

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

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

Case No. 94-cv-02307 CW  
ORDER GRANTING IN PART MOTION  
TO MODIFY REMEDIAL ORDERS AND  
INJUNCTIONS  
(Re: Dkt. No. 2948)

United States District Court  
Northern District of California

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In this class action for violations of disabled prisoners' rights under the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act (RA), which is in the remedial phase, Plaintiffs contend that staff at seven state prisons continue to deprive class members of their rights under the Armstrong Remedial Plan (ARP) and the ADA. Docket No. 2948. Plaintiffs seek an order modifying the Court's prior remedial orders and injunctions to require the implementation of new remedial measures to prevent further violations of the ARP and ADA. Defendants oppose the motion. Having carefully considered the parties' submissions, and the argument presented at the hearings held on October 6, 2020, and December 8, 2020,<sup>1</sup> the Court GRANTS

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<sup>1</sup> Defendants objected to the Court's consideration of new matters that were raised and attached to Plaintiffs' reply on the ground that Defendants did not have an opportunity to respond to them. Objections 1-3, Docket No. 3116. These objections are

1 IN PART Plaintiffs' motion to modify the Court's remedial orders  
2 and injunctions.

3 FINDINGS OF FACT

4 I. Procedural history

5 In 1994, Plaintiffs, a class of all present and future  
6 California state prison inmates and parolees with certain  
7 disabilities, sued defendants, California state officials with  
8 responsibility for the operation of the Department of Corrections  
9 and Rehabilitation (the CDCR) and the Board of Parole Hearings  
10 (BPH), challenging the State's treatment of disabled prisoners  
11 and parolees. The claims against the CDCR were litigated  
12 separately from the claims against the BPH; only the former  
13 claims are relevant to the present motion.

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

18 It is the intent of this Stipulation to  
19 require defendants to operate programs,  
20 activities, services and facilities of the  
21 California Department of Corrections in  
22 accordance with the Americans with  
23 Disabilities Act and § 504 of the  
24 Rehabilitation Act of 1973, if the Court  
25 determines that the ADA and § 504 apply to  
26 the California Department of Corrections.

27 Stipulation and Order ¶ 12, Docket No. 148.

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moot, as the Court allowed Defendants additional time and an  
opportunity to respond. Defendants further objected to certain  
portions of the declarations of Gay Grunfeld and Michael  
Freedman, upon which the Court has not relied. The Court  
overrules these objections as moot.

1 On September 20, 1996, this Court held that the ADA and RA  
2 do apply to state prisoners, Docket No. 157, and that Defendants'  
3 policies and procedures with regard to disabled prisoners were  
4 inadequate and violative of the ADA and the RA, Docket No. 159.  
5 See also Armstrong v. Wilson, 942 F. Supp. 1252, 1258 (N.D. Cal.  
6 1996), aff'd, 124 F.3d 1019 (9th Cir. 1997).

7 On the same date, the Court entered the parties' stipulated  
8 Remedial Order and Injunction, which required CDCR Defendants to  
9 develop plans, policies, and procedures, including disability-  
10 grievance procedures, to ensure that their facilities and  
11 programs were compliant with the ADA and RA. Remedial Order and  
12 Injunction at 1-4, Docket No. 158. The Court retained  
13 jurisdiction to enforce the terms of the Remedial Order and  
14 Injunction, as well as to issue "any order permitted by law,  
15 including contempt, necessary to ensure that defendants comply  
16 with the guidelines, policies, procedures, plans and evaluations"  
17 required by the Remedial Order and Injunction. Id. at 5.

18 In accordance with the Remedial Order and Injunction,  
19 Defendants produced the ARP in 1998, Docket No. 337, amended in  
20 January 2001, Docket No. 681. The ARP, Section I, incorporates  
21 the ADA's anti-discrimination and access provisions, 42 U.S.C.  
22 § 12132, by providing as follows:

23 No qualified inmate or parolee with a  
24 disability as defined in Title 42 of the  
25 United States Code, Section 12102 shall,  
26 because of that disability, be excluded from  
27 participation in or denied the benefits of  
28 services, programs, or activities of the  
Department or be subjected to  
discrimination.

1 ARP at 1, Docket No. 681. Section II.F. of the ARP requires CDCR  
2 to "provide reasonable accommodations or modifications for known  
3 physical or mental disabilities of qualified inmates/parolees."  
4 Id. at 7. The remainder of the ARP describes various types of  
5 accommodations that CDCR must provide, such as "staff  
6 assistance," sign language interpreters, alternative methods for  
7 restraining inmates who cannot be restrained with traditional  
8 restraint equipment in the ordinary prescribed manner, and  
9 accessible vehicles for transporting inmates. Id. at 22-34. The  
10 ARP requires each institution to take steps to ensure that staff  
11 are aware, at all times, of which inmates have disabilities that  
12 require accommodations. Id. For example, the ARP requires each  
13 institution to issue an identifying vest to each inmate who has  
14 vision or hearing disabilities, which the inmates must wear over  
15 their clothing when outside of their cell or bed area. Id.  
16 Defendants used the ARP as a model to craft remedial plans that  
17 were specifically tailored to each CDCR institution. See  
18 Individual Remedial Plans, Docket Nos. 782, 783, 784. The Court  
19 approved the remedial plans for each institution on February 6,  
20 2002. Docket No. 781.

21 In November 2006, Plaintiffs filed a motion for a further  
22 remedial order, in which they argued that Defendants were in  
23 violation of the ARP and the Court's orders. Docket No. 950. As  
24 a result of this motion, the Court issued another injunction in  
25 2007 (2007 injunction), which required Defendants, in relevant  
26 part, to comply with the ARP, including Section I, and to develop  
27 accountability procedures to ensure their compliance with the ARP  
28 and the Court's orders. 2007 Injunction at 7, 9, Docket No. 1045.

1 Since then, in response to enforcement motions brought by  
2 Plaintiffs, the Court has modified the 2007 injunction several  
3 times to clarify Defendants' accountability obligations. See  
4 Armstrong v. Schwarzenegger, 622 F.3d 1058, 1073 (9th Cir. 2010);  
5 Armstrong v. Brown, 768 F.3d 975, 979 (9th Cir. 2014); see also  
6 Order Modifying Permanent Injunction of August 2, 2012, Docket No.  
7 2180; Order Modifying 2007 Injunction of December 29, 2014, Docket  
8 No. 2479.

9 In February and June 2020, respectively, Plaintiffs filed  
10 two enforcement motions, in which they argue that Defendants'  
11 employees have engaged and continue to engage in conduct that  
12 violates disabled inmates' rights under the ARP and ADA contrary  
13 to this Court's prior orders and injunctions. Docket Nos. 2922,  
14 2948. The acts alleged involve misconduct directed at disabled  
15 inmates, who are vulnerable to abuse and less able than others to  
16 defend themselves in light of their disabilities, as well as acts  
17 that have served to discourage disabled inmates from requesting  
18 reasonable accommodations for their disabilities, either through  
19 the formal grievance process or otherwise.

20 The first enforcement motion sought a modification of the  
21 Court's prior orders and injunctions to require the  
22 implementation of new remedial measures at Richard J. Donovan  
23 Correctional Facility (RJD) to end ongoing violations of the ARP  
24 and ADA at that prison. Docket No. 2922. On September 8, 2020,  
25 the Court granted the RJD enforcement motion in part, Order,  
26 Docket No. 3059, and it ordered Defendants to draft a plan for  
27 achieving compliance with the ARP and ADA at that prison that  
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1 includes certain remedial measures, Order for Additional Remedial  
2 Measures, Docket No. 3060.

3 The second enforcement motion is the one presently before  
4 the Court. It seeks a modification of the Court's prior orders  
5 and injunctions to require the implementation of new remedial  
6 measures at seven prisons, namely California State Prison, Los  
7 Angeles County (LAC); California Correctional Institution (CCI);  
8 Kern Valley State Prison (KVSP); California State Prison,  
9 Corcoran (COR); Substance Abuse Treatment Facility (SATF);  
10 California Institute for Women (CIW); and Salinas Valley State  
11 Prison (SVSP) (collectively, the prisons at issue).

12 II. Staff at LAC, COR, SATF, CIW, and KVSP violated the ARP, the  
13 ADA, and the Court's prior orders and injunctions<sup>2</sup>

14 A. Staff denied qualified inmates with disabilities  
15 reasonable accommodations for their disabilities

16 As will be discussed in the Conclusions of Law, below, a  
17 violation of the ADA's anti-discrimination and access provisions,  
18 42 U.S.C. § 12132, which are incorporated into Section I of the  
19 ARP, occurs where a disabled inmate is discriminated against by a  
20 public entity or is otherwise denied the benefits of a public  
21 entity's services, programs, or activities by reason of his or  
22 her disability. ARP at 1, Docket No. 681. A failure to provide  
23 a reasonable accommodation can occur where a correctional officer  
24 could have used less force or no force during the performance of  
25 his or her penological duties with respect to a disabled person.  
26 A failure to provide a reasonable accommodation, or

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27 <sup>2</sup> Plaintiffs have not shown that staff violated the rights  
28 under the ARP or ADA of qualified inmates with disabilities at  
SVSP or CCI.

1 discrimination by reason of disability, constitutes a violation  
2 of the ADA, as well as the ARP.

3 Plaintiffs have submitted declarations<sup>3</sup> from current or  
4 former inmates at LAC, COR, SATF, CIW, and KVSP.<sup>4</sup> These  
5 declarations describe dozens of incidents in which staff at LAC,  
6 COR, SATF, CIW, and KVSP denied disabled inmates at these prisons  
7 reasonable accommodations for their physical or mental  
8 disabilities. Some of the incidents involve the use of force  
9 against mentally or physically disabled inmates even though the  
10 disabled inmates appear to have posed no imminent threat to the  
11 safety of staff or other inmates. For none of the incidents  
12 described below have Defendants submitted evidence to show that  
13 the denial of reasonable accommodations, or the use of  
14 unnecessary force, which itself can be a denial of a reasonable

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16 <sup>3</sup> Defendants object to certain portions of these declarations  
17 on the grounds that: (1) they contain evidence the probative  
18 value of which is substantially outweighed by the danger of  
19 unfair prejudice under Federal Rule of Evidence 403; (2) they  
20 contain hearsay; or (3) the declarants lack personal knowledge.  
21 The Court overrules these objections. The Court declines to  
22 exclude any portions of the inmate declarations on the basis of  
23 Federal Rule of Evidence 403, because there is no danger of  
24 unfair prejudice as the Court, not a jury, is making factual  
25 determinations. The Court finds that the rest of Defendants'  
26 objections lack merit. The statements in the inmate declarations  
27 at issue are not subject to exclusion because they (1) are not  
28 hearsay, as they are not made for the truth of the matter  
asserted or fall within one of the hearsay exceptions under  
Federal Rule of Evidence 803; and (2) are based on the  
declarants' personal knowledge and perceptions.

<sup>4</sup> Defendants move to strike the declarations of three inmate-  
declarants on the ground that they refused to answer certain  
questions during their depositions by invoking the Fifth  
Amendment. The Court denies the motion because the questions the  
inmate-declarants refused to answer are collateral to the matters  
at issue in the present motion. Further, the Court has not  
relied on the declarations of these three inmate-declarants, or  
on the transcripts of their depositions, for the purpose of  
deciding the present motion.

1 accommodation, was necessary for the performance of legitimate  
2 penological duties.<sup>5</sup> The following are illustrative examples.

3 An inmate at LAC who uses a wheelchair is frequently denied  
4 ADA assistance, to take a shower, by a particular officer.<sup>6</sup>  
5 Freedman Decl., Ex. 35 ¶¶ 1-12, Docket No. 2947-5. The inmate no  
6 longer asks for ADA showers when that officer is on her shift.

7 An inmate at LAC who has mobility, vision, and mental  
8 disabilities was not provided with a vehicle with a lift so that  
9 he could be transported to his medical appointment in August  
10 2020, and the inmate missed his appointment as a result.<sup>7</sup>  
11 Grunfeld Reply Decl., Ex. 8 ¶¶ 32-33, Docket No. 3108-1. The  
12 inmate believes that staff prevented him from going to his  
13 medical appointment in retaliation for reporting staff misconduct  
14 at LAC. Id.

