no longer medically necessary or appropriate. Possession of health care appliances in Special Placement Housing is governed by CCR, Title 15, Section 3380.20.

Health care appliances shall be retained and maintained by inmates upon release to parole.

4. PURCHASE OF HEALTH CARE APPLIANCES

Prescribed appliances shall be purchased by the inmate through the Department or a vendor of the inmate's choosing, with the approval of the Health Care Manager, Chief Medical Officer or Chief Dental Officer. Prior to issuance of any other appliance, the inmate must sign a CDC Form 193 for the cost of the appliance. If an inmate is indigent, as defined in CCR, Title 15, Section 3000,

or does not have enough money in his/her trust account to cover the cost of the appliance, the appliance shall be provided at State expense in accordance with CDC inmate trust accounting procedures. The inmate shall be required to contribute towards the cost of the device all funds contained or received in the account from the date the appliance is ordered to the date it is received, in accordance with departmental procedure. If the inmate is not indigent, he or she shall be held financially accountable for the cost of the appliance in accordance with departmental procedure. No inmate shall be denied a health care appliance because he or she is indigent.

Health care staff shall receive health appliances ordered in accordance with a licensed CDC health care physician's prescription. The appliance shall be evaluated by health care staff to ensure it corresponds to the physician's order and that there is a current CDC Form 128C communicating the order to custody staff. The procedure to verify and identify appliances shall not cause an unreasonable delay in the delivery of prescribed health appliances. Should any unreasonable delay in delivery occur, health care staff shall clearly document the nature of the delay and communicate this information to the inmate and his/her assigned counselor.

5. MAINTENANCE AND REPAIR OF HEALTH CARE APPLIANCES

It is the joint responsibility of CDC and the inmate/parolee to maintain all health care appliances in good repair and operation. Whenever an appliance, exclusive of wheelchairs, is in need of repair or replacement, the inmate shall utilize approved CDC procedures for notifying health care staff of health care needs. Health care staff shall direct the inmate for an appointment and evaluate the condition of the appliance. Once the need for repair or replacement is verified, the inmate shall be issued an appropriate appliance or accommodation. This procedure applies to replacement of batteries for hearing aids and other appliances. The inmate shall be financially responsible for damage, repair and replacement of appliances, and parts, and shall be charged for the cost thereof through a CDC Form 193 in accordance with departmental policy and procedure.

6. MAINTENANCE AND REPAIR OF WHEELCHAIRS

Custody staff shall conduct and log periodic safety and security inspections on all wheelchairs on at least a monthly basis. If a wheelchair needs repair, Health Care Services personnel shall be notified to secure the necessary repairs. The Health Care Services shall maintain the appropriate service contracts for wheelchair maintenance.

A State-issued wheelchair in need of repair shall be exchanged for one in good working condition. When a personal wheelchair is submitted for repair, the inmate shall be loaned a State issued wheelchair for the duration of the repair.

The inmate shall be financially responsible for damage, repair, and replacement of wheelchairs and parts, provided above.

G. MAINTENANCE OF ACCESSIBLE FEATURES AND EQUIPMENT

The CDC has a duty to maintain in operable working condition structural features and equipment necessary to make the prison/parole system's services, programs, and activities accessible to disabled inmates/parolees. Isolated or temporary interruptions in service or access due to maintenance or repairs are not prohibited.

H. LIBRARY EQUIPMENT

Electronic equipment is intended for use in the recreational library, education areas, and the law library. Each facility will be responsible for training staff and inmates in the proper use of the equipment to provide access for inmates with disabilities, e.g., inmates with hearing, and vision impairments and inmates with learning disabilities. Procedures and rules regarding access to the equipment will be established by each facility. Disabled inmates will not be restricted to using the equipment for legal text; however, legal users will be given priority access.

All institutions (DPP designated, nondesignated institutions, and reception centers) are to inform disabled inmates of the existence of the equipment, what equipment is available (type of equipment is dependent upon mission designation), how inmates can access the equipment, i.e., staff or inmate assistance, when the equipment can be accessed, and where the equipment is located. This information will be provided to disabled inmates during the orientation process.

Disabled inmates may request access to electronic equipment by submitting a written request to the librarian. Disabled inmates who are unable to write may verbally request such access.

I. INSTITUTION PROCEDURES

I. INMATE ORIENTATION PROCESS

Comprehensive information as outlined below shall be provided to all disabled inmates in accessible format during the inmate orientation process. Vision/hearing impaired and learning disabled inmates shall be accommodated with alternate forms of communication, e.g., verbal communication, video/audio presentation, and written material (large print), in order to ensure effective communication of information.

The following information shall be effectively communicated in alternate formats whenever a vision/hearing impaired or learning disabled inmate is undergoing the orientation process:

- ◆ The purpose of the inmate Disability Placement Program.

- ◆ Availability of the CCRs, Armstrong Remedial Plan, and similar printed materials in accessible formats to inmates with disabilities.
- ◆ CDC Form 1824 Reasonable Accommodation or Accommodation Request process and the location of the forms.
- ◆ Reasonable accommodations/modifications available to qualified inmates, e.g., sign language interpreters for due process settings, e.g., CDC 115 hearings, medical consultation, Board of Prison Terms (BPT) hearings, etc.
- ◆ Access to inmate/staff readers or scribes and availability of specialized library equipment for qualified hearing/vision impaired, learning disabled inmates such as text magnifiers, large print materials, audiocassette tapes, etc.
- ◆ The process of personal notification by staff and possible use of a dry erase/chalk board for notification of announcements, visits, ducats, messages, etc., in the housing unit.
- ◆ Access to a telecommunication device for the deaf (TDD) and/or volume control telephone.
- ◆ Access to a close captioned television in the housing unit.
- ◆ The institution's Inmate Assistance Program (upon completion).
- ◆ Verified case-by-case medical exceptions to institutional count procedures.
- ◆ Information regarding emergency alarms/evacuations, announcements and notices.

2. NOTICES, ANNOUNCEMENTS, AND ALARMS

a) WRITTEN MATERIALS

Each institution/facility (DPP designated institutions, nondesignated institutions and reception centers) shall ensure that the CCRs, Notices, Orientation Packages, Job Announcements, and similar printed materials that it distributes to inmates are accessible to inmates with disabilities.

Each institution/facility shall ensure that accommodations such as magnifiers, photocopying machines with capability to enlarge print for vision-impaired inmates, inmate or staff assistance, computer assisted devices, audiotapes and Braille are provided when necessary. Institution staff shall provide the assistance and equipment necessary to all inmates with disabilities on a case-by-case basis to ensure that inmates who have difficulty reading and/or communicating in writing, e.g., learning disabled inmates, are provided reasonable access to forms, CCRs, and procedures.

The type of equipment available will vary based upon the institution's mission designation. Information regarding access to written materials will be provided to disabled inmates during the orientation process.

b) VERBAL ANNOUNCEMENTS AND ALARMS

Each institution/facility (DPP designated institutions, nondesignated institutions and reception centers) shall ensure that effective communication is made with inmates who have hearing impairments impacting placement regarding public address announcements and reporting instructions, including those regarding visiting, yard release and recall, count, lock-up, unlock, etc.

All verbal announcements in housing units where inmates with hearing impairments impacting placement reside shall be done on the public address system (if applicable) and by flicking the unit lights on and off several times alerting hearing impaired inmates that an announcement is imminent.

The verbal announcements may be effectively communicated via written messages on a chalkboard or by personal notification, etc. These procedures shall be communicated to disabled inmates during the orientation process. These requirements shall also be incorporated into unit staff post orders.

Inmates with hearing impairments impacting placement who are temporarily housed at nondesignated institutions due to a change in condition or transferred in error shall be expeditiously transferred to DPP designated institutions as outlined in Section IV, D.

Local policies and procedures shall be adopted to reflect this obligation.

3. SPECIAL IDENTIFICATION

Each institution/facility (DPP designated institution, nondesignated institution, and reception center), shall ensure custody staff in housing units where an inmate with impairments that impact placement resides, maintains a copy of the identification card/picture for that inmate with the inmate roster, to alert unit staff of the special needs of the inmate during count, emergency evacuation, verbal announcements, etc. Special needs may include personal notification for hearing impaired inmates, or assistance provided to vision impaired inmates in responding to ducats or emergency evacuations. These procedures shall also be incorporated into unit staff's post orders.

Inmates with impairments impacting placement who are temporarily housed at nondesignated institutions due to a change in condition or transferred in error shall be expeditiously transferred to DPP designated institutions as outlined in Section IV, D.

4. YARD IDENTIFICATION

- a) Each inmate identified, per the CDC Form 1845, as having a hearing or vision impairment that impacts placement shall be issued an identifying vest by custody staff. The vest (yellow) shall identify (BLACK LETTERING printed on back of vest) the inmate's disability, i.e., vision or hearing impairment.
- b) Identifying vests shall be issued to the inmate from the Department without a CDC Form 193, Trust Account Withdrawal Order. However, the inmate shall be financially responsible, except for normal wear, for damage, repair and replacement of identifying vests and shall be charged for the cost thereof through a CDC Form 193 in accordance with departmental policy and procedure.
- c) All hearing or vision impaired inmates who are pending CDC Form 1845 verification or who have been verified to require placement in a designated DPP facility shall wear the vest at all times outside the inmate's assigned bed area or cell. The vest shall be worn over the inmate's outer clothing.
- d) All hearing or vision impaired inmates who are able to function in a nondesignated facility with prescription lenses (acuity correctable to better than 20/200) or hearing aid shall be temporarily issued an identifying vest whenever the prescribed health care appliance is not available or working properly.

Those inmates shall wear the vest outside the inmate's assigned bed area or cell at all such times while their appliance is not available or working properly. These inmates shall not be required to wear the identifying vest when their health appliance becomes available and working properly.

5. EVACUATION PROCEDURES

Each institution/facility (DPP designated institutions, nondesignated institutions, and reception centers) shall ensure the safe and effective evacuation of inmates with disabilities.

Local evacuation procedures shall be adopted at each facility.

Each institution/facility (DPP designated institutions, nondesignated institutions and reception centers) shall ensure custody staff in housing units where inmates with disabilities that impact placement reside maintain a copy of

the identification card/picture for that inmate with the inmate roster, to alert unit staff of the special needs required for emergency evacuation of the inmate. Special needs may include personal notification for hearing impaired inmates, or assistance provided to vision or mobility impaired inmates in responding to emergency evacuations.

Evacuation procedures shall be effectively communicated to disabled inmates during the orientation process. These procedures shall also be incorporated into unit staff's post orders.

Inmates with impairments impacting placement who are temporarily housed at nondesignated institutions due to a change in condition or transferred in error shall be expeditiously transferred to DPP designated institutions as outlined in Section IV, D.

6. COUNT

Each institution/facility (DPP designated institution, nondesignated institution and reception center) shall ensure that inmates who have a verified disability that prevents them from standing during count shall be reasonably accommodated to provide for effective performance of count.

Each institution/facility shall develop local procedures to reasonably accommodate inmates who are unable to stand for count due to a verified disability.

All standing counts in units housing inmates with disabilities impacting placement shall be announced on the buildings PA system as outlined above in Section IV, 1, 2, (b) (Verbal Announcements and Alarms).

If there is a verified condition as reflected on a CDC Form 1845 or CDC Form 128C that prevents the inmate from standing during count, the inmate may be allowed to sit on his/her bed, or in a wheelchair next to the bed, etc. The standing count process will be communicated to disabled inmates during the orientation process. These requirements shall also be incorporated into unit staff post orders.

Inmates with impairments impacting placement who are temporarily housed at nondesignated institutions due to a change in condition or transferred in error shall be expeditiously transferred to DPP designated institutions as outlined in Section IV, D.

7. RESTRAINTS

Inmates who have a disability that prevents application of restraint equipment in the ordinarily prescribed manner shall be afforded reasonable accommodation, under the direction of the supervisor in charge. Mechanical

restraints shall be applied to ensure effective application while reasonably accommodating the inmate's disability.

8. SEARCHES

a) Inmates who have a disability that prevents the employment of standard search methods shall be afforded reasonable accommodation under the direction of the supervisor in charge. Such searches shall be thorough and professional, with safety and security being the paramount concern.

- ❖ Inmates who use wheelchairs and who have severe mobility impairments and are unable to perform standard unclothed body search maneuvers shall be afforded reasonable accommodation to ensure a thorough search, including body cavities. If the search includes removal or disassembly of a health care appliance, it shall be conducted in a clean setting.
- ❖ If a search requires removal of the appliance, a compliant inmate shall be allowed to remove the appliance and tender it to staff. If forcible removal of an appliance from a noncompliant inmate is necessary, health care staff shall be available for consultation regarding the safe removal of the appliance.
- ❖ No inmate/parolee shall be required to lie or sit on extremely hot or cold surfaces to perform strip search maneuvers.
- ❖ Health appliances attached to the inmate's/parolee's body will be removed for inspection only during an unclothed body search.
- ❖ Complex devices (i.e., electronic medical devices, etc.) shall be disassembled for inspection only when there is reasonable cause to believe the inmate has concealed contraband inside the device. Inspection of such devices shall require approval from a Captain or above after consultation with appropriate medical staff. Only a trained professional shall disassemble such devices.

b) To ensure the safety of staff and inmates/parolees, all institutions/facilities (DPP designated institutions, nondesignated institutions, and reception centers) shall establish procedures for the routine inspection of health care appliances, i.e., inspection of a mobility impaired inmate's prosthetic device whose disability does not impact placement.

9. TRANSPORTATION

a) The special needs of inmates with disabilities shall be considered in transporting them. An inmate's/parolee's special health care aids and appliances shall be transported with the inmate/parolee upon transfer.

- b) Accessible vehicles shall be used to transport inmates/parolees in wheelchairs and those whose disability, i.e., mobility, necessitates specialized transportation. All other inmates/parolees shall be transported in standard vehicles.
- c) Institutions/facilities/county jail facilities may contact the Transportation Services Unit (TSU) hubs directly to request transport of inmates/parolees who require transportation in accessible vehicles. When TSU does not have available resources to facilitate the required transfers, TSU shall coordinate with the sending institution/facility, who shall be responsible for arranging the transportation with local resources.
- d) Request for accessible transportation must be received in advance so that the maximum number of requests can be scheduled utilizing existing resources.
- e) The CDC will provide accessible transportation to mobility impaired inmates for BPT parole hearings, unless local law enforcement agencies do so themselves. The request for these transports must be received in advance by TSU so that the maximum number of requests can be scheduled utilizing existing resources. If TSU resources are not available, the Regional Revocation Coordinator shall contact the nearest designated DPP institution for assistance.
- f) All applicable transportation policies and procedures apply to DPP inmates.

10. TELECOMMUNICATION DEVICES FOR THE DEAF / TELEPHONES

Access and use of a Telecommunication Device for the Deaf (TDD) and telephones for inmates with disabilities shall be consistent with CCR, Title 15, Section 3282(h). Verification of an inmate's need for TDD may be confirmed with local health care services staff, the assigned Correctional Counselor, or by reviewing a copy of the CDC Form 1845. An inmate who has been approved by the institution to use the TDD and who wishes to call a party who does not have use of a TDD shall be permitted to use the California Relay Service.

If the inmate does not have a severe hearing/speech impairment but desires to call an outside party who requires the use of a TDD, the outside party shall forward a physician's statement of TDD verification to the inmate's Correctional Counselor. Upon meeting all verification requirements, the inmate may sign up for telephone calls according to his/her privilege group designation.

The TDD sign-up sheets covering seven days shall be maintained and logged weekly. Sign-up sheets shall be divided into 40-minute increments. The TDD calls shall have extended time increments due to the time delay associated with

the TDD relay process. TDD access for the hearing impaired shall be consistent and similar to telephone access provided for nondisabled inmates.

An inmate's request for use of a TDD for confidential purposes, i.e., attorney/client privilege, shall be in accordance with CCR, Title 15, Section 3282(g)(1) and (h). Any printer paper containing the text of the verbal exchange shall be relinquished to the inmate, if requested. Should the inmate not wish to retain the written text, staff shall dispose of the unread text in accordance with institutional policy and procedure regarding the disposal of confidential documents, etc. Public telephones with volume control will be accessible to inmates in all locations where inmates with hearing impairments are housed.

11. CLOSED CAPTIONED TELEVISION

All designated DPP institutions and RCs (with the exception of California State Prison-San Quentin, California Correctional Institution, Valley State Prison for Women, and Northern California Women's Facility) are to ensure that at least one institutional television, located in housing units where hearing impaired inmates reside, utilizes the closed captioned function at all times while the television is in use. If a housing unit has only one television, the institution is to purchase an additional television to offset any associated concerns/issues raised by hearing impaired inmates. Please note that funds were allocated to all designated DPP institutions and RCs (except those noted above) for the purchase of closed captioned televisions.

Nondesignated institutions are not required to have closed captioned television; however, may do so at the discretion of the Warden.

12. VISITING

- a) Reasonable accommodation shall be afforded inmates with disabilities to facilitate their full participation in visiting as provided in these rules, whether contact, noncontact, or family visiting.
- b) Noncontact visiting booths will be accessible for inmates with disabilities. Auxiliary aids and assistive devices, such as volume control or writing materials, shall be provided for effective communication for noncontact visits.
- c) Inmates with disabilities shall be provided with the modifications necessary for them to participate in the contact visiting program. The modifications shall be provided as appropriate to assist inmates with their participation in the contact visiting program and shall be in a manner consistent with ensuring the safety and security of staff, inmates, or the public.

- d) Visitors shall not be permitted to bring in outside equipment for effective communication when it is available at the institution. Any equipment that visitors are permitted to bring in will be subject to search, pursuant to CCR, Title 15, Section 3173.
- e) Inmates with disabilities requiring accommodation for family visits shall give 72-hours notice of any request for accommodation to the institution staff responsible for setting up the family visit.

13. RECREATION

Reasonable accommodation for inmates with disabilities at designated facilities may include the provision of accessible recreation areas and specially fitted equipment. At nondesignated DPP institutions/facilities, requests for such accommodation may be granted on a case-by-case basis. The successful completion of a test to show proper and safe use of fitness apparatus items shall be required and documented on a CDC Form 128B.

14. INMATE PROGRAMS AND WORK ASSIGNMENTS

- a) It is the policy of CDC to ensure that all inmates, regardless of any type of disability, participate in educational/vocational, and work programs, including Prison Industry Authority and Joint Venture programs.
- b) Eligibility to participate in any program depends upon the inmate's ability to perform the essential functions of the program, with or without reasonable accommodations. Participation in these programs may be considered regardless of reading level if the inmate/student has the capacity to benefit from a program based on individual need and assessment. Inmates with disabilities shall be evaluated by health care services staff who will document the inmate's physical limitations and/or restrictions on a CDC Form 128C. A copy of the chrono will be forwarded to the inmate's Correctional Counselor who will schedule the inmate for classification committee review. The classification committee will determine if the inmate is able to participate in an academic/vocational, or work program based on the information provided by the health care services staff and a recommendation from the Inmate Assignment Lieutenant (IAL) or Work Incentive Coordinator (WIC).
- c) Reasonable accommodations shall be provided for dialysis inmates who may need to be excused from programs at times to permit dialysis treatment, including if necessary the times before and after the dialysis treatment when the inmate is not able to attend or return to the assigned programs. Such reasonable accommodations may include modified work or school schedules as long as reasonable accommodations do not prohibit the inmate from performing essential functions.

- d) Reasonable accommodations for all other disabled inmates to access program assignments, as determined via classification committee review, may include, but are not limited to, a modified work or school schedule, early release to/from meals, or assignments for mobility/vision impaired inmates, etc.
- e) Classification Committee actions shall be periodically monitored/audited to ensure that assignments of inmates with disabilities are nondiscriminatory.
- f) Only when an inmate's disability, even with reasonable accommodation, renders the inmate ineligible to participate in any available academic/vocational or work program for which the inmate is otherwise qualified, will the inmate be deemed "Medical (or Psychiatric) Unassigned" or "Medically Disabled" by the Unit Classification Committee, consistent with Section IV, I, 19, b) of this plan. It will be only on the rarest of occasions that the classification committee will place an inmate on medical/psychiatric unassigned or medically disabled status.
- g) Removal of an inmate from an academic/vocational or work program shall only be done by a classification committee, CCR, Title 15, Section 3375(c). When the work supervisor has determined that the inmate cannot perform the essential functions of the assignment, he/she must document the specific essential functions that the inmate cannot perform on a CDC 128B. The CDC 128B will be forwarded to the inmate's counselor. The counselor will schedule the inmate for a program review as soon as possible. The inmate will remain on "S" time pending the results of the program review.

15. ESSENTIAL FUNCTIONS

Essential functions are the basic duties/requirements of services, assignments, or programs an inmate/parolee performs, receives, or desires. This does not include the marginal duties of the position, services, assignments, or programs. Duties/requirements should be examined to determine which tasks are essential and which are nonessential.

16. VOCATIONAL ASSIGNMENTS

Reasonable modifications/accommodations shall be provided to ensure access when appropriate for qualified inmates with disabilities to participate in all programs, services, or activities including vocational assignments, unless affected by one of the exclusions as set forth in these rules. Participation in these programs may be considered regardless of reading level if the inmate/student has the capacity to benefit from a program based on individual need and assessment. The inmate, with or without reasonable accommodations, must meet the eligibility criteria of the vocational assignment as defined in the course description and be able to perform the essential functions of the

assignment. All inmates (including those with learning disabilities) shall be assigned on a case-by-case basis to appropriate work/academic/vocational programs by classification committee action.

17. ACADEMIC ASSIGNMENTS

Reasonable modifications/accommodations shall be provided to ensure access to academic programs. The individualized, self-paced learning format inherent in competency based instruction is available to inmates with disabilities who can perform the essential functions necessary for achieving the goals of the academic class. The competency based education model adopted for academic classes and vocational programs fosters individualized, self paced instruction for assigned students. Open entry and exit into and from the education programs is provided to allow inmates at all levels (including those with learning disabilities) to progress at their own speed and to begin or complete classes or programs within their own time frames.

18. CONSERVATION CAMPS

Inmates with disabilities shall not be precluded from assignment to a conservation camp based solely upon their disability. The CDC shall evaluate inmate disabilities in consideration of camp assignment on a case-by-case basis and shall determine if they are capable of performing essential functions of that assignment. When possible, without jeopardizing the fundamental nature of the camp program or legitimate penological interest, CDC may provide reasonable modifications for inmates with disabilities to allow participation in conservation camp assignments.

19. HEALTH CARE STATUS DETERMINATION

- a) When an inmate's disability limits his/her ability to participate in an academic/vocational or work program, health care services staff shall document the nature, severity, and expected duration of the inmate's limitations on a CDC Form 128C and forward it to the inmate's assigned Correctional Counselor. The counselor will then schedule the inmate for classification committee review. The medical/psychiatric staff shall not make program assignment recommendations or decisions on the CDC Form 128C. The classification committee has the sole responsibility for making program assignment decisions based on information provided on the CDC Form 128C and evaluation of the inmate's ability to perform the essential functions of the assignment with/without any necessary reasonable accommodation. The classification committee, in conjunction with staff representation from the affected work area, academic/vocational program and the IAL or WIC, shall evaluate the inmate's ability to participate in work, educational and other programs. Based on the results of the classification committee's evaluation, a determination shall be made as to the inmate's program assignment and work group status.

- b) Only when the inmate's documented limitations are such that the inmate, even with reasonable accommodation, is unable to perform the essential functions of any work, educational or other such program, will the inmate be placed in one of the two following categories by a classification committee:

❖ **TEMPORARY MEDICAL/PSYCHIATRIC UNASSIGNMENT** When a disabled inmate is unable to participate in any academic/vocational or work program, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to last for less than six months, the classification committee shall place the inmate on Temporary Medical/Psychiatric Unassignment. Inmates on Temporary Medical/Psychiatric Unassignment status shall be scheduled for classification review any time there are changes in his/her physical/mental impairment or no less often than every six months for a reevaluation of his/her status. The inmate's credit earning status shall be in accordance with CCR, Title 15, Section 3044 (b) (2), Work Group A2, upon exhaustion of any accrued ETO. If the inmate's condition lasts six months and the classification committee still cannot assign the inmate due to the impairment, his/her credit earning status shall be changed to be in accordance with CCR, Title 15, Section 3044 (b) (1), Work Group A1 and appropriate Privilege Group retroactive to the first day of the unassignment.

Note: The medical/psychiatric staff still has the authority to authorize short-term medical/psychiatric lay-in for illness as described in CCR, Title 15, Section 3043.5 (2) (A).

❖ **MEDICALLY DISABLED** When an inmate is unable to participate in any assigned work, educational or other such program activity, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to result in death or lasts for six months or more, the classification committee shall place the inmate on medically disabled status. The inmate credit earning status shall be in accordance with CCR, Title 15, Section 3044 (b)(1), Work Group A1 and Privilege Group A.

20. DISCIPLINARY PROCESS

- a) Reasonable accommodations shall be afforded inmates with disabilities in the disciplinary process.
- b) To assure a fair and just proceeding, the assignment of a Staff Assistant (SA) and/or an Investigative Employee (IE), as provided in CCR Sections 3315 (d)(1) and (2), may be required for the inmate. The inmate and/or SA or IE may need to be assisted by a bilingual aide or qualified interpreter in order to ensure effective communication.

Additional accommodations may be appropriate. All written notes utilized and exchanged for effective communication between the inmate and staff shall be attached and included with the disciplinary documents for placement in the inmate's central file.

Space reserved for Test of Adult Basic Education (TABE)

21. SPECIAL HOUSING PLACEMENT

The Department shall provide accessible special placement housing for inmates with disabilities as follows:

- a) **ADMINISTRATIVE SEGREGATION UNIT (ASU)**: Designated DPP facilities shall provide accessible ASU housing to accommodate inmates' disabilities. Where accessible ASU housing is unavailable, alternate placement may be made temporarily in another appropriate location consistent with CCR, Title 15, Section 3335, such as the highest security level accessible cell available. As a last resort prior to transfer to a designated DPP institution, an ASU inmate designated as "DPW" may be admitted by a physician temporarily to a medical bed when there is a medical judgment that the inmate requires nursing care consistent with that setting and/or there is a risk of possible injury to self if housed in a nonaccessible cell.
- b) **SECURITY HOUSING UNIT (SHU)**: Accessible SHU housing as provided in CCR, Title 15, Section 3341.5(c) shall be provided in at least one designated facility for inmates of each gender with disabilities affecting placement. The SHU inmates unable to utilize a sports wheelchair to enter a SHU cell will be provided accommodation on a case-by-case basis.
- c) **PROTECTIVE HOUSING UNIT (PHU)**: Accessible PHU housing as provided in CCR, Title 15, Section 3341.5(a) shall be provided in at least one designated facility for inmates of each gender with disabilities affecting placement. Where accessible PHU housing is unavailable, alternate secured housing may be utilized temporarily.
- d) **CONDEMNED HOUSING**: Condemned inmates at San Quentin with disabilities affecting placement shall be accommodated in existing condemned units. When alternate housing is necessary, a secure accessible location shall be provided. On a temporary basis, condemned inmates with disabilities affecting placement may be housed in an infirmary. Condemned inmates with disabilities are to receive access to the same type of programs as condemned inmates who are not disabled.

Any exceptions to participation must meet the exclusions outlined in Section II F of this plan.

- e) **MEDICAL PLACEMENT:** Inmates with disabilities may be admitted by a physician to a medical bed when there is a medical judgment that the inmate requires nursing care consistent with that setting and/or there is a risk of injury to self if the inmate is not so housed because no accessible cell is available.

Inmates with disabilities who are placed in medical beds because of their disability (including those placed in medical beds for the sole purpose of assistance with activities of daily living and those so placed because of a risk of injury to themselves) shall have access to equivalent programs and privileges for which they are eligible according to their privilege group and which they would be receiving if they were placed in a nonmedical setting unless the individual condition, needs, or limitations of the inmate make access to the program or privilege unreasonable. Such programs and privileges shall be provided in a manner that does not adversely impact health care operations. A program or privilege may be disallowed on a case-by-case basis if a physician determines that it would endanger the health or safety of the inmate or would impair health care.

When an inmate with a disability is housed in a medical setting because of an overriding medical need that requires nursing care, the inmate shall be afforded equivalent programs and privileges provided nondisabled inmates who are housed in that setting consistent with their medical needs.

22. REMOVAL OF HEALTH CARE APPLIANCES IN ASU/SHU/DISCIPLINARY DETENTION UNITS

Health care appliances, as defined in CCR, Title 15, Section 3358, shall be taken away from an inmate in ASU, SHU or other disciplinary detention units only to ensure the safety of persons, the security of the institution, or to assist in an investigation (which may include collecting the appliance as evidence of a crime) and only when supported by documented evidence. No inmate will be deprived of his or her appliance because of the acts of another inmate.

If the health care appliance presents a direct and immediate threat to safety and security, the appliance may be taken away immediately by any custody staff. The senior custody officer on duty may temporarily authorize the taking away of an inmate's appliance for any of the reasons listed in the foregoing paragraph; however, the process described below must be followed as soon as possible, at least by the next business day, if the appliance is to be retained. In no event shall the procedures set out herein obstruct standard protocols for crime scene preservation, evidence collection, emergency response or any other measure necessary for the safety of persons and security of the institution.

The inmate shall be deprived of the appliance for only so long as the appliance continues to pose a direct threat to safety and security.

When a health care appliance is taken away from an inmate for reasons of safety and security, the senior custody officer in charge shall consult the Health Care Manager, Chief Medical Officer or designee, regarding the inmate's need for the appliance and reasonable alternative in-cell accommodations. The senior officer in charge shall then inform the Warden or designee of the incident and the alternative means to accommodate the inmate. The Warden or designee shall decide what course to take regarding depriving the inmate of the appliance and providing alternative in-cell accommodation. If the decision is to retain the appliance, it will be stored in a designated location in the unit and provided to the inmate if needed when released from his or her cell for yard, escorts, visits, etc. During the period of alternative in-cell accommodation, health care staff shall regularly observe the health condition and document observed changes on a CDC Form 7219, Medical Report of Injury or Unusual Occurrence. If evidence of deterioration is observed, the health care staff shall immediately advise custody staff of need for medically necessary changes to the in-cell care.

The misconduct that caused removal of the appliance shall be charged against the inmate in an appropriate CDC Form 115, Rules Violation Report. The inmate shall be referred to the next scheduled classification committee hearing for confirmation of removal of the appliance, pending adjudication of the disciplinary charges. The inmate shall be deprived of the appliance as long as the appliance continues to pose a threat to the safety and security of the inmate or others. The necessity to continue the removal shall be reviewed by a classification committee at least as often as every 90 days. Review shall include a medical evaluation of the inmate's progress without the appliance.

The Health Care Manager or designee shall be consulted immediately to determine appropriate action to accommodate the inmate's needs. Accommodation may include modifying the appliance or substituting with a different appliance at CDC's expense.

A pattern of behavior involving the inappropriate use of a specific health care appliance may result in a custody decision to provide an alternate, but effective accommodation with medical consultation. In such case, the need for removal shall be approved by a classification committee.

Institution staff may replace the cane of an inmate placed in ASU/SHU/Disciplinary Detention Unit with other accommodations or useful care if there is a legitimate safety and security concern associated with allowing use of the cane.

23. APPEALS PROCESS FOR OBTAINING ACCOMMODATIONS

a) GENERAL

An inmate/parolee with a disability may request an accommodation, to access programs, services, activities or grieve alleged discrimination, through the CDC Form 1824 appeal process. The CDC Form 1824 shall be readily available to inmates/parolees. Departmental staff shall provide assistance to all disabled inmates/parolees who require assistance in using the appeal process.

The inmate/parolee shall submit the request for accommodation on a CDC Form 1824 to the Appeals Coordinator for the inmate's/parolee's facility or parole region. The inmate/parolee shall attach any relevant documentation of his or her disability that is in the inmate's/parolee's possession or is easily obtainable by the inmate/parolee. When an inmate/parolee files an accommodation or modification appeal on an inappropriate form, i.e., CDC Form 602, the Appeals Coordinator shall attach a CDC Form 1824 and process the appeal according to the timeliness in this section.

It is the mutual responsibility of the inmate/parolee and the CDC to verify a disability when a request for accommodation is made. The inmates/parolees must cooperate with staff's efforts to obtain documents or other information necessary to verify the claimed disability.

b) APPEAL SCREENING PROCESS

Upon date of receipt, the Appeals Coordinator shall review the CDC Form 1824 to determine whether the appeal meets one or more the following guidelines:

- ❖ An issue covered in the Armstrong Remedial Plan.
- ❖ Allegation of discrimination on the basis of a disability under the ADA.
- ❖ A request for access to a program, service, or activity based on a disability.
- ❖ The appeal includes both ADA and non-ADA issues (respond to ADA issues first). Advise the inmate that he/she may file a CDC Form 602 to appeal the non-ADA issue.
- ❖ The appeal concerns an issue that substantially limits a major life activity.

If the Appeals Coordinator determines that the appeal meets the above criteria, it will be assigned to the appropriate Division Head for review and response.

If the inmate/parolee fails to provide documentation to verify a disability and specifically states that he/she does not have any relevant documentation in their possession and/or specifically states there is no relevant documentation contained in their files (central/medical/ education) and the request otherwise meets the eligibility criteria of CCR, Title 15, Section 3084, the Appeals Coordinator shall accept and log the appeal and assign it to the appropriate Division Head for the first level review as described below. Otherwise, the appeal shall be returned to the inmate with instructions to attach the required documentation as required in CCR, Title 15, Section 3084.3 (c)(5).

If the Appeals Coordinator determines that the appeal is not an ADA issue it shall be recategorized to the appropriate category and processed as a CDC Form 602 according to the provisions of CCR, Title 15, Section 3084. Reasons for recategorization may include, but not be limited to any of the following:

- ❖ The appellant complains about pain and requests medical treatment with no indication that program access is impeded.
- ❖ The appellant requests a transfer solely for medical treatment.
- ❖ The appellant requests medical treatment for a condition that does not substantially limit a major life activity as defined and verified in Section II A.

If the request is recategorized or rejected per CCR, Title 15, Section 3084.3 (exclusive of (c) (5)), a copy of the CDC Form 1824 shall be maintained on file in the Appeal Coordinator's office. Comments explaining the reason why the request was recategorized or rejected shall be entered in the comments field of the Inmate Appeals Automated Tracking System or similarly documented in the Regional Parole Reentry Unit.

c) MEDICAL VERIFICATION PROCESS

If the appeal requires medical staff verification of a disability and/or identification of associated limitation, the Appeals Coordinator shall refer the CDC Form 1824 to medical staff.

- ❖ Medical staff should examine the unit health record (UHR) without delay, in any event within 5 working days of the date the appeal was received by the Appeals Coordinator. If health care staff locate verification of the disability and any associated limitations within the

unit health record (UHR), health care staff shall note that such documentation exists and/or attach relevant copies of any CDC Form 128Cs or CDC Form 1845s and return the appeal to the Appeals Coordinator within 5 working days of initial receipt by the Appeals Coordinator.

The Appeals Coordinator shall then assign the appeal to the appropriate Division Head responsible for responding to the request for accommodation who shall respond within 15 working days of initial receipt by the Appeals Coordinator.

If verification is not available in the UHR, medical staff shall determine whether a disability exists and identify and document any associated limitations and return the appeal to the Appeals Coordinator within 15 working days of receipt by the Appeals Coordinator. The Appeals Coordinator shall then assign the appeal to the appropriate Division Head responsible for responding to the request for accommodation who shall respond within the required time frames as outlined in Section e).

If verification is not available in the UHR and health care staff determine that referral to an expert consultant (outside of CDC) is required to make the necessary evaluations as to whether a disability and any associated limitations exist, within 10 days of the determination, an appointment with the expert consultant shall be scheduled. Upon determination that expert consultant is required, medical staff shall inform the Appeals Coordinator of the referral and the appeal time frames shall be suspended until the expert consultants report is received by health care staff.

- ❖ Upon receipt of the expert consultant's report, the appeal with all required documentation shall be returned to the Appeals Coordinator within 5 working days. The Appeals Coordinator shall then assign the appeal to the appropriate Division Head responsible for responding to the request for accommodation who shall respond within the required time frames as outlined in Section e).

d) NONMEDICAL VERIFICATION PROCESS

If the appeal requires verification of a nonmedical disability, e.g., learning disability, the Appeals Coordinator shall refer the CDC Form 1824 to the appropriate Division Head for response within the required time as outlined in Section e).

- ❖ The Division Head or designee shall review the central file to determine whether the nonmedical disability can be verified from a CDC Form 128B, or other applicable records.

- ❖ If the Division Head or designee is not able to verify the nonmedical disability in the above manner, he/she shall contact education or other appropriate staff for access to additional records or information. If the Division Head or designee is able to verify the disability in this manner, he/she shall ensure that documentation of the disability is added to the inmate/parolee's central file and respond to the request for accommodation or alleged discrimination within the required time frames as outlined in Section e).
- ❖ If the Division Head or designee is not able to verify the disability in the above manner, he/she shall conduct a face-to-face first level interview with the inmate/parolee. If the reviewer determines that there was discrimination or that the appellant would benefit from the requested reasonable accommodation or modification, he/she shall document that finding in the inmate's central file. The reviewer shall respond to the request for accommodation or alleged discrimination within the required time frames as outlined in Section e).
- ❖ If the Division Head or designee is not able to verify the disability in the above manner, he/she shall either grant the requested accommodation or requested remedy for discrimination, deny the appeal based on provisions outlined in Section II, H, within the required time frames as outlined in Section e) or shall refer the inmate/parolee to appropriate staff, expert consultant, for verification of the alleged nonmedical disability.
- ❖ If the inmate is referred to an expert consultant (outside of institution) for verification, the assigned Division Head shall inform the Appeals Coordinator of the referral and the appeal time frames shall be suspended until the expert consultants report is received by the Division Head.
- ❖ An appointment with the expert consultant (outside of CDC) shall be scheduled within 10 days of the referral. The expert consultation shall be scheduled to occur at the earliest available date.
- ❖ Upon receipt of the expert consultant's report, the appeal with all required documentation shall be responded to by the assigned Division Head and returned to the inmate via the Appeals Coordinator within 15 working days.

In appropriate circumstances the Appeals Coordinator or the assigned Division Head may temporarily grant an accommodation pending verification of an alleged disability, on the condition that the accommodation will be withdrawn if CDC is unable to verify the disability. Such conditional grants are particularly appropriate where the lack of an accommodation may cause serious or irreparable harm.

An appeal requesting an accommodation may be denied by appropriate staff, i.e., Warden or designee, Appeals Coordinator or Division Head, based on any of the criteria outlined in ARP, Section II, H, Justification for Denial of Requests for Reasonable Accommodation.

e) TIME FRAMES

A nonemergency CDC Form 1824 appeal is subject to three formal levels of review:

- ❖ **FIRST LEVEL OF REVIEW:** The first level of review is made by the appropriate Division Head or designee, who shall render a decision and return it to the inmate/parolee within 15 working days of receipt of the request by the Appeals Coordinator, except for item f) below. The decision shall be set forth on the CDC Form 1824.
- ❖ **SECOND LEVEL OF REVIEW:** The second level of review is initiated by the inmate's/parolee's attaching the request to a CDC Form 602, Inmate/Parolee Appeal Form, completing Section F, and forwarding the document to the Appeals Coordinator within 15 working days of receipt of the decision of the Division Head. In Section F, the inmate/parolee shall explain the nature of dissatisfaction and suggest an appropriate resolution. The Appeals Coordinator shall forward the second level appeal to the Warden, Health Care Manager, or Regional Parole Administrator or designee, who must render a decision and return it to the inmate/parolee within 10 working days of receipt, or 20 working days of receipt if the first level of review is bypassed.
- ❖ **THIRD LEVEL OF REVIEW:** The third level of review is initiated by the inmate/parolee's resubmitting the appeal to the Director's office within 15 working days of receipt of the decision by the Warden or Administrator. The third level response is made by the Director or designee, who shall render a decision and return it to the inmate/parolee within 20 working days from receipt.
- ❖ **EXTENSION OF TIME:** A nonemergency request for accommodation made through the CDC Form 1824 process is not subject to the exceptions to the appeals time limits found in CCR, Title 15, Section 3084.6(b)(5).

f) EXPEDITED APPEAL PROCESS

If the request for accommodation involves a matter that presents an immediate threat to the inmate's/parolee's safety, health or well being, or may result in other serious or irreparable harm, the request shall be processed according to the expedited appeal process described in CCR, Title 15, Section 3084.7. The inmate/parolee shall identify the appeal as an

emergency; however, the Appeals Coordinator shall review each appeal to ascertain those that qualify for expedited processing and shall respond accordingly. Appeals that qualify for an expedited appeal may included, but are not limited to, the following:

- ❖ Providing appliances or aids that are essential to performing major life activities;
- ❖ Providing equipment or modifications essential to safety; and
- ❖ Providing assistance to permit effective communications in due process settings or for health care provider communications.

Other provisions of these rules pertaining to inmate/parolee appeals not addressed herein shall apply.

24. SUBSTANCE ABUSE AND CIVIL ADDICT PROGRAMS

a) **SUBSTANCE ABUSE TREATMENT:** The Department shall provide accessible long-term intensive substance abuse treatment programs for male and female inmates with disabilities comparable to those programs provided to nondisabled inmates.

- ❖ Currently the Substance Abuse Program at the California Substance Abuse Treatment Facility and State Prison at Corcoran (SATF) is designated to provide substance abuse treatment for male inmates with disabilities.
- ❖ Currently the Substance Abuse Program at the Central California Women's Facility (CCWF) is designated to provide substance abuse treatment for female inmates with disabilities.

b) **CIVIL ADDICT PROGRAM:** The Department shall provide accessible placement for male and female civil addicts with disabilities in a Civil Addict Program (CAP) comparable to that provided to nondisabled civil addicts.

- ❖ Currently, SATF is the designated satellite CAP for male civil addicts with disabilities requiring designated DPP placement.
- ❖ Currently, CCWF is the designated satellite CAP for female civil addicts with disabilities requiring designated DPP placement.
- ❖ All male civil addict commitments arriving at the California Rehabilitation Center (CRC) who are preliminarily identified with a permanent disability that may impact placement during the initial RC process, will be transferred as soon as possible but no later than seven days to another institution, currently the California Institution for

Men's (CIM) RC, for further evaluation/verification and processing consistent with CAP policies and procedures.

- ❖ All female civil addict commitments arriving at CRC who are preliminarily identified with a permanent disability that may impact placement during the initial RC process, will be transferred as soon as possible but no later than seven days to another institution, currently the California Institution for Women's (CIW) RC for further evaluation/verification and processing consistent with CAP policies and procedures.
- ❖ Upon completion of RC processing, inmates who are suitable for the CAP will be transferred to SATF or CCWF if their disability impacts placement, or CRC if their disability does not impact placement.

J. BOARD OF PRISON TERMS ACCOMMODATION PLAN

It is the policy of the BPT to provide equal access to all parole proceedings to inmates/parolees with disabilities, with or without reasonable accommodation. It is the Board's objective to ensure that its communications with inmates/parolees with disabilities are as effective as communications with inmates/parolees without disabilities. Effective communication is imperative in assuring due process and equal access.

Department staff shall facilitate reasonable accommodations in parole proceedings by serving the BPT Form 1073, Reasonable Accommodation Notice and Request, with other prehearing documents. This will ensure effective communication with inmates to assist them in completing the form, and by providing to the BPT documentation pertaining to inmates/parolees' verified disabilities.

It is the responsibility of the inmate/parolee to request a reasonable accommodation in order to ensure effective communication and/or equal access by correctly completing the BPT Form 1073. When an inmate's/parolee's disability impedes his/her ability to request an accommodation, it is the responsibility of CDC and/or BPT staff who are aware of the disability, or should be reasonably aware of the disability, to request reasonable accommodation on his/her behalf.

In such cases where an inmate/parolee is unable to complete the form due to his/her disability, it is the responsibility of the BPT and/or CDC staff who are aware or should be reasonably aware of such disability to assist/complete the BPT Form 1073 for the inmate/parolee.

Effective January – March 2001, all case-carrying parole agents shall initiate the BPT Form 1073 for all parolees under their supervision. New releases not processed through the RC shall have the BPT Form 1073 initiated during their initial interview. The CDC and BPT will work to develop a tracking system, which captures central file and medical file information regarding disabilities covered by

the ADA. The BPT will provide guidelines for Unit Supervisor review of the parole violation report. Cases that are subsequently referred for revocation will follow the adopted Parole Revocation Process.

The counselor/parole agent shall review the central/field file for documentation (i.e., CDC Form 1845, CDC Form 611, CDC Form 128C) to determine whether or not the inmate has been verified with a disability. The BPT Form 1073, with all supporting documents on the issue of the disability, shall be forwarded to the BPT Americans with Disabilities Act (ADA) Coordinator at least 21 calendar days prior to the scheduled hearing. The original copy of the BPT Form 1073 shall be filed in the BPT section of the central file along with the other prehearing documents.

Inmates/parolees who elect to file a grievance based on the denial of their request for accommodation submitted on a BPT Form 1073. All complaints related to denials of requests for accommodations shall be handled by the grievance process, BPT Form 1074, Review of Reasonable Accommodation Request and Grievance Process. All BPT Form 1074 grievances will be sent directly to the Chief Deputy Commissioner along with supporting documents; i.e., BPT Form 1073, etc. The Chief Deputy Commissioner shall render a decision within five working days from the date the BPT received the copy of the BPT Form 1073 and BPT Form 1074 forms and/or other relevant information. The inmate/parolee may also pursue the denial after the BPT hearing using the BPT Form 1040 appeal with accompanying BPT Form 1073 and BPT Form 1074 forms attached.

The BPT subpoenas to witnesses and notifications to victims and/or their families will include instructions to contact the BPT ADA Coordinator 10 days prior to the hearing for any disability related accommodation request.

K. COMMUNITY CORRECTIONAL REENTRY CENTERS

Inmates with disabilities will not be excluded from participation in the Community Correctional Reentry Center (CCRC) program based solely on their disability. The CDC will place inmates who require special placement in designated CCRC facilities. At least one designated CCRC to accommodate inmates of each gender will be maintained to serve in each of CDC's four parole regions.

An inmate requiring accommodation, otherwise eligible for CCRC placement but without a designated facility within or servicing his/her county of last legal residence, will be endorsed for placement in an appropriate designated CCRC facility.

Inmates shall be considered for CCRC placement based on the totality of their classification criteria and medical/psychiatric needs. Overriding ongoing medical or psychiatric treatment needs may disqualify an inmate from CCRC placement.

Contracts with CCRC contractors shall require the contractor to adhere to the ADA. However, nondesignated facilities need not be fully accessible to inmates with disabilities.

L. DESIGNATED COMMUNITY CORRECTIONAL REENTRY CENTERS

Currently, the following CCRCs have been designated for permanent placement and housing of inmates meeting the eligibility criteria. The CDC is currently seeking additional locations for placement of female inmates in Region I and Region II through the State contracting process. Designated CCRCs are subject to change to increase DPP placements or to replace designated facilities.

NAME OF CENTER	LOCATION	GENDER	REGION
Turning Point, "G" Street	Fresno	male	I
Volunteers of America, Oakland West	Oakland	male	II
Marvin Gardens	Los Angeles	male	III
Volunteers of America, Long Beach	Long Beach	male	IV
California Mother-Infant/Project Success	San Diego	female	IV
Working Alternatives	Los Angeles	female	III

Note: These designated CCRC's may change.

M. HUB INSTITUTIONS

Identified below are the current HUB institutions and the CCRC's they serve.

HUB INSTITUTION	CCRC'S SERVED
COR	Turning Point, G Street
SQ	Volunteers of America, Oakland West
CIM	Marvin Gardens, Los Angeles
CIW	Working Alternatives, Inglewood; California Mother/Infant Project Success
CRC	Volunteers of America, Long Beach

The HUB institution responsibilities are:

- To provide nonroutine medical and dental care to DPP inmates.
- To enter into ambulance, medical, and dental contracts within the surrounding area of the designated CCRC for emergency and ongoing care that otherwise cannot be effectively managed at the CCRC.

- To transport inmates to complete the DPP verification process when necessary.

N. TRANSPORTATION

Institutions shall notify the Community Correctional Center Administration and the Regional Reentry Coordinator (RRC) at least one week prior to transferring DPP inmates endorsed for special placement at designated DPP CCRC's. The RRC shall coordinate transportation with the Transportation HUB.

The TSU shall be responsible for arrangement of DPP inmate/parolee transportation to the sending and/or receiving institution as outlined in Subsection 18, Transportation. If a DPP inmate/parolee requires staff administered medication or medical treatment during transportation from a CCRC to a HUB institution or to an established health care provider, the inmate/parolee shall be transported by ambulance or as directed by the HCM or designee. The TSU will not be responsible for coordinating such moves. The TSU responsibilities for DPP inmates/parolees at CCRC's include:

- Initial transports to the facility.
- Medical/dental transports.
- Disciplinary roll-up transports.
- Administrative roll-up transports.

The TSU shall conduct medical/dental, disciplinary, and administrative transports upon request from CDC staff at the designated CCRC. After hours emergency transportation needs for DPP inmates housed in a CCRC shall be handled through the appropriate Regional Administrative Officer of the Day (AOD). The AOD shall call TSU to arrange for immediate transport. The HUB institution's contracted ambulance service shall conduct all medical emergency transportation of DPP inmates at CCRC's.

The TSU shall transport DPP parolees held in county jails as "Our Hold Only" to CDC institutions, court proceedings, and parole revocation hearings in accordance with TSU transportation policy.

O. FAMILY FOUNDATIONS PROGRAM

Selected Family Foundations Program (FFP) facilities shall be designated as new facilities are approved. The FFP currently has two operational programs located in Santa Fe Springs and San Diego. The third program located in Fresno is scheduled to be operational in July 2001. Each program is designed to be appropriately accessible to inmates with disabilities. The Women and Children's Services Unit (WCSU) will place eligible women in an appropriate FFP facility in accordance with the CDC's policy.

P. COMMUNITY PRISONER MOTHER PROGRAM

The WCSU has identified two Community Prisoner Mother Program (CPMP) facilities as appropriately accessible to inmates with disabilities that impact placement. Eligible women identified as meeting DPP criteria will be placed into the following CPMP location:

NAME OF CENTER	LOCATION
Prototypes Women's Center	Pomona
Booth Family Apartments	Oakland

Q. FACILITIES OPERATED UNDER CONTRACT

The CDC shall include substantially the following language in all of its contracts for the operation of facilities that provide services, programs or activities for inmates or parolees: "By signing this contract, Contractor assures the State that it complies with the Americans with Disabilities Act of 1990, 42 United States Code, Section 12101, et seq., which prohibits discrimination on the basis of disability, and with applicable regulations and guidelines issued pursuant to the ADA."

The fact that the CDC includes this language in each contract shall not preclude the CDC from employing the "clustering approach" to providing accessible community-based facilities for inmates and parolees. The CDC will provide at least one DPP-accessible facility to serve male and female inmates/parolees in each parole region.

R. CONSTRUCTION POLICY**I. NEW PRISON CONSTRUCTION**

It is the policy of CDC to provide for structural accessibility to inmates with disabilities in the construction of new prisons, consistent with this policy. In new prison construction, two percent of designed bed capacity will be designed to be structurally accessible. All program and common use areas shall be designed and built to be ADA compliant. The CDC will "cluster" accessible beds and aligned program areas within specified structures and facilities of new prisons.

During the design phase of each new prison, CDC will determine whether the prison is to be designated to house inmates requiring specialized housing under DPP. When a new prison is so designated, CDC will determine whether the two percent scoping standard is sufficient or should be increased.

2. ALTERATION TO EXISTING FACILITIES

With respect to existing DPP facilities, alterations to inmate areas that house inmates with disabilities will be designed to be accessible, pursuant to state and federal accessibility standards. With respect to nondesignated DPP facilities and areas of DPP facilities that will not house inmates with disabilities, structural alterations will be reviewed in view of budgetary and penological considerations on a case-by-case basis.

S. PAROLE FIELD OPERATIONS →

This section of the remedial plan has been revised. The new Parole Field Operations section is attached to the end of this document.

1. POLICY

It is the policy of the Department to provide reasonable accommodation to parolees with disabilities consistent with established departmental policies and procedures. Parole planning and supervising is conducted on a case-by-case basis to meet the unique needs of the parolee while protecting legitimate parole interests of CDC.

2. RELEASE PROGRAM STUDY

Prior to a parolee's release from custody, a CDC Form 611, Release Program Study, shall be used to provide documentation and notice to field staff of special needs related to the parolee's disability; e.g., need for qualified interpreters, referral to the California Department of Rehabilitation, or need for TDD access. The C&PRs are responsible for notifying parole field staff, via the CDC Form 611 process, if an inmate has a verified disability and delineate the inmate's specific needs. The CDC Form 611 shall be forwarded to the appropriate parole region at least 210 days prior to the inmate's release date in order to ensure sufficient time for reentry processing.

3. EFFECTIVE COMMUNICATION

Field staff shall ensure that parolees with disabilities, upon reporting to a parole unit, are afforded effective means of communication in receiving orientation, Conditions of Parole, e.g., Penal Code, Section 290 Registration, etc. If the parolee's disability prevents the parolee from reporting to the assigned unit, reasonable accommodation shall be made to meet the parolee's needs.

4. WRITTEN COMMUNICATION

Each Parole Office shall ensure that the CCRs, Notices, Orientation Packages, Conditions of Parole, Job Announcements, and similar printed materials that are distributed to parolees are accessible to parolees with disabilities. Accommodations such as large print, computer assisted devices, audio tapes and Braille shall be provided when necessary. Parole staff shall provide the

assistance and make available equipment necessary to all parolees with disabilities on a case-by-case basis to ensure that parolees who have difficulties reading and/or communicating in writing will be provided reasonable access to forms, regulations and procedures.

5. FIELD SUPERVISION/OFFICE VISITS

Parole Agents shall continue to follow existing procedures as they pertain to the supervision of parolees. The main services received by parolees in a parole office are basic counseling services and supervision provided by the parole agent and mental health services, including testing, counseling and prescribed medication, provided by the Parole Outpatient Clinics. However, if a parolee has a disability, the unit supervisor, or designee, shall make reasonable modifications in procedures, if necessary, to ensure that services are provided at an accessible location; i.e., parole office or parolee's residence.

It is the mutual responsibility of the parolee and the P&CSD to verify disabilities that might affect the parolees' placement in community programs and functioning while in the community and of verifying credible claims of a disability in response to a request for reasonable accommodations. Verification of a disability shall be achieved by completing a BPT Form 1073. All case-carrying agents are required to automatically screen all active parolees under their supervision on or before January-March 2001, to identify all parolees with disabilities. New releases, not processed through an RC, shall be screened during the initial interview process. Parolees must cooperate with staff in the staff's efforts to obtain documents or other information necessary to verify a disability.

6. PURCHASE OF HEALTH CARE APPLIANCES

If a parolee is indigent, the Department operates under the reasonable assumption that he or she may qualify for Medi-Cal or Medicare benefits that would cover the financial responsibility of any/all health care appliances. If the parolee does not qualify for Medi-Cal or Medicare benefits, or the application process exceeds normal processing time frames, or the processing delays, hinders, or exacerbates the parolee's medical conditions, the CDC will provide financial assistance to the parolee in accordance with departmental policy and procedure. No parolee shall be denied a health care appliance solely because he/she is indigent.

7. MAINTENANCE AND REPAIR OF WHEELCHAIRS

Whenever an appliance, exclusive of wheelchairs, is in need of repair or replacement, the parolee shall report the repair need to their parole agent for a determination on the appropriate steps for accomplishing the repair, e.g., return to the physician/health care provider who prescribed the appliance for an appointment to evaluate the condition of the appliance or to a legitimate repair

agency or medical supply vendor. Once the need for repair or replacement is verified, the parolee shall follow the prescribed process for repair/replacement as set forth by his/her benefit provider. The parolee shall be responsible for damage, repair and replacement of appliances, parts and batteries. In the event the benefit provider does not cover the total cost of the repair or replacement and the parolee or their families are unable to absorb the difference in cost, the Department will provide financial assistance to the parolee in accordance with departmental policy and procedure.

8. PAROLE OUTPATIENT CLINICS

The Parole Outpatient Clinic shall provide evaluation or mental health diagnosis, and transitional, or occasionally, sustained therapeutic intervention on an outpatient basis to parolees with disabilities who have an Axis I diagnosis. Treatment services may be supplemented by interagency agreements/contracts with other state and county agencies. All nonroutine services shall be reviewed by the Regional Parole Administrator and Mental Health Program Administrator prior to implementation.

9. EVACUATION PROCEDURES

- a) In the event of an emergency requiring building evacuation, each parole office shall ensure the safe and effective evacuation of parolees with disabilities.
- b) Local evacuation procedures shall be adopted at each parole office.

10. RESTRAINTS

Parolees who have a disability that prevents the application of restraint equipment in the ordinarily prescribed manner shall be afforded reasonable accommodation, under the direction of the Unit Supervisor or designee. Mechanical restraints shall be applied so as to assure effective application while reasonably accommodating the parolee's disability.

11. TRANSPORTATION

The special needs of parolees with disabilities shall be considered in transporting them. A parolee's special health care aids and appliances shall accompany the parolee upon transport. All applicable transportation policies and procedures apply to DPP parolees.

12. REVOCATION HEARINGS

If a parolee has a physical disability that impairs his/her ability to attend the hearing or communicate effectively with the hearing officer, then arrangements shall be made in advance to provide modifications for the disability. Refer to BPT, CCR, Sections 2692 and 2694 for further details.

T. TRAINING

The CDC will provide DPP training to institution/parole staff on ADA regulations and DPP requirements. This training shall include but not limited to evacuation and emergency procedures, reasonable accommodations and effective communication.

STATE OF CALIFORNIA
INMATE/PAROLEE DISABILITY VERIFICATION (IPDV)
CDC 1845 Provisional (Rev. 01/01)

DEPARTMENT OF CORRECTIONS

CHECK ALL OF THE BOXES APPLICABLE

INMATE'S NAME:	CDC NUMBER:	INSTITUTION:	HOUSING ASSIGNMENT:	DATE FORM INITIATED:
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Section A - E to be completed by a physician only

SECTION A: REASON FOR INITIATION OF FORM <input type="checkbox"/> Inmate voluntarily self-identified to staff <input type="checkbox"/> Observation by staff <input type="checkbox"/> Third party evaluation request <input type="checkbox"/> Medical documentation or Central File information	SECTION B: CATEGORIES OF DISABILITY <input type="checkbox"/> Blind/Vision Impaired <input type="checkbox"/> Speech Impaired <input type="checkbox"/> Deaf/Hearing Impaired <input type="checkbox"/> Other <input type="checkbox"/> Mobility Impaired
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SECTION C: DISABILITIES IMPACTING PLACEMENT 1. <input type="checkbox"/> PERMANENT WHEELCHAIR USER -DPW 2. <input type="checkbox"/> PERMANENTLY MOBILITY IMPAIRED (Lower Extremities)-DPM <i>Cannot walk 100 yards or up a flight of stairs without pausing with the use of aids (crutches, prosthesis, or walker).</i> 3. <input type="checkbox"/> PERMANENTLY DEAF/HEARING IMPAIRED-DPH <i>So severe they must rely on written communication, lip reading or signing as their residual hearing, with aids, will not enable them to hear an emergency warning, or effectively communicate.</i> 4. <input type="checkbox"/> PERMANENTLY BLIND/VISION IMPAIRED -DPV <i>Not correctable to central vision acuity of less than 20/200 with corrective lenses.</i> 5. <input type="checkbox"/> PERMANENT INDISCERNIBLE/NO SPEECH-DPS <i>No effective written communication.</i> 6. <input type="checkbox"/> OTHER IMPACTING PLACEMENT (See Comments below)-DPO	SECTION D: DISABILITIES NOT IMPACTING PLACEMENT A. <input type="checkbox"/> PERMANENTLY MOBILITY IMPAIRED (Lower Extremities)-DNM <i>Walks 100 yards and up a flight of stairs without pause</i> <input type="checkbox"/> without aids <input type="checkbox"/> with aids (crutches, prosthesis, or walker) B. <input type="checkbox"/> PERMANENT NONAMBULATORY MOBILITY IMPAIRMENT <i>(e.g., arm or hand prostheses, or missing digit(s))</i> C. <input type="checkbox"/> PERMANENTLY HEARING IMPAIRED-DNH <i>With residual hearing at a functional level with hearing aid(s).</i> D. <input type="checkbox"/> PERMANENTLY BLIND/VISION IMPAIRED-DNV <i>Correctable to central vision acuity less than 20/200 with corrective lenses.</i> E. <input type="checkbox"/> PERMANENT INDISCERNIBLE/NO SPEECH-DNS <i>Communicates effectively in writing.</i>
--	--

SECTION E: Additional Medical Information List assistance needed with daily living activities: (i.e., eating, bathing, dressing, etc.) _____ _____ _____ Per 128C(s) dated: _____ Has the following documented health care needs: <input type="checkbox"/> In-patient <input type="checkbox"/> Sun Sensitive <input type="checkbox"/> Out-patient <input type="checkbox"/> Heat Risk/Alert <input type="checkbox"/> Cannot be exposed to particulates in the air Refer to 128C(s) dated: _____	<input type="checkbox"/> DISABILITY NOT VERIFIED (Explain in comments section) <input type="checkbox"/> VERIFIED DISABILITY IN: <input type="checkbox"/> SECTION C <input type="checkbox"/> SECTION D DOCUMENTED MENTAL HEALTH NEEDS <input type="checkbox"/> CCCMS <input type="checkbox"/> EOP <input type="checkbox"/> MHCB <input type="checkbox"/> DMH Refer to 128C(s) dated: _____
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SECTIONS A through E COMPLETED BY:		
Physician's Name (Print)	Physician's Signature	Date Signed

SECTION F: ADDITIONAL PLACEMENT FACTORS AND INFORMATION	
For completion by correctional counseling staff	
<input type="checkbox"/> Uses American Sign Language (A.S.L.) <input type="checkbox"/> Uses Signing Exact English (S.E.E.) <input type="checkbox"/> Communicates in writing <input type="checkbox"/> Reads lips <input type="checkbox"/> Reads braille <input type="checkbox"/> Requires large print	<input type="checkbox"/> NO ADDITIONAL INFORMATION AVAILABLE

SECTION F COMPLETED BY:		
NAME:	TITLE:	DATE SIGNED:
COMMENTS		

STATE OF CALIFORNIA
INMATE/PAROLEE DISABILITY VERIFICATION (I/P DV)
CDC 1845 Provisional (Rev. 01/01)

GENERAL INSTRUCTIONS

DEPARTMENT OF CORRECTIONS

This process does not require nor is it to result in the automatic screening of all inmates/parolees to identify disabilities. This process ensures standardization of CDC policy and procedures dealing with the verification of a disability and placement of inmates/parolees with disabilities covered by the Disability Placement Program (DPP). The use of this form will be initiated only in response to one or more of the following actions:

- The inmate/parolee voluntarily self-identifies or claims to have one of the six categories of disability;
- During interaction with the inmate/parolee, staff observes what appears to be a disability, severe enough to impact placement, affect program a, or present a safety/security concern;
- The health or central file record contains documentation regarding one of the six categories of disability.
- A third party (such as a family member) requests an evaluation of the inmate or parolee for an alleged disability.

Identification of inmates/parolees who may meet the DPP parameters will usually occur during reception center processing, but if an inmate/parolee appears to meet disability criteria indicated on the form, all of the institution/facilities will use the I/PDV. A verification referral, based on observation or interaction with the inmate/parolee, can be directed to the institution/facility health care service by a staff member via a CDC Form 128B.

Responsibility for verification of the disability through completion of Sections A-E of the I/PDV, rests with the health care services physicians. Health care staff shall follow CDC protocols for verifying disabilities. These protocols are set forth in Exhibit B (or other official CDC document that includes protocols). Upon completing Sections A through E, the physician signs in the appropriate signature block in Section E. Health care staff forwards the partially completed I/PDV to the Classification and Parole Representative or RC/CC III for tracking. Counseling staff completes the form by completing Section F and signing the signature box below Section F. Appropriate education staff shall verify learning disabilities by completing Sections A, B, and D. The staff member shall complete the identifying information and explain needed accommodations (if any) in the Comments Section. Learning disabilities will be verified only to determine the need for reasonable accommodation.

COMPLETION OF THE FORM:

Enter identifying information about the inmate/parolee and the date the I/PDV was initiated.

SECTION A: Mark the reason for initiating this form in the appropriate box.

SECTION B: Mark the category of disability to be verified. If it is determined during the verification process the inmate/parolee does not have one of the six categories of disability, completion of this form should stop. Place a check in the box below Section D, indicating "Disability not Verified," enter an explanation in the Comments Section, sign and date the incomplete form, and file the original in the General Chrono section of the central file and a copy in the health record.

SECTION C: A mark made in any of these boxes, indicates a need for special housing or programming and will result in placement in one of the designated institutions or facilities. NOTE: The word *permanent* is defined as a condition not expected to improve within six months. Check all boxes that apply using the definitions below:

IF THE INMATE/PAROLEE:

- Uses a wheelchair full time due to a permanent condition and requires use of the wheelchair both within and outside the assigned cell, check box 1.
- Cannot walk 100 yards or up a flight of stairs without stopping due to a permanent lower extremity ambulatory impairment and do not require a wheelchair full time but is medically prescribed a wheelchair for use outside of the assigned cell, check box 2.
- Must rely on written communication, lip reading or signing because their residual hearing even if augmented by aids, will not enable them to hear an emergency warning or to effectively communicate, check box 3.
- Is permanently blind or has a vision impairment not correctable to central vision acuity of less than 20/200 with corrective lenses, check box 4.
- Has a permanent speech impairment resulting in indiscernible speech or NO speech and does not communicate effectively in writing, check box 5.
- Has a permanent disability other than the five identified, or do not require a wheelchair full time but is medically prescribed a wheelchair for use outside of the assigned cell, due to a disability other than a lower extremity mobility impairment, i.e., emphysema, serious heart condition, etc., and it is severe enough the inmate would benefit from placement in a designated institution, check box 6.

SECTION D: A mark made in any of these boxes will not necessarily result in the placement of the inmate/parolee in special housing or programming. In one of the designated institutions/facilities, unless 1) a disability in Section C exists, or 2) the severity/compound condition results in a physician recommendation for DPP placement. For this type of recommendation, a CDC Form 128C and notes in the Comments Section should be completed by the physician. Check all boxes that apply using the definitions below:

IF THE INMATE/PAROLEE:

- Has a lower extremity ambulatory impairment but can walk 100 yards and up a flight of stairs without pausing. Mark box "A" and with or without aids.
- Uses an upper extremity prosthesis, is missing an arm, hand or digits, check box "B."
- Has a hearing loss but follows conversation at normal speaking levels and can hear an emergency warning using a hearing aid(s), check box "C."
- Can see well enough to score better than at a 20/200 level with corrective lenses, check box "D."
- Has indecipherable or no speech but communicates effectively in writing, check box "E."

SECTION E: If there has been CDC Form documentation, medical file review, health care staff observation or interaction with the inmate/parolee, health care staff must complete this section.

IF THE INMATE/PAROLEE:

- Need assistance with daily living activities, list both the needs and the date of the 128c documenting the need(s).
- Has documented health care or mental health needs, mark the appropriate box(es) and list by date the 128c(s) that note the condition(s).

SECTION F: If there has been CDC Form 128C documentation, Central File review, staff observation or interaction with the inmate/parolee, counseling staff must complete this section. If none of these factors exist, and there are no additional factors or information, mark the "NO ADDITIONAL INFORMATION AVAILABLE" box, sign, date, and insert title in the signature box.

IF THE INMATE/PAROLEE:

- Claims ability to communicate effectively by sign language (list years of training and years of use in the Comments Section), reading lips, Braille, reading large print, or by writing, mark the box(es) that apply.

COMMENT SECTION: For notes, references, explanations of disabilities and any information not listed elsewhere on the I/PDV.

****Verifying Staff:** Complete Sections A-E. Route this form to the assigned Correctional Counselor I.

****Counseling Staff:** Complete Section F, as appropriate. After processing, the original I/PDV is to be filed in the General Chrono Section of the Central File. The pink copy is to be forwarded to Health Care Services for filing in the Health Care Record. The yellow copy is to be given to the inmate/parolee.

(EXHIBIT B)

PROTOCOLS FOR VERIFYING DISABILITIES

I. STANDARDIZED HEALTH SCREENING OF INMATES WITH HEARING IMPAIRMENTS

The following protocol will clarify the following:

- ❖ The mechanism for identifying inmates with a hearing impairment;
- ❖ The procedure for measuring and verifying the impairment; and
- ❖ The procedure for referring hearing impaired inmates to a specialist in audiology or otolaryngology for further services as needed.

A. IDENTIFICATION OF INMATES WITH A HEARING IMPAIRMENT IN A RECEPTION CENTER

1. All inmates, within 24 hours of their arrival, go through an initial health care screening process, which includes a qualitative and functional evaluation of the inmate's hearing as part of the review of the inmate's health care needs. The process consists of at least the following:
 - a) The standardized health screening process
 - b) A health history and physical examination
 - c) A dental screening, and
 - d) A mental health screening and evaluation.
2. The evaluation is multidisciplinary. It includes nursing and medical assessments and dental and mental health evaluations.
 - a) The initial assessment period in reception centers (RC) provides the inmate with the opportunity to report possible health care problems.
 - b) During the initial assessment, the health care team performs a functional evaluation to identify the inmate's health care needs. This includes a possible hearing impairment which might impact placement and/or require referral for evaluation and treatment, possibly including the provision of assistive devices such as hearing aids.

3. Within 24 hours of the inmate's arrival, the screening begins with the standardized health screening. This is an interactive process between the inmate and the licensed health care staff. Staff interact with the inmate both in group settings and one-to-one. It includes a review of health records for previously identified health problems. Health care needs identified through this process are triaged by registered nurses (RN) or physicians who initiate referrals conforming to the urgency appropriate to the need.
4. Within two weeks of arrival at the RC, the inmate is given an initial comprehensive health assessment, which includes past and current health history; family history; identification of health risk factors; and medical, dental, and mental health evaluations.
5. Throughout the process of obtaining the inmate's health history and conducting examinations, physicians and other health care professionals qualitatively assess the inmate's functional hearing capacity, speech receptivity, and comprehension in the prison setting. This process involves a determination of functional hearing and comprehension through interactive speaking and writing, and conforms with appropriate medical practice standards for determining the inmate's hearing ability and need, if any, for additional evaluation and treatment.
 - a) A visual and otoscopic examination of the ears is performed on all inmates as part of the RC physical examination, whether or not they are identified as having a possible hearing impairment.
 - b) The visual and otoscopic examination of the ears allows for the determination of whether an acute condition exists that provides an etiology for the symptomatology of diminished hearing; e.g., cerumen (earwax) or foreign body occlusion of the ear canal.
 - c) Inmates wearing hearing aids, even if they maintain they have no hearing problem while wearing their aids, must remove their aids for this examination. The hearing aids are inspected for visible damage.
6. On the basis of the history and physical examination, the physician may suspect a possible hearing impairment and shall at that point perform, or refer the inmate for, verification or diagnostic testing.
 - a) However, if the inmate's hearing problem appears to be the result of an obvious acute condition, such as a cerumen impaction, the condition is addressed by the physician.
 - b) If treatment of the condition resolves the hearing impairment, the verification and measurement process in Section B, below, is not done unless specifically determined by the physician to be medically necessary.

