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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

15 **JOHN ARMSTRONG, et al.,**

16 Plaintiffs,

17 v.

19 **GAVIN NEWSOM, et al.,**

20 Defendants.

Case No. 94-cv-02307 CW

**DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION FOR A
 PERMANENT INJUNCTION AT SEVEN
 ADDITIONAL PRISONS AND
 STATEWIDE [ECF No. 2948]; AND**

**OBJECTIONS TO PLAINTIFFS'
 EVIDENCE**

Date: October 6, 2020
 Time: 2:30 P.M.
 Courtroom: TBD
 Judge: Hon. Claudia Wilken
 Action Filed: June 29, 1994

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INTRODUCTION

1
2 Plaintiffs improperly attempt to conflate issues identified at the R.J. Donovan Correctional
3 Facility (R.J. Donovan) with seven new prisons to justify a similar injunction at these additional
4 prisons, as well as statewide changes to the staff complaint, investigation, and discipline process
5 for all thirty-five prisons throughout California. But Plaintiffs premise their motion for an even
6 broader sweeping injunction than the one they sought at R.J. Donovan on exceedingly sparse and
7 highly defective evidence that does not establish systemic issues in each of those prisons. Their
8 motion must be denied.

9 The lack of class members attesting to issues at these new prisons, and Plaintiffs' failure to
10 provide any expert opinion addressing the incidents they do identify, alone requires denial of their
11 motion. The allegations also lack credibility, and Plaintiffs fail to establish violations of the
12 Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), or the *Armstrong* Remedial
13 Plan as claimed. For two of the prisons—Salinas Valley State Prison (SVSP) and the California
14 Institution for Women (CIW)—Plaintiffs fail to provide even a single inmate declaration claiming
15 staff misconduct of any kind, much less a declaration from a class member. Plaintiffs likewise
16 provide no expert analysis or opinion regarding any incidents or issues at these prisons.

17 For California State Prison, Corcoran (COR), and the California Correctional Institution
18 (CCI), Plaintiffs likewise fail to provide a single class-member declaration attesting to any
19 incidents, and again concede that they provide no expert opinion addressing any issues at these
20 institutions. Plaintiffs instead rely on six non-class-member declarations complaining of isolated
21 incidents of alleged staff misconduct with no or limited ADA connections. These accounts, in
22 any event, are undermined by countervailing evidence. To take just a few examples, among the
23 six inmate declarants, one declarant who alleged an excessive force claim threatened staff with
24 falsifying an excessive force report. For another, inmate and officer witnesses confirmed the
25 declarant bit the officer and that the force used as a result was not excessive. For another,
26 photographic evidence and witness accounts make clear the declarant had an inmate-
27 manufactured weapon and drugs. Similarly, another declarant claimed he was prevented from
28 performing his job as an ADA worker while at CCI, but multiple inmate ADA workers were

1 interviewed and consistently confirmed that they performed their duties and were not prevented
2 by staff from doing so.

3 Plaintiffs' evidence for the remaining prisons is likewise inadequate. For the Substance
4 Abuse Treatment Facility (SATF), Plaintiffs submit just a single class-member declaration
5 describing a random cell search. That class member claims in his declaration that he did not hear
6 the officers, but he provided a contradictory account in his related grievance at SATF. The
7 declarant also omits critical information, documented elsewhere, that he became aggressive and
8 refused to cooperate with the search, and that two sharpened, knife-like plastic pieces found in his
9 cell clearly supported his disciplinary charge for possession of a dangerous weapon. Likewise,
10 for Kern Valley State Prison (KVSP), Plaintiffs provide only three inmate accounts of staff
11 misconduct, one of which, again, is from an inmate who is not a class member. And for the
12 California State Prison, Los Angeles County (LAC), Plaintiffs provide just a handful of class
13 member accounts of general staff complaints without a clear disability nexus or with inaccurate
14 accounts of the incident that are undermined by contradictory inmate and officer witness
15 accounts, the declarant's own contradictory statements, or other evidence of attacks on officers
16 necessitating force but with the class member's disability taken into account.

17 And while Plaintiffs did not provide expert opinion addressing these incidents or prisons,
18 three correctional experts enlisted by Defendants to investigate and assess Plaintiffs' claims did
19 not find evidence of the ADA access issues, targeting of class members, or false disciplinary
20 charges claimed. Instead, their reviews confirmed that class members at these prisons have
21 access to and are using the accommodation-request and grievance processes, and that there is no
22 evidence of systemic targeting of class members.

23 Thus, Plaintiffs have not established violations of the ADA, RA, or the *Armstrong*
24 Remedial Plan at the seven newly identified prisons and, even if they had, the handful of
25 incidents presented does not justify the overreaching prison-wide and statewide injunction
26 Plaintiffs demand. The Court should therefore deny Plaintiffs' motion.

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STATEMENT OF THE CASE

I. FOLLOWING THEIR MOTION FOR AN INJUNCTION AT R.J. DONOVAN, PLAINTIFFS FILED THE INSTANT AND SIMILAR MOTION FOR AN INJUNCTION DIRECTED AT SEVEN ADDITIONAL PRISONS AND REQUESTING STATEWIDE CHANGES

Like their motion for a correctional-security injunction at R.J. Donovan (ECF No. 2922), Plaintiffs filed a second motion seeking a similar injunction at seven additional prisons—SATF, SVSP, KVSP, COR, CIW, CCI, and LAC—as well as an injunction requiring statewide changes. Pls.’ 2nd Mot. Inj. 23–24, ECF No. 2948. Plaintiffs move for an injunction requiring surveillance cameras, body-worn cameras, and increased and “non-uniformed supervisory positions in housing units” at these seven prisons. *Id.*

Additionally, and not specific to these seven prisons, Plaintiffs move for a statewide injunction for the entire California prison system. *Id.* The statewide injunction would require CDCR to “reform its staff complaint, investigation, and discipline process” for “allegations made by *Armstrong* class members.” *Id.* They also demand that CDCR “reassign” officers “accused of serious misconduct.” *Id.* Additionally, they demand statewide third-party monitoring of CDCR’s implementation of new investigation and disciplinary processes by a court-appointed expert, that CDCR “produce to Plaintiffs’ counsel on a quarterly basis all documents related to staff complaints in which the alleged victim is an *Armstrong* class member,” and “provide Plaintiffs’ counsel with monthly written updates regarding progress in implementing its plan to stop staff misconduct, including data regarding staff complaints and use of force.” *Id.* The requested injunction also would require CDCR to develop an electronic system to track “all incidents” to identify “non-compliance” and “proactively address staff misconduct and other problems.” *Id.*

Plaintiffs’ attempt to use this case as a vehicle for addressing a host of problems they perceive with California’s prison system is improper and impermissible.

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1 **II. THE EVIDENCE REGARDING THE SEVEN ADDITIONAL PRISONS¹**

2 **A. The Substance Abuse and Treatment Facility**

3 In support of their motion for an injunction at SATF, Plaintiffs submit a single inmate
4 declaration. Decl. Freedman Supp. Pls.' 2nd Mot. Inj. (Freedman Decl. 2nd Mot.) ¶ 77 & Ex. 63,
5 ECF No. 2948-2. Plaintiffs submit an expert declaration, but this expert did not review or provide
6 opinions regarding this inmate declaration or the incident it identifies. *See generally* Decl.
7 Schwartz Supp. Pls.' 2nd Mot. Inj. (Schwartz Decl.), ECF No. 2948-4. He likewise did not
8 review or provide any opinions about inmate access to the accommodation-request or grievance
9 process or the disciplinary process at this prison. *Id.* He did not tour this prison or speak to any
10 prison management, staff, or inmates. *Id.* And he did not address operations at this prison. *Id.*