15 An inmate at LAC who suffers from bipolar disorder and is  
16 assigned to an EOP unit experienced a manic episode in December  
17 2019, after which several officers brought the inmate to the  
18 ground. Freedman Decl., Ex. 29 ¶¶ 17-18. Once the inmate was  
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20 <sup>5</sup> Defendants submitted declarations by prison staff disputing  
21 some, but not all, of the incidents that some of the inmate-  
22 declarants describe. The incidents described in this order are  
23 examples of alleged incidents for which Defendants have not  
pointed to any evidence that contradicts the inmate-declarants'  
version of the events.

24 <sup>6</sup> Defendants submitted evidence that they argue contradicts  
the declaration of this inmate. See Docket No. 3080-4. But that  
evidence does not speak to the incidents described in this order  
25 in which a specific officer identified by name allegedly denied  
the inmate access to ADA assistance to take a shower.

26 <sup>7</sup> Defendants filed declarations by officers at LAC that  
27 address other unrelated incidents involving this inmate that took  
place in April 2020. Defendants filed no evidence to dispute  
28 that the inmate missed an appointment for lack of an accessible  
vehicle in August 2020.

1 under the control of the officers, one of the officers unloaded  
2 an entire can of pepper spray on the inmate, and then beat the  
3 inmate. Id. Then, after the inmate was in handcuffs, the  
4 officers beat him again. Id. ¶ 19. The inmate now refrains from  
5 asking for help. Id. ¶ 36.

6 An inmate at LAC who has mobility disabilities and suffers  
7 from bipolar disorder and is assigned to an EOP unit experienced  
8 hallucinations and sought mental health treatment in June 2019.  
9 Freedman Decl., Ex. 49 ¶¶ 1-10, Docket No. 2947-5. After a  
10 mental health evaluation, he was being returned to his cell,  
11 while handcuffed, by two officers when the officers and the  
12 inmate had a verbal altercation; once they reached his cell, the  
13 officers slammed him to the ground face first and punched him in  
14 the head. Id. ¶¶ 10-17. The inmate now is afraid of asking for  
15 help for his disabilities. Id. ¶ 32.

16 An inmate at LAC who suffers from schizoaffective disorder  
17 and is housed in an EOP unit reported that he was suicidal in  
18 March 2018 and was ignored for hours, after which he tried to  
19 hang himself. Freedman Decl., Ex. 33 ¶¶ 8-10, Docket No. 2947-5.  
20 Instead of providing him with mental health care, an officer  
21 pepper sprayed him in the face. Id.

22 An inmate at LAC who suffers from depression and anxiety and  
23 is housed in an EOP unit asked to speak to his mental health  
24 clinician because he had learned that his father had cancer, and  
25 an officer pepper sprayed him instead. Freedman Decl., Ex. 37 ¶¶  
26 1-11, Docket No. 2947-5.

27 An inmate at COR who is housed in an EOP unit observed  
28 officers beat another EOP inmate after he asked for medications.

1 Grunfeld Reply Decl., Ex. 23 ¶¶ 1-24, Docket No. 3108-1. The  
2 inmate now worries that staff will deny him mental healthcare.  
3 Id. ¶ 24.

4 An inmate at COR who is housed in an EOP unit was beaten by  
5 an officer after a suicide attempt in August 2019. Grunfeld  
6 Reply Decl., Ex. 20 ¶¶ 34-42, Docket No. 3108-1. The inmate  
7 believes that the officer beat him because he suffers from mental  
8 health issues and cannot advocate for himself. Id. ¶ 47. The  
9 inmate now refrains from asking for help because he is afraid of  
10 what would happen to him. Id. ¶ 61.

11 An inmate at COR who is housed in an EOP unit reported that  
12 he was suicidal in July 2020 but staff ignored him. Grunfeld  
13 Reply Decl., Ex. 20 ¶¶ 56-58, Docket No. 3108-1.

14 An inmate at SATF who has a hearing disability repeatedly  
15 asked for a telecommunication device for the deaf in February  
16 2020, and staff ignored his request for months, until June 2020.<sup>8</sup>  
17 Grunfeld Reply Decl., Ex. 70 ¶¶ 1-17, Docket No. 3109-1.

18 An inmate at CIW who has a mobility disability requested a  
19 handcuffing accommodation in February 2020, and the officer  
20 ignored her request. Grunfeld Decl., Ex. 41 ¶¶ 1-13, Docket No.  
21 3108-1. The inmate was handcuffed behind her back for two hours  
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25 <sup>8</sup> Defendants argue that the inmate's declaration is  
26 contradicted by evidence that he did receive access to the  
27 telecommunications device from June through August of 2020.  
28 Docket No. 3162 at 6. Defendants, however, point to no evidence  
to dispute the inmate's declaration that he requested the  
telecommunications device in February 2020 but Defendants failed  
to provide him access to it until June 2020.

1 until another officer confirmed that the inmate requires a  
2 handcuffing accommodation and removed the handcuffs.<sup>9</sup> Id. ¶ 11.

3 An inmate at KVSP who is designated as EOP and has permanent  
4 nerve damage in his wrists, Freedman Decl., Ex. 26 ¶¶ 1-5, Docket  
5 No. 2947-5, requested a change of bandages in May 2020 because he  
6 had had wrist surgery and, instead of accommodating him, an  
7 officer hit him with a mace can, Freedman Decl. ¶ 72 & Ex. 62 ¶¶  
8 1-9, Docket No. 2947-5. The inmate believes that staff at KVSP  
9 are retaliating against him for providing assistance in the  
10 Coleman and Armstrong litigation. Freedman Decl., Ex. 62 ¶ 18,  
11 Docket No. 2947-5.

12 The declarants believe, based on their experiences and  
13 observations, that staff target inmates with disabilities for  
14 mistreatment because they are vulnerable and unlikely to fight  
15 back. See, e.g., Grunfeld Reply Decl., Ex. 8 ¶¶ 34-35, Docket  
16 No. 3108-1; Freedman Decl., Ex. 29 ¶ 36; Freedman Decl., Ex. 33 ¶  
17 29, Docket No. 2947-5; Grunfeld Reply Decl., Ex. 70 ¶ 45, Docket  
18 No. 3109-1; Grunfeld Reply Decl., Ex. 43 ¶ 13, Docket No. 3108-1;  
19 Grunfeld Decl., Ex. 41 ¶ 20, Docket No. 3108-1; Freedman Decl.,  
20 Ex. 35 ¶ 21, Docket No. 2947-5; Freedman Decl., Ex. 49 ¶ 37,  
21 Docket No. 2947-5. The Court finds the inmate declarations to be  
22 credible. The descriptions in these declarations of the behavior  
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25 <sup>9</sup> Defendants argue that this inmate's description of the  
26 incident is contradicted by medical records, which state that  
27 "I/P was escorted cuffed in front to TTA exam room[.]" Grunfeld  
28 Decl., Ex. 41a, Docket No. 3108-1. These medical records, which  
state that the inmate was handcuffed in the front while she was  
being escorted do not contradict the inmate's declaration that  
she was handcuffed behind her back for two hours in a holding  
cell before the handcuffs were removed.

1 of staff toward disabled inmates are remarkably consistent.  
2 Further, the declarants appear to lack any incentive to fabricate  
3 the incidents they describe with such great detail. Finally, as  
4 noted, Defendants have not pointed to declarations or other  
5 evidence to dispute the sworn statements of the declarants with  
6 respect to the incidents described above.<sup>10</sup> The declarants'  
7 version of the incidents described above is, therefore,  
8 uncontroverted.

9 Defendants note that some of the inmate declarations that  
10 Plaintiffs filed are by members of the class in Coleman v.  
11 Newsom, Case No. 90-cv-00529 (E.D. Cal.) and argue that these  
12 declarations cannot establish violations of the ARP to the extent  
13 that they describe denials of reasonable accommodations as to  
14 Coleman class members. The Coleman class includes "all inmates  
15 with serious mental disorders who are now, or who will in the  
16 future, be confined within the California Department of  
17 Corrections." Coleman v. Schwarzenegger, 922 F. Supp. 2d 882,  
18 899 n.11 (E.D. Cal. 2009) (citation and internal quotation marks  
19 omitted). Defendants contend that the ARP does not apply to  
20 Coleman class members by virtue of their mental disorders unless  
21 the mental disorders are learning disabilities. See Tr. of Oct.  
22 6, 2020, Hr'g at 25-26, Docket No. 3131.

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25 <sup>10</sup> Defendants argue that the "current page limitations" made  
26 it "impossible" for them to "make extended discussions" of some  
27 of the inmate declarations. Docket No. 3162. Defendants'  
28 failure to cite evidence that contradicts the inmates'  
declarations, to the extent that any such evidence exists, is not  
justified by the page limitations the Court imposed on the  
parties. Pointing to contrary evidence does not require extended  
discussions of the evidence. Further, Defendants never moved for  
additional pages.

1 As noted, the Court's Remedial Order and Injunction requires  
 2 Defendants to ensure that their facilities and programs are  
 3 compliant with the ADA and RA. Remedial Order and Injunction at  
 4 1-4, Docket No. 158. The ARP, Section I, which incorporates the  
 5 ADA's anti-discrimination and access provisions, 42 U.S.C.  
 6 § 12132, provides that any "qualified inmate or parolee with a  
 7 disability" is protected from discrimination or exclusion because  
 8 of that disability:

9 No qualified inmate or parolee with a  
 10 disability as defined in Title 42 of the  
 11 United States Code, Section 12102 shall,  
 12 because of that disability, be excluded from  
 13 participation in or denied the benefits of  
 14 services, programs, or activities of the  
 15 Department or be subjected to  
 16 discrimination.

17 ARP at 1, Docket No. 681. Section II.A of the ARP defines a  
 18 "qualified inmate or parolee" as "one with a permanent physical  
 19 or mental impairment which substantially limits the  
 20 inmate/parolee's ability to perform a major life activity," id.  
 21 at 1, and Section II.B. of the ARP defines a "permanent  
 22 disability or impairment" as one that is not expected to improve  
 23 within six months, id. at 2. The ARP does not define or limit  
 24 the conditions that may constitute a covered "mental impairment."

25 In light of the plain language of the ARP, the Court  
 26 concludes that Coleman class members are "qualified inmates"  
 27 under the ARP if the record suggests that they suffer from any  
 28 known physical or mental impairment that substantially limits  
 their ability to perform a major life activity and that is not  
 expected to improve within six months. The Court finds no

1 support in the ARP for limiting the scope of the term "mental  
2 impairment" to learning disabilities, as Defendants propose.

3 During the hearing held on December 8, 2020, Plaintiffs  
4 argued that Coleman class members who "have been classified by  
5 CDCR as belonging to EOP, Enhanced Outpatient Placement," are  
6 qualified inmates within the meaning of the ARP because "they  
7 require special housing, special programming" and "are very ill."  
8 Tr. at 37, Docket No. 3184. The record in the Coleman litigation  
9 supports that argument. It shows that Coleman class members  
10 designated as EOP suffer from serious mental disorders such as  
11 depression, panic attacks, bipolar disorder, and post-traumatic  
12 stress disorder, which cause them to suffer from "crisis symptoms  
13 which require extensive treatment" or prevent them from  
14 functioning in the general prison population. See CDCR Mental  
15 Health Services Delivery System Program Guide, 2018 Revision, at  
16 7-8, Docket No. 5864-1, Coleman v. Newsom, Case No. 90-cv-00520  
17 (E.D. Cal.); see also Order at 5, Docket No. 5131, Coleman v.  
18 Newsom, Case No. 90-cv-00520 (E.D. Cal.) (noting that Coleman  
19 class members designated as EOP suffer from serious mental  
20 disorders that render them "unable to function in the general  
21 prison population"). As a result, Coleman class members  
22 designated as EOP require special housing apart from the general  
23 prison population and special extensive mental-health treatment.