B. VERIFICATION AND MEASUREMENT OF POSSIBLE HEARING IMPAIRMENTS

1. Inmates who have identified themselves as having a hearing impairment, or who have otherwise been identified as having a possible hearing impairment, are further evaluated for verification of impairment.
2. Based on results of the RC assessments, comprehensive history, and physical examination, a physician determines which of the components in Section B, Verification and Measurement, are indicated pursuant to applicable standards of care. The appropriate evaluation(s) may be ordered by the primary care physician during the time of the inmate's stay at the RC or may be obtained by referral to a specialist in audiology or otolaryngology, which referral may be done at the receiving institution.
3. A physician can refer the inmate to a hearing specialist, whether or not all components of the screening and verification evaluation are completed, whenever there is sufficient information to indicate that the inmate has a significant hearing impairment which is an impairment that could affect the safety and security of either the hearing impaired inmate or the institution, or could affect the program and medical needs of the inmate.
4. The RC verification and measurement process consists of quantitative standardized measurements and specialty evaluations to assess functional hearing capacity and speech receptivity and comprehension in the prison setting. The evaluation consists of one or more of the following:
 - a) Speech discrimination testing;
 - b) Conduction and lateralization testing (Rinne' and Weber);
 - c) Specialty referral, if indicated; and
 - d) Pure tone audiogram testing, if indicated.
5. The verification and measurement of hearing impairments shall conform to the following expectations:
 - a) Speech discrimination and comprehension is tested by speaking in a conversational voice, at six feet from the inmate, words from a phonetically balanced word list by an RN or physician. The inmate is positioned facing away from the speaker to avoid lip reading. An accepted standard is 70 percent accuracy in repeating the spoken words.
 - b) Rinne' and Weber tuning fork testing for bone and air conduction and lateralization shall be performed, if indicated, by an RN or physician using a 512 or 1024 Hz tuning fork.

- c) A standard pure tone air conduction screening audiogram is performed when necessary to verify and measure the degree and type of hearing impairment.
 - ❖ Only health care staff who are trained in administering and recording pure tone audiograms perform screening audiograms.
 - ❖ If the inmate does not demonstrate that he/she hears tones at 1000, 2000, 3000, and 4000 Hz at 30 dB, he/she shall be referred to a specialist in audiology or an otolaryngologist under contract to CDC for further evaluation and recommendation for treatment or the need for assistive devices, such as hearing aids.
6. Inmates who are verified by the screening process to have a hearing impairment, including inmates with hearing aids who report changes or have persistent uncorrected hearing impairment, shall be referred to a specialist in audiology or otolaryngology for identification of any pathologic conditions and recommendations for further care, if needed.
- a) In order not to prolong the time in the RC due to a referral to complete the evaluation and obtain recommendations for treatment or the use of assistive devices such as hearing aids, the inmate may be transferred to an appropriate receiving institution and the referral made from there. This also allows the use of referral resources close to the receiving institution.
 - b) The CDC shall request that the recommendations from specialists specify which auxiliary aids and services may be needed by the inmate and that the recommendations take into account the context of the prison environment in order to provide for the safety and security of both the hearing impaired inmate and the institution and the program and medical needs of the inmate.

II. STANDARDIZED HEALTH SCREENING OF INMATES WITH SPEECH, MOBILITY, VISION AND OTHER IMPAIRMENTS

The purpose of this protocol is to clarify:

- ❖ The mechanism for identifying inmates with impairments that might impact placement.
- ❖ The procedure for evaluating and verifying the impact of an impairment on placement

A. IDENTIFICATION OF INMATES WITH IMPAIRMENTS THAT MIGHT IMPACT PLACEMENT

1. All inmates receive an initial health care screening within 24 hours of their arrival at a Reception Center (RC), which includes a qualitative evaluation of the inmate's health care status. This includes visual acuity, evidence of mobility problems, the ability to communicate, or other potentially disabling conditions as part of a review of the inmate's health care needs. The process consist of at least the following:
 - a) The standardized health screening process.
 - b) A health history and physical examination
 - c) A dental screening, and
 - d) A mental health screening and evaluation.
2. The evaluation is multidisciplinary. It includes nursing and medical assessments and dental and mental health evaluations.
3. The initial assessment period in RC's provides the inmate with the opportunity to report possible health care problems.
4. During the initial assessment, the health care team performs a functional evaluation to identify the inmate's health care needs. This includes the health care needs which might impact placement and/or require referral for further evaluation and treatment.
5. Within 24 hours of the inmate's arrival, the screening begins with the standardized health screening. This is an interactive process between the inmate and licensed health care staff. Staff interacts with the inmate both in group settings and one to one. It includes a review of health care records for previously identified health problems. Health care needs identified through this process are triaged by RN's or physicians who initiate referrals conforming to the urgency appropriate to the need.
6. Within two weeks of arrival at the RC, the inmate is given an initial comprehensive health assessment which includes past and current health history, family history, identification of health risks factors and medical, dental and mental health evaluations.
7. Throughout the process of obtaining the inmate's health history and conducting examinations, physicians and other health care professionals qualitatively assess the inmate's functioning ability to communicate about their health care history and concerns and respond to verbal directions, or written if appropriate.

8. If the inmate has difficulty walking or is using crutches, or a walker or has a prosthesis for mobility purposes the mobility impairment is noted and the appropriateness of the current assistive aid is evaluated.
9. All inmates receive a visual acuity screening with and without correction. If the inmate requires additional evaluation to determine the overall visual impairment the RC health care staff refer the inmate accordingly.
10. All inmates transferring from one general population (GP) institution to another general population institution are processed via the standardized health screening process upon arrival. Each inmate is evaluated by health care staff to identify disabilities that may impact placement.
11. If the medical screening either in the RC or on entry to a GP reveal that the inmate has a visual acuity not correctable in at least one eye to better than 20/200, "no effective written communication," or cannot walk 100 yards, or up a flight of stairs without pausing with the use of aids, the disability is determined to impact placement.
12. If the examination determines that the inmate has a visual acuity of better than 20/200 in one eye, is able to communicate in writing or, is able to walk 100 yards or up a flight of stairs without pause with or without aids, the disability does not impact placement.

Throughout the process of obtaining the inmate's health history and conducting examinations, physicians and other health care professionals qualitatively assess the inmate's functioning capacity. This process involves a review of previous medical records including information of general physical and medical needs, and performing or referring for further testing if necessary to identify disabilities other than visual, mobility, speech, and hearing that may impact placement.

On the basis of the above examinations, if an inmate has been determined to have a permanent disability corresponding to the five listed on the CDC Form 1845, (or other disability that impacts placement), the physician will complete the CDC Form 1845. The physician will indicate the impact on placement of the disability in the correct section of the CDC Form 1845 so that inmate can be recommended for placement in a designated DPP facility.

Exhibit A

Parole Field Operations

It is the policy of the Department of Corrections and Rehabilitation (CDCR) to provide reasonable accommodations to parolees with disabilities to access programs and services provided by the Division of Adult Parole Operations (DAPO) and programs parolees are required to attend as a condition of their parole. Parole planning and supervision is conducted on a case-by-case basis to meet the unique needs of the parolee while protecting legitimate penological interests and consistent with the Department of Corrections and Rehabilitation's policy.

Release Program Study

Prior to an inmate's release to parole the Regional Re-Entry Coordinator receives CDC form 611, Release Program Study (RPS) from institutional staff. The Regional Re-Entry Coordinator or designee shall review the "Medical/Psychiatric" and "GPL" sections of the RPS to determine if the parolee has a disability or possible learning disability. If a disability is noted, the Regional Re-Entry coordinator shall ensure the necessary source documents related to the noted disability are included with the RPS. If the source documents are missing, the Regional Re-Entry Coordinator or designee shall contact the sending institution's records office to request a copy be immediately faxed.

Accommodation of Disabilities During Parole Supervision

Parolees with disabilities must be accommodated during their supervision. The information concerning a parolee's disabilities and needed accommodations accompanying the CDC 611 shall be placed in the ADA envelope attached to the back cover on the right side of the parole field file. Documents that are to be placed in this envelope include: CDC 128 C, CDC 128 C-1, CDC 128-1A, CDC 128 C-2, CDC 128-B (TABE), CDC 128-B (Transition to Parole Document), 128-B (Learning Disability), CDC 1845, and other CDCR approved documents identifying disabilities or needed accommodations. The agent of record (AOR) shall be familiar with the contents of this envelope, the CDC 611, and BPT 1073s if present in the field file that may identify a disability in order to provide appropriate accommodations prior to pre-arranged contacts with the parolee. During contacts not arranged in advance, the AOR or Officer of the Day (OD) shall ensure instructions given to parolee with disabilities affecting communication (i.e. vision, hearing, learning, developmental) are effectively communicated. In these cases, the means of effective communication used shall be documented on the Record of Supervision (CDC 1650-D).

Learning Disabilities/TABE Reading Level of 4.0 or Below

Parolees with learning disabilities are members of the class in the case of *Armstrong v. Schwarzenegger*. Learning disabilities are specific neurological disorders that may substantially limit one or more of the major life activities of reading, writing, spelling, performing mathematical calculations, or information processing. Certain impairments in

the ability to communicate verbally, both expressively and receptively, may be attributed to a learning disability. Learning disabilities are characterized by a significant difference in achievement in some areas, as compared to the individual's overall intelligence. Individuals with learning disabilities generally have average intelligence quotients. It is not necessary to verify a learning disability in order to accommodate the limitations associated with it.

The fact that a field file does not contain source documents verifying a learning disability does not mean the parolee has no learning disability or does not require an accommodation to access CDCR or community programs or services.

When the parolee's field file has no documentation of a learning disability, and the parolee provides verifiable evidence of a learning disability, the AOR shall notify the Unit Supervisor (US) who shall review the submitted document(s).

DAPO shall recognize and accept as legitimate learning disability verification diagnoses from any of the following:

- A licensed psychologist
- A credentialed school psychologist
- A licensed educational psychologist

DAPO will accept, as legitimate learning disability verification, a school transcript from a California public school or a non-California school, with special education requirements equivalent to California Education Code, Sections 56333-56347, that reflect the following:

- Individualized Education Plan (IEP) denoting a specific learning disability.
- Enrollment in Special Education and/or section 504 classes/services denoting specific learning disabilities.

For parolees who have received special education services unrelated to a learning disability will be accommodated on a case-by-case basis.

If accepted, a copy of the document(s) shall be placed in the ADA section or envelope of the parolee's field file and the original forwarded to case records for placement in the parolee's central file. The original shall be accompanied with a CDCR form 1502, Activity Report, which will note the nature of the document and a request for it to be placed in the parolee's central file.

Processing of 1824's

A parolee with a disability may request an accommodation to access CDCR authorized programs, services, and activities, or grieve alleged discrimination, through the use of the CDC Form 1824. DAPO staff shall ensure the 1824 is readily available to all parolees. Additionally, DAPO staff shall assist parolees

in completing an 1824 when the parolee is unable to complete the form on his/her own due to a disability.

When a parolee submits an 1824, DAPO staff shall retain one copy in the field file, provide the parolee with a copy of the 1824, and forward the original to the Regional ADA Coordinator. The Regional ADA Coordinator shall maintain a tracking log of all 1824s. If the parolee submits any relevant documentation with the 1824, the documentation shall be copied in the same manner and attached to the 1824.

If DAPO field staff grant or partially grant the requested accommodation or grievance, they shall document their actions on the 1824 before making copies and forwarding it to the Regional ADA Coordinator. After a response is completed DAPO staff shall retain a copy of the completed 1824 in the field file.

When a parolee files an accommodation or modification request/appeal on an inappropriate form, i.e., CDC Form 602, the Unit Supervisor shall attach an 1824 and forward the request/grievance per the normal 1824 process.

All 1824's shall be processed according to the established time limit guidelines of the California Code of Regulations, Title 15, section 3084.6.

Effective Communication

Reasonable accommodation shall be afforded parolees with disabilities (e.g. vision, speech, hearing or learning disabilities) to ensure effective communication is achieved with staff during supervision contacts. Auxiliary aids that are reasonable, effective, and appropriate to the needs of the parolee shall be provided when standard written or oral communication is not effective. Such aids may include qualified interpreters, readers, sound amplification devices, audio taped texts, Braille materials, large print materials, and signage.

Because of the critical importance of communications involving due process, the standard for equally effective communication is higher when a due process interest is involved. Communications involving such issues as conditions of parole and requirements to report or register come under this category as well as any subsequent instruction(s) from a parole agent for which the parolee's non-compliance may result in a parole hold. The means of effective communication used shall be documented on the Record of Supervision (CDC 1650-D)

Communication With Parolees Who Use Sign Language

For parolees who use sign language as their primary method of communication, a sign language interpreter must be provided for communication of the conditions of parole, initial interview, any notice of changes to the parole conditions, PACT orientation, and POC or medical appointments with CDCR medical staff. If written communication is used during parole supervision contacts, those writings must be retained in the field file. Any arrest based on a failure to follow instructions charge must have as a condition

precedent that the instruction was effectively communicated and understood by the parolee. An inability to prove the effective communication by a preponderance of the evidence will result in a dismissal of the charge.

Field Supervision/Office Visits

Parole Agents shall continue to follow existing procedures as they pertain to the supervision of parolees. The services provided by parole agents for parolees at the field offices are supervision and basic counseling.

Parolees with disabilities shall be provided reasonable accommodations for equal access to DAPO services and required participation in community programs. For parolees with disabilities that limit their ability to access the parole office, due to poor or inaccessible public transportation, for instance, accommodations may include arranging for regular home visits instead of office visits.

It is the mutual responsibility of the parolee and the DAPO to verify disabilities that might affect the parolees' placement in community programs, access to parole related services and the verification of credible claims of a disability in response to a request for reasonable accommodations. Parolees must cooperate with staff in the staff's efforts to obtain documents or other information necessary to verify a disability.

If accepted, a copy of the document(s) shall be placed in the ADA section or envelope of the parolee's field file and the original forwarded to case records for placement in the parolee's central file. The original shall be accompanied with a CDCR form 1502, Activity Report, which will note the nature of the document and a request for it to be placed in the parolee's central file.

Health Care Appliances

The CDCR is not obligated to and does not provide health care appliances to parolees except those appliances that are ordered in prison but received after release to parole. Any healthcare appliance received by the institution after the inmates release to parole shall be forwarded to the parole unit supervising the parolee. The parolee shall be responsible for maintenance and repair of health care appliances.

If a parolee is indigent, he/she may qualify for Medi-Cal, Medicare, or other benefits to pay for such appliances and repairs to appliances. However, on a case-by-case basis a parolee may require financial assistance for obtaining a health care appliance to effectively participate in a required community based or parole program. Parole Agents shall verify the need for the financial assistance. The CDCR may provide financial assistance to obtain health care appliances or repair such appliances on a case by case basis.

Parole Outpatient Clinics

The Parole Outpatient Clinic (POC) provides mental health diagnosis, evaluations, counseling, testing (As determined necessary by the clinician) and prescribing of medication. Additionally POC provides transitional mental health care and on occasion sustained therapeutic intervention on an outpatient basis to parolees with disabilities who have an Axis I diagnosis. Due to the nature of POC sessions, all communications must be conducted at a heightened level of effective communication

POC clinicians shall review the disability status of a parolee prior to providing services and shall have access to equipment and services (e.g. qualified interpreters, sound amplification devices, large print materials, and signage) to ensure parolees participating in POC services are afforded effective means of communication.

POC clinicians shall document the accommodations provided, including the means of effective communication used. If written communication is used, those writings must be retained in the POC clinicians file.

If a parolee's primary method of communication is sign language, a sign language interpreter shall be provided for POC appointments. If a parolee chooses or requests that no Sign Language Interpreter be used during POC meetings, none will be used. This request shall be documented by the clinician. Family members shall not be used as sign language interpreters for regularly scheduled POC services. This does not preclude POC staff from utilizing family members as sign language interpreters in emergency situations.

Evacuation Procedures

In the event of an emergency requiring building evacuation, each parole office shall ensure the safe and effective evacuation of parolees with disabilities. Local evacuation procedures shall be adopted at each parole office.

Searches

Parolees who have disabilities that preclude the use of standard search methods shall be afforded reasonable accommodations during searches. Such searches shall be thorough and professional with safety and security being of paramount concern. Parole agents shall advise a visually impaired parolee where and how he/she will be searched before any contact takes place. It is not necessary to advise a parolee with visual impairment regarding physical contact when necessary force is applied.

All assistive and prosthetic devices should be searched for safety of parole staff and the parolee. If the search requires the removal of a prosthetic device, a compliant parolee will be allowed to remove the device and give it to staff. The parole agent shall advise the outside agency, when booking, if the parolee has not been thoroughly searched due to a disability, so that appropriate medical or security personnel are made available to conduct a thorough search.

Restraints

Parolees who have disabilities precluding the application of restraint equipment in the ordinarily prescribed manner shall be afforded reasonable accommodations. Mechanical restraints shall be applied to ensure staff safety while reasonably accommodating the parolee's disability. The following guidelines shall apply when applying restraints to disabled parolees:

- Mechanical restraints shall be applied to ensure security, while reasonably accommodating the parolee's disability.
- Mechanical restraints shall never be applied in a manner that restricts breathing, blood circulation, or causes undue physical discomfort.
- Disabled parolees with one arm or hand, in a wheelchair, or use a walker or cane shall be placed in waist chains, whenever possible.
- Mechanical restraints shall never be applied to a prosthetic limb.
- Mechanical restraints shall never be used to secure a person to a fixed object, except as a temporary emergency measure. A person who is being transported shall not be secured in any manner to any part of the vehicle.
- Escorting a physically disabled parolee who is in mechanical restraints shall be conducted in a careful and safe manner. Special attention will be given to the walking speed and path taken during escorts. Visually impaired parolees shall be assisted by means of guidance by the upper arm.

Transportation

The special needs of parolees with disabilities shall be considered in transporting them. A parolee's special health care aids and appliances shall accompany the parolee upon transport. A parolee shall not be secured in any manner to any part of the vehicle with the exception of the seatbelt.

The following guidelines shall apply when transporting disabled wheelchair dependent parolees:

- A parolee being transported for non-custody reasons, who is compliant and can self-transfer from a wheelchair, can be transported in a standard vehicle by the parole agent.
- The parole agent may utilize other forms of transportation when a parolee being transported for non-custody reasons is compliant but unable to self-transfer from a wheelchair. A bus, van, para-transit van or any public vans equipped to handle the particular disability are considered as other forms of transportation. DAPO will utilize cash assistance to obtain these services when necessary.
- If the parolee is being transported for custody reasons and is compliant and can self-transfer from a wheelchair, a parole agent can transport.

If the parole agent preparing the CDC Form 1018, Transportation Request, knows that a parolee in local custody has a disability and requires assistance to enter or exit a vehicle, the agent will note that information on the 1018.

Exhibit B

ORIGINAL

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RECEIVED

JAN 17 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

FILED

JAN 18 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Case No. C 94-2307 CW

Plaintiffs,

v.

INJUNCTION

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

On January 12, 2007, this matter came on regularly for hearing in Courtroom 2, Fourth Floor, of this Court, the Honorable Claudia Wilken presiding. Donald Specter, Sara Norman, Michael Bien, and Gay Grunfeld appeared on behalf of Plaintiffs John Armstrong et al. Katherine Nelson appeared on behalf of Defendants Arnold Schwarzenegger, Governor; James Tilton, Secretary of California Department of Corrections and Rehabilitation ("CDCR"); Kingston W. Prunty, Jr., Undersecretary, CDCR; Scott Kernan, Acting Director, Division of Adult Institutions; Marisela Montes, Chief Deputy Secretary,

1 Adult Programs; George A. Sifuentes, Deputy Director, Office of Facilities Management;
2 and Dr. Peter Farber-Szekrenyi, Director, Division of Correctional Health Care Services
3 (“Defendants”).

4 Having considered the parties’ pleadings and the arguments of counsel, and good
5 cause existing therefor,

6 **THE COURT HEREBY FINDS AND ORDERS:**

7 In a series of orders commencing in 1996 and culminating in 2002, this Court found
8 defendants’ treatment of prisoners with disabilities violates the Americans with Disabilities
9 Act and Section 504 of the Rehabilitation Act. On January 3, 2001, defendants issued the
10 amended Armstrong Remedial Plan, which sets forth their own policies and procedures to
11 bring them into compliance with the ADA and Section 504. On March 21, 2001, this Court
12 issued a Permanent Injunction ordering defendants to comply with the ADA and Section
13 504 in eight specific areas previously litigated by the parties.

14 Commencing in 1999 and continuing to the present, plaintiffs’ counsel have engaged
15 in extensive monitoring of CDCR institutions for compliance with the ADA, Section 504,
16 the Permanent Injunction, and the Armstrong Remedial Plan.

17 This monitoring effort has not yet brought defendants into compliance. While some
18 individual prisons have improved their compliance, it has become increasingly clear that
19 defendants are unable to meet their obligations. This inability to comply with the Court’s
20 Orders and with federal law causes significant harm to the plaintiff class.

21 Through their Motion for Enforcement and Further Remedial Orders, Plaintiffs have
22 demonstrated that defendants continue to violate the rights of prisoners with disabilities
23 under the ADA and Rehabilitation Act in four significant areas.

24 **Inaccessible Housing**

25 Contrary to law, the Permanent Injunction, and the Armstrong Remedial Plan,
26 defendants are systemically failing to provide safe, accessible housing to prisoners with
27 mobility impairments, resulting in significant harm to the plaintiff class, including through
28 increased risk of injury. Defendants lack an adequate number of wheelchair accessible

1 placements, toilets and showers to accommodate the needs of prisoners with mobility
2 impairments who need to use a wheelchair either full-time or part-time. This shortage is
3 particularly acute for prisoners with special housing needs such as protective custody,
4 enhanced mental health care, administrative segregation, or high security levels.

5 Defendants also repeatedly fail to place prisoners with serious mobility and vision
6 impairments in safe housing. Defendants often force prisoners into upper bunks or upper
7 tiers of the prison despite restrictions from medical staff on such placements.

8 Defendants fail to transfer prisoners with severe disabilities to prisons designed to
9 accommodate them in a timely fashion. As a result, such prisoners are denied needed
10 accommodations too often and for too long.

11 Defendants have failed to repair and maintain accessible showers and toilets in many
12 prisons, especially California Institution for Men, San Quentin, and Kern Valley.

13 **Denial of sign language interpreters to prisoners who need them**

14 Contrary to law and the Armstrong Remedial Plan, defendants consistently and
15 systemically deny sign language interpreters to deaf prisoners. Within designated prisons,
16 the violations occur most frequently at deaf prisoner's medical and mental health
17 appointments. Plaintiffs have also presented pervasive evidence of violations with regard to
18 suicidal prisoners; in education, work, and other programming; and during classification
19 hearings, harming deaf signers by forcing them to rely on ineffective and inadequate forms
20 of communication such as lip reading and written notes. As such, deaf signers are unable to
21 understand or comprehend significant due process proceedings and medical care provided to
22 them.

23 **Confiscation of Medically Prescribed Assistive Devices**

24 Contrary to law and the Armstrong Remedial Plan, defendants routinely and
25 systemically remove assistive devices such as walking canes, hearing aids, tapping canes,
26 crutches, and wheelchairs from prisoners without any security justification and without
27 consulting medical staff. The problem is severe and longstanding. Removal of assistive
28 devices has been adopted as a policy at some institutions, while at others it is tolerated and

1 continues sporadically, making it difficult or impossible for prisoners to ambulate or hear in
2 prison and putting them at significant risk of injury.

3 **Late and Inadequate Disability Grievance Responses**

4 Contrary to law and the Armstrong Remedial Plan, defendants repeatedly and
5 systemically fail to respond promptly to class members' grievances requesting
6 accommodations. Some institutions respond chronically late – as often as 70 to 90 percent
7 of the time – to disability grievances, thereby subjecting class members to extraordinarily
8 long waits for hearing aids and other accommodations. Some institutions simply stop
9 processing grievances or lack any staff person (medical appeals analyst) to process
10 disability grievances or fail to retrieve the grievances from the box where prisoners are
11 instructed to leave them. Through whichever failed mechanism, CDCR's inadequate
12 disability grievance system harms the plaintiff class by denying them their only means of
13 seeking accommodation for their disabilities.

14 **Inadequate Disability Tracking**

15 Underlying all of these violations is defendants' failure to adequately track prisoners'
16 disabilities and the accommodations they need. As this Court held on May 30, 2006, "[t]he
17 current system for tracking prisoner ... disabilities is unreliable, noncomprehensive, and
18 insufficient." This Court further stated that "[u]se of a tracking system to prevent such
19 violations is required ... by the underlying law." Defendants' Armstrong and Clark
20 Automated Tracking System has failed to identify and track CDCR prisoners' disabilities
21 and the accommodations needed for those disabilities. The lack of an adequate tracking
22 system has resulted in significant harm to the plaintiff class, including but not limited to
23 denial of safe, accessible housing, prompt transfers to designated institutions, and sign
24 language interpretation.

25 **IT IS HEREBY ORDERED** that defendants, their agents, employees and
26 successors in interest shall take the actions listed below, and use all means at their disposal
27 to comply with the provisions set forth below, including obtaining staffing and funding on
28 an emergency basis, if necessary. If defendants believe that any provision in state law

1 makes compliance with any provision impossible, they shall immediately thereafter notify
2 the Court and set forth their position about whether such law should be waived pursuant to
3 18 U.S.C. Section 3626(a)(1)(B).

4 The parties shall meet and confer as often as necessary to fulfill the provisions of this
5 order and obtain as much agreement as possible on the means to achieve compliance
6 therewith. The parties shall notify the Court in writing of any disputes about the
7 implementation of these provisions and suggest appropriate methods of resolution.

8 The Court shall schedule periodic status conferences at 60 day intervals to monitor
9 the progress of compliance with this and other prior orders. Prior to such conferences, the
10 parties shall file statements in a form to be determined through agreement of the parties
11 describing defendants' progress on each issue, any perceived barriers to future compliance
12 and suggested methods of overcoming those barriers.

13 **A. ENHANCED STAFFING**

14 Within 45 days of the date of this Order, defendants shall increase the staff of the
15 CDCR Court Compliance Team so that it has at least one staff member at Correctional
16 Counselor II level or higher for each prison designated to house prisoners with disabilities
17 impacting placement (including designated reception centers and designated Security
18 Housing Unit and condemned housing) and at least one position at Correctional Counselor
19 II or higher position for every two non-designated prisons.

20 The Court Compliance Team shall have sufficient command authority within the
21 CDCR to direct compliance with the Armstrong Remedial Plan and the orders of this Court
22 at all CDCR institutions.

23 Within 45 days of the date of this Order, defendants shall appoint one full-time staff
24 member at the Associate Warden level or higher as the ADA Coordinator at each institution
25 designated to house prisoners with disabilities impacting placement (including designated
26 reception centers and designated Security Housing Unit and condemned housing), to work
27 only on ADA compliance matters, with a supervising correctional counselor as an assistant.

28 \\\

1 **B. TRACKING SYSTEM**

2 Defendants shall develop, implement, and begin to use a state-wide, computerized,
3 networked real-time tracking system to track prisoners with disabilities by May 30, 2007.
4 This system shall be integrated with the BPH tracking system previously ordered by the
5 Court. The tracking system shall include prisoners' disability designations and the
6 disability accommodations they require, including but not limited to lower bunks, ground
7 floor housing, assistive devices, and effective communication needs such as sign language
8 interpreters, large print, and scribes.

9 For prisoners whose disabilities impact placement (DPW, DPO, DPM, DPV, and
10 DPH), as well as for prisoners who are DNM with housing restrictions, the tracking system
11 shall include placement and classification factors, including but not limited to mental health
12 placement needs, protective custody, administrative segregation, Security Housing Unit,
13 security level, and developmental disability designation.

14 The tracking system shall be updated continuously as new information is received
15 about prisoners with disabilities.

16 **C. HOUSING**

17 Within 90 days of the date of this Order, defendants shall generate an inventory of
18 housing placements available to DPV, DPW, DPM, and DPO prisoners and DNM prisoners
19 with housing restrictions. The inventory must include classification factors for each
20 placement, including but not limited to mental health placement needs, protective custody,
21 administrative segregation, Security Housing Unit, security level, and developmental
22 disability designation. The inventory must also include information regarding the current
23 state of repair of accessible features for each placement.

24 The placement inventory shall be updated continuously as new information is
25 received regarding placement factors and maintenance.

26 Upon completion of the inventory, CDCR may no longer house DPW, DPO, and
27 DPM prisoners at any placements without adequate accessible housing, including working
28 accessible toilets and showers.

1 Starting immediately, defendants shall not house DPW, DPO, and DPM prisoners in
2 the CIM dayrooms or Kern Valley State Prison until those locations have adequate
3 accessible housing, including working accessible toilets and showers.

4 **D. ACCOUNTABILITY**

5 Within 120 days of the date of this Order, defendants, in cooperation with the Office
6 of the Inspector General and the Receiver in *Plata v. Schwarzenegger*, shall develop a
7 system for holding wardens and prison medical administrators accountable for compliance
8 with the Armstrong Remedial Plan and the orders of this Court. This system shall track the
9 record of each institution and the conduct of individual staff members who are not
10 complying with these requirements. Defendants shall refer individuals with repeated
11 instances of non-compliance to the Office of Internal Affairs for investigation and
12 discipline, if appropriate.

13 Within 60 days of the date of this Order, defendants, in consultation with plaintiffs'
14 counsel, shall develop and implement a system of positive incentives to encourage
15 individual employees and managers at the institutions to comply with the Armstrong
16 Remedial Plan and the Orders of this Court.

17 Within 60 days of the date of this Order, defendants shall amend post orders and duty
18 statements of correctional staff as appropriate to include the *Armstrong* requirements for
19 which they are responsible.

20 **E. TRAINING**

21 Within 60 days of the date of this Order, defendants, subject to the approval of
22 plaintiffs' counsel, shall select and retain outside experts to provide training of health care
23 staff and correctional counselors in effective communication issues.

24 Within 60 days of the date of this Order, the parties shall jointly agree on outside
25 experts and defendants shall retain them to provide training to all custody staff who work in
26 administrative segregation units, the Security Housing Unit, or Receiving and Release on
27 their obligations not to confiscate assistive devices and the reasons therefor.

1 Defendants' employees may jointly provide training with the outside experts. The
2 training of all appropriate staff shall be completed by September 1, 2007, and a regular
3 schedule of ongoing and refresher training shall be established.

4 **F. GRIEVANCES**

5 Within 30 days of the date of this Order, defendants shall ensure that the Appeals
6 Coordinator and Medical Appeals Analyst positions are filled at each institution.
7 Defendants shall take all actions necessary to ensure that these positions do not remain
8 vacant for more than one month.

9 Within 60 days of the date of this Order, defendants shall provide sufficient
10 additional staff time to timely process grievances whenever a prison's disability grievance
11 responses are late more than 30% of the time within the last six months. The additional
12 staffing shall remain in place until the grievance process is in substantial compliance. The
13 parties shall meet and confer as soon as possible to establish an appropriate methodology to
14 determine how to measure the timeliness of grievance responses and the definition of
15 substantial compliance in this area, with any disputes to be resolved by the Court.

16 **G. SIGN LANGUAGE INTERPRETERS**

17 Within 120 days of the date of this Order, defendants shall establish as permanent
18 civil service positions qualified sign language interpreters for each prison designated to
19 house prisoners whose hearing disabilities impact their placement (DPH). Defendants shall
20 employ, through whatever salary is necessary, sufficient qualified interpreters to serve the
21 needs of the DPH prisoners housed at each institution. Defendants may seek relief from this
22 provision at a particular institution when their video conferencing facilities are sufficient to
23 provide all necessary sign language services at that institution.

24 Within 30 days of the date of this Order, defendants shall conduct interviews of all
25 DPH inmates in reception centers by a correctional counselor in the presence of a qualified
26 sign language interpreter to determine the prisoner's preferred method of communication
27 and record that information in the state-wide tracking system as well as the prisoner's
28

1 central and medical files. Defendants shall conduct such interviews with prisoners who are
2 newly designated DPH within 30 days of the designation.

3 **H. MISCELLANEOUS**

4 Defendants shall comply with the policies and procedures contained in their
5 *Armstrong* Remedial Plan relevant to the issues outlined above, specifically Sections I (p.1),
6 II.A-D (pp. 1-4), II.E (pp. 4-7), II.F (p. 7), IV.C-G (pp. 16-21), IV.I.22 (pp. 34-35), and
7 IV.I.23 (pp. 36-41) of the Remedial Plan.

8 The Court finds that the relief ordered herein is narrowly drawn, extends no further
9 than necessary to correct the violation of federal rights, and is the least intrusive means
10 necessary to correct the violation of the federal rights.

11 **IT IS SO ORDERED.**

12
13 Dated: JAN 18 2007

By:


THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ARMSTRONG, ET AL,
Plaintiff,

Case Number: CV94-02307 CW

CERTIFICATE OF SERVICE

v.

DAVIS, ET AL et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 18, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: January 18, 2007

Richard W. Wicking, Clerk
By: Sheilah Cahill, Deputy Clerk

Exhibit C

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

JOHN ARMSTRONG, et al.,

No. C 94-2307 CW

Plaintiffs,

ORDER DENYING
MOTION FOR
CONTEMPT, DENYING
AS MOOT MOTION TO
STRIKE AND
MODIFYING
PERMANENT
INJUNCTION
(Docket Nos. 2024
and 2135)

v.

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

Defendants.

_____ /

Plaintiffs move for an order to show cause why Defendants should not be held in civil contempt for violating the January 18, 2007 Injunction and to hold Defendants in contempt. Defendants oppose the motion. Having considered the papers filed by the parties and their arguments at the hearing, the Court DENIES Plaintiffs' motion. The Court also MODIFIES the 2007 Injunction.

BACKGROUND

In a series of orders between 1996 and 2002, the Court found that Defendants' treatment of prisoners with disabilities violated the American with Disabilities Act (ADA) and section 504 of the Rehabilitation Act. On January 3, 2001, Defendants issued the amended Armstrong Remedial Plan (ARP) setting forth their own plans and policies to come into compliance with their obligations under these federal laws. Docket No. 681. On March 21, 2001, the Court issued a Permanent Injunction ordering Defendants to comply with the ADA and section 504 in eight specific areas previously litigated by the parties. Docket No. 694.

1 On January 18, 2007, this Court held that Defendants were not
2 yet in compliance with the ADA, section 504, the Permanent
3 Injunction or the ARP. Docket No. 1045. The Court found that
4 "Plaintiffs have demonstrated that defendants continue to violate
5 the rights of prisoners with disabilities under the ADA and
6 Rehabilitation Act" and described in detail its factual findings
7 of Defendants' ongoing and systemic violations of class members'
8 rights, including failure to provide safe accessible housing to
9 prisoners with mobility impairments, denial of sign language
10 interpreters to prisoners who need them, confiscation of medically
11 prescribed assistive devices, and late and inadequate disability
12 grievance responses and systems. Id. at 2-4. The Court
13 specifically found that some institutions responded chronically
14 late to class members' grievances regarding accommodations and
15 that other institutions simply did not process and address such
16 grievances at all. Id. at 4. These failures persisted despite
17 the Court's prior orders requiring Defendants to provide
18 reasonable accommodations and violated the ARP developed by
19 Defendants.

20 The Court entered an injunction, requiring Defendants to take
21 certain steps to address the ongoing rights violations.
22 Injunction, Docket No. 1045. To ensure that repeated violations
23 would be identified and addressed, the Court ordered, among other
24 things,

25 Within 120 days of the date of this Order, defendants,
26 in cooperation with the Office of the Inspector General
27 and the Receiver in Plata v. Schwarzenegger, shall
28 develop a system for holding wardens and prison medical
administrators accountable for compliance with the
Armstrong Remedial Plan and the orders of this Court.
This system shall track the record of each institution

1 and the conduct of individual staff members who are not
2 complying with these requirements. Defendants shall
3 refer individuals with repeated instances of non-
compliance to the Office of Internal Affairs for
investigation and discipline, if appropriate.

4 Id. at 7.

5 On November 21, 2008, Defendants issued a memorandum entitled
6 "Expectations for Staff Accountability and Non-compliance of the
7 Disability Placement Program" (DPP). Godbold Decl. ¶ 3, Ex. 1.
8 Plaintiffs allege that this memorandum sets forth "Defendants'
9 sole means of implementing" the accountability tracking
10 requirements of the 2007 Injunction. Mot. at 4. The memorandum
11 states, "In order to provide the documentation to meet the Court's
12 Injunction related to staff conduct, the following recording and
13 reporting protocols shall be implemented." Id. at 2. If a
14 supervisor or manager observes violations of the DPP or if staff
15 misconduct is alleged or reported by others, including "staff,
16 inmate interviews, submitted via CDC Form 602 - Inmate/Parolee
17 Appeal or CDCR Form 1824 - Request for Reasonable Modification or
18 Accommodation," or is found through "other fact-finding efforts,"
19 the supervisor or manager is required to "prepare and forward a
20 memorandum to the Employee Disciplinary Officer/Employee Relations
21 Officer (EDO/ERO) in the Employee Relations Office," setting forth
22 the details of the misconduct. Id. The EDO/ERO is then to
23 forward this information to the appropriate Hiring Authority,
24 which is either the warden of the institution or the Health Care
25 Manager, who is to determine "what action should be taken" and
26 whether the involvement of the Office of Internal Affairs (OIA) is
27 warranted. Id. at 2-3. The Hiring Authority's decision is to be
28 "entered on the DPP Employee Non-Compliance Log." Id. at 3. Each

1 month, the logs compiled at each institution are produced to
2 Plaintiffs' counsel. Id.; Godbold Decl. ¶ 4.

3 On July 13, 2010, the parties filed a joint status conference
4 statement, stating in relevant part,

5 Plaintiffs are concerned that the staff accountability
6 program, required by this Court's January 18, 2007
Injunction, is not working as intended.

7 Under Defendants' November 21, 2008 memorandum governing
8 accountability procedures, supervisors are required to
9 forward a memo to the Employee Relations Officer when
they "discover" -- via direct observation, prisoner
10 complaint, or reports by others -- that staff has
"fail[ed] to fulfill their responsibilities in regards
11 to the DPP." The Employee Relations Officer submits the
information to the Hiring Authority, and the Hiring
12 Authority is then to determine whether/what action to
take. Once the Hiring Authority has made its
13 determination, the Employee Relations Officer "shall
enter the decision in the DPP Employee Non-Compliance
Log."

14 Despite this direction, the non-compliance logs for
15 several institutions are completely blank for the entire
period of February 2009 through April 2010. The logs
16 for many other institutions are empty for months at a
time, and the logs for still others have very few
17 entries.

18 The lack of entries exist even where Plaintiffs have
produced reports alleging numerous and serious
19 violations of the Remedial Plan.

20 Without waiving any legal rights, Defendants have agreed
to put together a training module to ensure that staff
21 are properly investigating potential violations and
noting the investigations in the accountability logs.

22 The parties have agreed to meet on July 27 at 10:00 to
23 discuss the contents and status of such training.

24 Docket No. 1729, at 2-3.

25 In February 2011, Defendants required all institutional
26 staff, except staff working under the authority of the Receiver
appointed by the court in Plata v. Brown, to complete a training
27 module on the accountability procedures. Martinez Decl. ¶ 4. The
28

1 training consisted of written materials summarizing the procedures
2 and a quiz regarding the materials. Id., Ex. C.

3 Between April 2011 and December 2011, Plaintiffs submitted
4 allegations of more than 150 violations of the Armstrong Remedial
5 Plan to Defendants, which were not reported on the corresponding
6 DPP Employee Non-Compliance Logs provided by Defendants to
7 Plaintiffs. Godbold Decl. ¶¶ 7-57, Exs. 3-53; Evenson Decl.
8 ¶¶ 3-5.¹

9 On January 18, 2012, Plaintiffs sent Defendants a letter,
10 stating

11 Based on a review of the non-compliance logs produced
12 since completion of the training (April 2011 - November
13 2011), plaintiffs' counsel remains seriously concerned
14 about the incompleteness and inconsistency of the non-
15 compliance logs. Despite additional staff training,
16 logs at nine institutions remaining entirely blank even
17 though clear Armstrong violations have been identified
18 through monitoring at those prisons. Though logs at the
19 remaining institutions are not blank, at least 17 other
20 prisons fail to document violations which plaintiffs'
21 counsel identified in monitoring reports.

22 Godbold Decl. ¶ 6, Ex. 2. Plaintiffs attempted to discuss
23 solutions to these issues during a February 3, 2012 meeting.
24 Defendants refused to comment on plans to address these issues and
25 stated that they would respond in writing by March 1, 2012.

26 ¹ In their opposition, Defendants argue that Plaintiffs'
27 counsel's monitoring letters are inadmissible hearsay offered to
28 prove the truth of the allegations of violations contained in the
letters, and that they do not qualify for any exception to the
hearsay rule. Opp. at 12-13. Plaintiffs do not offer these
letters to establish that Defendants had in fact violated the
Armstrong Remedial Plan, but rather to establish that the fact
that Plaintiffs had submitted allegations of such violations to
Defendants between these dates, which did not appear on the DPP
Employee Non-Compliance Logs. Accordingly, the Court OVERRULES
Defendants' objections to these documents.

Godbold Decl. ¶ 6. Defendants had not responded as of March 22, 2012. Id.

On March 22, 2012, Plaintiffs filed the instant motion, alleging that Defendants have failed to comply with the quoted portion of the 2007 Injunction. The parties subsequently stipulated to extend the briefing and hearing schedule on the motion.

In March 2012, Defendants required all managerial and supervisory staff at the prisons, except staff working under the authority of the Receiver appointed by the court in Plata v. Brown, to complete again the training module on the accountability procedures. Calderon Decl. ¶ 2.

On May 10, 2012, Defendants filed their opposition to Plaintiffs' motion.²

² With their opposition, Defendants filed under seal a separate 120-page document, entitled "Appendix of Defendants' Objections to Plaintiffs' Evidence on Plaintiffs' Motion for an Order to Show Cause and a Contempt Order," and setting forth 270 evidentiary objections to Plaintiffs' evidence. Docket No. 2117. In their reply, Plaintiffs object to this appendix of objections and move to strike it.

Civil Local Rule 7-3(a) requires that, for an opposition to a motion, "[a]ny evidentiary and procedural objections to the motion must be contained within the brief or memorandum." Civil Local Rule 7-4(b) provides that, unless "the Court expressly provides otherwise pursuant to a party's request made prior to the due date, briefs or memoranda filed with opposition papers may not exceed 25 pages of text."

Between their opposition brief and their separate appendix of evidentiary objections, Defendants have filed a total of 143 pages in opposition to Plaintiffs' motion, without at any point seeking leave of the Court to exceed twenty-five pages. Accordingly, the Court GRANTS Plaintiffs' request to strike Defendants' appendix of evidentiary objections. The Court will only consider the evidentiary objections that Defendants raised within the opposition brief itself.

1 On May 24, 2012, Plaintiffs filed their reply in support of
2 their motion.

3 On May 31, 2012, Defendants filed objections to Plaintiffs'
4 reply evidence.³

5 On June 1, 2012, Plaintiffs filed a revised proposed order
6 for the instant motion.⁴

7 LEGAL STANDARD

8 A district court has the inherent authority to enforce
9 compliance with its orders through a civil contempt proceeding.
10 International Union, UMWA v. Bagwell, 512 U.S. 821, 827-28 (1994).
11 A contempt sanction is considered civil if it "is remedial, and
12 for the benefit of the complainant." Id. A contempt fine is
13 considered civil and remedial if it either "coerce[s] the
14

15
16 ³ Defendants request that the Court strike portions of the
17 reply declaration of Penny Godbold, arguing that these sections of
18 her declaration improperly contain conclusions and argument or
misstate the evidence in the record. Because the Court has not
relied on the Godbold reply declaration in resolving this motion,
Defendants' request is OVERRULED AS MOOT.

19 ⁴ On June 4, 2012, Defendants filed an administrative motion
20 to strike Plaintiffs' revised proposed order, arguing that the
21 proposed order is actually a sur-reply brief offering additional
argument in support of their motion. Docket No. 2135.

22 The Court notes that Plaintiffs appear to have revised their
23 proposed order to incorporate the arguments they raised in their
24 reply brief. Defendants allege that the revised proposed order
25 "improperly argues, after all briefing has been completed, that
26 this Court should change the nature of the proceedings, by
abandoning their motion for an order to show cause," by arguing
that "an order to show cause" is "not necessary because Plaintiffs
do not contest Defendants' evidence." Mot. to Strike 2 & n.1
(emphasis in original). However, Plaintiffs make this argument on
pages thirteen through fifteen of their reply brief.

27 Because the Court finds that the revised proposed order is
28 not material to the outcome of this motion and does not rely upon
it in ruling, the Court DENIES Defendants' motion as MOOT.

1 defendant into compliance with the court's order, [or] ...
2 compensate[s] the complainant for losses sustained." United
3 States v. United Mine Workers, 330 U.S. 258, 303-304 (1947).

4 "The standard for finding a party in civil contempt is well
5 settled: The moving party has the burden of showing by clear and
6 convincing evidence that the [non-moving party] violated a
7 specific and definite order of the court." FTC v. Affordable
8 Media, LLC, 179 F.3d 1228, 1239 (9th Cir. 1999) (quoting Stone v.
9 City & Cnty. of San Francisco, 968 F.2d 850, 856 n.9 (9th
10 Cir.1992)). The contempt "need not be willful, and there is no
11 good faith exception to the requirement of obedience to a court
12 order." In re Dual-Deck Video Cassette Recorder Antitrust Litig.,
13 10 F.3d 693, 695 (9th Cir. 1993). "But a person should not be
14 held in contempt if his action appears to be based on a good faith
15 and reasonable interpretation of the court's order." Id.
16 (internal formatting and quotation marks omitted). "'Substantial
17 compliance' with the court order is a defense to civil contempt,
18 and is not vitiated by 'a few technical violations' where every
19 reasonable effort has been made to comply." Id. (citing Vertex
20 Distrib., Inc. v. Falcon Foam Plastics, Inc., 689 F.2d 885, 891
21 (9th Cir. 1982)).

22 Thus, the Court may grant a motion for an order of contempt
23 if it finds that Defendants (1) violated the court order,
24 (2) beyond substantial compliance, (3) not based on a good faith
25 and reasonable interpretation of the order, (4) by clear and
26 convincing evidence. Id. Once the moving party has met its
27 burden, the burden "shifts to the contemnors to demonstrate why
28 they were unable to comply" with the court order. Stone, 968 F.2d

1 at 856 n.9 (citing Donovan v. Mazzola, 716 F.2d 1226, 1240 (9th
2 Cir. 1983)). "They must show they took every reasonable step to
3 comply." Id. (citing Sekaquaptewa v. MacDonald, 544 F.2d 396, 406
4 (9th Cir. 1976)).

5 DISCUSSION

6 Plaintiffs request that Defendants be held in civil contempt
7 because they have reported "hundreds of violations of the Remedial
8 Plan and instances of staff member misconduct" to Defendants and
9 "Defendants have failed to track these reported instances of staff
10 member non-compliance, or to refer repeated instances of non-
11 compliance to the OIA." Mot. at 3. Plaintiffs acknowledge that
12 Defendants have developed a tracking mechanism, but argue that it
13 has not been effective, that many institutions are not complying
14 with it and that Defendants' training on this mechanism has been
15 insufficient. Id. at 5.

16 Defendants do not dispute that they did not track allegations
17 of rights violations. Instead, they argue that the 2007
18 Injunction does not require them to log allegations of
19 non-compliance or to investigate such allegations and instead only
20 requires them to log instances in which they found that an
21 employee had in fact violated a class member's rights. Thus, they
22 contend that, although their November 2008 accountability program
23 mandates tracking of allegations of non-compliance that were
24 ultimately not substantiated, which they admit they have failed to
25 do, they cannot be held in contempt for this failure because the
26 information was not required by the 2007 Injunction. Defendants
27 further argue that, if the 2007 Injunction does require them to
28 conduct an investigation into allegations of non-compliance and to

1 report the outcome of each such investigation, including those
2 that were not substantiated, then the order is ambiguous and
3 unenforceable through civil contempt sanctions. Finally,
4 Defendants aver that they have been acting pursuant to a good
5 faith interpretation of the Injunction as not requiring this.

6 The Court finds that Defendants' interpretation of the 2007
7 Injunction fatally undermines any effectiveness that the relevant
8 requirements would have had in addressing the ongoing violations
9 identified in that order. The Court required Defendants to
10 "develop a system for holding wardens and prison medical
11 administrators accountable for compliance with the Armstrong
12 Remedial Plan and the orders of this Court," and to track both
13 "the record of each institution and the conduct of individual
14 staff members who are not complying with these requirements."
15 These requirements were intended to serve multiple purposes,
16 including remedying the widespread failures to respond to
17 grievances and requests for accommodations, verifying compliance
18 with the other parts of the Court's orders and the ARP and
19 ensuring that patterns of violations were identified and
20 addressed. Most importantly, these provisions required Defendants
21 to develop effective internal oversight and accountability
22 procedures to ensure that Defendants learned what was taking place
23 in their facilities, in order to find violations, rectify them and
24 prevent them from recurring in the future, without involvement by
25 Plaintiffs' counsel or the Court. Defendants are unable to
26 identify whether institutions and staff members have complied with
27 requirements, find patterns or hold wardens and medical
28 administrators accountable, if they do not determine whether

1 reports of rights violations are substantiated and record the
2 results. Simply put, investigations, including the documentation
3 of the results, are necessary to ensure that grievances are
4 addressed and to identify staff error or misconduct and
5 institutional deficiencies that violate class members' rights.
6 Defendants may not fail to investigate reports of rights
7 violations and then declare that, because they did not
8 substantiate a violation, they were not required to document it.
9 Without documentation, there is no way for the Court to know
10 whether a complaint was investigated and found unsubstantiated, or
11 was simply ignored.

12 Some of Defendants' declarations reveal that investigations
13 were not conducted into complaints of rights violations until
14 after the instant motion was filed. For example, on October 13,
15 2011, Plaintiffs' counsel submitted a monitoring report to
16 Defendants stating that, among other things, a class member had
17 reported "that his back brace was taken away following a cell
18 extraction on May 2, 2011." Godbold Decl. ¶ 9, Ex. 5, 3.
19 Defendants submit evidence that they conducted an investigation
20 into this allegation upon receipt of the instant motion and offer
21 no evidence that they investigated the report at any earlier time.
22 See Zanchi Decl. ¶¶ 2-3, 10-13 (asserting that the report was not
23 substantiated, because the class member "was not medically
24 authorized to have a back brace").

25 The Court also notes that Defendants concede that at least
26 some of the incidents at issue constituted violations of the ARP,
27 which they were required to report. See Opp. at 5 (admitting
28 twenty-six ARP violations were not logged). Defendants state that

1 they have or will amend their accountability reports to track
2 these incidents.

3 The Court finds that Defendants' own evidence submitted in
4 response to this motion reveals numerous additional incidents,
5 which do violate the ARP or other Court orders, and which
6 Defendants failed to track. In multiple incidents, Defendants
7 state that they did not log that a violation of the ARP occurred
8 because staff members did not intend to commit a rights violation
9 or because the violation was subsequently remedied. However, the
10 2007 Injunction requires that every violation be tracked,
11 regardless of whether or not it was done intentionally or based on
12 an honest mistake or unavoidable. Further, violations must be
13 tracked, even if steps are later taken to remedy the initial
14 problem.

15 For example, Defendants acknowledge that a deaf inmate
16 submitted a grievance dated September 4, 2011, stating that his
17 hearing aid was taken during a cell search that took place on
18 August 24, 2011 and asking that the hearing aid be returned or
19 that he be provided with a new one. Cavazos Decl. ¶¶ 17-18, Ex.
20 E. Defendants also admit that a later investigation revealed that
21 the hearing aid was taken during the search. Id. at ¶ 19.
22 Sometime after September 28, 2011, the inmate was seen by an
23 audiologist and given a new hearing aid. Id. at ¶ 19-21.
24 Defendants contend that they "determined that there was no
25 violation that needed to be logged" in the accountability logs,
26 because the inmate's hearing aid was removed from his cell "by
27 mistake, and there was no intention to deprive him of his hearing
28 aid," and because he was "provided a new hearing aid soon after he

requested one." Id. at ¶ 22.

In another incident, Defendants acknowledge that one prisoner's Disability and Effective Communication System (DECS) record shows that "his primary method of communication is American sign language and that his secondary method of communication is the use of written notes." Aref Decl. ¶ 6. See also Aref Decl. ¶ 7, Ex. A. The ARP requires that, "for all due process functions," when "sign language is the inmate's primary or only means of effective communication," a qualified sign language interpreter must be provided, "unless the inmate waives the assistance of an interpreter, reasonable attempts to obtain one are not successful, and/or delay would pose a safety or security risk." ARP § II.E.2.d. Defendants attest that, on April 18, 2011, staff held a meeting with this prisoner to provide notice of his conditions of parole, but did not have a sign language interpreter present and instead used written notes to communicate with him. Aref Decl. ¶ 8. Defendants do not provide evidence that the inmate waived the assistance of an interpreter, they made reasonable attempts to obtain an interpreter or that delay would pose a safety or security risk. After Plaintiffs' counsel raised this issue with Defendants, a second meeting was held on June 3, 2011 with the prisoner, at which a sign language interpreter was present. Aref Decl. ¶ 10-11, Ex. 11. Defendants assert that they concluded that no violation of the ARP occurred in the April 18, 2011 meeting, apparently because "the correctional counselor responsible" for the meeting "believed that the use of written notes was an appropriate effective form of communication," and thus that the incident need not be entered into the accountability

logs. Id. at ¶ 15.

Defendants' declarations also show that they failed to document violations where an inmate's grievance did not specifically accuse a staff member of misconduct, even though the inmate was deprived of an accommodation required under the ARP. Defendants must report incidents where an inmate complains that he or she was not provided with something required by the ARP, not only where the class member has explicitly accused a specific staff member of intentional malfeasance or another talismanic phrase. Defendants also repeatedly state that they are not required to track violations where they could not identify the specific staff members responsible for the problem. See, e.g., Zanchi Decl. ¶¶ 8-9 ("My investigation was unable to identify the specific staff members responsible for the violations. Because no specific staff member could be identified as the responsible party, this incident was not logged in the CCI DPP Accountability Logs."). However, the fact that Defendants could not identify the responsible individual does not negate the fact that an incident occurred in which a class member was deprived of his rights. Further, the 2007 Injunction clearly requires Defendants to track institutional compliance, not just the compliance of individual staff members.

For example, one prisoner submitted a grievance on a CDCR 602 form stating that he was "vision impaired [and] not receiving assistance from custody in reading and writing." Cullen Decl. ¶ 7, Ex. C, 3. In the response to his grievance, staff noted that, during an interview about the grievance, the inmate stated specifically that "staff is unwilling to assist [him] in

1 preparation of an Inmate/Parolee Appeal CDCR 602 form." Id. at 5.
2 His complaint was substantiated and the associate warden concluded
3 that "staff was not providing the proper assistance with your
4 disability needs," noting that the ARP mandated that "institution
5 staff shall provide the assistance and equipment necessary to all
6 inmates with disabilities on a case by case basis to ensure that
7 inmates, who have difficult reading and/or communicating in
8 writing . . . are provided reasonable access to forms, CCRs and
9 procedures." Id. See ARP § II.F. Defendants contend that they
10 were not required to log this because the grievance did not
11 provide "information that there was a violation of the Armstrong
12 remedial plan." Cullen Decl. ¶ 7. Even if the original grievance
13 was vague, the ensuing investigation clearly revealed that the
14 class member was alleging a violation of the ARP, and Defendants'
15 staff substantiated that there was such a violation. This
16 argument is especially disingenuous because the class member was
17 complaining that he was not provided with accommodations required
18 to help him complete this form properly, among other things. As
19 above, Defendants further aver that the inmate did not identify "a
20 specific person or persons who failed to provide" him with
21 assistance. Id.

22 The Court notes that the instant motion does not involve
23 Defendants' failure to provide appropriate accommodations; rather,
24 the Court considers whether Defendants have violated the 2007
25 Injunction's requirement that it develop an accountability system
26 to ensure compliance with the ARP and the Court's other orders.
27 On the record before it, the Court concludes that Defendants'
28 accountability system, with which they do not dispute they have

1 failed to comply, has not been effective. Although the Court
2 finds that the 2007 Injunction implicitly required Defendants to
3 include in the accountability system requirements to investigate
4 promptly and appropriately all allegations of violations,
5 regardless of the source, and to record the outcomes of the
6 investigations, including whether or not the allegations were
7 substantiated, in an abundance of caution the Court concludes that
8 the 2007 Injunction may not state this plainly enough.
9 Accordingly, the Court DENIES Plaintiffs' motion to hold
10 Defendants in contempt.

11 The Court finds the 2007 Injunction should be clarified and
12 made more detailed, to make clear what is expected of Defendants
13 and to allow Defendants to conform their future behavior to its
14 terms. The Court therefore MODIFIES the 2007 Injunction, as set
15 forth below. The modifications largely reflect the procedures
16 that were set forth in Defendants' November 21, 2008 memorandum,
17 with minimal changes. The Court makes changes in five substantive
18 areas--tracking, investigation, corrective action and discipline,
19 dispute resolution, and requirement for a protective order. The
20 Court finds that these changes are narrowly drawn, extend no
21 further than necessary to correct the violations of federal rights
22 identified in the 2007 Injunction, and are the least intrusive
23 means necessary to correct the violations of the federal rights.

24 The modifications require Defendants to track all allegations
25 of non-compliance with the ARP and the orders of this Court. The
26 modifications are similar to Defendants' own procedures. See
27 Godbold Decl. ¶ 3, Ex. 1, 2-3. This must be done regardless of
28 the source of the allegations. The only difference is that this

1 order also requires Defendants to list when the investigation was
2 initiated, the name and title of the investigator, the date the
3 investigation was completed, the result of the investigation, and
4 the number of prior allegations of non-compliance against the
5 involved employees or employees. The Court finds that tracking of
6 this additional information is necessary because Defendants have
7 not tracked or conducted violations into all reported violations,
8 and those facts will show whether Defendants are fully and
9 effectively complying with the 2007 Injunction and holding staff
10 members accountable for non-compliance. Furthermore, this Court
11 finds tracking the number of prior allegations of non-compliance
12 is necessary in order to meet the requirement in the 2007
13 Injunction that "Defendants shall refer individuals with repeated
14 instances of non-compliance to the Office of Internal Affairs for
15 investigation and discipline, if appropriate." 2007 Injunction at
16 7.

17 Like Defendants' own procedures, the modifications to the
18 Injunction set forth below also require Defendants to conduct an
19 investigation when they receive allegations of staff member
20 non-compliance. See Godbold Decl. ¶ 3, Ex. 1, 2-3. The only
21 difference is that this order requires the investigation to be
22 initiated within ten business days of receiving notice of such
23 allegation, and Defendants' internal policy does not specify the
24 timeframe for the investigation. Specifying a timeframe is
25 necessary because some of Defendants' investigations were
26 untimely, and such investigations may be less effective because of
27 the passage of time. Further, such delays extend the time in
28 which class members are deprived of accommodations set forth in

1 the ARP. Initiation of a timely investigation, within ten
2 business days, is necessary to ensure that allegations are
3 investigated while memories are fresh, the facts surrounding the
4 allegations are still in existence and the violation can be
5 remedied. Further, in order to reconcile disagreements between
6 the parties resulting from investigations, this Court finds that
7 Plaintiffs' counsel must have access to the results of the
8 investigation, including all sources of information relied on to
9 substantiate or refute the allegations. Such access is
10 consistent with the monitoring powers already granted to
11 Plaintiffs. See Remedial Order, Injunction, and Certification of
12 Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b), Docket No.
13 158, at 5 ("Plaintiffs shall be entitled to reasonable access to
14 information sufficient to monitor defendants' compliance with the
15 guidelines, plans, policies and procedures that have been approved
16 by the Court. Such monitoring shall include access to relevant
17 documents, . . . interviews or depositions of institution and
18 departmental staff. . .").

19 The 2007 Injunction requires that Defendants refer
20 individuals with repeated instances of non-compliance to the OIA
21 for investigation and discipline if appropriate. However, it does
22 not specify when and under what circumstance corrective and/or
23 disciplinary action is warranted. To be effective, an
24 accountability system must specify what discipline will result
25 from staff member violations. Accordingly, this order requires
26 that Defendants comply with the Employee Disciplinary Matrix set
27 forth in the CDCR Departmental Operations Manual, Chapter 3,
28 Article 22. See CDCR Operations Manual (2012) Personnel,

1 Training, and Employee Relations, §§ 33030.16–33030.19,
2 pp. 238–245.

3 The Court also finds it necessary to create a process for
4 resolving disputes between the parties regarding whether an
5 incident constitutes a violation of the ARP and this Court’s
6 orders, in order to facilitate Defendants’ compliance with the
7 2007 Injunction. Given the evidence that Defendants frequently
8 reached conclusions that no violation that needed to be documented
9 occurred, even though this was inconsistent with the ADA, the ARP
10 and the evidence, the Court will establish a process for resolving
11 disputes between the parties. This process will promote more
12 accurate decision making while not unduly burdening the resources
13 of the Court or of the State.

14 Further, the Court determines that it is necessary for the
15 parties to protect the rights of Defendants’ employees. Certain
16 facts surrounding the employees who are at the center of
17 non-compliance investigations will necessarily become known by the
18 parties. Such personnel information will be disclosed through
19 complaints and reports from prisoners and again as part of the
20 tracking, investigation, disciplinary and dispute resolution
21 processes cited above. The Court finds that this will be an
22 essential part of the dispute resolution process and that a
23 protective order is necessary to protect Defendants’ employees
24 from disclosure of personnel information that is not necessary to
25 the conduct of this litigation.

26 CONCLUSION

27 For the reasons set forth above, the Court DENIES Plaintiffs’
28 motion for an order holding Defendants in contempt (Docket No.

2024). The Court also DENIES AS MOOT Defendants' motion to strike (Docket No. 2135).

IT IS HEREBY ORDERED THAT the following shall be substituted in place of page seven, lines five through twelve of the 2007 Injunction:

Defendants, their agents and employees shall promptly take all reasonable steps to comply with each provision set forth below:

A. Tracking of All Allegations of Staff Member Non-Compliance

1. Defendants, their agents and employees (Defendants) shall track any allegation that any employee of the Department of Corrections and Rehabilitation was responsible 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.

2. The allegations shall be tracked in an electronic spreadsheet that can be searched and sorted. The spreadsheet shall contain at least the following information: the prison at which the incident occurred, the name and CDCR number of the prisoner, the date of the allegation, the name of the employee(s), the date the investigation was initiated, the name and title of the investigator, the date the investigation was completed, the

1 result of the investigation, the number of prior allegations of
2 non-compliance against the employee(s), and the action taken, if
3 any, as a result of the investigation, including whether the
4 incident was referred to the Office of Internal Affairs.

5 3. The spreadsheet shall be produced to Plaintiffs' counsel
6 in electronic format monthly. When the spreadsheet is produced to
7 Plaintiffs' counsel, the employees' names shall be removed and
8 shall be replaced with a unique identifier. When redacting
9 employees' names in records produced to Plaintiffs in accordance
10 with this Order, Defendants shall consistently identify an
11 individual employee by the same unique identifier.

12 B. Investigations

13 1. Defendants shall investigate all allegations of employee
14 non-compliance, regardless of whether the allegation includes the
15 name of the employee(s). Investigations shall be initiated within
16 ten business days of receiving notice of such allegations and
17 shall be completed as promptly as possible. Investigations must
18 include a review of all information necessary to determine whether
19 or not the allegation is true and shall include an interview with
20 the affected prisoner(s). The investigation must result in a
21 written report that shall list all sources of information relied
22 upon in deciding whether employee non-compliance occurred and
23 whether any other finding(s) of non-compliance against the
24 employee(s) has been sustained.

25 2. If Plaintiffs' counsel has a good faith disagreement with
26 the result of a particular investigation, they may request a copy
27 of the written report and it shall be produced. In such
28 instances, Plaintiffs' counsel shall have the right to review all

1 written documents utilized in making the determination set forth
2 in the report. Upon a showing of need, Plaintiffs' counsel shall
3 also have the right to interview individuals who provided
4 information utilized in making this determination.

5 3. When producing documents to Plaintiffs' counsel pursuant
6 to this section, Defendants shall replace employees' names with
7 unique identifiers as described in paragraph A.3.

8 C. Corrective Action and Discipline

9 1. Whenever an investigation reveals employee non-
10 compliance, Defendants must comply with procedures set forth in
11 Defendants' November 21, 2008 memorandum, "Expectations for Staff
12 Accountability and Non-Compliance of the Disability Placement
13 Program."

14 2. Defendants shall determine whether to initiate
15 disciplinary proceedings or corrective action against an employee
16 found in non-compliance, depending upon the number of prior
17 violations, the seriousness of the harm to the prisoner, and the
18 culpability of the employee. Defendants shall discipline
19 employees in compliance with the Employee Disciplinary Matrix set
20 forth in the CDCR Departmental Operations Manual, Chapter 3,
21 Article 22, Personnel, Training, and Employee Relations.

22 3. All determinations of whether to initiate disciplinary
23 proceedings or corrective action shall be produced to Plaintiffs'
24 counsel upon request. When producing these documents to
25 Plaintiffs' counsel, Defendants shall replace employees' names
26 with unique identifiers as described in paragraph A.3.

27 D. Dispute Resolution

28 1. In the event of a dispute about the production of

1 information, the results of Defendants' investigation of alleged
2 non-compliance or their decision about whether to initiate
3 corrective action, Plaintiffs' counsel shall provide notice to
4 Defendants and attempt to resolve the matter through negotiation.
5 Defendants must respond to this notice within ten business days.

6 2. If the parties are unable to resolve the dispute
7 informally, Plaintiffs' counsel may request that the Court's
8 expert review and resolve the matter. Depending on the nature of
9 the dispute, the Court's expert shall resolve disputes about the
10 production of information, determine whether non-compliance
11 occurred or, if it did, whether corrective action should be
12 initiated. When requesting review by the Court's expert,
13 Plaintiffs' counsel shall substantiate their contentions with
14 sworn declarations from the class member or members involved,
15 signed under penalty of perjury. Defendants shall produce all
16 documents requested by the Court's expert and shall make all
17 employees available for interview, on a confidential or non-
18 confidential basis as determined by the Court's expert.

19 Administrative decisions made by the Court's expert pursuant to
20 this section shall be final as between Plaintiffs and Defendants.

21 3. The parties dispute whether certain incidents set forth
22 in the pleadings constitute non-compliance with the Remedial
23 Order. Plaintiffs' counsel shall inform Defendants which
24 incidents remain in dispute and shall attempt to resolve these
25 disputes through negotiation with Defendants. If negotiations
26 fail, the disputes may be referred to the Court's expert pursuant
27 to paragraph D.2., above.
28

1 E. Protective Order

2 The parties shall negotiate an order to protect the state law
3 rights of Defendants' employees from unnecessary disclosure of
4 personnel information. All documents that contain personnel
5 information produced to Plaintiffs' counsel and the Court's expert
6 pursuant to this Order shall be covered by this protective order.
7 If the parties are unable to agree on the terms of a protective
8 order, the Court's expert will recommend one.

9 F. Notice

10 Defendants shall provide a copy of this Order to the present
11 and future individual employees who occupy the following positions
12 within the California Department of Corrections and
13 Rehabilitations:

- 14 a. the Undersecretaries of the CDCR,
15 b. the Director of the Division of Adult Institutions,
16 c. the Deputy Directors of the Division of Adult
17 Institutions,
18 d. the Associate Directors of the Division of Adult
19 Institutions,
20 e. all Wardens of adult institutions, and
21 f. all adult institution ADA coordinators.

22 G. Miscellaneous

23 The procedures set forth in this order or in the 2007
24 Injunction shall not apply to staff working under the authority
25 of the Receiver appointed by the court in Plata v. Brown.

26 IT IS SO ORDERED.

27 Dated: 8/22/2012

28 
CLAUDIA WILKEN
United States District Judge

Exhibit D

PRISON LAW OFFICE
DONALD SPECTER – 83925
REBEKAH EVENSON – 207825
CORENE KENDRICK – 226642
PENNY GODBOLD – 226925
1917 Fifth Street
Berkeley, California 94710
Telephone: (510) 280-2621
Email: revenson@prisonlaw.com

DISABILITY RIGHTS EDUCATION &
DEFENSE FUND, INC.
LINDA KILB – 136101
2212 Sixth Street
Berkeley, California 94710
Telephone: (510) 644-2555

ROSEN, BIEN & GALVAN, LLP
MICHAEL W. BIEN – 96891
GAY C. GRUNFELD – 121944
315 Montgomery Street, Tenth Floor
San Francisco, California 94104-1823
Telephone: (415) 433-6830

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN ARMSTRONG, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. C94 2307 CW

**~~PROPOSED~~ ORDER MODIFYING
JANUARY 18, 2007 INJUNCTION**

1 For the reasons set forth in this Court's Orders of August 22, 2012 (ECF No. 2180) and
2 December 5, 2014 (ECF No. 2462), IT IS HEREBY ORDERED that the following shall be substituted
3 in place of page seven, lines five through twelve of the January 18, 2007 Injunction (ECF No. 1045):

4 Defendants, their agents and employees shall promptly take all reasonable steps to comply with
5 each provision set forth below:

6 A. Tracking of All Allegations of Staff Member Non-Compliance

7 1. Defendants, their agents and employees (Defendants) shall track any allegation that any
8 employee of the Department of Corrections and Rehabilitation was responsible for any member of the
9 Plaintiff class not receiving access to services, programs, activities, accommodations or assistive
10 devices required by any of the following: the Armstrong Remedial Plan, the Americans with
11 Disabilities Act or this Court's prior orders. Allegations to be tracked include, but are not limited to,
12 those received from CDCR staff, prisoners, Plaintiffs' counsel, administrative appeals and third parties.
13 All such allegations shall be tracked, even if the non-compliance was unintentional, unavoidable, done
14 without malice, done by an unidentified actor or subsequently remedied.

15 2. The allegations shall be tracked in an electronic spreadsheet that can be searched and sorted.
16 The spreadsheet shall contain at least the following information: the prison at which the incident
17 occurred, the name and CDCR number of the prisoner, the date of the allegation, the name of the
18 employee(s), the date the investigation was initiated, the name and title of the investigator, the date the
19 investigation was completed, the result of the investigation, the number of prior allegations of non-
20 compliance against the employee(s), and the action taken, if any, as a result of the investigation,
21 including whether the incident was referred to the Office of Internal Affairs.

22 3. The spreadsheet shall be produced to Plaintiffs' counsel in electronic format monthly. When
23 the spreadsheet is produced to Plaintiffs' counsel, the employees' names shall be removed and shall be
24 replaced with a unique identifier. When redacting employees' names in records produced to Plaintiffs
25 in accordance with this Order, Defendants shall consistently identify an individual employee by the
26 same unique identifier.

1 B. Investigations

2 1. Defendants shall investigate all allegations of employee non-compliance, regardless of
3 whether the allegation includes the name of the employee(s). Investigations shall be initiated within ten
4 business days of receiving notice of such allegations and shall be completed as promptly as possible.
5 Investigations must include a review of all information necessary to determine whether or not the
6 allegation is true and shall include an interview with the affected prisoner(s). The investigation must
7 result in a written report that shall list all sources of information relied upon in deciding whether
8 employee non-compliance occurred and whether any other finding(s) of non-compliance against the
9 employee(s) has been sustained.