11 The single inmate declaration regarding SATF describes an April 2020 attempted cell
12 search. Freedman Decl. 2nd Mot. Ex. 63, ECF No. 2948-2. The class member does not claim the
13 incident was motivated by his disability or that he was prevented from accessing any program,
14 service, activity, or accommodation, or that he has been unable to do so since the incident. *Id.*
15 He does not allege that he was unable to submit a grievance about the incident and instead
16 concedes that he did in fact do so. *Id.* He also concedes that he was found guilty of two
17 disciplinary violations in connection with the incident—dangerous contraband and assault on a
18 peace officer. *Id.* During a search of his cell, which he initially refused, a flat piece of plastic
19 sharpened to a point was discovered inside a milk carton. *See* Decl. Siino Supp. Defs.' Opp'n
20 2nd Mot. Inj. (Siino Decl.) Exs A–D; Decl. Grider Supp. Defs.' Opp'n 2nd Mot. Inj. (Grider
21 Decl.); Decl. Jimenez Supp. Defs.' Opp'n 2nd Mot. Inj. (Jimenez Decl.). An additional flat piece
22 of plastic also sharpened to a point and measuring 5½ inches was also found. *Id.*

23 On the date of the incident, officers attempted a routine and random search of the class
24 member's cell. *Id.* The class member was given loud and clear orders to exit the cell so that the
25 search could be completed, but he did not comply and became loud and argumentative. *Id.* The

26 _____
27 ¹ Plaintiffs submit twenty-nine inmate declarations reciting various incidents of alleged
28 staff misconduct at the seven new prisons. Freedman Decl. 2nd Mot. ¶ 3, ECF No. 2948-2.
Defendants attempt to address as many of these allegations as they can discern and despite the
limited pages and aggressive briefing schedule set by the Court.

1 class member stood in the doorway, made his hands into fists, and yelled “you’re not searching
2 my cell!” *Id.* Moving sporadically and with clenched fists, the class member advanced towards
3 the officer. *Id.* The officer, who feared for his safety, deployed a single burst of pepper spray and
4 ordered the class member to get down, but he did not comply and the pepper spray appeared to
5 have no effect on him. *Id.* The officers attempted to secure the class member by taking him to
6 the ground, but he continued to resist. *Id.*

7 In his declaration, the class member claims that his hearing aids were broken and he could
8 not hear the officers approaching his cell. Freedman Decl. 2nd Mot. Ex. 63, ECF No. 2948-2.
9 But this testimony is contradicted by his own grievance, where he states he heard the officers tell
10 him to exit his cell. Siino Decl. Ex. D. While the class member has a disability placement code
11 indicating a hearing impairment, there was no indication that he had any difficulty hearing the
12 statements made to him. Grider Decl.; Jimenez Decl. He did not indicate that he could not hear
13 the officers. *Id.* Instead, his verbal responses indicated that he understood the officer’s
14 statements and was able to effectively communicate with them. *Id.* The class member submitted
15 a prison grievance about the incident, which was investigated, and included witness interviews.
16 Siino Decl. Ex. D. An inquiry into the incident found that staff did not violate policy. *Id.*

17 Prison administration expert Bernard Warner, who has forty years of corrections experience
18 with more than thirty years at the executive level, conducted a thorough review of SATF to
19 determine whether inmates have access to the process for seeking a reasonable accommodation
20 for their disabilities, have access to the grievance system for allegations of staff misconduct, and
21 whether inmates with disabilities at SATF are being targeted for abuse by staff. Decl. Warner
22 Supp. Defs.’ Opp’n 2nd Mot. Inj. (Warner Decl.) ¶¶ 2–26. Mr. Warner personally toured this
23 prison. *Id.* at ¶ 18. He also reviewed the SATF declaration submitted by Plaintiffs,
24 corresponding inmate appeal, and inquiry into the allegations of excessive force. *Id.* at ¶¶ 23–26.

25 He found that there were appropriate and effective processes in place to ensure that inmates
26 at SATF are able to request accommodations. *Id.* at ¶¶ 13–26. He found that disabled inmates
27 had appropriate access to the accommodation process and that there was a designated office area,
28 with an ADA coordinator and support staff. *Id.* He observed that clear timelines exist for

1 collecting the 1824 forms, for scheduling panels for review within five days, and for providing a
2 response within thirty days. *Id.* He also found that, if the inmate is dissatisfied with the response,
3 there is a readily available inmate appeals process with reasonable and clearly defined timelines
4 to seek relief, and that inmates are doing so. *Id.* In fact, in 2019, *Armstrong* class members at
5 SATF submitted over 1,000 ADA-related accommodation requests (Form 1824) and appeals
6 (Form 602), 890 healthcare appeals, and 1,950 non-healthcare appeals. Decl. Olgin Supp. Defs.’
7 Opp’n 2nd Mot. Inj. (Olgin Decl. 2nd Mot.) Decl. Ex. G.

8 Mr. Warner also reviewed the declaration submitted by the SATF class member and related
9 reports and investigations. Warner Decl. at ¶¶ 23–26. In his opinion, the report and investigation
10 were complete and thorough. *Id.* Based on his review of the materials, he did not detect any bias
11 against the inmate or unprofessional conduct from the staff reviewing or drafting the reports. *Id.*
12 He also did not detect any nexus between the alleged misconduct and the inmate’s disability or
13 *Armstrong* class-member status. *Id.*

14 **B. Salinas Valley State Prison**

15 Plaintiffs do not submit any inmate declarations regarding SVSP. *See generally* Pls.’ 2nd
16 Mot. Inj., ECF No. 2948; Freedman Decl. 2nd Mot., ECF No. 2948-2. Plaintiffs’ expert did not
17 review or discuss any individual cases of alleged staff misconduct, interference with the ADA
18 accommodation or grievance process, or disciplinary findings or proceedings at SVSP. *See*
19 *generally* Schwartz Decl., ECF No. 2948-4. He did not analyze accommodations requested and
20 received by class members at this prison, tour the prison, or speak to any prison management,
21 staff, or inmates at the prison. *Id.* To support their motion for an injunction at SVSP, Plaintiffs
22 submit a report from the Office of the Inspector General. Pls.’ 2nd Mot. Inj. 5–6, ECF No. 2948.

23 Mr. Warner reviewed operations at SVSP, including personally touring the prison and
24 meeting with the warden, ADA coordinator, and other staff members. Warner Decl. ¶ 8. He
25 found that disabled inmates have access to the processes in place to request and obtain reasonable
26 accommodations for their disabilities. *Id.* at ¶ 13. Further, based on his review, he found that
27 disabled inmates at SVSP were actively seeking such accommodations and that no judicial
28 intervention is necessary. *Id.* Based on his review of the materials, there does not appear to be

1 sufficient evidence that disabled inmates are targeted for staff misconduct because of their
2 disabilities or because they have requested accommodations for the disabilities, to justify the
3 requested injunctive relief. *Id.* In his opinion, the number of ADA appeals and requests for
4 accommodation filed by class members is in line with what should be expected based on
5 population within each institution. *Id.* at ¶ 17. He found no indication that class members were
6 refraining from requesting accommodations or unable to access the grievance process. *Id.*

7 **C. Kern Valley State Prison**

8 In support of their motion for an injunction at KVSP, Plaintiffs submit three inmate
9 declarations. Freedman Decl. Exs. 60–62, ECF No. 2948-2. Two of these declarations are from
10 *Armstrong* class members; one is not. *Id.* Plaintiffs' expert did not review or provide any
11 opinions regarding these declarations or the incidents they identify. *See generally* Schwartz
12 Decl., ECF No. 2948-4. He did not review any investigation files or other documents related to
13 KVSP. *Id.* He did not tour this prison or speak to prison management, staff, or inmates. *Id.* His
14 declaration does not even mention KVSP and provides no opinions about this prison. *Id.*

15 Mr. Warner, on the other hand, reviewed the inmate declarations regarding KVSP. Warner
16 Decl. ¶¶ 27–33. He also reviewed related investigation reports, rules violation reports, and data
17 reports regarding this prison. *Id.* Mr. Warner found that the investigations related to these
18 matters were complete and thorough. *Id.* He did not detect bias against the inmates or
19 unprofessional conduct. *Id.* He likewise did not find any nexus between the alleged misconduct
20 and the inmate's disability. *Id.* Mr. Warner reviewed operations at KVSP, including personally
21 touring the prison and meeting with the warden and ADA coordinator, who described the various
22 processes at KVSP concerning grievances, use of force, training, requests for accommodations,
23 and internal affairs. *Id.* at ¶ 8, ¶¶ 14–20. He observed the grievance lock-box and found that the
24 grievance forms were readily available. *Id.* According to Mr. Warner, there are appropriate and
25 effective processes in place to ensure inmates are able to request accommodations and disabled
26 inmates have appropriate access to the accommodation process. *Id.*

27 One of the *Armstrong* class-member declarations identifies incidents with staff that
28 occurred in 2019 and vary from witness accounts. Freedman Decl. 2nd Mot. Ex. 61, ECF No.