24 As will be discussed in more detail in the Conclusions of  
25 Law, below, a mental impairment that prevents an inmate from  
26 functioning in the general prison population and that requires  
27 the inmate to receive special and extensive mental-health  
28 treatment constitutes a disability within the meaning of the ARP

1 and ADA, as that impairment substantially limits the inmate's  
2 ability to perform a major life activity. Accordingly, Coleman  
3 class members who are designated as EOP are "qualified inmates"  
4 within the meaning of the ARP and are covered by the ARP and ADA.  
5 As such, any failure by Defendants' employees to provide EOP  
6 Coleman class members with reasonable accommodations for their  
7 disabilities constitutes a violation of the ARP and ADA. See ARP  
8 at 7, Section II.F., Docket No. 681 (requiring CDCR to "provide  
9 reasonable accommodations or modifications for known physical or  
10 mental disabilities of qualified inmates/parolees") (emphasis  
11 added).

12 The declarations of Coleman class members are also relevant  
13 to the resolution of the present motion to the extent that they  
14 contain evidence of violations of Armstrong class members' rights  
15 under the ARP or ADA, and to the extent that they contain  
16 evidence that is probative of the conditions that disabled  
17 inmates experience in CDCR's prisons.

18 For the foregoing reasons, the Court considers the  
19 declarations of Coleman class members when deciding the present  
20 motion.

21 Defendants next argue that certain of the declarants do not  
22 explicitly establish a causal link between the violations of the  
23 ARP and ADA that they describe and their disabilities. The Court  
24 is not persuaded. This causal link need not be expressly alleged  
25 by each of the declarants. The causal link can be inferred from  
26 the totality of the allegations in the declarations and the  
27 evidence discussed below, which shows that it is part of the  
28 staff culture at LAC, COR, SATF, CIW, and KVSP to target inmates

1 with disabilities for mistreatment, abuse, retaliation, and other  
2 improper behavior.

3 The Court finds, based on the foregoing, that staff have  
4 denied reasonable accommodations to inmates with disabilities on  
5 multiple occasions at LAC, COR, CIW, SATF, and KVSP, and that  
6 such denials were by reason of the inmates' disabilities.

7 B. Staff interfered with the ADA rights of qualified  
8 inmates with disabilities

9 As will be discussed in the Conclusions of Law below, a  
10 violation of the ADA's anti-interference provisions, 42 U.S.C.  
11 § 12203(b), occurs where (1) a person threatens, intimidates, or  
12 coerces a person with a disability; (2) the threat, intimidation,  
13 or coercion has a nexus to the exercise or enjoyment of an ADA  
14 right; and (3) the disabled person suffers distinct and palpable  
15 injury as a result, by virtue of giving up his ADA rights or some  
16 other injury which resulted from his refusal to give up his  
17 rights, or from the threat or intimidation or coercion itself.

18 Plaintiffs have submitted declarations by inmates stating  
19 that staff have threatened, intimidated, or coerced them when  
20 they requested reasonable accommodations or indicated that they  
21 would file ADA-related grievances, and that this has caused them  
22 to refrain from requesting accommodations or filing ADA  
23 grievances, or to experience severe emotional distress. As  
24 discussed below, the incidents described in the declarations,  
25 which are uncontested, establish that staff have violated 42  
26 U.S.C. § 12203(b). Below, the Court describes a few examples.  
27 Some of these incidents were also discussed in the previous  
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1 section of this order because they involve denials of reasonable  
2 accommodations, as well as violations of § 12203(b).

3 The inmate at LAC who uses a wheelchair, who is frequently  
4 denied by a particular officer of ADA assistance to take a  
5 shower, no longer asks for ADA showers when that officer is on  
6 her shift.<sup>11</sup> Freedman Decl., Ex. 35 ¶¶ 1-12, Docket No. 2947-5.

7 An inmate at LAC who suffers from depression and anxiety and  
8 is housed in an EOP unit and was assaulted by officers after he  
9 asked to speak to his mental health clinician filed a complaint  
10 regarding the incident and then experienced retaliation by  
11 officers in the form of an unwarranted placement in segregation  
12 in November 2019. Freedman Decl., Ex. 37 ¶¶ 1-11, 20-26, Docket  
13 No. 2947-5. The inmate now refrains from asking for mental  
14 health treatment when he feels suicidal. Id. ¶ 38.

15 An inmate at LAC who has mobility, vision, and mental  
16 disabilities was accused by an officer at LAC, while in the  
17 presence of other inmates, of reporting staff misconduct and  
18 denials of disability accommodations.<sup>12</sup> Grunfeld Reply Decl., Ex.  
19 8 ¶¶ 18-19, Docket No. 3108-1. The inmate now worries about his  
20 safety and refrains from asking for assistance he needs in light  
21 of his disabilities. Id. ¶¶ 18-19, 34.

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22  
23  
24 <sup>11</sup> As noted above, Defendants submitted evidence that they  
25 argue contradicts the declaration of this inmate. See Docket No.  
26 3080-4. But none of that evidence addresses the incidents  
described in this order in which a specific officer identified by  
name allegedly denied the inmate access to ADA assistance to take  
a shower.

27 <sup>12</sup> Defendants filed declarations by officers at LAC that  
28 address other unrelated incidents. Defendants have filed no  
evidence to dispute that this inmate suffered retaliation in the  
summer of 2020.

1 Described above is an inmate at LAC who has mobility  
2 disabilities and suffers from bipolar disorder and is assigned to  
3 an EOP unit; this inmate experienced hallucinations and sought  
4 mental health treatment in June 2019. Freedman Decl., Ex. 49 ¶¶  
5 1-10, Docket No. 2947-5. After a mental health evaluation, he  
6 was being returned to his cell, while handcuffed, by two officers  
7 when the officers and the inmate had a verbal altercation; once  
8 they reached his cell, the officers slammed him to the ground  
9 face first and punched him in the head. Id. ¶¶ 10-17. The  
10 inmate is now afraid of asking for help for his disabilities.  
11 Id. ¶ 32.

12 An inmate at COR who has mobility disabilities filed a staff  
13 complaint against an officer who allegedly kicked him on the  
14 inside of his legs in September 2019 during a body search,  
15 causing him excruciating pain and worsening his mobility  
16 disability.<sup>13</sup> Grunfeld Reply Decl., Ex. 33 ¶¶ 1-18, Docket No.  
17 3108-1. Since then, two other officers have threatened him and  
18 told him to drop his complaints against the officer who kicked  
19 him.<sup>14</sup> Id. ¶¶ 25-34.

20 An inmate at COR who was being housed in an EOP unit in June  
21 2020 observed officers extract another EOP inmate from his cell  
22 while he was wearing handcuffs and leg restraints; while that  
23

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24 <sup>13</sup> The officer who allegedly kicked the inmate filed a  
25 declaration, in which he does not deny having kicked the inmate.  
26 See Docket No. 3160-19.

27 <sup>14</sup> One of the officers who allegedly threatened the inmate  
28 filed a declaration. Docket No. 3160-17. This officer does not  
deny threatening or telling the inmate to drop his complaints  
against the officer who allegedly kicked the inmate. Id. The  
other officer who allegedly threatened and told the inmate to  
drop the complaints did not file a declaration.

1 inmate was on the floor, a female officer kicked the inmate in  
2 the head. Grunfeld Reply Decl., Ex. 22 ¶¶ 1-226, Docket No.  
3 3108-1. The inmate who observed the incident now refrains from  
4 asking for treatment for his mental illness. Id. ¶ 32.

5 An inmate at CIW asked for a handcuffing accommodation and  
6 was ignored, and she now refrains from asking for accommodations  
7 for her hearing disability as a result of the incident. Grunfeld  
8 Reply Decl., Ex. 43 ¶¶ 9-12, Docket No. 3108-1.

9 The inmate at KVSP who is designated as EOP and has  
10 permanent nerve damage in his wrists, Freedman Decl., Ex. 26 ¶¶  
11 1-5, Docket No. 2947-5, requested a change of bandages in May  
12 2020 because he had had wrist surgery and, instead of  
13 accommodating him, an officer hit him with a mace can, Freedman  
14 Decl. ¶ 72 & Ex. 62 ¶¶ 1-9, Docket No. 2947-5. The inmate  
15 believes that staff at KVSP are retaliating against him for his  
16 assistance in the Coleman and Armstrong litigation. Freedman  
17 Decl., Ex. 62 ¶ 18, Docket No. 2947-5.

18 For each of the examples just described, Defendants have not  
19 submitted any evidence, such as declarations by the officers who  
20 allegedly engaged in intimidation, threats, or coercion, to  
21 dispute the occurrence of these incidents.

22 The Court finds the inmate declarants to be credible for the  
23 same reasons discussed in the prior section, and because of the  
24 absence of any evidence that contradicts the version of the  
25 events described in these declarations.

1 Defendants argue that they have not violated § 12203(b)  
2 because their experts, Matthew Cate<sup>15</sup>, Bernard Warner<sup>16</sup>, and John  
3 Baldwin<sup>17</sup>, opine that disabled inmates have access to, and  
4 regularly utilize, systems for requesting accommodations and for  
5 reporting officer misconduct. Cate Decl. ¶¶ 21-39, Docket No.  
6 3083-5. Defendants retained these experts to determine whether  
7 inmates with disabilities are systemically being denied or  
8 discouraged from requesting accommodations; and whether they are  
9 targeted for abuse, retaliation, and harassment for doing so, or  
10 on the basis of their disabilities. Warner examined these issues  
11 with respect to SATF, SVSP, KVSP; Baldwin with respect to COR,  
12 CIW, and CCI; and Cate with respect to LAC.

13 The Court gives little weight to these experts' opinions  
14 because they do not consider or take into account the possibility  
15 that, despite the existence of systems for requesting  
16 accommodations and reporting staff misconduct, and the fact that  
17 some inmates employ such systems, some disabled inmates refrain  
18 from filing ADA requests or staff misconduct grievances that they  
19 would have filed but for the threats, intimidation, or coercion  
20 by staff. The data upon which Defendants' experts rely, which  
21

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22 <sup>15</sup> Cate previously served as the Inspector General of  
23 California, and as the Secretary of CDCR. Cate Decl. ¶¶ 1-6,  
Docket No. 3083-5.

24 <sup>16</sup> Bernard Warner has forty years of experience in the field  
25 of corrections and served as CDCR's Chief Deputy Secretary for  
26 the Department of Juvenile Justice and as the Secretary of the  
Washington Department of Corrections. Warner Decl. ¶ 3, Docket  
No. 3083-6.

27 <sup>17</sup> John Baldwin has more than forty-two years of experience  
28 in the field of corrections and served as the Director of the  
Iowa Department of Corrections. Baldwin Decl. ¶ 3, Docket No.  
3083-4.

1 show that disabled inmates are filing some ADA requests and  
 2 grievances, does not take into account requests or grievances  
 3 that disabled inmates did not make or submit, nor do they take  
 4 into account requests and grievances that disabled inmates  
 5 withdrew, because of threats, coercion, or intimidation.  
 6 Accordingly, the Court finds that the opinions of Defendants'  
 7 experts do not impact its finding that Defendants violated  
 8 disabled inmates' rights under § 12203(b).<sup>18</sup>

9 III. Defendants have failed to comply with their Court-ordered  
 10 accountability obligations

11 In 2007, more than ten years after the Court entered its  
 12 first Remedial Order and Injunction requiring Defendants to  
 13 develop plans, policies, and procedures to ensure that their  
 14 facilities and programs comply with the ADA and RA, the Court  
 15 found that Defendants were not yet in compliance with the ADA,  
 16 the ARP, or the Court's Remedial Order and Injunction. See  
 17 Order, Docket No. 1045. Accordingly, the Court entered the 2007  
 18 injunction, which required Defendants to develop and implement a  
 19 system for holding wardens and other staff accountable for  
 20 compliance with the ARP and the Court's orders (accountability  
 21 obligations). Order at 7, Docket No. 1045. Since that time, the  
 22 Court has clarified Defendants' accountability obligations to  
 23 specify the actions that Defendants must take to ensure that they  
 24 comply with the ARP and ADA, such as tracking allegations of

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25  
 26  
 27 <sup>18</sup> For the same reasons, the Court's conclusion is not  
 28 altered by data showing that disabled inmates submitted ADA-  
 related appeals and grievances in the last several years. See  
 Olgin Decl., Ex. A-G, Docket No. 3083-7.