10 2. If Plaintiffs' counsel has a good faith disagreement with the result of a particular
11 investigation, they may request a copy of the written report and it shall be produced. In such instances,
12 Plaintiffs' counsel shall have the right to review all written documents utilized in making the
13 determination set forth in the report. Upon a showing of need, Plaintiffs' counsel shall also have the
14 right to interview individuals who provided information utilized in making this determination.

15 3. When producing documents to Plaintiffs' counsel pursuant to this section, Defendants shall
16 replace employees' names with unique identifiers as described in paragraph A.3.

17 C. Corrective Action and Discipline

18 1. Whenever an investigation reveals employee noncompliance, Defendants must comply with
19 procedures set forth in Defendants' November 21, 2008 memorandum, "Expectations for Staff
20 Accountability and Non-Compliance of the Disability Placement Program."

21 2. Defendants shall determine whether to initiate disciplinary proceedings or corrective action
22 against an employee found in non-compliance, depending upon the number of prior violations, the
23 seriousness of the harm to the prisoner, and the culpability of the employee. Defendants shall
24 discipline employees in compliance with the Employee Disciplinary Matrix set forth in the CDCR
25 Departmental Operations Manual, Chapter 3, Article 22, Personnel, Training, and Employee Relations.

26 3. All determinations of whether to initiate disciplinary proceedings or corrective action shall
27 be produced to Plaintiffs' counsel upon request. When producing these documents to Plaintiffs'
28

counsel, Defendants shall replace employees' names with unique identifiers as described in paragraph A.3.

D. Dispute Resolution

1. In the event of a dispute about the production of information, the results of Defendants' investigation of alleged non-compliance or their decision about whether to initiate corrective action, Plaintiffs' counsel shall provide notice to Defendants and attempt to resolve the matter through negotiation. Defendants must respond to this notice within ten business days.

2. If the parties are unable to resolve the dispute informally, Plaintiffs' counsel may request that the Court's expert review and resolve the matter. Depending on the nature of the dispute, the Court's expert shall resolve disputes about the production of information, determine whether non-compliance occurred or, if it did, whether corrective action should be initiated. When requesting review by the Court's expert, Plaintiffs' counsel shall substantiate their contentions with sworn declarations from the class member or members involved, signed under penalty of perjury. Defendants shall produce all documents requested by the Court's expert and shall make all employees available for interview, on a confidential or nonconfidential basis as determined by the Court's expert. Administrative recommendations made by the Court's expert pursuant to this section shall be reviewable by this Court on a motion by any party dissatisfied with the expert's decision. The review shall be conducted pursuant to the requirements of 28 U.S.C. § 636(b)(1)(C), the procedure for the review of a report and recommendation by a magistrate judge.

3. The parties dispute whether certain incidents set forth in the pleadings constitute non-compliance with the Remedial Order. Plaintiffs' counsel shall inform Defendants which incidents remain in dispute and shall attempt to resolve these disputes through negotiation with Defendants. If negotiations fail, the disputes may be referred to the Court's expert pursuant to paragraph D.2., above.

E. Protective Order

The parties shall negotiate an order to protect the state law rights of Defendants' employees from unnecessary disclosure of personnel information. All documents that contain personnel information produced to Plaintiffs' counsel and the Court's expert pursuant to this Order shall be

1 covered by this protective order. If the parties are unable to agree on the terms of a protective order, the
2 Court's expert will recommend one.

3 F. Notice

4 Defendants shall provide a copy of this Order to the present and future individual employees
5 who occupy the following positions within the California Department of Corrections and
6 Rehabilitations:

- 7 a. the Undersecretaries of the CDCR,
8 b. the Director of the Division of Adult Institutions,
9 c. the Deputy Directors of the Division of Adult Institutions,
10 d. the Associate Directors of the Division of Adult Institutions,
11 e. all Wardens of adult institutions, and
12 f. all adult institution ADA coordinators.

13 G. Miscellaneous

14 The procedures set forth in this order or in the 2007 Injunction shall not apply to staff working
15 under the authority of the Receiver appointed by the court in Plata v. Brown.

16 **IT IS SO ORDERED.**

17
18 Dated: 12/29/2014

19 
20 CLAUDIA WILKEN
21 United States District Judge
22
23
24
25
26
27
28

Exhibit E

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

JOHN ARMSTRONG, et al., on behalf
of themselves and as
representatives of the class,

Plaintiffs,

v.

EDMUND G. BROWN, JR., Governor of
the State of California;
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION;
MICHAEL MINOR, Director of the
Division of Juvenile Justice; DR.
JEFFREY A. BEARD, Secretary of
the California Department of
Corrections and Rehabilitation;
JENNIFER SHAFFER, the Executive
Officer of the Board of Parole
Hearings; DIANA TOCHE, Acting
Director of the Division of
Correctional Health Care
Services; CHRIS MEYER, Director
of the Division of Facility
Planning, Construction and
Management; KATHLEEN DICKINSON,
Director of Adult Institutions;
and DAN STONE, Director of
Division of Adult Parole
Operations,

Defendants.

No. C 94-2307 CW
ORDER REGARDING
MONITORING

On February 4, 2013, the Court directed the parties to file a
brief addressing whether it would be appropriate for the Office of
Inspector General (OIG) to play a role in monitoring state prisons
in this action for compliance with the rights of inmates with
disabilities. Docket No. 2231. Pursuant to the Court's
direction, the parties filed briefs addressing this topic. Docket

Nos. 2252, 2290, 2291.¹

Having reviewed the written submissions by the parties and their oral presentations at the hearing, the Court declines to establish OIG monitoring at this time.² In their briefs and in previous status reports, the parties raised issues about the ongoing monitoring that is taking place in this case pursuant to the Court's prior orders. At this time, the Court directs the parties to meet and confer, with the assistance of the Court's expert as needed, on how to resolve these issues and improvements that might be made on the monitoring process.

IT IS SO ORDERED.

Dated: 6/3/2013


CLAUDIA WILKEN
United States District Judge

¹ Defendants move to strike Plaintiffs' brief for violation of the ten-page page limit set by the Court. Docket No. 2295. At the hearing held on May 16, 2013, Defendants declined to pursue the motion. Accordingly, the motion is DENIED as moot (Docket No. 2295).

² Plaintiffs' administrative motion to submit supplemental evidence is DENIED as moot (Docket No. 2323).

Exhibit F



50 Fremont Street, 19th Floor
San Francisco, California 94105-2235
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

September 20, 2018

VIA ELECTRONIC MAIL ONLY

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

Ralph Diaz
Secretary
CDCR
Ralph.diaz@CDCR.ca.gov

Re: *Armstrong v. Brown*: Staff Misconduct at RJD
Our File No. 581-3

Dear Mr. Diaz:

Plaintiffs' counsel in *Armstrong v. Brown* write to inform you of ongoing allegations of serious staff misconduct on Facility C at Richard J. Donovan Correctional Facility ("RJD"). These allegations arose during the course of a Joint Audit conducted by Plaintiffs' counsel and CDCR's Office of Audits and Court Compliance.

During interviews with *Armstrong* class members on August 27 and 28, 2018, Plaintiffs' counsel heard multiple, consistent, and corroborating accounts of inappropriate force being used by staff members. Specifically, we heard that staff members routinely toss people out of wheelchairs and kick, hit, or stomp on people, even after those people are on the ground and restrained. This reportedly happens, according to multiple people we spoke with, one to two times a week. We also heard that staff target "vulnerable" people in prison for such assaults. Lastly, we heard that although incidents of serious force originate with staff, such incidents are often turned in to allegations of assault on staff members resulting in disciplinary write-ups. Multiple class members on Facility C reported that they are not comfortable asking for needed disability accommodations from staff on that yard as a result of staff misconduct.

///

PRIVILEGED AND CONFIDENTIAL

Ralph Diaz

September 20, 2018

Page 2

Ongoing reports of force, both experienced by and observed by *Armstrong* class members on Facility C, inhibit CDCR's compliance with Court Ordered standards for providing disability accommodations — a process which inherently depends on class members being able to rely on staff members for assistance.

Unfortunately, problems on Facility C, including multiple allegations from *Armstrong* class members against specific staff members, were previously reported by Plaintiffs' counsel Monitoring Tour reports from April 2017 and October 2017. Not a single staff misconduct allegation reported by Plaintiffs' counsel in either report was confirmed after investigation. Yet, incarcerated people on Facility C report that serious problems persist.

Immediate action should be taken to eliminate ongoing problems and reports of staff misconduct on Facility C. Plaintiffs request that any investigation of problems on Facility C be conducted by qualified investigators from outside of the institution. Prior investigation results, which fail to confirm any reported allegations by class members against staff, undermine confidence in local investigations and are clearly not working to uncover and eliminate ongoing problems. If incarcerated people on Facility C are interviewed, those interviews should be widespread, include many people on Facility C, and should not single out or otherwise identify *Armstrong* class members. Class members who were interviewed during the Joint Audit reported overwhelmingly that they will not agree to participate in a CDCR investigation as a result of fear of retaliation. Non-class members housed on Facility C and those not considered "vulnerable" may be in the best position to provide information about what is happening on that facility. Interviews should be conducted only by qualified investigators who do not work at RJD and should be done in a confidential and private setting with some assurance of anonymity in the process. For example, a broad canvass of incarcerated people on Facility C might uncover both specific allegations which could be investigated further and general allegations that could be used to support preventative or systemic changes on the yard such as staffing changes or cameras. Care should be taken to ensure that those staff who are escorting interviewees are not aware of the nature of the interviews or investigation, as at least one class member reported being intimidated when asked by Facility C staff during escort what he planned to tell the attorneys during the Joint Audit interview.

In addition, alternative sources of information should be identified and reviewed as part of any investigation. At a minimum staff misconduct reports and staff assault reports should be reviewed and analyzed to determine whether those reports consistently originate from or concern the same staff members. Non-custody staff members should be interviewed about what they have witnessed or heard.

PRIVILEGED AND CONFIDENTIAL

Ralph Diaz

September 20, 2018

Page 3

Lastly, cameras should be installed on Facility C. During the Joint Audit we learned that existing cameras on Facility C, especially those on the yard, are not operational. Existing cameras should be made operational and additional cameras and updated technology should be installed as soon as possible.

We request a phone call to discuss these matters with you further. We look forward to your response and to learning specific steps that will be taken to address these serious problems.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

Penny Godbold
By: Of Counsel

PMG:fgl

cc: Ed Swanson
Sharon Garske
Patrick McKinney
Patricia Ferguson
Russa Boyd
Tamiya Davis
Joanne Chen
Bruce Beland
Matt Espenshade
Kathleen Allison
Guillermo Viera Rosa
Jeff Macomber
Sandra Alfaro
Kim Seibel
Kelly Mitchell
Joe Galvan
Simone Renteria
Co-Counsel

Exhibit G

Memorandum

Date : SEP 20 2018

To : Connie Gipson
Director (A)
Division of Adult Institutions

Subject: **STAFF MISCONDUCT ALLEGATIONS IDENTIFIED DURING DISABILITY PLACEMENT PROGRAM COMPLIANCE REVIEW AT RICHARD J. DONOVAN CORRECTIONAL FACILITY**

From August 27, 2018 through August 30, 2018, auditors from the Office of Audits and Court Compliance (OACC) and *Armstrong* plaintiffs' counsel conducted a joint compliance review of the Disability Placement Program at Richard J. Donovan Correctional Facility (RJD). Additionally, Ed Swanson (court expert), representatives from the Division of Adult Institutions (DAI), the Office of Legal Affairs, and California Correctional Health Care Services observed portions of the joint compliance review. Systemic issues identified during the compliance review were shared with the institution and DAI management during an exit meeting on August 30, 2018.

In addition to the systemic issues communicated during the exit meeting, the joint compliance review team heard multiple allegations of serious staff misconduct during interviews with inmates housed on RJD's Facility C. Specifically, representatives from OACC and the plaintiffs' counsel interviewed 12 inmates who had been housed on Facility C. Of those 12 inmates, 7 reported regular and ongoing incidents of misconduct, including allegations of staff members assaulting inmates housed on Facility C. The inmates reported allegations about 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. Many of the details of staff misconduct alleged by the inmates were consistent, and some of the inmates specifically identified a small group of second watch staff members primarily responsible for the alleged actions. Additional details were recorded by OACC Correctional Counselor II Robert Wonnell and sent separately to RJD Chief Deputy Warden Patrick Covello.

In a separate letter, plaintiffs' counsel requests that the California Department of Corrections and Rehabilitation and RJD take action, including conducting an independent investigation and making existing Facility C cameras operational. Because of the nature and consistency of the allegations, OACC agrees that DAI and RJD management should promptly take all reasonable actions to ensure that these incidents do not occur in the future, and that the historical allegations are thoroughly investigated.

Please provide Lois Welch, Chief of Court Compliance (Lois.Welch@cdcr.ca.gov), with a Corrective Action Plan (CAP) to address these allegations by Friday, October 5, 2018. The CAP should identify the steps RJD and DAI plan to take mitigate these issues and address

Connie Gipson

Page 2

confirmed violations, along with projected completion dates for each task. If you have any questions, please contact me via phone at (916) 255-2906 or via email at Matt.Espenshade@cdcr.ca.gov.



MATT ESPENSHADE, CFE
Deputy Director
Office of Audits and Court Compliance

Attachments

cc: Kathleen Allison, Operations
Kenneth Pogue, Administration and Offender Services
Guillermo Viera Rosa, Division of Internal Oversight and Research
Patrick McKinney, Office of Legal Affairs
Simone Renteria, Office of Legal Affairs
Patricia Ferguson, Office of Legal Affairs
Russa Boyd, Office of Legal Affairs
Tamiya Davis, Office of Legal Affairs
Joanne Chen, Office of Legal Affairs
Sharon Garske, Department of Justice
Penny Godbold, Rosen, Bien, Galvan & Grunfeld
Ed Swanson, Swanson & McNamara LLP
Jeff Macomber, DAI
Sandra Alfaro, DAI
Kim Seibel, DAI
Kelly Mitchell, DAI
Joe Galvan, Office of Internal Affairs
Patrick Covello, RJD
Lois Welch, OACC
Steve Faris, OACC
Robert Wonnell, OACC

Exhibit H

Message

From: Alfaro, Sandra@CDCR [Sandra.Alfaro@cdcr.ca.gov]
Sent: 12/11/2018 10:16:20 AM
To: Gipson, Connie@CDCR [Connie.Gipson@cdcr.ca.gov]
CC: Macomber, Jeff@CDCR [Jeffrey.Macomber@cdcr.ca.gov]; Seibel, Kim@CDCR [Kimberly.Seibel@cdcr.ca.gov]
Subject: Re: RJD

Pat V will be great

Sent from my iPhone

On Dec 11, 2018, at 9:59 AM, Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov> wrote:

I am good with the idea, may be Pat V

From: Macomber, Jeff@CDCR
Sent: Tuesday, December 11, 2018 8:27 AM
To: Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>; Alfaro, Sandra@CDCR <Sandra.Alfaro@cdcr.ca.gov>; Seibel, Kim@CDCR <Kimberly.Seibel@cdcr.ca.gov>
Subject: RE: RJD

I'm good with the supervisors, but I do think they need some help with a former Warden.

From: Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>
Sent: Tuesday, December 11, 2018 8:23 AM
To: Macomber, Jeff@CDCR <Jeffrey.Macomber@cdcr.ca.gov>; Alfaro, Sandra@CDCR <Sandra.Alfaro@cdcr.ca.gov>; Seibel, Kim@CDCR <Kimberly.Seibel@cdcr.ca.gov>
Subject: RE: RJD

We had Pat Vasquez there before, and she is a fan of Pat. Not sure a mentor is needed now, but do want to move forward with plan to add additional supervision to RJD facility C. Kim is working on this now

Connie

From: Macomber, Jeff@CDCR
Sent: Tuesday, December 11, 2018 8:18 AM
To: Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>; Alfaro, Sandra@CDCR <Sandra.Alfaro@cdcr.ca.gov>; Seibel, Kim@CDCR <Kimberly.Seibel@cdcr.ca.gov>
Subject: RE: RJD

Thoughts on sending a mentor to RJD? I think it is needed based on the volume of issues at RJD. Recommendations? Thanks. jm

From: Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>
Sent: Thursday, December 6, 2018 12:25 PM
To: Macomber, Jeff@CDCR <Jeffrey.Macomber@cdcr.ca.gov>
Subject: FW: RJD

Fyi

From: Gipson, Connie@CDCR
Sent: Thursday, December 6, 2018 12:25 PM
To: Malone, Sara@CDCR <Sara.Malone@cdcr.ca.gov>
Subject: RE: RJD

I spoke to Jeff and he is keeping Kathy in the loop.

From: Malone, Sara@CDCR
Sent: Thursday, December 6, 2018 12:23 PM
To: Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>
Subject: Re: RJD

Thanks Connie - talked with Patrick this morning and he has some plans but he had those in September also? He has taken some actions but not enough to turn the tide yet...
Is Kathy aware of all this as I don't want this to come back at me if it has not been shared with her? Please advise and thx!

Thank you,

Sara Malone, Chief
Office of the Ombudsman
California Department of Corrections and Rehabilitation
1515 S Street,
Sacramento , Ca 95670
916-327-8467

From: Gipson, Connie@CDCR
Sent: Thursday, December 6, 2018 10:32:52 AM
To: Malone, Sara@CDCR; Seibel, Kim@CDCR
Subject: RE: RJD

Thanks Sara for this information I too am concerned for RJD. I have discussed some strategies with Kim that I want us to explore to get more supervision for Facility C. Also the plan is to do a deep dive into appeals, UOF on this facility.

I appreciate that your team is there today walking and talking.

Connie

From: Malone, Sara@CDCR
Sent: Wednesday, December 5, 2018 7:18 PM
To: Seibel, Kim@CDCR <Kimberly.Seibel@cdcr.ca.gov>
Cc: Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>
Subject: RE: RJD

Hi Kim-

Thank you for including our office and I am glad positive feedback was received. The results of these interviews were no different than the results of my teams tour 9/11-14. If you refer to that report and/or the information provided to you by Eric Joe in his exit, there has been little to no progress since September. My concern in waiting for a January report is the inmates shared that personal information is being gathered on the staff to "deal with it" if nothing happens soon to address the issues. I hope Jason shared this with you. Additionally, a poem was provided to one of the teams that speaks to the desperation of the inmate and future action toward staff. I am not typically an alarmist, but again, I have never heard such despair, hopelessness, and fear from inmates and I have been on quite a few of these

teams to review and interview inmates. The CIW tour results don't come close to this and CIW was very bad.

Sara Malone
Chief, Office of the Ombudsman
California Department of Corrections and Rehabilitation
1515 "S" Street
Sacramento, CA 95811
(916) 327-8467
(916) 324-8263 - fax
Sara.Malone@cdcr.ca.gov

Ombudsman Website - <http://www.cdcr.ca.gov/Ombuds/>

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From: Seibel, Kim@CDCR
Sent: Wednesday, December 05, 2018 6:50 PM
To: Malone, Sara@CDCR; Gipson, Connie@CDCR
Subject: RE: RJD

Hi Sara,

First thank you for having your staff there and present. Reports were that they were great partners.

During our exit today I was informed of a lot of the same and should have a complete report by January which really doesn't address camera's, or additional strike teams today but is movement in a forward direction. However, Covello is aware of the back of the gym area and will be addressing it. Please share with him the inmate concerns so that he can work with management on a possibly solution as well.

A review of their appeals will occur as well as some other ideas we are considering.

Thank you for this feedback and I will also follow up with Covello too.

Kimberly A. Seibel
Associate Director
Reception Centers Mission
Division of Adult Institution
(916) 322-4662

<image001.jpg>

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From: Malone, Sara@CDCR <Sara.Malone@cdcr.ca.gov>

Sent: Wednesday, December 5, 2018 6:37 PM

To: Seibel, Kim@CDCR <Kimberly.Seibel@cdcr.ca.gov>; Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>

Subject: RJD

Hi Kim and Connie- We completed the interviews today and what 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. I have two of my Ombudsman staying back to provide support on that yard for tomorrow. I have not told anyone that as of yet and will inform Pat in the morning. 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. We will provide any help you need.

Thank you,

Sara Malone, Chief
Office of the Ombudsman
California Department of Corrections and Rehabilitation
1515 S Street,
Sacramento , Ca 95670
916-327-8467

Exhibit I

OFFICE OF LEGAL AFFAIRS

Howard E. Moseley
General Counsel (A)
P.O. Box 942883
Sacramento, CA 94283-0001



February 4, 2019

VIA EMAIL ONLY

Ms. Penny Godbold
Rosen, Bien, Galvan & Grubfeld, LLP
pgodbold@rbgg.com

Dear Ms. Godbold:

This letter is in response to your September 20, 2018 letter, concerning allegations of staff misconduct on Facility C at Richard J. Donovan Correctional Facility (RJD).

The California Department of Corrections and Rehabilitation (CDCR) take every allegation seriously, and as such have conducted an inquiry into the allegations as outlined in your letter. Your letter requested that CDCR take some steps to address the allegations contained in your letter. CDCR considered your requests and a summary of the steps taken since receipt of your letter are as follows:

Plaintiffs' Request No. 1: Immediate action should be taken to eliminate ongoing problems and reports of staff misconduct on Facility C.

Upon receipt of the September 20, 2018 letter, senior CDCR leadership convened to meet and discuss next steps with regard to the concerns raised in that letter. Some specific actions that have been reported by the institution and the Reception Center mission as taken are:

- Reception Center Associate Director (AD) Kim Seibel provided training regarding cultural leadership via The Stanford Project at RJD on October 1, 2018. Additionally, AD Seibel spoke with staff separately about the need for cultural understanding and professionalism.
- Appeals and investigatory documents at RJD were reviewed in October by non-RJD staff, and continue to be reviewed to identify possible trends and statements relevant to the allegations of staff misconduct. Areas for improvement in the appeals process itself have been identified, such as how appeal documents are picked up, tracked, and reviewed. In December 2018, the Acting Warden was reviewing all C Facility appeals. Appeals processes have been updated, with an interest in improving and maintaining the integrity and confidentiality of the process. The number of appeals will be monitored to check for changes in levels in response to staffing and process changes.
- AD Seibel provided several directives to increase staff training and raise awareness of better practices in the field. As of the date of this letter, there are now weekly Facility

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Penny Godbold
Page 2

Captain meetings designed to refresh knowledge and provide a forum for staff to raise concerns, discuss best practices, and ask questions regarding those best practices. A Second and Third Watch sergeants were placed for mentoring and training regular staff on the yard. Supervisory staff have received refresher training on the staff disciplinary process as well as given supervisory expectations. Additionally, training on correctional ethics and decision making is under development and will be rolled out to the facilities, starting with C Facility.

- Staffing changes were made at RJD in key positions. As one example, Chief Deputy Warden (A) Joe Stewart, a recognized Subject Matter Expert at CDCR in Use of Force (UOF), joined the RJD leadership team and is actively engaged in overseeing UOF training at the facility. New staff has been placed in the leadership positions within the Investigative Services Unit. A number of additional senior leadership changes have been made.
- Facility C supervisory staff have been physically relocated to Facility C to better observe daily operations and provide closer supervision to staff.

Plaintiffs' Request No. 2: Plaintiffs request that any investigation of problems on Facility C be conducted by qualified investigators from outside of the institution.

Plaintiffs' Request No. 3: If incarcerated people on Facility C are interviewed, those interviews should be widespread, include many people on Facility C, and should not single out or otherwise [identify] Armstrong class members.

Plaintiffs' Request No. 4: Interviews should be conducted only by qualified investigators who do not work at RJD and should be done in a confidential and private setting with some assurance of anonymity in the process.

Plaintiffs' Request No. 5: Care should be taken to ensure that those staff who are escorting interviewees are not aware of the nature of the interviews or investigation [.]

Inmate interviews were conducted on December 4-5, 2018, under the leadership of an experienced Associate Warden employed at another institution. The interview team included 14 custody staff from other institutions, all of whom had successfully completed the Basic Investigator Course (BIC) and seven individuals from the Office of the Ombudsman.

CDCR Office of Research randomly selected 20% of the 730 inmates housed on Facility C at RJD. This list included a variety of individuals, both class members and non-class members. The interview team contacted inmates from this list exclusively, which resulted in a total of approximately 150 inmates.

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Interviews took place in locations which offered visual and auditory privacy. Multiple private offices in the Facility B/C visiting area were utilized. Two custody interviewers, with at least one at sergeant or lieutenant, conducted the interview, with an ombudsman also in attendance.

Precautions were taken to ensure the confidentiality of the interview process, including:

1. Keeping the nature of the inquiry confidential to all RJD staff with the exception of the Warden (A) and the Chief Deputy Warden (A).
2. Maintaining the confidentiality of the nature of the inquiry for as long as was practicable; for example, the review team members who conducted the interviews were not informed of the nature of the inquiry until the morning of December 4.
3. Informing each inmate interviewee of the criticality of their input to the success of the inquiry and encouraging their cooperation and a commitment to maintaining the confidentiality of the process.
4. Inmate interviewees were escorted by non-Facility C supervisory custody staff to and from the interview location.

Plaintiffs' Request No. 6: [S]taff misconduct reports and staff assault reports should be reviewed and analyzed to determine whether those reports consistently originate from or concern the same staff members.

RJD is in the process of completing an extensive review and analysis of staff misconduct allegations. The analysis includes identification of patterns of behavior and staff names, and cross referencing the allegations received through the December interviews and through other avenues. When it is determined that serious misconduct may have occurred, RJD is taking immediate steps to initiate the disciplinary (989) process. Additionally, RJD has since redirected at least 3 staff off of C Facility and has made multiple referrals to OIA.

Plaintiffs' Request No. 7: [C]ameras should be installed on Facility C.

Some existing cameras have been reactivated and are now in use. CDCR is seeking funding opportunities and solutions to address visibility of activity in areas identified as higher risk.

RJD has gathered a number of initial findings as a result of the December interviews and the ongoing review and analysis of its processes. Inquiries remain are ongoing and the development of program improvements is in process. The lessons learned while inquiring into and addressing allegations of staff misconduct at other institutions, such as High Desert State Prison and Central California Women's Facility (CCWF), which were useful and successful in addressing allegations of widespread issues, are being applied to RJD. For example, using a team of non-RJD staff to conduct interviews of a random sample of inmates, using a standardized set of questions that

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covered many topics, was modeled after what was done at CCWF. This model will enable CDCR to implement changes necessary to have a positive impact on Facility C as whole.

RJD continues to review the data collected thus far, by interview and by video. Referrals for further inquiry continue to be taken to correct staff misconduct. Training and oversight have been increased and clear expectations have been set.

This letter is a status update and is intended to be informative as to the steps RJD is taking to respond to the concerns raised in your letter. As the interim legal liaison for Reception Centers Mission, I am available to provide further updates as appropriate and/or requested.

We will continue to process and review class member concerns through our established channels.

Should you have any questions, please contact me at (916) 324-1835 or by email at ursula.stuter@cdcr.ca.gov.

Sincerely,

/s/ Ursula Stuter

URSULA STUTER
Attorney
Interim Legal Liaison, Reception Centers
Office of Legal Affairs

cc: Warden (A) Covello
R. Boyd

Exhibit J

Regional Offices

Sacramento

Bakersfield

Rancho Cucamonga

January 17, 2020

Mr. Ralph M. Diaz, Secretary
California Department of Corrections and Rehabilitation
1515 S Street
Sacramento, CA 95811

Re: Advocacy Letters Received from *Coleman* and *Armstrong* Plaintiff's Counsel

Dear Mr. Diaz:

In January 2019, the Office of the Inspector General began receiving copies of letters written to the Office of Legal Affairs at the California Department of Corrections and Rehabilitation (CDCR or department) by attorneys from Rosen Bien Galvan & Grunfeld LLP, the attorneys who represent inmates in the *Coleman* and *Armstrong* federal class action lawsuits. We received these letters pursuant to Penal Code section 6128. These letters, called "advocacy letters," call attention to complaints of staff misconduct and mistreatment of their clients. In all, the Plaintiffs' Counsel copied us on 16 different advocacy letters pertaining to 14 inmates. The purpose of this letter is to report what action we were able to determine that the department took upon receiving these complaints.

Each letter requested that the department take specific action regarding the concerns raised in the advocacy letters. Plaintiffs' Counsel requested that any inquiry be done by personnel from outside the prison and not by the prison's Investigative Services Unit. In all cases, the staff misconduct described was serious and, if true, would result in disciplinary action for the subject employees.

Thirteen of the 14 inmates had reported allegations to the prison prior to the department's receipt of the advocacy letter. The prison conducted inquiries into the inmate allegations of misconduct prior to the receipt of the advocacy letters, although not all allegations were investigated. Only one inmate had not previously reported allegations to the prison.

In summary, our review of the department's handling of these advocacy letters revealed a pervasive lack of timely follow through by the department after being informed of potential staff misconduct. Even in the few cases when the department did take action, they ignored many of the allegations in the letters.

I reached out to Plaintiffs' Counsel to inquire about their expectation for the Office of the Inspector General as soon as we began receiving copies of their correspondence. I explained that this office had no authority to investigate the complaints and could not comment on the quality



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of the investigation or inquiry conducted by the department. Plaintiffs' Counsel explained that their reason for including our office in the distribution list was to give us some visibility on the issues they were raising.

We express no opinion about whether the complaints are valid, about the quality of any investigations or inquiries, or if we agree or disagree with any final decisions after such investigation or inquiry. We only reviewed whether the department addressed all allegations of misconduct identified by the advocacy letters, with the expectation that the department would follow its own policy as expressed in the Department Operations Manual, Article 14, Section 31140.1, which states,

“Every allegation of employee misconduct within the Department of Corrections and Rehabilitation (CDCR or Department) shall be promptly reported, objectively reviewed, and investigated when appropriate.”

The Department Operations Manual goes on to say at Section 31140.4.3,

“The Office of Internal Affairs is responsible for determining which allegations of staff misconduct warrant an Internal Affairs investigation and for completing all investigations in a timely and thorough manner.”

In June 2019, I met with the department General Counsel to discuss how the department was responding to the advocacy letters. The General Counsel assured me that there was a process in place to make sure the issues raised in the advocacy letters were forwarded to the appropriate entity within the department to address the concerns raised, and subsequently, provided my office with documentation detailing this process. In their written process, the Office of Legal Affairs states that when an inmate alleges a violation of the *Armstrong* Remedial Plan or American with Disabilities Act (ADA), they have a process in place to “investigate, and hold staff accountable within parameters set through the *Armstrong* Remedial Plan, Court Orders, and CDCR's various Class Action Teams.”

We utilized a number of sources to determine what action the department took on each allegation raised in the advocacy letters. We reviewed printed outputs generated by the inmate appeals and tracking system relative to each inmate to determine if the prison addressed any of the alleged complaints through the staff complaint process. We also reviewed documentation the prison completed for the allegations, if the prison conducted a staff complaint inquiry or a use-of-force allegation inquiry.

To determine whether the department communicated with Plaintiffs' Counsel, we reviewed all correspondence generated by the department related to the advocacy letters. We also requested all documentation showing the process used by the Office of Legal Affairs to refer these matters to CDCR Division of Adult Institutions.

Overall, we determined that the department, for the most part, did not thoroughly review the issues raised in the advocacy letters. The advocacy letters raised 31 allegations that were

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previously unknown to the department. Of those 31 additional allegations, the department conducted an inquiry into only three.

Additionally, we found that in each case, Plaintiffs' Counsel's requests to have the issues reviewed by personnel outside the prison were largely ignored. We do note that the department has no obligation to have these inquiries conducted outside the prison, but we also believe that conducting these inquiries outside the subject prison would have introduced much needed transparency into these issues. Upon receiving the advocacy letters at the prison level, the institution referred only one allegation of misconduct to the Office of Internal Affairs requesting an investigation. The Office of Internal Affairs rejected the request for investigation and returned it to the prison for further inquiry; however, the prison did not conduct any further inquiry and the Office of Internal Affairs never conducted any follow-up on its request to the institution for further inquiry. On December 27, 2019, following another request by our office to the Office of Legal Affairs for documentation, the department referred allegations from a second advocacy letter for inquiry outside the prison, requesting another prison conduct the inquiry.

The Office of Internal Affairs independently opened four investigations into allegations of misconduct prior to receipt of the advocacy letters. However, after receiving the advocacy letters regarding these allegations, the department did not submit any of the four advocacy letters to the Office of Internal Affairs for consideration. This is important because the advocacy letters contained additional allegations of misconduct arising from the incidents the Office of Internal Affairs was investigating. Therefore, not all allegations of misconduct arising from these incidents were investigated.

The department failed to provide status updates to Plaintiff's Counsel for most of the advocacy letters. The Plaintiffs' Counsel submitted 16 advocacy letters on behalf of 14 of their clients. The Office of Legal Affairs acknowledged receipt of nine of the advocacy letters, and it provided a more detailed final response to only seven letters. However, the responses were not timely, with one response provided to Plaintiffs' Counsel almost 10 months after receipt of the advocacy letter.

The department provided seven responses to Plaintiffs' Counsel for the 16 advocacy letters.

The Office of Legal Affairs provided a response to seven advocacy letters. In one of the seven responses, the Office of Legal Affairs provided a status update to Plaintiffs' Counsel, noting that the prison had already conducted a fact-finding inquiry into the incidents prior to the date of the advocacy letter. In this response, the Office of Legal Affairs reported to Plaintiffs' Counsel that because the allegations described were related to an active litigation, "for which [the inmate] has retained independent counsel, we are not able to provide further information at this time."

For the remaining nine advocacy letters, the Office of Legal Affairs responded to the Plaintiffs' Counsel with only an acknowledgment of receipt of the advocacy letters. Three of the letters acknowledging receipt noted that the staff misconduct allegations described by the advocacy letter "are appropriate for referral to the processes articulated in Chapter 3, Articles 14 and 22 of

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CDCR's Operations Manual, which govern Internal Affairs Investigations and employee discipline." However, there was no documentation from the department regarding any referrals. We also conducted a review of referrals to the Office of Internal Affairs, and there were no referrals related to the allegations in these three cases. The Office of Legal Affairs reported to us that three of the nine outstanding responses had been prepared, but had not yet been finalized.

The department referred inquiries to investigators outside the prison to conduct inquiries in six of the 16 letters.

Plaintiffs' Counsel requested that the department open an inquiry into the allegations presented in the advocacy letters but requested the department assign an investigator from outside the prison. In four cases, the incident in question had coincidentally been opened by the Office of Internal Affairs for investigation prior to the receipt of the advocacy letter. However, each advocacy letter presented additional information and allegations regarding the incident, but the department took no action and did not notify the Office of Internal Affairs of the additional information. Additionally, in only two of the four cases did the department inform the Plaintiffs' Counsel that an investigation by the Office of Internal Affairs had been approved.

In one case, one prison forwarded one allegation from one advocacy letter to the Office of Internal Affairs requesting an investigation. The Office Internal Affairs rejected the request and returned the matter back the prison to conduct further inquiry. As noted above, no further inquiry was done by the prison and the Office of Internal Affairs did not follow up on its request that the prison conduct further inquiry.

The Office of Legal Affairs reported that after meeting with an associate director who supervises the prison, the associate director approved one advocacy letter to be referred to a different prison to conduct an inquiry.

The Department did not address all of the allegations raised by inmates in the advocacy letters.

The 16 advocacy letters described in detail serious incidents of staff misconduct¹. Each letter was specific to an inmate and provided a detailed summary of events, including dates, times, the names of specific staff members involved in the incidents, and the names of specific inmates who were, or could be, witnesses to the incidents. Some advocacy letters included attachments containing medical documentation, staff complaint paperwork, and incident reports.

The advocacy letters identified a total of 67 allegations for 14 inmates, including discourteous treatment, unreasonable use of force, retaliation, and threats. Some allegations of neglect of duty, for failing to provide access to medical care, were also identified in the advocacy letters.

¹ The Plaintiffs' Counsel submitted two advocacy letters on the behalf of two inmates.

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We determined that of the 67 allegations identified in the advocacy letters, the department had prior knowledge of 38 allegations. The affected inmates had previously reported these 38 allegations by submitting written complaints to the prison through the inmate appeals process or the request for reasonable accommodation process prior to the receipt of the advocacy letters. One inmate reported an allegation by calling the Office of Internal Affairs hotline, who then notified the prison of the allegation. One inmate raised two other allegations during a use-of-force inquiry.

The prison conducted inquiries at the local level into only 19 of these 38 known allegations *before* receiving the advocacy letters. Nine of the 38 allegations were referred to the Office of Internal Affairs for investigation, and 10 of the 38 allegations were not addressed.

The advocacy letters identified 31 additional allegations. Only three of the 31 additional allegations resulted in an inquiry at the local level. The department conducted no inquiry into 28 allegations of alleged serious misconduct.

Plaintiffs' Counsel highlighted an unfair rules violation hearing in one advocacy letter, alleging that the hearing officer told the inmate he was only going to believe what the officers said to him and delivered an ultimatum to the inmate to plead guilty to a lesser charge or face a more serious charge. The inmate fearing a greater penalty admitted to the lesser charge. The Office of Legal Affairs commented on this allegation in its response to Plaintiffs' Counsel simply stating that the hearing officer provided documentation of testimony and evidence in support of the finding, and that the inmate admitted the behavior. This response by the Office of Legal Affairs did not address the serious alleged misconduct of the hearing officer.

The following pages contain our summary of each of the advocacy letters we received.

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Summary of Each Incident and Advocacy Letter and the Department's Action

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
January 8, 2019	October 14, 2018	March 7, 2019	No	Yes

On October 14, 2018, an inmate alleged he was stabbed multiple times by other inmates during a riot on an exercise yard at the request of an officer. The inmate reported the officer allegedly had him stabbed because the inmate was interviewed on September 19, 2018, in connection with allegations of staff misconduct. The inmate reported that the department determined the stabbing was a result of a racially motivated act of gang violence, however, the inmate reported that statements made to him after the incident undermines the department's determination. The inmate alleges the attack was orchestrated by an officer who is known to be involved in organizing attacks on inmates. On October 27, 2018, the inmate alleged that following his return from medical treatment from the stabbing, his property was missing from his cell. The inmate alleged that officers left his property unattended and allowed other unsupervised inmates to take his property.

On December 18, 2018, the inmate filed a written complaint on a CDCR form 602, requesting return of his personal property and compensation for any property lost. The prison conducted an inquiry into the complaint and determined that the property that was being held in the storage while the inmate was in the hospital would be returned and damaged property would be replaced. The prison's response dated March 7, 2019, addressed the missing property issues.

On January 8, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs which reported the inmate's allegations that his property was missing and included the allegation that the inmate was stabbed at the request of an officer. The advocacy letter provided detailed information about the stabbing, including the name of the officer who allegedly orchestrated the attack.

The department provided the Office of Inspector General a copy of the inmate's complaint, the prison's response to the complaint, and the Office of Legal Affairs acknowledgement of the advocacy letter and their response to the Plaintiffs' Counsel.

OIG Analysis

In our review of the inmate's staff complaint, we noted that the inmate only requested the prison return his "stolen property" or provide compensation for the missing property. The complaint did not make any allegations regarding the officer who allegedly orchestrated the attack on the inmate. The advocacy letter identified this additional allegation.

During our analysis, we located the prison's inquiry into the stabbing of the inmate. On November 6, 2018, the prison conducted a fact-finding inquiry into the riot which included an

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inquiry into the inmate's stabbing. The prison conducted this inquiry prior to the receipt of the advocacy letter.

On July 17, 2019, the Office of Legal Affairs responded to Plaintiffs' Counsel. Our analysis of the response letter revealed that the Office of Legal Affairs provided a response to each of the inmate's allegations contained in the advocacy letter. The letter addressed the purpose for the September 19, 2018, interview, the October 14, 2018, riot which resulted in the inmate being stabbed by other inmates, and the missing property. However, the Office of Legal Affairs responded to the Plaintiffs' Counsel over six months after receiving the advocacy letter.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
February 26, 2019	January 21, 2019	January 23, 2019	No	No

On January 21, 2019, an inmate reported that he observed an "elderly ADA inmate" being assaulted by an officer. The witness reported that he observed an officer allegedly grab the elderly inmate, push him up against a fence, knock him in the torso, causing the inmate to fall to the ground, and then jump on the elderly inmate's back, while yelling "stop resisting." The witness reported that multiple staff members responded to the area and allegedly began punching and kicking the elderly inmate. The officers then allegedly handcuffed the elderly inmate and were escorting him in the direction of the medical building when the elderly inmate was pushed or collapsed and fell on to the ground. The witness reported that he observed officers attempt to pull the elderly inmate up, and when the inmate did not get up, another officer allegedly kicked the elderly inmate in the rib cage. A sergeant responded but allegedly did not stop the attack. A second sergeant responded, and the attack stopped.

On February 26, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs which reported that the "elderly ADA inmate" was identified as their client. The advocacy letter provided detailed information regarding the use-of-force incident as described by the reporting inmate, including names of alleged involved officers. The advocacy letter also provided the name of the sergeant who allegedly failed to intervene and stop the attack.

The department provided the Office of Inspector General with copies of the use-of-force incident reports and allegation worksheets, medical documentation, and a request for an internal affairs investigation with supporting documentation.

OIG Analysis

In our analysis, we noted that a sergeant was conducting unrelated interviews of inmates on January 22, 2019, when he learned of this incident. He immediately informed the warden. On January 23, 2019, the warden directed the investigative services unit to prepare a request for investigation, which they did and submitted to the Office of Internal Affairs.

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While the Office of Internal Affairs was reviewing this matter, Plaintiffs' Counsel submitted their advocacy letter to the Office of Legal Affairs. On March 6, 2019, the Office of Internal Affairs approved an investigation into allegations of unnecessary force and failure to report a use of force. The Office of Legal Affairs provided the advocacy letter to the associate director but did not notify the Office of Internal Affairs of the allegations in the advocacy letter. Also, the Office of Legal Affairs did not communicate to Plaintiffs' Counsel that the Office of Internal Affairs had opened an investigation.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
February 26, 2019	December 14, 2018	May 1, 2019	No	Yes
	December 17, 2018	February 18, 2019	No	

On December 14, 2018, an inmate alleged that he requested officers to make copies of his legal mail while they were handing out breakfast trays through the food port. The inmate reported that one officer allegedly responded, "[Expletive] no, you filed [a staff misconduct complaint] on [an officer]." The inmate then requested to talk to the sergeant and stated that he wanted the food port left open. The inmate alleged that the officer stated, "Slam the food port on his hand," at which point the second officer allegedly closed the food port on the inmate's hand. The inmate alleged that as a result, his hand was fractured and was placed in a cast. Following the incident, the inmate reported his allegation of excessive force to a psychiatric technician during a medical evaluation.

In a second incident, on December 17, 2018, the inmate alleged that he was returning from a medical appointment when three officers and a sergeant allegedly had him lie down in a sally port, where he was handcuffed and shackled, then taken back to his cell. The inmate alleged that while he was at his cell door, he was allegedly placed on his knees to remove the ankle restraints when the sergeant signaled that the cell door be closed on his neck and chin. As a result of his injury, the inmate reported that he lost feeling and fell to the ground. The sergeant then allegedly threatened him by stating, "Don't get up. If you get up, I will say you threatened me." The inmate reported that he experienced temporary paralysis, suffered a neck contusion, coughed up blood for five days, and has ongoing neck and lower back pain.

On December 19, 2018, the inmate filed a written staff complaint on a CDCR form 602 regarding the December 14, 2018, incident. The prison conducted an inquiry and, in a memorandum, dated April 29, 2019, the prison notified the inmate that the appeal inquiry was complete and all issues were adequately addressed. The memorandum also stated that staff did not violate department policy with respect to one or more of the issues appealed.

On December 21, 2018, the inmate filed a written staff complaint on a CDCR form 602 regarding the December 17, 2018, incident. A lieutenant conducted a video-recorded interview of the inmate, and in a memorandum, dated February 18, 2019, the prison notified the inmate

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that the appeal inquiry was complete and all issues were adequately addressed. The memorandum also stated that staff did not violate department policy with respect to one or more of the issues appealed.

On February 26, 2019, Plaintiff's Counsel submitted an advocacy letter to the Office of Legal Affairs which reported the inmate's allegations regarding the December 14, 2018, incident, detailing both the discourteous statement by the officer and the closing of the food port on the inmate's hand. Additionally, the advocacy letter reported the December 17, 2018, incident of the sergeant allegedly signaling the cell door to be closed on the inmate and the sergeant allegedly threatening to write up the inmate.

The department provided the Office of Inspector General a copy of both of the inmate's staff complaints, the inquiry report, the responses to the inmate, use-of-force allegation review documents, medical documentation, and two letters from the Office of Legal Affairs, one acknowledging receipt of the advocacy letter and the other was a status update letter.

OIG Analysis

We determined the department conducted separate inquiries for each incident. The inmate reported the first incident during a medical evaluation and followed up with a written complaint. The inmate's reported allegations were the same as noted in the advocacy letter. However, the department's inquiry only focused on the inmate's allegation that the food port door was intentionally closed on his hand and not the discourteous statement.

The inmate also filed a separate written complaint regarding the second incident. The second complaint also detailed the allegations that the sergeant had the inmate's cell door intentionally closed on his neck and threatened to write up the inmate. The department's inquiry, however, only addressed whether the sergeant used unnecessary force but did not include the alleged threat made by the sergeant.

The department also provided our office with a copy of the acknowledgment letter the Office of Legal Affairs sent to the Plaintiffs' Counsel, dated March 15, 2019. The acknowledgement letter indicated that the staff misconduct allegations described by the advocacy letter "are appropriate for referral to the processes articulated in Chapter 3, Articles 14 and 22 of CDCR's Operations Manual, which govern Internal Affairs Investigations and employee discipline." However, the department made no such referrals. We also reviewed referrals to the Office of Internal Affairs and verified that there were no referrals related to the allegations involving the inmate. The Office of Inspector General believes that the department should have referred the allegations of misconduct to the Office of Internal Affairs for consideration of investigation pursuant to department policy set forth in the Department Operations Manual.

The department also provided us a copy of a second response letter, dated July 12, 2019, from the Office of Legal Affairs to the Plaintiffs' Counsel. This second response letter advised that the prison had conducted a fact-finding inquiry into the incidents alleged to have occurred on or around December 14, 2018, and December 17, 2018. However, because the allegations described

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are relative to an active litigation, “for which [the inmate] has retained independent counsel, we are not able to provide further information at this time.” Although the Office of Legal Affairs provided a response to the Plaintiffs’ Counsel, the response was not meaningful and was provided over four months after receipt of the advocacy letter.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs’ Counsel?</i>
February 26, 2019 October 23, 2019	December 16, 2018	February 4, 2019	No	No

On December 16, 2018, an inmate allegedly requested access to an ADA shower. An officer came to his door and allegedly told him to “shut the [expletive] up,” and threatened to have him attacked if he filed a complaint. On January 6, 2019, the inmate filed a written complaint of his allegations on a Reasonable Accommodation Request, CDCR form 1824. On January 10, 2019, the Reasonable Accommodation Panel referred the matter for a staff complaint review.

On January 26, 2019, the inmate alleged that the officer continued to harass him, and allegedly repeatedly flashed a flashlight on the inmate’s genitals and stared at him while he was in the shower. On January 29, 2019, the inmate reported the allegation by calling the Administrative Officer of the Day hotline at the Office of Internal Affairs. A sergeant from the prison conducted an inquiry into this allegation.

On February 26, 2019, Plaintiffs’ Counsel submitted an advocacy letter to the Office of Legal Affairs which reported the inmate’s allegations of being refused a shower, being harassed, and having a flashlight flashed at him while he was in the shower.

On March 20, 2019, the prison referred the inmate’s allegations to the Office of Internal Affairs. The Office of Internal Affairs rejected the matter and returned it to the prison for further inquiry.

On October 23, 2019, Plaintiffs’ Counsel submitted a second request to the Office of Legal Affairs, which reported that the inmate alleged, at the end of February [2019], that an officer approached his cell and said, “You like writing us up? We’re going to [expletive] your ass up. We’re part of the Green Wall.” The inmate reported that he filed a staff complaint against a third officer who allegedly failed to release the inmate to obtain medications and taunted the inmate by stating, “Write me up and spell my name right.” The inmate also alleged that in retaliation for his complaints, the officers had him stabbed by other inmates on April 18, 2019.

The department provided the Office of Inspector General a copy of the inmate’s request for reasonable accommodation form signed January 6, 2019, the Reasonable Accommodation Panel response, a CDCR form 602, and related documentation regarding disabilities and medical classification.

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OIG Analysis

The documentation the department provided us did not address the inmate's allegations. The inmate alleged staff misconduct on a request for reasonable accommodation form. The Reasonable Accommodation Panel reviewed the allegation on January 10, 2019, and notified the inmate on February 5, 2019, that his allegation of being denied showers was referred to "Appeals for Staff Complaint Review." However, the prison also provided us a copy of an inmate appeal, CDCR form 602, received by the appeals office on January 18, 2019, which simply stated, "See attached 1824 dated 1/6/19" and was assigned a log number. Attached to that appeal form was CDC form 695, dated January 28, 2019, which stated the appeal issue did not meet the criteria for a staff complaint, the appeal would be processed as a routine appeal, and "the ADA will be addressed via the Reasonable Accommodation Request form."

The department did refer the allegations made by the inmate to the Office of Internal Affairs. Upon review of the documentation from the Office of Internal Affairs, we found that although the Office of Internal Affairs received a copy of the Plaintiffs' Counsel's advocacy letter, dated February 26, 2019, the Office of Internal Affairs Central Intake Unit only reviewed the allegations of the discourteous statement and the flashing of a flashlight at the inmate's genitals. The Office of Internal Affairs Central Intake Unit rejected the case and returned the matter to the prison to conduct further inquiry. The prison conducted no further inquiries pursuant to the Office of Internal Affairs request, and the Office of Internal Affairs did not follow up with the institution.

The Office of Legal Affairs provided no response to the Plaintiffs' Counsel's advocacy letter.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
February 28, 2019	June 25, 2018	October 18, 2018	No	Yes

On June 25, 2018, an inmate allegedly approached an officer two or three times requesting to be sent to a mental health crisis bed because he was having suicidal thoughts. The inmate alleged that the officer told him to return to his cell each time. While the inmate was on the exercise yard, he asked for help as three officers approached him. The inmate reported that the officers allegedly suddenly grabbed him by the back of the arms and yelled at him, "stop resisting," threw him to the ground, kicked and kneed him, and stomped on his hand causing it to split open. A psychiatric technician responded and began administering first aid when officers allegedly attempted to make her stop and told her to "just leave him." The officers did not physically prevent the psychiatric technician from providing first aid.

Following the incident, the officers allegedly took the inmate to the gym and placed him in a holding cell while still handcuffed. Allegedly, the officers continued to harass and yell at him. At one point, an officer allegedly opened the holding cell door, struck the inmate in the back of the head, causing his head to strike the side of the holding cell, then kicked the inmate between the

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legs, and closed the holding cell door quickly, as if nothing had happened. The inmate was later placed in a mental health crisis bed.

On July 9, 2018, the inmate filed a written complaint on a CDCR form 602, detailing the allegations of the officer failing to act when the inmate reported suicidal thoughts, officers using unreasonable force on him, and an officer striking him in the holding cell. The prison conducted an inquiry into the complaint and responded to the inmate that the inquiry determined staff did not violate department policy.

On February 28, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs which reported the inmate's allegations and also reported the inmate alleged that several days prior to his transfer to another prison, while he was still in the mental health crisis bed, an officer came to the door of his cell and made a threatening gesture by pointing at the inmate, then pointing at himself, and made two fists indicating an intention to fight.

The department provided the Office of Inspector General a copy of the inmate's staff complaint, the inquiry report, the response to the inmate, use-of-force allegation review documents, medical documentation, a memorandum from a psychologist, and two letters from the Office of Legal Affairs, one acknowledging receipt of the advocacy letter and the other was a response to the Plaintiffs' Counsel.

OIG Analysis

We determined that the inmate made an allegation of excessive force to a psychologist on June 29, 2018, and that a sergeant conducted and concluded an inquiry on July 3, 2018. The inmate filed a written complaint to the prison on July 9, 2018. The inquiry was assigned to another sergeant, who concluded his review on August 15, 2018, pending the decision of the institution's executive review committee, who concluded their review on September 21, 2018. In a memorandum dated September 27, 2018, and provided to the inmate on October 18, 2018, the prison notified the inmate that the appeal inquiry was complete, all issues were adequately addressed, and staff did not violate department policy. The reviewing authority signed a memorandum on October 21, 2018, three days after notification to the inmate.

The prison concluded its inquiries prior to the receipt of the Plaintiffs' Counsel's advocacy letter. The inquiries only addressed the excessive force allegations reported by the inmate and not the alleged assault in the holding cell. The advocacy letter alleged that officers harassed and assaulted the inmate in the holding cell, and that an officer threatened the inmate while the inmate was in a mental health crisis bed. Although the memorandum to the inmate identified the inmate's allegation that officers assaulted the inmate in the holding cell, the reviewer did not address that allegation in his inquiry. There is no evidence that the prison conducted any further follow-up inquiries.

The department provided us with a copy of the Office of Legal Affairs response letter to Plaintiffs' Counsel, dated March 15, 2019, which indicated the staff misconduct allegations described by the advocacy letter "are appropriate for referral to the processes articulated in

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Chapter 3, Articles 14 and 22 of CDCR's Operations Manual, which govern Internal Affairs Investigations and employee discipline." However, no one in the department made any such referrals.

The Office of Legal Affairs provided us with a copy of their response to the Plaintiffs' Counsel, dated December 17, 2019. The response letter only addressed the excessive force allegations reported by the inmate in his staff complaint. Additionally, the prison completed an inquiry four months before the advocacy letters were sent to the Office of Legal Affairs. However, the Office of Legal Affairs responded to the Plaintiff's Counsel almost 10 months after receipt of the advocacy letter.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
April 18, 2019	June or July 2018	January 30, 2019	Yes	Yes

In June or July of 2018, an inmate alleged an officer ordered him to drop contraband from his hand. The inmate reported that he attempted to comply by offering the contraband to the officer, but instead, the officer allegedly grabbed the inmate's hand, which was holding both the contraband and his cane. The inmate reported that he attempted to explain to the officer that he could not drop the contraband because the officer was pressing the contraband between the inmate's hand and cane by holding down the inmate's hand. The inmate reported that the officer then allegedly grabbed the inmate by the back of the head and slammed his head, face first, into the edge of a wooden table. A second officer allegedly intervened and told the first officer to stop. The inmate reported that the first officer then escorted the inmate to receive medical care for his injuries and allegedly threatened to write him up for a staff assault and possession of contraband if he reported how he received his injuries. The inmate reported that the officer stayed in the room with him while he was receiving medical care, therefore, he told the nurse he "hit a locker." The inmate was transferred to another prison after the alleged incident.

In August 2018, a joint *Armstrong* compliance audit of the prison by CDCR and Plaintiffs' Counsel was conducted. An audit report included details of this alleged misconduct. In response, on January 30, 2019, the prison conducted an inquiry into the allegations of misconduct.

On April 18, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs which reported the inmate's allegations and fear of retaliation from the officer. Once the inmate was transferred to another prison, he was willing to report the incident. Additionally, the Plaintiffs' Counsel also reported that the prison did not appropriately house the inmate and did not consider the inmate's mobility restrictions.

The department provided the Office of Inspector General a copy of an allegation inquiry memorandum, dated January 30, 2019, and a copy of the Office of Legal Affairs response letter to the Plaintiffs' Counsel, dated July 25, 2019.

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OIG Analysis

Based on our analysis of the documentation, the prison conducted an allegation inquiry after the *Armstrong* compliance audit of August 2018, prior to the receipt of the Plaintiffs' Counsel's advocacy letter. The allegation inquiry addressed the allegation of unnecessary force.

The Office of Legal Affairs provided a response to the Plaintiffs' Counsel more than three months after receipt of the advocacy letter. The Office of Legal Affairs response to the Plaintiffs' Counsel addressed both the unnecessary force and the housing concerns. However, neither the inquiry conducted by the prison or the response by the Office of Legal Affairs addressed the alleged threat of a write-up made by the officer.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
May 31, 2019 July 12, 2019	April 24, 2019	June 5, 2019	No	No

On April 24, 2019, an inmate reported that a control booth officer was releasing inmates for the evening meal when he allegedly opened the inmate's cell door only after releasing all other inmates. The inmate reported that he left his cell and walked into the sally port when the gate was closed, and three officers allegedly ran into the sally port, trapping the inmate between them and the gate behind him. The inmate alleged that the three officers kicked him until he fell to the ground, punched him in the head and mouth, and then stomped on his left arm. During the assault, the inmate reported that the control booth officer allegedly recorded the assault on a mobile phone, and the floor officer allegedly stood on the other side of the gate watching the attack. Following the attack, the inmate reported that officers allegedly ordered him to go to the dining hall even though he was bleeding from the mouth and his clothes were covered in blood. The inmate went to the dining hall and returned to his cell after the evening meal. The inmate reported that at no time did staff inquire about what had happened to him.

Later, when officers released the inmate for evening activities, the inmate allegedly requested medical attention from a psychiatric technician. The psychiatric technician allegedly refused to help by stating, "I don't want to be a part of that," and told the inmate he would need a pass to go to the correctional treatment center. The floor officer allegedly refused to provide the inmate with a pass and ordered the inmate to return to his cell because he was inciting a riot. After the inmate was in his cell, a sergeant allegedly told him, "You're not getting any medical attention." The inmate reported that, after a shift change, he spoke with an officer who called medical staff and had the inmate taken to the correctional treatment center for medical attention.

On May 13, 2019, the inmate filed a written complaint on a CDCR form 602 alleging three officers used unreasonable force on him, and a fourth officer and a sergeant failed to seek medical assistance for him. The prison conducted an inquiry and determined that the matter

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would be referred to the Office of Internal Affairs. On August 14, 2019, the Office of Internal Affairs approved an investigation into the matter.

On May 31, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs which reported the inmate's allegations. On July 12, 2019, Plaintiff's Counsel sent a supplemental letter to the Office of Legal Affairs, providing the department with additional information; specifically, the names and statements of two witnesses to the incident.

The department provided the Office of Inspector General with copies of the inmate's staff complaint, use-of-force allegation worksheets, medical documentation, and a request for internal affairs investigation with supporting documentation.

OIG Analysis

In our analysis, we noted that the prison completed use-of-force allegation worksheets on June 5, 2019. A captain reviewed the worksheets and recommended further inquiry. The prison submitted a request for investigation to the Office of Internal Affairs. On August 14, 2019, the Office of Internal Affairs approved an investigation into allegations of unnecessary force and failure to report a use of force. The department did not notify the Office of Internal Affairs of the allegations in the advocacy letter, nor did they provide the Office of Internal Affairs with the supplemental information provided by the Plaintiffs' Counsel. Also, the department did not communicate to Plaintiffs' Counsel that an investigation had been opened.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
July 12, 2019	September 28, 2018 June 4, 2019	August 30, 2019	No	No

On September 28, 2018, an inmate reported that he was in the dining hall during breakfast. After obtaining his food tray, the inmate reported that the shell on his hard-boiled egg was cracked and he asked the food server for another egg. The server allegedly said no, so the inmate took an egg off a new tray, replaced it with his cracked egg, and returned to his seat. The inmate reported that he saw an officer, who he knew to be assigned to the investigative services unit, allegedly speak with the food server, after which the officer approached the inmate. The inmate alleged the officer stated, "Who do you think you are? I would have eaten that egg at home," or words to that effect. The inmate responded, "I'm not at home, I'm in prison," after which the officer allegedly commented that the inmate was being "funny" and ordered him to place his hands behind his back. The inmate reported that he had papers in his hand and tried to put them in his pocket before complying with the officer's order. The officer allegedly repeated his order then pushed the inmate, forcing his head against the wall with one hand, and pushing him in the back with the other hand. The inmate reported that this use of force caused him to trip and twist his ankles.

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The inmate further reported that the officer allegedly began handcuffing him behind his back, but another officer told the officer the inmate had to be handcuffed in front because of his disability and use of a walker. After the officer handcuffed the inmate, he escorted him to the mental health building, located a significant distance away from the dining hall. The inmate reported that he told the officer he was in serious pain because of his injured ankles, and the officer allegedly told him to “shut up.” The officer placed the inmate in a holding cell for approximately 20 minutes, after which time the inmate reported a sergeant released him back to his housing unit and allegedly stated, “We’re going to let this go.”

On October 23, 2018, the inmate filed a written complaint on a CDCR form 602 alleging unreasonable force by the officer. The prison conducted an inquiry into the complaint and responded to the inmate that staff did not violate department policy with respect to one or more of the issues appealed.

On June 4, 2019, the inmate reported that he was going to the exercise yard but went back to his cell to get his glasses. The inmate reported that when he was walking back out of his cell, the control booth officer allegedly closed his cell door, trapping him between the cell door and wall for two to three minutes. The inmate reported that as a result of being trapped by the cell door, he now has significant and persistent back pain.

On June 13, 2019, the inmate filed a request to be removed from his job assignment on a Reasonable Accommodation Request, CDCR form 1824, specifying the request was a result of an officer closing a cell door on him and injuring the his back.

On July 12, 2019, Plaintiffs’ Counsel sent a letter to the Office of Legal Affairs which reported the inmate’s allegations from September 28, 2018, and June 4, 2019.

The department provided the Office of Inspector General with copies of the documentation related to the September 28, 2018, allegation of unnecessary use of force. We received a copy of the inmate’s staff complaint, the inquiry report, use-of-force allegation worksheets, medical documentation, and the response to the inmate. The department also provided us copies of the documentation related to the June 4, 2019, incident which the inmate submitted on a Reasonable Accommodation Request, CDCR form 1824, and the Reasonable Accommodation Panel response, as well as a letter from the department’s Office of Legal Affairs acknowledging receipt of the advocacy letter.

OIG Analysis

The prison received the inmate’s staff complaint on October 23, 2018, which only identified the allegation of the unnecessary force, and not the allegation that the officer told him to “shut up” when he reported his ankle pain. A sergeant conducted the review and interviewed the inmate on October 24, 2018, and again on October 30, 2018, regarding only the allegation of the unnecessary force. The assigned sergeant signed the completed inquiry report on August 12, 2019. The hiring authority signed the completed inquiry report on August 30, 2019.

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In a memorandum dated October 30, 2018, but delivered on August 30, 2019, prison staff notified the inmate that the appeal inquiry was complete and adequately addressed all issues. The memorandum also stated that staff did not violate department policy with respect to one or more of the issues appealed.

We also reviewed the CDCR form 1824 and the Reasonable Accommodation Panel response. On the CDCR form 1824, the inmate requested he be removed from his job assignment due to his physical limitations. Additionally, the inmate documented that he suffered a back injury “again” on June 4, 2019, when an officer closed his cell door on him. The Reasonable Accommodation Panel conducted a meeting on the inmate’s request and determined that removing the inmate from his job assignment was not an appropriate accommodation. The panel’s response did not address the allegation that an officer closed the cell door on the inmate.

On July 19, 2019, the Office of Legal Affairs acknowledged receiving the Plaintiffs’ Counsel’s advocacy letter and indicated the allegation(s) presented were routed to the appropriate personnel at the department. Additionally, the letter indicated that the Office of Legal Affairs would provide Plaintiffs’ Counsel with information when it became available.

The prison opened but did not complete an inquiry into the use of force until August 30, 2019. Furthermore, the use-of-force inquiry began prior to the date of the advocacy letter. There is no evidence that the department conducted any additional inquiry after it received the Plaintiffs Counsel’s letter, which included two additional allegations of staff misconduct. The department should have referred the allegation of misconduct to the Office of Internal Affairs for consideration of investigation pursuant to department policy set forth in the Department Operations Manual. Also, no additional communication occurred between the department and Plaintiffs’ Counsel to address the concerns raised in Plaintiffs’ Counsel’s letter, dated July 12, 2019.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs’ Counsel?</i>
July 17, 2019	March 17, 2019	June 24, 2019	No	Yes

On March 17, 2019, an inmate had a verbal confrontation with three other inmates in front of his housing unit. The inmate reported that he walked away, entered his housing unit, and waited outside of his cell for the control booth officer to open his door. While waiting for his cell door to open, the inmate reported that he observed one of the inmates he had argued with approach the podium and speak with two officers. The inmate then entered his cell, and the control booth officer closed the cell door but then allegedly reopened the cell door a few seconds later. The inmate reported that two of the three inmates with whom he had argued then entered his cell and kicked and punched him while the third inmate stood watch outside of his cell. The inmate stated that he looked through his cell door towards the podium hoping that the two officers would intervene. Instead, the two officers allegedly walked away from the podium, out of the line of

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sight to the inmate's cell. The inmate reported that he lost consciousness and when he regained consciousness, the attackers were gone and had taken his television and radio.

The inmate reported that he attempted to get the attention of the officers, so he could be seen by medical staff, by banging on his cell door, and requesting other inmates summon the officers but that no officers allegedly came to his cell. The inmate reported that he was later released from his cell to receive his afternoon medication, at which time he allegedly reported his assault to an officer. The officer escorted the inmate to be examined by medical staff, nearly four hours after the other inmates assaulted him. The inmate reported that he sustained multiple facial fractures, requiring two surgeries to address his injuries.

On May 20, 2019, the inmate filed a written complaint on a CDCR form 602 alleging that officers allowed inmates to enter his cell and attack him, failed to respond to the incident to provide the inmate medical assistance, and let other inmates take his personal property. In a memorandum, dated June 14, 2019, prison staff notified the inmate that the appeal inquiry was complete and adequately addressed all issues. The memorandum also stated that staff did not violate department policy with respect to one or more of the issues appealed.

On July 17, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs which reported the inmate's allegations from the March 17, 2019, incident.

The department provided the Office of Inspector General a copy of the inmate's staff complaint, the inquiry report, the response to the inmate, and two letters from the Office of Legal Affairs, one acknowledging receipt of the advocacy letter and the other, a response to the advocacy letter.

OIG Analysis

The date of the inmate's staff complaint was March 28, 2019, however, the prison stamped the complaint as received on May 20, 2019. The inmate's staff complaint reported the incident that occurred on March 17, 2019, and identified the same allegations as noted by the advocacy letter, dated July 17, 2019.

A lieutenant at the prison completed the inquiry report, dated June 17, 2019, which identified the allegation that three officers failed to act while the inmates attacked the inmate. The inquiry only addressed the allegations that the control booth officer opened the inmate's cell door, permitting inmates to enter and assault the inmate, and that three officers failed to intervene when the inmates assaulted the inmate. The inquiry report did not address the allegations of missing property or failure to provide access to medical care for nearly four hours.

On July 19, 2019, the Office of Legal Affairs acknowledged receiving the Plaintiffs' Counsel's advocacy letter and indicated the allegation(s) presented were routed to the legal liaison for the prison, who would provide the Plaintiffs' Counsel with information when it became available. The Office of Legal Affairs provided a response to the Plaintiffs' Counsel on November 19, 2019, over four months after receipt of the advocacy letter.

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The records provided to us illustrated that the prison conducted and completed the inquiry in response to the staff complaint appeal on June 24, 2019, one month prior to the receipt of the advocacy letter. The department conducted no further inquiry after it received the Plaintiffs' Counsel's letter. The department should have referred the allegation of misconduct to the Office of Internal Affairs for consideration of investigation pursuant to department policy set forth in the Department Operations Manual.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
August 28, 2019	May 18, 2019	October 22, 2019	Yes	No
	July 18, 2019	October 22, 2019	Yes	No

On May 18, 2019, an officer allegedly told an inmate the prison was moving him to another yard, and the inmate requested to see a sergeant. The sergeant allegedly came to the inmate's cell door, told him to calm down, offered him a television, then walked away. The inmate reported that he felt distressed and covered his cell window with a sheet, and allegedly reported to a clinician that he had issues with the custody staff. The clinician allegedly threatened the inmate with a cell extraction. The inmate reported that he removed his window covering, however, he re-covered it, and another sergeant came to speak with him. The inmate allegedly told the sergeant that he was suicidal and swallowed two razors in front of him, to which the sergeant allegedly yelled "non-responsive inmate." The control booth officer opened the cell door. The inmate reported that he allegedly got down and lay prone on the floor of his cell. The sergeant and other officers allegedly dragged him out of his cell by his shoulders and started punching, kicking, and stomping on him in the middle of the housing unit. The inmate reported that an officer escorted him to the triage and treatment area, where medical staff gave him milk of magnesia, and he ultimately passed the razors. The prison then housed the inmate in the administrative segregation and issued a rules violation for assault on a peace officer.

On July 18, 2019, the inmate alleged that officers forcefully handcuffed and placed the inmate in waist restraints in a wheel chair and took him to the institutional classification committee meeting. The committee determined that the prison would move the inmate to the same yard they originally planned to move him in May 2019. The inmate reported that he was upset and wanted to see a clinician, but two officers allegedly escorted him to a holding cell in the housing unit. The inmate requested to use the restroom while he was being placed into the holding cell, and the officers allegedly told him he could use the restroom when he got to the yard. The inmate then put his feet down to prevent the officers from placing him in the holding cell, and one officer allegedly stated, "tip the wheelchair back," and the inmate stood up and stated he did not want to go the yard, and the second officer allegedly slammed him to the ground. The inmate reported that he landed on his face and his teeth lacerated the inside of his lip. The inmate began spitting blood. The inmate reported that once he was housed in the new housing unit, he allegedly did not receive all of his personal property.

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On August 28, 2019, Plaintiff's Counsel sent a letter to the Office of Legal Affairs which reported the inmate's allegations from May 18, 2019, and July 18, 2019. The inmate had not previously filed a complaint.

The department provided the Office of Inspector General with a copy of the incident packages, use-of-force reviews and medical documentation from both incidents, and an allegation inquiry report. The inquiry report addressed both incidents.

OIG Analysis

The department provided our office with documentation verifying that the prison conducted the allegation inquiry in response to the Plaintiffs Counsel's advocacy letter. The inquiry report addressed the use-of-force incidents but did not address the inmate's allegation of missing property. The Plaintiffs' Counsel received no response from the department. The department should have referred the allegations of misconduct to the Office of Internal Affairs for consideration of investigation pursuant to department policy set forth in the Department Operations Manual.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
October 4, 2019	May 11, 2018	July 20, 2018	No	Yes

On May 11, 2018, an inmate reported that he was waiting in the mental health building and he approached an officer to get his identification card back before he went out to court. The officer allegedly refused the inmate's request and taunted the inmate by calling him a derogatory name. The inmate reported that he called the officer the same derogatory name, and the two exchanged insults. The inmate reported that several officers then allegedly surrounded the inmate, and the officer allegedly sprayed him in the face with approximately half a canister of pepper spray. When the pepper spray took effect, the inmate bent over and dropped to the ground. The officer then allegedly kicked the inmate in the face, twice, extremely hard. The inmate reported that he received medical attention and reported the unnecessary force.

The inmate reported that following the incident, the prison issued him a rules violation report for assaulting a peace officer. He reported that although he tried to present evidence that would exonerate him, the senior hearing officer allegedly told him that he was going to believe the officer and offered the inmate a lesser violation if he plead guilty. Fearing greater penalty that would increase his sentence, the inmate pled guilty to a lesser charge.

On June 8, 2018, the inmate submitted a staff complaint on a CDCR form 602. The inmate reported that prison staff told him the prison referred his staff complaint to the Office of Internal Affairs.