1 2948-2. In July 2019, the class member had been cutting the legs off of his state-issued pants to
 2 turn them into shorts in violation of prison policy. Decl. Hunt Supp. Defs.' Opp'n 2nd Mot. Inj.
 3 (Hunt Decl.). An officer explained to him that he could not alter the pants into shorts, and the
 4 class member became agitated and vocal. *Id.* Because of his response, officers assisted him to
 5 standing and escorted him to a holding cell. *Id.* The class member walked to the holding cell
 6 without incident. *Id.* Similarly, the other incident referred to by the same class member was
 7 unrelated to his disability. In August 2019, an officer responded to a fight between inmates.
 8 Decl. Campbell Supp. Defs.' Opp'n 2nd Mot. Inj. (Campbell Decl.) & Exs. A, B. When he
 9 arrived, he observed the class member walking towards the fighting inmates. *Id.* The officer
 10 gave the class member loud and clear orders to stop, but the class member ignored the orders and
 11 continued to walk toward the fight. *Id.* The class member became belligerent, raised his cane
 12 with his left hand, and violently struck the officer's outer left knee with it, causing him a great
 13 deal of pain. *Id.* In the other declaration submitted by a non-class member, the declarant
 14 concedes that he was fighting with another inmate at KVSP and was pepper sprayed by an officer
 15 in an attempt to stop the fight. Freedman Decl. 2nd Mot. Ex. 60, ECF No. 2948-2. This inmate
 16 does not allege that the incident occurred because of an *Armstrong*-related disability. *Id.* He
 17 claims he refrained from asking for cleaning supplies for his cell from one officer, but admits he
 18 was able to ask another officer. *Id.*

19 **D. The California Institution for Women**

20 Plaintiffs do not submit any inmate declarations regarding CIW. *See generally* Pls.' 2nd
 21 Mot. Inj., ECF No. 2948; Freedman Decl. 2nd Mot., ECF No. 2948-2. Plaintiffs' expert did not
 22 review or discuss CIW at all. *Id.* Plaintiffs cite a single e-mail and unverified hearsay accounts
 23 of their counsel in tour reports and counsel letters to justify their motion for an injunction at
 24 CIW.² Pls.' Mot. 2nd Inj. 9, ECF No. 2948.

25 Mr. John Baldwin, a prison administration expert with over 40 years of corrections
 26 experience who served as the Director of Corrections for both Illinois and Iowa, reviewed and

27 _____
 28 ² Defendants object to any reliance by Plaintiffs on the unverified and hearsay inmate
 accounts recited in these reports and correspondence. Fed. R. Evid. 801 & 803.

1 assessed *Armstrong* class members' access to the accommodation and appeal process at CIW, as
2 well as how staff misconduct is handled at this prison. Baldwin Decl. Supp. Defs.' Opp'n 2nd
3 Mot. Inj. (Baldwin Decl.) ¶¶ 3–13. Mr. Baldwin spoke with the warden and various staff
4 regarding operations. *Id.* He found that Plaintiffs' evidence did not demonstrate that disabled
5 inmates at CIW were being systematically attacked by staff or denied access to prison programs,
6 and he found no evidence of this from his review of CIW. *Id.* at ¶¶ 14–26. According to Mr.
7 Baldwin, it was clear that both *Armstrong* and non-*Armstrong* inmates avail themselves of the
8 accommodation-request process. *Id.* Mr. Baldwin also found that CDCR has a very well-defined
9 and understood process for determining the appropriate accommodation for those inmates who
10 need services in compliance with the ADA and the *Armstrong* Remedial Plan. *Id.*

11 **E. California State Prison, Corcoran**

12 Plaintiffs do not submit any class member declarations regarding COR. Freedman Decl.
13 2nd Mot. ¶¶ 70–72, ECF No. 2948-2. Instead, they submit two non-class-member declarations
14 identifying incidents unconnected to ADA violations. *Id.* at Exs. 58 & 59. Plaintiffs' expert did
15 not review or discuss these inmate declarations or any other cases of alleged staff misconduct at
16 COR. *See generally* Schwartz Decl. His declaration does not mention COR at all. *Id.*

17 One of the declarants identifies an incident where the inmate claims he was harassed by
18 officers because his hands were in his pockets. Freedman Decl. 2nd Mot. Ex. 59, ECF No. 2948-
19 2. After an officer attempted to counsel the declarant about prison rules in the area, the declarant
20 became aggressive and bit the officer, necessitating the officers to restrain him and take him to
21 the ground. Siino Decl. Exs. J–K. An inquiry was conducted and one inmate witness reported
22 seeing the declarant bite the officer, which is consistent with the officers' recitation of the facts.
23 *Id.* That inmate witness and another inmate witness also stated that the officers did not use
24 unnecessary force. *Id.* The other declarant claims that he was falsely accused of having a
25 weapon and that excessive force was used against him. Freedman Decl. 2nd Mot. Ex. 598, ECF
26 No. 2948-2. Extensive photographic evidence, witness statements, and lab results, however,
27 document that a dangerous inmate-manufactured weapon and heroin, meth, and other drugs were
28 found on the declarant. Siino Decl. Exs. G–I The declarant also claimed that he was punched

1 and kicked by staff, but a nurse examined him that day and found only a dry, healing scratch on
2 the back of his hand. *Id.*

3 Mr. Baldwin reviewed these two non-class member inmate declarations. Baldwin Decl.
4 ¶¶ 27–48. In his opinion, they do not establish that CDCR staff are systematically targeting
5 disabled inmates for harassment or attacks. *Id.* He likewise found that they do not establish that
6 disabled inmates are being systematically “chilled” from reporting staff misconduct. *Id.* In
7 Mr. Baldwin’s opinion, even if true, the declarations only demonstrated isolated incidents of
8 misconduct that occur in every state’s prison system, and that California is working to reduce the
9 frequency of staff use-of-force incidents. *Id.* Based on incident reports he reviewed, he found
10 they were for the most part well documented, followed a consistent format, provided the inmate
11 ample opportunity to state their side of the incident, documented medical care, and were generally
12 well-written. *Id.* He found staff descriptions of the incidents to be good and that staff answered
13 investigators’ questions appropriately. *Id.* Mr. Baldwin also warned that, due to the large number
14 of inmates who reside in the prisons identified by Plaintiffs, it is important to be cautious about
15 drawing conclusions about these prisons as a whole based on a handful of anecdotes. *Id.*

16 **F. The California Correctional Institution**

17 Plaintiffs do not submit any class-member declarations regarding CCI. *See* Freedman Decl.
18 2nd Mot., ECF No. 2948-2. Instead, they submit four non-class-member declarations. *Id.* at
19 ¶¶ 65–69. Like the other prisons, Plaintiffs’ expert did not review or discuss these inmate
20 declarations or any other individual cases of alleged staff misconduct or instances of alleged
21 ADA violations at this prison. *See generally* Schwartz Decl., ECF No. 2948-4. His declaration
22 did not address operations at this prison at all. *Id.*

23 Mr. Baldwin did review the inmate declarations submitted by Plaintiffs regarding CCI and
24 found that they do not establish that CDCR staff are systematically targeting disabled inmates for
25 harassment or attacks or that disabled inmates are being systematically “chilled” from reporting
26 staff misconduct. *Id.* at ¶¶ 14–26, 49–60. Again, from his review of the declarations and related
27 investigation materials, he did not find that inmates were singled out because they were an
28