1 violations of the ARP, the ADA, and the Court's orders;  
2 conducting prompt investigations of any such alleged violations;  
3 and ensuring that any staff who violate the ARP, ADA, or the  
4 Court's orders receive the appropriate discipline. See 2012  
5 Order, Docket No. 2180; 2014 Order Modifying 2007 Injunction at  
6 1, Docket No. 2479; 2020 Order, Docket No. 3059.

7 As noted above, Defendants have repeatedly failed to comply  
8 with their accountability obligations. See, e.g., 2012 Order at  
9 4-6, Docket No. 2180; 2020 Order at 31-35, Docket No. 3059.

10 In their present motion, Plaintiffs have shown that  
11 Defendants continue to violate multiple aspects of their Court-  
12 ordered accountability obligations.

13 A. Defendants' system for investigating and holding staff  
14 accountable for violations of the ARP and ADA is  
ineffective

15 In 2007, the Court ordered Defendants to develop and  
16 implement a system for holding wardens and other staff  
17 accountable for compliance with the ARP, the ADA, and the Court's  
18 orders. Order at 7, Docket No. 1045. In 2012, the Court  
19 clarified that this requires, among other things, that Defendants  
20 "investigate promptly and appropriately all allegations of  
21 violations, regardless of the source[.]" Order at 16, Docket No.  
22 2180.

23 Plaintiffs have shown that Defendants' system for  
24 investigating alleged violations of the ARP and the ADA is flawed  
25 and that the results of investigations conducted pursuant to that  
26 system are unreliable.

27 Plaintiffs' expert, Eldon Vail, is a former correctional  
28 administrator with thirty-five years of experience working in and

1 administering adult correctional institutions. Vail Decl. ¶ 3,  
2 Docket No. 2020-5. He has served as the Warden of three adult  
3 correctional institutions, and he served as the Secretary of the  
4 Department of Corrections of Washington for four years. Id. ¶ 4.  
5 He is familiar with CDCR prisons, as he was an expert in several  
6 actions involving CDCR prisons, including the Coleman litigation.  
7 Vail Decl. ¶¶ 1-8, Docket No. 3106-7. As part of his assignment,  
8 Vail reviewed, among other things, 170 declarations by inmate-  
9 declarants that describe incidents of abuse directed at disabled  
10 inmates at eight prisons, including incidents that constitute  
11 violations of the ARP and ADA. Id. ¶ 8.

12 Vail opines that Defendants' investigations of the  
13 allegations made by the inmate-declarants were systematically  
14 inadequate, as investigators "overlooked or intentionally  
15 ignored" evidence that supports the inmate-declarants' version of  
16 the events and that undermines officer statements and incident  
17 reports generated by prison staff. Id. ¶ 28.

18 For example, Vail analyzed the investigation of allegations  
19 of abuse by an inmate at LAC who has mobility disabilities and  
20 uses a wheelchair, and he concluded that this investigation, like  
21 many others, was flawed. Vail Decl. ¶¶ 72-79, Docket No. 3106-7.  
22 This inmate stated in his declaration that, on August 7, 2019, he  
23 requested multiple accommodations, including an ADA shower and  
24 extra supplies to clean up after an incontinence accident, but  
25 instead of accommodating him, an officer threw him out of his  
26 wheelchair and then put his knee on his back before handcuffing  
27 him. Freedman Decl., Ex. 27, Docket No. 2947-5.

28

1 To dispute this inmate's allegations, Defendants filed the  
2 declaration of the officer who allegedly threw the inmate out of  
3 his wheelchair. The officer attached to his declaration an  
4 incident report that he wrote after the incident, which states  
5 that the inmate stood up from his wheelchair, yelled profanities  
6 at the officer, and then threw a plastic bag containing  
7 disposable diapers at his chest and face. Docket No. 3083-2, Ex.  
8 A. According to the incident report, when the officer ordered  
9 the inmate to get on the floor, the inmate refused, and the  
10 officer then pushed the inmate to the floor and handcuffed him.  
11 Id. The incident report lists three other officers as witnesses,  
12 but no inmate witnesses. Id. Defendants did not file any  
13 declarations by any of the three officers listed as witnesses.

14 Vail reviewed the incident report and medical report just  
15 described, as well as other documents that Defendants did not  
16 file, including a second report that was written in 2020  
17 summarizing the results of Defendants' inquiry into the incident.  
18 See Vail Decl. ¶¶ 72-79 & Ex. GGG, Docket No. 3106-7. This  
19 second report summarizes an interview with an inmate who  
20 witnessed the incident and corroborated the subject inmate's  
21 description of it; the witness stated that he saw the officer  
22 lift the inmate's wheelchair from the back, forcing the inmate to  
23 fall out of the chair. The investigator wrote that he did not  
24 find the subject inmate's or the witness's accounts to be  
25 credible because (1) the inmate and the witness did not mention  
26 that the inmate threw a bag of dirty diapers at the officer as  
27 the officer wrote in the incident report; (2) the witness failed  
28 to mention that the inmate "stood up from his wheelchair" as the

1 officer had written in the incident report; (3) the witness "is  
2 friends with" the inmate and therefore colluded with the inmate  
3 to tell the same story; and (4) the witness and the inmate  
4 differed in their accounts as to whether the inmate received an  
5 ADA shower prior to the incident. Vail Decl., Ex. GGG at 2-4,  
6 Docket No. 3106-7. The investigator concluded that the inmate's  
7 allegations of excessive force and staff misconduct "have no  
8 merit and should be closed . . . based on the lack of  
9 corroborating witnesses and supporting evidence which  
10 contradict[s]" the inmate's allegations. Id. at 8.

11 Vail opines that the investigator improperly assumed that  
12 the officer's version of the incident was true, and that he  
13 improperly discounted the subject inmate's and the witness's  
14 statements on the ground that such statements did not match the  
15 officer's version of the incident. Vail Decl. ¶¶ 75-77. Vail  
16 further opines that the investigator erred in assuming, without  
17 proof, that the similarities between the inmate's and the  
18 witness's version of the events was the result of collusion or  
19 fabrication, as opposed to being the truth. Id. ¶ 75. Finally,  
20 Vail opines that the investigator erred in discounting the  
21 inmate's and the witness's statements on the basis that their  
22 stories conflicted as to whether the inmate took an ADA shower  
23 before the officer threw him out of his wheelchair, because  
24 whether or not the inmate took an ADA shower was not material to  
25 whether he was thrown out of the wheelchair. Id. ¶ 76.

26 Neither Defendants nor their experts dispute Vail's analysis  
27 and conclusions with respect to the investigation of this  
28 inmate's allegations.

1 Plaintiffs' other expert, Jeffrey Schwartz, who has assisted  
 2 prisons and jails over the last twenty years in applying national  
 3 correctional standards to their operations, concurs with Vail's  
 4 opinions and further opines that the problems and failures of  
 5 Defendants' process for investigating and disciplining  
 6 allegations of staff misconduct directed at disabled inmates are  
 7 systemic. Schwartz Decl. ¶ 2, Docket No. 2947-9; Schwartz Decl.  
 8 ¶ 6, Docket No. 3106-5.

9 The Court finds Vail's and Schwartz's opinions about the  
 10 systemic inadequacies of Defendants' investigation of allegations  
 11 of staff misconduct directed at disabled inmates to be credible  
 12 and reliable. They are consistent with the data published by the  
 13 Office of the Inspector General (OIG)<sup>19</sup>, which shows that a  
 14

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15 <sup>19</sup> Pursuant to California Penal Code § 6133(a), the OIG is  
 16 "responsible for contemporaneous public oversight of the  
 17 Department of Corrections and Rehabilitation investigations and  
 18 staff grievance inquiries conducted by the Department of  
 19 Corrections and Rehabilitation's Office of Internal Affairs . . .  
 20 . The Office of the Inspector General shall have discretion to  
 21 provide public oversight of other Department of Corrections and  
 22 Rehabilitation personnel investigations as needed." The OIG's  
 23 records, reports, statements, and data compilations are  
 24 presumptively admissible under the public records hearsay  
 25 exception, Federal Rule of Evidence 803(8). See Johnson v. City  
 26 of Pleasanton, 982 F.2d 350, 352 (9th Cir. 1992) ("A trial court  
 27 may presume that public records are authentic and trustworthy.  
 28 The burden of establishing otherwise falls on the opponent of the  
 evidence, who must come 'forward with enough negative factors to  
 persuade a court that a report should not be admitted.'"); Estate  
of Gonzales v. Hickman, No. 05-660 MMM (RCX), 2007 WL 3237727, at  
 \*2 n.3 (C.D. Cal. May 30, 2007) (holding that OIG report was  
 admissible under Rule 803(8) because the report contained factual  
 findings and conclusions resulting from an investigation made by  
 the OIG pursuant to its authority granted by law, and because the  
 opponents did not meet their burden to show that the report was  
 unreliable or untrustworthy); Lorraine v. Markel Am. Ins. Co.,  
 241 F.R.D. 534, 551 (D. Md. 2007) (holding that "official  
 publications posted on government agency websites should be  
 admitted into evidence easily" based on Federal Rules of Evidence

1 significant percentage of Defendants' investigations of  
 2 allegations of staff misconduct involving inmates are inadequate.  
 3 The OIG monitored 116 cases involving allegations of harm or  
 4 negligence against incarcerated people dated January 1, 2019, to  
 5 June 30, 2020, and it concluded that, in twenty-eight out of the  
 6 116 cases (or twenty-four percent), CDCR's overall performance in  
 7 investigating the allegations was "poor", and that in forty-five  
 8 out of the 116 cases (or thirty-eight percent), CDCR performed  
 9 poorly in determining its findings for alleged misconduct and  
 10 processing the case. See Grunfeld Reply Decl. ¶¶ 227-231 & Ex.  
 11 127, Docket No. 3108-1.<sup>20</sup> The OIG did not issue an overall  
 12 "superior" rating for any of the 116 cases.<sup>21</sup> Id.

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13  
 14 803(8) and 902(5)). Here, Defendants have not rebutted the  
 15 presumption that the OIG data and OIG reports discussed in this  
 16 order are admissible under Rule 803(8) because Defendants have  
 not shown that such data and reports are unreliable or  
 untrustworthy.

17 <sup>20</sup> These calculations are based on data that Plaintiffs  
 18 obtained from the OIG's website based on criteria described in  
 19 detail in the declaration of Gay Grunfeld. Defendants object to  
 20 the Court's consideration of the calculations on the ground that  
 21 the calculations are hearsay. The Court overrules this objection  
 22 because Defendants do not dispute that the underlying data came  
 from the OIG's website and is therefore admissible under Federal  
 Rules of Evidence 803(8) and 902(5). Further, Defendants have  
 not shown that the calculations at issue, which are based on the  
 OIG's data, are inaccurate. To the contrary, during the hearing  
 held on December 8, 2020, Defendants stated that they do not  
 argue that "the calculations were done incorrectly." See Tr. at  
 8, Docket No. 3187.

23 <sup>21</sup> Defendants' expert, Matthew Cate, states in his report  
 24 that the OIG concluded that CDCR's performance in the first six  
 25 months of 2019 in terms of "the internal investigation and  
 26 employee disciplinary process" was satisfactory overall and  
 27 excellent based on certain specific metrics. Cate Decl. ¶¶ 86-  
 28 88, Docket No. 3083-5. The OIG data that Cate summarizes in his  
 report, however, does not appear to speak specifically to CDCR's  
 performance in investigating or disciplining staff misconduct of  
 the type that is at issue in the present motion, namely staff  
 misconduct directed at inmates. For that reason, the Court gives  
 little weight to Cate's opinions based on this data.