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On October 4, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs which reported the inmate's allegations of unreasonable force. Plaintiffs' Counsel also reported that the inmate alleged that he spoke with the officer about dropping his staff complaint, if the officer and others would stop harassing him, and that the officer allegedly agreed. The inmate reported that he withdrew his staff complaint, but the harassment did not stop. The inmate reported that officers allegedly continued to call him names and search his cell more frequently than they searched other inmates' cells.

The department provided the Office of Inspector General with copies of the inmate's staff complaint, use-of-force allegation worksheets, medical documentation, a request for an internal affairs investigation with supporting documentation, and a response letter by the Office of Legal Affairs to the Plaintiffs' Counsel.

OIG Analysis

The department completed use-of-force allegation worksheets on May 15, 2018, and submitted a request for investigation to the Office of Internal Affairs. On July 3, 2018, the Office of Internal Affairs approved an investigation into allegations of unnecessary force and failure to report a use of force. We determined that the Office of Internal Affairs conducted an investigation prior to the receipt of the advocacy letter.

The department took almost three months to respond to the Plaintiffs' Counsel. On December 26, 2019, the Office of Legal Affairs provided a response to Plaintiffs' Counsel that the Office of Internal Affairs had conducted and completed an investigation into the allegations of excessive force on April 5, 2019. The response letter also addressed the allegation related to the unfair rules violation hearing, which was not an allegation referred to the Office of Internal Affairs. However, the response only indicated that the hearing officer documented testimony and evidence supporting his finding. The department did not request any further inquiry be conducted on this allegation.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
October 10, 2019	September 6, 2019 September 10, 2019	September 23, 2019	No	Yes

On September 6, 2019, an inmate was found unconscious in his cell and was transported to an outside hospital for care. An officer rode in the ambulance with the inmate, and a second officer met the ambulance at the hospital. The inmate was admitted to the hospital and reported that a nurse allegedly told him to use his call button if he needed medical attention. The inmate felt dizzy and pressed the call button twice. The officer allegedly told the inmate multiple times to "stop pressing that [expletive] button," then grabbed the television remote from the inmate's hand and hit the inmate in head with it and hovered over him and threatened him. The inmate

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alleged that the second officer then shut the door, and the first officer allegedly proceeded to choke the inmate, stopping only after the inmate yelled for help, but before three nurses and a security guard could respond. The inmate allegedly reported the incident to the nurse, who stated she could not report the choking because she did not see it but allegedly confirmed she saw the redness on his neck. The inmate alleged that the prison issued him a rules violation for delaying a peace officer in connection with this incident.

The inmate alleged that on September 10, 2019, an officer was escorting him to his cell when he reported to the officer that he felt unwell and was afraid he was going to lose consciousness. He was put in his cell and left there allegedly with waist restraints on. The inmate reported that approximately 10 minutes later, a sergeant and two officers allegedly entered his cell and began kicking him the head. The inmate alleged he lost consciousness, did not know how long the beating lasted, and was left in his cell drifting in an out of consciousness and bleeding for five hours before a housing unit officer discovered him and transported him to the triage and treatment area. Subsequently, officers transported the inmate to an outside hospital.

On September 16, 2019, the inmate filed a written complaint on a CDCR form 602 regarding the September 10, 2019, incident. The prison conducted an inquiry and on October 28, 2019, and determined that staff did not violate department policy with respect to one or more of the issues appealed. However, on October 17, 2019, the warden submitted a request for investigation to the Office of Internal Affairs.

On October 10, 2019, Plaintiffs' Counsel sent a letter to the Office of Legal Affairs, which reported the inmate's allegations of September 6, 2019, and September 10, 2019.

The department provided the Office of Inspector General with a copy of the incident reports and allegation worksheets related to both the September 6, 2019, and the September 10, 2019, allegations of unnecessary use of force.

OIG Analysis

The prison completed an inquiry for the September 6, 2019, allegation of unnecessary force and determined that the allegation was unsubstantiated.

The prison reported that the hiring authority referred the allegation from September 10, 2019, to the Office of Internal Affairs for an investigation. The prison also provided us a copy of the prison's inquiry into the allegation of unnecessary force. A memorandum to the inmate dated October 28, 2019, stated the prison determined that staff did not violate policy. However, 10 days prior, on October 17, 2019, the warden had already signed a request for investigation. The Office of Internal Affairs approved the case for an investigation on November 20, 2019.

The Office of Legal Affairs provided a response to the Plaintiffs' Counsel on October 30, 2019, twenty days after receiving the advocacy letter. The response reported that the prison completed the inquiry for the September 6, 2019, incident and found no violation of policy, and that the

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prison referred the September 10, 2019, incident to the Office of Internal Affairs for an investigation.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs' Counsel?</i>
October 29, 2019	September 1, 2019	September 2, 2019	No	No

On September 1, 2019, an inmate alleged that an officer came to his cell and advised him that he was required to take a random drug test. When the inmate requested to speak with a sergeant, the officer allegedly stated, "I don't have time for this shit." The inmate stated that the officer then allegedly tightly handcuffed him behind his back which prevented him from being able to use his cane or walker to ambulate. The inmate asked for waist restraints, and the officer allegedly stated, "You know, you're an asshole, you're a real asshole. You're the cause of a lot of stuff around here." The officer then allegedly led the inmate across the dayroom to the toilets to provide a urine sample. The inmate allegedly asked to have the test conducted in a more sanitary area and not the filthy dayroom toilets. The officer allegedly denied the request, and the inmate then yelled to a second officer to call a sergeant.

The inmate reported that he began losing feeling in his hands and asked the officer to loosen his handcuffs. The officer allegedly called the inmate an "asshole" and grabbed the inmate by the back of his left arm and threw him to the ground, causing him to fall hard on his hip. The inmate alleged that he laid on the ground for a number of minutes, unable to get up on his own due to the pain, and another officer allegedly approached and said something to him in Spanish, which he did not understand. This officer and the first officer then allegedly helped him to his feet and forced him to stand on his feet without the aid of his cane or walker. A third officer arrived from outside the building and escorted the inmate to the urinal. The third officer allegedly pulled the inmate's pants and underwear down to his knees, exposing his genitals and then held a cup in front of the inmate to provide a urine sample. The inmate alleged that he attempted to provide a urine sample in the cup but because his hands were handcuffed behind his back, he urinated on his pants and legs. The first officer then escorted him back to his cell, where the inmate requested to be seen by medical staff because his side and back hurt from the fall. The officer allegedly refused his request. The inmate was seen by medical staff two days later, when he reported the incident to medical staff and later the same day to a sergeant.

Four days later, on September 5, 2019, the inmate reported that a sergeant conducted a video-recorded interview with him, and the sergeant allegedly disputed the inmate's account of the incident and insisted that the inmate was resisting. The inmate reported that the sergeant allegedly stopped recording his statement every time the inmate accused the sergeant of being a part of the staff misconduct at the prison.

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On September 5, 2019, the inmate submitted his written complaint of staff misconduct on the Reasonable Accommodation Request, CDCR form 1824. The Reasonable Accommodation Panel elevated the matter for further review.

On September 9, 2019, the prison served the inmate with a rules violation for delaying an officer in the performance of his duties in the September 1, 2019, incident. On October 1, 2019, the prison conducted a hearing for the rules violation. The inmate alleged that the senior hearing officer allegedly refused to interview any of his witnesses or review his defenses and stated, “I believe my officer and I’m going to find you guilty. If you don’t like it, you can 602 it.”

On October 29, 2019, Plaintiffs’ Counsel sent a letter to the Office of Legal Affairs reporting in detail the inmate’s allegations of unreasonable force, and additionally, discourteous treatment by the officers, the failure to accurately record the inmate’s statement, a retaliatory rules violation, and an unfair rules violation hearing.

The department provided the Office of Inspector General with a copy of the inmate’s staff complaint, which he wrote on a Reasonable Accommodation Request, CDCR form 1824, the Reasonable Accommodation Panel response, the rules violation report, an inquiry report, and use-of-force allegation review documents.

OIG Analysis

In our analysis, we noted that the inmate filed his complaint on September 5, 2019, alleging only that the officer pushed him down and deprived him of medical attention. The Reasonable Accommodation Panel reviewed the allegation on September 12, 2019, and elevated the matter for further review. The allegation inquiry that the department conducted was not classified as a staff complaint but as a routine appeal. The inquiry report, dated September 2, 2019, only addressed “Unnecessary/Excessive Force” and concluded there was no merit to the inmate’s claim of staff misconduct.

The inquiry report received by the Office of Inspector General was not signed by the hiring authority, and it is unknown if the inmate received a response. The department conducted no further inquiry into the inmate’s eight additional allegations contained in the letter. Additionally, the department did not reply to the Plaintiffs’ Counsel’s advocacy letter. Furthermore, the advocacy letter identified allegations of serious staff misconduct. The department should have referred the allegations of misconduct to the Office of Internal Affairs for consideration of investigation pursuant to department policy set forth in the Department Operations Manual.

<i>Date Advocacy Letter was Submitted to CDCR</i>	<i>Date of Alleged Incident</i>	<i>Date Staff Complaint Inquiry Completed</i>	<i>Was an Inquiry Completed in response to Advocacy Letter?</i>	<i>Did CDCR Respond to the Plaintiffs’ Counsel?</i>
November 5, 2019	April 12, 2019	August 23, 2019	No	No

Mr. Ralph M. Diaz, Secretary
January 17, 2020
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On April 12, 2019, an inmate reported that he was frustrated with his clinician, stormed out of an appointment, and went back to the yard. When he approached the gate to the yard, an officer allegedly opened the gate, striking the inmate and stated, "Don't let the gate hit you in the ass, get out of here." The inmate reported that he yelled back, "Hey, what are you doing?" when a second officer yelled, "Get the [expletive] down!" The inmate stated that he raised his hands and backed away when the two officers allegedly drew their batons and tackled him to ground, and a third officer allegedly grabbed the inmate's head and struck it on the concrete. The inmate alleged that eight officers and a sergeant struck him numerous times with batons, fists, and kicks to the face, ribs, and chest.

The inmate reported that he passed out and when he woke up, an officer was allegedly kneeling on his head, crushing his ear to the concrete, while officers placed him in handcuffs and leg restraints. The officers escorted the inmate to a gym, and while he was standing in front of the holding cell, an officer allegedly stood on his leg restraints and pushed him forward, causing him to strike his head on the holding cell. The inmate alleged that another officer repeatedly kicked and kneed him in the ribs before he was picked up and thrown into the holding cell. The inmate reported that officers then stripped him of his clothing and allegedly left him in the holding cell. An officer gave the inmate his glasses which were no longer in their hard-plastic case and were twisted and broken.

A psychiatric technician entered the gym with an officer to conduct a medical evaluation. The officer allegedly made derisive comments, like "That's what you get for being an asshole," causing the inmate to request to speak with the psychiatric technician alone. The psychiatric technician allegedly responded, "I can't do nothing for you," and left the gym. The inmate reported that he was left naked and bleeding in the holding cell for nearly five hours, when another psychiatric technician allegedly found him and had the inmate escorted to the medical building for treatment.

On April 13, 2019, two sergeants conducted a video-recorded interview of the inmate. The inmate alleged that during the recorded interview, the two sergeants were allegedly hostile toward him and repeatedly asked, "Are you sure you want to make a statement?" Additionally, the inmate alleged that during a second interview, the investigative services unit officer repeatedly questioned the veracity of the inmate's allegations by stating that it was "impossible" for the inmate to be thrown into the holding cell and that he knew the officers involved and had already spoken to them about the incident.

On May 21, 2019, the inmate filed a written complaint on a CDCR form 602 alleging officers and a sergeant used unnecessary force, and an officer had broken his glasses. The prison conducted an inquiry and determined that staff did not violate policy.

On November 5, 2019, the Plaintiffs' Counsel sent a letter to the Office of Legal Affairs reporting the allegations of unnecessary force, and additionally the allegations of discourteous statements, two sergeants' attempts to dissuade the inmate from reporting the misconduct, and the officer questioning the veracity of the inmate's allegations.

Mr. Ralph M. Diaz, Secretary
January 17, 2020
Page 26

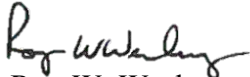
The department provided the Office of Inspector General with a copy of the inmate's staff complaint, the inquiry report, the response to the inmate, the incident package, the use-of-force allegation review documents, medical documentation, a memorandum requesting follow-up from the Department Executive Review Committee, and an allegation inquiry report.

OIG Analysis

The prison conducted an inquiry into the inmate's allegations of unnecessary force and submitted a response to the inmate on June 13, 2019, indicating staff did not violate policy. The prison also conducted an additional review of the incident in response to the request for follow-up from the Department Executive Review Committee. The prison completed the allegation inquiry on August 23, 2019. In neither report did the prison address all of the inmate's allegations. In neither report did the prison address the allegations of the broken glasses, the discourteous statement, the interview by the sergeants dissuading the inmate from reporting the incident, and the officer questioning the veracity of the inmate's allegations.

On December 27, 2019, an associate director of the department requested a different prison conduct an inquiry into these allegations.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy W. Wesley".

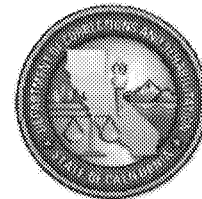
Roy W. Wesley
Inspector General

Exhibit K

OFFICE OF THE SECRETARY

PO Box 942883

Sacramento, CA 94283-0001



January 16, 2020

Roy W. Wesley, Inspector General
Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

Re: Response to Draft January 2020 Letter Addressing Advocacy Letter Received from
Coleman and Armstrong Plaintiffs' Counsel

Dear Mr. Wesley:

I write in response to the draft letter you provided regarding advocacy letters that Rosen Bien Galvan & Grunfeld LLP, plaintiffs' counsel in two federal class actions *Coleman* and *Armstrong*, have submitted to the California Department of Corrections and Rehabilitation's Office of Legal Affairs. Plaintiffs' counsel submit approximately 300 advocacy letters annually in these two class actions alone. Here, you focus on sixteen letters in which plaintiffs' counsel allege staff misconduct and mistreatment of their clients, which they provided to you.

As an initial matter, I am deeply troubled about the timing of your letter. You note that in January 2019 plaintiffs' counsel began copying the Office of the Inspector General on letters submitted to CDCR's Office of Legal Affairs. Yet you made no mention of this or any related concerns during any of our standing monthly meetings, or during any of the many impromptu phone calls that we have had over the past year, until early November 2019. Nor did you address these concerns with the Undersecretary of Operations or the Director of the Division of Adult Institutions at your regular meetings with them. As the Inspector General if, like me, you are concerned about alleged staff misconduct or the mistreatment of inmates, it is incumbent upon you to not sit idly by but to address it promptly with me. I understand that you discussed the advocacy letters with the current and former General Counsel and they have engaged with the appropriate individuals in CDCR, but I expect that if you have concerns of the magnitude expressed in your letter that you will also address them with me. Additionally, I understand that plaintiffs' counsel have noticed your deposition in *Armstrong* for January 22, 2020, which makes the timing of this letter, that you will make public, suspect.

Your stated purpose of the letter is to "report what action [the Office of the Inspector General was] able to determine that the department took upon receiving these complaints." (Jan. 2020 Draft Letter at p. 1.) This aligns somewhat with what your staff conveyed to the Office of Legal Affairs, that the inquiry from your office was to ensure that upon receiving plaintiffs' letters the Office of Legal Affairs did something with them and that they did not simply go to an archive file or "fall into a black hole." Your letter indicates telling plaintiffs' counsel that the Office of the Inspector General "could not comment on the quality of the investigation or inquiry conducted

Roy W. Wesley, Inspector General
Page 2

by the department.” (Jan. 2020 Draft Letter at p. 1.) Yet this is precisely what you have now done. You have reviewed and commented on the adequacy of the Office of Legal Affairs, the Office of Internal Affairs, and the Hiring Authority. In doing so, it is entirely unclear what the Office of the Inspector General has determined are the allegations at issue. Nowhere are the allegations listed out and the reference to the actual number of allegations is inconsistent throughout the letter.

While I appreciate the role of the Office of the Inspector General in monitoring the use of force and the employee discipline process, this particular review intrudes into the relationship between plaintiffs’ counsel and the Office of Legal Affairs. Indeed, the letter reads as if the Office of the Inspector General is advocating on behalf of plaintiffs’ counsel. As an example, you correctly note that plaintiffs’ counsel “requested that any inquiry be done by personnel from outside the prison’s Investigative Services Unit.” (Jan. 2020 Draft Letter at p. 1.) You go on to state that, “for the most part, the department did not grant this request and did not notify Plaintiffs’ Counsel that outside investigators would not be assigned.” (Jan. 2020 Draft Letter at p. 4.) Plaintiffs’ counsel do not get to dictate who conducts an inquiry. And there is no requirement that the department notify plaintiffs’ counsel about how an investigation will be conducted or by whom.

The letter reveals many fundamental misunderstandings about the relationship between the department and plaintiffs’ counsel and the handling of matters within the context of the class action litigation.

Timeliness and Nature of Response to Advocacy Letters

The Office of the Inspector General “determine[d] whether the department communicated with Plaintiffs’ Counsel.” (Jan. 2020 Draft Letter at p. 2.) In each of plaintiffs’ letters reviewed, the Office of the Inspector General commented on the timeliness of a response from the department to plaintiffs’ counsel, and many of the comments expressly state or imply that the response was not timely. (E.g., Jan. 2020 Draft Letter at p. 7, “However, the Office of Legal Affairs responded to Plaintiffs’ Counsel over six months after receiving the advocacy letter.”; at p. 9, “Although the Office of Legal Affairs provided a response to the Plaintiff’s Counsel, the response was not meaningful and was provided over four months after receipt of the advocacy letter.”) The Office of the Inspector General also opined on the content of the letters finding some of it not meaningful, and the Office of Legal Affairs was faulted for not providing status updates to plaintiffs’ counsel. (Jan. 2020 Draft Letter at p. 3.) The Office of the Inspector General also condemns the Office of Legal Affairs for not advising plaintiffs of the existence or status of investigations either at the prison or with the Office of Internal Affairs.

Roy W. Wesley, Inspector General
Page 3

The Office of Legal Affairs has responded in some manner to the letters and additional, follow up response to some of the letters remain in progress. It takes time to gather information from the prison, for the prison to conduct any necessary inquiry, and for the Office of Legal Affairs to engage in follow up with the prison so that an accurate response can be provided to plaintiffs' counsel.

I am not aware of authority for the Office of the Inspector General to opine on the handling of correspondence between the department and plaintiffs' counsel. Within *Coleman* and *Armstrong* there is no requirement for any response to plaintiffs' correspondence, nor is there any requirement about the depth, format, or scope of the response. The Office of Legal Affairs does however regularly respond to plaintiffs' correspondence both in writing and orally in conversations at meetings and over the telephone. The Office of the Inspector General's review and comment on the timing and content of the responses is inappropriate.

Office of Legal Affairs Referrals to the Office of Internal Affairs or Notification to Their Client to Do So

As the Office of the Inspector General is well aware, it is a Hiring Authority, not an attorney in the Office of Legal Affairs who has the authority within the department to refer a matter to the Office of Internal Affairs. Thus the continued refrain throughout the letter that the Office of Legal Affairs should have referred the allegation of misconduct to the Office of Internal Affairs for investigation is not well taken. Although it is reasonable and appropriate to expect the Office of Legal Affairs to work with their clients and to advise the Hiring Authorities regarding referrals, which does occur, the Office of the Inspector General's misrepresentation of the Office of Legal Affairs obligations is concerning.

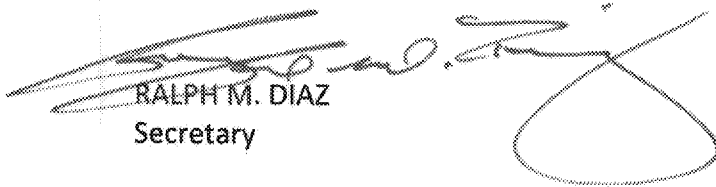
Similarly, the numerous statements that the Office of Legal Affairs should have "advised their client to make sure a referral to OIA was made for consideration for investigation" and the implication that it was not done improperly intrudes into the attorney-client relationship and confidential communication. What department attorneys advise their clients to do is protected. It is concerning for the Office of the Inspector General to presume that communications did not take place and suggest publicly that this is a failure of the Office of Legal Affairs.

In sum, publicizing the Office of the Inspector General's letter to me is inappropriate. The department is in active litigation with Rosen Bien Galvan & Grunfeld with discovery currently

Roy W. Wesley, Inspector General
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ongoing and a motion to the *Armstrong* Court on the horizon. That the Office of the Inspector General would stretch its oversight authority to questionable lengths to assist plaintiffs in this litigation is untenable.

Respectfully,



RALPH M. DIAZ
Secretary

Exhibit L

DONALD SPECTER – 083925
RITA K. LOMIO – 254501
MARGOT MENDELSON – 268583
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, California 94710-1916
Telephone: (510) 280-2621
Facsimile: (510) 280-2704

MICHAEL W. BIEN – 096891
GAY C. GRUNFELD – 121944
PENNY GODBOLD – 226925
MICHAEL FREEDMAN – 262850
ROSEN BIEN
GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
Telephone: (415) 433-6830
Facsimile: (415) 433-7104

LINDA D. KILB – 136101
DISABILITY RIGHTS EDUCATION &
DEFENSE FUND, INC.
3075 Adeline Street, Suite 201
Berkeley, California 94703
Telephone: (510) 644-2555
Facsimile: (510) 841-8645

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**PLAINTIFFS' NOTICE OF
DEPOSITION PURSUANT TO
F.R.C.P. § 30(b)(6) OF THE
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION's PERSON MOST
KNOWLEDGEABLE; REQUEST FOR
PRODUCTION OF DOCUMENTS**

Judge: Hon. Claudia Wilken

Case No. C94 2307 CW

PLAINTIFFS' NOTICE OF DEPOSITION OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION; REQUEST FOR PRODUCTION OF DOCUMENTS

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of
3 Civil Procedure, plaintiffs, by their attorneys, will take the deposition of the California
4 Department of Corrections and Rehabilitation's ("CDCR" 's)¹ person(s) most
5 knowledgeable regarding the following subjects:

- 6 1. All staff misconduct² at Richard J. Donovan Correctional Facility ("RJD") between
7 January 2017 and present, in which the alleged victim of the staff misconduct was
8 an *Armstrong* class member.
- 9 2. All allegations of staff misconduct at RJD between January 2017 and present, in
10 which the alleged victim of the staff misconduct was an *Armstrong* class member.
- 11 3. All investigations into allegations of staff misconduct at RJD between January 2017
12 and present in which the alleged victim of the staff misconduct was an *Armstrong*
13 class member.
- 14 4. The findings of all investigations into allegations of staff misconduct at RJD
15 between January 2017 and present in which the alleged victim of the staff
16 misconduct was an *Armstrong* class member.
- 17 5. All corrective and disciplinary actions—including, but not limited to, suspension,
18 pay reduction, termination, and criminal prosecution—taken in all cases where an
19 investigation confirmed allegations of staff misconduct at RJD between January
20 2017 and present, in which the victim of the staff misconduct was an *Armstrong*
21 class member.
- 22 6. All incidents of staff misconduct in which CDCR imposed corrective or adverse

23 ¹ "CDCR" means the California Department of Corrections and Rehabilitation, including
24 any boards, divisions, units, agencies, agents, servants, representatives, consultants, or
counsel thereof.

25 ² Staff misconduct means staff behavior in violation of law, policy, regulation or procedure
26 or appearing contrary to an ethical or professional standard as defined in Title 15,
27 § 3084(g) and Departmental Operations Manual § 54110.25. Staff misconduct includes
28 excessive use of force. Excessive use of force means the use of more force than is
objectively reasonable to accomplish a lawful purpose as defined in Departmental
Operations Manual § 51020.4.

- 1 action against any CDCR employee(s) as a result of a finding that the employee(s)
2 engaged in staff misconduct against a *Armstrong* class member.
- 3 7. CDCR's policies, procedures, and practices related to allegations of staff
4 misconduct at RJD between January 2017 and present.
- 5 8. Current and historical data regarding the monthly number of reported allegations of
6 staff misconduct at RJD between January 2017 and present.
- 7 9. Current and historical data regarding the monthly number of allegations of staff
8 misconduct at RJD between January 2017 and present referred by the RJD hiring
9 authority to the Office of Internal Affairs.
- 10 10. Current and historical data regarding the monthly number of allegations of staff
11 misconduct at RJD between January 2017 and present (a) accepted for review by
12 the OIA, (b) rejected by the OIA, or (c) returned to the RJD hiring authority for
13 direct action.
- 14 11. Current and historical data regarding the monthly number of allegations of staff
15 misconduct at RJD between January 2017 and present that the OIA Central Intake
16 Unit accepted for review and initiated (a) a criminal investigation, (b) an
17 administrative investigation, or (c) an interview of the subject employee only.
- 18 12. Current and historical data regarding the monthly number of allegations of staff
19 misconduct at RJD between January 2017 and present that the OIA Central Intake
20 Unit assigned to a special agent in a regional office.
- 21 13. Current and historical data regarding the monthly number of allegations of staff
22 misconduct at RJD between January 2017 and present for which the OIA conducted
23 a criminal investigation and decided (a) to refer to a prosecuting agency or (b) not
24 to refer to a prosecuting agency.
- 25 14. Current and historical data regarding the monthly number of allegations of staff
26 misconduct at RJD between January 2017 and present for which the OIA conducted
27 an administrative investigation or only interviewed the subject employee and the
28 RJD hiring authority concluded that the OIA investigation was insufficient.

- 1 15. Current and historical data regarding the monthly number of allegations of staff
2 misconduct at RJD between January 2017 and present for which the RJD hiring
3 authority (a) sustained the allegations or (b) did not sustain the allegations.
- 4 16. Current and historical data regarding the monthly number of allegations of staff
5 misconduct at RJD between January 2017 and present for which the RJD hiring
6 authority sustained the allegations and imposed (a) corrective action or
7 (b) disciplinary action.
- 8 17. Current and historical data regarding the monthly number of sustained allegations
9 of staff misconduct at RJD between January 2017 and present for which the RJD
10 hiring authority imposed disciplinary action and issued (a) a Level 1 penalty
11 (official reprimand), (b) a Level 2 penalty (1-2 day suspension without pay), (c) a
12 Level 3, 4, 5, 6, or 7 penalty (salary reduction or suspension without pay), (d) a
13 Level 8 penalty (demotion), or (e) a Level 9 penalty (dismissal), as those levels are
14 defined in the Employee Disciplinary Matrix, Department of Operations Manual,
15 § 33030.16.
- 16 18. Any system, electronic or otherwise, used by CDCR to track allegations of staff
17 misconduct at RJD between January 2017 and present.
- 18 19. The process by which CDCR investigates allegations of staff misconduct at RJD.
- 19 20. The process CDCR undertook in December 2018, whereby, in response to
20 information gathered during the August 2018 Joint *Armstrong* Audit, CDCR
21 interviewed 20 percent of people incarcerated on RJD's Facility C regarding staff
22 misconduct.
- 23 21. The standards used by CDCR for determining if an allegation of staff misconduct
24 relates to CDCR's compliance with the Americans with Disabilities Act, the
25 Rehabilitation Act, the *Armstrong* Remedial Plan, and/or court orders in *Armstrong*.
- 26 22. The standards used by CDCR for determining if an allegation of staff misconduct
27 should be included in the log of non-compliance that the *Armstrong* court ordered
28 CDCR to maintain in its August 22, 2012 order.

- 1 23. Any processes by which CDCR assesses CDCR personnel's compliance with
 2 CDCR policies and procedures related to staff misconduct involving someone with
 3 a disability.
- 4 24. Any changes to CDCR's policies, practices, and procedures since January 1, 2017,
 5 intended to reduce the number of instances or severity of staff misconduct or the
 6 number of staff misconduct complaints at RJD.
- 7 25. The current and historical use of cameras to monitor staff and incarcerated people at
 8 RJD.
- 9 26. Current and historical security measures at RJD intended to prevent staff from
 10 bringing into the prison prohibited items, including, but not limited to, cellular
 11 telephones and illegal drugs.
- 12 27. Any changes that CDCR is planning to make or has made to the process for
 13 investigating staff misconduct claims at RJD.
- 14 28. Any remedial measures CDCR has taken since January 1, 2017 to address
 15 allegations of staff misconduct against persons with disabilities, including
 16 *Armstrong* class members, at RJD.

17 The deposition will commence at **9:30 a.m. on January 15, 2019** at Rosen Bien
 18 Galvan & Grunfeld LLP, 101 Mission Street, Sixth Floor, San Francisco, California
 19 94105. If not completed on the specified date, the deposition will continue from day-to-
 20 day, excluding Sundays and holidays, until such date as is necessary to complete the
 21 deposition. The deposition shall be recorded by stenographic means and may also be
 22 videotaped.

23 **REQUEST FOR PRODUCTION OF DOCUMENTS**

24 PLEASE TAKE FURTHER NOTICE pursuant to Federal Rule of Civil Procedure
 25 30(b)(2) and 34, that the deponent(s) is required to produce the following documents for
 26 copying and inspection at 101 Mission Street, 6th Floor, San Francisco, CA 94105, 30
 27 days from service of this Request:
 28

INSTRUCTIONS

1. The following Requests require the production of all responsive documents within the sole or joint possession, custody, or control of any agents, agencies, boards, departments, employees, servants, representatives, consultants, counsel, and/or other persons or entities acting or purporting to act on Defendants' behalf, or otherwise subject to the control of any Defendants.

2. The following Requests are continuing in nature and require prompt supplemental responses for any and all responsive documents that come into any Defendant's sole or joint possession, custody, or control after the service of any initial responses hereto.

3. The following Requests require the production of preliminary drafts, revisions, and/or copies of any such document if the copy is in any way different from the original.

4. The following Requests require the production of all transmittal sheets, cover letters, exhibits, enclosures and attachments to the documents, in addition to the documents themselves.

5. Pursuant to Federal Rule of Civil Procedure 34(b), all responsive documents are required to be produced either: (a) as they are kept in the usual course of business (together with copies of any file labels or binder covers for the files or binders in which they are maintained); or (b) organized and labeled to correspond with the categories of the Requests to which they respond.

6. If any responsive document is maintained electronically, the document shall be produced on disc in native format and with metadata intact.

7. In construing the Requests herein, the singular shall include the plural and the plural shall include the singular. A masculine, feminine or neutral pronoun shall not exclude the other genders, so that the interpretation applied results in the more expansive production. The terms "and" and "or" shall be construed broadly and expansively as "and/or," and shall not be construed to limit the documents or information sought in any

1 manner.

2 8. If any Request demands production of documents that have been lost,
3 discarded, or destroyed, identify such documents as completely as possible. Such
4 identification shall include, but is not limited to, a description of the subject matter of the
5 document, the author of the document, the date of the document's creation, the date of
6 disposal, manner of disposal, reason for disposal, person authorizing the disposal and
7 person disposing of the document.

8 9. For any responsive document or portion thereof that is either redacted or
9 withheld, in whole or in part, on the basis of any assertion of privilege or other asserted
10 exemption from discovery, furnish a list identifying each document, or portion thereof, not
11 produced for this reason, together with the following information: (a) the title or identity
12 of the document; (b) the date of the document; (c) the type or nature of the document;
13 (d) the identity, title, or responsibilities, and relationship to Defendants of all persons who
14 either prepared or received the document; (e) the number of pages and attachments; (e) the
15 type and nature of the privilege or exemption asserted; and (f) the contents or subject
16 matter of the document, with sufficient detail to explain the basis for the privilege or
17 exemption asserted (*see* Fed. R. Civ. P. 26(b)(5)). For any responsive document or portion
18 thereof that may not properly be redacted or withheld in its entirety, produce each and
19 every portion thereof to which the claimed privilege or exemption does not apply and
20 specify, on the face of each such page or portion, the fact and reason for the redaction or
21 withholding.

22 DEFINITIONS

23 1. "ANY" and "ALL," as used herein, shall include "each" and "every" and is
24 not to be construed to limit a Request.

25 2. "DOCUMENTS" means all writings, whether fixed in a tangible medium or
26 electronically stored. DOCUMENTS includes, but is not limited to, all of the following:
27 papers, correspondence, emails, MS Excel files, MS Word files, MS PowerPoint files, text
28 files, instant messages, postings on internet websites or blogs including Twitter and

1 Facebook, training manuals, employee manuals, policy statements, trade letters, envelopes,
2 memoranda, telegrams, cables, notes, messages, reports, studies, press releases,
3 comparisons, books, accounts, checks, audio and video recordings and transcriptions
4 thereof, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines,
5 questionnaires, surveys, charts, maps, plans, graphs, computer programs, photographs,
6 newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices,
7 diagrams, instructions, diaries, minutes of meetings, orders, resolutions, agendas,
8 memorials or notes of oral communications, whether by telephone or face-to-face,
9 contracts, agreements, memoranda of understanding, and letters of intent. DOCUMENTS
10 includes any writings recorded or stored in any medium or location, including desktop
11 computers, laptops, PDAs, cell phones, home computers used for work, calendars,
12 computer tapes, computer drives or memories, computer diskettes or disks, email, CD-
13 ROMs, DVDs, BlackBerrys, iPhones, or other similar handheld devices used to send and
14 receive electronic mail, instant messaging (“IM”), blogs or other internet or intranet
15 postings, text messages, Twitter postings, Facebook postings, or any other tangible thing
16 on which any handwriting, typing, printing, photostatic, electronic or other form of
17 communication or information is recorded or reproduced. DOCUMENTS also includes all
18 notations on any of the foregoing, all originals, file copies or other unique copies of the
19 foregoing and all versions or drafts thereof, whether used or not, and all metadata.
20 DOCUMENT has the broadest possible meaning and includes anything coming within the
21 definition of “writings” and “recordings” as set forth in Rule 1001 (1) of the Federal Rules
22 of Evidence.

23 3. “COMMUNICATIONS” means any exchange of information by any means
24 of transmission, including, face-to-face conversations, mail, electronic mail, IM, blog or
25 other internet or intranet posting, telegram, text messages, overnight delivery, telephone,
26 facsimile or telex.

27 4. “DEPARTMENT” or “CDCR” means the California Department of
28 Corrections and Rehabilitation, including any boards, divisions, units, agencies, agents,

1 servants, representatives, consultants, or counsel thereof, including the Board of Parole
2 Hearings, the Division of Adult Parole Operations, and the Board of State and Community
3 Corrections, and any predecessor entities thereof, including the former California
4 Department of Corrections, the Board of Prison Terms, and the Corrections Standards
5 Authority.

6 5. “RJD” means Richard J. Donovan Correctional Facility, located at 480 Alta
7 Rd, San Diego, CA 92179.

8 6. “STAFF MISCONDUCT” means staff behavior in violation of law, policy,
9 regulation or procedure, or appearing contrary to an ethical or professional standard as
10 defined in Title 15, § 3084(g) and Departmental Operations Manual § 54110.25. STAFF
11 MISCONDUCT includes EXCESSIVE USE OF FORCE.

12 7. “EXCESSIVE USE OF FORCE” means the use of more force than is
13 objectively reasonable to accomplish a lawful purpose as defined in Departmental
14 Operations Manual § 51020.4.

15 8. “CORRECTIVE ACTION” means a documented non-adverse action (verbal
16 counseling, in-service training, on-the-job training, written counseling, or a letter of
17 instruction) taken by a supervisor to assist a CDCR employee in improving his/her work
18 performance, behavior, or conduct.

19 9. “DISCIPLINARY ACTION” means a documented action, which is punitive
20 in nature and is intended to correct misconduct or poor performance or which terminates
21 employment, including, but not limited to, a letter of reprimand, salary reduction within
22 the salary range of the class, suspension without pay, demotion to a lower class, and
23 dismissal from CDCR employment.

24 10. “INCLUDING” means “including, but not limited to”, and is not to be
25 construed to limit a Request.

26 11. “OR” shall be construed as disjunctive and conjunctive and, as used herein,
27 shall include “and” and is not to be construed to limit a Request.

28 12. “OTHER STATE AGENCY” means any governmental agency, board, or

1 division of the State of California other than the DEPARTMENT or CDCR.

2 13. "RELATING TO" means relating to, referring to, constituting, representing,
3 defining, depicting, concerning, embodying, reflecting, identifying, stating, mentioning,
4 addressing, or pertaining to the subject matter of the request in whole or in part, directly or
5 indirectly.

6 14. "ALLEGATION" means a claim that someone has done something wrong.

7 15. "INVESTIGATION" means the act, either formal or informal, of conducting
8 an inquiry in to someone or something.

9 16. "FINDING" or "FINDINGS" mean a conclusion reached as a result of an
10 inquiry, investigation or trial, including, but not limited to, the findings set forth in CDCR
11 Department Operations Manual § 33030.13.1.

12 17. "RELEVANT PERIOD" shall mean from January 1, 2017 to the present,
13 INCLUDING ALL DOCUMENTS dated, prepared, generated OR received during the
14 RELEVANT PERIOD and ALL DOCUMENTS and information RELATING TO whole
15 OR in part, such period, OR to events OR circumstances during such period, even though
16 dated, prepared, generated OR received prior OR subsequent to the RELEVANT PERIOD.

17 DOCUMENT REQUESTS

18 DOCUMENT REQUEST NO. 1:

19 ALL DOCUMENTS and COMMUNICATIONS RELATING TO STAFF
20 MISCONDUCT at RJD that occurred during the RELEVANT PERIOD in which the
21 alleged victim of the STAFF MISCONDUCT was an *Armstrong* class member.

22 DOCUMENT REQUEST NO. 2:

23 ALL DOCUMENTS and COMMUNICATIONS RELATING TO ALLEGATIONS
24 of STAFF MISCONDUCT at RJD that occurred during the RELEVANT PERIOD in
25 which the alleged victim of the STAFF MISCONDUCT was an *Armstrong* class member.

26 DOCUMENT REQUEST NO. 3:

27 ALL DOCUMENTS and COMMUNICATIONS RELATING TO
28 INVESTIGATIONS into ALLEGATIONS of STAFF MISCONDUCT at RJD that

1 occurred during the RELEVANT PERIOD in which the alleged victim of the STAFF
2 MISCONDUCT was an *Armstrong* class member.

3 **DOCUMENT REQUEST NO. 4:**

4 ALL DOCUMENTS and COMMUNICATIONS RELATING TO the FINDINGS
5 of all INVESTIGATIONS into ALLEGATIONS of STAFF MISCONDUCT at RJD that
6 occurred during the RELEVANT PERIOD in which the alleged victim of STAFF
7 MISCONDUCT was an *Armstrong* class member.

8 **DOCUMENT REQUEST NO. 5:**

9 ALL DOCUMENTS and COMMUNICATIONS RELATING TO ALL
10 CORRECTIVE or DISCIPLINARY ACTION taken in all cases where an
11 INVESTIGATION confirmed ALLEGATIONS of STAFF MISCONDUCT at RJD that
12 occurred during the RELEVANT PERIOD in which the victim of the staff misconduct was
13 an *Armstrong* class member.

14 **DOCUMENT REQUEST NO. 6:**

15 ALL CDCR Forms 402 RELATING TO all INVESTIGATIONS of STAFF
16 MISCONDUCT at RJD that occurred during the RELEVANT PERIOD in which the
17 victim of the staff misconduct was an *Armstrong* class member.

18 **DOCUMENT REQUEST NO. 7:**

19 ALL CDCR Forms 403 RELATING TO all INVESTIGATIONS of STAFF
20 MISCONDUCT at RJD that occurred during the RELEVANT PERIOD in which the
21 victim of the staff misconduct was an *Armstrong* class member.

22 **DOCUMENT REQUEST NO. 8:**

23 ALL CDCR Forms 989 RELATING TO all INVESTIGATIONS of STAFF
24 MISCONDUCT at RJD that occurred during the RELEVANT PERIOD in which the
25 victim of the staff misconduct was an *Armstrong* class member.

26 **DOCUMENT REQUEST NO. 9:**

27 ALL INVESTIGATION REPORTS and RELATED DOCUMENTS RELATING
28 TO all INVESTIGATIONS of STAFF MISCONDUCT at RJD that occurred during the

1 RELEVANT PERIOD in which the victim of the staff misconduct was an *Armstrong* class
2 member.

3 **DOCUMENT REQUEST NO. 10:**

4 ALL complaints, including but not limited to CDCR Forms 602, 602-HC, and 1824,
5 filed by incarcerated people RELATING TO STAFF MISCONDUCT at RJD that
6 occurred during the RELEVANT PERIOD in which the victim of the staff misconduct was
7 an *Armstrong* class member.

8 **DOCUMENT REQUEST NO. 11:**

9 ALL DOCUMENTS, including written DOCUMENTS, audio recordings, and
10 video recordings, RELATING TO interviews conducted as part of ALL
11 INVESTIGATIONS of STAFF MISCONDUCT at RJD that occurred during the
12 RELEVANT PERIOD in which the victim of the staff misconduct was an *Armstrong* class
13 member.

14 **DOCUMENT REQUEST NO. 12:**

15 ALL DOCUMENTS and COMMUNICATIONS RELATING TO the
16 DEPARTMENT's policies, practices and procedures RELATING TO ALLEGATIONS of
17 STAFF MISCONDUCT at RJD.

18 **DOCUMENT REQUEST NO. 13:**

19 ALL DOCUMENTS AND COMMUNICATIONS during the RELEVANT
20 PERIOD RELATING TO the capacity of CDCR to track ALLEGATIONS of STAFF
21 MISCONDUCT at RJD.

22 **DOCUMENT REQUEST NO. 14:**

23 ALL DOCUMENTS AND COMMUNICATIONS during the RELEVANT
24 PERIOD RELATING TO the policies, practices and procedures used by the
25 DEPARTMENT to determine if ALLEGATIONS of STAFF MISCONDUCT RELATE
26 TO the DEPARTMENT's compliance with the Americans with Disabilities Act, the
27 Rehabilitation Act, the *Armstrong* Remedial Plan, or court orders in *Armstrong*.

28

DOCUMENT REQUEST NO. 15:

ALL DOCUMENTS AND COMMUNICATIONS during the RELEVANT PERIOD RELATING TO the policies, practices and procedures used by the DEPARTMENT to determine if ALLEGATIONS of STAFF MISCONDUCT must be included in the log of non-compliance that the *Armstrong* court ordered CDCR to maintain in its August 22, 2012 order.

DOCUMENT REQUEST NO. 16:

ALL DOCUMENTS AND COMMUNICATIONS during the RELEVANT PERIOD RELATING TO ALL changes to CDCR policies, practices, and procedures, intended to reduce the number of instances or severity of STAFF MISCONDUCT or the number of staff misconduct complaints at RJD.

DOCUMENT REQUEST NO. 17:

ALL DOCUMENTS AND COMMUNICATIONS during the RELEVANT PERIOD RELATING TO ALL changes to RJD policies, practices, and procedures, intended to reduce the number of instances or severity of STAFF MISCONDUCT or the number of staff misconduct complaints at RJD.

DOCUMENT REQUEST NO. 18:

ALL DOCUMENTS AND COMMUNICATIONS during the RELEVANT PERIOD RELATING TO the use of cameras to monitor staff and incarcerated people at RJD

DOCUMENT REQUEST NO. 19:

ALL DOCUMENTS AND COMMUNICATIONS during the RELEVANT PERIOD RELATING TO security measures at RJD intended to prevent staff from bringing into RJD prohibited items, including, but not limited to, cellular telephones and illegal drugs.

DOCUMENT REQUEST NO. 20:

ALL DOCUMENTS AND COMMUNICATIONS, including interviews notes, RELATING TO the process CDCR undertook in December 2018, whereby, in response to

1 information gathered during the August 2018 Joint *Armstrong* Audit, CDCR interviewed
2 20 percent of people incarcerated on RJD's Facility C regarding STAFF MISCONDUCT.

3
4 DATED: November 21, 2019

ROSEN BIEN GALVAN & GRUNFELD LLP

5 By: 

6 Michael Freedman

7 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 101 Mission Street, Sixth Floor, San Francisco, CA 94105-1738.

On November 21, 2019, I served true copies of the following document(s), with an *unsigned* copy of this proof of service, described as:

PLAINTIFFS' NOTICE OF DEPOSITION PURSUANT TO F.R.C.P. § 30(b)(6) OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION's PERSON MOST KNOWLEDGEABLE; REQUEST FOR PRODUCTION OF DOCUMENTS

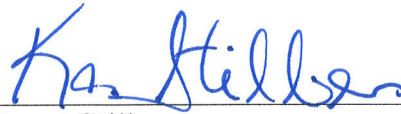
on the interested parties in this action as follows:

**Joanna Hood
Deputy Attorney General
Department of Justice
Office of the California Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612**

XX BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Rosen Bien Galvan & Grunfeld LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 21, 2019, at San Francisco, California.



Karen Stilber

Exhibit M

From: [Sean Lodholz](#)
To: [Michael Freedman](#); [Joanna Hood](#); [Annakarina De La Torre-Fennell](#); [Russa Boyd](#); [Davis, Tamiya@CDCR](#)
Cc: [Gay C. Grunfeld](#); [Penny Godbold](#); [Jack Gleiberman](#); [Ed Swanson](#); [Jessica Winter](#)
Subject: RE: Armstrong: Stipulation re: exceeding page limits, proposed redactions to documents, and protective order [IWOV-DMS.FID3579]
Date: Tuesday, February 18, 2020 8:54:34 PM

Mike,

We will have responses to you shortly. In the meantime, I wanted to confirm that Plaintiffs have agreed to narrow their February 6, 2020 requests for data regarding staff misconduct at Richard J. Donovan Correctional Institution to instances resulting in dismissal. Defendants will also provide a verified explanation regarding the burden imposed by Plaintiffs' other requests for data, and Plaintiffs have not waived their right to request that data.

I also wish to clarify that all records designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – ARMSTRONG V. NEWSOM (C 94-2307 CW)" and produced in in response to Plaintiffs' November 21, 2019 discovery requests thus far (DOJ00000001-6701), were designated that way because they contain personal, security, or personnel information covered by the protective orders at ECF Nos. 1044 and 2219. Despite this designation, Plaintiffs may share these records with any authorized persons listed in these protective orders, including outside experts and consultants, and may file them with the Court in accordance with those orders.

Additionally, except for 989, 402, 403 forms, investigation reports, and related materials, Defendants do not object to Plaintiffs filing confidential records produced in response to Plaintiffs' November 21, 2019 discovery requests unsealed if: (1) Plaintiffs redact all personal, security, and personnel information from these records; and (2) Plaintiffs meet and confer with Defendants before filing so that Defendants are able to ensure that there is no particularly sensitive information that may warrant specific redactions or necessitate filing the document under seal in compliance with the procedures set forth in ECF Nos. 1044 and 2219.

Lastly, if an agreement on a protective order limited to and 989, 402, 403 forms, investigation reports, and related materials is reached, it will result in some documents only being covered by the older protective orders in this case. Therefore, to avoid confusion moving forward, Defendants will label confidential documents that are covered by a previous protective orders as: "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER - ARMSTRONG V. NEWSOM (C 94-2307 CW)." Defendants will continue to use the "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – ARMSTRONG V. NEWSOM (C 94-2307 CW)" label when designating 989, 402, and 403 forms, investigation reports, and related materials.

Thank you,

Sean W. Lodholz | Deputy Attorney General | California Department of Justice

Correctional Law Section | 1300 I Street | Sacramento, CA 95814

t (916) 210-7369 | f (916) 324-5205 | e sean.lodholz@doj.ca.gov

From: Michael Freedman [mailto:MFreedman@rbgg.com]

Sent: Tuesday, February 18, 2020 7:45 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Russa Boyd <russa.boyd@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>

Cc: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Penny Godbold <PGodbold@rbgg.com>; Jack Gleiberman <JGleiberman@rbgg.com>; Ed Swanson <eswanson@swansonmcnamara.com>; Jessica Winter <JWinter@rbgg.com>

Subject: Armstrong: Stipulation re: exceeding page limits, proposed redactions to documents, and protective order [IWOV-DMS.FID3579]

All,

I write to follow up on our call from last Friday.

1. Attached is a stipulation and proposed order re: exceeding page limits. Please let us know by no later than close of business this Thursday, February 20, 2020, whether you approve and we can affix Joanna's signature.
2. Attached are proposed redactions to the December 10, 2018 Bishop Memorandum, two memorandum authored by Sgt. Allen, and the confidential portion of the Seibel deposition. Please let us know by no later than close of business this Thursday, February 20, 2020, whether you agree with the proposed redactions or request any changes. We can be available any time on Thursday to meet and confer regarding redactions.
3. Pursuant to the tentative agreement reached by Sean and me following the conference call on Friday (subject to approval by our respective teams), Plaintiffs are willing to enter into a protective order that mirrors the HDSP protective order, Dkt. 2639. Since Defendants believe that such protections are necessary before producing the 402s, 403s, and related 989s, we would appreciate if Defendants would use the same language as the HDSP PO, just substituting RJD instead of HDSP and omitting the corrective action plans and grievances as not applicable here.

We expect to provide you with a stipulation and order re sealing documents shortly.

Best,

Michael Freedman
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 (telephone)
(415) 433-7104 (fax)
mfreedman@rbgg.com

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at rbgg@rbgg.com.

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Exhibit N

From: [Joanna Hood](#)
To: [Gay C. Grunfeld](#); [Annakarina De La Torre-Fennell](#); [Ed Swanson](#); [Sean Lodholz](#); [Russa Boyd](#); ["Davis, Tamiya@CDCR"](#)
Cc: [Rita Lomio](#); [Margot Mendelson](#); [Penny Godbold](#); [Michael Freedman](#); [Karen Stilber](#); [Jack Gleiberman](#)
Subject: RE: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-DMS.FID3579]
Date: Monday, January 27, 2020 9:15:00 PM

Gay,

Here is how the topics will be split between Ms. Seibel and Ms. Ramos:

1- 3: Ramos as to OIA. Seibel as to RJD.
4: Seibel.
5: Seibel.
6: Ramos as to OIA. Seibel as to RJD.
7: Ramos as to OIA. Seibel as to RJD.
8: Seibel.
9-14: Ramos.
15-17: Seibel.
18: Ramos as to OIA. Seibel as to RJD/CDCR.
19: Ramos as to OIA. Seibel as to RJD/CDCR.
20: Seibel.
21-23: Seibel, to the extent that the topic does not implicate any functions performed by OLA attorneys, as set forth in my email of January 17.
24-26: Seibel.
27: Seibel as to RJD/CDCR. An additional PMK may be required to discuss the new staff complaint process that is being handled by OIA. Defendants will inform you as soon as that decision is made.
28: Seibel.

Thank you,
Joanna

Joanna B. Hood | Deputy Attorney General | California Department of Justice

Correctional Law Section | 1300 I Street | Sacramento, CA 95814

t (916) 210-7343 | f (916) 324-5205 | e joanna.hood@doj.ca.gov

From: Gay C. Grunfeld [mailto:GGrunfeld@rbgg.com]
Sent: Monday, January 27, 2020 8:57 PM
To: Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Russa Boyd <russa.boyd@cdcr.ca.gov>; 'Davis, Tamiya@CDCR' <Tamiya.Davis@cdcr.ca.gov>
Cc: Rita Lomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Karen Stilber <KStilber@rbgg.com>; Jack Gleiberman <JGleiberman@rbgg.com>
Subject: RE: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-

DMS.FID3579]

Thanks. We can use this call in number: 701-801-1220, Access code 320 630 335.

Also, I thought you were going to email us the topics that Ms. Seibel will be covering on Wednesday?

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830

From: Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>
Sent: Monday, January 27, 2020 3:41 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Russa Boyd <russa.boyd@cdcr.ca.gov>; 'Davis, Tamiya@CDCR' <Tamiya.Davis@cdcr.ca.gov>
Cc: Rita Lomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Karen Stilber <KStilber@rbgg.com>; Jack Gleiberman <JGleiberman@rbgg.com>
Subject: Re: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-DMS.FID3579]

Hello,

We are available at 3:30.

Thank you,
Annakarina

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Monday, January 27, 2020 3:37:20 PM
To: Ed Swanson; Joanna Hood; Annakarina De La Torre-Fennell; Sean Lodholz; Russa Boyd; 'Davis, Tamiya@CDCR'
Cc: Rita Lomio; Margot Mendelson; Penny Godbold; Michael Freedman; Karen Stilber; Jack Gleiberman
Subject: RE: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-DMS.FID3579]

Joanna et al., hope we can set a time for tomorrow's call soon: 11 or 3:30?

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105

(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld

Sent: Monday, January 27, 2020 1:07 PM

To: Ed Swanson <ed@smllp.law>; Joanna Hood (Joanna.Hood@doj.ca.gov)

<Joanna.Hood@doj.ca.gov>; Annakarina De La Torre-Fennell (Annakarina.Fennell@doj.ca.gov)
<Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Russa Boyd
<russa.boyd@cdcr.ca.gov>; 'Davis, Tamiya@CDCR' <Tamiya.Davis@cdcr.ca.gov>

Cc: Rita Lomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>;
Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Karen Stilber
<KStilber@rbgg.com>; Jack Gleiberman <JGleiberman@rbgg.com>

Subject: RE: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-DMS.FID3579]

Both times work for us.

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Ed Swanson <ed@smllp.law>

Sent: Monday, January 27, 2020 1:00 PM

To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Joanna Hood (Joanna.Hood@doj.ca.gov)
<Joanna.Hood@doj.ca.gov>; Annakarina De La Torre-Fennell (Annakarina.Fennell@doj.ca.gov)
<Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Russa Boyd
<russa.boyd@cdcr.ca.gov>; 'Davis, Tamiya@CDCR' <Tamiya.Davis@cdcr.ca.gov>

Cc: Rita Lomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>;
Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Karen Stilber
<KStilber@rbgg.com>; Jack Gleiberman <JGleiberman@rbgg.com>

Subject: RE: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-DMS.FID3579]

I am free tomorrow at 11 am or 3:30 pm.

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>

Sent: Monday, January 27, 2020 11:33 AM

To: Joanna Hood (Joanna.Hood@doj.ca.gov) <Joanna.Hood@doj.ca.gov>; Annakarina De La Torre-Fennell (Annakarina.Fennell@doj.ca.gov) <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz
<Sean.Lodholz@doj.ca.gov>; Russa Boyd <russa.boyd@cdcr.ca.gov>; 'Davis, Tamiya@CDCR'

<Tamiya.Davis@cdcr.ca.gov>

Cc: Ed Swanson <ed@smllp.law>; Rita Lomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Karen Stilber <KStilber@rbgg.com>; Jack Gleiberman <JGleiberman@rbgg.com>

Subject: RE: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-DMS.FID3579]

Importance: High

I am re-sending this request without the attachments which caused bounce back messages from the Attorney General's Office. The bates numbers for the three documents in question are DOJ00000358-374, 33-96, and 228-256. Please see below and let me know a good time to talk tomorrow.

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld

Sent: Monday, January 27, 2020 9:14 AM

To: Joanna Hood (<Joanna.Hood@doj.ca.gov> <Joanna.Hood@doj.ca.gov>; Annakarina De La Torre-Fennell (<Annakarina.Fennell@doj.ca.gov> <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz (<Sean.Lodholz@doj.ca.gov> <Sean.Lodholz@doj.ca.gov>; 'Boyd, Russa@CDCR' (<Russa.Boyd@cdcr.ca.gov> <Russa.Boyd@cdcr.ca.gov>; 'Davis, Tamiya@CDCR' (<Tamiya.Davis@cdcr.ca.gov> <Tamiya.Davis@cdcr.ca.gov>

Cc: Ed Swanson <ed@smllp.law>; Rita Lomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Karen Stilber <KStilber@rbgg.com>; Jack Gleiberman <JGleiberman@rbgg.com>

Subject: Armstrong; Request to Meet and Confer re Confidentiality Designation [IWOV-DMS.FID3579]

Dear Ed, Joanna et al.,

We have begun reviewing the documents defendants produced on January 24. The three attached here are particularly relevant. Defendants have designated them "attorneys' eyes only," which is not an appropriate designation under the attached protective order. We would like to discuss removing that designation

so that we can show these documents to our expert and ultimately file them with the Court.

Are you free for a call about this tomorrow, January 28?

Thanks, Gay

Gay Crosthwait Grunfeld

ROSEN BIEN GALVAN & GRUNFELD LLP

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San Francisco, CA 94105

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Exhibit O

From: [Gay C. Grunfeld](#)
To: [Joanna Hood](#); [Ed Swanson](#); [Jessica Winter](#); [Karen Stilber](#)
Cc: [Russa Boyd](#); [Penny Godbold](#); [Michael Freedman](#); [Margot Mendelson](#); [Rita Lomio](#); [Annakarina De La Torre-Fennell](#); [Sean Lodholz](#)
Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]
Date: Friday, January 17, 2020 5:33:33 PM

Dear Joanna et al.,

As a follow up to today's telephone call, we appreciate the work that you are doing to identify documents for production and to prepare AD Seibel for her deposition. I write to ensure that Defendants produce two types of documents in advance of AD Seibel's deposition.

1. All memoranda or reports drafted by Sgt. Allen regarding investigations into staff complaints at RJD.
2. All documents that reflect any changes to policies or practices or any plans to make changes to policies or practices intended to reduce the number of instances or the severity of staff misconduct or the number of staff complaints at RJD.

These documents are responsive to Plaintiffs' existing document requests and are extremely relevant to the PMK deposition. Some of these documents may also be included in the documents that Defendants have agreed to and are intending to produce in advance of the deposition (namely the investigation files).

Please let us know if you have any questions; otherwise, we look forward to continuing these discussions on January 21 at 5:00 p.m.

Warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld

Sent: Friday, January 17, 2020 3:25 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>; Ed Swanson <ed@smlp.law>; Jessica Winter <JWinter@rbgg.com>; Karen Stilber <KStilber@rbgg.com>

Cc: Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>

Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

Dear Joanna, Russa et al.,

Please see attached; we have moved Dr. Bolton's deposition to a conference room in San Diego.

Thanks and have a good weekend, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld

Sent: Wednesday, January 15, 2020 5:02 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>; Ed Swanson <ed@smlp.law>; Jessica Winter <JWinter@rbgg.com>

Cc: Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>

Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

Thanks everyone for your time today. Just a heads up that we just served the attached Notice of Deposition by federal express. You can contact Jessica Winter of our office, copied here, regarding any logistical issues.

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Joanna Hood <Joanna.Hood@doj.ca.gov>
Sent: Tuesday, January 14, 2020 4:49 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>
Cc: Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>
Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

Noon works for us. I will send out a meeting notice.

Joanna B. Hood | Deputy Attorney General | California Department of Justice
Correctional Law Section | 1300 I Street | Sacramento, CA 95814
t (916) 210-7343 | *f* (916) 324-5205 | *e* joanna.hood@doj.ca.gov

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Tuesday, January 14, 2020 3:37 PM
To: Ed Swanson <ed@smllp.law>; Joanna Hood <Joanna.Hood@doj.ca.gov>
Cc: Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>
Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

I have a slight preference for noon, if that works for Joanna. We can use my conference call number: 701 801 1220, access code 320 630 335. Thanks!

Gay Crosthwait Grunfeld
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From: Ed Swanson <ed@smllp.law>

Sent: Tuesday, January 14, 2020 3:25 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>; Gay C. Grunfeld <GGrunfeld@rbgg.com>

Cc: Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>

Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

I am available at noon or at 5 pm tomorrow. Let me know which of those works better for you.

From: Joanna Hood <Joanna.Hood@doj.ca.gov>

Sent: Tuesday, January 14, 2020 3:24 PM

To: Gay C. Grunfeld <GGrunfeld@rbgg.com>

Cc: Ed Swanson <ed@smllp.law>; Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>

Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

Ed,

Do you have availability for a call tomorrow between 11-1 or after 4?

Best,

Joanna

Joanna B. Hood | Deputy Attorney General | California Department of Justice

Correctional Law Section | 1300 I Street | Sacramento, CA 95814

t (916) 210-7343 | f (916) 324-5205 | e joanna.hood@doj.ca.gov

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>

Sent: Tuesday, January 14, 2020 3:08 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>

Cc: Ed Swanson <eswanson@swansonmcnamara.com>; Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>

Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

Dear Joanna,

Thank you for this update. We still believe a call with Ed is needed. We too are available from 11 to 1 or after 4 tomorrow.

Best, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
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From: Joanna Hood <Joanna.Hood@doj.ca.gov>
Sent: Tuesday, January 14, 2020 1:58 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Cc: Ed Swanson <eswanson@swansonmcnamara.com>; Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Annakarina De La Torre-Fennell <Annakarina.Fennell@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>
Subject: RE: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

Gay,

Defendants are working diligently and as quickly as possible to begin production of documents. As you are aware, emails from January 1, 2017 through present for the identified custodians are being downloaded by CDCR and provided to the OAG on an ongoing basis. The OAG is uploading the emails to our e-discovery platform, and then running searches based on the terms agreed upon by the parties. The OAG has already received and uploaded emails for six custodians, including Kim Seibel. Searches have already been run on Ms. Seibel's emails and the OAG is in the process of reviewing them for responsiveness. I note that the list of custodians includes all ISU staff from prisons other than RJD who were involved in the initial interviews on Facility C in December 2018, and the follow up interviews in January and February 2019.

As you are also aware, on Friday, CDCR provided the OAG with a hard drive containing investigatory files—three boxes and nine packages sent from RJD. OAG is in the process of uploading the files to our e-discovery platform and we will begin review of those files as soon as they are available. Notably, those files contain items that were on discs and were not available for review during the January 6-7, 2020 visit to RJD.

CDCR has asked AW Armata to prioritize the non-compliance inquiries identified in your letter and send them on an ongoing basis, as soon as they are pulled, rather than waiting to send them all at once. Please keep in mind that AW Armata is new to the ADA Coordinator position at RJD. CAMU has sent two CCIIs to RJD on a 60-day assignment to assist him with getting oriented in his new assignment. This should help expediting production, but we that you be patient during the transition.

Defendants have not yet made a decision to withhold any files or emails, and are engaged in internal discussions about how production of certain files or emails may be impacted by POBAR. This discussion has not delayed ongoing identification and provision of potentially responsive files and emails to the OAG, and has not delayed the OAG in beginning review. Relatedly, Defendants anticipate that certain documents will be produced only if a stipulated protective order is in place, and are already in the process of drafting one.

Again, Defendants are working as quickly as possible, and will begin production, which will continue on a rolling basis, as soon as documents are reviewed. Per your request, we are prioritizing review and production of the PMK deponents and the investigatory files.

If you would still like to schedule a call with Ed, we are available tomorrow between 11-1 and after 4.

Best,
Joanna

Joanna B. Hood | Deputy Attorney General | California Department of Justice
Correctional Law Section | 1300 I Street | Sacramento, CA 95814
t (916) 210-7343 | f (916) 324-5205 | e joanna.hood@doj.ca.gov

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Tuesday, January 14, 2020 11:22 AM
To: Joanna Hood <Joanna.Hood@doj.ca.gov>
Cc: Ed Swanson <eswanson@swansonmcnamara.com>; Russa Boyd <russa.boyd@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>
Subject: Armstrong, RJD Discovery -- Need Further Meet and Confer [IWOV-DMS.FID3579]

Dear Joanna,

Following up on our call of Friday, January 10, we are increasingly concerned about Defendants' inability to provide a date by which the responsive documents will begin to be produced, especially the investigative files for the incidents, including those on the Armstrong accountability log as requested in my attached letter. The PMK deposition is two weeks from tomorrow.

We request that we talk with Ed about these issues as soon as possible. I will make myself available any time you and Ed are this afternoon after 2:30 or tomorrow all day.

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld

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Exhibit P

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

vs.

No. C94 2307 CW

GAVIN NEWSOM, et al.,

Defendants.

_____/

30(b)(6) DEPOSITION OF KIMBERLY A. SEIBEL

CONFIDENTIAL PORTION EXCERPTED

JANUARY 29, 2020

9:55 A.M.

101 Mission Street, Suite 600

San Francisco, California

REPORTED BY:

Mark W. Banta

CSR No. 6034, CRR

A P P E A R A N C E S

For the Plaintiff:

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- and -

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION
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designated by a party as Protected Material:

CONFIDENTIAL EXCERPTS EXCLUDED

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30(b)(6) DEPOSITION OF

KIMBERLY A. SEIBEL

John Armstrong v. Gavin Newsom, et al.

January 29, 2019

Mark W. Banta, CSR No. 6034, CRR

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Exhibit 5	9-20-2018 OACC Memorandum to Connie Gipson, Subject: Staff Misconduct Allegations Identified During Disability Placement Program Compliance Review at Richard J. Donovan Correctional Facility	22
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1 SAN FRANCISCO, CALIFORNIA

2 WEDNESDAY, JANUARY 29, 2020, 9:55 A.M.

3
4 KIMBERLY A. SEIBEL,

5 having been first duly sworn, was examined and testified

6 as follows:

7 EXAMINATION

8 BY MR. FREEDMAN:

9 Q. Good morning.

10 A. Good morning.

11 Q. Please state your full name for the record.

12 A. Kimberly Ann Seibel.

13 Q. Miss Seibel, my name is Michael Freedman. I'm
14 an attorney for the plaintiff class in Armstrong v.
15 Newsom, and I'll be taking your deposition today.

16 Before we get into the questions, I'd like to go
17 over a few ground rules.

18 So I will be asking you a series of questions
19 today. My questions and your answers will be recorded by
20 the court reporter who is sitting here at the end of the
21 table.

22 This is just a reminder to speak loudly,
23 clearly, and in a manner understood and easily recordable
24 by the court reporter. So that means no "um-hmms" or
25 head nodding. Do you understand that?

1 A. Yes, I do.

2 Q. You've just taken an oath that requires you to
3 tell the truth, the whole truth, and nothing but the
4 truth. Do you understand that?

5 A. Yes.

6 Q. As we go through this today, I don't want you to
7 guess about things, but if you can make an estimate about
8 something based on the knowledge that you possess, you
9 should do that. Do you understand that?

10 A. Yes.

11 Q. As we go through the deposition today, please
12 let me know if you don't understand a question. I will
13 do my best to ask it in a way that you do understand. Do
14 you understand that?

15 A. I do.

16 Q. Have you taken any medications or drugs that
17 might make it difficult for you to understand and answer
18 my questions today?

19 A. No.

20 Q. Is there any reason you would not be able to
21 answer my questions fully and truthfully today?

22 A. Not that I'm aware of.

23 MR. FREEDMAN: Let's mark this as Exhibit 1.

24 (Exhibit 1 marked.)

25 //

1 facility.

2 Q. Was this decision to send a strike team down to
3 conduct interviews the primary way in which CDCR
4 initially responded to receiving these letters?

5 A. Yeah, because we wanted to validate what was
6 being said with people that were not assigned to RJD but
7 with outside staff.

8 Q. Great. Can you turn back to the letter from
9 OACC for a moment.

10 A. Yes.

11 Q. And take a look at paragraph 3. The letter
12 instructs Miss Gipson to provide OACC with a corrective
13 action plan or a CAP to address the allegations of staff
14 misconduct by Friday, October 5th, 2018; correct?

15 A. Yes.

16 Q. Did RJD or CDCR ever produce a CAP in response
17 to OACC's request?

18 A. I do not believe so.

19 Q. Are you saying that it was not produced or you
20 don't know whether or not it was produced?

21 A. I don't know. I do -- I would be estimating no,
22 because I don't recall seeing one and I don't recall in
23 all of our document production ever reviewing one.

24 Q. Is there anyone besides you who would know
25 whether a CAP had been produced?

1 A. OACC.

2 MR. FREEDMAN: We'll mark this as Exhibit 7.

3 (Exhibit 7 marked.)

4 BY MR. FREEDMAN:

5 Q. Have you ever seen this document before?

6 A. Yes, I have.

7 Q. What is it?

8 A. This is an action plan where the associate
9 warden that was assigned to that facility was tasked to
10 put together.

11 Q. And when you say "that facility" you mean
12 Facility C at RJD?

13 A. Yes. Correct. Facility C.

14 Q. Who ordered that this document be produced?

15 A. That was part of one of our strategy meetings.
16 When we spoke that -- immediately after receiving these
17 documents that you already provided (indicating), when we
18 started having our conference calls and talking, we said,
19 "Hey, let's get the managers to immediately start
20 strategizing and put something in writing that we can
21 work towards."

22 Q. Please take a look at Item 7 on page 2. It
23 states, quote: Work with mental health staff on a
24 process for reporting allegations and misconduct
25 consistent with policy and procedure, as well as a

1 moved into the program area on Facility C; correct?

2 A. Um-hmm. (Witness nods head).

3 Q. The Facility C AW had his corner moved to the
4 corner of the gym where he can see over the yard;
5 correct?

6 A. Where -- where the officers were.

7 Q. There's been now a change in the policies and
8 practices for collecting appeals on Facility C; correct?

9 A. Correct.

10 Q. And the new policy is that the appeals office is
11 the only one with keys to get those appeals; correct?

12 A. And they collect them every business day,
13 working day.

14 Q. Was that change only made on Facility C or other
15 facilities as well?

16 A. That one was just on Facility C.

17 Q. So on other facilities, the locks have not been
18 changed?

19 A. Right. The facility captain's secretary still
20 collect them on the other facilities.

21 Q. Now just before lunch, I think you mentioned
22 something about the hiring authority reviewing all
23 Facility C staff complaints.

24 A. Correct.

25 Q. Could you speak about that a little bit?

1 A. Right. So with that, prior to this, the chief
2 deputy warden would review them and make a determination,
3 and the hiring authority took over that.

4 Q. And was that change -- so that means now any
5 staff complaint on Facility C is reviewed by the hiring
6 authority before it is resolved; is that correct?

7 A. What do you mean by resolved?

8 Q. Denied at the institution level or otherwise?

9 A. Oh, yes. Yes. At the completion.

10 Q. Correct.

11 A. Okay.

12 Q. Yes.

13 A. Yes.

14 Q. Is the hiring authority reviewing staff
15 complaints on any of the other yards at RJD?

16 A. Yes. They review them, but not all of them.

17 Q. Which ones do they review?

18 A. A good portion of them, but sometimes if the
19 warden, hiring authority, is traveling or not available,
20 then the chief deputy warden. It's not outside the scope
21 of a chief deputy warden to review them.

22 Q. But on Facility C, the hiring authority is
23 making sure to review every single one?

24 A. Right.

25 Q. Now, I believe you also mentioned staff and

1 manager training. Could you provide a little bit more
2 information about that?

3 A. Yeah. So there was training conducted -- so are
4 we talking -- so are we still talking about the Bishop
5 memorandum, prior to that or after that?

6 Q. I'd like to talk about everything that's been
7 done at RJD --

8 A. 2017 forward?

9 Q. -- since -- yes.

10 A. Okay. I just want to make sure.

11 So in 2017, the associate director at that time
12 did make -- he was at the institution anywhere from six
13 to seven times, and from that duration from about 2017 to
14 about mid-2018, he met with the managers there, he talked
15 about advocacy letters, he talked about professionalism,
16 he talked about leadership, he talked about all of those
17 things, and had meetings with those staff.

18 And I myself conducted training. I did cultural
19 training. Goodness, it's been a while. It was -- what's
20 the name of it? So it was called -- it was a class that
21 I did was called cultural leadership, and it was
22 basically -- there was portions of the Stanford
23 Experiment and the produced effects that were a part of
24 the training. That was given to all of the managers
25 there, including noncustody. And then I had key

1 supervisors there in that training as well.