1 *Armstrong* class member. *Id.* He also found the declarations did not establish the existence of
2 system-wide problems. *Id.*

3 One of the non-class-member declarations provided by Plaintiffs involves a claim that ADA
4 workers were being prevented from performing their jobs at CCI. Freedman Decl. Ex. 55, ECF
5 No. 2948-2. An investigation was conducted regarding this allegation, and multiple inmate ADA
6 workers were interviewed to determine if this was, in fact, true. Decl. Parrish Supp. Defs.' Opp'n
7 Mot. 2nd Inj. (Parrish Decl.) & Exs A, B. These additional inmate ADA workers, however,
8 consistently confirmed that they had no issues with performing their duties and were not being
9 prevented by staff from doing so. *Id.* Based on the information gathered during this
10 investigation, the declarant's claim was found to be unsubstantiated. *Id.*

11 Another non-class member declarant identified a supposed excessive-force incident at CCI,
12 but four inmates were interviewed as part of the confidential staff investigation, and all of the
13 inmates provided accounts contradicting the declarant's version of events. Siino Decl. Ex. M, N.
14 And two months before the supposed excessive use of force, the declarant threatened staff with
15 falsifying a report of excessive force in order to receive his property faster. *Id.* at Ex. L.

16 **G. California State Prison, Los Angeles County**

17 In support of their motion for an injunction at LAC, Plaintiffs submit twelve declarations
18 from *Armstrong* class members and sixteen declarations from non-class members. Freedman
19 Decl. 2nd Mot. 35–64, ECF No. 2948-2. Plaintiffs' expert did not review or provide any opinions
20 regarding these declarations or the incidents they identify. *See generally* Schwartz Decl., ECF
21 No. 2948-4. He did not review any investigation files from this prison or any other documents
22 related to LAC. *Id.* He did not tour this prison or speak to the prison management, staff, or
23 inmates at LAC. *Id.* His declaration does not mention LAC and provides no opinions about this
24 prison. *Id.*

25 None of the declarations Plaintiffs submit regarding LAC show a meaningful connection
26 between the incidents and the issue of accommodations for disabilities, either because the
27 allegation was not related to the inmate's disability, or because the facts did not support the claim.
28 Cate Decl. ¶ 11. In cases where staff used force, it was documented and reviewed. *Id.* at ¶¶ 9–14,

1 35–69. During the inquires, officials discovered evidence that controverted the declarants’
2 accounts, such as testimony from other inmates, or a lack of injuries despite allegations of a brutal
3 beating. *Id.*; *See* Decls. Arreguin, Chavarria, Sierra, Bermudez, Campbell, Williams, Miller,
4 Sarmiento, Mijares, Ruiz, Villalobos, Galenao, Wingfield & Hanks Supp. Defs.’ Opp’n Mot. 2nd
5 Inj.; Siino Decl. O, P, R, T. One of the declarants who admitted that he was being resistive
6 during the incident is being criminally charged for his conduct during the incident. Defs.’ Req. J.
7 Notice Ex. A. Another declarant attempted to punch an officer in the face. Sarmiento Decl. &
8 Ex. A.

9 Another class-member declarant identifies an incident in July 2018. Freedman Decl. Ex.
10 48, ECF No. 2948-2. During the incident, when an officer attempted to move the class member
11 to a new cell, the class member yelled, “this is [expletive], I shouldn’t be in the [expletive] hole
12 and inside this [expletive] cell.” Hanks Decl. & Ex. A. The officer advised the class member that
13 he would be moved to a new cell and, in response the class member stated, “yeah, that’s
14 [expletive] right, I knew you [expletive] would move me.” *Id.* When the officer was able to
15 move the class member to his new cell, the class member suddenly turned around and
16 intentionally stuck his leg outside the cell door to prevent it from closing completely. *Id.* The
17 officers directed the control-booth officer to open the door and, as it opened, the class member
18 yelled, “you [expletive] don’t know who you [expletive] with.” *Id.* The class member then
19 forced himself out of the cell and lunged toward the officers. *Id.* The officers then took the class
20 member to the ground in response to the class member’s aggressive conduct in order to maintain
21 the safety and security of the officers and the prison, not because of the class member’s disability.
22 *Id.*

23 In response to Plaintiffs’ motion for an injunction at LAC, corrections expert Matthew Cate
24 conducted a thorough review of this prison to determine whether inmates have access to the
25 process for seeking a reasonable accommodation for their disabilities, have access to the
26 grievance system for allegations of staff misconduct, and whether inmates with disabilities at
27 LAC are being targeted for abuse by staff. Cate Decl. ¶ 2. In addition to his other extensive
28 qualifications detailed in his declaration, Mr. Cate has served as the California Inspector

1 General—a role that required him to report on deficiencies to prison leadership and federal court
2 monitors. *Id.* at ¶¶ 3–8. In this role, he personally inspected every cell block in every yard in
3 every prison in California. *Id.* And he spoke to inmates and staff at every prison. *Id.*

4 Mr. Cate reviewed the reports and declarations submitted by Plaintiffs, corresponding
5 inmate appeals and accommodation request forms, and investigations into the allegations of
6 excessive force. *Id.* at ¶¶ 17–18. He also reviewed the data reports that concern these allegations
7 and the reports of the Office of the Inspector General. *Id.* Mr. Cate also personally toured LAC.
8 *Id.* According to Mr. Cate, by observing the state of the facility, watching interactions between
9 inmates and staff, and speaking directly with the people who live and work at LAC, he was able
10 to come away with a fuller, more nuanced understanding of the daily culture there. *Id.*

11 Based on his review, Mr. Cate found that disabled inmates at LAC have access to the
12 systems put in place to allow them to request a reasonable accommodation. *Id.* at ¶¶ 9–16, ¶¶ 20–
13 34. His review showed that inmates are utilizing the system and that staff are reviewing the
14 disabled inmates’ concerns. *Id.* The ADA coordinator at LAC is assigning ADA matters for
15 inquiry and resolving the matters in a timely way. *Id.* According to Mr. Cate, on the whole,
16 disabled inmates at LAC had ready access to the ADA accommodation process, including
17 disabled inmates in the Administrative Segregation Unit. *Id.* Mr. Cate was impressed to learn
18 that at LAC there are approximately 200 inmates who are ADA workers and paid to provide
19 assistance to inmates with disabilities. *Id.*

20 Mr. Cate also found no evidence that disabled inmates at LAC are being targeted for abuse
21 because of their disabilities. *Id.* His review of the inmates’ declarations submitted by Plaintiffs
22 regarding alleged incidents at LAC, along with the investigations that followed, did not show a
23 meaningful connection between these incidents and the issue of accommodations for disabilities.
24 *Id.* Mr. Cate determined that most of the declarations submitted by Plaintiffs are from individuals
25 who are not *Armstrong* class members. *Id.*

26 Mr. Cate also found no evidence that staff misconduct investigations at LAC ignore or
27 improperly discount inmate allegations. *Id.* at ¶¶ 41–73. In his opinion, allegations were being
28 investigated in a professional manner in accordance with CDCR policies. *Id.* As he reviewed the

1 investigative reports produced by staff at LAC, he found that most were good, solid police
 2 reports. *Id.* He found that, where allegations of staff misconduct were not sustained, the
 3 conclusion was typically based not only on the officers' word, but on some other physical or
 4 testimonial evidence that made the accusing inmate's story unlikely. *Id.*

5 **ARGUMENT**

6 As directed by the Court's June 15, 2020 order (ECF No. 2961), Defendants limit repetition
 7 of their legal and factual arguments already made in response to Plaintiffs' R.J. Donovan
 8 injunction motion and instead incorporate those arguments by reference.