1 Vail's and Schwartz's opinions also are consistent with the  
2 OIG's findings that the statewide system for investigating  
3 allegations of staff misconduct is flawed and ineffective. For a  
4 report dated January 2019, the OIG reviewed 188 staff misconduct  
5 inquiries at SVSP to determine whether the statewide staff  
6 misconduct complaint process had functioned as intended.  
7 Grunfeld Decl., Ex. GG, Docket No. 2922-1. Out of the 188 staff  
8 misconduct complaint inquiries the OIG reviewed, the OIG found  
9 that the hiring authority determined in ninety-seven percent of  
10 them that the staff accused of misconduct had not violated  
11 policy. Id. at 1. However, according to the OIG, the  
12 "dependability of the staff complaint inquiries" upon which the  
13 hiring authority's determinations were based was "significantly  
14 marred by inadequate investigative skills" that staff misconduct  
15 complaint reviewers had demonstrated. Id. at 3. The OIG found  
16 that staff misconduct complaint reviewers "displayed signs of  
17 bias in favor of their fellow staff when conducting their staff  
18 complaint inquiries; they sometimes ignored corroborating  
19 evidence offered by inmate witnesses and often compromised the  
20 confidentiality of the process." Id. at 2. The OIG concluded  
21 that the staff misconduct complaint reviewers' "ability to remain  
22 impartial" could have been affected by the fact that the  
23 reviewers were "frequently peers or coworkers of the staff  
24 members they were investigating" and "must always rely on fellow  
25 staff for their physical safety." Id. at 5.

26 The OIG recommended that CDCR "consider a complete overhaul  
27 of the staff complaint inquiry process" across the entire state  
28 on the ground that the problems the OIG found at SVSP—namely,

1 that staff complaint reviewers “did not follow sound practices  
2 with respect to interviewing, collecting evidence, and writing  
3 reports” and “lack[ed] of independence”—“may also be found to  
4 some extent at other institutions” because the same staff  
5 misconduct complaint inquiry process “is in place statewide.”  
6 Id. at 89-90. The OIG specifically “urge[d] the department to  
7 reassign the responsibility of conducting staff complaint  
8 inquiries to employees who work outside of the prison’s command  
9 structure[.]” Id. at 89.

10 After this OIG report was published, CDCR implemented the  
11 Allegation Inquiry Management Section (AIMS) in certain prisons  
12 in January 2020, and statewide in April 2020. Amy Miller Decl. ¶  
13 57, Docket No. 3006-1. According to Defendants, AIMS “is able to  
14 provide reviews of staff complaints that are more independent  
15 than the reviews performed at the institutions themselves.” Id.  
16 ¶ 53. “AIMS is responsible for completing allegation inquiries  
17 for most allegations against staff submitted through the  
18 grievance process which, if true, meet the definition of staff  
19 misconduct, but for which the reviewing authority does not have  
20 the reasonable belief the alleged misconduct occurred.” Id. ¶  
21 53. In other words, “[w]hen the warden or chief deputy warden  
22 determines that the allegations, if true, would more likely than  
23 not result in adverse disciplinary action, but there is no  
24 reasonable belief that the misconduct occurred, the grievance  
25 will be directed to AIMS for an allegation inquiry.” Id. ¶ 55.  
26 Once a grievance is sent to AIMS for an allegation inquiry, AIMS  
27 conducts interviews and reviews documents, and it then provides a  
28 report to the warden so that the warden can decide whether (1) no

1 action should be taken against staff because there was no  
 2 evidence to substantiate the allegations, or (2) the matter  
 3 should be forwarded to the Office of Internal Affairs for formal  
 4 investigation or for direct adverse action. Id. ¶ 56.

5 On February 16, 2021, the OIG issued a new report in which  
 6 it analyzed whether the implementation of AIMS has solved the  
 7 structural problems it identified in its January 2019 report as  
 8 to the statewide system for investigating and disciplining staff  
 9 misconduct.<sup>22</sup> OIG Report, Docket No. 3205. The OIG concluded  
 10 that the "lack of independence" it found in its report of January  
 11 2019 "still persists" notwithstanding the implementation of AIMS.  
 12 Id. at 1. The OIG found that wardens had mostly circumvented the  
 13 AIMS process by "largely avoid[ing] referring staff misconduct  
 14 grievances" to AIMS and by retaining such grievances at the  
 15 prison for internal investigation. Id. at 1. The OIG concluded  
 16 that the wardens were able to retain grievances for investigation  
 17 within the prison instead of sending them to AIMS because, under  
 18 the current statewide system, the determination of whether a  
 19 grievance should be sent to AIMS is within the wardens'

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22  
 23 <sup>22</sup> Defendants object to the Court's consideration of this  
 24 report on the grounds that (1) Plaintiffs filed it after the  
 25 December 8, 2020, hearing on the present motion, and (2) the  
 26 report is inadmissible. See Docket No. 3207. The Court will  
 27 consider the report because it is relevant to the Court's  
 28 determination of the present motion, and because the Court  
 provided Defendants with an opportunity to respond to the report.  
 The Court overrules Defendants' admissibility objections on the  
 ground that Defendants have not rebutted the presumption that the  
 report is admissible as a public record under Federal Rule of  
 Evidence 803(8), as they have not shown that the report is  
 unreliable or untrustworthy.

1 discretion, and the exercise of that discretion is not subject to  
2 any oversight. Id.

3 The OIG also found that, out of the grievances that wardens  
4 did refer to AIMS, AIMS did not conduct investigations into  
5 various categories of grievances, including staff misconduct  
6 related to the ADA reasonable accommodations process and staff  
7 misconduct involving the reported use of excessive force that did  
8 not result in serious bodily injury. Id. at 3. For the  
9 grievances that AIMS did investigate, the OIG found that AIMS  
10 terminated the investigations before completing them as soon as  
11 an AIMS investigator formed a reasonable belief that any  
12 misconduct occurred; at that point, AIMS sent a report to the  
13 warden even though the investigators may not have gathered all  
14 relevant evidence. Id. at 3-4. The OIG found this to be  
15 problematic because, once a warden receives a report from AIMS,  
16 the warden has the discretion to decide, based on AIMS'  
17 incomplete investigation, that no action should be taken against  
18 staff because there was no evidence to substantiate the  
19 allegations. Id.

20 The OIG expressed a "deep concern[] about the low rate at  
21 which wardens determined their staff violated policy (regardless  
22 of the entity that prepared the inquiry), which raises serious  
23 issues about the overall fairness of the process." Id. at 2.  
24 Specifically, "of the 1,293 allegations that wardens resolved  
25 between June 1, 2020, and August 31, 2020, wardens found that  
26 their staff violated policy in only 22 (1.7 percent)." Id.

27 Finally, the OIG found that CDCR's mechanisms for tracking  
28 and collecting staff misconduct data are inadequate and preclude

1 any meaningful analysis or assessment of CDCR's effectiveness in  
2 investigating staff misconduct grievances. Id. Notably, the  
3 inadequacy of the tracking system has resulted in CDCR "severely  
4 undercount[ing]" the number of allegations of staff misconduct,  
5 "possibly by the thousands." Id.

6 The Secretary for CDCR, Kathleen Allison, sent a letter to  
7 the OIG responding to the OIG's new report. See id. at 69-70.  
8 In that letter, the Secretary states that the OIG's conclusions  
9 as to the effect of AIMS are "premature" because AIMS was  
10 implemented statewide in April 2020 and CDCR is still in the  
11 process of implementing the new procedures and training staff.  
12 Id. at 69-70. The OIG responded to the Secretary's letter,  
13 noting that the problems it identified in its February 2021  
14 report "are structural and are not dependent on when [CDCR]  
15 activated AIMS. The primary reason we published this progress  
16 report was to highlight structural problems in the department's  
17 regulations and to point out that those problems will remain  
18 until the department changes the regulations (and its process),  
19 again." Id. at 71.

20 Defendants do not dispute any of the OIG's findings with  
21 respect to the structural flaws in the statewide system for  
22 investigating and disciplining staff misconduct. See Docket No.  
23 3211. Defendants state only that CDCR acknowledges the report  
24 and is in the process of considering the report's recommendations  
25 for the development of further policies. Id. at 1-2. Defendants  
26 also note that, on March 1, 2021, the Secretary for CDCR  
27 testified before the California Assembly's Budget Subcommittee  
28 about "proactive measures CDCR is prepared to take" in light of

1 the OIG's report, namely centralizing the complaint screening  
2 process outside the institutions; expanding the scope of AIMS to  
3 cover all allegations of excessive or unnecessary force when  
4 there is any injury; and requiring AIMS investigators to state a  
5 conclusion about whether a complete inquiry has been conducted  
6 and whether or not it has established a reasonable belief that  
7 misconduct occurred. See Kathleen Allison Decl. ¶¶ 3-4, Docket  
8 No. 3212-1. Defendants provide no indication of whether, and if  
9 so, when, any of these "proactive measures CDCR is prepared to  
10 take" will become CDCR policy.

11 The Court finds, based on the foregoing, that Defendants'  
12 system for investigating staff misconduct is deficient and  
13 ineffective, and that the results of any investigations conducted  
14 pursuant to that system cannot be relied upon to hold wardens and  
15 staff accountable for violations of the ARP and ADA.

16 Defendants' experts, Matthew Cate, Bernard Warner, and John  
17 Baldwin, admit that the investigations of at least some of the  
18 incidents described in the inmates' declarations were deficient.  
19 See, e.g., Cate Decl. ¶ 5, Docket No. 3160-6 (opining that "most"  
20 investigations were conducted "in a professional manner" and that  
21 the findings of the hiring authorities were "typically reasonable  
22 under the circumstances"); Baldwin Decl. ¶ 35, Docket No. 3083-4  
23 (admitting that at least one of the incident reports he reviewed  
24 "should have been more thorough, which makes it difficult to  
25 determine what actually happened in that incident").

26 Defendants nevertheless argue, based on Cate's opinions,  
27 that the statewide system for investigating allegations of staff  
28 misconduct has worked properly with respect to the allegations of

1 misconduct made by the inmate-declarants. Cate opines that,  
2 "[w]hile not perfect, the investigations generally produced a  
3 result that, based on [his] expertise, was reasonable and  
4 appropriate," Cate Decl. ¶¶ 75-78, 84, Docket No. 3160-7, and  
5 that "a few poor investigations" cannot be used as a means to  
6 conclude that the system is broken, id. ¶ 20. Cate further  
7 opines that AIMS will "improve the system" by allowing for  
8 investigations of certain categories of allegations outside of  
9 the prisons. Id. ¶ 90.

10 Cate's opinions do not impact the Court's determinations,  
11 because his opinions are inconsistent with the OIG's findings,  
12 discussed in more detail above. Cate does not square his  
13 opinions with the OIG's findings from January 2019 that the  
14 statewide system is prone to generating unreliable investigation  
15 results because of the reviewers' lack of independence and poor  
16 investigative skills.<sup>23</sup> Further, Cate's opinion that AIMS will  
17 improve the system also is contradicted by the OIG's findings of  
18 February 2021 that AIMS has not, and will not, solve any of the  
19 structural problems the OIG identified in its January 2019  
20 report.

21 In light of the foregoing, the Court finds that Plaintiffs  
22 have shown that Defendants have failed to implement an effective  
23 system for investigating and disciplining violations of the ARP  
24

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25 <sup>23</sup> The OIG's report of February 2021 was published after Cate  
26 wrote his declarations in connection with the present motion, but  
27 the OIG's January 2019 report was available on the OIG's website  
28 at the time that Cate wrote his declarations. Indeed, Cate  
states in his second declaration that he reviewed this report.  
See Cate Decl., List of Documents Reviewed at 4, Docket No. 3160-  
60.

1 and ADA. This constitutes a violation of the Court's prior  
2 orders.

3 B. Defendants failed to log alleged violations of the ARP  
4 and ADA

5 In 2012, the Court ordered Defendants to track and  
6 investigate all allegations of violations of the ARP and ADA.  
7 Order, Docket No. 2180. In December 2014, the Court clarified  
8 Defendants' obligations to track allegations of violations of the  
9 ARP, the ADA, and the Court's prior orders and injunctions as  
10 follows:

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

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

23 In its order of September 8, 2020, the Court modified its  
24 prior orders and injunctions to require Defendants to also track  
25 allegations of violations of the ADA's anti-retaliation and anti-  
26 interference provisions, on the ground that the Court's intent at  
27 the outset of the remedial phase of this litigation was to  
28 require Defendants to operate their facilities and programs in

1 accordance with the ADA and RA. Order of September 8, 2020, at  
2 34-35, Docket No. 3059.