2 One-on-one interviews were conducted with all
3 the managers where expectations were set and also talked
4 to them about perception in leadership and allegations
5 that were coming out of that facility.

6 Q. When you say "managers," who do you mean?

7 A. Chief deputy warden, associate wardens,
8 captains.

9 Q. Thank you.

10 A. Interviews were also done with noncustody but
11 regarding other things as well.

12 The warden at that time had done some leadership
13 training, talked about perception, talked about the
14 temperature of the yards, what was going on on the yards,
15 gave expectations as well.

16 Warden Callahan came in, provided training on
17 second and third watch to managers and supervisors and
18 any rank and file on how to be a great state employee,
19 talked about differences between missions and
20 institutions and that type of thing. So there's been
21 quite a few trainings going on.

22 Q. Were each of the trainings that you just listed
23 there trainings that were specially provided to people at
24 RJD in response to some of these allegations of staff
25 misconduct?

1 A. Yes.

2 Q. So these are not trainings that would have been
3 given in the ordinary course to staff at RJD or managers
4 at RJD?

5 A. No.

6 Q. Would there be documents documenting attendance
7 at these trainings?

8 A. Yes.

9 Q. Would there be documents setting forth what was
10 covered at these trainings as well?

11 A. There might be. I don't know if there's a list
12 or an agenda, but there might be like the lesson plan or
13 the PowerPoint.

14 Q. Were any of these trainings recorded?

15 A. No. Not that I'm aware of.

16 Q. Are there any special trainings that were
17 delivered to staff at RJD in response to these
18 allegations of staff misconduct that you haven't listed
19 for me already?

20 A. There might be some that I missed or am not
21 aware of, but these are the ones that I'm aware of. And
22 if I come across some then I'll share them.

23 Q. Currently -- let's say in the last two months,
24 so the more recent past, has any special training been
25 given at RJD to attempt to address allegations of staff

1 misconduct?

2 A. In the last two months?

3 Q. Yes.

4 A. I'm not aware of any in the last two months.

5 Q. How about in the last six months?

6 A. The last six months? I'm not aware of any.

7 Q. You listed off a number of trainings there. Can
8 you give me the date range between the earliest one and
9 the most recent one?

10 A. So some of the trainings started in early
11 January 2017, trainings occurred around September,
12 October. September of 2018, October 2018, November 2018,
13 January 2019, and then as associate director or another
14 staff go down and they have their meetings, that's when
15 they...

16 Q. Okay. I think you also mentioned monitoring of
17 the institutional executive review committee?

18 A. So --

19 Q. Could you tell me more about that?

20 A. Yeah. So from early January 2017 to about
21 mid-2018, there was a lot of monitoring of the IERC in
22 that there was concerns that they weren't fully capturing
23 use of force prior to, during, or after being captured in
24 compliance with our policy.

25 Q. So some of these concerns predated the letters

1 use of force that are on one facility, but when I have an
2 institution total of 90, meaning I've got 90 on my -- all
3 of my other yards, I see a disproportionate number which
4 to me is a red flag, something that needs to be looked
5 into.

6 Q. And you mentioned data tracking. I would like
7 to ask you some questions about that. Does CDCR
8 currently have a system to track use of force incidents?

9 A. Yes.

10 Q. What system is that?

11 A. So we have -- okay. Are you ready for this? We
12 just rolled out January 1, 2020, IRT, Incident Report
13 Tracking.

14 Prior to IRT, we had DIRS, D-I-R-S. Daily
15 Incident Report System, was a very old system in which
16 only a portion of the incident reports would be uploaded
17 into, and then the information from those would be placed
18 into a repository and then uploaded into another system
19 called IRTS. However, if that incident package did not
20 get uploaded timely, the information in it would not get
21 pulled over, so the information then had to get manually
22 input in. So the information in IRTS is not going to be
23 near as reliable as IRT.

24 Q. So we're mostly concerned with the current
25 situation, so let's talk about IRT.

1 And then are the staff complaints -- well, is everything
2 being addressed, and is it being referred appropriately?

3 Q. So the Reception Center Mission at headquarters
4 is actually looking at the substance of the staff
5 complaints?

6 A. So they'll get a -- they might ask for send me
7 the last five or send me whatever, and then they'll just
8 review them.

9 Q. So they're not looking at all staff complaints;
10 correct?

11 A. No.

12 Q. They're looking at a sample size of --

13 A. Um-hmm.

14 Q. -- some of the staff complaints; correct?

15 A. Yeah.

16 Q. But that is not something that happens at every
17 institution by the mission at headquarters, is it?

18 A. No. And that might be something that someone
19 might request on a one-time deal.

20 Q. I believe you also mentioned that headquarters
21 sent various subject matter experts to RJD to work with
22 and train staff. Could you tell me a little bit about
23 that?

24 A. Okay. Back up.

25 Q. This was when you were providing -- right before

1 A. That was mid-2018.

2 Q. Okay. You'll forgive me for going back, but the
3 use of force subject matter experts, the AW and captain,
4 when were they at RJD?

5 A. It was in -- they were there 2017, they were
6 there also on 2018.

7 Q. How long were they --

8 A. Early 2018.

9 Q. Okay. And the subject matter expert who worked
10 with the use of force analyst, how long -- when was she
11 there?

12 A. May of 2018.

13 Q. Any other subject matter experts?

14 A. For use of force?

15 Q. For anything that was sent down to RJD in
16 response to these issues that we're talking about today.

17 A. So Warden Callahan who is now retired, he was
18 there doing training on how to be a great state employee
19 on second and third watch as a whole.

20 Q. To all staff?

21 A. All staff. November. That was November of
22 2018.

23 I was there in October of 2018, and that's where
24 I provided the PowerPoint presentation on cultural
25 leadership. That was October of 2018.

1 We've had -- then I've had mentors go down. So
2 let me back up. In 2017, Pat Vasquez was down there as a
3 mentor. She was a retired annuitant warden. She was
4 providing a mentorship for the warden and she was
5 selected based on her years of experience.

6 Q. How long was she there for to provide
7 mentorship?

8 A. She was there for about three months assisting
9 and helping, and she was mentoring the warden.

10 When Warden Pollard retired, Covello came in, we
11 sent Kelly Harrington down there. He was a retired
12 annuitant, he was a retired director for Division of
13 Adult Institution. He did mentoring and he was mentoring
14 also Covello. And at that timeframe, Joe Stewart was
15 doing an out-of-class as the chief deputy warden at RJD.

16 Q. So Mr. Callahan, I believe that's the name you
17 said.

18 A. Um-hmm.

19 Q. When was he mentoring Warden Covello?

20 A. So Callahan wasn't doing mentoring. He was
21 there just doing that great state employee training.

22 Q. Who was there to mentor Covello?

23 A. Covello? Kelly Harrington.

24 Q. I'm sorry. I had the name wrong.

25 Mr. Harrington, when was he there?

1 A. Kelly was there 2018. He was there the end of
2 2018 and then his time ran out, and then we had Pat
3 Vasquez go down.

4 Q. And when was Pat Vasquez there?

5 A. Pat was there towards -- so Kelly Harrington --
6 let me back up -- was there in August 2017 to November of
7 2017. Then she was there again in August 2018 to
8 December of 2019. And then she started --

9 Q. Do you mean December 2019 or December 2018?

10 A. 2019.

11 Q. Can you describe that last time period again one
12 more time?

13 A. Yeah. That's -- you're right. That would have
14 been off. She was there from August 2019 to December of
15 2019. Kelly Harrington was there from February 2019 to
16 April, the end of April 2019. And now she just started
17 back again, Pat Vasquez, on the 22nd.

18 Q. Of?

19 A. This year.

20 Q. 2020?

21 A. 2020.

22 Q. And how long will she be there now?

23 A. Hopefully for a good four months.

24 Q. And then I believe you also mentioned that -- I
25 hope I get his name right, Joe Stewart acted out-of-class

1 Q. We've got a lieutenant from Chuckawalla. He's
2 there assisting with all of these complaints.

3 Q. What's his name?

4 A. Lieutenant George Theim.

5 Q. How long has he been there?

6 A. He started on the 27th of this month.

7 We have a Lieutenant Maria Mireles. She's
8 there. She started on the 27th of this month as well.
9 She's looking at policies.

10 Q. And when you say she's looking at policies, is
11 she looking to revise and improve policies?

12 A. Correct. Lieutenant Mireles was also on part of
13 the team that went to High Desert.

14 Q. Is she specifically looking at review of
15 policies with an eye toward reducing staff misconduct?

16 A. Yes. Getting things back into policy, what can
17 we do to improve.

18 Q. Anyone else?

19 A. Lieutenant Ware from Salinas Valley has been
20 there. He's been there for a couple of weeks. He's
21 still there and he's working on complaints as well.

22 Q. And when you say "complaints," you're talking
23 about complaints --

24 A. Allegations.

25 Q. Inquiries that are not yet complete out of the

1 December interviews and things that followed from that?

2 A. Yes.

3 Q. Anyone else?

4 A. That's what we have going now, but we're always
5 looking for more.

6 Q. I'm going to keep going down this list of things
7 you told us you've done just so I can understand them
8 better.

9 You mentioned that the warden and chief deputy
10 warden have done trainings. Can you tell me a little bit
11 more about that?

12 A. So Joe Stewart, he does a lot of leadership
13 trainings. They've done some off-site trainings where
14 they've pulled managers, associate wardens and captains
15 off site and they did leadership trainings.

16 Ken Hurdle, I don't know if you know who he is.
17 He's a retired chief ombudsman. He came and did some
18 leadership training. Headquarters paid for that as a
19 private vendor. So -- and there should be 844s all
20 showing who was present at these trainings.

21 Q. Great. And were these trainings aimed towards
22 reducing staff misconduct or did they have a broader
23 scope?

24 A. Staff misconduct, but also leadership, having
25 good leadership and accountability.

1 Q. I believe you mentioned ombudsmen are on site at
2 RJD looking at various things. Could you tell me a
3 little bit more about that?

4 A. So each -- we have ombudsmen that serve for the
5 Secretary. However, they are assigned to different
6 institutions. If there is times where we could request
7 an ombudsman to go look into a certain issue that we
8 might see or we might hear something that's going on, we
9 would ask the ombudsman to go down there and look at
10 certain areas, even review certain inmates, and then
11 they'll come back and report directly to the director.

12 Q. Are there -- is there always -- how many
13 ombudsmen are typically at RJD?

14 A. Usually one is assigned. However, if we need
15 them to go down and look at multiple things, the chief
16 ombudsman might send two or three, depending on what's
17 needed.

18 Q. Since January 1st, 2017, have there been extra
19 ombudsmen sent to RJD?

20 A. There was extra to help participate with this
21 (indicating).

22 Q. And when you say "this," you're referring to the
23 December 4 and 5 interviews?

24 A. Yes.

25 Q. On Facility C?

1 A. Correct. There was extras sent down for this.
2 But I would not be aware if they sent down additional to
3 look at anything else. They don't report to my
4 structure.

5 Q. So headquarters and the Secretary have the
6 ability to use ombudsmen to engage in additional
7 monitoring of the institutions; correct?

8 A. Correct.

9 Q. But beyond the ombudsmen who were sent down for
10 the December 4th and 5th, 2018, interviews, you're not
11 aware of any extra ombudsmen being sent to RJD; is that
12 correct?

13 A. Correct. But it doesn't mean it didn't happen
14 because they do a lot of tours. They're in the field a
15 lot.

16 Q. Are those special ombudsmen deployments
17 documented anywhere?

18 A. They might be documented in a report directly
19 either to the secretary or to the director.

20 Q. So you said a couple of things. One I believe
21 was sent additional staff to assist with advocacy letter
22 and staff complaint backlogs. Have you already mentioned
23 the staff who have gone down to assist with that or is
24 that additional staff who you haven't mentioned today?

25 A. No. They've all been mentioned.

1 Q. Those additional staff also have been and are
2 being used to investigate the allegations in the Bishop
3 memo? Is that correct?

4 A. They're not investigating it. They're doing
5 their inquiry.

6 Q. Inquiring into the...

7 I believe you mentioned you have pulled staff
8 from their posts and put them on special assignment.
9 Could you tell me a little bit more about that?

10 A. So Lieutenant Gabe Ortiz was the staff complaint
11 lieutenant in appeals office. He was pulled from his
12 post or we redirected him from his post to work
13 specifically on just going through these allegations, and
14 then we redirected Sergeant Segovia from Investigative
15 Services Unit to also assist.

16 Q. Have there been any other staff who have been
17 pulled from their posts on special assignment to help
18 address staff misconduct at RJD?

19 A. Not from RJD. Just these others that I've
20 already mentioned.

21 Q. So there was those list of people who came from
22 other institutions or from headquarters to assist;
23 correct?

24 A. Correct.

25 Q. And then you mentioned these two staff members,

1 Segovia and Ortiz, at RJD who were pulled from their
2 positions at RJD and placed on special assignment. Is
3 that correct?

4 A. Yes. Um-hmm.

5 Q. I'm uncertain whether you're prepared to discuss
6 this, but I think you also mentioned that the department
7 rolled out the Allegation Inquiry Management System this
8 week at RJD?

9 A. Yes.

10 Q. What is AIMS, as I'll call it, A-I-M-S?

11 A. So do you want to know how it works, what it is,
12 how it's going to --

13 Q. Well, what is AIMS changing?

14 A. So AIMS is changing that -- all of the
15 allegation inquiry management section. They're going to
16 support the grievance process in that what's going to
17 happen is so staff complaint is put into the box, it's
18 collected, it goes to the appeals office, the CC-2 or the
19 staff complaint lieutenant, depending on which
20 institution gets the additional staff, will review it,
21 make their recommendation on how it should be processed.
22 They'll forward it to the warden.

23 If the warden elects that, yes, this warrants an
24 inquiry or an investigation, if it warrants an inquiry
25 it's going to get sent to that AIMS unit which works up

1 out of Northern California. There's going to be three
2 regions, but Northern California is the only one that's
3 going to be starting up. And then they're going to
4 process them all.

5 Q. And so am I correct in saying that one of the
6 main changes in moving to AIMS is that staff from the
7 Office of Internal Affairs will conduct the fact finding
8 into inquiries instead of local ISU staff; is that
9 correct?

10 A. Yes. So that's correct. But AIMS is like a
11 subset of Office of Internal Affairs, and I believe a
12 different PMK will give you all the details.

13 Q. Understood. So if the results of an inquiry
14 conducted by AIMS is then referred by the hiring
15 authority to OIA, it would go to a different part of OIA;
16 correct?

17 A. Yes. So if -- if the warden felt it needed an
18 inquiry, it would go to AIMS. If the hiring authority
19 felt it needed an investigation, it would go straight via
20 the 898 process to OIA.

21 Q. I believe you also mentioned later in your
22 testimony today that some of the management has been
23 changed on Facility C. Could you tell me a little bit
24 more about that.

25 A. So the captain has been moved off the yard.

1 Felt he reached a level of making changes on that yard
2 that needed to be made. He had reached his peak. There
3 was a vacancy, took advantage of that vacancy. The
4 hiring authority recruited from outside the department
5 and hired a captain, actually came from headquarters, and
6 is now assigned to Facility C.

7 Q. And what's -- what was the old captain's name?

8 A. Brocamonte.

9 Q. And the new captain's name?

10 A. Ruggiero. I cannot say it correct.

11 Q. And the new captain, when did he start on
12 Facility C?

13 A. 2019 sometime.

14 Q. I believe you also mentioned that CDCR served an
15 AW an involuntary transfer in mid-February; is that
16 correct? That will be effective mid-February; is that
17 correct?

18 A. Yeah. He was served in December and it goes
19 into effect mid-February.

20 Q. And what was the name of that AW?

21 A. Jesse Juarez.

22 Q. And why was he served an involuntary transfer?

23 A. Felt that he just wasn't the right person to
24 support the mission at RJD.

25 Q. And why did CDCR think he wasn't the right

1 person to support the mission at RJD?

2 A. Just didn't feel he had what it takes to make
3 the change, to effect change.

4 Q. Did his involuntary transfer have anything to do
5 with the staff misconduct problems at RJD?

6 A. I wouldn't say directly. I would say his
7 inability to make change a whole at his role, at his
8 level, is what generated the change. So we needed to
9 bring in somebody else.

10 Q. Are there any vacancies at the AW level at RJD
11 currently?

12 A. We have -- there's six positions, three
13 permanent full-time vacancies, and we have one vacancy
14 due to sick.

15 Q. So of the six positions, there are only two who
16 are permanent placements there; is that correct?

17 A. Correct.

18 Q. And who are those?

19 A. Carie Covell and Francisco Armenta.

20 Q. And what roles do they serve?

21 A. Carie Covell is the AW of health care, and
22 Armenta is I believe working on one of the facilities, a
23 program associate warden.

24 Q. Is it difficult to effect change at an
25 institution when the leadership is comprised of a lot of

1 actors?

2 A. Yes.

3 Q. And why is that?

4 A. Just because you said, actors. It takes time.
5 It takes time to learn their role, to be comfortable in
6 it, to be able to do what they need to do.

7 Q. Is CDCR concerned at all that an institution
8 like RJD with a significant number of staff misconduct
9 allegations has so many actors at the AW level?

10 A. Yes. And that's why we redirected those senior
11 AWs from those other prisons to help while we're going
12 through the hiring process.

13 Q. When does CDCR expect to fill the three vacant
14 AW positions at RJD?

15 A. We're currently recruiting right now, and we --
16 our goal is to fill all four of them, because there's
17 three permanent full-time vacancies, but once Juarez is
18 relocated, that will give us four. So the goal is to
19 fill them all, and they're actively recruiting right now.

20 Q. And how long will that process take?

21 A. Well, hopefully, when the recruitment close and
22 we get enough applications in, that's when we start. But
23 the interviews have not been scheduled yet.

24 Q. When does recruitment close?

25 A. I would have to check on the date, employment

1 posting, when all the applications are due.

2 Q. And then is there an interview process after the
3 recruitment process, after the recruitment comes to a
4 close?

5 A. So once the application comes in, then it's
6 screened to make sure they meet the minimum
7 qualifications, then there will be an interview.

8 Q. And then there will be some period of time to
9 decide who to select after that as well?

10 A. Yes.

11 Q. Is this a process that will take weeks?

12 A. Weeks.

13 Q. Will it take months?

14 A. Hopefully not too many months.

15 Q. Some months perhaps, though?

16 A. Some months, yes.

17 Q. So RJD is going to be operating with a lot of
18 actors for at least weeks if not some months; is that
19 correct?

20 A. Right. But that's why we sent down those
21 additional, because they're already hard bar experienced
22 AWs who can make decisions.

23 Q. Since -- sorry. So we've discussed a lot of
24 things that you and others have implemented at RJD in an
25 effort to address the staff misconduct problems

1 identified in the December 2018 interviews; correct?

2 A. Correct.

3 Q. Is there anything that we have not discussed
4 today that CDCR has done to try to reduce staff
5 misconduct at RJD?

6 A. I'd like to say that when Warden Covello was
7 there, I felt we were moving in a positive direction.
8 However, the vetting process didn't come through for him
9 and he was subsequently moved. And so starting over with
10 a new warden, sometimes you have to step back a few steps
11 to get the groove going again.

12 Also, we've had to restart with a new chief
13 deputy warden at RJD. However, I'm very confident with
14 this chief deputy warden and this warden, and I feel that
15 they can do what we need to do.

16 Q. Why are you confident?

17 A. Their energy, their commitment, their leadership
18 abilities, their prior work histories. They have very
19 good experiences.

20 Q. Do you interact directly with them on a regular
21 basis?

22 A. Yes.

23 Q. Do you interact with them on a regular basis
24 regarding staff misconduct issues at RJD?

25 A. I interact with them on everything.

1 MR. FREEDMAN: Why don't we just take a
2 five-minute break or so.

3 (Recess taken from 4:49 to 5:00 p.m.)

4 BY MR. FREEDMAN:

5 Q. It sounded like you had something you wanted to
6 clarify?

7 A. Yeah. You had asked if there was anything else
8 we had done at CDCR that I might have missed or not
9 mentioned. We did some additional staff complaint
10 training, southern region, in late October 2019, and RJD
11 sent additional staff to do a staff complaint training to
12 attend, and then the Office of Internal Affairs lent us a
13 couple of their agents to review some of the -- conduct
14 some of the allegation reviews.

15 Q. So those are two additional things that you're
16 telling me about; correct?

17 A. Yes.

18 Q. The first one is that some staff from RJD
19 attended a southern region training regarding staff
20 complaints?

21 A. Correct.

22 Q. In October 2018?

23 A. 2019.

24 Q. 2019. Thank you. How many staff attended?

25 A. I would have to find out how many.

1 Q. Was it staff who work to conduct inquiries?

2 A. Yeah. It would be typically the lieutenant
3 level.

4 Q. Are they part of the ISU staff?

5 A. Or a line staff.

6 Q. And then the second thing is that the Office of
7 Internal Affairs lent two agents to help review -- help
8 conduct inquiries at the local level; is that correct?

9 A. Correct.

10 Q. And how long were those two agents lent to RJD
11 to conduct those inquiries?

12 A. For about 30 days.

13 Q. And when was that?

14 A. That was -- wait. Now we're 2020. So that was
15 about towards the late 2019.

16 Q. Okay. I'm going to ask again, because I'm not
17 sure I got an answer to it before, of the inquiries
18 started -- that started out of the December 2018
19 interviews on Facility C, how many are not -- of the
20 inquiries are not yet complete?

21 A. You're right. I didn't have an answer to that,
22 and that was one of the things we were going to get back
23 to you on.

24 Q. Okay. So you do not know how many inquiries are
25 not yet complete from those interviews?

1 A. Correct.

2 Q. So now I'm going to ask you some questions that
3 address topics 8 and 15, 16 and 17.

4 You've been designated as the person most
5 knowledgeable on those topics; correct?

6 A. Yes.

7 Q. Okay. So since January 1st, 2017, how many
8 allegations of staff misconduct at RJD has CDCR
9 discovered?

10 A. So according to our log which tracks all the
11 allegations of staff misconduct from 2017 to present, in
12 2017 I have a total of 295; in 2018 I have 481; in 2019 I
13 have 289; and 2020 I have 38 noted on the log.

14 Q. And 2020, what date is that up to?

15 A. That was up to -- what's today? 29th? The
16 27th.

17 Q. Since January 1st, 2017, how many allegations of
18 staff misconduct has the hiring authority sustained the
19 findings of misconduct?

20 A. So you want to know how many cases from
21 January 1st to present where the misconduct was
22 sustained?

23 Q. Correct.

24 A. Or where a penalty was given?

25 Q. I will ask both of those. But for now I just

1 I don't know that that will be necessary, but we're
2 objecting just for the record. Okay.

3 I'd also just say on the record, regarding this
4 data of the -- the pure data regarding the types of
5 discipline imposed against everyone, not just Armstrong
6 class members, perhaps the parties can meet and confer
7 about a way to produce that data in a way that doesn't
8 require Miss Seibel to come back and testify.

9 MS. DE LA TORRE-FENNELL: Okay.

10 MS. HOOD: That's agreeable.

11 BY MR. FREEDMAN:

12 Q. Since January 1st, 2017, as far as you're aware,
13 has RJD directly referred any cases of staff misconduct
14 to any criminal law enforcement agencies?

15 A. I'm not aware of any being referred for
16 criminal.

17 Q. Okay. As far as you are aware, has OIA referred
18 any allegations of staff misconduct at RJD to any law
19 enforcement agencies such as the San Diego District
20 Attorney since January 1st, 2017?

21 MS. DE LA TORRE-FENNELL: Objection. That's
22 outside the scope of what Miss Seibel is being designated
23 to discuss.

24 BY MR. FREEDMAN:

25 Q. You can answer if you know.

1 A. I'm not aware of any.

2 Q. Since January 1st, 2017, if you know, how many
3 times has a correctional officer at RJD self-reported
4 that he or she engaged in staff misconduct?

5 A. Self-reported? I'm not aware of any
6 self-reporting.

7 Q. When you say you're not aware, does that mean as
8 far as you know that hasn't happened?

9 A. As far as -- I'm not aware of any staff
10 self-reporting that they have engaged in staff
11 misconduct. That wouldn't mean it hasn't happened. I
12 just have not read every single...

13 Q. Since January 1st, 2017, if you know, how many
14 times has a correctional officer at RJD reported that he
15 or she witnessed another correctional officer engaged in
16 staff misconduct?

17 A. I'm not aware of any.

18 Q. And when you say you're not aware of any, that
19 means as far as you know it hasn't happened; right?

20 A. As far as I'm aware, I'm not aware of any --
21 staff member or any correctional staff member?

22 Q. Correctional staff member.

23 A. I'm not aware of any correctional staff member,
24 but it doesn't mean it doesn't happen. I'm just not
25 aware of that case.

1 A. Yes.

2 Q. And CDCR has also looked at data regarding staff
3 complaints; is that correct?

4 A. Yes.

5 Q. CDCR has not, however, gone back to the
6 incarcerated population to see whether their perception
7 of the situation has changed; is that correct?

8 A. Not yet. No.

9 Q. Are there any plans to do that?

10 A. There's discussion of possibly doing that, but
11 the goal is to complete the active inquiries that are
12 still open.

13 Q. Is there any schedule for when that follow-up
14 strike force interview process might take place?

15 A. No.

16 Q. I asked if you have data on this, but do you
17 have data regarding the overall number of people who were
18 terminated because of staff misconduct from January 1st,
19 2017, to the present? Or do you only have that data for
20 Armstrong, for where the victim was an Armstrong class
21 member?

22 A. Just Armstrong at this time.

23 Q. Okay. So there's no point in me asking you how
24 many people were terminated for staff misconduct between
25 January 1st, 2017, and the present; correct?

1 A. No. You're bleeding by the way.

2 MR. FREEDMAN: I know. Paper cut.

3 THE WITNESS: Your knuckle.

4 MR. FREEDMAN: Well, we're almost done. It's
5 been a long day.

6 Q. Does CDCR believe that there is currently a
7 serious problem at RJD with staff misconduct?

8 (Brief interruption in proceedings.)

9 A. Can you --

10 Q. I'll repeat the question.

11 A. -- repeat the question, and define "serious."

12 Q. Does CDCR believe there's currently a serious
13 problem at RJD with respect to staff misconduct? And by
14 serious, I mean an urgent problem that requires resources
15 and attention.

16 A. The department recognizes there is a problem
17 that does take resources and does need to be addressed.

18 Q. Is it a problem throughout the institution or
19 only on Facility C?

20 A. I would say the majority that I have been well
21 immersed in are focused on Facility C, but there is staff
22 misconduct that does occur on the other facilities.

23 Q. Does CDCR believe that there is currently a
24 serious problem, defined in the same way as an urgent
25 problem requiring attention and resources, at RJD with

1 A. No, I don't think the department would say that
2 there is a serious problem in regards to allegations of
3 retaliation.

4 Q. Does CDCR believe that there is currently a
5 serious problem at RJD with staff retaliating against
6 incarcerated people who file staff complaints?

7 A. No. I think the department's stance is we saw a
8 problem, we made some changes, and the staff complaints
9 reduced, which also is in correlation to the incidents
10 reducing which shows that we're trending in the right
11 direction.

12 Q. Does CDCR believe that there is currently a
13 serious problem at RJD with staff targeting individuals
14 with disabilities, including individuals with mental
15 illness, with misconduct?

16 A. No. We do not feel that they're targeting class
17 members.

18 Q. Does CDCR believe that the -- let me go back.

19 In the December -- in AW Bishop's report, he
20 provided a lot of information about incarcerated people
21 being afraid to request help from staff; correct?

22 A. Yes.

23 Q. Does CDCR have any reason to believe that
24 incarcerated people on Facility C are any less afraid
25 than they were in December of 2018?

1 A. I have no data or statistical information that
2 would tell me either way that a person is less or more
3 hesitant.

4 Q. So CDCR doesn't know whether that problem has
5 improved?

6 A. Statistically or data-wise, no, other than my
7 staff complaints have reduced, as long as my -- as well
8 as uses of force incidents. That's a big dramatic --
9 that's a big improvement.

10 Q. If you were an incarcerated person with a
11 disability at RJD, would you be concerned about
12 retaliation if you submitted an 1824 requesting an
13 accommodation for your disability?

14 MS. DE LA TORRE-FENNELL: Objection. It's an
15 improper hypothetical and outside the scope of the
16 person's most knowledgeable deposition and the topics
17 designated.

18 BY MR. FREEDMAN:

19 Q. You can go ahead and answer.

20 A. No. I would not be.

21 Q. Would you be concerned about retaliation if you
22 submitted a grievance complaining that a RJD staff member
23 failed to provide you with disability accommodations?

24 MS. DE LA TORRE-FENNELL: Objection. Outside
25 the scope of the topics designated. An improper

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN FRANCISCO)
3

4 I, MARK W. BANTA, a Certified Shorthand
5 Reporter, CSR No. 6034, do hereby certify:

6 That the foregoing proceedings were taken
7 before me at the time and place therein set forth, at
8 which time the witness was put under oath by me;

9 That said proceedings were recorded
10 stenographically by me and were thereafter transcribed;

11 That a review of the transcript by the deponent
12 was not requested;

13 I further certify that I am neither counsel
14 for, nor related to or employed by any attorney of the
15 parties to the action, nor in any way interested in the
16 outcome of this action.

17 In witness whereof, I have hereunto subscribed
18 my name.

19
20 Dated: February 6, 2020

21 
22
23

24 MARK W. BANTA
25 CSR 6034, CRR

Exhibit Q



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Michael Freedman
Email: MFreedman@rbgg.com

February 6, 2020

VIA ELECTRONIC MAIL ONLY

Joanna B. Hood
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom*
Our File No. 0581-03

Dear Joanna:

I am writing to confirm agreements made during our conversation on February 4, 2020, regarding the production of documents.

First, Plaintiffs' counsel requests a copy, pursuant to Federal Rule of Civil Procedure 26, of the document(s) relied on by Kim Seibel to refresh her memory during her January 29, 2020 deposition. This request includes, but is not limited to, the approximately four-page document to which Ms. Seibel referred when providing testimony regarding (a) changes made at RJD to address staff misconduct and (b) current and historical data regarding staff misconduct at RJD.

Second, Defendants produced Ms. Seibel as a person most knowledgeable for topics 9, 15, 16, and 17. During Ms. Seibel's deposition, she was unable to provide full testimony regarding topics 15, 16, and 17. At the deposition, Plaintiffs objected to Ms. Seibel's designation as a person most knowledgeable on these topics and reserved their right to require Defendants to produce a different witness on those topics or to continue Ms. Seibel's deposition if she can become a person most knowledgeable on those topics. On February 4, 2020, the parties agreed that, in an effort to avoid the need for additional testimony on topics 15, 16, and 17, Plaintiffs' counsel would pose questions to Defendants in writing. Those questions are enclosed in interrogatory form. We request Ms. Seibel's responses to the interrogatories be verified and have included a verification form.

Joanna B. Hood
February 6, 2020
Page 2

Please produce answers to the interrogatories by Friday, February 17, 2020. By agreeing to accept written answers to the questions, Plaintiffs are not foregoing their right to continue Ms. Seibel's deposition to ask questions regarding Topics 15, 16, or 17 or regarding Defendants' interrogatory responses or to insist and potentially move to compel Defendants to produce a different person most knowledgeable on those topics.

Third, Defendants produced at least seven logs in the second round of document production: DOJ00000706-711; DOJ00000715-756; DOJ00001180-1203; DOJ00001204-1237; DOJ00001238-1259; DOJ00003308-3317; DOJ00003319. Regarding each of these logs, can you please provide the following information:

1. Who generated the log?
2. Where is the log maintained, at the institution, headquarters, the Office of Internal Affairs, or elsewhere?
3. What is the purpose of the logs?
4. Which dates are covered by the log?
5. Do the logs differs from the other logs produced and, if yes, how?
6. What does the heading for each column on each log mean?

Please produce answers to these questions by Friday, February 17, 2020. In addition, Defendants produced the first six logs as PDFs, not as native Excel files. If Defendants maintain any of the logs in native format, please produce them in native format. Plaintiffs reserve the right to ask Ms. Seibel questions about these logs, as they were produced on January 31, 2020, following Ms. Seibel's deposition on January 29, 2020.

Fourth, Plaintiffs' counsel requests that Defendants agree to a date certain by which Defendants will produce all investigative files responsive to Plaintiffs' document requests. Plaintiffs' counsel proposes Friday, February 17, 2020. Plaintiffs' counsel notes that, to date, Defendants have not produced any investigation reports from the Office of Internal Affairs or any Forms 402 or 403.

Lastly, Defendants have not produced any ESI from Kim Seibel and Tricia Ramos. Please provide an update regarding when Defendants will produce these documents.

///

Joanna B. Hood
February 6, 2020
Page 3

We look forward to hearing back from you.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Michael Freedman

By: Michael Freedman
Senior Counsel

MLF:cg

Enclosures

cc: Russa Boyd
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Annakarina De La Torre-Fennell
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**PLAINTIFFS' SPECIAL
INTERROGATORIES**

Judge: Hon. Claudia Wilken

PROPOUNDING PARTY: Plaintiffs JOHN ARMSTRONG et al.

RESPONDING PARTY: Defendants GAVIN NEWSOM et al.

SET NUMBER: 1

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs JOHN ARMSTRONG et al. ("Plaintiffs") propound these Special Interrogatories ("Interrogatories") on Defendants GAVIN NEWSOM et al. ("Defendants"). Defendants are required to respond in writing to the offices of Rosen Bien Galvan & Grunfeld LLP, 101 Mission Street, Sixth Floor, San Francisco, California 94105, counsel for Plaintiffs, no later February 14, 2020.

INSTRUCTIONS

1. These instructions and definitions should be construed to require answers based upon the knowledge of, and information available to you and your agents, representatives, employees, servants and, unless privileged, your attorneys. This includes information subject to your possession and/or control, and not merely information known of your own personal knowledge. For any information withheld on the ground of privilege or work product protection, identify the relevant interrogatory(ies), the grounds upon which the information is being withheld, the nature of the information withheld, the author, date, recipients, and subject matter of any documents containing such information, and the identity of the person on whose behalf the privilege is asserted.

2. Each answer to an interrogatory shall be answered under oath, verified and signed by the answering party.

3. In answering these interrogatories, quote each interrogatory before each answer.

4. These discovery requests are intended as continuing requests, requiring you to supplement your interrogatory responses to the extent required by Rule 26 of the Federal Rules of Civil Procedure.

5. No part of an interrogatory should be left unanswered merely because an objection is interposed to another part of the interrogatory. If a partial or incomplete answer is provided, you shall state that the answer is partial or incomplete. If you cannot answer a particular interrogatory in full after exercising due diligence to secure the information to do so, answer to the extent possible, specify your inability to answer the

6. For all interrogatories for which the answers involve both privileged or protected material, and non-privileged or unprotected material, answer the interrogatory to the extent that it calls for non-privileged and unprotected material, and provide the information required in Instruction 1 above for the privileged or protected portion of your answer.

7. If you elect to specify and produce business records in answer to any interrogatory, the specification shall be in sufficient detail to permit Plaintiffs to readily locate and identify the business records from which the answer may be ascertained.

8. Where acts set forth in answers or portions thereof are supplied upon information and belief, rather than upon actual knowledge, the answer should so state and specifically identify the source or sources of such information and belief.

9. Notwithstanding any definition below, each word, term or phrase used in these interrogatories is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

10. In the event that your answer to any interrogatory is "not applicable" or any similar phrase or answer, explain in detail why that interrogatory is not applicable.

11. In the event that your answer to any interrogatory is “do not know” or any similar phrase or answer, explain in detail who, if anyone, would know the answer to that interrogatory, where the answer to that interrogatory might be found, and all efforts made by you to obtain the answer to that interrogatory.

12. In construing these interrogatories, the singular shall include the plural and the plural shall include the singular. A masculine, feminine or neutral pronoun shall not exclude the other genders, so that the interpretation applied results in the more expansive response.

DEFINITIONS

1. “YOU” and “YOUR” means Defendants GAVIN NEWSOM et al..

2. “RJD” means the Richard J. Donovan Correctional Facility.

3. "ANY" AND "ALL," as used herein, shall include "EACH" AND "EVERY" AND are not to be construed to limit a request. "AND" AND "OR" should be construed disjunctively OR conjunctively as necessary to make the request inclusive rather than exclusive, AND are not to be construed to limit a request.

4. "INCLUDING" means "including, but not limited to," AND is not to be construed to limit a request.

5. "INCARCERATED PERSON" means ANY person held in custody at RJD at ANY point of time, regardless of pre-arraignment status, pre-trial status, post-conviction status, OR ANY other status, AND regardless of whether they are described by YOU with different terms such as "inmate," "prisoner," "resident," "patient," or "detainee."

6. "STAFF MISCONDUCT" means staff behavior in violation of law, policy, regulation or procedure or appearing contrary to an ethical or professional standard as defined in Title 15, § 3084(g) and Departmental Operations Manual § 54110.25. STAFF MISCONDUCT includes EXCESSIVE USE OF FORCE.

7. EXCESSIVE USE OF FORCE means the use of more force than is objectively reasonable to accomplish a lawful purpose as defined in Departmental Operations Manual § 51020.4.

INTERROGATORIES

INTERROGATORY NO. 1:

For each month from January 1, 2017 to the present, indicate the number of STAFF MISCONDUCT allegations that the RJD hiring authority (a) sustained or (b) did not sustain.

INTERROGATORY NO. 2:

For each month from January 1, 2017 to the present, indicate the number of STAFF MISCONDUCT allegations that the RJD hiring authority sustained and imposed (a) corrective action or (b) disciplinary action.

INTERROGATORY NO. 3:

For each month from January 1, 2017 to the present, please indicate the number of

1 STAFF MISCONDUCT allegations that the RJD hiring authority sustained and issued
2 (a) a Level 1 penalty (official reprimand), (b) a Level 2 penalty (1-2 day suspension
3 without pay), (c) a Level 3, 4, 5, 6, or 7 penalty (salary reduction or suspension without
4 pay), (d) a Level 8 penalty (demotion), or (e) a Level 9 penalty (dismissal), as those levels
5 are defined in the Employee Disciplinary Matrix, Department of Operations Manual,
6 § 33030.16.

7 **INTERROGATORY NO. 4:**

8 Does the information provided in the answers to Interrogatories 1-3 include all
9 allegations of STAFF MISCONDUCT engaged in by RJD employees including, for
10 example, STAFF MISCONDUCT that occurred away from the prison and STAFF
11 MISCONDUCT that did not involve an incarcerated person as a victim of the STAFF
12 MISCONDUCT?

13 **INTERROGATORY NO. 5:**

14 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the
15 present, indicate the number of STAFF MISCONDUCT allegations in which an
16 incarcerated person at RJD was an alleged victim of the STAFF MISCONDUCT where
17 the RJD hiring authority (a) sustained or (b) did not sustain in which an incarcerated
18 person at RJD was an alleged victim of the STAFF MISCONDUCT.

19 **INTERROGATORY NO. 6:**

20 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the
21 present, indicate the number of STAFF MISCONDUCT allegations in which an
22 incarcerated person at RJD was an alleged victim of the STAFF MISCONDUCT where
23 the RJD hiring authority sustained and imposed (a) corrective action or (b) disciplinary
24 action .

25 **INTERROGATORY NO. 7:**


26 If the answer to Interrogatory 4 is yes, for each month from January 1, 2017 to the
27 present, please indicate the number of STAFF MISCONDUCT allegations in which an
28 incarcerated person at RJD was an alleged victim of the STAFF MISCONDUCT where

1 the RJD hiring authority sustained and issued (a) a Level 1 penalty (official reprimand),
2 (b) a Level 2 penalty (1-2 day suspension without pay), (c) a Level 3, 4, 5, 6, or 7 penalty
3 (salary reduction or suspension without pay), (d) a Level 8 penalty (demotion), or (e) a
4 Level 9 penalty (dismissal), as those levels are defined in the Employee Disciplinary
5 Matrix, Department of Operations Manual, § 33030.16.

6
7 DATED: February 6, 2020

ROSEN BIEN GALVAN & GRUNFELD LLP

8 By:

9 
Gay Crosthwait Grunfeld

10 Attorneys for Plaintiffs
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I have read the foregoing Response to Plaintiffs' Special Interrogatories and know its contents.

I am the Deputy Director of Facility Operations – Division of Adult Institutions for the California Department of Corrections and Rehabilitation, a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Executed on _____, 2020, at Sacramento, California.

Kimberly Seibel

Print Name of Signatory

Signature

Exhibit R

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

Case No. C94 2307 CW

GAVIN NEWSOM, et al.,

Defendants.

DEPOSITION OF PATRICIA JANE RAMOS

Tuesday, February 4, 2020

10:27 a.m. - 6:42 p.m.

101 Mission Street, Sixth Floor

San Francisco, California

REPORTED BY:

Ingrid Skorobohaty

CSR No. 11669

1 APPEARANCES:

2
3 For Plaintiffs:

4 ROSEN BIEN GALVAN & GRUNFELD LLP
5 MICHAEL FREEDMAN, ATTORNEY AT LAW
6 101 Mission Street, Sixth Floor
7 San Francisco, California 94105
8 (415) 433-6830
9 mfreedman@rbgg.com

10 For Defendants :

11 STATE OF CALIFORNIA DEPART OF JUSTICE
12 OFFICE OF THE ATTORNEY GENERAL
13 CORRECTIONAL LAW SECTION
14 ANNAKARINA DE LA TORRE-FENNELL,
15 DEPUTY ATTORNEY GENERAL
16 - and -
17 JOANNA B. HOOD, DEPUTY ATTORNEY GENERAL
18 1300 I Street
19 Sacramento, California 95814
20 (916) 210-7361
21 annakarina.fennell@doj.ca.gov
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23 - and -

24 STATE OF CALIFORNIA
25 DEPARTMENT OF CORRECTIONS AND REHABILITATION
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WITNESS: PATRICIA JANE RAMOS

EXAMINATION

PAGE

By Mr. Freedman

7

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PATRICIA JANE RAMOS

Armstrong v. Newsom, et al.

Tuesday, February 4, 2020

Ingrid Skorobohaty CSR No. 11669

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PATRICIA JANE RAMOS

Armstrong v. Newsom, et al.

Tuesday, February 4, 2020

Ingrid Skorobohaty CSR No. 11669

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Exhibit 9	Three pages, first one titled "OIA 2017 Cases by Central Intake Outcomes (R.J. Donovan Correctional Facility)"	115
Exhibit 10	One page headed "Case Tracking"	121
Exhibit 11	Multiple pages, first page headed "S-RJD-086-19-A"	181
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Exhibit 13	Multipage January 17, 2020 letter to Mr. Ralph M. Diaz from the Office of the Inspector General	193

1 SAN FRANCISCO, CALIFORNIA

2 TUESDAY, FEBRUARY 4, 2020, 10:27 A.M.

3
4 MR. FREEDMAN: So before we get started today,
5 I just want to set forth the parties' mostly agreement
6 about Plaintiffs' reservation of the right to bring
7 Ms. Ramos back for further deposition or to continue the
8 deposition.

9 The parties agree that Plaintiffs can bring
10 Ms. Ramos back to ask her questions about any
11 subsequently produced documents. The Plaintiffs agree
12 that, if we bring Ms. Ramos back, we will not ask her
13 any straightforward questions about already produced
14 documents.

15 And the parties currently have a dispute over
16 whether -- if we bring Ms. Ramos back to ask her
17 questions about any subsequently produced documents,
18 whether Plaintiffs can ask questions regarding
19 previously produced documents if they relate to
20 subsequently produced documents.

21 Counsel, does that fit with your
22 understanding?

23 MS. DE LA TORRE-FENNELL: Yes.

24 MR. FREEDMAN: Great.

25 Could you please swear in the witness.

1 PATRICIA JANE RAMOS,
2 having been first duly sworn, was examined and
3 testified as follows:
4

5 EXAMINATION

6 MR. FREEDMAN: Good morning.

7 THE WITNESS: Good morning.

8 BY MR. FREEDMAN:

9 Q. My name is Michael Freedman. I'm an attorney
10 for the plaintiff class in Armstrong v. Newsom, and I'll
11 be taking your deposition today.

12 Could you please state your full name for the
13 record.

14 A. Patricia Jane Ramos.

15 Q. I will be asking you a series of questions
16 here today. My questions and your answers will be
17 recorded by the court reporter, who's sitting here at
18 the end of the table. This is just a reminder to speak
19 loudly and in a manner that can be understood and easily
20 recorded by the court reporter.

21 In addition, the court reporter can only
22 record one of us at a time, so let's do our best today
23 not to talk over each other.

24 Do you understand?

25 A. Yes.

1 Q. You've just taken an oath that requires you to
2 tell the truth, the whole truth, and nothing but the
3 truth.

4 Do you understand that oath?

5 A. Yes.

6 Q. As you're answering my questions today, I
7 don't want you to guess about things, but if you can
8 make an estimate about something based on your
9 knowledge, you should do that.

10 Do you understand?

11 A. Yes.

12 Q. Throughout the deposition today, please let me
13 know if you do not understand a question. Please also
14 let me know if you need a break.

15 Do you understand?

16 A. Yes.

17 Q. Have you taken any medication or drugs that
18 might make it difficult for you to understand and answer
19 my questions today?

20 A. No.

21 Q. Is there any reason you would not be able to
22 answer my questions fully and truthfully today?

23 A. No.

24 MR. FREEDMAN: Let's mark this as Exhibit --

25 (Discussion off the record.)

1 A. Only if someone asks for additional work.

2 Q. Does the OIA consult with the hiring authority
3 at all regarding whether to make a finding sustaining
4 allegations of misconduct?

5 A. No.

6 Q. Does the OIA track what decision the hiring
7 authority makes with respect to its investigations?

8 A. No.

9 Q. Does the OIA even know what decision the
10 hiring authority makes regarding whether to sustain
11 allegations of misconduct?

12 A. In CMS 3.0, there are three ownerships:
13 Central Intake, investigation, and discipline.

14 The department wasn't doing a very good job in
15 putting discipline in 3.0, and when everyone was
16 instructed to do so, we found out that the discipline
17 function in CMS 3.0 didn't work like it was supposed to.
18 Everything was kept in different systems.

19 Under CMS 4.0, we completely redid the entire
20 disciplinary process. It works, and it captures
21 everything along the way.

22 It's important to have that information in 4.0
23 because I need to know when the case is closed for the
24 litigation desk.

25 Q. Does the OIA have access to the discipline

1 criminal?

2 A. Those are the exigents that don't come in on a
3 989.

4 Q. Understood.

5 And those would be extraordinary circumstances
6 where there's a crime about to be committed imminently;
7 is that correct?

8 A. Correct.

9 Q. Let me see if I can ask this a different way.

10 Since January 1st, 2017, how many referrals in
11 criminal investigations has the OIA made to a
12 prosecuting agency related to something at RJD?

13 A. One.

14 There were no criminal cases referred to OIA
15 from RJD for 2017 and 2018.

16 Q. And when you say there were no cases, does
17 that mean there was no criminal investigations opened,
18 or there was no criminal investigations open that
19 resulted in a referral to the DA in 2018 or 2017?

20 A. There were no -- may I look -- I'm trying to
21 reconcile.

22 Q. Why don't we give you all of the exhibits, so
23 this is -- let me put them in order. Here's 8, 9, 6,
24 and I believe you have 7 there.

25 A. The data from the region says there was no

1 criminal cases referred to OIA from RJD for 2017 and
2 2018. The 2017 pie chart, there is no criminal
3 investigation.

4 Q. And that's Exhibit 9, correct?

5 A. Yes.

6 But in Exhibit 8, it is detailed as one
7 criminal investigation.

8 Q. And are you able to resolve that discrepancy
9 at this time?

10 A. No. It would be a hunch.

11 Q. What is your hunch?

12 A. That they referred something administratively,
13 and we flipped it crim, but just a hunch.

14 Q. Now, from January 1st, 2017 to late
15 January 2020, when you stopped gathering information for
16 this, how many referrals to the district attorney did
17 OIA make for misconduct that occurred at RJD?

18 A. One.

19 Q. And I'm not asking for specifics of the case,
20 other than this narrow question. You guys can see if it
21 passes muster.

22 Did that case involve an incarcerated person
23 who was a victim?

24 A. What do you mean by incarcerated person that
25 was a victim?

1 Q. I'm trying to get at whether the case that was
2 referred involved misconduct against an incarcerated
3 person by an officer.

4 A. I don't have information on the subject, so it
5 could be free staff or an officer. I can gather that
6 information, but usually illegal communications means a
7 employee is having communications with an inmate.

8 Q. Okay.

9 So it was not, for example, for assaulting an
10 incarcerated person?

11 A. No. It was illegal communications.

12 Q. Okay.

13 And that's the one referral that's been made
14 to the DA so far?

15 A. Yes.

16 Q. I do believe that -- oh, so you said, in 2019,
17 two criminal investigations concluded; is that correct?

18 A. Not going by the chart, but by the region
19 statistics. They said there were six criminal cases
20 referred to OIA in 2019. Four are still open. One was
21 illegal communication. That was referred to the DA and
22 rejected. Another was for conspiracy and narcotics and
23 was not referred to the DA.

24 Q. Of the four that are still open -- again, I'm
25 not asking for the specifics of the case, the officers,

1 Q. Do you know how many officers have been
2 terminated at RJD since January 1st, 2017?

3 A. No.

4 Q. I'm gonna ask some questions about OIA's
5 ability to track the information about the allegations
6 and investigations -- sorry -- the allegations it's
7 investigating.

8 Let's start with CMS 3.0.

9 A. Okay.

10 Q. Could that system track the institution at
11 which the case was happening?

12 A. Yes.

13 Q. Could it track the location within the
14 institution?

15 A. By manually going in and reviewing the 989.

16 Q. But not in any global way?

17 A. No.

18 Q. Could it track the time of the incident?

19 A. CMS 3.0 has the DOE, Date of Event, field.

20 Q. Can it -- does the Date of Event field track
21 the time at which the event occurred?

22 A. No.

23 Q. Can it track the date of the discovery of the
24 incident?

25 A. Yes.

1 Q. Can it track the names of the subjects?

2 A. Yes.

3 Q. It could produce a report that includes all of
4 the names of the subjects for all of the investigations
5 during certain time periods?

6 A. CMS tracks subjects, but a analyst has to go
7 in and manually produce the report like we did for RJD
8 cases.

9 Q. In CMS 3.0, would it be possible to run a
10 report for all incidents involving a particular officer?

11 A. In CMS 3.0, I could do a search by subject
12 name and come up with a related case.

13 Q. Did CMS 3.0 track the race of the officers?

14 A. No.

15 Q. Or the race of the subjects, I should say?

16 A. No.

17 Q. Did it track victims' names, if any?

18 A. Off-duty victims?

19 Q. I'm most interested in incarcerated people
20 victims, but, yeah.

21 A. Inmates are included in CMS. They would be
22 detailed on the 837 or the inquiry. I believe they put
23 the inmate's name and CDC number.

24 Q. Would it be possible to run a report to
25 identify -- that generated the names of, let's say, all

1 of the victims for cases started in 2019?

2 A. There is a old search function in CMS 3.0, but
3 I don't know what -- it would have to actually go
4 through the narrative to be able to pull that
5 information out.

6 Q. Let me ask it a little bit differently.

7 Was there a field in CMS 3.0 to enter in
8 victims' names?

9 A. No.

10 Q. Was there a field in CMS 3.0 to enter the CDCR
11 number of any victims?

12 A. No.

13 Q. Was there a field to enter any characteristics
14 of the victims, such as their race?

15 A. No.

16 Q. Whether they were an Armstrong class member?

17 A. Other than the case-tracking box, there was
18 not a field.

19 Q. So you could enter whether someone was an
20 Armstrong class member in the case-tracking box; is that
21 correct?

22 A. Yes.

23 Q. What about if they were a Coleman class
24 member?

25 A. I believe that was on there. Coleman was on

1 there as a case tracking.

2 Q. What about if they were a Clark class member?

3 MS. DE LA TORRE-FENNELL: Objection: Outside
4 the scope of what Mr. Ramos is designated to speak to.

5 MR. FREEDMAN: You can answer if you know the
6 answer.

7 THE WITNESS: I don't see it on here, but the
8 field isn't -- the field doesn't depict all of the case
9 tracking.

10 BY MR. FREEDMAN:

11 Q. Was there a field to enter in the age of any
12 victims?

13 A. No.

14 Q. Was there a field for the type of misconduct?

15 A. There is case tracking for death, cell-phone
16 smuggling, but the type of misconduct is usually
17 captured in the scoped allegation.

18 Q. Could you generate a report in CMS 3.0 that
19 listed all of the cases opened in 2019, let's say, and
20 the type of misconduct alleged in those cases?

21 A. Not by type of misconduct alleged, but I
22 believe the analysts can group by allegation type
23 scoped.

24 Does that make sense?

25 Q. So it can track by allegation type?

1 A. There's not a report for that, but I recall
2 running, like, DUI cases or -- it's not readily
3 available with a button, but she has pulled that
4 information.

5 Q. And do you know how they pull that
6 information?

7 A. I'm not an IT person, but something about
8 going into the back end of the system on 3.0.

9 Q. And I think you've previously testified that
10 you could not run reports in 3.0 related to whether
11 there was a -- whether the hiring authority sustained an
12 allegation of misconduct; is that correct?

13 A. Correct.

14 The discipline phase -- the discipline
15 ownership in 3.0 was not reliable.

16 Q. So you also couldn't run a report on whether
17 discipline was imposed, correct?

18 A. I believe CMS 3.0 had the capability to -- the
19 analyst had a capability to run a report whether there
20 was a 402, 403.

21 Do you know what those forms are?

22 Q. What are those forms?

23 A. That's the first step of reviewing the
24 investigation and the first step of the discipline
25 process. But EROs weren't consistently uploading that

1 information into 3.0.

2 Q. In CMS 3.0, could you track the discipline
3 that was imposed by the hiring authority?

4 A. Again, the only capabilities that worked in
5 3.0 was the 402, 403, which is only the start of the
6 process. There's five or six steps of the process. And
7 not everyone was uploading those forms.

8 Q. So even that one part that worked was
9 unreliable; is that correct?

10 A. It would be reliable as to that point in time,
11 but as discipline changes through the process, it was
12 not updated.

13 Q. And since not every 402 or 403 was entered, it
14 wouldn't even be accurate with respect to all cases,
15 correct?

16 A. Correct.

17 The litigation desk has instructed: We don't
18 give out any discipline on our cases.

19 Q. And I believe you have just testified that, in
20 CMS 3.0, it was not possible to track what actual
21 discipline was imposed after the entire disciplinary
22 process was completed; is that correct?

23 A. Yes.

24 Q. So, for example, it wouldn't be possible to
25 track how many staff members resigned in lieu of

1 termination, correct?

2 MS. DE LA TORRE-FENNELL: Objection: That's
3 outside of the scope of what she's designated to speak
4 to because she's limited to the OIA function.

5 MR. FREEDMAN: You can answer if you know.

6 THE WITNESS: Or not answer?

7 MR. FREEDMAN: If you don't know -- if you
8 don't know the answer, you can say "I don't know," but
9 if you know the answer, you have to answer.

10 THE WITNESS: Now I forgot the question.

11 BY MR. FREEDMAN:

12 Q. CMS 3.0, could it track whether, in the
13 disciplinary phase of a case, a staff member resigned in
14 lieu of discipline?

15 A. It could not track that information, unless
16 somebody uploaded the memo. It would be there, but it's
17 not tracked.

18 Q. And would it be possible to generate a report
19 on that, or would someone have to go manually in to the
20 case to see what happened?

21 A. I cannot run a report, and there's no
22 requirement that that memo would be in there.

23 Q. I just want to be clear.

24 In terms of tracking the names of the subjects
25 involved in investigations by OIA, in CMS 3.0, could OIA

1 generate a report, let's say, for all cases in 2019 that
2 includes the names of the subjects?

3 A. I have a search function to put a name in, and
4 those cases will populate by case number. My
5 recollection of what pops up is if they've been a
6 witness, a subject, complainant -- every time they're
7 associated with a case. There's not a tab or an
8 automated report that's generated, but they might be
9 able to pull by subjects, similar to the way we pull by
10 RJD.

11 Q. You said something about tracking by
12 complainant.

13 What did you mean by that?

14 A. When I do a search by a name, if I've been
15 designated as a complainant, let's say whistleblower,
16 the person who brought the attention forward, that
17 populates in that field when you run that name.

18 Q. Would that include the names of incarcerated
19 people if they filed a staff complaint?

20 A. I don't believe so, no.

21 Q. So in CMS 3.0, OIA did track what institution
22 and allegation of misconduct occurred at, correct?

23 A. Yes.

24 Q. It did not track the location within the
25 institution at which that happened, correct?

1 A. It is not tracked. It's recorded, as the 989
2 should specify where that location is, but I can't run a
3 report that says "Facility B."

4 Q. Or even "Facility B gym," correct?

5 A. Correct. Cannot run that report.

6 Q. And as far as you know, it does not track the
7 time of day at which the incident allegedly occurred,
8 correct?

9 A. Correct.

10 On the 989, does it have the time? The
11 date -- it has the time on there.

12 Q. And is that -- would that be entered into a
13 searchable field that you could then generate a report
14 for?

15 A. That's a good question. I don't believe so.
16 I don't believe very many people put a time in the
17 field.

18 Q. So let's talk about CMS 4.0 --

19 A. Okay.

20 Q. -- and any changes that have been made.

21 Is CMS 4.0 a more advanced system than
22 CMS 3.0?

23 A. Yes.

24 Q. Is it a better system?

25 A. Yes.

1 Q. Why is it better?

2 A. The two goals of CMS 4.0 were to take the
3 system off the server, which we did -- it's Web based --
4 and to automate the 989, which we did.

5 But it also automates the investigative
6 process. There's a vision going forward of what else it
7 could automate.

8 It also provides for the hiring authorities to
9 go in and pull down their reports electronically.

10 Another big change in CMS 4.0 is the
11 allegations now mirror Article 22, the disciplinary
12 matrix, when, in 3.0, they didn't necessarily mirror the
13 same allegations you charged someone for with
14 misconduct.

15 Q. Can CMS 4.0 -- does CMS 4.0 track the
16 institution at which an incident occurred?

17 A. Yes.

18 Q. Does it track the location within the
19 institution that the incident occurred?

20 A. I don't believe so.

21 Q. Does it track the time of the incident?

22 A. There is a field for the time, but on the
23 list, people want to take it out because it's a
24 mandatory field, and there's complaints that people
25 can't determine what time. It's usually unknown.

1 Q. Is there a field for what watch it occurred
2 on?

3 A. No.

4 Q. Is there a field for date of discovery?

5 A. Yes.

6 Q. Is there a field for the subject's names?

7 A. Yes.

8 Q. Is there a field for the subjects' race?

9 A. No.

10 Q. Is there a field for -- to enter any victims'
11 names?

12 A. There's no victim field.

13 Q. Is there a field for entering victim's CDCR
14 number if they're an incarcerated person?

15 A. No.

16 Q. Is there a field for entering the race of any
17 victims?

18 A. No.

19 Q. Is there a field for entering when the victim
20 was an Armstrong class member?

21 A. There is a case-tracking box.

22 Q. The case-tracking box, is it -- does it suffer
23 from some of the same problems that we discussed
24 regarding the case-tracking box in CMS 3.0?

25 A. Yes.

1 Q. Is it up to the agent processing the case to
2 identify it as an Armstrong case?

3 A. No.

4 Q. How is it identified as an Armstrong case,
5 then?

6 A. When it comes through Central Intake, if it is
7 noted in any of the materials, they'll check the box.

8 Q. Is there any policy that requires staff in
9 Central Intake to check SOMS to see whether any victims
10 are Armstrong class members?

11 A. No.

12 Q. Does it track if the victims are Coleman class
13 members?

14 MS. DE LA TORRE-FENNELL: Objection: Outside
15 the scope of what she's been designated to testify to.

16 MR. FREEDMAN: You can go ahead and answer.

17 THE WITNESS: I can't picture the case
18 tracking in CMS 4.0.

19 BY MR. FREEDMAN:

20 Q. If it did track Coleman class members, would
21 it still require Central Intake staff to check the box
22 to indicate that it was a Coleman class member victim?

23 MS. DE LA TORRE-FENNELL: Objection: It's
24 outside the scope of what she's been designated to
25 testify to.

1 MR. FREEDMAN: You can go ahead.

2 THE WITNESS: Now I forgot your question.

3 BY MR. FREEDMAN:

4 Q. CMS 4.0 --

5 A. Yes.

6 Q. -- does it have a way to check whether -- to
7 track whether a victim of an incident is a Coleman class
8 member?

9 A. I believe there is a case-tracking box in
10 CMS 4.0. I'm not for sure.

11 Q. Okay.

12 If there is one, would it suffer from the same
13 problems as the Armstrong box?

14 A. Yes.

15 Q. And that the only way it would get checked is
16 if Central Intake staff note that it was a Coleman class
17 member victim; is that correct?

18 A. I'd like to clarify in that it's my
19 understanding that the agents also have access to the
20 case tracking, so they could check the box as well, so
21 the investigators have access to it, so Central Intake
22 usually catches it, 'cause the 989 comes in, but, like,
23 on the ATO, if the subject gets put out on ATO during
24 investigation, the agent is responsible for going in
25 there and checking the box, so we share the case

1 tracking, but it is not hundred percent accurate.

2 Q. And there's no policy requiring that, at any
3 step of the process, any OIA staff member check SOMS to
4 determine if a person involved in the incident is an
5 Armstrong class member, correct?

6 A. Correct.

7 Q. Or a Coleman class member?

8 MS. DE LA TORRE-FENNELL: Objection: Outside
9 the scope of what she's designated to testify to.

10 THE WITNESS: Correct.

11 BY MR. FREEDMAN:

12 Q. Or a Clark class member, correct?

13 MS. DE LA TORRE-FENNELL: Objection: Outside
14 the scope of what she's designated to testify to.

15 MR. FREEDMAN: You can answer.

16 THE WITNESS: I'm not sure Clark is even on
17 there.

18 BY MR. FREEDMAN:

19 Q. Does CMS 4.0 have a way to track the age of
20 any victims?

21 A. No.

22 Q. Does CMS 4.0 have a way to track the type of
23 misconduct alleged?

24 A. By allegation.

25 Q. And when you say "by allegation," what do you

1 mean?

2 A. The misconduct is scoped in Central Intake by
3 allegation: Use of force, attendance, dishonesty,
4 neglect of duty.

5 Q. And so can you run reports in CMS 4.0
6 regarding different types of allegations?

7 A. No. We hope to run many reports in CMS 4.0.

8 Q. But, currently, you can't run a report to
9 identify the type of allegation, correct?

10 A. Correct.

11 Q. I believe you testified before that CMS 4.0
12 does have more robust tracking abilities with respect to
13 the disciplinary phase of investigations; is that
14 correct?

15 A. Yes.

16 Q. Does it track the result of the investigation;
17 in other words, whether the hiring authority sustained
18 or didn't sustain the findings -- the allegations? I'm
19 sorry.

20 A. I'm looking for the sustained, not sustained
21 in my mind's eye.

22 It tracks the -- it automates the 402, 403
23 when, before, you had to fill out the form and upload
24 it. Now you can't close the case unless you go into all
25 those fields and fill them all out.

1 Q. So the 402 and 403 are now entered in CMS 4.0?

2 A. Automated, yes.

3 Q. So do you know if it has the ability to track
4 whether -- all cases in which allegations have been
5 sustained, let's say?

6 A. I'm not an expert in discipline, but I believe
7 those forms require the finding and the penalty on them.

8 Q. So is it your understanding that CMS 4.0 can
9 run reports about what discipline was imposed as well?

10 MS. DE LA TORRE-FENNELL: Objection: It's
11 outside the scope of what she's designated to testify to
12 as an OIA person most knowledgeable.

13 THE WITNESS: Right now, due to programming
14 staffing issues, there are very limited reports because
15 I don't have the staff to program them.

16 BY MR. FREEDMAN:

17 Q. What reports can CMS 4.0 run right now?

18 A. ATO and redirect.

19 Q. And when you say "ATO," what do you mean?

20 A. Subjects placed on ATO.

21 Q. When you say "redirect," what do you mean by
22 that?

23 A. The subjects who have been redirected from
24 their position.

25 Q. What does "ATO" stand for?

1 A. "Administrative time off."

2 Q. And when you say you can run a report for
3 that, does that mean you can run a report saying, at
4 RJD, Show me all the subjects who have been placed on
5 administrative time off or redirected?

6 A. I can do it statewide. Can I designate an
7 institution? I can't recall.

8 Q. So it can run those two reports.

9 What other reports can it run right now?

10 A. We generated a 989 status report so that
11 hiring authorities could go in to CMS 4.0 and see if
12 Central Intake has accepted their request for
13 investigation and where it is in the process, meaning
14 the designation of CDAR.

15 Q. What other reports can it run?

16 A. The last one we just finished is called an
17 "IDAR." It is for CCHCS, for medical staff, because
18 they have to --

19 Q. We don't need to go into that.

20 A. So that one -- we did that one as well.

21 Q. And those are the three reports that it can
22 run; is that correct?

23 A. And I believe, at this point, they were
24 working on active cases, and then the next one in the
25 queue is by statute of limitations.

1 Q. Great.

2 So those are reports that OIA hopes to be able
3 to run in the future, correct?

4 A. The ones I just specified we can run, but the
5 SOL report is next in the queue, as well as many other
6 requests.

7 Q. Who has access to CMS 4.0 -- actually, scratch
8 that question.

9 Who has access -- do hiring authorities have
10 access to CMS 4.0?

11 A. Yes.

12 Q. What access do they have?

13 A. In the front end, the hiring authority has to
14 approve the 989.

15 Been very successful in --

16 (Interruption in proceedings.)

17 THE WITNESS: Where was I at?

18 MR. FREEDMAN: What access the hiring
19 authority has to CMS 4.0.

20 THE WITNESS: Correct.

21 The hiring authority has to approve the 989.
22 Then we've taken everybody's access out of the
23 investigation. They get a notification, and they have
24 access to the case, again, after Central Intake, for a D
25 and a -- for a direct action and a reject, and then when

1 ownership changes out of investigation back to
2 discipline, when the investigation's complete, again,
3 they have access to complete and approve the 402, 403,
4 which now has electronic signature.

5 BY MR. FREEDMAN:

6 Q. Do hiring authorities have the ability to run
7 any reports?

8 MS. DE LA TORRE-FENNELL: Objection: That
9 would be outside the scope of what she's designated to
10 speak to as the PMK for OIA.

11 You can go ahead.

12 THE WITNESS: They can run the 989 status
13 report to see where their 989 is for their institution
14 alone. Other than that, no.

15 BY MR. FREEDMAN:

16 Q. Are they able to run any reports -- scratch
17 that.

18 Are they able to run any other reports than
19 that?

20 A. No.

21 Q. In CMS 3.0, what access did the hiring
22 authority have?

23 A. I was just thinking about that.

24 Most hiring authorities didn't have access
25 because it was all paper-driven. They signed the 989,

1 and the 402, 403 was manual, so I think there was very
2 few hiring authorities that had access.

3 Q. Has OIA ever used any of the information in
4 CMS 3.0 to provide a warning to an institution that it
5 might have a problem with staff misconduct?

6 A. Not that I'm aware of.

7 Q. Has CDCR ever used -- I'm sorry.

8 Has OIA ever used CMS 4.0 to provide a warning
9 to an institution that it might have a problem related
10 to staff misconduct?

11 A. No.

12 Q. If you needed to pull up the cases for all OIA
13 investigations at RJD since January 1st, 2017 to the
14 present that involved a victim who was an Armstrong
15 class member, how would you do that?

16 A. We'd have to go into -- to be accurate.

17 Q. I want you to be accurate.

18 A. And I say that because we can't -- we've
19 determined we can't rely on the Armstrong tracking box.
20 We'd have to go into each -- each individual case, but
21 I'm not certain that that information would even be
22 there.

23 Q. Could you go into each individual case,
24 identify the victims and their CDCR numbers, and then
25 run those in SOMS to see if they're an Armstrong class

1 member?

2 A. I believe that's how you'd have to do it. I
3 can't figure another way around that.

4 MR. FREEDMAN: Let's take a five- or
5 seven-minute break.

6 (Recess taken 4:47 to 5:04 p.m.)

7 BY MR. FREEDMAN:

8 Q. I want to ask you a question back about OIA
9 policies, which we discussed a little bit earlier.

10 In conducting investigations, what weight does
11 OIA give to statements made by incarcerated people?

12 A. I don't believe there is a policy on how much
13 weight we give to inmates.

14 The investigation often has us interview
15 inmates, and the inmate interview is summarized as part
16 of the investigative report, but it's done the same way
17 as a staff witness would be.

18 Q. When OIA opens an investigation -- let's talk
19 about an administrative investigation for the time
20 being.

21 A. Okay.

22 Q. OIA doesn't really weigh anything, right?

23 A. Correct.

24 Q. So let's ask this question, more about the
25 Central Intake Panel and how it weighs the evidence

1 before it in the request for investigation submitted by
2 the hiring authority.

3 A. Okay.

4 Q. When the panel is weighing whether to open an
5 investigation or not -- it's trying to decide whether to
6 open an investigation or not, what weight does it
7 gave -- give to statements made by incarcerated people
8 that may be included in the referral packet?

9 A. Again, I don't believe there is a weight
10 associated with it.

11 If there's an incident involving misconduct
12 that would rise to the level of adverse action, the
13 Central Intake agent is going to gather all of the
14 information he or she can, whether that's inmate
15 statements or staff statements or reports.

16 Q. Is there any policy in OIA that limits the
17 weight that a statement from an incarcerated person can
18 be given by the panel?

19 A. A policy that limits the weight an
20 incarcerated person -- no.

21 Q. If a case came to the panel and, on one side,
22 you have an incarcerated person saying that X
23 happened -- and X, if it did happen, would be sufficient
24 for the employee who did X to be subject to
25 discipline -- and, on the other side, you have a

1 statement from multiple staff members saying X didn't
2 happen, how does the panel weigh that competing
3 evidence?

4 A. The special agent evaluating the case, in an
5 even playing field, would believe a peace officer over
6 an inmate if those were those two statements.

7 If there were officers or inmates over here
8 that contradicted either one of those, that would be
9 weighed in the analysis as well.

10 Q. But I believe you just said -- if it's a
11 straight he said/she said and the "he" is an
12 incarcerated person and the "she" is an employee of
13 CDCR, what would happen then?

14 A. Especially a peace officer.

15 If you weren't gathering any other
16 information, it would be the peace officer is believed
17 over the inmate.

18 Q. And is that a policy --

19 A. No.

20 Q. -- of the OIA?

21 A. No.

22 And we also don't ever want to get ourselves
23 in a situation where it's just this person versus this
24 person. We're trying to gather whatever reports, video,
25 memos to corroborate one side or another.

1 Q. What about a situation where it's an
2 incarcerated person on one side and multiple peace
3 officers on the other side and the versions of what
4 happened are impossible to reconcile?

5 A. I believe the agent is responsible, on a use
6 of force, looking at their reports.

7 One of the things that we'll look at on an
8 inmate's allegation is the 7219. For example,
9 there's -- the inmate is making an allegation that "The
10 officers broke my arm," and the officers are saying, "We
11 didn't break his arm," and we get the 7219 that says the
12 basket-- his arm was broken in a basketball game, that
13 tips that scale.

14 But if an inmate says -- alleges excessive
15 force and there's injuries on a 7219 and there's no
16 evidence that those injuries took place anywhere else
17 and inconsistencies are in the 837, that's a red flag.