9 **I. PLAINTIFFS FAIL TO SHOW VIOLATIONS OF THE ADA, RA, OR REMEDIAL ORDERS** 10 **OR PLAN AT SVSP, SATF, COR, CCI, CIW, KVSP, OR LAC.**

11 Plaintiffs have not established that Defendants denied reasonable accommodations for class
 12 members' disabilities at the seven newly identified prisons or that staff at these prisons have
 13 interfered with class members' enjoyment of their rights under the ADA or *Armstrong* Remedial
 14 Plan. Under 42 U.S.C. section 12132, "No qualified inmate or parolee with a disability as defined
 15 in Title 42 of the United States Code, Section 12102 shall, because of that disability, be excluded
 16 from participation in or denied the benefits of services, programs, or activities of the Department
 17 or be subjected to discrimination." A plaintiff must establish that (1) he is a "qualified individual
 18 with a disability"; (2) excluded from participation in or denied the benefits of a public entity's
 19 services, programs or activities, or was otherwise discriminated against by the public entity; and
 20 (3) the exclusion, denial, or discrimination was by reason of his disability. *Duvall v. Cty. of*
 21 *Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2011).

22 Citing *Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211, 1232–33 (9th Cir. 2014),
 23 this Court held that "the second element of this test can be satisfied where a law enforcement
 24 officer could have used less force or no force during the performance of his law-enforcement
 25 duties with respect to a disabled person." Order on RJD Inj. Mot. 57, ECF No. 3059. The Court
 26 noted that *Sheehan* held that, for the second prong, a failure to reasonably accommodate a
 27 disability during an arrest or investigation gives rise to a claim if it causes the person to suffer
 28 "greater injury or indignity in the process than other arrestees." *Id.* The plaintiff must still also

1 satisfy the third element—provide evidence that the discrimination “was by reason of his
2 disability.” *Duvall*, 260 F.3d at 1135.

3 But here, Plaintiffs failed to show that class members at these institutions required and that
4 the prison staff failed to provide the class with services, programs or activities, or otherwise
5 discriminated against them or interfered with their ADA rights and because of their disability. To
6 begin, for four of the prisons—SVSP, CIW, COR, CCI—Plaintiffs fail to provide a single class
7 member declaration, much less one that shows the class member required and was not provided a
8 service or was discriminated or retaliated against, or one that shows a systemic problem at these
9 institutions. *See* Freedman Decl. ¶¶ 3, 35–77, ECF No. 2948-2; Pls.’ 2nd Mot. Inj. 5–6, ECF
10 No. 2948. For SVSP and CIW, Plaintiffs did not submit any declarations at all, relying only on
11 an Inspector General Report, a single e-mail, and counsel letters. *Id.* And Mr. Warner and
12 Mr. Baldwin reviewed these prisons to determine the extent to which *Armstrong* class members
13 are able to request and access accommodations, and whether there was evidence that they were
14 being targeted, not accommodated, or otherwise deterred from seeking ADA services due to a
15 fear of retaliation. *See* Warner Decl.; Baldwin Decl. They did not find evidence of any such
16 violations and, instead, the high frequency of the submissions by class members made it clear, in
17 their opinion, that there are no access issues at SVSP or CIW. *Id.*

18 For COR and CCI, Plaintiffs likewise submit no class member declarations attesting to any
19 issues at these prisons, much less evidence demonstrating the required elements. *See* Freedman
20 Decl. 2nd Mot. ¶¶ 3, 35–77, ECF No. 2948-2; Pls.’ 2nd Mot. Inj. 5–6, ECF No. 2948. And even
21 looking at the non-class member declarations, the evidence does not show access issues or
22 discrimination. Freedman Decl. 2nd Mot. Exs. 54–57, 58–59. Instead, these declarations on their
23 face do not allege that staff assaulted or discriminated against them because of any disability or
24 because or they had requested disability accommodations. *Id.* And the additional countervailing
25 evidence undermines the declarants’ credibility and complaints, in any event. *See* Brown Decl. &
26 Ex. A; Bonffil Decl. & Ex. A; Parrish Decl. & Exs. A, B; Siino Decl. G–N. For the use-of-force
27 incident identified by one declarant, multiple inmate and officer witnesses confirmed that the
28 force used was not excessive but was an appropriate response to the declarant biting an officer.

1 *Id.* Another declarant threatened to make false reports of excessive force and then, when he did
2 claim an excessive force incident, his account did not match the injuries documented or the
3 witness statements, suggesting that he carried out that threat. *Id.* One declarant claimed that he
4 was being prevented from performing his ADA worker duties, but multiple inmates who also had
5 ADA worker duties were interviewed about this claim and reported no issues at all in carrying out
6 those duties. *Id.*

7 For SATF, Plaintiffs present a single account of staff misconduct, which although from a
8 class member, does not establish an ADA or *Armstrong* Remedial Plan violation, either. *See*
9 Freedman Decl. ¶¶ 3, 35–77 & Ex. 63, ECF No. 2948-2; Pls.’ 2nd Mot. Inj. 5–6, ECF No. 2948.
10 There, the declarant in his declaration claims that he could not hear the officers tell him to exit his
11 cell for a cell search, yet he contradicts himself in his prison grievance where he states he could
12 hear them. Freedman Decl. 2nd Mot. Ex. 63; Grider Decl. & Ex. A; Jimenez Decl. & Ex. A;
13 Siino Decl. Exs. A–D. The evidence is clear that the declarant was hostile and the force used was
14 necessary even taking into account his hearing disability, and that he was properly found guilty of
15 possessing two dangerous inmate-manufactured weapons that were found in his cell. *Id.*

16 And for KVSP, the two class member declarations and one non-class member declaration
17 likewise do not show any failure to receive accommodations or disability-based discrimination.
18 *See* Freedman Decl. ¶¶ 3, 35–77, ECF No. 2948-2; Pls.’ 2nd Mot. Inj. 5–6, ECF No. 2948. As
19 discussed above, the evidence does not show access issues or discrimination. Freedman Decl.
20 2nd Mot. Exs. 60–62; Hunt Decl.; Campbell Decl.; Siino Decl. Exs. E, F, Q. Instead, these
21 declarations on their face do not allege that staff assaulted or discriminated against them because
22 of any disability or because or they had requested disability accommodations. *Id.* The same is
23 true for the inmate declarations regarding LAC. *See* Freedman Decl. 2nd Mot. Exs 25–53;
24 Arreguin Decl.; Chavarria Decl.; Sierra Decl.; Bermudez Decl.; Campbell Decl.; Williams Decl.;
25 Miller Decl.; Sarmiento Decl.; Mijares Decl.; Ruiz Decl.; Villalobos Decl.; Galenao Decl.;
26 Wingfield Decl. Hanks Decl.; Siino Decl. O, P, R, T.

27 This handful of isolated class member complaints, moreover, stands in stark contrast to the
28 thousands of ADA-related appeals and grievances, healthcare appeals, and non-healthcare appeals

1 submitted by class members at these prisons in 2019 alone—over 11,700. Olgin Decl. 2nd Mot.
 2 Exs. A–G. Clearly, class members have access to and are using these systems. The sheer volume
 3 of ADA-related requests calls into question Plaintiffs’ allegation that class members “frequently
 4 refrain from asking for disability accommodations and other help they require.” And in any
 5 event, Mr. Cate found that there is no evidence that any inmate has not received an
 6 accommodation because of these concerns. Cate Decl. ¶ 94. In his opinion, there is likewise no
 7 evidence that staff members are targeting disabled inmates, or that any of the incidents Plaintiffs
 8 allege happened because of their disability. *Id.* at ¶ 94.

9 **II. PLAINTIFFS’ REQUESTED INJUNCTION FAILS THE PLRA’S NEEDS-NARROWNESS-**
 10 **INTRUSIVE REQUIREMENT.**

11 Even if the Court found that some violations exist at these prisons with respect to individual
 12 class members, Plaintiffs’ requested remedial relief would be inconsistent with the Prison
 13 Litigation Reform Act (PLRA). 18 U.S.C. § 3636(a)(1)(A). A court “shall not grant or approve
 14 any prospective relief unless the court finds that such relief is narrowly drawn, extends no further
 15 than necessary to correct the violation of the Federal right, and is the least intrusive means
 16 necessary to correct the violation of the Federal right.” *Id.* There must be a “fit between the
 17 [remedy’s] ends and the means chosen to accomplish those ends.” *Board of Trustees of State*
 18 *Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989). “[T]he scope of the order must be determined
 19 with reference to the constitutional violations established by the specific plaintiffs before the
 20 court.” *Brown v. Plata*, 562 U.S. 492, 531 (2011). And courts may not “reach[] out to control the
 21 treatment of persons or institutions beyond the scope of the violation.” *See Dayton Bd. of Ed. v.*
 22 *Brinkman*, 433 U.S. 406, 420 (1977). Plaintiffs fail this test with respect to the seven newly
 23 identified prisons and their statewide demands.