3 Plaintiffs have shown, and Defendants do not dispute, that  
4 Defendants failed to log many of the allegations of violations of  
5 the ARP that Plaintiffs' counsel raised in their advocacy  
6 letters, including (1) allegations that staff denied disabled  
7 inmates reasonable accommodations for their disabilities<sup>24</sup>; and  
8 (2) allegations that disabled inmates suffered physical abuse by  
9 staff after requesting reasonable accommodations<sup>25</sup>. See Grunfeld  
10 Reply Decl. ¶¶ 239-49, Docket No. 3108-1. This constitutes a  
11 violation of the Court's prior orders.

12 C. Defendants do not timely initiate or complete  
13 investigations of alleged violations of the ARP and ADA

14 In 2012, the Court required Defendants to initiate an  
15 investigation of any violation of the ARP, the ADA, or the orders  
16 of this Court "within ten business days of receiving notice of  
17 such allegation" and to complete any such investigation "as  
18 promptly as possible." Order at 17, 21, Docket No. 2180.

19 Plaintiffs have shown, and Defendants do not dispute, that  
20 Defendants often fail to initiate, or delay in initiating,  
21 investigations of alleged violations of the ARP and ADA.

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22  
23  
24 <sup>24</sup> These allegations include that, during a body search, an  
25 officer at COR kicked and then slammed to the ground an inmate  
26 who requested an accommodation for his mobility disability during  
27 the search. Grunfeld Reply Decl., Ex. 33 ¶¶ 12-17, Docket No.  
28 3108-1.

<sup>25</sup> These allegations include that an inmate with mobility  
impairments who was undergoing chemotherapy was thrown out of his  
wheelchair by an officer after he requested to be housed closer  
to the medication window because he could not walk long  
distances. Freedman Decl., Ex. 53 ¶¶ 15-23, Docket No. 2947-5.

1           In January 2020, the OIG concluded that CDCR had been  
2           untimely in responding to, and in initiating investigations of,  
3           allegations of staff misconduct directed at disabled and other  
4           vulnerable inmates. Grunfeld Decl., Ex. J at 1, Docket No. 2922-  
5           1. The OIG reviewed CDCR's responses to advocacy letters sent by  
6           Plaintiffs' counsel to CDCR in 2019 and concluded that each  
7           described "serious" misconduct that, "if true, would result in  
8           disciplinary action for the subject employees." Id. The  
9           allegations included that an officer assaulted an elderly  
10          disabled inmate; that a disabled inmate requested, but was  
11          denied, an ADA shower and an officer threatened to have the  
12          inmate attacked if he filed a complaint; and that an inmate with  
13          a mobility disability requested, but was denied, a handcuffing  
14          accommodation and was then thrown to the ground by an officer.  
15          Id. at 3-23. The OIG found a "pervasive lack of timely follow  
16          through," including that CDCR "ignored" many allegations, failed  
17          to investigate dozens of allegations, and failed to refer  
18          pertinent information to the Office of Internal Affairs when  
19          appropriate. Id. at 1. This constitutes a violation of the  
20          Court's prior orders.

21           D. Defendants do not timely provide to Plaintiffs' counsel  
22           information about investigations of alleged violations  
            of the ARP and ADA

23           In 2012, the Court ordered Defendants to provide Plaintiffs'  
24           counsel with access to the results of investigations of alleged  
25           violations of the ARP or the Court's orders, including all  
26           sources of information relied on to substantiate or refute the  
27           allegations. Order at 18, Docket No. 2180.

28

1 Plaintiffs have shown, and Defendants do not dispute, that  
2 Defendants have failed to provide, or have delayed in providing,  
3 them with information regarding the status or results of  
4 investigations of alleged violations of the ARP.

5 For example, on September 25, 2020, Defendants agreed to  
6 provide in a spreadsheet information about investigations,  
7 findings of misconduct, and discipline imposed in connection with  
8 168 alleged incidents of staff misconduct against disabled  
9 inmates at LAC, COR, KVSP, and CCI that were described in inmate  
10 declarations. Grunfeld Decl. ¶ 4, Docket No. 3169-4. On  
11 November 13, 2020, Defendants produced information with respect  
12 to only ninety-eight of the 198 allegations of misconduct and did  
13 not provide information as to seventy of the allegations. Id. at  
14 7. Defendants did not provide a date by which they would produce  
15 the requested information for the seventy incidents. See Ex. 1,  
16 4 to Grunfeld Sur-Reply Decl., Docket No. 3169-4. Notably, of  
17 the ninety-eight allegations for which Defendants provided  
18 information, Defendants' responses show that that they failed to  
19 investigate seven of the allegations (or seven percent).

20 As another example, Defendants agreed to provide information  
21 about investigations, findings of misconduct, and discipline  
22 imposed in connection with each distinct allegation of misconduct  
23 contained in Plaintiffs' tour reports from 2018 to 2020 for LAC,  
24 COR, KVSP, and CCI. Id. ¶ 5. Defendants did not provide any  
25 information for forty-four of the fifty-three allegations, or a  
26 date by which they would do so. See Ex. 2 to Grunfeld Sur-Reply  
27 Decl., Docket No. 3169-4.

28

1           These failures by Defendants violate the Court's prior  
2 orders.

3           E.     Defendants' tracking systems do not enable them to  
4                 identify staff who repeatedly violate the ARP or other  
5                 information critical to monitoring their compliance

6           In 2007, the Court required Defendants to "refer individuals  
7 with repeated instances of non-compliance to the Office of  
8 Internal Affairs for investigation and discipline, if  
9 appropriate." Order at 7, Docket No. 1045. To facilitate this  
10 process, the Court ordered Defendants in 2012 to track  
11 allegations of violations of the ARP and the Court's orders,  
12 including "the number of prior allegations of non-compliance  
13 against the involved employees or employees." Order at 16-17,  
14 Docket No. 2180.

15           In its report of February 16, 2021, the OIG stated that,  
16 "[d]espite having numerous information systems that contain data  
17 related to the staff misconduct process, [CDCR] lacks the ability  
18 to produce reports that are capable of identifying the names of  
19 all staff accused of misconduct or the names of all staff who  
20 were found to have violated policy as well as several other types  
21 of critical information." Docket No. 3205 at 1.

22           Defendants' tracking systems are, therefore, in violation of  
23 the Court's prior orders.

24           IV.   Defendants' failure to comply with their accountability  
25 obligations is resulting in ongoing violations of disabled  
26 inmates' rights under the ARP and ADA

27           As discussed in the preceding sections, Plaintiffs have  
28 shown that Defendants have violated the ARP and ADA by failing to  
provide reasonable accommodations to, or by interfering with the  
ADA rights of, qualified inmates with disabilities at LAC, COR,

1 SATF, CIW, and KVSP. Plaintiffs have also shown that Defendants  
2 have violated their accountability obligations by failing to  
3 track alleged violations of the ARP and ADA; failing to promptly  
4 and properly investigate alleged violations of the ARP and ADA;  
5 failing to provide Plaintiffs' counsel with information about the  
6 status and results of their investigations; and failing to  
7 implement an effective system for holding wardens and other staff  
8 accountable for non-compliance with the ARP and ADA.

9 Plaintiffs' expert, Eldon Vail, opines that CDCR's  
10 ineffective system for holding staff accountable for misconduct  
11 leads to and perpetuates a staff culture in which staff target  
12 inmates with disabilities for abuse, mistreatment, retaliation.  
13 See, e.g., Vail Decl. ¶ 9, Docket No. 3106-7. Vail opines that,  
14 if inmates and staff know that nothing will happen to staff who  
15 abuse inmates, then incarcerated people become reluctant to  
16 report misconduct and staff become less likely to stop the  
17 pattern of abuse. Id.

18 The Court finds Vail's opinions to be credible and  
19 consistent with other evidence in the record. They are  
20 consistent with the OIG's finding that "an inadequately  
21 functioning staff complaint process that lacks independence  
22 fosters distrust among inmates[.]" Grunfeld Decl., Ex. GG at 2,  
23 Docket No. 2922-1. Further, as noted above, many declarants  
24 describe a staff culture at LAC, COR, SATF, CIW, and KVSP of  
25 staff targeting inmates with disabilities and other vulnerable  
26 inmates for mistreatment, abuse, retaliation, and other improper  
27 behavior that, among other things, violates the ARP and ADA.  
28 See, e.g., Grunfeld Reply Decl., Ex. 8 ¶¶ 34-35, Docket No. 3108-

1 1; Freedman Decl., Ex. 29 ¶ 36; Freedman Decl., Ex. 33 ¶ 29,  
2 Docket No. 2947-5; Grunfeld Reply Decl., Ex. 70 ¶ 45, Docket No.  
3 3109-1; Grunfeld Reply Decl., Ex. 43 ¶ 13, Docket No. 3108-1;  
4 Grunfeld Decl., Ex. 41 ¶ 20, Docket No. 3108-1; Freedman Decl.,  
5 Ex. 61 ¶¶ 33-36, Docket No. 2947-5; Freedman Decl., Ex. 35 ¶ 21,  
6 Docket No. 2947-5. The descriptions of the staff culture in  
7 these declarations are remarkably consistent even though the  
8 declarants reside at different prisons and in different locations  
9 within each prison. The Court finds that this lends credibility  
10 to the declarations and to Vail's opinions.

11 The data produced by Defendants also support the notion that  
12 a staff culture exists in which staff target disabled inmates for  
13 abuse. The data show that, despite the dozens of allegations of  
14 abuse by inmates, only a relatively small number of the incidents  
15 have resulted in discipline, and that out of the incidents that  
16 have resulted in discipline, disabled inmates are  
17 overrepresented. For example, from 2017 to 2020, despite the  
18 dozens of allegations of abuse at LAC, there were six staff  
19 misconduct incidents at LAC involving incarcerated people that  
20 resulted in discipline, and three of the six incidents (or fifty  
21 percent) involved misconduct directed at an Armstrong or Coleman  
22 class member.<sup>26</sup> Grunfeld Decl. ¶ 14, Docket No. 3169-4. At COR,

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23  
24 <sup>26</sup> These figures are based on data that Defendants produced  
25 to Plaintiffs in their interrogatory responses. The criteria  
26 that Plaintiffs used to calculate these figures is described in  
27 detail in the declaration of Gay Grunfeld. Defendants object to  
28 the Court's consideration of the figures on the grounds that the  
criteria used to generate the figures is "nebulous" and that  
Plaintiffs' counsel lack expertise in data analysis. The Court  
overrules this objection because Defendants do not dispute that  
the underlying data came from their interrogatory responses.

1 from 2017 to 2020, there were eighteen staff misconduct incidents  
 2 involving incarcerated people that resulted in discipline, and  
 3 all of them (one hundred percent) involved misconduct directed at  
 4 an Armstrong or Coleman class member. Id. ¶ 15. At KVSP, from  
 5 2017 to 2020, there were twenty-four staff misconduct incidents  
 6 involving incarcerated people that resulted in discipline, and  
 7 sixteen of them (or sixty-six percent) involved misconduct  
 8 directed at an Armstrong or Coleman class member. Id. ¶ 17.

9 Defendants' experts, Cate, Baldwin, and Warner, opine that  
 10 "disabled inmates" are not being targeted by prison staff for  
 11 conduct that is violative of the ARP and ADA because of their  
 12 disabilities. Cate Decl. ¶ 11, Docket No. 3083-5. The Court is  
 13 not persuaded by these experts' opinions on this issue for the  
 14 following reasons. First, the experts' definition of "disabled  
 15 inmate" is under-inclusive, as it excludes inmates such as  
 16 Coleman class members who have been designated as EOP by virtue  
 17 of the severity of their mental impairments. As a result of this  
 18 definitional limitation, these experts appear to have excluded  
 19 from their analysis the experiences of inmates who suffer from  
 20 mental impairments that are covered under the ARP. Second, the  
 21 experts do not explain how their opinions can be reconciled with  
 22 the data discussed in more detail above, which shows that  
 23  
 24

25 \_\_\_\_\_  
 26 Further, the calculations from which the figures were derived do  
 27 not require any expertise; the calculations involve parsing data  
 28 from Defendants' interrogatory responses and performing basic  
 arithmetic, as described in detail in the Grunfeld Declaration.  
 Finally, Defendants have not shown that the figures in question  
 are inaccurate or are inconsistent with the data contained in  
 their interrogatory responses.