18 Q. So if there's some evidence that the officer's
19 stories -- or story is inconsistent, you might accept
20 the statements of an incarcerated person over the
21 statements as made on the 837 by the officer; is that
22 correct?

23 A. Yes.

24 It's hard to put every scenario, so it's
25 really, really case by case, but what I can say is the

1 agent is responsible for gathering everything and
2 weighing it all. Officers engage in misconduct.
3 Sometimes what the inmate's saying is not true. That's
4 our job to try to weed that out.

5 Q. But I believe you said, a while back, if all
6 you have is a statement from an officer and a statement
7 from an incarcerated person and they are inconsistent,
8 OIA will believe the version of events from the officer;
9 is that correct?

10 A. Yes.

11 Q. I want to move to talking about the specific
12 incidents that I believe you came prepared to talk about
13 today.

14 A. Okay.

15 Q. At the beginning of your testimony, you
16 indicated that there were four incidents that you were
17 prepared to talk about today, correct?

18 A. Yes.

19 Q. But then I believe, during a break -- I'm not
20 sure it was on the record -- counsel for -- your counsel
21 indicated that one of the incidents did not involve an
22 Armstrong class member, and so, in fact, you would not
23 be providing testimony about that incident today; isn't
24 that correct?

25 MS. DE LA TORRE-FENNELL: Yes.

1 to this incident have warranted a decision by the
2 Central Intake Panel to conduct an investigation?

3 A. I did not make notes of everything that
4 Central Intake had to review for their case analysis.

5 Q. From your review of the case, was it critical
6 to the investigation that a video of the incident did
7 exist?

8 A. It was very helpful, yes.

9 Q. And why was it helpful?

10 A. Because I believe it documented the use of
11 force. Cameras are very helpful.

12 Q. The officers involved in this incident, do you
13 know what happened to them in terms of discipline?

14 A. I don't have direct knowledge, but I was told
15 they were terminated.

16 Q. Let's turn to S-RJD-134-19-R.

17 MS. HOOD: Did you mark this an exhibit, or
18 were you intending to?

19 MR. FREEDMAN: I meant to, and I did not.
20 Let's mark it now. Let's mark your copy because those
21 are the originals.

22 (Exhibit 11 marked.)

23 (Discussion off the record.)

24 MR. FREEDMAN: All right.

25 Let's look at the packet that you had for

1 STATE OF CALIFORNIA)
)
2 COUNTY OF ALAMEDA)
3

4 I, Ingrid Skorobohaty, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in
7 the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing but
9 the truth;

10 That said proceedings were taken before me at
11 the time and place therein set forth and were taken down
12 by me in shorthand and thereafter transcribed into
13 typewriting under my direction and supervision, and that
14 the witness has not requested a review pursuant to Rule
15 30(e)(2).

16 I further certify that I am neither counsel
17 for, nor related to, any party to said proceedings, nor
18 in anywise interested in the outcome thereof.

19 In witness whereof, I have hereunto subscribed
20 my name.

21
22 Dated: February 10, 2020


23 
24 _____
Ingrid Skorobohaty
25 CSR No. 11669

Exhibit S

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v. Case No. C94 2307 CW

GAVIN NEWSOM, et al.,

Defendants.

_____/

DEPOSITION OF ROY W. WESLEY

Wednesday, January 22, 2020, 10:12 a.m.

San Francisco, California

Reported by: Cindy Tugaw, CSR No. 4805

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v. Case No. C94 2307 CW

GAVIN NEWSOM, et al.,

Defendants.

Deposition of ROY W. WESLEY, taken at Rosen
Bien Galvan & Grunfeld, 101 Mission Street, 6th Floor,
San Francisco, California, on Wednesday, January 22,
2020, at 10:12 o'clock a.m., before Cindy Tugaw,
Certified Shorthand Reporter, in and for the State of
California.

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ROY W. WESLEY

Armstrong, et al. v. Gavin Newsom, et al.

Wednesday, January 22, 2020

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1 Wednesday, January 22, 2020

2 San Francisco, California

3
4 Whereupon,

5 ROY W. WESLEY,

6 being first duly affirmed by the Certified Shorthand
7 Reporter to tell the truth, the whole truth, and
8 nothing but the truth, testified as follows:

9 EXAMINATION BY MS. GODBOLD

10 MS. GODBOLD: Q. Can you please state your full
11 name for the record?

12 A. Roy W. Wesley.

13 Q. Mr. Wesley, my name is Penny Godbold and I
14 will be taking your deposition today. A few brief
15 ground rules before we get started. I know that you're
16 familiar with these rules, so I'll just go quickly
17 through them.

18 I will be asking you a series of questions,
19 and my questions and your answers will be recorded by
20 the court reporter. So as a reminder, speak loudly and
21 in a manner that can be understood and easily recorded
22 by the reporter.

23 You have just taken an oath that requires you
24 to tell the truth, the whole truth, and nothing but the
25 truth. Do you understand that?

1 A. I do.

2 Q. And that is the same oath that you would take
3 if you were to testify in court. Do you understand
4 that?

5 A. Yes.

6 Q. Just let me know if you don't understand a
7 question or if you need to take a break. We will take
8 a lunch break today.

9 I have to ask you, are there any medications
10 or drugs that you're taking today that might make it
11 difficult for you to understand and answer my
12 questions?

13 A. No.

14 Q. Is there any reason you would not be able to
15 answer my questions fully and truthfully?

16 A. Not that I'm aware of.

17 MS. GODBOLD: Okay. I would like to mark as
18 Exhibit 1 this document.

19 (Plaintiffs' Exhibit 1 marked for
20 identification.)

21 MS. GODBOLD: I have handed the witness a Notice
22 of Deposition of Non-Party Roy W. Wesley, Inspector
23 General, dated December 18th, 2019.

24 Do you have that document in front of you?

25 A. Yes.

1 process where we identify those kind of extraordinary
2 cases and get those out right away because our
3 discipline monitoring report only comes out once every
4 six months.

5 Q. In this report you found an apparent bias and
6 hostility against inmate testimony and evidence by CDCR
7 attorneys charged with litigating employee misconduct
8 cases before the State Personnel Board.

9 A. I did.

10 Q. What is the impact of bias against inmate
11 testimony in litigating employee misconduct cases
12 before the State Personnel Board?

13 A. Well, in cases such as this case, the only
14 testimony there was was from inmates. None of the
15 officers came forward, even though there were
16 extraordinary circumstances where weapons were found in
17 plumbing chases where only officers have access, that
18 the inmates had a can of paint to mimic how the
19 Department -- how the Department notes when metal or
20 plastic has been harvested from source. All of that --
21 all of that information made it clear that officers
22 were involved in this case yet none of them came
23 forward. And when other officers who work in those
24 areas were questioned, their responses were "We don't
25 know anything. We never saw anything."

1 And so absent the inmate testimony, there is
2 no case to be made although there was certainly serious
3 misconduct in this case.

4 Q. What weight should be given inmate testimony
5 during the staff misconduct inquiry and investigation
6 process?

7 A. Well, I think the case law is pretty clear,
8 inmate testimony is to be looked at with some
9 suspicion, but it needs to be corroborated. And when
10 it is corroborated, it is certainly as valid as any
11 other testimony.

12 In this case we thought there was plenty of
13 corroboration since the inmates who had been testifying
14 were the ones who told the Department where to find all
15 the weapons, the paint. They took them to the places
16 where the metal was harvested. There was lots of
17 corroboration in this case. We felt that the case
18 should have gone forward and the inmate testimony be
19 put on.

20 Q. How common is it for a staff misconduct case
21 to rest on inmate testimony?

22 A. I don't think it's very common at all. I
23 think most of the time there is other evidence from
24 other officers, there's video, there's -- you name it.
25 I think this is relatively uncommon.

1 Q. Do you think video is an important component
2 of staff misconduct investigations and inquiries?

3 A. I think it can be, but it's not available in
4 most cases.

5 Q. And why is it not available in most cases?

6 A. There's no cameras in most prisons.

7 Q. Would installing cameras in prisons assist in
8 providing important evidence in the staff misconduct
9 inquiry and investigation process?

10 A. Based on the research that I've done, yes, I
11 think it would. There are a number of jurisdictions
12 that have cameras in their jails and prisons. And they
13 seem to have a better process for the staff misconduct.
14 There are at least two prisons in the California system
15 that have a very good video camera system, and in those
16 case -- in those places we don't have nearly as many
17 problems as in other prisons where there are no
18 cameras.

19 Q. And those prisons are?

20 A. Stockton Health Care Facility and California
21 City.

22 Q. And do you know where those prisons -- I'm
23 sorry, where those cameras are located in those
24 prisons? Are they --

25 A. Everywhere. They are -- there's virtually no

1 place in those prisons that aren't monitored.

2 Obviously not in privacy areas, so they're not in
3 restrooms, showers, that sort of thing.

4 Q. And do you know why cameras were installed in
5 those prisons and not other prisons?

6 A. California City is a leased prison. The State
7 leases that prison. And it came with cameras. The
8 owner of the prison built it apparently with cameras.
9 And the Stockton facility, it's a new construction, and
10 cameras were integral to the construction of that
11 prison. Other prisons are at least probably 30 years
12 old, and the infra -- the infrastructure challenges to
13 putting in cameras are enormous.

14 Q. We talked about the bias against inmate
15 testimony that you discovered in the Sentinel case.
16 Have you seen evidence of bias against inmate testimony
17 during any other stage of staff -- of the staff
18 misconduct process?

19 A. We found that at Salinas Valley when we did
20 that -- that review. Very rarely were inmates allowed
21 to put on testimony and witnesses. They were not
22 allowed to call sworn witnesses, so that officers who
23 were present when this happened they were not allowed
24 to call. And most often their testimony was not
25 believed.

1 Q. Is it true that their testimony was not
2 believed even if it was corroborated by other inmate
3 testimony?

4 A. Well, the problem was that the inquiries were
5 done so poorly that there was no corroboration. And
6 the officers for the most part who conducted those
7 inquiries had no training. We were not able to make
8 any kind of opinion about the quality of the
9 investigation because the investigations were -- let me
10 restate that.

11 We were not able to have an opinion about what
12 the outcome of the inquiry should be because the
13 investigations were so poor there wasn't enough there
14 to make a decision on.

15 Q. So properly corroborated inmate testimony
16 should be afforded weight, in your opinion?

17 A. Yes.

18 Q. Do you believe bias against inmate testimony
19 is a pervasive problem in staff misconduct
20 investigations in CDCR?

21 A. I believe that, yes.

22 Q. Can you explain why you believe that?

23 A. I've seen a lot of they're called RVR
24 hearings, they're rules violation report hearings,
25 where inmates are told, "I don't care what you tell me,

1 I'm going to believe the officer."

2 Q. Are statements like that misconduct by the
3 hearing officers?

4 A. I don't think they're properly doing their
5 job. I don't know whether it's misconduct.

6 Q. And what should hearing officers be doing in
7 order to properly do their job?

8 A. They should be affording due process.

9 MS. GODBOLD: I'd like to mark this document as
10 Exhibit 4. I'm handing the witness the Office of the
11 Inspector General's Special Review of Salinas Valley
12 State Prison's Processing of Inmate Allegations of
13 Staff Misconduct dated January 2019."

14 (Plaintiffs' Exhibit 4 marked for
15 identification.)

16 MS. GODBOLD: Q. Do you have that document to
17 review?

18 A. Yes.

19 Q. Can you explain what this document is?

20 A. It is a report of a review that we did at
21 Salinas Valley State Prison that was requested by the
22 Department of Corrections and Rehabilitation -- well,
23 it was requested jointly by the Prison Law Office and
24 the Department of Corrections and Rehabilitation.

25 And we were asked to look at the Salinas

1 the inmate that's made who -- and he gets to explain
2 why he believes that the force is out of policy. And
3 that video is reviewed at the institutional executive
4 review committee and a decision is made whether there
5 is -- whether the force is in policy or not.

6 Q. And do you know whether use of force
7 allegations against staff will be included in CDCR's
8 new process for staff misconduct grievances?

9 A. I don't think they are. I think they're
10 separate.

11 Q. Has CDCR given you any indication of whether
12 or not they intend to include those in the staff
13 misconduct grievance process?

14 A. They've given me no indication.

15 Q. And have you made any recommendations to CDCR
16 about whether they should include use of force
17 allegations in the new process for staff misconduct
18 grievances?

19 A. Our recommendation was that any allegation of
20 staff misconduct made by an inmate should go through
21 the -- the staff misconduct grievance process.

22 Q. What is the impact of use of force allegations
23 not going through the staff misconduct grievance
24 process?

25 A. They're just on a separate track, so there may

1 be some consistency issues. That doesn't mean that if
2 force is found out of policy, that officers aren't held
3 accountable. There are a fair number of cases that are
4 referred to the Office of Internal Affairs that arise
5 out of improper use of force. The route they get there
6 is through this IERC process where the institution
7 determines that the force was out of policy or that the
8 officer did something before, during or after that was
9 out of policy, and they refer those for -- for
10 investigation.

11 It's just a different track. Our
12 recommendation was put it all in one place so that it
13 all gets handled the same, but that's not what they --
14 that's not what they decided to do.

15 Q. Do you have any concerns about bias in the use
16 of force process that's handle at the local
17 institution?

18 A. I would say they do a pretty good job,
19 actually. We monitor about 40 percent of the uses of
20 force, so a pretty good sample. We agree with their
21 assessment about 95 percent of the time. I think that
22 they are relatively careful in their analysis of
23 whether force is within policy or not. And I don't
24 have a real concern about -- we haven't seen anything
25 that would indicate there's a problem with the use of

1 A. The new process doesn't even look at that.

2 Q. How are you feeling? Do you need a break
3 right now?

4 A. I'm fine.

5 Q. Okay. I'd like to ask you some questions
6 about the OIG oversight of the new staff misconduct
7 grievance process. Newly revised Penal code 6126 (i)
8 states that "The Inspector General shall be responsible
9 for providing contemporaneous oversight of grievances
10 that fall within the Department's process for reviewing
11 and investigating allegations of staff misconduct."

12 Have you started oversight over grievances
13 alleging staff misconduct in this new process?

14 A. Oversight hasn't started yet.

15 Q. When will you start oversight?

16 A. We will begin when they begin doing the new
17 process.

18 Q. Can you describe what your role will be in the
19 oversight of the new process?

20 A. Right now it's going to be a pretty small
21 footprint. There are -- I think the estimate I saw was
22 system-wide about 6,000 staff complaints out of the
23 complaint process. I have one person in each region to
24 monitor that. That's the funding that I was given.
25 And so we really need to find out -- we're still in the

1 kind of building it stage where I need to find out
2 what's the best use for that one person in each region.
3 And I don't know that we're going to have much more
4 than anecdotal information when we're done.

5 Q. So there are 6,000 staff misconduct complaints
6 statewide?

7 A. That's the estimate, I think.

8 Q. And you will have three people total based on
9 the funding that you received dedicated towards
10 monitoring these staff misconduct allegations under the
11 new process?

12 A. Yes. And under the new process the Office of
13 Internal Affairs I think got 40 bodies to do this.

14 Q. Are three people enough to monitor staff
15 misconduct allegations statewide?

16 A. No, of course not.

17 Q. How many people do you estimate you would need
18 in order to adequately monitor staff misconduct
19 complaints?

20 A. We estimated that we needed four to five
21 people per region because even then we wouldn't monitor
22 every staff complaint. We would model it on the way we
23 do our discipline monitoring. We would take a sample,
24 and it would be the more serious allegations.

25 Q. So you estimate that the Office of the

1 Inspector General needs 12 to 15 people in order to
2 adequately monitor staff misconduct complaints under
3 CDCR's new process?

4 A. I think that's the minimum, yes.

5 Q. Because you only have three people, you will
6 only be anecdotally monitoring cases, is that correct?

7 A. Yeah, we'll monitor cases. We'll try and
8 triage the more serious cases, but, you know, in each
9 region there are 10 to 12 prisons, and a person can
10 only be at one prison at a time, so there's going to be
11 a lot of those cases that don't get monitored.

12 Q. What's the potential impact of not adequately
13 monitoring staff misconduct grievances under CDCR's new
14 process?

15 A. I'm not going to be able to give them any
16 reliable data on how the process is working.

17 Q. Without reliable data on whether or not
18 process is working, is there a risk that the problems
19 that you identified in your Salinas Valley report
20 regarding inadequate investigations and report writings
21 continue?

22 A. There's a risk.

23 Q. What does "contemporaneous oversight" mean?

24 A. It means we're there when it happens. So this
25 isn't -- it is not an audit. When a case gets opened,

STATE of CALIFORNIA

OIG | OFFICE of the
INSPECTOR GENERAL

Roy W. Wesley, Inspector General
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

February 13, 2020

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Rosen Bien Galvan & Grunfeld

ATTN: Production Department

Re: John Armstrong, et al. v. Gavin Newsom, et al.

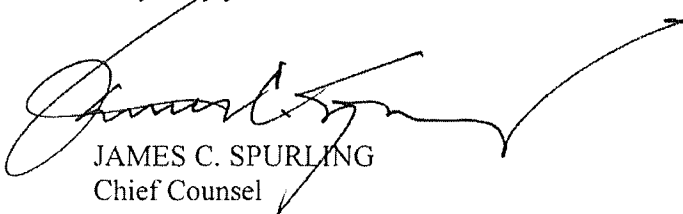
Dear Sir/Madam:

Please be advised that Inspector General Roy Wesley has reviewed and signed the transcript of his deposition taken by Cindy Tugaw (CSR No. 4805) on January 22, 2020. The only correction he made is located on page 75, line 21; the word "our" should read "their."

Enclosed are copies of the corrected page and the signature page reflecting Mr. Wesley's signature.

Please feel free to contact me if you have any questions.

Very truly yours,



JAMES C. SPURLING
Chief Counsel

Enclosures

Penny Godbold, Esq. (w/enclosures)
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Roy W. Wesley
January 22, 2020

1 continue to get complaints.

2 Q. Are the officer names in the complaints that
3 you've received the same officers that are in the
4 allegations provided to you by plaintiffs' counsel?

5 A. I think there were a couple of them.

6 Q. As part of your monitoring of the employee
7 misconduct process, can you tell whether any action is
8 being taken at Richard J. Donovan Correctional Facility
9 regarding these officers that you see complaints about?

10 A. So if OIA investigations are open, we monitor
11 those investigations. And I don't think any have been
12 opened on these subject officers.

13 Q. If OIA investigations have not been opened on
14 the subject officers, is it possible that the hiring
15 authority is taking direct disciplinary action?

16 A. They're not allowed to. Even if they want --
17 even if there is no investigation needed and they have
18 enough to do direct action, it has to go on a 989 to
19 OIA and OIA has to allow the hiring authority to take
20 that direct action because all that has to be tracked
21 in ^{their} ~~our~~ computer system pursuant to Madrid.

22 Q. So there's no indication that CDCR is taking
23 any action with regard to the complaints against
24 officers that you have forwarded to CDCR?

25 A. None that I'm aware of.

Roy W. Wesley
January 22, 2020

CERTIFICATE OF WITNESS

---o0o---

I, ROY W. WESLEY, hereby declare under
penalty of perjury that I have read the foregoing
deposition testimony; and that the same is a true
and correct transcription of my said testimony
except as corrected pursuant to my rights under
Section 2025(q)(1) of the California Code of Civil
Procedure.


Signature

12 Feb 20
Date

Exhibit T



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January 3, 2020

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Russa Boyd
CDCR Office of Legal Affairs
Russa.Boyd@cdcr.ca.gov

Re: *Armstrong v. Newsom*: Plaintiffs' Good Faith Disagreement
With Results of Investigations
Our File No. 0581-03

Dear Russa:

Pursuant to the Order Modifying the January 18, 2007 Injunction, "Defendants shall investigate all allegations of employee non-compliance, regardless of whether the allegation includes the name of the employee(s). [...] If Plaintiffs' counsel has a good faith disagreement with the result of a particular investigation, they may request a copy of the written report and it shall be produced. In such instances, Plaintiffs' counsel shall have the right to review all written documents utilized in making the determination set forth in the report." (See December 29, 2014, Order Modifying the January 18, 2007 Injunction, Doc. 2479, at 2.)

Based on our review of Employee Non-Compliance Logs produced by Defendants between November 2017 and the most recent logs provided, October 2019, Plaintiffs have a good faith disagreement with the results of the investigations in the following cases:

1. Mr. Albert Moffett, BC4849, logged in December 2017 and not confirmed in January 2018
2. Mr. Salvador Paz, V31052, logged in January 2019 and not confirmed in February 2019

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Russa Boyd
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Page 2

3. Mr. James Coley, AU6329, logged in September 2019 and pending as of October 2019
4. Mr. Andre Rider, T13317, logged in September 2019, and not confirmed in October 2019
5. Mr. Albert Moffett, BC4849, logged in December 2018 and not confirmed in January 2019
6. Mr. Markeith Clinton, AY1315, logged in September 2019 and not confirmed in October 2019
7. Mr. Herbert Johnson, P60805, logged in September 2019, and not confirmed in October 2019
8. Mr. Alexander Payne, AK2275, logged in November 2017, not confirmed in January 2018
9. Mr. Michael Patton, AV5870, logged in November 2017, not confirmed in January 2018
10. Mr. Robert Lynch, AZ3519, logged in November 2017, not confirmed in January 2018
11. Mr. Charles Hage, AZ2431, logged in November 2017, not confirmed in January 2018
12. Mr. James Shaw, G05862, logged in November 2017, not confirmed in January 2018
13. Mr. Greenwood, G07153, logged and not confirmed in July, 2017
14. Mr. Dickey, AS6285, logged in December 2017, and not confirmed in January 2018
15. Mr. Kinnamon, P50234, logged in December 2017 and not confirmed in January 2018
16. Mr. Deans, J17189, logged in December 2017 and not confirmed in January 2018

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Page 3

17. Mr. Lau, V15557, logged in December 2017 and not confirmed in January 2018

Pursuant to the Accountability Order, Plaintiffs request that copies of all written reports in these cases be produced within 15 days.

Thank you as always for your ongoing courtesy and cooperation.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:cg

cc: Ed Swanson
Alexander "Lex" Powell
Nicholas Meyer
Patricia Ferguson
Tamiya Davis
Amber Lopez

Erin Anderson
Sean Lodholz
Joanna B. Hood
Annakarina
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Damon McClain

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Exhibit U



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January 30, 2020

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--

Russa Boyd
CDCR Office of Legal Affairs
Russa.Boyd@cdcr.ca.gov

Re: *Armstrong v. Newsom*
Our File No. 0581-03

Dear Russa:

This letter follows-up on my January 3, 2020, letter regarding Plaintiffs' counsel's good faith disagreements with the results of investigations into allegations of non-compliance made by *Armstrong* class members at RJD.

Based on Plaintiffs' review of documents produced by Defendants on January 24, 2020, Plaintiffs' counsel has determined that the current production does not satisfy Defendants' obligations under the Court's Accountability Order. The Accountability Order states, "If Plaintiffs' counsel has a good faith disagreement with the result of a particular investigation, they may request a copy of the written report and it shall be produced. In such instances, Plaintiffs' counsel shall have the right to review all written documents utilized in making the determination set forth in the report." (*See* December 29, 2014, Order Modifying the January 18, 2007 Injunction, Doc. 2479, at 2.).

Defendants have failed to satisfy their obligations in two distinct ways. First, in many cases, Defendants have failed to produce "all written documents utilized in making the determination" with which Plaintiffs' expressed a good faith disagreement in the letter dated January 3, 2020. Second, Defendants have failed in some cases to produce the "written report" which sets forth CDCR's final determination as to confirm or not confirm the allegation.

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Please immediately produce the documents required to comply with the Court's Accountability Order in the following cases:

1. Albert Moffett, BC4849

Defendants' production failed to include all documents utilized in making the determination that Mr. Moffett's allegations could not be confirmed. *See* DOJ155-DOJ172. Defendants failed to produce RVR Log # 3863624, which was cited as evidence in the investigative memo dated January 10, 2018 as well as the Allegation of Non-Compliance Worksheet signed by the Hiring Authority on January 22, 2018. *See* DOJ165; DOJ155. Because CDCR utilized Mr. Moffett's RVR in making the determination that his allegations could not be confirmed, Defendants are obligated to produce the RVR.

2. Salvador Paz, V31052

Plaintiffs' counsel requests confirmation regarding whether the Hiring Authority signed off on the results of the investigation in this case. If so, please produce any written documentation confirming so. This request is based on the fact that this case does not appear to include an allegation worksheet, which includes a Hiring Authority signature line, as is present in other cases.

3. James Coley, AU6329

Defendants' production failed to include any documents utilized in making the determination that Mr. Coley's allegations could not be confirmed nor the final determination that his allegations could not be confirmed. Please immediately produce: a) the written report setting forth CDCR's final decision that Mr. Coley's allegations could not be confirmed and b) all written documents utilized in making that determination.

4. Andre Rider, T13317

Defendants' production failed to include the report containing the final determination that Mr. Rider's allegations could not be confirmed. Instead, Defendants produced only the initial allegation memo dated September 13, 2019, an investigative memo dated September 24, 2019, a referral memorandum dated September 13, 2019, and supporting documents. *See* DOJ208-215. These documents solely set forth recommendations as to the disposition of the allegation, and they do not contain the final results of the investigation into the allegations of non-compliance. *See* DOJ211.

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Defendants must immediately produce a “written report” which sets forth CDCR’s final decision to not confirm the allegation.

5. Markeith Clinton, AY1315

Plaintiffs’ counsel requests confirmation regarding whether the Hiring Authority signed off on the results of the investigation in this case. If so, please produce any written documentation confirming so. This request is based on the fact that this case does not appear to include an allegation worksheet, which includes a Hiring Authority signature line, as is present in other cases.

Defendants also failed to produce “TELESTAFF,” which was utilized in rendering the findings of the investigative memo. *See* DOJ99. In particular, Mr. Clinton’s allegation was not confirmed, in part, because a review of “TELESTAFF” indicated that the staff member “was not working in Housing Unit #5 as inmate Clinton alleges.” *See* DOJ98-99. Because investigators utilized “TELESTAFF” in making the determination that Mr. Clinton’s allegations could not be confirmed, Defendants are obligated to produce all documents pertaining to or constituting “TELESTAFF.”

6. Herbert Johnson, P60805

Defendants’ production failed to include any documents utilized in finding that Mr. Johnson’s allegations could not be confirmed nor the final determination that his allegations could not be confirmed. Instead, Defendants produced investigative documents and a written report related to an allegation of non-compliance raised by a different Mr. Johnson altogether, Mr. James Johnson, D65556. *See* DOJ125-129. Plaintiffs’ counsel did not express any good faith disagreement with the results of the investigation into Mr. James Johnson’s allegations of non-compliance. Please immediately produce: a) the written report finding that Mr. Herbert Johnson’s allegations could not be confirmed and b) all written documents utilized in making that determination.

7. Alexander Payne, AK2275

Defendants’ production failed to include any documents utilized in finding that his allegations could not be confirmed nor the final determination that his allegations could not be confirmed. Defendants appear to have produced documents pertaining to a different allegation raised by Mr. Payne altogether, which was logged on February 28, 2017. *See* DOJ195-199. Plaintiffs’ counsel’s good faith disagreement pertained to an allegation logged in November 2017 and not confirmed in January, 2018. *See* Letter from G. Grunfeld to R. Boyd, dated January 3, 2020, at 2. Because Defendants have

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failed to produce any documents pertaining to the allegation requested by Plaintiffs, Defendants have not met their obligations under the Accountability Order. Please immediately produce: a) the written report finding that Mr. Payne's allegations (initially logged on November 15, 2017) could not be confirmed and b) all written documents utilized in making that determination.

8. Reggie Greenwood, G07153

Defendants' production failed to include all documents utilized in finding that Mr. Greenwood's allegations could not be confirmed. Defendants produced Mr. Greenwood's 602, the signed response to his 602, and a confidential supplement to the appeal, Attachment C, which was signed by the Hiring Authority. *See* DOJ221-227. In Attachment C, it is noted in the "Findings" section that the allegation was "closed with no further action" after evaluation at the Institutional Executive Review Committee ("IERC"). *See* DOJ227. No documentation originating from the IERC, nor documents used to support the IERC's finding, were included in the production. Because the IERC's findings were utilized in making the final decision contained in Attachment C, Defendants are obligated to produce any and all written documents produced as part of the IERC evaluation into Mr. Greenwood's allegations.

9. Gary Dickey, AS6265

Defendants' production failed to include all documents utilized in finding that Mr. Dickey's allegations could not be confirmed. Defendants produced the initial allegation memo dated December 11, 2017, the investigative memo dated January 13, 2018, and the final results of the investigation, signed by the Hiring Authority on January 23, 2018. *See* DOJ117-120. The investigative memo notes that Mr. Dickey's staff complaint Log # C-17-0582, the IERC review on March 16, 2017, and Crime Incident Report Log # RJD-CYD-17-02-0045 were used as evidence in making CDCR's final decision. *See* DOJ119. Defendants, however, failed to produce any written documents pertaining to such evidence. Because the staff complaint, the IERC review, and the Incident Log were all utilized in making the finding that Mr. Dickey's allegations could not be confirmed, Defendants are obligated to produce 602 Log # C-17-0582, Crime Incident Report Log # RJD-CYD-17-02-0045, and any and all written documents produced as part of the IERC evaluation into Mr. Dickey's allegations.

10. Todd Kinnamon, P50234

Defendants' production failed to include all documents utilized in finding that Mr. Kinnamon's allegations could not be confirmed. Defendants produced the initial

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allegation memo dated December 11, 2017, the investigative memo dated January 5, 2018, the final results of the investigation, signed by the Hiring Authority on January 17, 2018, as well as supporting documents. *See* DOJ130-149. In the “Evidence” section of the investigative memo, it is noted that the Crime Incident Report, which was part of the production, was “reviewed and cleared by the Institutional Executive Review Committee,” *See* DOJ134. The production does not include any documents pertaining to the IERC review of the Crime Incident Report. Because the fact that the IERC cleared the Incident Report was utilized as evidence in making the finding that the allegation could not be confirmed, Defendants are required to produce any and all written documents pertaining to the IERC review of Crime Incident Report Log # CYD-17-01-0039.

11. Gary Deans, J17189

Defendants’ production failed to include all documents utilized in finding that Mr. Dean’s allegations could not be confirmed. Defendants produced the initial allegation memo dated December 11, 2017, the investigative memo dated January 5, 2018, and the final results of the investigation, signed by the Hiring Authority on January 17, 2018. *See* DOJ109-116. Some, but not all, documents utilized by CDCR in finding Mr. Deans’ allegations could not be confirmed were produced in a separate file. *See* DOJ130-149. In the “Evidence” section of the investigative memo, it is noted that the Crime Incident Report, which was part of the production, was “reviewed and cleared by the Institutional Executive Review Committee,” *See* DOJ134. The production does not include any documents pertaining to the IERC review of the Crime Incident Report. Because the fact that the IERC cleared the Incident Report was utilized as evidence in making the finding that the allegation could not be confirmed, Defendants are required to produce any and all written documents pertaining to the IERC review of Crime Incident Report Log # CYD-17-01-0039.

12. Hon Lau, V15557

Defendants’ production failed to include any documents utilized in making the determination that his allegations could not be confirmed nor the final determination that his allegations could not be confirmed. Please immediately produce: a) the written report setting forth CDCR’s final decision that Mr. Lau’s allegations could not be confirmed and b) all written documents utilized in making that determination.

///

///

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
January 30, 2020
Page 6

We would appreciate receiving the requested documents no later than one week from today. As always, we appreciate your courtesy and cooperation in this matter.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:JG:aa

cc: Ed Swanson
Alexander "Lex" Powell
Nicholas Meyer
Patricia Ferguson
Tamiya Davis

Amber Lopez
Erin Anderson
Sean Lodholz
Joanna B. Hood
Annakarina
De La Torre-Fennell

Damon McClain
Bruce Beland
Armstrong Co-Counsel

Exhibit V

**OFFICE OF LEGAL AFFAIRS
EMPLOYMENT LAW GROUP
PUBLIC RECORDS ACT TEAM**

10111 Old Placerville Road, Suite, 100
Sacramento, California 95827
(916) 255-1309
(916) 255-1444 (Fax)



RECEIVED

JAN 22 2020

Rosen Bien Galvan & Grunfeld

January 17, 2020

Michael Freedman
Rosen Bien Galvan & Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105-1738

**PUBLIC RECORDS REQUEST REGARDING
REFERENCE #: 2019-10-08-001**

Dear Mr. Freedman:

This letter is in response to your Public Records Act request dated October 4, 2019, received by CDCR on October 8, 2019, for the following records:

"This is a request pursuant to the California Public Records Act (California Government Code §§ 6250, et seq.) for copies of public records in the possession of the California Department of Corrections and Rehabilitation ("CDCR").

As used in this request, the term "California Department of Corrections and Rehabilitation" Of "CDCR" means the California Department of Corrections and Rehabilitation itself as well as any and all agencies, arms, branches, bureaus, offices, subdivisions, treatment facilities, hospitals, officers, directors, employees, independent contractors or agents of the CDCR.

'Relating to' means referring to, constituting, representing, defining, depicting, concerning, embodying, reflecting, identifying, stating, mentioning, governing, addressing, or pertaining to the subject matter of the request in whole or in part, directly or indirectly.

'Identified Staff' means any of the following people who work or have worked at Richard J. Donovan Correctional Facility, 480 Alta Road, San Diego, CA 92179 ("RJD") in the last two years: Arizaga, Asbury, Barrietos, Bowman, Bustos, Coleman, Diaz, Eschoo, Grant, Jackson, Kandowski, McCarty,

Request #2019-10-08-001

Page: 2

Morales, R. Battad, Robles, and Trejo. We have attempted to provide as much information regarding the specific individuals as possible, including full names or first initials where known. If the information provided could refer to more than one staff member who worked at RJD in the last two years, please provide the information for all of the staff members to whom the name could refer. Please also note that though our requests only encompass people who worked at RJD in the last two years, we are requesting all responsive records, not only responsive records from the past two years.

Our requests encompass any documents within the definition of the term "writing" as defined in Cal. Gov't Code § 6252(g).

Specifically, we request the documents and writings listed below:

- 1. All records relating to the report, investigation, or findings of the following:*
 - a. An Incident involving the discharge of a firearm at a person by Identified Staff.*
 - b. An Incident in which the use of force by Identified Staff resulted in death, or in great bodily injury.*
- 2. Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by Identified Staff directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence."*

The California Department of Corrections and Rehabilitation (CDCR) Employment Law Group (ELG) initially identified disciplinary records from 2 cases responsive to your request. However, upon closer examination, CDCR cannot provide any responsive records at this time, but Rosen Bien Galvan & Grunfeld (RBGG) can make a future request.

RBGG paid CDCR \$25.00 for these records. CDCR did not cash RBGG's check, and it is enclosed with this letter.

Request #2019-10-08-001

Page: 3

Should you have any questions or concerns please feel free to contact me at (916) 445-5298 to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn Clark', with a stylized, cursive script.

KATHRYN CLARK
ATTORNEY III
Office of Legal Affairs
Employment Law Group
Public Records Act Team
SB1421PRARRequests@cdcr.ca.gov

Exhibit W



101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Gay Crosthwait Grunfeld
Email: ggrunfeld@rbgg.com

January 14, 2020

VIA ELECTRONIC MAIL ONLY

<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
--

Russa Boyd
Nicholas Weber
CDCR Office of Legal Affairs
P.O. Box 94283-0001
Russa.Boyd@cdcr.ca.gov
Nicholas.Weber@cdcr.ca.gov

Joanna Hood
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom; Coleman v. Newsom*
Declarations Demonstrating Disability-related Staff Misconduct at
Richard J. Donovan Correctional Facility
Our File Nos. 0581-03; 0489-03

Dear Counsel:

Thank you for arranging for Penny Godbold and Michael Freedman to meet with Warden Pollard at Richard J. Donovan Correctional Facility (“RJD”) on January 6, 2020.

In order to keep you apprised of the scope and seriousness of the problems at RJD, we will shortly connect you to a share file containing declarations from 42 *Armstrong* and *Coleman* class members regarding staff misconduct at RJD. Defendants should immediately investigate all allegations contained in the declarations.

Notwithstanding some of the changes that Defendants have made and are planning to make at the prison, the situation at RJD remains intolerable and directly undermines the Department’s efforts to comply with the Americans with Disabilities Act. Due to the slow pace of reform at RJD, we intend to file these and other declarations in support of a motion in *Armstrong* seeking to end to staff misconduct at RJD.

PRIVILEGED AND CONFIDENTIAL

Russa Boyd
Nicholas Weber
Joanna Hood
January 14, 2020
Page 2

Pursuant to the prohibition on communications with a represented party, neither Defendants nor Defendants' counsel may communicate with the declarants or class members referenced in the declarations regarding the allegations in the declarations. *See* California Rule of Professional Conduct 4.2. Any communications with the declarants or class members referenced in the declarations about the content of the declarations must be made through Plaintiffs' counsel or with Plaintiffs' counsel present.

The declarations are subject to the protective order in the case and shall be kept confidential. Due to credible fears of retaliation, we expect that Defendants will limit access to the declarations to only those individuals necessary to respond to and investigate the allegations.

Given the dangerous environment at RJD, we want to emphasize Defendants' obligation to protect the declarants and other incarcerated people referenced in the declarations from retaliation. Plaintiffs' counsel will bring any instances of retaliation to the attention of the Court.

Please do not hesitate to contact me if you would like to discuss this matter further.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:cg
Enclosures

cc: *(via email only)*

Coleman Special Master Team
Adam Fouch
Elise Thorn
Melissa Bentz
Eureka Daye
Adriano Hvartin

Ed Swanson
Roy Wesley (*w/o encls.*)
Bruce Beland
Alexander Powell
Patricia Ferguson
Tamiya Davis
Armstrong OLA

Sean Lodholz
Annakarina
De La Torre-Fennell
Damon McClain
Joanna Hood
Armstrong Co-Counsel
Coleman Co-Counsel

Exhibit X

From: [Russa Boyd](#)
To: [Gay C. Grunfeld](#); [Michael Freedman](#); [Penny Godbold](#); ["Ed Swanson"](#)
Cc: [Stuter, Ursula@CDCR](#); [Davis, Tamiya@CDCR](#); [Renteria, Simone@CDCR](#); [Neill, Jennifer@CDCR](#); [Seibel, Kimberly@CDCR](#); [Foss, Tammy@CDCR](#)
Subject: RJD updates
Date: Friday, January 24, 2020 2:56:25 PM

All,

I write to provide some updates about additional measures implemented at RJD since Tammy Foss became the Associate Director over RJD's mission.

1. Two Associate Wardens from other institutions have been directed to RJD. One (Castro) is from KVSP and has been the ADA AW there for quite some time, so she will also be tasked with assisting the ADA office at RJD.
2. Pat Vasquez has returned to RJD to provide assistance to management. You will recall that she was instrumental at CCWF and has vast management experience.
3. An experienced Lieutenant from SVSP has been assigned to RJD to review all of the outstanding or pending allegations to reconcile the workload and ensure inquiries are completed.
4. Two more Lieutenants from other prisons (one who helped with "culture" at HDSP) will be reporting to RJD on Monday to begin assisting ISU to organize. They will also review institutional policies and procedures to ensure they are up to date.
5. An Associate Warden from CMC will be reporting to review Business Services operations at RJD.
6. Tammy is in the planning stages with the intent to implement quarterly peer reviews, which would result in the development of Corrective Action Plans, along with subsequent quarterly reviews.

Thank you,

Russa Boyd

Attorney IV, Class Action Team
Office of Legal Affairs
California Department of Corrections and Rehabilitation
(916) 324-4123 Office
(916) 862-5737 Cell

ATTORNEY CLIENT COMMUNICATION / ATTORNEY WORK PRODUCT

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Exhibit Y

STATE OF CALIFORNIA

Budget Change Proposal - Cover Sheet

DF-46 (REV 09/19)

Budget Change Proposal - Cover Sheet

Fiscal Year: 2020-21

Business Unit: 5225

Department: California Department of Corrections and Rehabilitation

Priority Number: n/a

Budget Request Name: 5225-022-BCP-2020-GB

Program: Various

Subprogram: Various

Budget Request Description: Correctional Video Surveillance/Drug Interdiction Project Continuation

Budget Request Summary: The California Department of Corrections and Rehabilitation requests \$21.6 million General Fund and 8 positions (6 permanent and 2 one-year, limited-term) in 2020-21 and \$2.1 million General Fund and 6 positions in 2021-22 and ongoing to enhance drug interdiction efforts by completing additional deployments of the Correctional Video Surveillance project at three institutions- Richard J. Donovan Correctional Facility (RJD), Salinas Valley State Prison (SVSP) and the California Institution for Women (CIW).

Requires Legislation: ☐ Yes ☒ No

Code Section(s) to be Added/Amended/Repealed: n/a

Does this BCP contain information technology (IT) components? ☒ Yes ☐ No

If yes, departmental Chief Information Officer must sign.

Department CIO Name: Russell J. Nichols

Department CIO Signature:

Signed On Date: n/a

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project Number: 5225-170

Project Approval Document: S4PRA

Approval Date: 10/05/17

If proposal affects another department, does other department concur with proposal?

☐ Yes ☐ No

Attach comments of affected department, signed and dated by the department director or designee.

Prepared By: Julie Thompson

Date: n/a

Reviewed By: Eric Swanson

Date: n/a

Department Director: Connie Gipson

Date: n/a

Agency Secretary: Ralph Diaz

Date: n/a

Department of Finance Use Only

Additional Reviews: Capital Outlay:☐ ITCU:☐ FSCU:☐ OSAE:☐

Department of Technology:☐

PPBA: Robert Nelson

Date submitted to the Legislature: January 10, 2020

A. Budget Request Summary

The California Department of Corrections and Rehabilitation requests \$21.6 million General Fund and 8 positions (6 permanent and 2 one-year, limited-term) in 2020-21 and \$2.1 million General Fund and 6 positions in 2021-22 and ongoing to enhance drug interdiction efforts by completing additional deployments of the Correctional Video Surveillance project at three institutions- Richard J. Donovan Correctional Facility (RJD), Salinas Valley State Prison (SVSP) and the California Institution for Women (CIW).

B. Background/History

CDCR oversees, manages, and controls all facets associated with safely and securely housing inmates within its institutions. Unfortunately, CDCR's ability to effectively monitor all activities is limited due to the large acreages of adult institutions.

In 2015, the Office of Inspector General conducted a special review of High Desert State Prison (HDSP). The resulting report stated, "Surveillance is invaluable in capturing misconduct, documenting inmate activity, and exonerating employees who have been wrongly accused of misconduct. High quality visual recordings of incidents can serve to resolve...conflicting accounts. In addition, there are many rule violations and crimes inmates commit that visual recordings could memorialize for just resolution." The report further recommended CDCR "immediately install cameras in all inmate areas, including, but not limited to, the exercise yards, rotundas, building dayrooms, patios, and program offices of HDSP."

In 2016, CDCR installed an Audio Video Surveillance Solution (AVSS) with 207 high definition cameras in designated high traffic and large congregation areas at HDSP. This deployment served as a technical pilot, enabling CDCR to test the viability of operating this type of equipment on CDCR's network. In 2017-18, CDCR received funding to deploy AVSS at HDSP and the Central California Women's Facility (CCWF).

Also in 2016, a Coleman Special Master monitoring team toured California State Prison, Sacramento (SAC) due to an increased number of allegations against the staff within their Psychiatric Services Unit, Treatment Centers, and Administrative Segregation Units. The resulting report recommended CDCR install video surveillance cameras to increase observation and provide transparency in areas where allegations commonly originate. In 2018-19, CDCR received funding and installed 178 video surveillance cameras at SAC.

The AVSS records video (with or without audio) from all of the cameras simultaneously on a dedicated computer with Video Management System (VMS) software, or a dedicated network video recorder. The VMS allows authorized CDCR users to watch

live or recorded video to gather evidence in investigations. CDCR retains all audio and video recordings for 90 days. The system also has the functionality to export and save video to other storage devices to retain in an investigation file for as long as needed.

Each AVSS consists of approximately 800 hundred digital cameras installed inside and outside of buildings throughout an institution. Typical locations include, but are not limited to: yards, housing units, program buildings, administration buildings, visiting rooms, sally ports, and visitor processing. The perimeter locations will use radar technology to detect movement in front of the unit with a wide field of view and infrared to produce light for the camera without the need for exterior lighting. This technology can be integrated into the existing VMS software and programmed to send real time alerts, such as text or email, or trigger an audible alarm or visual alerts when the system detects activity in the area.

C. State Level Considerations

The implementation of an AVSS solution in adult institutions aligns with and supports Objective 2.1, Incident Prevention, and Objective 2.2, Drug Interdiction Program, of the Department's strategic plan.

Objective 2.1 Incident Prevention states "...facilities will reduce the rate of incidents that interfere with orderly facility operations by 20 percent through the implementation of a proactive Incident Prevention Strategy."

Objective 2.2 Drug Interdiction Program states "...reduce the use of controlled substances and alcohol by 20 percent in the previously identified 'Intensive' institutions; by 10 percent at the 8 identified 'Moderate' institutions; and by 5 percent at all other institutions ..."Implementation of the AVSS constitutes an information technology project requiring approval from the California Department of Technology (CDT). CDCR received project approval from CDT in October 2017 to implement the AVSS in all CDCR institutions during multiple fiscal years as part of the Statewide Correctional Video Surveillance (SCVS) project. In addition, CDCR received funding in FY 2017-18 through an approved BCP for the deployments at CCWF and HDSP. This budget request seeks funding for deployments at three more institutions.

D. Justification

CDCR provides for the safety and security of the public, employees, volunteers, attorneys, visitors and inmates. CDCR has long recognized the ongoing problem of the use and trafficking of illegal drugs and contraband within its institutions, with visiting rooms being an avenue for the introduction of contraband. The importing, trafficking, and use of illegal drugs and contraband can lead to an increase in inmate violence, the

establishment of an underground economy, and inmates' death due to drug overdose. Refer to Table 1 in Attachment A – Data Tables, which illustrates inmate deaths in institutions from 2016 through 2018.

CDCR determined a multifaceted; zero-tolerance approach is the most effective way to reduce contraband activity within the institutions. This approach includes heightened security, dismantling drug distribution systems, disrupting gang activity, and closing all contraband avenues. This approach enables CDCR to reduce the amount of contraband entering institutions and minimize its availability.

The Department uses a variety of search methods on inmates, including visual inspections, clothed body searches, visual unclothed body searches, hand-held metal detectors, walk-through metal detectors, audio and video surveillance devices, and canine units. The enforcement of various Department regulations and search methods has deterred inmates from attempting to introduce drugs and contraband into the institution. This has resulted in the discovery, identification, and in some instances, prosecution of people (inmates, employees, visitors, volunteers, attorneys, contractors, etc.) who have violated contraband introduction laws. From July 2014 to June 2018, there were 1,142 incidents in which staff, visitors, and non-visitors (civilians) were identified, arrested, and prosecuted for attempting to introduce drugs, alcohol, or contraband into an institution. Refer to Table 2 in Attachment A – Data Tables, which illustrates the type and amount of Contraband discovered across Institutions in 2017 and 2018. Refer to table 3 in Attachment A – Data Tables, which illustrates the number of persons prosecuted for attempting to introduce drugs, alcohol, or contraband to the inmates.

Audio and/or video recording technology enables CDCR to capture and store recorded data that can be accessed and used as evidence of contraband introduction and violent incidents such as assaults, batteries, and riots. It also provides evidence and transparency in allegations of staff misconduct, use of force, and sexual misconduct; and the introduction and possession of drugs and contraband. High quality visual recordings of incidents will serve as irrefutable evidence in investigations, and in administrative, civil, or criminal proceedings. The existence of evidence improves the institution's ability to conduct and conclude investigations compared to investigations reliant solely on eyewitness testimony.

Video recordings will be recorded and stored for at least 90 days. The following events will require staff to preserve the recorded data, until instructed otherwise, as potential evidence in investigations and in administrative, civil, or criminal proceedings:

- Use of force incidents
- Riots
- Suspected felonious criminal activity

- Incidents resulting in serious bodily injury, great bodily injury, or a suspicious death
- Prison Rape Elimination Act/Sexual assault allegations
- Allegations of inmate misconduct (i.e., Serious Rules Violation Reports) by staff
- Allegations of staff misconduct by an inmate, employee, visitor, or other person
- Incidents that may potentially be referred to the District Attorney's Office for criminal prosecution
- An employee report to supervisor of injury
- Inmate claims with Victims Compensation and Government Claims Board
- Office of Appeals requests to review audio or video when conducting an inquiry as it relates to a submittal third level appeal.

Another entry for illegal drug and contraband into an institution is the Minimum Security Facility (MSF) perimeter. The Department has seen a significant increase in the number incidents where citizens will gain access to institutional grounds for the purpose of introducing illegal drugs and contraband into an institution by throwing contraband into the MSF perimeter. As technology changes, the Department needs to be proactive in using audio-video recording technology and perimeter detection equipment to ensure the safety of the institutions. The use of audio and/or video recording technology are invaluable investigative tools in identifying involved suspects after an incident has been contained. With the installation of cameras, institutions can eliminate blind spots where prohibited activities may occur.

The use of audio and/or video recording technology will also aid the Department in providing an environment conducive to inmates participating in rehabilitative programs. Inmates that have access to drugs, negatively impact the success of drug treatment and other rehabilitative programs at the institutions.

CCWF and HDSP AVSS Implementation:

These deployments allowed CDCR to begin assessing the effect of AVSS. This assessment includes looking at any changes to the number of violent incidences, amount of contraband, and allegations of staff misconduct, as well as determining the impact the availability of audio or video has on reaching a conclusion to an investigation.

Since implementation at CCWF and HDSP, both institutions have utilized their AVSS to identify suspects in investigations, including attempted homicides. Both institutions have successfully utilized video from their respective systems to locate lost, misplaced or stolen items, eliminating the need for lengthy searches and potential lock down situations. CCWF and HDSP have also identified opportunities to enhance staff training by reviewing video of actual incidents and providing staff guidance on how to handle similar incidents in the future.

Please see Attachment B – Supplemental Reports for additional incidents that would have not been reported or discovered without the availability of audio and/or video recording technology.

Details regarding the specific tasks for each requested position can be found on Attachment C – Position Workload Analysis.

E. Outcomes and Accountability

The Department asserts that with the addition of AVSS at the proposed institutions, the Department will perform the following actions:

- Identify and/or refer for prosecution employees, volunteers, contractors, attorneys, visitors, and inmates discovered introducing contraband into the institutions;
- Identify employee, volunteer, contractors, attorney, visitor, or inmate misconduct;
- Enhance the overall safety of the public, employees, volunteers, contractors, attorneys, visitors, and inmates;
- Identify inmates that are disruptive or do not want to participate in educational, vocational, or rehabilitative programs; and
- Deter individuals from attempting to introduce drugs or contraband into the institutions.

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Reduce violent incidents by 20 percent within 18 months of the complete installation of video surveillance equipment at institution in conjunction with various components of other interdiction efforts.	Receipt of funding, beginning of project, three sites implemented		Violent incidents reduced by 20 percent at implemented sites.			
Reduce contraband (drugs, cell phones) entering an institution by 20 percent within	Receipt of funding, beginning of project,	Contraband entering institution reduced by	Contraband entering institution reduced by			

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
24 months of the complete installation of video surveillance equipment at each institution and in conjunction with various components of other interdiction efforts.	three sites implemented	10 percent at implemented sites.	20 percent at implemented sites.			
Reduce number of inmate allegations of staff misconduct by 20 percent within 24 months in the institutions. Afford more transparency to substantiate or refute allegations of staff misconduct by 20 percent within the institutions in conjunction with the various components of other interdiction efforts.	Receipt of funding, beginning of project, three sites implemented		Number of inmate allegations of staff misconduct reduced by 20 percent at implemented sites.			
Return staff to normal duties 10 percent faster due to availability of specific evidence.	Receipt of funding, beginning of project, three sites implemented		Timeframe for investigating allegations against staff reduced by 10 percent at implemented sites.			

F. Analysis of All Feasible Alternatives

Alternative 1: Implement AVSS technology at three institutions to include MSF perimeter and the areas of inmate path of travel and congregation. This alternative would cost approximately \$21.6 million General Fund (\$20.4 million one-time and \$1.2 million ongoing) and 8 positions (6 permanent and 2 one-year, limited-term) in 2020-21 and \$2.1 million General Fund and 6 positions in 2022-23 and ongoing.

Pros:

- Provides 24 x 7 comprehensive coverage for all areas where inmate movement

occurs.

- Deters criminal activities such as violent incidents, drug and contraband activity, and alleged staff misconduct.
- Monitors activities in inmate/ward movement areas and institution/facility ground MSF perimeters.
- Provides an objective record of incidents that can be used during investigations into allegations against inmates/wards and staff.

Cons:

- Requires a significant financial investment.

Alternative 2: Implement video surveillance in the visiting rooms, yards, and institution/facility MSF perimeter only. This alternative would cost approximately \$7.2 million for operating expenses and equipment and 6 positions.

Pros:

- Provides video surveillance coverage in some but not all areas where inmates travel and congregate in an institution.
- Requires a shorter timeframe for implementation.
- Lower costs than Alternatives 1, 3 and 4.

Cons:

- Leaves areas within an institution unmonitored by video surveillance, where inmates typically travel and congregate.
- Limits the ability to provide an objective record of incidents that can be used during investigations.

Alternative 3: Implement AVSS technology in the 95 visiting rooms of 31 institutions (cameras were deployed at CCWF, HDSP and SAC in Phase I) over two fiscal years. This alternative would cost approximately \$19.5 million for operating expenses and equipment and 8 positions.

Pros:

- Provides comprehensive coverage in visiting where contraband often enters an institution in all institutions.
- Lower cost than Alternative 1.

Cons:

- Does not provide a deterrent or the ability to monitor for incidents throughout the institutions and facilities or at the perimeter.
- Does not provide an objective record for allegations against inmates and staff.
- Does not provide a deterrent to criminal activities such as violent incidents and alleged staff misconduct in areas other than visiting.

Alternative 4: Hire additional correctional officers and assign two officers per facility, 24 hours a day, 7 days a week. This would add an average of 40 Correctional Officers per institution, who would be specifically posted and assigned to watch and observe for potentially inappropriate or illegal activities throughout the institution. This alternative would cost approximately \$18.3 million annually for 120 positions.

Pros:

- Does not require installing any new or additional equipment and eliminates the potential for inoperability due to broken or failed equipment.
- Solution can be implemented quickly.
- Lower costs in the first year than Alternatives 1 and 2.

Cons:

- Additional staff cannot cover the large breadth of land and buildings in each institution.
- Does not provide irrefutable evidence related to an incident. Instead, it relies on an individual's personal observation and their interpretation of what they witnessed.
- Ongoing costs are significantly higher.

G. Implementation Plan

Please Refer to Attachment D – Implementation Plan for the AVSS technology Implementation Plan.

H. Supplemental Information

The following are available upon request:

Attachment A – Data Tables

Attachment B – Supplemental Reports

Attachment C – Position Workload Analysis

Attachment D – Implementation Plan

I. Recommendation

Alternative 1 is recommended. Implement CDCR's comprehensive AVSS solution at three additional institutions.

BCP Fiscal Detail Sheet

BCP Title: Video Surveillance Expansion

BR Name: 5225-022-BCP-2020-GB

Budget Request Summary

Personal Services

Personal Services	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
Positions - Permanent	0.0	6.0	6.0	6.0	6.0	6.0
Total Positions	0.0	6.0	6.0	6.0	6.0	6.0
Earnings - Permanent	0	694	525	525	525	525
Overtime/Other	0	450	0	0	0	0
Total Salaries and Wages	\$0	\$1,144	\$525	\$525	\$525	\$525
Total Staff Benefits	0	421	328	328	328	328
Total Personal Services	\$0	\$1,565	\$853	\$853	\$853	\$853

Operating Expenses and Equipment

Operating Expenses and Equipment	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
5301 - General Expense	0	46	31	31	31	31
5302 - Printing	0	7	5	5	5	5
5304 - Communications	0	13	8	8	8	8
5306 - Postage	0	3	2	2	2	2
5320 - Travel: In-State	0	16	10	10	10	10
5322 - Training	0	3	2	2	2	2
5340 - Consulting and Professional Services - External	0	2,577	3	3	3	3
5340 - Consulting and Professional Services - Interdepartmental	0	2	1	1	1	1
5346 - Information Technology	0	9,672	1,165	1,165	1,165	1,165
5368 - Non-Capital Asset Purchases - Equipment	0	28	11	11	11	11
539X - Other	0	7,618	0	0	0	0
Total Operating Expenses and Equipment	\$0	\$19,985	\$1,238	\$1,238	\$1,238	\$1,238

Total Budget Request

Total Budget Request	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
Total Budget Request	\$0	\$21,550	\$2,091	\$2,091	\$2,091	\$2,091

Fund Summary

Fund Source

Fund Source	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
State Operations - 0001 - General Fund	0	21,550	2,091	2,091	2,091	2,091
Total State Operations Expenditures	\$0	\$21,550	\$2,091	\$2,091	\$2,091	\$2,091
Total All Funds	\$0	\$21,550	\$2,091	\$2,091	\$2,091	\$2,091

Program Summary

Program Funding

Program Funding	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
4500039 - Information Technology	0	20,626	1,624	1,624	1,624	1,624
4530010 - General Security	0	467	467	467	467	467

Program Funding	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
4530028 - General Security Overtime	0	457	0	0	0	0
Total All Programs	\$0	\$21,550	\$2,091	\$2,091	\$2,091	\$2,091

Personal Services Details

Positions

Positions	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
1402 - Info Tech Spec I (Eff. 07-01-2020)	0.0	2.0	2.0	2.0	2.0	2.0
1402 - Info Tech Spec I (Eff. 07-01-2020)(LT 06-30-2021)	0.0	0.0	0.0	0.0	0.0	0.0
1414 - Info Tech Spec II (Eff. 07-01-2020)	0.0	1.0	1.0	1.0	1.0	1.0
4063 - Sr Estimator of Bldg Constrn (Eff. 07-01-2020)(LT 06-30-2021)	0.0	0.0	0.0	0.0	0.0	0.0
9662 - Corr Officer (Eff. 07-01-2020)	0.0	3.0	3.0	3.0	3.0	3.0
OT00 - Overtime (Eff. 07-01-2020)	0.0	0.0	0.0	0.0	0.0	0.0
Total Positions	0.0	6.0	6.0	6.0	6.0	6.0

Salaries and Wages

Salaries and Wages	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
1402 - Info Tech Spec I (Eff. 07-01-2020)	0	166	166	166	166	166
1402 - Info Tech Spec I (Eff. 07-01-2020)(LT 06-30-2021)	0	83	0	0	0	0
1414 - Info Tech Spec II (Eff. 07-01-2020)	0	98	98	98	98	98
4063 - Sr Estimator of Bldg Constrn (Eff. 07-01-2020)(LT 06-30-2021)	0	86	0	0	0	0
9662 - Corr Officer (Eff. 07-01-2020)	0	261	261	261	261	261
OT00 - Overtime (Eff. 07-01-2020)	0	450	0	0	0	0
Total Salaries and Wages	\$0	\$1,144	\$525	\$525	\$525	\$525

Staff Benefits

Staff Benefits	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
5150450 - Medicare Taxation	0	17	8	8	8	8
5150500 - OASDI	0	27	17	17	17	17

Staff Benefits	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
5150600 - Retirement - General	0	221	184	184	184	184
5150800 - Workers' Compensation	0	22	18	18	18	18
5150820 - Other Post-Employment Benefits (OPEB) Employer Contributions	0	20	16	16	16	16
5150900 - Staff Benefits - Other	0	114	85	85	85	85
Total Staff Benefits	\$0	\$421	\$328	\$328	\$328	\$328

Total Personal Services

Total Personal Services	FY20 Current Year	FY20 Budget Year	FY20 BY+1	FY20 BY+2	FY20 BY+3	FY20 BY+4
Total Personal Services	\$0	\$1,565	\$853	\$853	\$853	\$853

Table 1: Inmate Deaths in Institutions from Overdose from 2016 through 2018.

Year	Overdoses Resulting In Death
2016	28
2017	39
2018	61
Total	128

Table 2: Contraband Discovered in Institutions in 2017 and 2018.

Type of Contraband	2017	2018
Cellular Telephones	13,195 phones	11,715 phones
Heroin	28.83 pounds	30.8 pounds
Marijuana	91.77 pounds	131.9 pounds
Methamphetamines	43.55 pounds	44.22 pounds
Tobacco	635.8 pounds	527.9 pounds

Table 2 data obtained from CDCR's Office of Research

Table 3: Number of Persons Prosecuted for Attempting to Introduce Drugs,
Alcohol, or Contraband - By Fiscal Year

Fiscal Year	Staff	Visitors	Non-Visitors	Totals
2014-15	6	211	51	268
2015-16	7	224	51	282
2016-17	9	221	32	262
2017-18	4	269	57	330
Totals	26	925	191	1,142

Table 3 data obtained from CDCR's Office of Research.

Table 4: AVSS Data for CCWF and HDSP Compared to All Other Institutions
February 1, 2018 to April 30, 2019

	Rules Violation Reports		Staff Complaints		Incident Reports	
	(RVR)				(IR)	
	Impact	No Impact	Impact	No Impact	Impact	No Impact
CCWF	500	258	117	113	12	554
HDSP	645	733	155	0	251	295
All Other Institutions	1,645	3,477	477	1,123	1,121	2,624
Totals	2,790	4,468	749	1,236	1,384	3,473

Table 5: AVSS Rules Violation Reports from February 1, 2018 through April 30, 2019

Rules Violation Reports (RVR)				
	Impact	No Impact	Available	Not Available
CCWF	500	258	338	895
CIW	2	0	4	1,164
HDSP	645	733	1,710	2,209
RJD	11	0	12	27
SVSP	7	0	13	5,659
Totals	1,165	991	2,077	9,954

Table 6: AVSS Staff Complaint from February 1, 2018 through April 30, 2019

Staff Complaints				
	Impact	No Impact	Available	Not Available
CCWF	117	113	141	85
CIW	0	0	0	171
HDSP	155	0	145	128
RJD	7	469	29	653
SVSP	0	0	0	751
Totals	279	582	315	1,617

Table 6 data obtained from the Office of Research COMPSTAT 13-Month Reports

The data in table 6 represents the number of times AVSS was available for Staff Complaints and if the video had an impact for each of the four institutions identified in the table. A single video can be used in more than one Staff Complaint.

Table 7: AVSS Incident Report from February 1, 2018 through April 30, 2019

Incident Reports				
	Impact	No Impact	Available	Not Available
CCWF	12	554	574	227
CIW	0	0	1	480
HDSP	251	295	578	327
RJD	11	14	28	167
SVSP	0	0	0	1,556
Totals	274	863	1,180	2,277

Table 7 data obtained from the Office of Research COMPSTAT 13-Month Reports

The data in table 7 represents the number of times AVSS was available for Incident Reports and if the video had an impact for each of the four institutions identified in the table. A single video can be used in more than one Incident Report.

Supplemental Reports

These examples illustrate the evidence that audio and/or video recording technology provide the Department when criminal behavior occurs.

Central California Women's Facility

Battery on a Prisoner

On Monday, December 17, 2018, at approximately 1840 hours, the Audio Video Surveillance System (AVSS) was reviewed due to an inmate being found with injuries consistent with being involved in a physical altercation.

On Monday, December 17, 2018 at approximately 1425 hours, while dayroom was open, inmate #1 walked into the inmate restroom. A few moments later two additional inmates, Inmates #2 and #3 followed the first inmate to the inmate restroom. Once inmates #2 and #3 were positioned in front of the restroom, inmate #2 snuck into the inmate restroom behind inmate #1. The AVSS revealed that soon after inmate #2 entered the inmate restroom a struggle between the two inmates took place which could be seen through the mirror on the wall. It is believed that inmate #2 committed an act of battery against inmate #1 while inmate #3 staged outside of the restroom attempting to be the lookout for inmate #2 as she committed this act of battery.

The AVSS was used as the main source of evidence during the hearing which resulted in a guilty finding of inmate #2 for Battery on an Inmate and #3 for Conspiracy to batter an inmate.

Conduct which could lead to violence

On Sunday, January 14, 2018, at approximately 1019 hours, an incident occurred (Battery on an Inmate with a Weapon) involving multiple inmates in the dayroom. A Code 2 response was summoned over the institutional radio, and a personal alarm device was activated, providing an audible sound, and visual alert in the building. During the incident, responding staff gave multiple verbal orders to the involved and non-involved inmates identified in the incident to "get down," with negative results for compliance.

On January 17, 2018, a review of the video recorded footage of the incident showed an inmate attempting to obstruct staff from performing their duties. Numerous inmates in the dayroom were provided several verbal orders to "get back" and to "move away and get down" from the area, which was met with negative compliance. Due to the magnitude of the incident, positive identification of the inmates who failed to get down as ordered was not possible.

The video recorded footage of the incident showed an inmate attempting to obstruct staff from the performance of their duties. As a result of the video evidence, the inmate was found guilty of Behavior Which Could Lead to Violence.

Battery on a Peace Officer

On Friday, March 15, 2019, at approximately 1905 hours, the Facility C Sergeant heard a Correctional Officer call a Code 1, "gassing," via institutional radio followed by an audible alarm sound from the unit. The Sergeant responded and observed the front of officer's uniform pants wet with an unknown liquid. The Officer reported while he was conducting an unlock, an inmate threw an unknown liquid on his person striking him in the left eye, face, and upper torso.

Supplemental Reports

The reviewed AVSS footage shows the inmate throwing an unknown liquid at the officer. This evidence was used in the findings portion of the Rules Violation Report.

Assault on a Peace Officer

On Saturday, April 20, 2019, there was a disruptive inmate in building 503 dayroom. There were two inmates on the second tier being disruptive and refusing to comply with orders. The inmates ran to the center part of the tier. One inmate pushed a utility cart down the stairs towards the responding officer while the other inmate was encouraging her to do it. The cart missed the officer by approximately 2-3 feet with the cart stopping approximately 4-5 feet past the officer. The inmates ran and climbed over the safety rail on the top tier as if they were going to jump, while still refusing to comply with orders to get down. The inmates started to run towards the middle of the tier when another officer deployed an OC Blast grenade which landed in front of the inmates forcing them to run back. One of the inmates picked up a wet floor safety cone from in front of cells and threw it over the rail in the officer's direction, missing by approximately one foot.

Review of the AVSS footage clearly shows the inmate pushed the cart down the stairs and then threw the "Wet Floor" sign at the officer.

High Desert State Prison

Arrest of a Non-Prisoner (Visitor)

On January 6, 2019, at approximately 1427 hours, the approved visitor of an inmate was arrested. Utilizing the AVSS, staff observed the inmate receive a suspected controlled substance from his visitor. The Investigative Services Unit responded and found the inmate in possession of 8 grams of methamphetamine. The inmate was rehoused in the Short Term Restricted Housing unit.

The visitor was processed into the county jail. The inmate postponed the adjudication of the Rules Violation Report pending the outcome of the referral for felony prosecution by the District Attorney's Office.

Fighting Resulting in SBI – UOF (OC, Baton, 40MM)

On August 22, 2018, at approximately 1035 hours, a staff member in A-Facility observed two inmates striking each other in the head and facial areas. Multiple orders to stop fighting were ignored resulting in the use of force. Due to an injury to the top of one of the inmate's head, he was transported to medical and later to an outside medical facility for further care. After a review of the AVSS, the inmate is observed walking up to the other inmate and with his right fist striking him in the facial area.

A review of the AVSS was conducted which was utilized as evidence in the RVR hearing. Inmate "A" stated he was the victim which was substantiated by the AVSS. However, during a review of the AVSS, upon staff arriving to the incident "A" the opportunity to separate from Inmate "B" and stop his actions. Inmate "A" ignored staff's orders to stop and continued his actions striking Inmate "B" with his fist. At that point in time Inmate "A" is no longer the victim and had become the aggressor. The AVSS clearly shows Inmate "A" engaged in violence as his actions were aggressive in nature as he ignored staffs orders and attempted to strike Inmate "B". Therefore, Inmate "A" was found guilty for fighting. Assessed a credit loss of 61-days and loss of yard recreation privileges for 30-days.

Supplemental Reports

Attempted Murder

On October 19, 2018, at approximately 1009 hours, staff observed two inmates stabbing another inmate with metal weapons near the workout area closest to the handball courts. The victim attempted to elude the attack from the two suspects as they continued to stab the victim. The victim was bleeding profusely from his upper torso and head/neck area. The Observation Officer fired one round from his state issued Mini 14 rifle; the round did not strike anyone. Responding staff arrived and ordered the suspects and victim to get down. Both the suspects and victim complied with staff orders. The video evidence clearly depicted their use of deadly weapons, which caused such serious wounds to the victim that the doctor on duty was fearful the victim may die.

This case was referred and accepted by the District Attorney's Office for felony prosecution. Both inmates determined not to postpone their Administrative hearing pending the outcome of referral for prosecution. Both inmates pled guilty and were found guilty by a Senior Hearing Official of Attempted Murder of an Inmate and were assessed a credit loss of 181 days.