24 **A. Even If The Handful Of Complaints Presented Showed Violations,**
 25 **Surveillance and Body Cameras at SVSP, SATF, COR, CCI, CIW, KVSP,**
 26 **and LAC Would Be Unnecessary, Overbroad, and Overly Intrusive Relief.**

27 As discussed above, evidence of the violations alleged at the seven newly identified prisons
 28 is either non-existent or incredibly thin. Plaintiffs’ motion for prison-wide surveillance cameras,
 body cameras, and other correctional security changes at these prisons is plainly trying to “reach[]

1 out to control the treatment of persons or institutions beyond the scope of the violation”
2 established. *See Dayton Bd. of Ed.*, 433 U.S. at 420. As a threshold matter, certain facilities
3 already have camera coverage, and Defendants are moving forward to procure and deploy
4 cameras at R.J. Donovan and at two facilities in LAC. Decl. Macomber Supp. Defs.’ Opp’n 2nd
5 Mot. Inj. ¶¶ 8, 12.

6 In any event, for four of the prisons—SVSP, COR, CIW, and CCI—Plaintiffs failed to
7 submit declarations from even a single class member attesting to any issues, ADA related or not.
8 *See Freedman Decl.*, ECF No. 2948-2. And their expert failed to analyze or address any
9 complaints or conditions at these prisons. *See generally Schwartz Decl.*, ECF No. 2948-4. A
10 prison-wide correctional security injunction at SVSP, COR, CIW, or CCI, without a single class
11 member attesting to any issues of any kind, would violate the Supreme Court’s clear direction
12 that the scope of the injunction must be limited to the violations established. *Brown*, 562 U.S. at
13 531.

14 Similarly, at SATF, Plaintiffs provide a single class-member declaration complaining of a
15 non-ADA related cell search and confrontation with staff. *See Freedman Decl.* ¶ 77, ECF No.
16 2948-2. Even if this single declaration did establish an ADA or *Armstrong* Remedial Plan
17 violation, which it does not, a single violation would not justify surveillance cameras, body
18 cameras, and increased supervisory positions throughout the entire prison. Relief of that
19 magnitude based on a single violation would not be narrowly drawn, as required by the PLRA,
20 and would extend far beyond what is necessary to correct the violation. 18 U.S.C.
21 § 3636(a)(1)(A). The same holds true for Plaintiffs’ injunction directed at KVSP, for which
22 Plaintiffs alleged just three accounts of staff misconduct, and LAC, for which Plaintiffs submitted
23 fewer than fifteen class-member declarations alleging staff misconduct out of the 412 class
24 members currently in the institution. *See Freedman Decl.* ¶ 73–74, ¶¶ 35–64, ECF No. 2948-2.
25 Additionally, even if cameras were a proper response, Mr. Cate makes clear there is no
26 justification for placing them anywhere other than yards that house the most vulnerable inmates,
27 such as those who are both disabled and at the EOP level of care. *Cate Decl.* ¶ 97. According to
28 Mr. Cate, in light of the \$50 billion deficit the state is facing due to COVID-19, it is reasonable

1 that the state would install fixed cameras throughout the system beginning with those units that
2 house the most vulnerable populations. *Id.*

3 **B. Statewide Changes to CDCR's Staff Complaint, Investigation, and**
4 **Discipline Process Would Exceed the Scope of Any Violations Presented.**

5 According to Mr. Cate, the requirements outlined in CDCR's use-of-force policies are
6 detailed and comprehensive. *See* Cate Decl. ¶¶ 79–96, 98. These provisions establish standards
7 within CDCR and include clear definitions of the types of force, how they are differentiated from
8 each other, and when each type can be applied. *Id.* They also delineate the role of each
9 participant in a use-of-force incident and the review committees, including the Interdisciplinary
10 Executive Review Committee and the Department Executive Review Committee, the Deadly
11 Force Investigation Team, Deadly Force Review Board, and the Joint Use Committee. *Id.* The
12 policies also set out the options available to staff when force is necessary, the circumstances and
13 conditions in which each option can be applied, and specific instructions on all aspects of the
14 application of force. *Id.* The regulations also delineate the requirements and instructions for
15 reporting use-of-force incidents. *Id.* And policies provide detailed instructions on how to review
16 use-of-force incidents, up through the supervisory and administrative levels. *Id.* Multiple prison
17 experts reviewed these policies and agree that they meet or exceed the requirements found in
18 similar state jurisdictions across the United States. *Id.* These policies were all reviewed as part of
19 the reforms put in place by CDCR in resolution of the *Madrid v. Schwarzenegger* lawsuit over ten
20 years ago. *Id.*

21 Additionally, Mr. Cate found that CDCR's investigations are professional and reach the
22 correct result. *Id.* When an inmate complains about an unnecessary or excessive use of force,
23 that inmate is interviewed on videotape and his or her injuries are documented as soon as possible
24 and no later than forty-eight hours after the incident. *Id.* This ensures that evidence of the
25 injuries is preserved, and it makes it unlikely that the inmate's statements will be
26 mischaracterized. *Id.* Additionally, all uses of force that are unreported or result in serious bodily
27 injury are investigated by the Allegation Inquiry Management Section (AIMS) or the Office of
28 Internal Affairs, which are outside of the prison and remove the potential of internal bias. *Id.* All

1 use-of-force incidents, moreover, are reviewed by an interdisciplinary team led by the warden or
2 chief deputy and including an administrator from the health care division, thereby guaranteeing
3 that someone outside the warden's chain of command is engaged in the process and is in a
4 position to raise concerns. *Id.* The AIMS investigations of use of force are documented in
5 CDCR's electronic records management system (SOMS), which allows for tracking of
6 investigations and data mining for trends. *Id.*

7 Also, the Office of the Inspector General has independent authority to track any particular
8 use-of-force matter that is brought to the Inspector General's attention and the duty to regularly
9 report on the use of force statewide. *Id.* As recognized by Plaintiffs' experts, the Office of the
10 Inspector General's oversight is particularly important in assessing the use of force and CDCR's
11 officer discipline system. *Id.* The Office of the Inspector General issues an annual report that
12 delineates any and all concerns regarding the Department's compliance with use-of-force
13 policies. *Id.* And according to the Office of the Inspector General, in 98.5% of all cases
14 statewide in 2018, the reporting officer did an acceptable job in articulating the existence of an
15 imminent threat justifying the use of force in his or her report. *Id.* The Office of the Inspector
16 General rightly points out that, due to the large numbers of cases in a state the size of California, a
17 failure rate of 1.5% is a very small percentage of the whole system and represents significant
18 evidence that officers are complying with state policy. *Id.*

19 Similarly, the Office of the Inspector General issues a semi-annual report in which it
20 monitors the internal investigation and employee-disciplinary process. *Id.* In the most recent
21 report, covering the first six months of 2019, the Office of the Inspector General selected a
22 sample of 170 cases to monitor. *Id.* These represented the most serious allegations against staff
23 for that reporting period. *Id.* The Office of the Inspector General found that wardens and other
24 hiring authorities did a satisfactory job discovering and referring allegations of employee
25 misconduct. *Id.* Mr. Cate also determined that, with respect to the quality of the investigations
26 conducted by Office of Internal Affairs agents, the Office of the Inspector General found that in
27 99% of all cases, the agents conducted all necessary interviews, and in 100% of cases, used
28 effective interviewing techniques. *Id.* In addition, in 99% of cases the agents produced thorough

1 investigative reports. *Id.* Mr. Cate found these percentages were a strong indicator of a system
2 that does an effective job of investigating the most serious cases of officer misconduct. *Id.*