1 disabled inmates are overrepresented in incidents of staff  
2 misconduct that resulted in discipline.

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

5 For the reasons discussed in the preceding section, the  
6 policies, procedures, and monitoring mechanisms currently in  
7 place, despite recent modifications made by Defendants (including  
8 the implementation of AIMS), have proven to be ineffective at  
9 bringing Defendants into compliance with the ARP and ADA.  
10 Accordingly, the Court finds that the implementation of  
11 additional remedial measures at LAC, COR, SATF, CIW, and KVSP is  
12 necessary to improve the effectiveness of the system for  
13 investigating and disciplining violations of the ARP and ADA and  
14 to end the ongoing violations of the ARP and ADA.

15 Defendants contend that further remedial measures are  
16 premature at this juncture because investigations of some  
17 disabled inmates' allegations have not yet been completed. The  
18 Court is not convinced that the pendency of the investigations  
19 warrants a delay in implementing additional remedial measures.  
20 Defendants have provided no timeline for when the Court could  
21 expect the investigations to be completed; based on the record,  
22 it seems reasonable to expect that investigations could take many  
23 months, if not years. As discussed above, the OIG, in reviewing  
24 CDCR's response to disabled inmates' allegations of staff  
25 misconduct, noted that CDCR's investigations of such allegations  
26 had been inordinately delayed or abandoned. The Court is  
27 reluctant to allow further violations of disabled inmates' rights  
28

1 under the ARP and ADA to occur while the investigations are  
2 pending.

3 Defendants' expert, Matthew Cate, opines that no additional  
4 remedial measures are necessary because "disabled inmates can  
5 request accommodations in a variety of ways" and "[e]ven if class  
6 members were afraid to request accommodations from officers due  
7 to officer wrongdoing, they still have all of the other ways  
8 . . . to request accommodations that do not involve the  
9 officers." Cate Decl. ¶ 94, Docket No. 3083-5. The Court is not  
10 persuaded by this argument, because it misses the point.

11 Plaintiffs have shown that the ongoing violations of the ARP and  
12 ADA are the consequence of the ineffectiveness of the system for  
13 investigating and disciplining violations of the ARP and ADA and  
14 the resulting staff culture of targeting inmates with  
15 disabilities. Defendants have presented no evidence to show that  
16 the ongoing violations are the result of a lack of access to  
17 methods for requesting accommodations. Accordingly, the Court  
18 cannot conclude that providing additional methods to disabled  
19 inmates for requesting accommodations, as Defendants propose,  
20 would end the ongoing violations of the ARP and ADA.

21 Plaintiffs request that the Court require Defendants to  
22 develop a plan within thirty days to implement the additional  
23 remedial measures described in more detail below. The plan would  
24 be implemented within forty-five days after the parties meet and  
25 confer. See Proposed Order at 17-21, Docket No. 2948-6.

26 The Court finds that requiring Defendants to design, and  
27 ultimately implement, a plan that requires them to adopt a  
28 combination of certain of the remedial measures that Plaintiffs

1 propose, with modifications, as discussed below, is necessary to  
2 prevent further violations of the ARP and disabled inmates' ADA  
3 rights. These additional remedial measures are intended and  
4 tailored to improve policies and procedures for supervising  
5 staff's interactions with inmates, investigating staff  
6 misconduct, and disciplining staff by enhancing the process for  
7 gathering and reviewing evidence that can be used to hold staff  
8 accountable for any violations of the ARP and disabled inmates'  
9 ADA rights. These additional measures, when considered as a  
10 whole, constitute an incremental expansion of processes and  
11 systems that are already in place pursuant to the Court's prior  
12 orders and injunctions.

13 1. Surveillance cameras

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

26 Both sides and their experts agree that the installation of  
27 additional surveillance cameras would help reduce misconduct and  
28 would facilitate the investigation of any misconduct that does

1 occur. See, e.g., Cate Decl. ¶ 97, Docket No. 3083-5.

2 (“[I]nstalling cameras would be beneficial to every institution  
3 in the CDCR system. It would serve to deter misconduct on the  
4 part of inmates and officers alike. It would also make it easier  
5 to investigate misconduct should it occur.”).

6 Defendants nevertheless oppose Plaintiffs’ request to require  
7 them to install surveillance cameras based on the following  
8 grounds: (1) certain facilities already have camera coverage, and  
9 Defendants are moving forward to procure and deploy cameras at  
10 RJD and at two facilities in LAC; (2) the installation of cameras  
11 is not necessary to correct the violations of the ARP and ADA  
12 shown; and (3) even if additional fixed cameras were necessary,  
13 they should not be installed anywhere other than yards that house  
14 the most vulnerable inmates.

15 The Court is not persuaded. Defendants’ arguments fail to  
16 acknowledge that violations of disabled inmates’ rights under the  
17 ARP and ADA are likely to continue to take place throughout LAC,  
18 COR, SATF, CIW, and KVSP in the absence of surveillance cameras,  
19 and that this is unacceptable. In light of Defendants’ failure  
20 to comply with the ADA and ARP after the Court ordered them to  
21 implement lesser measures, the Court finds that the installation  
22 of surveillance cameras at LAC, COR, SATF, CIW, and KVSP is  
23 necessary and that it must be done as soon as possible. Further,  
24 Defendants already have a contract in place with a vendor for the  
25 installation of surveillance cameras at CDCR institutions through  
26 June 2023. Diaz Decl. ¶ 42; Macomber Decl. ¶ 12. This existing  
27 contract should facilitate the installation and deployment  
28 process.

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

8 2. Body cameras

9 Plaintiffs request that CDCR purchase and begin using body-  
10 worn cameras for all correctional officers at the prisons at  
11 issue within sixty days.

12 Defendants oppose the request on the ground that their  
13 expert, Matthew Cate, opines that (1) body cameras are not  
14 necessary to redress the ARP and ADA violations shown; (2) they  
15 are expensive; and (3) fixed cameras are superior to body  
16 cameras. Br. at 18-19, Docket No. 3082-0; Cate Decl. ¶ 99,  
17 Docket No. 3083-5.

18 The Court finds that body cameras are likely to improve  
19 investigations of misconduct by staff and to reduce the incidence  
20 of violations of disabled inmates' rights under the ARP and ADA.  
21 They are, therefore, necessary and should be deployed at LAC,  
22 COR, SATF, CIW, and KVSP as soon as possible. The Court finds  
23 the opinions of Plaintiffs' expert, which Defendants have not  
24 meaningfully rebutted, to be persuasive. Eldon Vail opines,  
25 based on research and studies on the topic, that the use of body  
26 cameras in correctional facilities has resulted in "increased  
27 officer and inmate safety, fewer uses of force," and improved  
28 investigations of internal misconduct by officers, particularly

1 when used in conjunction with surveillance cameras. Vail Decl.  
2 ¶¶ 64-66, Docket No. 3023-9. He further opines that issues about  
3 when cameras should be turned on or off, and privacy concerns,  
4 can be addressed through policymaking and training. Id. ¶¶ 67-  
5 68.

6 Defendants' expert, Matthew Cate, does not provide any basis  
7 for his opinion that the cost of body cameras would be  
8 "prohibitive." Cate Decl. ¶ 99. Accordingly, the Court gives  
9 this opinion no weight. Defendants also have not shown that  
10 procuring the body-worn cameras in the time frame that Plaintiffs  
11 have proposed would not be feasible.

12 In light of the foregoing, the Court finds that it would be  
13 appropriate to require Defendants to procure and deploy body-worn  
14 cameras at LAC, COR, SATF, CIW, and KVSP in the time frame that  
15 Plaintiffs have proposed.

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

18 Plaintiffs request that Defendants be required to develop a  
19 plan to reform the staff misconduct complaint, investigation, and  
20 discipline process to ensure (1) that CDCR completes unbiased,  
21 comprehensive investigations into all allegations of staff  
22 misconduct in which the victim was a disabled inmate; (2) that  
23 CDCR imposes appropriate and consistent discipline against  
24 employees who engage in misconduct against disabled inmates; and  
25 (3) that employees who engage in criminal misconduct against  
26 disabled inmates are appropriately investigated and, if  
27 warranted, referred for prosecution or reassigned. Plaintiffs  
28 also request that CDCR headquarters be required to exercise

1 oversight over all staff misconduct complaints, use of force  
2 reviews, and related staff disciplinary proceedings at the  
3 prisons at issue in which an employee is accused of engaging in  
4 misconduct against an incarcerated person, and to conduct  
5 quarterly interviews of randomly-selected incarcerated people at  
6 the prisons at issue using the methodology and interview  
7 questionnaire utilized by the December 2018 investigators who  
8 interviewed inmates at RJD for the Bishop Report.

9 Defendants oppose these requests, arguing that CDCR already  
10 has existing processes, policies, and oversight systems in place  
11 to investigate misconduct and discipline employees who commit it,  
12 which they contend, based on the opinions of their expert,  
13 Matthew Cate, are effective mechanisms. Cate Decl. ¶¶ 79-96, 98.

14 As discussed above, the Court gives little weight to Cate's  
15 opinions that the current systems for investigating and  
16 disciplining violations of the ARP and ADA are effective, because  
17 such opinions do not take into account the OIG's findings that  
18 the statewide system (with AIMS included) is prone to generating  
19 unreliable investigation results with respect to staff misconduct  
20 allegations because of the reviewers' lack of independence and  
21 the poor quality of the investigations.

22 The Court has found that it is necessary to stop ongoing  
23 violations of the ARP and disabled inmates' ADA rights at LAC,  
24 COR, SATF, CIW, and KVSP, and that the current policies and  
25 procedures are incapable of achieving that. Accordingly, the  
26 Court finds that requiring Defendants to craft a plan to modify  
27 the current policies, procedures, and oversight of staff  
28

1 complaints to achieve compliance with the ARP and ADA at LAC,  
2 COR, SATF, CIW, and KVSP is necessary and appropriate.

3 4. Third-party monitoring

4 Plaintiffs request that the additional remedial measures  
5 include the appointment of an expert pursuant to Federal Rule of  
6 Evidence 706 to monitor Defendants' implementation of their plan  
7 to reform the staff misconduct complaint, investigation, and  
8 discipline policies and procedures, and that the expert have  
9 access to documents necessary to conduct its monitoring.

10 Defendants oppose this request because their expert, Matthew  
11 Cate, opines that the OIG already has oversight of staff  
12 misconduct investigations and that the modification of the  
13 current system is unnecessary and would be burdensome. Cate  
14 Decl. ¶¶ 104-05.

15 The Court is not persuaded by Cate's opinions. As discussed  
16 above, the current system, although subject to OIG oversight, has  
17 been ineffective in ending the ongoing violations of the ARP and  
18 ADA at LAC, COR, SATF, CIW, and KVSP, and for that reason,  
19 modifying it with the goal of improving its effectiveness is  
20 necessary. Accordingly, the Court finds that the appointment of  
21 an expert is necessary and appropriate.

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

24 Plaintiffs request that Defendants share with Plaintiffs'  
25 counsel and the Court's expert all documents related to staff  
26 misconduct complaints at the prisons at issue in which the  
27 alleged victim is a disabled inmate, as well as monthly written  
28

1 updates regarding the implementation of any additional remedial  
2 measures.

3 Defendants have not raised an objection in their briefs to  
4 this request. In the absence of a showing to the contrary, the  
5 Court finds that requiring the sharing of documents as described  
6 above is necessary for the effective monitoring of Defendants'  
7 implementation of the additional remedial measures at LAC, COR,  
8 SATF, CIW, and KVSP and is appropriate.

9 6. Supervisory staffing

10 Plaintiffs request that CDCR significantly increase  
11 supervisory staff on all watches on all yards at the prisons at  
12 issue and create non-uniformed supervisory positions in each  
13 housing unit.

14 Defendants oppose this request on the grounds that (1) it is  
15 unnecessary, as some housing units do not house disabled inmates,  
16 and (2) existing staff could provide additional supervision in  
17 areas where disabled inmates are housed.