Correctional Officer - DAI

<i>Specific Task</i>	Hours to Complete Task	Number of Tasks per Year	Number of Institutions	Number of Hours per Year
Serves as the video surveillance liaison to local IT and requests the necessary access for new users based on their job function.	0.50	222.5	3	333.75
Verifies operability of all hardware and software. Facilitate and coordinate resolution of any issues with local IT support staff.	0.50	222.5	3	333.75
Monitors inmate activity for suspicious behavior.	3.00	222.5	3	2,002.50
Performs follow-up investigation work pertaining to criminal conduct captured by video surveillance footage.	2.50	222.5	3	1,668.75
Evaluates the video surveillance process, prepare summaries of activities and provide statistical information to institutional administrators and headquarters.	0.50	222.5	3	333.75
Provides training to institutional staff on how to operate the video surveillance system (e.g., where cameras and monitors are located, operation of a point tilt zoom cameras, etc.).	0.50	222.5	3	333.75
Provides training to institutional staff on how to collect (download) video surveillance footage and how to process video surveillance footage as evidence, per procedure.	0.50	222.5	3	333.75
Total Hours Projected Annually				5,340
Total Positions Projected				3.0

Information Technology Specialist II - EIS/SCVS Team

<i>Specific Task</i>	Hours to Complete Task	Number of Tasks per Year	Number of Hours per Year
Monitor and track all project expenditures and invoices.	8.00	12	96.00
Conduct monthly executive steering committee meetings	4.00	12	48.00
Draft regular status reports for EIS executives and control agency.	2.00	52	104.00
Conduct and attend regular status meetings with team members and vendor	4.00	52	208.00
Monitor and track all project schedules.	4.00	52	208.00
Draft and modify project authority and budget request documents; coordinate review and approval with internal stakeholders	16.00	12	192.00
Receive and review all requests and inquiries related to video surveillance	24.00	12	288.00
Monitor status of projects, efforts managed by SCVS PMs.	12.00	12	144.00
Discuss solutions and progress on resolving new or ongoing issues with SCVS team members	24.00	12	288.00
Review Service Bulletins and Change Control Notifications	2.00	12	24.00
Request and obtain input/approval from Business Stakeholder for issues, requests, etc. as needed.	4.00	12	48.00
Monitor and track project risks and issues, and escalate critical items to executives when needed.	10.00	12	120.00
Submit Purchase Requisitions, Review Purchase Orders, and process Goods Receipts	4.00	12	48.00
Total Hours Projected Annually			1,816
Total Positions Projected			1.0

Information Technology Specialist I - EIS/SCVS Team

<i>Specific Task</i>	Hours to Complete Task	Number of Tasks per Year	Number of Hours per Year
Work with DAI, FPCM & other project stakeholders to determine institutions' needs and requirements in accordance with project scope, design, specifications and cost estimates.	2.00	20	40.00
Carry out project management responsibilities required to oversee the planning, scope, and installation of the video surveillance equipment.	4.00	20	80.00
Manage all aspects of changes to the system for initial implementation. This includes configuration of the video management software to meet initial and changing business needs, managing processes and procedures for requesting access and changes to the system, providing ongoing training for users of the system and provisioning staff to access the system appropriately.	8.00	20	160.00
Conduct site inspections to confirm that implementation of video surveillance solution meets expectations based on the standard model.	24.00	20	480.00
Conduct site walk throughs to determine viewing objectives for each location and to determine camera placement.	24.00	20	480.00
Coordinate installation activities with institution staff to ensure timely completion of tasks and mitigate negative impacts to institutional operations.	8.00	20	160.00
Manage processes and documentation for change requests related to drops for implementation of video surveillance solution at institutions.	2.00	20	40.00
Schedule and attend meetings with EIS & various project stakeholders.	2.00	20	40.00
Prepare and update project schedules for each institution implementation which includes tasks for equipment, software, configuration, training and provisioning.	2.00	148	296.00
Review drawings and other documentation provided by vendor for project close-out and to ensure all deliverables are complete.	8.00	4	32.00
Monitor camera performance, views, focus, etc., to ensure consistent and appropriate performance.	8.00	20	160.00
Review and triage all incoming Remedy requests related to video surveillance system problems and issues.	5.00	120	600.00
Troubleshoot reported video surveillance system issues and research appropriate resolutions.	4.00	100	400.00
Coordinate and facilitate resolution of video surveillance system issues with local IT.	12.00	20	240.00
Provide onsite support to resolve significant video surveillance system issues.	16.00	20	320.00
Total Hours Projected Annually			3,528
Total Positions Projected			2.0

Information Technology Specialist I - EIS/Network Engineering

<i>Specific Task</i>	Hours to Complete Task	Number of Tasks per Year	Number of Hours per Year
Perform deployment planning for WAN/LAN upgrades to include creation of the Telecommunication Infrastructure Service Request (TISR) response.	60.00	7	420.00
Perform pre-configuration and testing on HP 8400 core switches (One time for project).	80.00	1	80.00
Perform equipment receipt, pre-configuration, and shipping of site core distribution switches.	40.00	7	280.00
Perform equipment receipt, pre-configuration, and shipping of edge switching equipment.	40.00	7	280.00
Attend meetings with EIS & various project stakeholders.	1.00	52	52.00
Perform security analysis with Information Security Office (ISO) and apply firewall changes.	20.00	14	280.00
Perform IP Address Management (IPAM) and DHCP configuration for IP scope reservation and deployment.	2.00	7	14.00
Perform regular management/maintenance of core distribution switches, routers, and edge switches.	2.00	52	104.00
Document data communications configuration for wired network, and communicate changes with Automation team (Tools Team) and Network Operations Center (NOC).	25.00	7	175.00
Create Budget Cost Estimates (BCE) and confirm vendor bill of materials (BOM) for network equipment.	4.00	7	28.00
Perform onsite router/switch/patch cabling deployment.	80.00	7	560.00
Coordinate video surveillance installation activities with institution IT staff to ensure timely completion of network tasks and mitigate negative impacts to institutional operations,	1.00	7	7.00
Total Hours Projected Annually			2,280
Total Positions Projected			1.0

Senior Estimator of Building Construction - FPCM

<i>Specific Task</i>	Hours to Complete Task	Number of Tasks per Year	Number of Hours per Year
Works with EIS & other project stakeholders to determine institutions' needs and requirements in accordance with project scope, design, specifications and cost estimates of the Video Surveillance Project.	2.00	120	240.00
Reviews and analyzes project plans and specifications to determine materials and labor required for the project's budget.	4.00	25	100.00
Prepares project schedule for budget packages to provide an estimate of the duration of the design and construction of the project.	4.00	25	100.00
Develops, budgets, and manages infrastructure and construction projects. Ensures that specifications and plans are accurate and in compliance with the scope, schedule, applicable budget language, codes, regulations, and hazardous materials requirements.	3.00	120	360.00
Maintains written and verbal communication with section estimators, as well as contractors, while preparing cost estimates to remain current on various costs and construction methods.	4.00	25	100.00
Visits construction sites at various locations to investigate the existing & ongoing physical conditions, photograph site conditions to ensure a complete understanding of project drawings & requirements and examine project conditions to ensure all stakeholders are in agreement regarding project plans, specifications, and requirements.	4.50	120	540.00
Coordinates construction activities with institution Correctional Plant Managers and other institution staff to determine Institutional needs and requirements related to the project.	4.00	30	120.00
Performs value engineering (analysis) of plans and specifications to determine areas of potential cost savings to bring CDCR's preliminary and final cost estimates within budget.	4.00	25	100.00
Compares proposed change orders against original construction documents; estimates and negotiates value (increase or decrease) of proposed changes to the original contract documents.	4.00	7	28.00
Schedules and attends meetings with EIS & various project stakeholders.	2.00	100	200.00
Reviews as-built drawings and other documentation provided by vendor (Full Site Completion package) for project close-out and to ensure compatability to existing systems & as-built drawings.	48.00	4	192.00
Total Hours Projected Annually			2,080
Total Positions Projected			1.0

The AVSS technology will be implemented as follows:

Task	Approximate Timeframe
Receive funding and begin project	July 2020
Establish, recruit and fill positions	July 2020 – October 2020
Conduct site visits and design systems	October 2020 – February 2021
Procure equipment and services	November 2020 – March 2021
Install network equipment	December 2020 – April 2021
Install cabling and cameras	December 2020 – May 2021
Train users	April 2021 – May 2021
Test cameras and validate viewing objectives	May 2021 – June 2021
Solution validated and accepted	June 2021

Exhibit Z

9840 Augmentation for Contingencies or Emergencies

Each year, the Budget Act includes appropriation items in business unit 9840 to be used to supplement department's appropriations that are insufficient due to unanticipated expenditures or emergency situations. There are three separate appropriations, one for each fund type - General, special, and non-governmental cost funds. These appropriations are allocated to other departments by the Department of Finance based upon the determination of need.

3-YEAR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2018-19	2019-20	2020-21	2018-19*	2019-20*	2020-21*
7806 Augmentation for Contingencies or Emergencies	-	-	-	\$-	\$44,996	\$50,000
TOTALS, POSITIONS AND EXPENDITURES (All Programs)	-	-	-	\$-	\$44,996	\$50,000
FUNDING			2018-19*	2019-20*	2020-21*	
0001 General Fund			\$-	\$14,996	\$20,000	
0494 Other - Unallocated Special Funds			-	15,000	15,000	
0988 Other - Unallocated Non-Governmental Cost Funds			-	15,000	15,000	
TOTALS, EXPENDITURES, ALL FUNDS			\$-	\$44,996	\$50,000	

LEGAL CITATIONS AND AUTHORITY

DEPARTMENT AUTHORITY

Annual Budget Act.

DETAILED BUDGET ADJUSTMENTS

	2019-20*			2020-21*		
	General Fund	Other Funds	Positions	General Fund	Other Funds	Positions
Workload Budget Adjustments						
Other Workload Budget Adjustments						
• Miscellaneous Baseline Adjustments	\$-5,004	\$-	-	\$-	\$-	-
Totals, Other Workload Budget Adjustments	\$-5,004	\$-	-	\$-	\$-	-
Totals, Workload Budget Adjustments	\$-5,004	\$-	-	\$-	\$-	-
Totals, Budget Adjustments	\$-5,004	\$-	-	\$-	\$-	-

* Dollars in thousands, except in Salary Range. Numbers may not add or match to other statements due to rounding of budget details.

9840 Augmentation for Contingencies or Emergencies - Continued**2018-19 Unanticipated Cost Funding Table**

<u>Department Name</u>	<u>Description of Unanticipated Cost</u>	<u>Fund Title</u>	<u>Funded from 9840 Budget Act Items</u>	<u>Funded by Supplemental Appropriation Bill</u>
State Controller's Office	Costs related to Mallano v State Controller's Office legal settlement	General Fund	\$1,440	
Exposition Park	Funding for settlement of a workers compensation lawsuit	General Fund	623	
California Tahoe Conservancy	Funding for shoreline stabilization activities following an emergency erosion event	California Environmental License Plate Fund	500	
State Lands Commission	Funding for external counsel costs related to the Venoco LLC bankruptcy litigation	General Fund	3,000	
Coastal Commission	Funding for attorney fees and external counsel costs related to the Spotlight litigation	General Fund	1,204	
Department of Aging	Return of funds to the federal government that were incorrectly remitted to the General Fund	General Fund	678	
California Department of Corrections and Rehabilitation	Population adjustment	General Fund		\$17,000
California Department of Corrections and Rehabilitation	Medical Classification Model	General Fund		12,675
California Department of Corrections and Rehabilitation	Pharmaceutical costs for inmates	General Fund		18,849
California Department of Corrections and Rehabilitation	Contract medical augmentation	General Fund		61,000
California Department of Corrections and Rehabilitation	California Correctional Health Care Services leasing augmentation	General Fund		3,070
Board of State and Community Corrections	Community Corrections Partnership Plans	General Fund	50	
Payment to Counties for Homicide Trials	Augmentation to reimburse qualified counties for the costs of homicide trials	General Fund		1
	Totals, Unanticipated Costs		\$7,495	\$112,595
	Totals by Fund Source:			
	General Fund		\$6,995	\$112,595
	Special Funds		500	-
	Nongovernmental Cost Funds		-	-
	Grand Total		\$7,495	\$112,595

* Dollars in thousands, except in Salary Range. Numbers may not add or match to other statements due to rounding of budget details.

9840 Augmentation for Contingencies or Emergencies - Continued**2019-20 Unanticipated Cost Funding Table**

<u>Department Name</u>	<u>Description of Unanticipated Cost</u>	<u>Fund Title</u>	<u>Funded from 9840 Budget Act Items</u>	<u>Funded by Supplemental Appropriation Bill</u>
Department of Motor Vehicles	Funding to meet federal deadlines related to its voter registration activities	General Fund	\$2,182	
Department of Forestry and Fire Protection	CAL FIRE will incur costs in 2019-20 related to back pay of cash-in-lieu-of benefits pursuant to a settlement with Bargaining Unit 8.	General Fund		\$4,800
Coastal Commission	Settlement pursuant to <i>Dunes Development, LLC v. California Coastal Commission</i> , Los Angeles County Superior Court Case No. BS173162.	General Fund	150	
California Department of Corrections and Rehabilitation	California Health Care Facility - Legionella Remediation	General Fund		9,702
Department of Finance	National Mortgage Settlement	General Fund	1,427	
Department of Veterans Affairs	California State Approving Agency for Veterans Education	General Fund	1,245	
	Totals, Unanticipated Costs		\$5,004	\$14,502
	Totals by Fund Source:			
	General Fund		\$5,004	\$14,502
	Special Funds		-	-
	Nongovernmental Cost Funds		-	-
	Grand Total		\$5,004	\$14,502

* Dollars in thousands, except in Salary Range. Numbers may not add or match to other statements due to rounding of budget details.

9840 Augmentation for Contingencies or Emergencies - Continued

PROGRAM DESCRIPTIONS

7806 - AUGMENTATION FOR CONTINGENCIES OR EMERGENCIES

The 2018-19 and 2019-20 budget display for 9840 items of appropriations reflects the amounts allocated or to be allocated from 9840. A separate table has been provided for 2018-19 and 2019-20 that displays the detail of the allocations from 9840 and the unanticipated costs that have either been funded or are proposed to be funded from supplemental appropriations bills. Please see the "2018-19 Unanticipated Cost Funding Table" and the "2019-20 Unanticipated Cost Funding Table" for allocations from 9840 Items of Appropriations and Supplemental Appropriations Bills.

DETAILED EXPENDITURES BY PROGRAM

		2018-19*	2019-20*	2020-21*
PROGRAM REQUIREMENTS				
7806	AUGMENTATION FOR CONTINGENCIES OR EMERGENCIES			
	State Operations:			
0001	General Fund	\$-	\$14,996	\$20,000
0494	Other - Unallocated Special Funds	-	15,000	15,000
0988	Other - Unallocated Non-Governmental Cost Funds	-	15,000	15,000
	Totals, State Operations	\$-	\$44,996	\$50,000
TOTALS, EXPENDITURES				
	State Operations	-	44,996	50,000
	Totals, Expenditures	\$-	\$44,996	\$50,000

EXPENDITURES BY CATEGORY

1 State Operations	Positions			Expenditures		
	2018-19	2019-20	2020-21	2018-19*	2019-20*	2020-21*
SPECIAL ITEMS OF EXPENSES				-	44,996	50,000
TOTALS, POSITIONS AND EXPENDITURES, ALL FUNDS (State Operations)				\$-	\$44,996	\$50,000

DETAIL OF APPROPRIATIONS AND ADJUSTMENTS

1 STATE OPERATIONS	2018-19*	2019-20*	2020-21*
0001 General Fund			
APPROPRIATIONS			
001 Budget Act appropriation	-	\$20,000	\$20,000
Allocation included in Agency Budgets	-	-5,004	-
Totals Available	-	\$14,996	\$20,000
TOTALS, EXPENDITURES	-	\$14,996	\$20,000
0494 Other - Unallocated Special Funds			
APPROPRIATIONS			
001 Budget Act appropriation	-	\$15,000	\$15,000
Totals Available	-	\$15,000	\$15,000
TOTALS, EXPENDITURES	-	\$15,000	\$15,000
0988 Other - Unallocated Non-Governmental Cost Funds			
APPROPRIATIONS			
001 Budget Act appropriation	-	\$15,000	\$15,000
Totals Available	-	\$15,000	\$15,000

* Dollars in thousands, except in Salary Range. Numbers may not add or match to other statements due to rounding of budget details.

9840 Augmentation for Contingencies or Emergencies - Continued

1 STATE OPERATIONS	2018-19*	2019-20*	2020-21*
TOTALS, EXPENDITURES	-	\$15,000	\$15,000
Total Expenditures, All Funds, (State Operations)	\$0	\$44,996	\$50,000

* Dollars in thousands, except in Salary Range. Numbers may not add or match to other statements due to rounding of budget details.

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part of the Budget Act of 2019, shall be approved by the Legislature as part of the Budget Act of 2020 or through another piece of legislation.

11. The Department of Human Resources shall promptly post on its public internet website all addenda. Each addendum shall be posted in its entirety, including any attachments or schedules that are part of the agreement, along with the fiscal summary documents of the agreement.

9840-001-0001—For Augmentation for Contingencies or Emergencies..... 20,000,000

Schedule:

- (1) 7806-Augmentation for Contingencies or Emergencies..... 20,000,000

Provisions:

1. Subject to the conditions set forth in this item, amounts appropriated by this item shall be transferred, upon approval by the Director of Finance, to augment any other General Fund item of appropriation that is made under this act to an agency, department, board, commission, or other state entity. Such a transfer may be made to fund unanticipated expenses to be incurred for the 2019–20 fiscal year under an existing program that is funded by that item of appropriation, but only in a case of actual necessity as determined by the Director of Finance. For purposes of this item, an “existing program” is one that is authorized by law.
2. The Director of Finance may not approve a transfer under this item, nor may any funds appropriated in augmentation of this item be allocated, to fund any of the following: (a) capital outlay, (b) any expense attributable to a prior fiscal year, (c) any expense related to legislation enacted without an appropriation, (d) startup costs of programs not yet authorized by the Legislature, (e) costs that the administration had knowledge of in time to include in the May Revision, or (f) costs that the administration has the discretion to incur or not incur.
3. A transfer of funds approved by the Director of Finance under this item shall become effective no sooner than 30 days after the director files written notification thereof with the Chairperson of the Joint Legislative Budget Committee, and

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- the chairpersons of the fiscal committees in each house of the Legislature, or no sooner than any lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine, except for an approval for an emergency expense as defined in Provision 5.
4. Each notification shall include all of the following: (a) the date the recipient state entity reported to the Director of Finance the need to increase its appropriation, (b) the reason for the expense, (c) the transfer amount approved by the Director of Finance, and (d) the basis of the director's determination that the expense is actually needed. Each notification shall also include a determination by the director as to whether the expense was considered in a legislative budget committee and formal action was taken not to approve the expense for the 2019–20 fiscal year. Any increase in a department's appropriation to fund unanticipated expenses shall be approved by the Director of Finance.
 5. The Director of Finance may approve a transfer under this item for an emergency expense only if the approval is set forth in a written notification that is filed with the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the fiscal committees in each house of the Legislature, no later than 10 days after the effective date of the approval. Each notification for an emergency expense shall state the reason for the expense, the transfer amount approved by the director, and the basis of the director's determination that the expense is an emergency expense. For the purposes of this item, "emergency expense" means an expense incurred in response to conditions of disaster or extreme peril that threaten the immediate health or safety of persons or property in this state.
 6. Within 15 days of receipt, the Director of Finance shall provide, to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees in each house of the Legislature, copies of all requests, including any supporting documentation, from any agency, department, board, commission, or other state entity for a transfer under this item. The submission to the Legislature of a copy of

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such a request does not constitute approval of the request by the Director of Finance. Within 15 days of receipt, the director shall also provide copies to these chairpersons of all other requests received by the Director of Finance from any state agency, department, board, commission, or other state entity to fund a contingency or emergency through a supplemental appropriations bill augmenting this item.

7. For any transfer of funds pursuant to this item, the augmentation of a General Fund item of appropriation shall not exceed the following during any fiscal year:
 - (a) 30 percent of the amount appropriated, for those appropriations made by this act that are \$4,000,000 or less.
 - (b) 20 percent of the amount appropriated, for those appropriations made by this act that are more than \$4,000,000.
8. The Director of Finance may withhold authorization for the expenditure of funds transferred pursuant to this item until such time as, and to the extent that, preliminary estimates of potential unanticipated expenses are verified.
9. The Director of Finance shall submit any requests for supplemental appropriations in augmentation of this item to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees in each house of the Legislature. Requests shall include the information and determinations required by Provision 4, excluding subdivision (c), and a determination that requests meet the requirements of Provision 2.

9840-001-0494—For Augmentation for Contingencies or Emergencies, payable from unallocated special funds..... 15,000,000

Schedule:

- (1) 7806-Augmentation for Contingencies or Emergencies..... 15,000,000

Provisions:

1. Provisions 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Item 9840-001-0001 also apply to this item, except references to General Fund appropriations shall instead refer to special fund appropriations.
2. For Augmentation for Contingencies or Emergencies, payable from special funds, there are

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appropriated from each special fund sums necessary to meet contingencies or emergencies, to be expended only upon written authorization of the Director of Finance.

9840-001-0988—For Augmentation for Contingencies or Emergencies, payable from unallocated nongovernmental cost funds..... 15,000,000

Schedule:

(1) 7806-Augmentation for Contingencies or Emergencies..... 15,000,000

Provisions:

1. Provisions 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Item 9840-001-0001 also apply to this item, except references to General Fund appropriations shall instead refer to nongovernmental cost fund appropriations.
2. For Augmentation for Contingencies or Emergencies, payable from nongovernmental cost funds, there are appropriated from each nongovernmental cost fund that is subject to control or limited by this act, sums necessary to meet contingencies or emergencies, to be expended only upon written authorization of the Director of Finance.

9850-011-0001—For Augmentation for Contingencies or Emergencies (Loans)..... (2,500,000)

Provisions:

1. This appropriation is for loans that may be made to state agencies which derive their support from the General Fund or from sources other than the General Fund, upon terms and conditions for repayment as may be prescribed by the Department of Finance. Any sum so loaned shall, if ordered by the Department of Finance, be transferred by the Controller to the fund from which the support of the agency is derived.
2. No loan shall be made which requires repayment from a future legislative appropriation.
3. Authorizations for loans shall become effective no sooner than 30 days after notification in writing to the Joint Legislative Budget Committee, or not sooner than a lesser time which the joint committee, or its designee, may in each instance determine, except that this limit shall not apply if the Director of Finance states in writing to the Chairperson of the Joint Legislative Budget Committee the necessity and urgen-

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cy for the loan which, in the judgment of the director, makes prior approval impractical.	
4. Within 10 days after approval, the Director of Finance shall file with the Joint Legislative Budget Committee copies of all executive orders for loans stating the reasons for, and the amount of, all of these authorizations.	
9860-301-0001—For capital outlay, Capital Outlay Planning and Studies Funding.....	2,000,000
Schedule:	
(1) 0000668-Statewide Planning and Studies.....	2,000,000
(a) Study.....	2,000,000
Provisions:	
1. The funds appropriated in this item are to be allocated by the Department of Finance to state agencies to develop design and cost information for new projects for which funds have not been appropriated previously, but which are anticipated to be included in future budgets.	

GENERAL SECTIONS STATEWIDE

SEC. 3.00. Whenever herein an appropriation is made for support, it shall include salaries and all other proper expenses, including repairs and equipment, incurred in connection with the institution, department, board, bureau, commission, officer, employee, or other agency for which the appropriation is made.

Each item appropriating funds for salaries and wages includes the additional funds necessary to continue the payment of the amount of salaries in effect on June 30, 2019, for the state officers whose salaries are specified by statute.

Whenever herein an appropriation is made for capital outlay, it may include acquisition of land or other real property to be owned by the state. It may also include minor projects, studies, specifications, design, construction, and equipment necessary in connection with a construction, repair, or improvement project on state-owned or state-leased property.

Whenever herein any item of appropriation contains provisions for acquisition of land or other real property, it shall include all necessary expenses in connection with the acquisition of the property.

Whenever herein an appropriation is made in accordance with a schedule set forth after the appropriation, the expenditures from that item for each program or project included in the schedule shall be limited to the amount specified for that program or project, except as otherwise provided in this act. Each schedule is a restriction or limitation upon the

Exhibit BB

STATE OF CALIFORNIA
 UNANTICIPATED COST FUNDING REQUEST
 DF-580 (REV. 04/11)

Department of Finance
 915 – L Street
 Sacramento, CA 95814

I. APPROPRIATION FUND TO BE ADJUSTED

DEPARTMENT <input type="text"/>	ITEM NUMBER <input type="text"/>	
FUND <input type="text"/>	AMOUNT OF FUNDING REQUESTED <input type="text"/>	FISCAL YEAR <input type="text"/>

II. JUSTIFICATION FOR REQUEST (Please provide the following information: reason for expense and basis of determination that the expense is needed.) DOF may not approve requests for ☐ a capital outlay funding, ☐ prior year expenses, ☐ expenses related to legislation enacted ☐ without an appropriation, ☐ startup costs of programs not yet authorized by the Legislature, ☐ costs that could have been included in May Revision, and ☐ costs that the Administration has the discretion to incur or not incur. Use attachments if additional space is needed.

III. EMERGENCY NOTIFICATION

Is this an emergency request for funding unanticipated costs? ☐ An emergency request is for expenses incurred in response to conditions of disaster or extreme peril that threaten the immediate health or safety of persons or property in this state.

- ☐ NO
- ☐ YES If yes, please provide reason for expense and basis for determining this an emergency. Use attachments if additional space is needed.

IV. PROVIDE A DETAILED EXPLANATION OF ALL LEGALLY PERMISSIBLE STEPS THAT HAVE BEEN TAKEN TO AVOID ADDITIONAL COSTS, (e.g., reduce spending, etc.) (Add attachments if additional space is needed.)

V. WAS THIS NEED FOR FUNDING PREVIOUSLY DENIED IN A LEGISLATIVE BUDGET COMMITTEE ACTION? (Use attachments if additional space is needed.)

- ☐ NO ☐ YES (when and why)

VI. MONTH AND YEAR WHEN SPENDING AUTHORITY TO OBLIGATE FUNDS (not make cash payment) WILL BE NEEDED.

Month Year

VII. REQUESTING DEPARTMENT

Approved By Title Date

VIII. AGENCY SECRETARY (IF APPROPRIATE)

Approved By Date

IX. DEPARTMENT OF FINANCE

Date Received ☐ _____

Date of Notice to Legislature ☐ _____

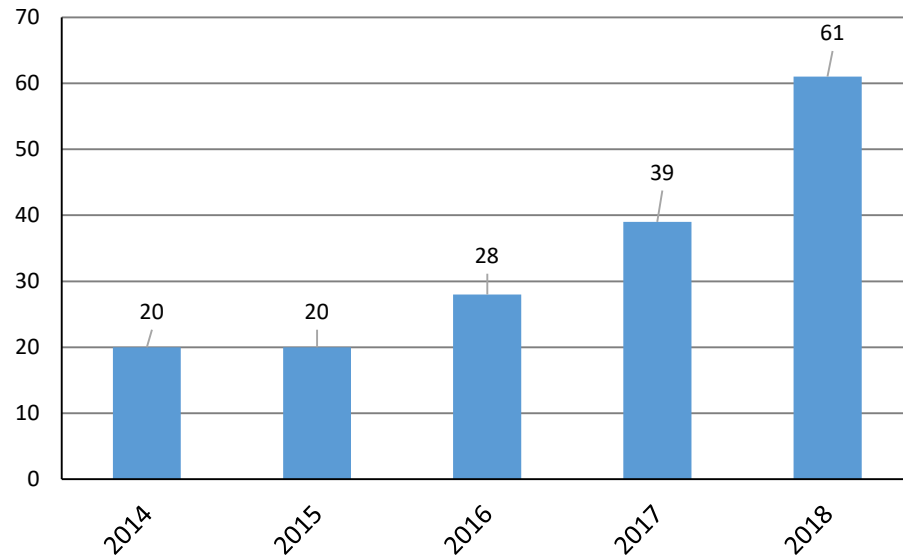
Exhibit CC

Why?

Drug Overdoses in CDCR – Upward Trend



Confirmed
Overdose Deaths
Jan 2014-Dec 2018



Overdose Patients
Top 10 Institutions
by Volume
Oct 2015-May 2019

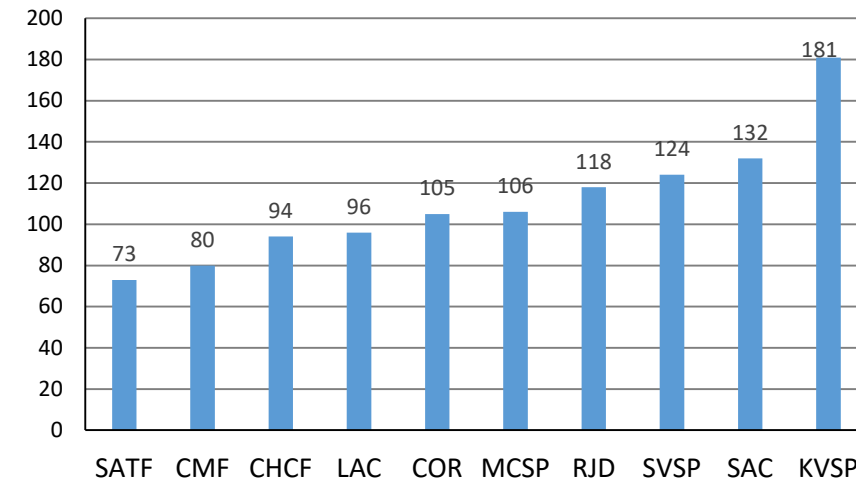


Exhibit DD

The 2020-21 Budget: **Criminal Justice Proposals**



2020-21 BUDGET

several billion dollars between 2008-09 and 2012-13 due to the Great Recession.

...But Has Increased Steadily Since Then.

However, overall spending for the operational support of criminal justice programs has increased steadily since 2012-13. This was largely due to additional funding for CDCR and the trial courts. For example, increased CDCR expenditures resulted from (1) the cost of complying with court orders related to prison overcrowding and improving inmate health care, (2) increased employee compensation costs, and (3) spending on costs deferred during the fiscal crisis. (For more information on this issue, please see our recent brief *State Correctional Spending Increased*

Despite Significant Population Reductions.) During this same time period, various augmentations were provided to the trial courts to offset reductions made in prior years and to fund specific activities.

Governor's Budget Proposals

Total Proposed Spending of \$19.7 Billion in 2020-21. As shown in **Figure 2**, the Governor's 2020-21 budget includes a total of \$19.7 billion from all fund sources for the operation of judicial and criminal justice programs (excluding planned capital outlay expenditures). This is a net increase of \$341 million (2 percent) over the revised 2019-20 level of spending. General Fund spending is proposed to be \$16.2 billion in 2020-21, which

Figure 2

Judicial and Criminal Justice Budget Summary

(Dollars in Millions)

	Actual 2018-19	Estimated 2019-20	Proposed 2020-21	Change From 2019-20	
				Actual	Percent
Department of Corrections and Rehabilitation	\$12,597	\$13,320	\$13,395	\$75	0.6%
General Fund ^a	12,278	13,014	13,088	75	0.6
Special and other funds	319	306	306	—	—
Judicial Branch^b	\$3,801	\$4,330	\$4,367	\$37	0.9%
General Fund	1,860	2,240	2,192	-48	-2.1
Special and other funds	1,941	2,090	2,176	85	4.1
Department of Justice^c	\$902	\$1,086	\$1,107	\$22	2.0%
General Fund	291	360	370	10	2.8
Special and other funds	611	725	737	12	1.6
Board of State and Community Corrections	\$185	\$381	\$298	-\$83	-21.7%
General Fund	93	255	127	-128	-50.2
Special and other funds	92	126	171	46	36.4
Department of Youth and Community Restoration^d	—	—	\$290	\$290	—
General Fund	—	—	284	284	—
Special and other funds	—	—	5	5	—
Other Departments^e	\$265	\$290	\$291	\$1	0.2%
General Fund	95	112	132	20	17.8
Special and other funds	169	178	159	-19	-10.9
Totals, All Departments	\$17,750	\$19,407	\$19,748	\$341	1.8%
General Fund	14,618	15,981	16,194	213	1.3
Special and other funds	3,131	3,426	3,555	129	3.8

^a Does not include revenues to General Fund to offset corrections spending from the federal State Criminal Alien Assistance Program.

^b Includes funds received from local property tax revenue.

^c Does not include funding related to the National Mortgage Settlement.

^d Was previously the Division of Juvenile Justice within the Department of Corrections and Rehabilitation.

^e Includes Office of the Inspector General, Commission on Judicial Performance, California Victim Compensation Board, Commission on Peace Officer Standards and Training, State Public Defender, funds provided for trial court security, and debt service on general obligation bonds.

Note: Detail may not total due to rounding.

Exhibit EE

Robert A. Barton
Inspector General

Office of the Inspector General

2015
Special Review:
High Desert State Prison
Susanville, CA



December 2015

Fairness ♦ Integrity ♦ Respect ♦
Service ♦ Transparency

Office of the Inspector General

2015 Special Review:

High Desert State Prison



Robert A. Barton
Inspector General

Roy W. Wesley
Chief Deputy Inspector General

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December 2015

SUMMARY OF FINDINGS

There is evidence that a perception of insularity and indifference to inmates exists at High Desert State Prison, exacerbated by the unique geographical isolation, the high stress environment, and a labor organization that opposes oversight to the point of actively discouraging members from coming forward with information that could in any way adversely affect another officer. These aspects coupled with the difficult missions at HDSP have helped create an entrenched culture of self-protection and loyalty to HDSP above everything else.

Accounts from both staff and inmates depict a culture of indifference perpetuated by at least some staff. Reports from inmates of appeals being read and destroyed and officers using profane and derogatory language directed at inmates were corroborated by at least some staff.

The conflicting missions at HDSP make it difficult for vulnerable inmates, whether by commitment offense or disability, to program safely. Hardline officers run some yards with little regard for vulnerable inmates. The most extreme example is the Level IV sensitive needs yard (SNY) facility, which is just as violent as the general population (GP) yards, with gang politics meting out abuse and punishment for drug and gambling debts and extorting vulnerable inmates for protection, all of which is exacerbated by the tacit acquiescence of custody staff.

The department's use of the R suffix to designate the restricted custody of certain inmates has served as a bull's-eye target at HDSP and other prisons, most notably on SNY yards. Based upon this review and observations in prior OIG reports, the continued use of sensitive needs yards merits a complete overhaul.

The inmate appeals system at HDSP is not functioning adequately and the staff complaint process is broken. Very few staff complaints were referred for investigation and those that were referred have not been adequately monitored and tracked for response. Also, HDSP does not have a process for addressing officers who are repeatedly accused of misconduct by different inmates. There are statistical trends, continued complaints, and recent misconduct allegations that cause alarm about the use of force at HDSP.

Finally, the OIG found that the use of resident agents by the Office of Internal Affairs is a poor practice, and should be discontinued, especially at HDSP in light of the issues that arose from the placement of a resident agent at that institution. Additionally, the processes in place for allegation inquiries at HDSP are inadequate, and could be improved statewide. The OIG is monitoring several misconduct investigations that, but for this review, may not have been opened or investigated to the broadest extent appropriate. Because the investigations have not been completed, only the general facts are discussed in this report, but results will be published in a future OIG Semi-Annual Report. The OIG made 7 broad findings and 45 specific recommendations during this review (see pages 55 to 60 for a detailed list).

--- **ROBERT A. BARTON, INSPECTOR GENERAL**

circumstances surrounding the complaints, such as deficiencies in supervision; however, management never correlated multiple complaints against officers.

HDSP is not consistently logging its allegations of misconduct, which is required by DOM Section 31140.13; therefore, it cannot accurately track the status of complaints referred for inquiry or investigation, nor can it easily recognize potential areas of concern related to allegations being lodged repeatedly against the same staff or in the same work area.

DISINCENTIVES TO FILING STAFF COMPLAINTS

The appeal collection process places inmate appeals directly in the hands of the officers being accused of misconduct. This creates a significant disincentive for inmates to file appeals; knowing that the officers they are accusing of misconduct will be handling or reading the appeals will likely dissuade an inmate from filing a complaint. When an inmate does file a complaint against staff, the inmate is often placed in administrative segregation for their own “protection,” which is yet another disincentive.

However, even if the appeals collection process is changed in a manner that precludes custody staff from reading or handling inmate appeals, the CCPOA MOU contains a provision that mandates that officers who are accused of misconduct by inmates be immediately notified of the contents of all inmate complaints filed against them. Section 9.09 of the Bargaining Unit 6 MOU states:

(D) Whenever a ward/inmate/parolee/patient files or submits a grievance, a 602 (Inmate Appeal), any written complaint, or verbal complaint which is later reduced to writing by either the inmate or the State, which, if found true, could result in adverse action against the employee or contain a threat against the employee, the Department agrees to immediately notice the employee of said filing. The State agrees to provide the affected employee a copy of said document if the employee so requests. This is not intended to preclude the informal level response procedure in the current CDCR Operations Manual. Upon the employee's request, a copy of the outcome of the ward/inmate/parolee/patient's complaint shall be provided, if the complaint has progressed beyond the informal stage. The Employer and CCPOA agree that all video tapes, audio tapes or any other kind of memorialization of an inmate/ward/parolee/patient statement or complaint shall be treated as a writing within the meaning of this subsection. The tapes or writings shall be turned over, regardless of whether the complaint/statement is deemed inmate/ward/ parolee/patient initiated or not.

The department's appeal process fails to protect the identity of the inmate accusing an officer of misconduct and unjustifiably exposes the inmate to retaliation for filing a complaint. The appeal process is the inmate's main avenue for resolving issues and the OIG was repeatedly informed that inmates choose to no longer file appeals for fear of

reprisal. CDCR's own peer review found additional deficiencies in HDSP's appeal processing.

CDCR's headquarters Appeals Office has responsibility for ensuring institutions have the necessary training and assistance needed relative to the appeal system; conducting audits of appeals units; and meeting with CDCR administrators to review policy and procedure needs as revealed by inmate appeals. It does not appear that the headquarters Appeals Office has done any of these related to High Desert State Prison, which could greatly benefit from oversight, training, and assistance.

RECOMMENDATIONS TO CDCR

- Create a formal policy that reflects the contents of the December 30, 2011, memo titled: *Secure Appeal Collection Sites and Related Matters*, but require appeals in lock boxes be retrieved by Appeals Office staff only.
- Add a receipt feature to the *CDCR Form 602, Inmate/Parolee Appeal*, or assign a log number to all appeals at the point of collection.
- Immediately reiterate that initial appeal content is to be read by Appeals Office staff only, until assigned out for response.
- Provide HDSP staff with training relating to the processing and handling of inmate property and hold officers accountable for failing to abide by the relevant policies and procedures.
- Require institutions to conduct a management review into an employee's performance and worksite when multiple staff complaints are filed by multiple inmates against an individual employee.
- Revisit DOM Section 31140.14, and develop a procedure to ensure staff completing allegation inquiries have received approved internal affairs investigation training, prior to being designated and/or approved by CDCR's OIA or OIA investigators.
- Require staff performing allegation inquiries into staff complaints receive formal internal affairs investigations training prior to conducting allegation inquiries.
- Ensure hiring authorities and managers reviewing allegation inquiry reports are trained to recognize complete, thorough, and adequate allegation inquiry reports.
- Develop an accountability process for ensuring hiring authorities are keeping accurate and complete *CDCR Form 2140, Internal Affairs Allegation Logs*, in accordance with DOM Section 31140.13, which requires each allegation of employee misconduct be logged, regardless of whether the allegation is referred for investigation.
- Renegotiate Section 9.09 of the Bargaining Unit 6 MOU to treat inmate appeals in the same manner as any other allegation of staff misconduct.

- Remedy the inability of inmates in ASU or on a modified program to personally place their appeal into a lock box, by mandating Appeals Office staff personally retrieve the appeal from the inmates' cells or instituting some form of secure mobile collection process.
- Dispatch staff from the Appeals Office to conduct an in-depth audit of HDSP's appeal process, provide any remedial training necessary, and report back to CDCR administrators any policy or procedure deficiencies revealed by a review of HDSP inmate appeals, such as property issues and the handling of staff complaints.

USE OF FORCE INCIDENTS

HDSP USE OF FORCE FREQUENCY

As part of this review of High Desert State Prison, the Senate Committee specifically requested the OIG review practices related to excessive use of force against inmates, internal reviews of incidents involving excessive use of force against inmates, and protection of inmates from assault and harm by others.

The OIG analyzed and compared a variety of use of force documents and data points, spanning, unless otherwise noted, the 18-month period of January 1, 2014, through June 30, 2015. This included several dozen use-of-force incident packages, staff complaints alleging excessive or unnecessary use of force, disciplinary logs and rules violation reports, confidential inmate files related to force allegations, complaints filed directly with outside stakeholders, and internal affairs investigations. In addition, the OIG interviewed several inmates formerly housed at HDSP.

From the data gathered by the OIG, it developed the following tables to get a snapshot of how HDSP compares to other similar facilities, and how the facilities within HDSP compared to each other.

The table below compares the total number of incidents to the total number of incidents involving use of force, and the percentage of incidents involving use of force, that occurred on Level IV SNY facilities.

Incident Data, Level IV SNY Facilities²²

Facility	Total # of Incidents	Total # of Incidents Involving Use of Force	Percent of Incidents Involving Use of Force
HDSP-B	227	173	76%
CAL-D	91	49	54%
COR-03B	343	176	51%
KVSP-C	226	118	52%
KVSP-D	204	141	69%
LAC-C	217	134	62%
MCSP-A	334	214	64%
RJD-C	209	98	47%
SATF-D	128	80	63%

²² SVSP and CCI also have a Level IV SNY; however, they went through their conversions during this timeframe, so comparable data was not available.

This data demonstrates that HDSP's Level IV SNY Facility B had the highest percentage of incidents involving the use of force, compared to other Level IV SNY facilities.

The next table compares the number of inmate disciplinary actions for a variety of serious or violent offenses to the total number of all inmate disciplinary actions, for each yard at HDSP.

HDSP Inmate Disciplinary Actions

Inmate Disciplinary Actions January 1, 2014-July 31, 2015	HDSP-A	HDSP-B (SNY)	HDSP-C	HDSP-D
Inmate Disciplinary Actions for Serious or Violent Offenses	337	805	354	387
All Inmate Disciplinary Actions	643	1076	486	548
Percent of Disciplinary Actions for Serious or Violent Offenses	52%	75%	73%	71%

This data demonstrates that a significantly higher number of disciplinary actions occurred on Facility B, with a higher percentage involving serious or violent offenses, compared to the other HDSP facilities.

In addition to reviewing incident data, the OIG has been reviewing every use of force incident package and attending every Institutional Executive Review Committee²³ (IERC) meeting since March 2015,²⁴ where the warden and executive staff review every use of force incident package. Reviews conducted by the OIG find that the majority of the incident packages and staff reports are thorough and the IERC conducts a fair review. It should be noted that IERC reviews are only as thorough as the reports available for review. If fights are instigated or staff are not fully reporting the force used, this will not be apparent in the reports. Additionally, unlike institutions with yard cameras, staff reports are the only source of information related to HDSP use-of-force incidents for the IERC to review.

In the OIG's 2012 report related to sex offender abuses at High Desert State Prison, some of the officers interviewed indicated that they believed there were officers at HDSP who would provoke inmates into physical altercations to necessitate the use-of-force. The inmate interviews conducted by the OIG are consistent with the picture the data paints of High Desert State Prison as an institution with a high level of violence. The interviews are also consistent with inmate complaints the OIG read in appeals and also in letters written to the OIG and received from outside stakeholders.

²³ IERC requirements can be found in CCR, Title 15, Section 3268, Use of Force.

²⁴ Prior to March 2015, the OIG would attend at least one IERC meeting at HDSP per month.

The following excerpts are summarized from individual inmate interviews, conducted separately over the course of this review:

.. officers are slow to respond to incidents.

.. always concerned that an incident could erupt at any time.

.. had safety concerns due to his commitment offense.

.. officers at times were slow to respond during riots.

.. felt less safe than other prisons.

.. an officer sent an inmate to attack him, and then the officer and his buddies sat and watched.

.. constantly afraid at HDSP, and had never been afraid at any other prison. It was the officers he was afraid of, and not the inmates.

Additionally, the OIG was told that staff who had previously worked at HDSP and then transferred to CCC were heavy-handed and quicker to “jump” to using force.

The OIG is also currently monitoring a number of internal affairs investigations related to excessive or unnecessary force which are detailed in the ***Internal Affairs Investigations*** portion of this report. The OIG will report on the outcome of these cases at the conclusion of the investigations. All of these incidents currently being monitored allegedly occurred between October 2014 and September 2015.

With an appeals process that is fatally flawed and a staff complaint process that results in only about one percent of complaints getting referred for an outside investigation, coupled with staff’s unwillingness to report misconduct for fear of reprisal, it is very difficult to prove excessive or unnecessary use of force. However, inmates continue to utilize all available avenues to report alleged abuses, including writing letters to the CDCR Ombudsman, the OIG, the Prison Law Office, the Legislature, and the Governor. Until the department takes steps to address these issues, outside stakeholders will continue to place a heightened level of scrutiny on HDSP.

THE NEED FOR CAMERAS IN ALL INMATE AREAS

In the OIG’s September 2015 Semi-Annual Report, it was noted that one area where the department agrees but has yet been unable to address, is the placement of cameras on all yards and in all housing units. Such surveillance is invaluable in capturing misconduct, documenting inmate activity, and exonerating employees who have been wrongly accused of misconduct. The OIG monitors all incidents involving the use of deadly force, as well as incidents involving lesser force that may not have complied with departmental policy. Often times there are conflicting accounts of what transpired, making it difficult

to assess whether the force used complied with policy. High quality visual recordings of incidents can serve to resolve these conflicting accounts. In addition, there are many rule violations and crimes inmates commit that visual recordings could memorialize for just resolution. However, most institutions still lack cameras, including HDSP.

Installing cameras at High Desert State Prison should be the department's number one fiscal priority. Allegations of excessive and unnecessary use of force, inmate abuse, and staff misconduct have been relentlessly lodged at HDSP for years, and with evidence of lax supervision and sustained cases of officers failing to report use of force that they observed, cameras are the absolute best tool for CDCR to curtail misconduct and exonerate staff falsely accused of using unnecessary or excessive force.

When deciding on a camera system to install, the OIG recommends that the department look to the system installed at the California Health Care Facility or the California City Correctional Facility, and ensure the cameras are installed in all inmate areas.

THE NEED TO PILOT A PROGRAM USING BODY CAMERAS

In addition to installing cameras in all inmate areas, CDCR should pilot a program similar to the program piloted by the Wisconsin Department of Corrections (WDOC). According to the WDOC, it partnered with a company known as Taser International to conduct a pilot program using body cameras in its Waupun Correctional Institution (WCI). The pilot was designed to enhance staff professionalism, reduce sexual assault allegations, staff assaults, inmate complaints regarding staff, and use of force incidents. At the conclusion of the pilot, WCI found that there was a reduction in the number of use of force incidents; however, PREA allegations and inmate complaints remained consistent.

WCI found the body cameras to be very effective for interactions at cell doors and when speaking to inmates. They were not effective while escorting inmates; however, the audio provided perspective as to what was taking place.

In the beginning of the pilot, WDOC reported that staff were apprehensive about wearing the cameras, while the inmate population appeared to be playing to the camera, attempting to provoke an unprofessional response from staff. Training regarding professional communication skills was conducted with all staff involved in the pilot and after a couple of weeks, staff were comfortable wearing the cameras and the inmates had adjusted as well. The pilot showed that the cameras enhanced the professionalism of staff and how they communicated with inmates.

Although the number of complaints and PREA allegations did not decrease during the pilot, the camera footage made it easier to review the allegations and determine if an incident occurred. The use of body cameras by police departments has also had a positive

impact of enhanced officer safety and reduced liability, and as the WDOC pilot shows, it appears that similar benefits can also be achieved within correctional settings.²⁵

In piloting the use of body cameras, the OIG recommends that CDCR choose at least one building on HDSP Level IV SNY facility. This will enable the department to compare incident and disciplinary data, among other things, to other buildings housing similar inmates. The OIG further recommends that the body cameras be equipped with GPS (global positioning satellite) geotagging technology, which is a common feature in body cameras. This feature could be important to determine the location of staff during incidents at any particular point in time, improving officer safety and possibly disproving staff misconduct allegations.

ALLEGATIONS THAT STAFF ARE SLOW TO RESPOND TO INCIDENTS

Although the earlier table shows that HDSP has a high percentage of incidents involving the use of force, several inmates previously housed at HDSP said that staff would pick and choose which incidents to respond to with force. Inmates stated officers were sometimes deliberately slow to respond to incidents and intervene when inmates assaulted one another. Two recent incidents occurred at HDSP, where staff reports suggest a delayed response and failure to use force when it appears force was necessary to stop serious injuries to the victims from multiple attackers. The details of these incidents are as follows:

Staff observed three inmates attacking another inmate on the yard by punching the victim with their fists. One officer reported that it took ten minutes before the inmates finally complied with staffs' orders to get down into a prone position. As staff finally approached the incident, the combatants ceased their attack. Staff reports state that the victim lost consciousness during the incident and was transported to an outside hospital for serious bodily injuries, including a broken nose, broken orbital socket, and stitches to his left eye. Force was not used to stop the attack.

Staff observed four inmates attacking another inmate on the yard by punching the victim with their fists, while one of them stabbed the victim multiple times with an inmate manufactured weapon. Staff reports state that staff gave multiple orders for the inmates to get down, but the combatants continued their assault. As staff finally approached, the combatants ceased their attack. Staff reports state that the victim was transported to an outside hospital for serious bodily injuries, including more than 30 lacerations and puncture wounds to his face, neck, stomach, head, and back areas. Force was not used to stop the attack.

Allegations that officers are slow to respond to incidents are exceedingly difficult to adjudicate. There is no system currently in use that documents where officers are within

²⁵ A copy of WDOC's pilot report at WCI can be found in the Appendix J.

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the prison. One solution would be to use GPS or RFID (radio frequency identification) type tags to document where officers are in the prison. Not only would these types of allegations be easy to resolve, but the use of this type of technology would be a significant enhancement to the safety and security of the individual officers. No officer could ever be isolated without someone knowing their location.

RECOMMENDATIONS TO CDCR

- Immediately install cameras in all inmate areas, including, but not limited to, the exercise yards, rotundas, building dayrooms, patios, and program offices of HDSP.
- Implement a pilot program in at least one building on HDSP's Level IV SNY facility, requiring custody staff to wear body cameras, similar to the pilot conducted at Wisconsin's Waupun Correctional Institution. Ensure the body cameras are equipped with GPS geotagging technology. Collect, compare, and report the resulting incident, disciplinary, and other relevant data for the buildings with body cameras and the similar buildings without body cameras, for possible statewide pilot program expansion.
- Ensure that HDSP custody supervisors are scrutinizing all incidents where inmates receive serious injuries, and hold accountable officers who fail to timely respond to incidents and fail to use force when appropriate to stop potential deadly attacks.
- Consider using GPS or RFID type technology to document where within an institution an officer is located.

***ARMSTRONG* REMEDIAL PLAN – ADA INMATES**

DISABILITY PLACEMENT PROGRAM

In 1994, a class action lawsuit (known as *Armstrong*) was brought against the department under the Americans with Disabilities Act and the Rehabilitation Act on behalf of inmates and parolees with disabilities. The resulting court-ordered *Armstrong* Remedial Plan²⁶ is the department's framework for ensuring inmates are not excluded from programs, services, or activities, and are not discriminated against, due to a disability.

The Disability Placement Program (DPP) is the department's set of plans, policies, and procedures related to *Armstrong*. Inmates with permanent mobility, hearing, vision, and speech impairments, or other disability or compound conditions severe enough to require special housing and programming, are to be placed in a designated DPP facility. HDSP has been a designated DPP facility since at least 1997. Inmates with a permanent impairment of lesser severity may be assigned to any of the department's institutions consistent with their existing classification factors.

The number of DPP inmates at any institution varies from day to day. In October 2015, of the more than 3,000 inmates housed at HDSP, approximately five percent (165) were DPP inmates, who were housed on various yards throughout the institution based on their classification factors.

HDSP DPP Inmates	
Mobility Impaired (not impacting placement)	58
Full Time Wheelchair User	30
Hearing Impaired (not impacting placement)	28
Mobility Impaired	19
Intermittent Wheelchair User	17
Vision Impaired	10
Hearing Impaired	3
Total DPP Inmates ²⁷	165

At the designated facilities, the department is required to provide reasonable accommodations or modifications for known physical or mental disabilities of qualified inmates. Examples of reasonable accommodations include: special equipment (such as

²⁶ A copy of the Plan can be found on CDCR's website, at: www.cdcr.ca.gov

²⁷ In addition, 19 of the 165 DPP inmates also had a secondary disability.

readers, sound amplification devices, or Braille materials), inmate or staff assistance, bilingual or qualified sign language interpreters, modified work or program schedules, or grab bars installed for mobility impaired inmates who require such.

Ultimately, when an inmate requests a durable medical device or an accommodation, custody staff must initially provide the device or accommodation to the inmate and then refer the inmate to a physician to determine whether the accommodation or device is needed for the disability. Custody staff does not have the authority to deny an accommodation or medical device unless there is a demonstrated security concern.

CALLOUS TREATMENT OF DPP INMATES

During the OIG's review, allegations surfaced that staff callously disregarded an inmate's claimed disability and that a general culture of indifference to the plight of severely disabled inmates exists at HDSP. The OIG is currently monitoring three investigations that illustrate this culture of indifference. HDSP referred one of these investigations on its own; the other two cases would not have been referred for investigation, but for this review.

Case Number 1

In this case, an inmate who had mobility impairment was virtually ignored by staff for hours. The *Armstrong* issues arose after a use-of-force incident. The inmate, who wore a leg brace to prevent foot drop due to an injury that occurred prior to his commitment to State prison, was confronted about alleged contraband shoes that he was wearing. When he refused to voluntarily relinquish the shoes, the shoes were forcibly removed. When the shoes were removed, custody staff also confiscated his leg brace. During that incident, the inmate received a head injury and a leg injury which required him to be taken to an outside hospital for a higher level of care.

When he returned from the hospital, he was in a wheelchair and was dressed in an orange jumpsuit (the type of jumpsuit inmates wear when outside the prison). He was directed to remove the jumpsuit and to return to his housing unit to pick up his issued blue prison clothing. His wheelchair was also taken from him. He protested that, because of his injuries, he could not walk and needed the wheelchair. By this time, he was only dressed in boxer briefs. He was told by custody staff that he did not have an authorization for a wheelchair and that he needed to walk back to his housing unit to get dressed. It should be noted that prior to the altercation he did walk with a cane and with a leg brace. The inmate protested that he could not walk and needed the wheelchair and was told by custody staff "when you get tired of sitting here you will get up and walk back to your housing unit." He remained outside the housing unit for an extended period of time while custody staff simply ignored him sitting there in his boxer briefs. At some point, a lieutenant noticed him sitting there and asked him why he was simply sitting there. The inmate explained that he could not walk back to the housing unit and, at this point, the lieutenant retrieved a wheelchair and had the inmate delivered to a medical clinic.

The inmate remained in the medical clinic for several more hours, sitting in a holding cell in his boxer briefs. Again, there is no evidence that staff inquired as to what his condition was and why he was sitting there. Finally, the same lieutenant who had delivered him to the medical clinic observed him sitting there and again inquired as to why he was just sitting in the medical clinic. The inmate again informed the lieutenant that he needed help getting back to his housing unit and at that point the lieutenant made arrangements for the inmate's cellmate to take the inmate back to his housing unit in a wheelchair. After finally arriving at his cell, the inmate remained for several days without a wheelchair and was unable to participate in programming. There is no evidence that custody checked on the inmate until he was transferred to another institution several days later.

There appears to have been a complete disregard for this inmate during the hours that he was simply sitting trying to get back to his housing unit and further disregard after he was in his cell.

Case Number 2

In this case, a wheelchair-bound inmate resisted being placed in a cell, claiming that he had safety concerns with the other occupant of the cell. The officers disregarded his safety concerns and physically picked him up out of the wheelchair and threw him into the cell. The door to the cell was then closed and the wheelchair was thrown against the door, damaging the wheelchair. Neither the use of force nor the damage to the wheelchair was reported. In addition, an inmate who could not ambulate was left in the cell without his wheelchair.

Case Number 3

In this case, a hearing impaired inmate who was wearing a vest noting that he was hearing impaired was slightly injured during a use-of-force incident. The inmate was receiving a package through Receiving and Release and for reasons still not clearly understood; the inmate became upset regarding his package. There was no sign language interpreter and it does not appear that the officer ever tried to establish effective communication.

The account of what happened becomes somewhat confused at this point with officer witnesses claiming that the inmate took a bladed stance and raised his fists while inmate witnesses consistently claim that this inmate turned around to leave and was tackled from behind. What is clear is that no reasonable attempt was made to establish effective communication with an inmate who has been deaf and speechless since birth.

INTERNAL COMPLIANCE REVIEWS AND PLAINTIFF TOURS

As part of this authorized review, the OIG reviewed CDCR internal *Armstrong* compliance reviews and the reviews done by plaintiffs' counsel. The department has not done an internal compliance review since 2013, while plaintiffs' counsel has done a review within the past few months.

CDCR's 2013 internal *Armstrong* compliance review showed a decrease in compliance from the prior review done in 2011. After the 2013 compliance review, a final corrective action plan was required; however, the corrective action plan was not submitted until March 24, 2015.

In contrast, the most recent plaintiffs' counsel tour and document review at HDSP was conducted from August 18 – 21, 2015. Plaintiffs' counsel conducts yearly tours of each CDCR institution. The most recent Plaintiff *Armstrong* monitoring tour found HDSP significantly out of compliance in several areas. Many of the serious violations identified in this report have been previously identified by Plaintiffs, but never effectively addressed or remedied by the institution. The areas of noncompliance found by Plaintiffs are broadly documented in the following areas:

I. MANAGEMENT FAILURES PREVENT THE INSTITUTION FROM RECOGNIZING AND REMEDYING VIOLATIONS

Plaintiffs believe that management has not embraced the reforms mandated by the *Armstrong* remedial orders. Plaintiffs allege that prison management fails to identify or stop violations from occurring. Plaintiffs report that inmates who were interviewed have claimed that staff retaliate against prisoners who request disability accommodations. These reports have remained consistent from year to year. What is most troubling is that the department has not investigated these complaints, seemingly dismissing them because they come from inmates.

For several years, a consistent complaint has been that appeals “disappear” or “go missing.” Interviews of inmates by Plaintiffs' counsel have been consistent with complaints received by the OIG about appeals that have gone missing or are not acted on. The OIG's review of the appeals system at HDSP noted that the institution is not collecting appeals as directed by a memo authored by a former Director of Adult Institutions, which directed institutions to collect appeals with personnel other than officers who may be subjects of staff complaints. HDSP tasks housing officers on first watch to collect the appeals. This practice sets the department up for allegations that officers who may be the subject of a complaint are interfering with the complaint process.

II. THE YARDS ARE INACCESSIBLE AND PRISON STAFF DO NOT BELIEVE THERE IS ANY DURABLE REMEDY

Plaintiffs allege that the paths of travel throughout the yards at HDSP are inaccessible to people with mobility and vision impairments. Cracks that appear two or three inches wide and one-half to two inches deep run throughout each of the prison yards, making the yards unsafe for prisoners with significant mobility and vision impairments. Path of travel problems throughout the yards are longstanding, and are the subject of numerous reports and appeals as documented in the Plaintiffs' March 2014 HDSP report.

There appears to be no immediate ongoing remedial plan to improve accessibility of all paved areas at the prison and at all times of year. Although CDCR expects to complete “master plan” repairs to HDSP, those repairs are not expected to begin until mid-2016.

Exhibit FF

The Effect of Camera Installation on Violence at High Desert State Prison

Kristy N. Matsuda, Jim Hess, Susan F. Turner, and Adrienne Credo
Center for Evidence-Based Corrections
University of California, Irvine
April 9, 2018
(Revised May 9, 2018)



Then, the trend in violence for HDSP-B is compared with the trend in violence of Synthetic HDSP-B. If that match was successful, the pattern of violence for the two facilities would look identical during the baseline period. Then, at the point of the introduction of the intervention (i.e., camera activation), the trends would either continue together or diverge. If the trend in violence at HDSP-B coincides with the Synthetic HDSP-B trend after camera activation then we can conclude, regardless of any decreases in levels of violence, that the cameras did not impact the rate of violence over and above what would have been expected in the facility if cameras were not activated. If the levels of violence in HDSP-B significantly depart from the violence in Synthetic HDSP-B after cameras, then we can conclude that the cameras were responsible for the change at HDSP-B because we know that except for the introduction of cameras, the two facilities were otherwise “equal.”

The study results are presented in five sections. The first section answers the question of whether violence was reduced in HDSP after cameras were installed. The second section addresses the timing of violence changes and whether reductions were unique to only camera areas at HDSP. The third section compares camera effects at HDSP-B with the other Level 4 SNY facilities. The fourth section assesses the effect of cameras on non-violent outcomes. The fifth section looks at outcomes that are measured only at the prison level. The final section of the report compares the characteristics of inmates in CDCR, other HSEC prisons and HDSP. This section also examines if any demographic features are correlated with certain types of offending.

Results

I. Was there a significant reduction in violence after camera installation at HDSP?

IRs for Violence

Table 1 compares the number and percent of Incident Reports (IRs) for physical violence recorded before and after cameras were installed at HDSP. The data are presented by area where cameras were installed at HDSP⁹ versus those where cameras were not installed¹⁰. The table shows, that a majority of the IRs occurred in areas without cameras. This is expected because cameras were only installed to cover approximately 30 percent of the entire HDSP population.

⁹ Areas where cameras were installed include the public spaces in Facility B, Facility E (the Minimum Support Facility), Facility Z (the Short Term Restricted Housing Unit), and Facilities A and B Visiting. As a note, no IRs for violence were recorded in Facility A visiting during the baseline or the experimental periods, so results for Facility A are presented entirely as a “No Camera” section for ease of reporting instead of having a separate section for Facility A Visiting as a “camera area” with only 0 cells.

¹⁰ Areas where cameras were not installed included the private spaces in Facilities B, E, and Z (i.e., cells and bathrooms). Other areas without cameras include all of Facilities A (as noted in footnote 9), C, and D.

Table 1. Number of Incident Reports for violence by camera installation areas at High Desert State Prison.

Research Period				
	Baseline	Experimental	Total	Change
	n	n	N	% (n)
No Cameras	98	85	183	-13.3% (-13)
Cameras	64	32	96	-50.0% (-32)
Total	162	117	279	-27.8% (-45)

$\chi^2(1) = 4.45, p < .05$

Results in Table 1 suggest that there is a significant relationship between camera installation and experimental period on incidents of physical assaults. In other words, there was a greater decline in violence in camera areas than in non-camera areas after AVSS installation. The table shows that there were declines in violence in all areas in the experimental period, but the non-camera areas demonstrated a 13 percent reduction in violence after cameras were installed while the camera areas saw a 50 percent reduction in violence during the same period.

Table 2 presents a closer examination of HDSP Facility B, the primary area of camera installation. An examination of HDSP-B shows that the IRs for violence did decrease in camera areas during the experimental period (decrease of 45.6% or 26 IRs). The non-camera areas suggest a slight displacement effect of cameras on violence. Displacement refers to the movement of violence from a camera area to a non-camera area to avoid detection. One concern regarding the implementation of camera surveillance is that violence would simply move, creating a decrease in violence in one area, an increase in another, but overall demonstrate no change in the total violence. The IR data show an increase of 28.6 percent, which represents an increase of 2 violence incidents in the non-camera areas after activation.

Table 2. Number of Incident Reports for physical assaults by camera installation areas in HDSP Facility B.

Research Period				
	Baseline	Experimental	Total	Change
	n	n	N	% (n)
No Cameras	7	9	16	+28.6% (+2)
Cameras	57	31	88	-45.6% (-26)
Total	64	40	104	-37.5% (24)

Fisher's Exact Test $P = .06$

However, because a majority of the violence in HDSP-B is in camera areas, HDSP-B still experienced an overall reduction of violence in the post-camera period. The change in violence in HDSP-B has relatively few observations in the no camera areas, so the Fisher's exact test is most appropriate and suggests it is trending toward statistical significance (Fisher's Exact Test, $P = .06$).

Figure 1 shows the effect of cameras on different types of violence. While IRs for riots are included in the "violence" category, the number of riots ($n = 4$; 3 pre-cameras, 1 post-cameras) during the research period at HDSP was so low that the results were excluded in Figure 1. The overall trend in types of violence at HDSP shows that a majority of the violent incidents were between inmates as opposed to inmate-on-officer.¹¹ During the entire 14-month study period, there were 229 IRs for inmate-on-inmate

¹¹ IR incidents were recoded by the research team for the initial cause of the incident. Therefore, the research coding of the incident may or may not match the CDCR coding of the incident offense. In some instances, for example, CDCR may have coded an incident "Battery on an Officer" because an officer was assaulted during the

Exhibit GG



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

January 2019



Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct

STATE of CALIFORNIA

OIG | OFFICE of the
INSPECTOR GENERALRoy W. Wesley, Inspector General
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

Regional OfficesSacramento
Bakersfield
Rancho Cucamonga

January 24, 2019

Dear Governor and Legislative Leaders:

Enclosed is the Office of the Inspector General's report titled *Special Review of Salinas Valley State Prison's Processing of Inmate Allegations of Staff Misconduct*. In January 2018, the secretary of the California Department of Corrections and Rehabilitation (the department) and attorneys from the Prison Law Office requested that the Office of the Inspector General assess Salinas Valley State Prison's (Salinas Valley) process for handling inmate allegations of staff misconduct, commonly referred to as *staff complaints*. The prison conducts staff complaint inquiries—a precursor to a formal investigation—to address such allegations. A staff complaint inquiry includes the gathering of evidence, through interviews and document collection, and can evolve into a formal investigation if the prison suspects staff misconduct serious enough to warrant disciplinary action. This special review encompassed two periods: a retrospective review of 61 staff complaint inquiries that the prison completed between December 1, 2017, and February 28, 2018, and an onsite monitoring review of 127 staff complaint inquiries that the prison initiated between March 1, 2018, and May 31, 2018.

In this report, we concluded that Salinas Valley's process for handling staff complaints was inadequate and may have resulted in decisions it cannot defend. The hiring authority—the person with the authority to hire and discipline staff—determined that subject staff had not violated policy in 183 of the 188 staff complaint inquiries we reviewed (97 percent of the inquiries) and concluded that only one of them warranted a formal investigation. However, we found that more than half of the staff complaint inquiries were inadequately performed because the staff complaint reviewers—supervisors the prison assigned to conduct the staff complaint inquiries—did not follow sound practices with respect to interviewing, collecting evidence, and writing reports. Notably, we found at least one significant deficiency (or inadequate rating) in 173 of the staff complaint inquiries included in this review (92 percent). We did not conclude whether the hiring authority's decisions were correct or incorrect, or whether an accused staff member was responsible for committing the alleged misconduct; rather, we concluded that the hiring authority often made decisions based on flawed investigative work.

The deficiencies we found may have resulted, in part, from a lack of training for the staff complaint reviewers. For instance, among the 61 individual reviewers, only 14 of them had received any training prior to conducting their first staff complaint inquiry-related interview, and that training component consisted of only a two-hour class providing them with a general overview of the process and acquainting them with filling out proper forms. Forty-two individuals received this training class sometime after conducting their first interview, and five individuals never received this training.

Gavin Newsom, Governor

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Governor and Legislative Leaders
January 24, 2019
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Nevertheless, none of the reviewers received meaningful training in how to conduct interviews, collect evidence, or write reports. Overall, this lack of training was evident in the quality of their staff complaint inquiries.

In addition, we concluded that inadequate staff complaint inquiries resulted not only from poor investigative skills, but also from the staff complaint reviewers' lack of independence. These reviewers were frequently peers or coworkers who worked in the same location as the accused staff—the same individuals the reviewers must rely upon if their physical safety were threatened. The reviewers also displayed signs of bias in favor of their fellow staff when conducting their staff complaint inquiries; they sometimes ignored corroborating evidence offered by inmate witnesses and often compromised the confidentiality of the process. As a result, we question whether Salinas Valley can effectively police itself utilizing the staff complaint process. Furthermore, an inadequately functioning staff complaint process that lacks independence fosters distrust among inmates and, in the cases we reviewed, the compromised confidentiality could have exposed inmates to retaliation for complaining about staff.

Moreover, although we determined Salinas Valley completed most staff complaint inquiries within the required time frame of 30 working days, it did not always notify inmates or its associate director when some staff complaint inquiries took longer to complete than required.

Finally, we also assessed nine other inquiries conducted by reviewers regarding inmate complaints concerning alleged staff misconduct that the Prison Law Office brought to the department. We found that the reviewers' work with respect to these inquiries suffered from the same general types of failures as those we identified during the two periods covered in this special review. We found the quality of seven of the nine inquiries to be inadequate.

Respectfully submitted,

A handwritten signature in blue ink that reads "Roy W. Wesley". The signature is written in a cursive, flowing style.

Roy W. Wesley
Inspector General

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Special Review Highlights

The Process Salinas Valley Used to Review Allegations of Staff Misconduct Was Inadequate, and Staff Assigned to Conduct the Reviews Were Inadequately Trained

Of the 188 staff complaint inquiries we reviewed, the prison determined that its staff did not violate policy in 183 of them (97 percent). However, we found that the dependability of the staff complaint inquiries was significantly marred by inadequate investigative skills that reviewers demonstrated—notably, by their deficiencies in interviewing, collecting evidence, and writing reports. This resulted in final reports that were often incomplete or inaccurate, or both incomplete and inaccurate. Due to these overall procedural deficiencies, we determined that prison staff completed more than half of the staff complaint inquiries inadequately. This resulted in the hiring authority being deprived of adequate investigative results for making determinations. The hiring authority found that staff had violated policy in five cases and took corrective action in only four cases. The hiring authority determined corrective action was not possible in the fifth case. Furthermore, the hiring authority determined that one case warranted a formal investigation.

Our conclusions, however, are not meant to convey whether the hiring authority's decisions were correct or incorrect, or whether accused staff members were responsible for committing the alleged misconduct; rather, we point out that the hiring authority made decisions based on inadequate investigative work. Highlights of our findings in this section include the following:

- ✓ We found 104 of the 188 staff complaint inquiry reviews (55 percent) to be inadequate.
- ✓ We found at least one significant deficiency in 173 of the 188 staff complaint inquiries (92 percent).
- ✓ A reviewer's rank of service had little effect on the quality of the staff complaint inquiry; we found the work across all ranks to be lacking in quality.

Poor interviewing techniques:

- ✓ In 28 staff complaint inquiries (16 percent), a reviewer improperly interviewed a subject before interviewing the appellant, which was out of sequence.
- ✓ During the onsite review period, in 22 staff complaint inquiries (17 percent), reviewers failed to ask relevant questions or appropriate follow-up questions while interviewing the appellants and inmate witnesses.
- ✓ In the 158 staff complaint inquiries with a potential witness, reviewers failed to interview the witnesses or explain why they had not done so in 47 of those inquiries (30 percent).
- ✓ In 16 instances (9 percent), we found reviewers failed to interview all of the subjects whom they identified or reasonably should have identified.

Poor evidence collection techniques:

- ✓ Of the 150 staff complaint inquiries that could have had relevant evidence to collect, reviewers failed to do so in 90 instances (60 percent).

Poor report writing skills:

- ✓ Of the 188 staff complaint inquiry reports, 108 of them (57 percent) were incomplete or inaccurate, or both.
- ✓ We concluded that 101 of the 188 staff complaint inquiry reports were incomplete (54 percent).
- ✓ We concluded that 45 of the 188 staff complaint inquiry reports were inaccurate (24 percent).

In addition, we found that reviewers were inadequately trained in how to conduct staff complaint inquiries. The two-hour training component that reviewers received during our monitoring period focused on completing forms and observing legal requirements when dealing with peace officers. The training did not include instructions in best practices for framing interviews, planning questions or preparing follow-up questions, or deducing conclusions from evidence. We note the following deficiencies:

- ✓ Only 14 of the 61 reviewers (23 percent) had received any relevant training on the staff complaint inquiry process before conducting their first staff complaint inquiry-related interview.
- ✓ We found that 42 reviewers (69 percent) received training at some point after conducting their first interview. As of November 19, 2018, we found that five reviewers (8 percent) had no record of receiving any training in the staff complaint process.
- ✓ None of the 61 reviewers received meaningful training in techniques of interviewing, collecting evidence, or writing reports.

Staff Complaint Reviewers Were Not Independent: They Sometimes Displayed Bias in Favor of Their Fellow Staff Members, Sometimes Ignored Inmate Witness Testimony, and Often Compromised Confidentiality

Reviewers conducting staff complaint inquiries were supervisors—typically, sergeants and lieutenants—performing inquiries in addition to their regular duties; they were also frequently peers or coworkers of the staff members they were investigating, and were sometimes involved directly or peripherally with the incident under investigation. In a prison setting, these reviewers must always rely on fellow staff for their physical safety, which raises concerns over their ability to remain impartial. Reviewers demonstrated bias against inmates and in favor of staff, recording opinions as evidence, and basing conclusions on

those opinions. Reviewers also ignored corroborating evidence given by inmates in some instances and discounted or mischaracterized corroborating evidence in other instances. Moreover, reviewers frequently compromised the confidentiality of the staff complaint inquiry process, which, in the cases we reviewed, could have exposed the inmates to retaliation for raising concerns against staff. Selected highlights of this finding include the following:

- ✓ In 113 of the 188 staff complaint inquiries (60 percent), the prison assigned a reviewer who worked on the same yard and shift as the subject employee.
- ✓ In 11 instances (6 percent), the reviewer held the same rank or a lower one than the subject employee.
- ✓ In five instances (3 percent), the reviewer was actually involved in the incident giving rise to the staff complaint.
- ✓ During 34 appellant interviews and during 31 witness interviews, reviewers improperly compromised the confidentiality of the process.