3 The Office of the Inspector General also found that wardens and other hiring authorities did
4 an excellent job in reviewing the evidence and making the correct determination as to the
5 culpability of the staff member alleged to have committed misconduct. *Id.* For the first six
6 months of 2019, the OIG found that hiring authorities identified the appropriate subjects and
7 allegations in 99% of cases and assessed the appropriate penalty in 93% of cases. *Id.* Contrary to
8 the views expressed by Plaintiffs, moreover, wardens are very well suited to make discipline
9 decisions following a finding of staff misconduct. *Id.* They know the background of each staff
10 member, have access to their personnel file, and are familiar with their work habits and any
11 patterns of misconduct. *Id.* In order to ensure that discipline decisions are consistent across the
12 state, wardens use a disciplinary matrix that was based on a national model. *Id.* The disciplinary
13 matrix provides the hiring authority with a range of appropriate discipline based on a number of
14 factors, including the seriousness of the offense. *Id.* This range can then be mitigated or
15 aggravated based on individual factors, such the experience and record of the staff member
16 involved and on the potential for serious harm from the conduct. *Id.* This system works
17 extraordinarily well. *Id.*

18 An order requiring statewide reforms based on the limited, individual allegations by
19 Plaintiffs from a few prisons, when there are already systems in place working effectively and
20 with oversight, would be unnecessary, overbroad, and overly intrusive.

21 **C. Reassignment of All Officers Accused of Serious Misconduct by an Inmate**
22 **Is Unnecessary, Overbroad, and Overly Intrusive.**

23 Plaintiffs demand that CDCR suspend or remove every staff member who is accused of
24 serious misconduct. In Mr. Cate's opinion, this request is "simply unworkable and would result
25 in utter chaos" for the following reasons. Cate Decl. ¶ 100. An allegation of serious misconduct
26 is just that: an allegation. *Id.* Absent a requirement of sufficient evidence to believe the
27 misconduct actually happened, any inmate could make a serious allegation against staff at any
28 time, without a shred of evidence, requiring the officer to be removed. *Id.* Reassignment of

1 officers alleged to have committed serious misconduct should not be automatic because inmates
2 could readily manipulate the system to remove officers they singled out, as threatened by one
3 declarant. *Id.*; Siino Decl. Ex. L. Actual evidence of serious misconduct by an officer already
4 triggers a change in assignment or provision of administrative time off by the warden in most
5 cases. Cate Decl. ¶ 100. Mr. Cate believes it would be dangerous to change this policy, and finds
6 that it is easy to envision inmates making false accusations against staff based on a desire to
7 remove a particularly effective staff member or because of a personal dispute. *Id.* In Mr. Cate’s
8 opinion, a flood of allegations from one building could make it impossible for CDCR to staff that
9 building, interfering with CDCR’s ability to perform the functions of keeping inmates and staff
10 safe in prison. *Id.*

11 **D. Statewide Data Collection and Early Warning System Reforms Are**
12 **Unnecessary, Overbroad, and Overly Intrusive.**

13 Plaintiffs demand that CDCR build a system to collect data on staff misconduct and officer
14 discipline and utilize that data as an early warning system to identify staff and institutions that are
15 involved in the most alleged incidents of misconduct and use of force. However, in Mr. Cate’s
16 opinion, this can already be achieved using the AIMS system. Cate Decl. ¶ 101. He also notes
17 that the Office of the Inspector General already gathers this data and uses it for its reports. *Id.*
18 And, according to Mr. Cate, the better and more efficient approach would be to use the already
19 existing data to identify problems with particular staff and problems at particular prisons. *Id.*

20 **E. Supervisory Increases Are Unnecessary, Overbroad, and Overly Intrusive.**

21 Plaintiffs propose creating “non-uniformed positions in each housing unit” on all yards at
22 the seven prisons identified above. As Mr. Cate explains, however, some of those housing units
23 do not even house class members. Cate Decl. ¶ 102. This proposal is therefore not necessary to
24 protect disabled inmates’ rights. *Id.* Moreover, in his view, creating new staff positions is
25 expensive, and the problems identified, if they existed, could be solved by visits from existing
26 staff. *Id.* Mr. Cate found that this proposal is neither necessary, nor the least intrusive means to
27 solve any accommodation problem. Defendants also refer the Court to the expert opinion of
28

1 Mr. Kenneth McGinnis regarding the inherent problems with this request. McGinnis Decl. Ex. B,
2 ECF 3006-2.

3 **F. Additional Training Is Unnecessary, Overbroad, and Overly Intrusive.**

4 Plaintiffs requested an injunction requiring training for staff in the fields of human rights,
5 de-escalation, and retaliation. Mr. Cate believes that, while these topics are undoubtedly
6 important, there is no showing that such training is necessary. Cate Decl. ¶ 103. Even among the
7 incidents hand-picked by Plaintiffs, Mr. Cate found that the vast majority of uses of force by
8 officers were justified and appropriate under CDCR policy. *Id.* He also identified that CDCR
9 officers are already trained on these topics, so an order requiring additional training would be
10 unnecessary and intrusive. *Id.* Defendants refer the Court to the declaration of Secretary Diaz for
11 the extensive list of current trainings already in place. Diaz Decl. ¶¶ 24–32, ECF No. 3006-4.

12 **G. Additional Headquarters Oversight and Third-Party Expert Monitoring Is**
13 **Unnecessary, Overbroad, and Overly Intrusive.**

14 Plaintiffs demand an injunction requiring CDCR headquarters' oversight over all staff
15 complaints, use-of-force reviews, and related staff disciplinary proceedings, regardless of the type
16 of officer misconduct or level of injury. This would be unwieldy and unnecessarily burdensome.
17 Cate Decl. ¶ 104. The Office of the Inspector General provides independent reviewing and
18 monitoring of all use-of-force incidents, as well as employee disciplinary processes, and makes its
19 detailed findings available to the public. *Id.* This oversight system has been thorough and
20 effective and should not be replaced by a parallel system. *Id.* In addition, the new AIMS process
21 will also be subject to OIG oversight and public reporting. *Id.* Plaintiffs suggest a court-
22 appointed expert to monitor the proposed plan regarding staff misconduct investigations. As
23 stated above, a new plan is not necessary, as Defendants' current plan is working well. *Id.* at
24 ¶ 105. Moreover, oversight of staff misconduct investigations is already being performed by the
25 Office of the Inspector General. *Id.* Another layer of oversight is not necessary. *Id.*

26 **H. Weighing OC Canisters Is Unnecessary, Overbroad, and Overly Intrusive.**

27 Plaintiffs request a statewide CDCR policy to weigh all Oleoresin Capsicum (OC) canisters
28 before and after each use. Plaintiffs have provided no evidence of any problem that this would

1 solve. Cate Decl. ¶ 106. None of Plaintiffs' allegations show any problem with the amount of
 2 spray used. *Id.* Rather, Plaintiffs complain that spray was used at all and as to *Armstrong* class
 3 members, but there is no evidence of a problem with the amount of spray being used. *Id.* Mr.
 4 Cate found the request impractical. *Id.* At CDCR, OC canisters are routinely issued to all
 5 correctional staff, so virtually every correctional officer carries a spray canister while on duty. *Id.*
 6 Most canisters are left on post and picked up by a new reporting officer during the next watch.
 7 *Id.* All housing unit staff exchange OC canisters during watch change and other security staff are
 8 issued OC at the central control center when they check in. *Id.* In a setting where only a few
 9 individuals carry OC canisters, weighing canisters can provide useful data on the number and
 10 extent of discharges, but there are hundreds of correctional staff at each facility and they share the
 11 canisters in different ways depending on their assignments, so in Mr. Cate's opinion the logistics
 12 of Plaintiffs' request would be overly burdensome. *Id.*

13 CONCLUSION

14 For the reasons discussed above, the Court should deny Plaintiffs' motion for an injunction
 15 at seven additional prisons and statewide.

16 EVIDENTIARY OBJECTIONS

17 **Hearsay.** Defendants object under Federal Rules of Evidence 801 and 803 that the
 18 following statements contain impermissible hearsay not subject to an exception: Freedman Decl.
 19 2nd Mot. (ECF No. 2948-2) Ex. 25 at ¶¶ 12, 13, 15-19, 23, 28, 29, 34, and 39; Ex. 26 at ¶¶ 9, 11,
 20 12, 20, 28, 29, 33, 34, 40, 50, 52, 53, and 55; Ex. 27 at ¶¶ 12-14, 21-23, 26, 27, 30, 31, 37, 40, 44,
 21 and 45; Ex. 28 at ¶ 33; Ex. 29 at ¶ 23, 30, and 37; Ex. 30 at ¶¶ 17, 26; Ex. 31 at ¶¶ 10, 13, 14, 18,
 22 and 22; Ex. 32 at ¶¶ 14 and 32; Ex. 33 at ¶¶ 7, 10, and 16; Ex. 34 at ¶¶ 18, 22, 31, 32, 33, and 37;
 23 Ex. 35 at ¶ 10, 18 and 19; Ex. 36 at ¶¶ 9, 10, 11, 13, 14, 22, 28, 29, 31, and 34; Ex. 37 at ¶¶ 13,
 24 15, 17-20, 22, 24, 25, 30-32; Ex. 38 at ¶¶ 9, 14, 16, 19, 22, 23, 27, and 31; Ex. 39 at ¶¶ 15, 20,
 25 and 21; Ex. 40 at ¶ 17; Ex. 41 at ¶¶ 9, 12, 21, 25, 26, 31, and 49; Ex. 42 at ¶¶ 11, 25, 26, 28, 29,
 26 and 33; Ex. 43 at ¶¶ 8, 11, 13, and 15; Ex. 44 at ¶¶ 19, 24, and 26; Ex. 45 at ¶¶ 7, 8, 10, 13, 14,
 27 22, 23, 24, 28, 33, and 34; Ex. 46 at ¶¶ 15, 16, 20, 22, 23, 25, 26, 28, 29, 31, and 40; Ex. 47 at ¶¶
 28 12, 16-18, 23, 25, 33, 35, 36, 40, 42, and 45; Ex. 48 at ¶¶ 16, 19, 21, 23, 26, 28-30, 36, 37, and

1 41; Ex. 49 at ¶¶ 13, 18, 19, 29, 35, and 36; Ex. 50 at ¶ 24; Ex. 51 at ¶¶ 10, 11, 13, 15, 19, 22, and
 2 26-29; Ex. 52 at ¶¶ 12-16, 19, 22, 24, 26, and 31; Ex. 53 at ¶¶ 15, 22, 25, 27, 28, 30, 31, and 35;
 3 Ex. 54 at ¶¶ 7-9, 11, and 13; Ex. 55 at ¶¶ 9, 12, 15, 20, 24, 28, and 29; Ex. 56 at ¶¶ 9-11, 15, 17,
 4 and 21; Ex. 57 at ¶¶ 9-11, 15, 18, 20, and 25; Ex. 58 at ¶¶ 16, 24, and 28; Ex. 59 at ¶¶ 18, 19, 21,
 5 23, and 25; Ex. 60 at ¶¶ 12, 14, 15, and 17-21; Ex. 61 at ¶¶ 11,20, 22, 29, and 31; Ex. 62 at ¶¶ 10,
 6 11, and 16; Ex. 63 at ¶ 15.

7 **Prejudice, Confusion, and Misleading.** Defendants object under Federal Rule of
 8 Evidence 403 that the following evidence, even if relevant, has limited probative value and is
 9 substantially outweighed by danger of unfair prejudice, confusing the issues, or being misleading:
 10 Freedman Decl. 2nd Mot. (ECF No. 2948-2) Ex. 27 at ¶ 46; Ex. 30 at ¶¶ 19-26; Ex. 31 at ¶ 18;
 11 Ex. 32 at ¶ 34; Ex. 33 at ¶ 18; Ex. 34 ¶¶ 18 and 42; Ex. 35 ¶ 18; Ex. 36 at ¶¶ 28-30; Ex. 40 at ¶
 12 27; Ex. 41 at ¶¶ 47 and 48; Ex. 42 at ¶ 31; Ex. 46 at ¶ 33; Ex. 48 at ¶¶ 41 and 45; Ex. 49 at ¶ 36;
 13 Ex. 52 at ¶¶ 24 and 28; Ex. 55 at ¶¶ 28 and 31; Ex. 60 at ¶¶ 13 and 19.

14 **Lack of Personal Knowledge.** Defendants object under Federal Rule of Evidence 602 to
 15 the following testimony on the grounds that it lacks personal knowledge: Freedman Decl. 2nd
 16 Mot. (ECF No. 2948-2) Ex. 27 at ¶¶ 12-14, 21-23, 26, 27, 30, 31, 37, 40, and 44; Ex. 25 at ¶¶ 28
 17 and 41-44; Ex. 26 at ¶¶ 9, 20, 27, 34, 57, and 59-61; Ex. 27 at ¶¶ 6, 40, 42, 43; Ex. 28 at ¶¶ 16,
 18 24, 25, 36, and 37; Ex. 29 at ¶¶ 22, 25, 27, 32, 35, and 36; Ex. 30 at ¶¶ 12, 18, 25, 29, 34, 36, and
 19 38; Ex. 31 at ¶¶ 15, 22, and 26; Ex. 32 at ¶¶ 9, 15, 17, 36, 37, and 41-43; Ex. 33 at ¶¶ 10, 15, 17,
 20 18, 19, 22, 29, and 30; Ex. 34 at ¶¶ 7, 12, 17, 18, 30, 35, 36, and 41; Ex. ¶ 35 at 10, 19, 21, and
 21 22; Ex. 36 at ¶¶ 22, 24, 29, and 37; Ex. 37 at ¶¶ 12, 22, 23, 32, and 40; Ex. 38 at ¶¶ 2, 9, 16, 19,
 22 26, 28, 29, 31, and 34-37; Ex. 39 at ¶¶ 11, 19, and 26; Ex. 40 at ¶¶ 9-11, 13, 21, and 23-26; Ex. 41
 23 at ¶¶ 9, 20, 29, 32, 35-37, 40, 42, 47, 48, 50, and 51; Ex. 42 at ¶¶ 12, 18, 31, 35, 36, 39, and 40;
 24 Ex. 43 at ¶¶ 12, 14, 18, and 19; Ex. 44 at ¶¶ 11, 27, 29, 30, and 32; Ex. 45 at ¶¶ 10, 13, 17, 18, 21,
 25 23, 31, 37, and 38; Ex. 46 at ¶¶ 9-11, 21, 22, 26, 27, 30, 32, 37, 39, and 40; Ex. 47 at ¶¶ 11, 18,
 26 19, 20, 24, 26, 27, 36-40, 44, 45, 48, and 50-53; Ex. 48 at ¶¶ 42-46; Ex. 49 at ¶¶ 16, 31, 35, and
 27 37; Ex. 50 at ¶¶ 29 and 30; Ex. 51 at ¶ 35; Ex. 52 at ¶¶ 5, 14, 17, 19, 20, 21, 28, 33, and 34; Ex.
 28 53 at ¶ 40; Ex. 54 at ¶ 20; Ex. 55 at ¶¶ 14, 19, 21, 24, 25, 26, 29, and 31; Ex. 56 at ¶¶ 19-21; Ex.

1 57 at ¶¶ 13, 19, and 28; Ex. 58 at ¶¶ 11, 20, 23, 29, 30, 37, and 42-45; Ex. 59 at ¶ 23; Ex. 60 at ¶¶
2 13, 17, 19, 21, 23, 27, 30, and 31; Ex. 61 at ¶¶ 24, 27, 30, 32, 33, 36, and 37; Ex. 62 at ¶ 18.

3
4 Dated: September 11, 2020

Respectfully Submitted,

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7 JOANNA B. HOOD
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9 */s/ Alicia A. Bower*
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14 *Corrections and Rehabilitation*

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