Salinas Valley Completed Most of the Staff Complaint Inquiries Within Required Time Frames; However, the Prison Did Not Always Notify Inmates, as Required, When Inquiries Were Overdue

Although the prison completed most of the staff complaint reviews within a 30-working-day time frame, some staff complaint inquiries took longer without the reviewer seeking extensions or notifying the inmates involved that the staff complaint inquiry would be late. On average, the prison completed a staff complaint inquiry in 27 days. We include the following notable findings:

- ✓ Reviewers completed 133 of the 165 time-sensitive staff complaint inquiries (81 percent) within the 30-working-day requirement. Reviewers completed another 18 staff complaint inquiries after 30 working days had passed, but within their requested extension period.

- ✓ Reviewers did not complete 14 staff complaint inquiries (8 percent) on time, including those with a time extension granted.
- ✓ Reviewers failed to provide the inmates with the required notification in 24 of the 32 cases (75 percent) that took longer than 30 working days to complete, and failed to notify their associate director in 27 of the 32 cases (84 percent).

Salinas Valley Staff Worked More Thoroughly When Reviewing Complaints Submitted by Attorneys Who Represented Inmates, but They Still Did Not Complete High-Quality Inquiries

The OIG also assessed the department's inquiries conducted in connection with nine complaint letters submitted to Salinas Valley by the Prison Law Office. Although the inquiry reports for these cases were generally longer and more detailed than the staff complaint inquiry reports prepared in connection with the 188 cases the OIG reviewed during the paper review and the onsite review periods, these inquiries also suffered from the reviewers' general failures to interview subjects and relevant witnesses, the reviewers' not addressing all allegations, and the reviewers interviewing the inmate complainant after interviewing the subjects or other witnesses. We found the quality of seven of the nine inquiries to be inadequate. In addition, the reviewers at times relied upon the investigative work and findings in prior staff complaint inquiries conducted by Salinas Valley regarding these same complaints rather than conducting independent inquiries.

Recommendations

The problems we encountered require substantial changes at Salinas Valley. Although this special review focused only on Salinas Valley, the process we reviewed is in place at prisons statewide. Therefore, the conditions we found may also exist to some degree at other institutions. Toward that end, we offer the following recommendations for consideration at the departmental level:

To address the independence and quality issues we identified, the department should consider a complete overhaul of the staff complaint inquiry process. Specifically, we urge the department to reassign the responsibility of conducting staff complaint inquiries to employees who work outside of the prison's command structure, which is the Division of Adult Institutions.

To the extent the department utilizes staff from outside the prison's command structure, the department should consider adopting a regionalized model for staffing purposes. For instance, the reviewers should not work or be co-located in the facilities where they are assigned to conduct staff complaint inquiries. The department currently uses a regionalized model for special agents who work in the Office of Internal Affairs.

To ensure that all prison employees who conduct staff complaint inquiries possess the requisite knowledge and skills to perform staff complaint inquiry activities effectively and efficiently, the department should:

- Provide comprehensive and ongoing training to all staff members who may be assigned to conduct staff complaint inquiries. This training should provide, at a minimum, an understanding of the staff complaint inquiry process; best practices to apply when interviewing appellants, witnesses, and subjects; best practices to apply for maintaining impartiality and confidentiality; instructions in effective techniques in collecting and preserving evidence; and instructions in effective report writing techniques.
- Consider requiring reviewers receive a certificate from the California Commission on Peace Officer Standards and Training with respect to conducting investigations.
- Assign staff complaint inquiries to only those employees who have received training and are certified on how to properly conduct them.

To ensure that the hiring authority has the most complete information at his or her disposal when making decisions regarding staff complaint inquiry determinations, the department should consider requiring audio-recorded interviews of staff subjects and witnesses. If this is not permitted under existing labor Memoranda of Understanding, then this recommendation may require negotiating with the respective labor organizations to effectuate such a change. Furthermore, the department should require reviewers to video-record (or at least, audio-record) all appellant and inmate witness interviews.

To better align the processes of a staff complaint inquiry and an investigation, the department should:

- Consider redefining an inquiry so that it is not perceived as a less-laborious process or as an inferior process when compared with an investigation. As we describe in the body of this report, inquiries consist of the same basic activities as investigations and, for results to be meaningful, they must include thorough interviews of the appellant, all pertinent witnesses, and all subjects. The staff complaint inquiry must also include all relevant supporting documentation and a complete and accurate written report. A reviewer cannot cut corners on these steps without compromising quality.
- Require reviewers to report all evidence they have uncovered in the staff complaint inquiry reports, and prohibit them from including their personal opinions or from making conclusions and recommendations in the staff complaint inquiry report.

To improve communication with appellants, the department should evaluate its notification procedures to ensure it promptly notifies appellants when reviewers need additional time to process staff complaint inquiries, beyond the regulatory time frame.

To ensure better follow-through on identified policy deviations, the department should routinely audit whether employees who were found to be out of compliance as part of a staff complaint inquiry actually received the corrective or adverse actions ordered by the hiring authority and then report the findings publicly.

Exhibit HH

Selected Institution(s): ASP, CAC, CAL, CCC, CCI, CCWF, CCWF-RC, CEN, CHCF, CIM, CIM-RC, CIW, CMC, CMF, COR, CPMP, CRC, CTF, CVSP, DVI, DVI-RC, FCRF, FOL, HDSP, ISP, KVSP, LAC, MCSP, NKSP, NKSP-RC, PBSP, PRCCF, PUCCF, PVSP, RJD, SAC, SACCO, SATF, SCC, SHS, SOL, SQ, SQ-RC, SVSP, VSP, WSP, WSP-RC

Inmate Type: DPP

Disability Inmate Counts

Run By: ladjrs

Date Run: 02/04/2020 10:24 AM

Institution	Inmate Count
ASP	115
CAC	34
CAL	34
CCC	34
CCI	106
CCWF	239
CCWF-RC	5
CEN	57
CHCF	1,287
CIM	725
CIM-RC	12
CIW	145
CMC	356
CMF	928
COR	172
CPMP	1
CRC	80
CTF	447
CVSP	142
DVI	61
DVI-RC	77
FCRF	1
FOL	92

Disability Inmate Counts

Run By: ladjrs

Date Run: 02/04/2020 10:24 AM

Institution	Inmate Count
HDSP	215
ISP	65
KVSP	207
LAC	414
MCSP	790
NKSP	29
NKSP-RC	55
PBSP	69
PRCCF	5
PUCCF	8
PVSP	73
RJD	965
SAC	124
SACCO	63
SATF	870
SCC	104
SHS	40
SOL	548
SQ	342
SQ-RC	15
SVSP	336
VSP	683
WSP	56
WSP-RC	57
	11,283

Exhibit II



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 07-11-2019

Location(s): CCC, CIM, CMC, CRC, DVI, NKSP, RJD, SCC, SQ, WSP



		2018					2019							
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
NKSP	Per 100 Staff	0.10	0.68	0.00	0.19	0.10	0.10	0.50	0.00	0.00	0.20	0.20	0.00	0.40
	Dismissals (Non-Medical)	0	0	0	0	0	0	0	0	0	1	0	0	0
	Adverse Actions Total (Medical)	0	0	0	0	0	0	0	0	0	0	0	0	0
	Per 100 Staff	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Dismissals (Medical)	0	0	0	0	0	0	0	0	0	0	0	0	0
RJD	Custody Operations													
	Total Bed Capacity													
	Blueprint Crowding Capacity	3,942	3,942	3,942	3,942	3,942	3,942	3,942	3,942	3,942	3,942	4,038	4,038	4,038
	Maximum Capacity	5,212	5,212	5,212	5,212	5,212	5,212	5,212	5,212	5,212	5,212	5,212	5,212	5,212
	Design Beds	2,992	2,992	2,992	2,992	2,992	2,992	2,992	2,992	2,992	2,992	2,992	2,992	2,992
	Inmate Count	3,915	3,965	3,947	4,035	4,001	3,962	3,957	3,890	3,886	3,806	3,817	3,829	3,921
	% Institution Filled to Blueprint Crowding Capacity	99 %	101 %	100 %	102 %	101 %	101 %	100 %	99 %	99 %	97 %	95 %	95 %	97 %
	Inmate Security Level													
	Inmate Level I (Classification Score of 0-18)	129	143	142	152	153	143	147	137	150	148	151	151	158
	Out of Bed Level I Assignments	3	19	19	15	17	18	20	20	21	17	15	18	18
	% of Out of Level I Assignments	2 %	13 %	13 %	10 %	11 %	13 %	14 %	15 %	14 %	11 %	10 %	12 %	11 %
	Inmate Level II (Classification Score of 19-35)	1,393	1,427	1,420	1,414	1,422	1,404	1,406	1,398	1,426	1,424	1,435	1,435	1,452
	Out of Bed Level II Assignments	83	91	85	86	88	83	92	95	111	120	118	125	137
	% of Out of Level II Assignments	6 %	6 %	6 %	6 %	6 %	6 %	7 %	7 %	8 %	8 %	8 %	9 %	9 %
	Inmate Level III (Classification Score of 36-59)	1,252	1,253	1,262	1,317	1,282	1,279	1,280	1,258	1,246	1,191	1,197	1,212	1,265
	Out of Bed Level III Assignments	12	17	12	13	15	15	18	13	12	25	40	39	30
	% of Out of Level III Assignments	1 %	1 %	1 %	1 %	1 %	1 %	1 %	1 %	1 %	2 %	3 %	3 %	2 %
	Inmate Level IV (Classification Score of 60+)	1,141	1,142	1,123	1,152	1,144	1,136	1,124	1,097	1,064	1,043	1,034	1,031	1,046
	Out of Bed Level IV Assignments	37	29	31	27	27	31	40	32	25	23	30	30	39



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 01-13-2020

Location(s): CCC, CIM, CMC, CRC, DVI, NKSP, RJD, SCC, SQ, WSP



		2018		2019										
		Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
RJD	% of Out of Level IV Assignments	4 %	3 %	2 %	2 %	3 %	3 %	4 %	4 %	5 %	4 %	5 %	4 %	4 %
	Camps													
	Camps (CMC, CRC only)	0	0	0	0	0	0	0	0	0	0	0	0	0
	Camps	0	0	0	0	0	0	0	0	0	0	0	0	0
	Pipeline	0	0	0	0	0	0	0	0	0	0	0	0	0
	Reception Center													
	Blueprint Crowding Capacity	0	0	0	0	0	0	0	0	0	0	0	0	0
	Actual Population	0	0	0	0	0	0	0	0	0	0	0	0	0
	Reception Center with S-Suffix	0	0	0	0	0	0	0	0	0	0	0	0	0
	General Population (GP)													
	Blueprint Crowding Capacity	978	978	978	978	978	978	978	978	978	978	978	978	978
	Actual Population	977	959	946	834	853	863	939	1,022	1,058	1,037	978	1,029	1,052
	GP with S-Suffix	19	20	17	11	11	13	15	14	15	13	13	12	10
	Enhanced Outpatient Program (EOP)													
	Blueprint Crowding Capacity	864	864	864	864	864	864	864	864	864	864	864	864	864
	Total EOP Population	707	743	712	697	680	682	716	707	722	743	753	754	746
	Actual Population (In EOP Designated Bed Use)	707	743	712	697	680	682	716	707	722	743	753	754	746
	Actual Population (In Non-EOP Designated Bed Use)	0	0	0	0	0	0	0	0	0	0	0	0	0
	EOP with S-Suffix	83	81	76	78	76	77	79	81	84	85	88	86	83
	SNY-EOP													
	Blueprint Crowding Capacity	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total SNY EOP Population	30	27	21	18	18	15	13	13	12	10	8	5	5
	Actual Population (In SNY-EOP Designated Bed Use)	0	0	0	0	0	0	0	0	0	0	0	0	0
	Actual Population (In Non SNY-EOP Designated Bed Use)	30	27	21	18	18	15	13	13	12	10	8	5	5



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 01-13-2020

Location(s): CCC, CIM, CMC, CRC, DVI, NKSP, RJD, SCC, SQ, WSP



		2018		2019										
		Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
RJD	SNY EOP with S-Suffix	0	0	0	0	0	0	0	0	0	0	0	0	0
	Correctional Clinical Case Management Services (CCCMS)													
	Treatment Capacity	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950
	Actual Population	1,479	1,417	1,416	1,393	1,398	1,376	1,361	1,388	1,415	1,420	1,403	1,378	1,360
	Work Crews (WC/SWC/FH/SFH)													
	Blueprint Crowding Capacity	200	200	200	200	296	296	296	296	296	296	296	296	296
	Actual Population	115	116	143	154	163	166	168	167	180	165	164	144	141
	Administrative Segregation (ASU)													
	Blueprint Crowding Capacity	250	250	250	250	250	250	250	250	250	250	250	250	250
	Actual Population	242	204	208	244	225	237	218	243	241	220	188	151	157
	CSR Endorsed for Transfer	7	10	20	13	9	26	26	6	46	13	39	18	13
	Stays Exceeding 150 days	30	26	28	20	20	19	27	25	51	25	14	9	6
	Stays Exceeding 400 days	7	5	6	7	6	7	5	5	5	5	4	0	1
	Stays Exceeding 800 days	1	1	1	1	1	1	2	2	2	1	2	0	0
	ASU EOP Hub													
	Blueprint Crowding Capacity	100	100	100	100	100	100	100	100	100	100	100	100	100
	Actual Population	42	45	46	42	43	49	38	39	30	26	34	28	32
	Restricted Housing													
	Blueprint Crowding Capacity	250	250	250	250	250	250	250	250	250	250	250	250	250
	Actual Population	242	204	208	244	225	237	218	243	241	220	188	151	157
	Total Restricted Housing Endorsed Inmates	3	8	7	7	3	15	7	1	22	7	21	15	7
	Restricted Custody General Population (RCGP)													
	Actual Population	0	0	0	0	0	0	0	0	0	0	0	0	0
	Short Term Restricted Housing (STRH)													



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 01-13-2020

Location(s): CCC, CIM, CMC, CRC, DVI, NKSP, RJD, SCC, SQ, WSP



		2018		2019										
		Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
RJD	Blueprint Crowding Capacity	0	0	0	0	0	0	0	0	0	0	0	0	0
	Actual Population	0	0	0	0	0	0	0	0	0	0	0	0	0
	Out-Patient Housing Unit (OHU)													
	Blueprint Crowding Capacity	0	0	0	0	0	0	0	0	0	0	0	0	0
	Actual Population	0	0	0	0	0	0	0	0	0	0	0	0	0
	Mental Health Crisis Bed (MCB)													
	Blueprint Crowding Capacity	0	0	0	0	0	0	0	0	0	0	0	0	0
	Actual Population	13	14	10	11	11	11	14	14	14	12	11	13	13
	American with Disabilities Act (ADA)													
	Actual Population (All Institutions)	1,014	999	988	979	980	982	976	976	989	985	969	974	980
	DPW - Disability Type: Mobility	96	94	92	95	87	85	90	92	91	91	94	95	98
	DPW Code Only	78	77	75	77	70	69	73	75	75	74	77	77	76
	Multiple Codes Including DPW	18	17	17	18	17	16	17	17	16	17	17	18	22
	DPO - Disability Type: Mobility	194	190	190	188	192	200	192	191	193	190	187	195	199
	DPO Code Only	154	152	155	155	157	159	152	147	148	149	149	157	155
	Multiple Codes Including DPO	40	38	35	33	35	41	40	44	45	41	38	38	44
	DPM - Disability Type: Mobility	474	466	454	448	452	449	445	441	445	448	435	420	425
	DPM Code Only	398	391	379	371	374	372	367	367	369	371	359	349	350
	Multiple Codes Including DPM	76	75	75	77	78	77	78	74	76	77	76	71	75
	DLT - Disability Type: Mobility	94	97	96	96	97	94	91	92	91	89	91	99	97
	DLT Code Only	81	82	81	80	82	79	75	77	75	76	79	86	83
	Multiple Codes Including DLT	13	15	15	16	15	15	16	15	16	13	12	13	14
	DNM - Disability Type: Mobility	76	75	82	82	84	86	89	90	95	96	87	87	88
	DNM Code Only	63	62	67	68	71	71	73	73	76	77	70	70	72
	Multiple Codes Including DNM	13	13	15	14	13	15	16	17	19	19	17	17	16
	DPH - Disability Type: Hearing	29	27	25	23	22	21	25	24	25	24	23	22	23



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 01-13-2020

Location(s): CCC, CIM, CMC, CRC, DVI, NKSP, RJD, SCC, SQ, WSP



		2018		2019											
		Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	
RJD	DPH Code Only	17	16	16	14	15	13	15	15	15	14	13	14	14	
	Multiple Codes Including DPH	12	11	9	9	7	8	10	9	10	10	10	8	9	
	DNH - Disability Type: Hearing	183	182	183	182	181	187	186	188	189	184	182	185	194	
	DNH Code Only	48	49	48	48	45	46	44	44	45	46	49	53	48	
	Multiple Codes Including DNH	135	133	135	134	136	141	142	144	144	138	133	132	146	
	DPV - Disability Type: Vision	16	14	13	12	11	14	14	13	15	15	16	14	13	
	DPV Code Only	9	7	6	5	4	5	5	6	7	5	7	6	5	
	Multiple Codes Including DPV	7	7	7	7	7	9	9	7	8	10	9	8	8	
	DPS - Disability Type: Speech	14	12	8	8	9	9	9	8	10	11	11	9	10	
	DPS Code Only	1	1	1	1	1	1	1	1	2	0	0	0	0	
	Multiple Codes Including DPS	13	11	7	7	8	8	8	7	8	11	11	9	10	
	DKD - Disability Type: Kidney	3	2	2	2	2	2	2	3	4	3	3	3	2	
	DKD Code Only	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Multiple Codes Including DKD	3	2	2	2	2	2	2	3	4	3	3	3	2	
	Development Disability Program (DDP)														
	Actual Population		125	121	114	110	114	115	112	101	99	102	91	91	92
	DD1		49	49	46	43	42	50	50	42	38	40	37	36	37
	DD2		73	69	66	65	70	63	61	57	59	61	52	53	53
	DD3		3	3	2	2	2	2	1	2	2	1	2	2	2
	Inmate Disciplinaries														
	Per 100 inmates		8.36	9.77	10.83	9.46	9.25	9.69	9.21	7.56	7.29	8.04	7.10	10.63	5.51
	Total Inmate RVRs		331	380	421	360	353	371	361	305	302	332	289	425	219
	Counseling RVRs		114	118	151	100	122	159	105	74	110	139	116	196	75
	Administrative RVRs		12	22	15	24	34	30	22	19	21	22	9	30	18
	Serious RVRs		205	240	255	236	197	182	234	212	171	171	164	199	126
	Pending RVRs		2	4	4	3	4	4	4	5	9	12	23	36	75
	Camp RVRs		0	0	0	0	0	0	0	0	0	0	0	0	0

Exhibit JJ



DASHBOARD STATEWIDE COMPARISON

All Institutions

September 2019

[Main Menu](#)

[Return to Top](#)

Institution & Population Characteristics	MCSP	NKSP	PBSP	PVSP	RJD	SAC	SATF	SCC	SOL	SQ	SVSP	VSP	WSP
High Risk Priority 1	20.8%	0.7%	1.0%	0.0%	16.9%	5.4%	3.9%	0.7%	9.3%	9.0%	3.8%	5.4%	0.8%
High Risk Priority 2	25.2%	2.9%	3.1%	0.3%	20.6%	17.2%	7.0%	1.2%	14.8%	16.6%	8.1%	10.4%	1.9%
Medium Risk	37%	30%	20%	26%	40%	46%	54%	21%	24%	33%	47%	52%	34%
Low Risk	17%	66%	76%	73%	22%	32%	36%	77%	52%	41%	41%	32%	63%
Mental Health EOP	16.1%	1.3%	0.0%	0.1%	19.5%	32.9%	10.8%	0.0%	0.0%	5.4%	9.5%	11.4%	1.1%
Patients with Disability	18.2%	1.8%	2.0%	2.1%	24.0%	4.7%	16.1%	1.9%	12.1%	7.5%	10.1%	20.5%	2.0%
Inmates 50 Years or Older	45%	11%	13%	8%	38%	15%	27%	13%	34%	42%	16%	47%	10%
Men and Women Institutions	M	M	M	M	M	M	M	M	M	M	M	M	M
Specialized Health Care Beds	10	16	19	15	28	66	38	10	15	16	22	20	16
Institution Population	4,033	4,458	2,621	3,170	4,071	2,149	5,526	4,104	4,588	4,347	3,055	2,864	4,959

* Rate Per 1,000 Inmates

Please direct questions or feedback to QMstaff@cdcr.ca.gov

Report run: 11/14/2019 3:11:02 PM

Exhibit KK



OIG | OFFICE of the INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy
Inspector General

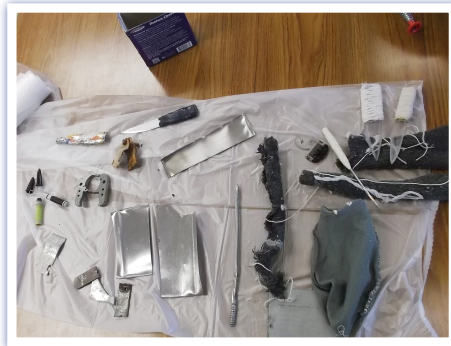
Independent
Prison Oversight

OIG No. 20-01

SENTINEL CASE

JANUARY 10, 2020

The Office of the Inspector General (OIG) is responsible for, among other things, monitoring the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process. Pursuant to California Penal Code section 6133, the OIG reports semiannually on its monitoring of these cases. However, in some cases, where there are compelling reasons, the OIG may issue a separate public report regarding a case; we call these *Sentinel Cases*. When this happens, the OIG has determined that the department's handling of a case was unusually poor, involving serious errors, even after it has had a chance to repair the damage. This Sentinel Case, No. 20-01, involves department attorneys who failed so fundamentally in their representation of the department that substantial justice was not done.

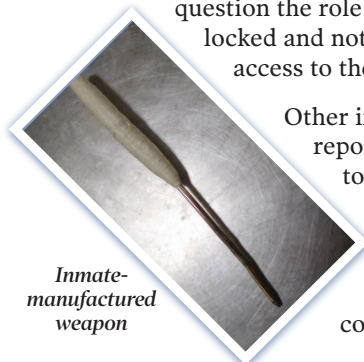


Cache of recovered weapons

From January through August 2017, ten officers at a prison in central California allegedly engaged in a conspiracy to open cell doors in a particular housing unit to allow a select group of inmates—called a *crew*—to enter cells and assault inmates convicted of sex offenses. The officers' misconduct was allegedly prevalent and widespread in the housing unit. This crew consisted of inmate porters, who are inmates selected by staff to assist with cleaning and other duties in a prison. A member of this inmate crew came forward to report the officers' misconduct because he was afraid that other inmates would attack him, and he knew there was a variety of weapons in the housing unit.

The department launched an investigation. The reporting inmate provided specific information, including identifying where the inmate crew had hidden weapons and other materials. After the reporting inmate provided the information, the prison's Investigative Services Unit found weapons and other materials in a locked plumbing chase, which is a cavity behind a wall used to conceal plumbing piping. This is significant because not only did the discovery of weapons corroborate the reporting inmate's information and credibility, it also called into question the role of the officers as the plumbing chase is locked and not accessible by inmates unless staff provide access to the inmates.

Other inmates independently corroborated the reporting inmate's information. According to four inmates whom departmental investigators interviewed, officers commonly allowed members of the inmate crew access to restricted areas in the housing unit so that these inmates could obtain materials to make inmate-



Inmate-manufactured weapon

manufactured weapons, to hide the weapons, and also to secrete drugs. The Investigative Services Unit found stabbing weapons the inmates crafted using metal they stripped from furniture and acrylic sheets of plexiglass typically used on holding cells. Furthermore, the Investigative Services Unit also found a can of red spray paint in the plumbing chase. Prison staff typically apply red spray paint to identify property with missing material, such as a piece of furniture or equipment. In order to conceal the material taken to make weapons, the inmates used the paint to mirror how prison staff applied red spray paint to identify property with missing material.

Multiple inmates also independently offered additional specific details and confirmed to investigators that inmates who were members of the crew assaulted inmates convicted of sex offenses; the inmate crew used



Cage marked with contraband spray paint

stabbing weapons to assault the inmates convicted of sex offenses; the inmate crew made weapons using metal stripped from furniture and acrylic sheets; the inmate crew hid the weapons in a locked plumbing chase; and housing unit officers delayed responding to the Investigative Services Unit when its personnel requested access to the housing unit in order to conduct searches.

The investigators' discovery of five weapons and weapon stock in the exact location described by the inmates corroborated the statements of these inmates. The inmates also provided accurate descriptions concerning the manner in which the officers attempted to delay the entry of the Investigative Services Unit into the housing unit, allowing the inmates time and opportunity to hide their contraband weapons and drugs. Interestingly, departmental investigators also interviewed a number of officers, and not one stated that he or she was aware of any misconduct. The evidence for this case came solely from information provided by inmates and subsequent corroboration of that information.

As a result of the department's internal investigation as to the ten officers, on June 10, 2019, the warden decided to dismiss six officers and decided to not sustain misconduct allegations against four officers. The OIG agreed with the warden's decisions to

Continued on reverse.





dismiss the six officers based on the credible evidence and corroboration provided by the inmates. The OIG also agreed with the warden's decisions to not sustain allegations as to four officers because the evidence did not support a finding of misconduct as to those officers.



Can of recovered red spray paint

As to the six officers the hiring authority decided to dismiss, the department had previously terminated two of the four officers on unrelated cases; one of the officers resigned from the department pursuant to an unrelated case; and one of the officers resigned before being dismissed pursuant to the instant case. Thus, there remained two officers who were facing dismissals as decided upon by the warden.

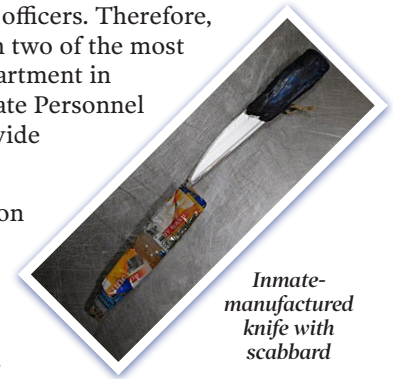
The department attorney assigned to this case agreed with the warden's decisions to not sustain the allegations against four officers and to sustain the allegations against the four officers who were previously terminated or resigned from the department, but objected to the warden's decision to sustain the allegations against the two remaining officers and elevated the matter to the warden's supervisor. The assigned department attorney, who is one of the most senior attorneys on the Office of Legal Affairs' Employment Advocacy and Prosecution Team, which is responsible for litigating the department's employee misconduct cases, reasoned that the department could not successfully litigate an employee discipline case before the State Personnel Board based only on inmate testimony.

In meetings regarding this case, the department attorney and his supervisor informed the OIG and departmental executives that the testimony of inmates would be insufficient and that noninmate testimony concerning the employee misconduct was necessary to prevail. However, in the OIG's opinion, this position is not supported by current case law. The law states a witness's testimony may be impeached if the witness has suffered a felony conviction involving moral turpitude; and yet, in determining the admissibility, the judge is to balance the probative value of the prior conviction against its prejudicial effect (*People v. Clark* (2011) 52 C.4th 856, *Robbins v. Wong* (1994) 27 Cal.App.4th 261, and California Evidence Code section 352). However, this does not mean that inmate testimony is categorically inadmissible or that it is not sufficient to sustain a finding of guilt or culpability. That is for the trier of fact, such as a judge, to decide.

To support their position, the department attorney and his supervisor cited prior decisions from the State Personnel Board that were not precedential which indicated that inmate testimony is to be viewed with suspicion and to not ordinarily be credited without corroboration. In one of the cases cited, the judge noted an inmate's prior convictions, but also that the inmate had a history of filing unfounded grievances against staff, lied to investigators, and had previously suffered serious rules violations. In the other case offered by the department attorneys, the judge noted that uncorroborated inmate testimony must be viewed with suspicion, but also noted other reasons for not believing an inmate based on other statements he made and circumstantial evidence.

Moreover, although the support provided by the department attorney is not established case law, even utilizing such a standard, as noted above, that corroboration was present in this case. Furthermore, the department attorneys' logic was internally inconsistent in that they agreed the evidence provided by the inmates and subsequently corroborated could be used to sustain the allegations against four officers, but not the two remaining officers. Therefore, the department attorneys' advice—from two of the most senior attorneys who represent the department in employee discipline cases before the State Personnel Board—violated their obligation to provide accurate legal advice to their client.

The OIG supported the warden's decision to dismiss the officers and expressed its support for the warden's decision to the department. However, based on the poor legal advice from its own attorneys, departmental executives overturned the warden's decision and decided to not sustain the misconduct allegations against the two remaining officers. The OIG does not agree with the department's ultimate decision that there would be no sustained misconduct allegations against the two officers.



Inmate-manufactured knife with scabbard

THE OIG IS CONCERNED that the department attorneys' actions suggest an apparent bias and hostility against inmate testimony and evidence provided by inmates, and set a dangerous precedent in which widespread officer misconduct, which in some cases cannot be proven by any means other than evidence or testimony provided by inmates, will go undiscovered and unpunished. The OIG believes that evidence concerning staff misconduct provided by an inmate and subsequent testimony proffered in a legal proceeding should not be disregarded, based simply on the fact that it came from an inmate. The credibility of information and testimony concerning staff misconduct provided by inmates must be independently assessed for credibility, like any other witness testimony, and should not be dismissed outright because the provider of the testimony is an inmate. Furthermore, simply because an individual is incarcerated does not mean he or she can never provide credible and reliable information. Unless department attorneys change their approach and bias regarding inmate testimony, we question whether they can effectively represent the department in such cases. [OIG](#)

Exhibit LL

CHAPTER 3 — PERSONNEL, TRAINING, AND EMPLOYEE RELATIONS

ARTICLE 1 — EQUAL EMPLOYMENT OPPORTUNITY

Revised August 25, 2015

31010.1 Policy

The California Department of Corrections and Rehabilitation (CDCR) is committed to providing Equal Employment Opportunity (EEO) and creating a work environment in which all individuals are treated with respect and professionalism. Consistent with this commitment, it is the policy of CDCR to provide a workplace free from discrimination, harassment, and retaliation for all applicants, employees, contractors, unpaid interns and volunteers. The CDCR EEO policy is a zero-tolerance policy which applies to all aspects of employment within CDCR including recruitment, hiring, promotion, transfer, training, corrective adverse action, and other terms, conditions, and benefits of employment. Zero tolerance means that violations of this policy will not be tolerated. When policy violations are found to have occurred, appropriate corrective action and/or adverse action, up to and including dismissal, depending on the severity of the violation, will be taken.

All employees are prohibited from discriminating against or harassing anyone on the basis of their protected status. The bases for filing a complaint are:

- Age (40 or older)
- Ancestry
- Color
- Disability (physical or mental)
- Genetic Information
- Marital Status
- Medical Condition (cancer or genetic characteristics)
- National Origin
- Political Affiliation (includes opinion or activities)
- Race
- Religion/Religious Creed
- Sex/Gender (including sexual harassment, pregnancy, gender identity, and gender expression)
- Sexual Orientation
- Veteran Status/Military Service
- Usage of leave rights permissible under the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), and/or Pregnancy Disability Leave Act.
- EEO Retaliation

All employees are prohibited from retaliating against any person because the person has opposed any practices forbidden under this policy or because the person has filed a complaint, testified, or assisted in any proceeding related to this policy.

All employees are prohibited from aiding or coercing any acts forbidden under this policy.

All employees are prohibited from engaging in behavior that rises to the level of discrimination, harassment, or retaliation in violation of:

- Title VII of the Civil Rights Act of 1964 (including amendments)
- California Fair Employment and Housing Act (FEHA) of 1959 (including amendments)
- California Code of Regulations (Titles 2 and 15)
- Departmental EEO policies and procedures
- Other California and federal EEO laws

This policy applies to conduct that occurs in any location operated by CDCR or is considered a workplace by CDCR, as well as any location that can reasonably be regarded as an extension of the workplace, such as an off-site business or social function, or other non-CDCR facility where CDCR business is being conducted. This policy applies to conduct that occurs off-duty and is brought back to the workplace, when such conduct adversely affects the individual in a manner otherwise prohibited by this policy.

31010.2 Purpose

The purpose of this policy is to prevent misconduct, define the roles and responsibilities of CDCR management and employees relative to the EEO policy, and to identify the discrimination complaint process.

31010.3 Definitions of Discrimination Basis

Age

Refers to the chronological age of any individual who has reached his or her 40th birthday.

Ancestry

The national or cultural origin of a line of familial descent.

Color

The color of skin of an individual, including shades of skin within a racial group.

Disability

A physical or mental impairment affecting one or more body systems which limits a major life activity, including work; a record of such an impairment; or being regarded as having such an impairment. This includes Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome.

Genetic Information

With respect to any individual, information about the individual's genetic tests, genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual.

Marital Status

The legal status in a relationship such as married, never married, single, separated, divorced, or widowed.

Medical Condition

A person's genetic characteristics or a person who has or had cancer.

National Origin

The country where a person was born, or more broadly, the country from which his or her ancestors came, which includes the individual's common language, culture, ancestry, and other similar social characteristics.

Political Affiliation

Membership or association in a political party or special interest group (union issues are not included).

Race

Classes of persons identifiable because of their ancestry or ethnic characteristics.

Religion

All aspects of religious belief, observance, and practice.

Retaliation

An adverse employment action taken against an individual due to his/her protected activity (including one's opposition to a discriminatory practice or participation in the discrimination complaint process).

Sex

Sex includes, but is not limited to, a person's gender. Gender includes a person's gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. Gender identity refers to a person's identification as male, female, a gender different from the person's sex at birth, or transgender.

Sex also includes, but is not limited to pregnancy or medical conditions related to pregnancy; childbirth or medical conditions related to childbirth; and breastfeeding or medical conditions related to breastfeeding.

Sexual Orientation

"Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

Military and Veteran Status

Any person entitled to the rights and benefits under the Uniformed Services Employment and Reemployment Rights Act.

31010.3.1 Definitions of Other Terms

Association

An individual's involvement with a member of a protected group or membership in an advocacy organization representing a protected group.

Complainant

Any individual or group of individuals who allege discrimination in violation of a State or federal EEO law or regulation or departmental policy.

EEO

The legal right of all individuals to be afforded full and equal consideration for employment, retention, and advancement on the basis of merit.

- Notifying each complainant, including citizen, inmate, or employee complainants, in writing, of the finding on the original complaint within thirty (30) days of the determination of the disposition of the investigation regarding the original complaint. The Hiring Authority shall not notify the complainant of specific investigative findings, but shall make a separate finding on the original complaint. At no time should the specifics related to any personnel action be discussed with the complainant in the matter. The notification of the finding on the complaint shall be limited to whether the original complaint is sustained, not sustained, exonerated, or unfounded;
- Coordinating and consulting with the Vertical Advocate for designated cases and the SAIG for cases monitored by the BIR before making investigative findings or disciplinary determinations and prior to approving any settlement agreements.

31140.4.11 Supervisors and Managers

Each supervisor and manager shall be responsible for referring alleged misconduct and requests for investigation or adverse action to the Hiring Authority immediately following discovery of facts which may constitute misconduct.

31140.4.12 Locally Designated Investigators

Locally designated investigators shall be responsible for the following:

- Conducting investigations, as assigned by OIA regional offices, in a manner that provides a complete and thorough presentation of all facts regarding the allegation or complaint;
- Maintaining integrity and the confidentiality of the investigative process, unless prior approval to discuss a case with the Hiring Authority is obtained through the SAC;
- Cooperating with and providing continual real-time consultation among OIA, the Vertical Advocate for designated cases, and the BIR for cases the BIR is monitoring;
- Identifying issues related to allegations of employee misconduct and assisting the Hiring Authority, Vertical Advocate for designated cases, and the SAIG for cases monitored by the BIR;
- Updating case activity in CMS.

31140.4.13 Vertical Advocate

The Vertical Advocate shall be responsible for the following:

- Coordinating with the assigned investigator for designated cases for the duration of an investigation and evaluating completed investigations for legal sufficiency to prosecute an administrative action;
- Monitoring and coordinating with the ERO/Disciplinary Officer the adverse action process for all designated cases, from the onset of an investigation, including calculation of statute of limitations expiration dates;
- Providing legal consultation for all designated cases to the assigned investigator, including developing the investigative plan, assisting with preparation of investigative interviews, and attending investigative interviews, as appropriate, to assess witness demeanor and credibility;
- Providing legal consultation to the Hiring Authority on all designated cases and coordinating with the SAIG for cases monitored by the BIR.

31140.4.14 Office of Civil Rights

The OCR may initiate investigations when an employee files a complaint with the OCR regarding discrimination, harassment, or EEO related retaliation. Following completion of OCR's evaluation, and if the OCR determines that an OIA investigation may be necessary, the OCR shall forward a copy of the intake document and all related information to the OIA for investigation consideration.

31140.5 Employee Expectations & Reporting

Each employee, regardless of classification or rank, shall adhere to the Department's Employee Performance Standards as defined in DOM, Section 3, Article 22, Subsection 33030.3. Each employee shall report misconduct or any unethical or illegal activity in a timely manner. Failure to report employee misconduct or any unethical or illegal activity in an investigation or allegation inquiry shall be grounds for corrective action, disciplinary action, or both. Employees shall not make false statements when questioned, interviewed, or in reports submitted.

31140.5.1 Employee Duty to Cooperate

Each employee of the CDCR is required to comply and cooperate as follows:

- If requested to make a statement in any official internal investigation conducted by the Department, employees shall make full, complete,

and truthful statements. Failure or refusal to make statements or making false statements during Department Internal Affairs investigations may result in disciplinary action.

- Employees shall not take any action which would interfere with, delay, distort, or unduly influence any official investigation conducted by the Department or any other government agency. Any employee who knowingly gives false evidence, withholds evidence, or interferes in any way during such an investigation, or requests or encourages another to do so, may be subject to disciplinary action.
- Employees have a duty to cooperate with investigators of the Department and with officials from other law enforcement agencies who are conducting a criminal investigation. Employees shall make full, complete, and truthful statements. Failure to cooperate may result in disciplinary action.

31140.6 Authority to Conduct Investigations

Pursuant to Government Code Section 11182, the Secretary of the Department delegates the authority to initiate and conduct investigations to the Assistant Secretary, OIA.

31140.7 Requirements for Hiring Internal Affairs Investigators

Investigators shall be hired in accordance with Penal Code Sections 6065 (b)(1) and 6126.1(c).

31140.8 Required Training

All Internal Affairs investigators shall complete investigation training and be certified as mandated by Penal Code Section 6126.1 and the OIA Investigation Training Requirements. In addition, Internal Affairs investigators shall complete advanced investigative training as outlined in the OIA Investigation Training Requirements.

31140.9 Filing an Allegation of Employee Misconduct with a Hiring Authority

Information regarding alleged employee misconduct shall be reported promptly by staff to a supervisor or other appropriate departmental, governmental, or law enforcement entity. If information is reported verbally to a supervisor, the staff person shall also submit a written report to the supervisor. The supervisor shall prepare a separate written report regarding the allegation(s) and shall submit his/her report and the staff person's report to the Hiring Authority or to the Hiring Authority's supervisor if the allegation(s) are against the Hiring Authority. Such reports shall include all pertinent information concerning the allegation(s), the timeline, and the source(s) of the information.

Any allegation of misconduct which is believed by staff to constitute an emergency shall be reported immediately to a supervisor, locally designated investigators, or the OIA. In the event of such an emergency, staff shall follow-up with the written report within one (1) day of learning of the information. Some instances that constitute an emergency are as follows:

- Possible loss of life or serious bodily injury;
- Serious breach of facility security;
- Further aggravation of a potentially dangerous situation;
- Activities which seriously compromise or jeopardize an investigation;
- An illegal activity which may occur imminently.

31140.10 Reporting Misconduct and Protecting Employees from Retaliation

To encourage and protect employees that confront and report serious misconduct, the Department has strengthened its policies and procedures to provide additional protections beyond those included in the California Whistleblower Protection Act (Government Code section 8547 et seq.) and other California protective statutes. This reporting of misconduct process and the protection offered by the Department are detailed in the Department's "Policy and Procedure for Reporting Serious Misconduct and Protecting Employees from Retaliation." The procedures may be obtained by contacting the OIA.

31140.11 Inmate, Ward, or Parolee Complaints Against Staff

All inmate, ward, or parolee complaints against staff shall be processed in accordance with DOM, Section 54100.

31140.12 Complaints by Members of the Public Against Department Employees

Pursuant to Penal Code Section 832.5, it is the policy of the Department, as an employer of peace officers, to have a procedure for investigating a complaint by a member of the public against its peace officers.

storage in accordance with the manufacturer's wear and care recommendations.

- Designation of a VCP by position title and number.
- Procedures for conducting inventories.
- Procedures for procurement and replacement of vests and/or covers, as required. Replacement must occur before the manufacturer's warranty expiration date.
- The procedures and requirements for using the CDCR 2154.
- The procedures and requirements for using the CDCR 2155.
- Mandatory wear provisions that exceed the requirements of DOM Section 33020.16.2.
- Standby Vest Pool management, issuance, and return procedures. These shall include the specific procedures for cleaning and care, including:
 - The designation of an employee, by duty assignment, to be responsible for the cleaning and maintenance of the Standby Vest Pool vest panels and covers.
 - Provisions to ensure that the Standby Vest Pool vest panels are cleaned in accordance with the manufacturer's specifications and without inmate/ward/parolee contact. Vest covers can be laundered by inmates/ward/parolees with appropriate supervision.
- A detailed schedule for cleaning Standby Vest Pool components (cover and panels). In Standby Vest Pool situations, protective vests that have been worn shall be cleaned at least weekly. Protective vests shall be cleaned before they are reissued if they are contaminated. This may require the acquisition of extra covers to facilitate the required cleaning.
- Specific identification of a contracted cleaner if there are not resources available at the respective site to facilitate protective vest cleaning in accordance with this section. This should also include the required inventory process (including transport to and from the cleaner) to ensure accountability. Cleaning requirements might require the purchase of additional covers.

33020.16 Revisions

Revised July 27, 2010

The Assistant Secretary, Office of Correctional Safety or his/her designee shall ensure that the content of this DOM Article is accurate and current.

33020.17 References

Revised July 27, 2010

PC 830.10 and 832, CCR, Title 15, Division 3, Section 3291(b), California State Administrative Manual, Section 8643.

ARTICLE 22 — EMPLOYEE DISCIPLINE

Effective January 2006

33030.1 Policy

All disciplinary action shall be imposed in a fair, objective, and impartial manner, and the California Department of Corrections and Rehabilitation (Department) shall consistently apply accepted principles of due process and progressive discipline when corrective or adverse action is imposed.

33030.2 Purpose

To ensure effective and efficient departmental operations and employee adherence to reasonable and acceptable rules of conduct and performance.

33030.3 Employee Performance Standards

33030.3.1 Code of Conduct

As employees and appointees of the Department, we are expected to perform our duties, at all times, as follows:

- Demonstrate professionalism, honesty, and integrity;
- Accept responsibility for our actions and their consequences;
- Appreciate differences in people, their ideas, and opinions;
- Treat fellow employees, inmates, wards, parolees, victims, their families, and the public with dignity and respect;
- Respect the rights of others and treat them fairly regardless of race, color, national origin, ancestry, gender, religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation;
- Comply with all applicable laws and regulations;

- Report misconduct or any unethical or illegal activity and cooperate fully with any investigation.

33030.3.2 General Qualifications

All employees are subject to the requirements as specified in the California Code of Regulations (CCR), Title 2, Section 172, General Qualifications, which states, in pertinent part, the following:

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class.

33030.3.3 Law Enforcement Code of Ethics

Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics is as follows:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all people to liberty, equality and justice.

I will keep my public and private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, organizational associations or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

Confidential information received in my official capacity shall remain undisclosed unless disclosure is necessary in the performance of my duty. I will never engage in acts of corruption, bribery, insubordination or the obstruction of justice, nor will I condone such acts by other peace officers. I will immediately report acts of misconduct by staff of my department and cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am serving as a law enforcement officer. I will constantly strive to achieve these objectives and ideals, dedicating myself before all present to my chosen profession... law enforcement.

33030.4 Definitions

Adverse Action - A documented action, which is punitive in nature and is intended to correct misconduct or poor performance or which terminates employment.

Affected Employee - An individual who is the subject of adverse action.

Appointing Power - The Secretary of the Department.

Assistant General Counsel (AGC) - An individual responsible for managing the Employment Advocacy and Prosecution Team (EAPT) in the Department's Office of Legal Affairs.

Bureau of Independent Review (BIR) - A unit within the Office of the Inspector General responsible for contemporaneous public oversight of the Department's investigative and disciplinary processes.

Charging Package (Also known as the "Skelly package") - All documentation used to substantiate the charges in the action and which is presented to the employee with the Preliminary or Final Notice of Adverse Action. This material may include but is not limited to the following: the investigative report; applicable policies, procedures, and Government Code sections; records of training the employee has attended; job descriptions; and

33030.16 Employee Disciplinary Matrix Penalty Levels

- | | | |
|---|--|--|
| 1 Official Reprimand | 4 Salary Reduction 10% for 3-12 months or Suspension w/o pay for 6-24 work days | 7 Suspension w/o pay for 49-60 work days |
| 2 Suspension w/o pay for 1-2 work days | 5 Salary Reduction 5% for 13-36 months or Suspension w/o pay for 13-36 work days | 8 Demotion to a lower class |
| 3 Salary Reduction 5% for 3-12 months or Suspension w/o pay for 3-12 work days | 6 Salary Reduction 10% for 13-24 months or Suspension w/o pay for 26-48 work days | 9 Dismissal |

Work Week Group E and SE employees shall not receive a suspension of less than five (5) work days, unless the union contract provides otherwise.

33030.17 Applying the Employee Disciplinary Matrix

Sufficient evidence establishing a preponderance is necessary before any disciplinary action can be taken. The Employee Disciplinary Matrix shall be the foundation for all disciplinary action considered and imposed by the Department and shall be utilized by the Hiring Authority to determine the penalty to impose for misconduct. No favor shall be afforded simply because of an employee's rank, and managers, supervisors, and sworn staff may be held to a higher standard of conduct. Off duty misconduct for non-sworn staff requires a nexus between the employee's behavior and the employment.

The Employee Disciplinary Matrix is based on the assumption that there is a single misdeed at issue and that the misdeed is the employee's first adverse action. The Matrix provides a base penalty within a penalty range. The base penalty (represented with bold and underlined text) shall represent the starting point for an action. The Hiring Authority shall impose the base penalty unless aggravating or mitigating factors are found. The Hiring Authority or designee is not required to impose an identical penalty in each case because there are a variety of factors which may influence the Hiring Authority to take stronger action in one case than it does in another. The appropriate level of penalty within the specified range shall be based on the extent to which the employee's conduct resulted in or, if repeated, is likely to result in harm to public service; the circumstances surrounding the misconduct; and the likelihood of recurrence.

A single misdeed may result in several different violations of the Government Code. It is the nature of the misconduct and aggravating or mitigating factors, as discussed below, which determine the final penalty included in the Notice of Adverse Action and not the number of Government Code sections cited in the Notice of Adverse Action.

Multiple acts of misconduct may occur during a continuing event, contiguous or related events, or may be entirely independent of each other. When multiple acts of misconduct occur, the Employee Disciplinary Matrix shall be used to determine which single act warrants the highest penalty. The penalty range for the most severe charge shall be utilized, and other acts of

33030.19 Employee Disciplinary Matrix

The following list of charges and causes for disciplinary action is representative only and is not all inclusive.

misconduct are considered as aggravating circumstances that may increase the penalty up to and including dismissal.

33030.18 Mitigating and Aggravating Factors

Aggravating and mitigating factors shall be considered and may increase or decrease the penalty within the penalty range. Aggravating or mitigating factors may not pertain directly to the circumstances of the misconduct but shall be relevant. Rarely will mitigating circumstances exonerate employees; however, mitigating circumstances may be used to reduce the penalty that might otherwise be imposed. Aggravating circumstances may increase a penalty to dismissal, for misconduct where dismissal is not included in the penalty range. Mitigating circumstances may decrease a penalty to corrective action for misconduct only when penalty level number 1 (Letter of Reprimand) is the expected penalty within the penalty range.

The following mitigating factors shall be considered when determining a penalty:

- The misconduct was unintentional and not willful;
- The misconduct was not premeditated;
- The employee had a secondary and/or minor role in the misconduct;
- Based upon length of service, experience, policy directives, and the inherent nature of the act, the employee may not have reasonably understood the consequences of his/her actions;
- Commendations received by the employee;
- The employee was forthright and truthful during the investigation;
- The employee accepts responsibility for his/her actions;
- The employee is remorseful;
- The employee reported the harm caused and/or independently initiated steps to mitigate the harm caused in a timely manner.

The following aggravating factors shall be considered when determining a penalty:

- The misconduct was intentional and willful;
- The misconduct was premeditated;
- The employee had a primary and/or leadership role in the misconduct;
- Based upon length of service, experience, policy directives, inherent nature of the act, the employee knew or should have known that his/her actions were inappropriate;
- Serious consequences occurred or may have occurred from the misconduct;
- The misconduct was committed with malicious intent or for personal gain;
- The misconduct resulted in serious injury;
- More than one act of misconduct forms the basis for the disciplinary action being taken;
- The employee was evasive, dishonest, or intentionally misleading during the investigation;
- The employee does not accept responsibility for his/her actions;
- The employee did not report the harm caused and/or attempted to conceal the harm through action or inaction;
- The employee has sustained other related adverse action(s).

The base penalty is bold and underlined.	
A. ATTENDANCE	PENALTY
1) Excessive tardiness. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty)	<u>1</u> 2 3
2) Unauthorized absence. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 j, Inexcusable Absence without Leave)	<u>1</u> 2 3

The base penalty is bolded and underlined.	
3) Abuse of sick leave. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty)	<u>1</u> 2 3
B. CODE OF SILENCE OR RETALIATION	PENALTY
1) Intentional failure to report misconduct by another employee. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
B. CODE OF SILENCE OR RETALIATION (CONTINUED)	PENALTY
2) Intimidation, threats, or coercion that could interfere with an employee's right to report misconduct or an act of retaliation for reporting misconduct. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 x, Retaliation)	4 5 <u>6</u> 7 8 9
3) Making false or intentionally misleading statements during a criminal or administrative investigation or inquiry by any agency. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>
4) Any independent act(s) which prevents or interferes with the reporting of misconduct. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>
5) Any involvement in a coordinated effort with other employees to prohibit the reporting of misconduct. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>9</u>
C. CONTROLLED SUBSTANCES	PENALTY
1) Use or possession of controlled substances on or off duty, unless medically prescribed. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 i, Addiction to the Use of a Controlled Substance) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
2) Sale of illegal drugs or narcotics. (Gov. Code § 19572 i, Addiction to the Use of a Controlled Substance) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>2</u>
D. CONDUCT or INEFFICIENCY	PENALTY
1) Discourtesy toward inmates, other employees, or the public. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3

The base penalty is bolded and underlined.	
2) Endangering self, fellow employees, inmates, or the public by violation of Departmental training, laws, or ordinances. (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
3) Leaving assigned post without supervisor approval. (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 u, Negligence)	1 <u>2</u> 3
4) Distraction from duty. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
5) Participating in illegal gambling on duty. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
6) Unauthorized use of position in the Department, uniform, or equipment on behalf of a political candidate or issue. (Gov. Code § 19572 n, Improper Political Activity) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
7) Inappropriate involvement in a law enforcement matter. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
8) Improper access to confidential information. (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3 4
9) Improper transmittal of confidential information with malicious intent or for personal gain. (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 <u>7</u> 8 9
10) Disruptive, offensive, or vulgar conduct which causes embarrassment to the Department. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 <u>3</u> 4
11) Asleep while on duty. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 u, Negligence)	2 <u>3</u> 4
12) Use or abuse of over-the-counter or prescription drugs while on duty which impairs an employee's ability to discharge his/her duties. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>3</u> 4 5 6
13) Intimidation, threats, or assault (without the intent to inflict serious injury) toward a member of the Department. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination) (Gov. Code § 19572 x, Retaliation)	3 <u>4</u> 5 6

The base penalty is bolded and underlined.	
14) Battery against a member of the Department with the intent to inflict injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination) (Gov. Code § 19572 x, Retaliation)	7 8 <u>9</u>
15) Making insults to anyone pertaining to race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination)	3 <u>4</u> 5 6
16) Harassing anyone based upon race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior) (Gov. Code § 19572 w, Discrimination)	4 5 <u>6</u> 7 8 9
17) Sexual misconduct involving staff, up to and including harassment. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
D. CONDUCT or INEFFICIENCY (CONTINUED)	PENALTY
18) Over-familiarity with an inmate(s)/parolee(s). (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
19) Sexual misconduct with an inmate(s)/parolee(s). (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>9</u>
20) Solicitation of prostitution. (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 <u>7</u> 8 9
21) Drunkenness on duty. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 g, Drunkenness on Duty) (Gov. Code § 19572 h, Intemperance) (Gov. Code § 19572 t, Other Failure of Good Behavior) CCR, title 15, §3410	4 5 <u>6</u> 7 8 9
22) Use of identification or position in the Department to solicit a gratuity or privilege. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6 7
23) Operating the employee's personal vehicle, state vehicle, or state equipment for state business while under the influence of alcohol or illegal prescription drugs. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 g, Drunkenness on Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
24) Bringing contraband into a security area for personal use. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 <u>4</u> 5 6

The base penalty is bolded and underlined.	
25) Bringing contraband into a security area for an inmate and/or for personal gain. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 8 <u>2</u>
26) Failure to observe and perform within the scope of training. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 2 <u>3</u> 4 5 6
27) Intentional failure to intervene or attempt to stop misconduct by another employee. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 o, Willful disobedience) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6 7 8 9
28) Felony criminal conviction. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>2</u>
E. INTEGRITY	PENALTY
1) Petty theft. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 - 6 Penalty shall be relative to value and circumstances.
E. INTEGRITY (CONTINUED)	PENALTY
2) Grand theft. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	7 - 9 Penalty shall be relative to value and circumstances.
3) Making false or intentionally misleading statements to a supervisor. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
4) Making false or intentionally misleading statements to a public safety officer on or off duty. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>2</u>
5) Any form of cheating on a civil service examination, including but not limited to unauthorized possession, use, or distribution of examination material or participating in an examination for another person. (Gov. Code § 19572 a, Fraud in Securing Appointment) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>2</u>
6) Falsification of time records or financial record for fraudulent purposes. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>2</u>
7) Falsification or making intentionally misleading statements in official reports or records. (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>2</u>
8) Falsification of application or omission of information for employment or promotion when it materially affects acceptance or rejection for employment or promotion. (Gov. Code § 19572 a, Fraud in Securing Appointment) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>2</u>
9) Falsification, alteration, or planting of evidence.	6 7 8 <u>2</u>

The base penalty is bolded and underlined.	
(Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	
10) False testimony under oath. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>2</u>
F. FAILURE TO COMPLY	PENALTY
1) Failure to report employment outside the Department. (Gov. Code § 19572 r, Violation of Gov. Code § 19990)	<u>1</u> 2 3
2) Failure to attend required training. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	<u>1</u> 2 3
3) Accepting employment outside the Department which imposes a conflict of interest or having financial interest in any contract made by an employee in their official capacity or by any body or board of which the employee is a member. (Gov. Code § 1090) (Gov. Code § 19572 r, Violation of Gov. Code § 19990)	3 <u>4</u> 5 6
4) Failure to follow lawful instructions or refusal to act as lawfully directed by a supervisor or higher ranking official. (Gov. Code § 19572 b, Incompetency) (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	3 <u>4</u> 5 6
5) Refusal to submit to or take any oath or affirmation required by law or ordinances. (Gov. Code § 19572 s, Refusal to Take an Oath)	<u>2</u>
6) Refusal to take a medical examination or to submit to chemical testing, as required by civil service rules, ordinances, or lawful order. (Gov. Code § 19572 e, Insubordination) (Gov. Code § 19572 o, Willful disobedience)	<u>2</u>
G. MISUSE OF STATE EQUIPMENT or PROPERTY	PENALTY
1) Unauthorized use of state telephones or photocopy equipment for personal use. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 r, Violation of Gov. Code § 19990) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
2) Failure to carry required equipment. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
3) Misuse or non-use of issued equipment. (Gov. Code § 19572 p, Misuse of State Property)	<u>1</u> 2 3
4) Misappropriation of state equipment, property, supplies, or funds. (Gov. Code § 19572 c, Inefficiency) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 – 9 Penalty shall be relative to value of misappropriation and circumstances..
H. OFF DUTY INCIDENTS	PENALTY
1) Failure to report off duty arrest to the Hiring Authority. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
2) Drunk or disorderly conduct in public. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
3) Off duty drunk driving. (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3

The base penalty is bolded and underlined.	
4) Off duty drunk driving with collision. (Gov. Code § 19572 h, Intemperance) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6
5) Carrying an unauthorized weapon off duty. (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6
6) Domestic violence. (Gov. Code § 19572 k, Conviction of a Felony or a Misdemeanor Involving Moral Turpitude) (Gov. Code § 19572 l, Immorality) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
7) Intimidation, threats, or assault of a private citizen without intent to inflict serious injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6
8) Battery of a private citizen with intent to commit injury. (Gov. Code § 19572 m, Discourteous Treatment of Public/Other Employees) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 <u>6</u> 7 8 9
I. TRAFFIC RELATED INCIDENTS WHILE ON DUTY	PENALTY
1) Dangerous or negligent driving. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	1 <u>2</u> 3
2) Dangerous or negligent driving with collision. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	3 4 <u>5</u> 6
3) Dangerous or negligent driving with collision and injuries. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 p, Misuse of State Property) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 <u>7</u> 8
J. USE of FORCE	PENALTY
1) Unreasonable use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	<u>1</u> 2 3
J. USE of FORCE (CONTINUED)	PENALTY
2) Significant unreasonable use of force likely to cause injury. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 <u>5</u> 6
3) Significant unreasonable use of force likely to cause serious injury. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	6 7 8 <u>9</u>
4) Employee's failure to report his/her own use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 3 4 <u>5</u> 6
5) Employee's failure to report his/her own unreasonable use of force. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
6) Employee's failure to report use of force witnessed. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	2 3 4 <u>5</u> 6
7) Employee's failure to report unreasonable use of force witnessed. (Gov. Code § 19572 d, Inexcusable Neglect of Duty) (Gov. Code § 19572 f, Dishonesty) (Gov. Code § 19572 t, Other Failure of Good Behavior)	4 5 6 7 8 <u>9</u>
K. WEAPONS – LETHAL & LESS-LETHAL WHILE ON DUTY	PENALTY

CHAPTER 5 — ADULT CUSTODY AND SECURITY**OPERATIONS****ARTICLE 1 — PEACE OFFICER AUTHORITY***Revised February 29, 2009***51010.1 Policy**

It is the policy of the California Department of Corrections and Rehabilitation (CDCR) to ensure that CDCR peace officer authority comports with applicable State statutes, regulation and mutual aid agreements.

51010.2 Purpose

The purpose of this Article is to clarify CDCR peace officer authority as it relates to inmates, parolees, and California law enforcement requests for assistance.

51010.3 Peace Officer Authority

CDCR peace officer authority is outlined in Penal Code (PC) Sections 830.2(d)(1) & (2) and PC 830.5. While normal CDCR peace officer authority applies generally to custody of inmates either inside or outside of a CDCR facility (e.g. escape pursuit and transportation/hospital custody, etc.) and parolees, appropriately trained and equipped CDCR peace officers can be authorized to act outside of normal duties during emergency and non-emergency situations as specified by law.

A CDCR peace officer has authority that extends to any place in the State while engaged in the performance of the duties of his/her respective employment and for the purposes of carrying out the primary function of his/her employment or as required under Sections 8597, 8598, and 8617 of the Government Code (GC).

51010.4 Emergency Assistance

When a government agency (city, county, state, federal) makes an emergency mutual aid request that meets the criteria contained in the State Mutual Aid Plan or the Law Enforcement Mutual Aid Plan, response protocol provided in these plans shall be followed.

GC Section 8597 authorizes that when the appropriate state official proclaims a state of emergency or when a state of war emergency exists, PC Section 830.5 CDCR peace officers have full powers and authority as outlined in PC Section 830.1. Criteria for activation of these plans include, but are not limited to, disasters which may result from flood, fire, earthquake, war, sabotage, or riots.

GC Section 8598 authorizes that when a local emergency exists, PC Section 830.5 peace officers have full powers and authority as outlined in PC Section 830.1.

When acting as peace officers under PC Section 830.1, CDCR peace officers are authorized to exercise any powers which are appropriate or which may be directed by their superior officers.

51010.5 Non-Emergency Assistance (General Law Enforcement Assistance)

GC Section 8617 provides that the CDCR may exercise non-emergency mutual aid powers in accordance with the Master Mutual Aid Agreement and local ordinances, resolutions, agreements, or plans.

51010.6 Provision of Assistance in Emergency and Non-Emergency Situations

CDCR hiring authorities (e.g. Wardens, Regional Parole Administrators) are authorized to provide CDCR peace officer assistance to law enforcement agencies in emergency and non-emergency situations as consistent with the authority discussed herein. Hiring authorities will notify their supervisors of provision of assistance (e.g. Wardens will notify their Associate Directors). Specially trained and equipped peace officers include, but are not limited to, Crisis Response Team members and Emergency Operations Unit personnel conducting tactical and negotiation operations, and Investigative Services Unit members conducting investigative operations, and should be deployed as appropriate for the particular circumstances.

When CDCR peace officers are assigned to provide emergency or non-emergency law enforcement assistance, these tasks become the primary function of their employment for the duration of the assignment. Unless other agreements have been made, all costs associated with this assistance are the responsibility of the CDCR.

51010.7 Revisions

The Assistant Secretary, Office of Correctional Safety, shall ensure that the content of this Article is current and accurate.

51010.8 References

PC §§ 830.1, 830.2(d)(1) & (2).

GC §§ 8597, 8598, & 8617.

ARTICLE 2 — USE OF FORCE*Revised January 12, 2016***51020.1 Policy**

It is the policy of the California Department of Corrections and Rehabilitation's (CDCR), Division of Adult Institutions (DAI), to accomplish custodial and correctional functions with minimal reliance on the use of force. Employees may use reasonable force as required in the performance of their duties, but shall not use unnecessary or excessive force. Staff may, at any point, determine the situation can be resolved without the use of force and terminate the use of force process.

This policy, in conjunction with related procedures and training, defines staff responsibilities and requirements concerning the use of force.

This policy will assist staff in identifying when and how much force is appropriate under different circumstances, ensure that supervision, monitoring, and evaluation of the use of force is consistent with procedures and training, and ensure the investigation of possible unnecessary or excessive use of force. Staff found culpable of violations of the Use of Force Policy will be subject to disciplinary (preventive, corrective, or adverse action) procedures.

51020.2 Purpose

The purpose of this Article is to outline DAI's procedures pertaining to the use of force, as set forth in CCR, Title 15, Section 3268.

51020.3 Responsibility

It is the responsibility of all employees to understand and comply with the Use of Force policy, related procedures, ongoing training, and applicable law.

It is the responsibility of each Institution Head:

- To ensure that all employees receive appropriate training annually and understand the Use of Force policy and procedures, including both the application of force and subsequent reporting and documentation requirements.
- To record and track all training and discipline related to the use of force.

51020.4 Definitions*Revised March 7, 2017*

The following shall define language usage in this Article:

Reasonable Force

Reasonable force is the force that an objective, trained, and competent correctional employee faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

Unnecessary Force

Unnecessary force is the use of force when none is required or appropriate.

Excessive Force

Excessive force is the use of more force than is objectively reasonable to accomplish a lawful purpose.

Immediate Use of Force

Immediate use of force is the force used to respond without delay to a situation or circumstance that constitutes an imminent threat to institution/facility security or the safety of persons. Employees may use immediate force without prior authorization from a higher official.

Immediate force may be necessary to subdue an attacker, overcome resistance or effect custody.

If it is necessary to use force solely to gain compliance with a lawful order, controlled force shall be used.

Imminent Threat

An imminent threat is any situation or circumstance that jeopardizes the safety of persons or compromises the security of the institution, requiring immediate action to stop the threat. Some examples include, but are not limited to: an attempt to escape, on-going physical harm or active physical resistance.

Controlled Use of Force

A controlled use of force is the force used in an institution/facility setting, when an inmate's presence or conduct poses a threat to safety or security and the inmate is

located in an area that can be controlled or isolated. These situations do not normally involve the imminent threat to loss of life or imminent threat to institution security. All controlled use of force situations requires the authorization and the presence of a First or Second Level Manager during business hours. During non-business hours, the on-site manager shall be the Administrative Officer of the Day (AOD) who is responsible for the authorization of any controlled use of force and whose presence is required during any controlled use of force. Staff shall make every effort to identify disabilities, to include mental health issues, and note any accommodations that may need to be considered.

Non-conventional Force

Non-conventional Force is force that utilizes techniques or instruments that are not specifically authorized in policy, procedures, or training. Depending on the circumstances, non-conventional force can be necessary and reasonable; it can also be unnecessary or excessive.

Non-deadly Force

Non-deadly force is any use of force that is not likely to result in death.

Deadly Force

Deadly force is any use of force that is likely to result in death. Any discharge of a firearm other than the lawful discharge during weapons qualifications, firearms training, or other legal recreational use of a firearm, is deadly force.

Great Bodily Injury (GBI)

Great bodily injury is any bodily injury that creates a substantial risk of death.

Serious Bodily Injury

Serious bodily injury means a serious impairment of physical condition, including, but not limited to the following:

- Loss of consciousness;
- Concussion;
- Bone fracture;
- Protracted loss or impairment of function of any bodily member or organ;
- A wound requiring extensive suturing; and
- Serious disfigurement.

Response Supervisor

The Response Supervisor is the first line supervisor in an institution/facility responsible for the area where an incident occurs. When responding to or observing an incident involving the use of force, the response supervisor shall assume control of the responders and direct the tactics used to stop the threat. Additionally, the response supervisor shall assess the appropriateness/effectiveness of the force options being deployed, ensuring compliance with policy and training.

Responding Supervisor

The Responding Supervisor is the first line supervisor responsible for the employee involved in an incident.

Incident Commander

The Incident Commander is the second line supervisor in an institution/facility responsible for the area where an incident occurs or an allegation of excessive or unnecessary force is received.

First Level Manager

A First Level Manager in an institution/facility is a Captain, or the AOD.

First Line Manager

A First Line Manager is a Parole Administrator, District Administrator, Special Agent-In-Charge, or a Senior Special Agent.

Second Level Manager

A Second Level Manager in an institution/facility is an Associate Warden.

Second Line Manager

A Second Line Manager is a Deputy Regional Parole Administrator or Chief.

Institution Head

The Institution Head is a Warden or designee.

Institutional Executive Review Committee (IERC)

The IERC is a committee of institution staff chaired by the respective Institution Head tasked with reviewing all uses of force and every

allegation of excessive or unnecessary force. The IERC is the final institutional level of review.

Department Executive Review Committee (DERC)

The DERC is a committee of staff selected by, and including, the Associate Director who oversees the respective institution/facility Mission-based group. The DERC has oversight responsibility and final review authority over the IERC. The DERC shall review every use of deadly force and every serious bodily injury, great bodily injury or death that could have been caused by a staff use of force. The DERC shall also review those incidents referred to the DERC by the IERC Chairperson or otherwise requested by the DERC. The DERC shall conduct all reviews within sixty (60) days of completion by the IERC.

Deadly Force Investigation Teams (DFIT)

DFIT is a team of trained department investigators that shall conduct criminal and administrative investigations into every use of deadly force and every death or great bodily injury that could have been caused by a staff use of force, except the lawful discharge of a firearm during weapons qualifications or firearms training, or other legal recreational uses of a firearm. Based on certain local Memoranda of Understanding, criminal investigations may instead be conducted by an outside police department or sheriff's office. Although defined as deadly force DFIT need not investigate the discharge of a warning shot inside an institution/facility if an Investigative Services Unit Sergeant or above, or an uninvolved Correctional Lieutenant, confirms that the discharge of deadly force was a warning shot and that no injuries were caused by the shot. All warning shots shall be reported to the Office of Internal Affairs/DFIT and the Office of the Inspector General (OIG).

Deadly Force Review Board (DFRB)

The DFRB conducts a full and complete review of all incidents involving a use of deadly force (except warning shots) and every death or great bodily injury that could have been caused by a staff use of force, regardless of whether the incident occurs in an institutional or community setting.

Joint Use Committee (JUC)

The JUC is a committee of field staff from the DAI tasked with reviewing and evaluating recommended revisions to the Division's Use of Force Policy and Procedures.

Holding Cells

All holding cells shall be located within buildings or sheltered areas. A holding cell shall not be used as a means of punishment, housing or long-term placement. If clothing is taken from an inmate when they are placed in a holding cell, alternate clothing shall immediately be provided unless security concerns preclude issuance.

51020.5 Use of Force Options

It is the expectation that staff evaluate the totality of circumstances involved in any given situation, to include consideration of an inmate's demeanor, bizarre behavior, mental health status if known, medical concerns, as well as ability to understand and/or comply with orders, in an effort to determine the best course of action and tactics to resolve the situation. Whenever possible, verbal persuasion should be attempted in an effort to mitigate the need for force. The type of verbal persuasion will vary dependent upon the inmate's ability to understand. If time permits, verbal orders should be issued prior to resorting to force and are required to be provided before controlled force is used. The unresisted searching or escorting of an inmate/parolee and the unresisted application of authorized restraint equipment is not a use of force. Use of Force options do not have to be utilized in any particular sequence, but should be the force option staff reasonably believes is sufficient. Each force option has specific qualities that should be considered when choosing which option to deploy, including but not limited to: range of effectiveness, level of potential injury, staff safety, deployment methodology, level of threat presented, distance between staff and inmate, number of staff and inmates involved and the inmate's ability to understand. When responding to or observing an incident involving the use of force, the response supervisor shall assume control of the responders and direct the tactics used to stop the threat. Additionally, the response supervisor shall assess the appropriateness/effectiveness of the force options being deployed ensuring compliance with policy and training. Use of force options include but are not limited to:

- Chemical agents: Provides staff the ability to use force while maintaining distance.
- Hand-held batons: The baton is normally issued to custodial staff assigned to positions with direct inmate contact. The baton should not be carried in the extended position unless it is being utilized for the protection of the inmate and/or staff. In controlled use of force, the baton is intended for the defense of staff and to assist in gaining control of the inmate.
- Physical strength and holds: Any deliberate physical contact, using any part of the body to overcome conscious resistance, is considered physical force. A choke hold or any other physical restraint which prevents the person from