18 The current level of staffing has not been effective at  
19 stopping the ongoing violations of the ARP and ADA at LAC, COR,  
20 SATF, CIW, and KVSP. Accordingly, the Court finds that requiring  
21 CDCR to increase managerial presence at LAC, COR, SATF, CIW, and  
22 KVSP in the form of additional sergeants is necessary.

23 The Court declines at this time to require CDCR to create  
24 non-uniformed supervisory positions at LAC, COR, SATF, CIW, and  
25 KVSP. The parties' experts disagree about the effectiveness of  
26 such non-uniformed positions, and the Court finds that there is  
27 insufficient evidence in the record outside of the experts'  
28

1 conflicting declarations to make a determination as to whether  
2 non-uniformed supervisory positions are needed.

3 7. Training

4 Plaintiffs request that CDCR develop and implement human  
5 rights, de-escalation, and cultural training for all custody,  
6 mental health, and medical staff at the prisons at issue to  
7 include discussion of reporting requirements, whistleblowing,  
8 non-retaliation, and treatment of incarcerated people as  
9 patients.

10 Defendants object to requiring them to provide staff with  
11 additional training beyond what they already provide on the  
12 ground that doing so would be unnecessary and intrusive.

13 In light of the evidence discussed above showing that the  
14 measures that CDCR has implemented to date, including the  
15 training that CDCR current provides to its staff, have proven to  
16 be ineffective at stopping violations of the ARP and disabled  
17 inmates' ADA rights, the Court finds that it is necessary to  
18 require Defendants to develop additional training programs for  
19 staff and supervisors at LAC, COR, SATF, CIW, and KVSP that are  
20 tailored to achieving staff compliance with the ARP and ADA.

21 8. Data collection and early-warning system

22 Plaintiffs request that CDCR develop an electronic system  
23 for tracking all incidents at the prisons at issue by date, time,  
24 location, staff involved, and incarcerated people involved, that  
25 includes information about whether inmates are disabled, any  
26 injuries they suffered, and related medical records.

27 Defendants oppose this request, on the grounds that their  
28 current systems are capable of serving as an early-warning

1 system. During the hearing on December 8, 2020, the Court asked  
2 Defendants to identify and describe the current processes that  
3 could be used as an early-warning system, and Defendants failed  
4 to do so. Tr. at 35-36, Docket No. 3184. Further, as discussed  
5 above, the OIG has found, and Defendants do not dispute, that  
6 Defendants' tracking systems are deficient and incapable of  
7 generating reports that could help Defendants identify critical  
8 information necessary to track past staff misconduct incidents  
9 and prevent future ones. See OIG Report at 1, Docket No. 3205.

10 Accordingly, the Court finds that requiring Defendants to  
11 develop the electronic tracking system that Plaintiffs propose is  
12 necessary.

13 9. Pepper spray

14 Plaintiffs request a policy requiring that all pepper spray  
15 canisters at the prisons at issue be weighed before and after  
16 use.

17 Defendants oppose this request because their expert opines  
18 that it would be unnecessarily burdensome and would not help  
19 Defendants determine whether pepper spray was overused, as  
20 cannisters are not reused and the amount of pepper spray required  
21 varies depending on the weather and the distance from the target.  
22 See Cate Decl. ¶¶ 31-32.

23 The Court is persuaded by Defendants' argument that the  
24 weighing of pepper spray cans would not be conducive to reducing  
25 its overuse. However, in light of the evidence discussed above,  
26 which shows that pepper spray was used against disabled inmates  
27 where there was no evidence that the inmates posed an imminent  
28 threat to staff or other inmates, or that the use of pepper spray

1 served a legitimate penological interest, the Court finds that it  
2 is necessary to require CDCR to craft a plan to modify its  
3 policies to more effectively monitor and control the use of  
4 pepper spray by staff with respect to disabled inmates at LAC,  
5 COR, SATF, CIW, and KVSP.

6 10. Anti-retaliation

7 Plaintiffs request that CDCR be required to put an end to  
8 retaliation against disabled inmates at the prisons at issue who  
9 report staff misconduct and to ensure complainants' safety.

10 Defendants did not object to this request in their briefs.

11 The Court finds that requiring CDCR to take steps to stop  
12 retaliation in violation of the ADA at LAC, COR, SATF, CIW, and  
13 KVSP is necessary.

14 LEGAL STANDARD

15 "It is well established that the district court has the  
16 inherent authority to enforce compliance with a consent decree  
17 that it has entered in an order, to hold parties in contempt for  
18 violating the terms therein, and to modify a decree." Nehmer v.  
19 U.S. Dep't of Veterans Affairs, 494 F.3d 846, 860 (9th Cir.  
20 2007); Frew ex rel. Frew v. Hawkins, 540 U.S. 431, 441 (2004)  
21 ("Federal courts are not reduced to approving consent decrees and  
22 hoping for compliance. Once entered, a consent decree may be  
23 enforced."). Further, a district court has "wide discretion" to  
24 modify its own injunctions "if the circumstances, whether of law  
25 or fact, obtaining at the time of its issuance have changed, or  
26 new ones have since arisen." Sys. Fed'n No. 91, Ry. Emp. Dep't,  
27 AFL-CIO v. Wright, 364 U.S. 642, 647 (1961); see also United  
28 States v. Swift & Co., 286 U.S. 206, 114 (1932) ("A continuing

1 decree of injunction directed to events to come is subject always  
2 to adaptation as events may shape the need”).

3 The interpretation of a consent decree is for the court, and  
4 not the parties subject to the decree. Nehmer, 494 F.3d at 860  
5 (“Although a party may ask the district court to issue an order  
6 clarifying, enforcing, or modifying a decree and suggest a  
7 favored interpretation, a party—whether a private or public  
8 entity—cannot dictate the meaning of the decree to the court or  
9 relieve itself of its obligations under the decree without the  
10 district court’s approval.”). The court’s discretion in  
11 interpreting a consent decree is particularly wide where the  
12 court has been overseeing a remedial decree for many years. Id.;  
13 Armstrong v. Schwarzenegger, 622 F.3d at 1073 (holding that a  
14 court that has been “overseeing complex institutional reform  
15 litigation for a long period of time” is entitled to “heightened  
16 deference”).

17 Any prospective injunctive relief granted or approved by the  
18 Court affecting prison conditions must comply with the Prison  
19 Litigation Reform Act (PLRA). 18 U.S.C. § 3626(a)(1)(A)  
20 (providing that courts “shall not grant or approve any  
21 prospective relief [with respect to prison conditions] unless the  
22 court finds that such relief is narrowly drawn, extends no  
23 further than necessary to correct the violation of the Federal  
24 right, and is the least intrusive means necessary to correct the  
25 violation of the Federal right”).

CONCLUSIONS OF LAW

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

A. Coleman class members designated as EOP are qualified inmates with a disability under the ARP and ADA

Section I of the ARP requires Defendants to comply with the ADA's anti-discrimination and access provisions, 42 U.S.C. § 12132<sup>27</sup>, with respect to any "qualified inmate or parolee with a disability as defined in Title 42 of the United States Code, Section 12102[.]" As discussed above, Section II.A of the ARP defines a "qualified inmate or parolee" as "one with a permanent physical or mental impairment which substantially limits the inmate/parolee's ability to perform a major life activity," ARP at 1, Docket No. 681, and Section II.B. of the ARP defines a "permanent disability or impairment" as one that is not expected to improve within six months, id. at 2. The ARP does not define or limit the conditions that may constitute a covered "mental impairment." Accordingly, the Court interprets the term "mental impairment" based on the ADA's provisions, which are incorporated by reference into the ARP.

Under the ADA, a disability is a "physical or mental impairment that substantially limits one or more major life activities of such individual[.]" 42 U.S.C § 12012(1)(A). The ADA provides that the term disability "shall be construed in

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<sup>27</sup> The language in Section 1 of the ARP mirrors the language of Title II of the ADA, 42 U.S.C. § 12132, which provides, "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

1 favor of broad coverage of individuals[.]” 42 U.S.C §  
2 12012(4)(A).

3 The mental disorders from which EOP Coleman class members  
4 suffer include depression, anxiety and panic attacks, bipolar  
5 disorder, and post-traumatic stress disorder. As discussed in  
6 more detail in the Findings of Fact, above, these disorders cause  
7 EOP Coleman class members to suffer from acute symptoms that  
8 prevent them from functioning in the general prison population  
9 and to require special extensive mental-health treatment. See  
10 CDCR Mental Health Services Delivery System Program Guide, 2018  
11 Revision, at 7-8, Docket No. 5864-1, Coleman v. Newsom, Case No.  
12 90-cv-00520 (E.D. Cal.); see also Order at 5, Docket No. 5131,  
13 Coleman v. Newsom, Case No. 90-cv-00520 (E.D. Cal.) (noting that  
14 Coleman class members designated as EOP suffer from serious  
15 mental disorders that render them “unable to function in the  
16 general prison population”). As such, the mental disorders from  
17 which EOP Coleman class members suffer substantially limit one or  
18 more of their major life activities and, therefore, fall within  
19 the scope of “disability” under the ADA. See, e.g., Snead v.  
20 Metro. Prop. & Cas. Ins. Co., 237 F.3d 1080, 1088 (9th Cir. 2001)  
21 (noting that “stress and depression can be considered mental  
22 impairments” under the ADA); Mustafa v. Clark County Sch. Dist.,  
23 157 F.3d 1169, 1174-75 (9th Cir. 1998) (per curiam) (holding that  
24 plaintiff could be substantially limited in a major life activity  
25 because he suffered from depression, post-traumatic stress  
26 disorder, and panic attacks); Mattice v. Mem’l Hosp. of S. Bend,  
27 Inc., 249 F.3d 682, 684 (7th Cir. 2001) (holding that plaintiff  
28 stated a claim under the ADA based on allegations that major life

1 activities were significantly impaired by "the existence of and  
2 care and treatment for panic disorder, severe depression and  
3 suicidal ideation"). That some Coleman class members designated  
4 as EOP suffer from symptoms that are episodic does not preclude a  
5 finding that they suffer from a disability within the meaning of  
6 the ADA. See 42 U.S.C § 12012(4)(D) ("An impairment that is  
7 episodic or in remission is a disability if it would  
8 substantially limit a major life activity when active.").

9 Accordingly, Coleman class members who are designated as EOP  
10 are qualified inmates with disabilities under the ARP and ADA.

11 B. Staff denied qualified inmates with disabilities  
12 reasonable accommodations

13 As discussed above, the Court retained jurisdiction to  
14 enforce Defendants' compliance with the ARP. Remedial Order and  
15 Injunction at 5, Docket No. 158. Section I of the ARP requires  
16 Defendants to comply with the ADA's anti-discrimination and  
17 access provisions, 42 U.S.C. § 12132.

18 To prove that a public program or service violated § 12132,  
19 a plaintiff must show: (1) that he or she is a "qualified  
20 individual with a disability"; (2) that he or she was either  
21 excluded from participation in or denied the benefits of a public  
22 entity's services, programs, or activities, or was otherwise  
23 discriminated against by the public entity; and (3) that such  
24 exclusion, denial of benefits, or discrimination was by reason of  
25 the disability. Duvall v. Cty. of Kitsap, 260 F.3d 1124, 1135  
26 (9th Cir. 2001), as amended on denial of reh'g (Oct. 11, 2001).

27 The Ninth Circuit has held that the second element of this  
28 test can be satisfied where a law enforcement officer could have

1 used less force or no force during the performance of his law-  
2 enforcement duties with respect to a disabled person. See  
3 Sheehan v. City & Cty. of San Francisco, 743 F.3d 1211, 1232-33  
4 (9th Cir. 2014), rev'd on other grounds sub nom., City & Cty. of  
5 San Francisco, Calif. v. Sheehan, 575 U.S. 600 (2015) (holding  
6 that a failure to reasonably accommodate a person's disability in  
7 the course of an investigation or arrest by using unnecessary  
8 force, causing the person to suffer "greater injury or indignity  
9 in that process than other arrestees," gives rise to a claim  
10 under § 12132, and that a reasonable jury could conclude that a  
11 police officer's failure to use less force or no force during an  
12 arrest of a person with mental illness could constitute a failure  
13 to provide a reasonable accommodation in violation of § 12132);  
14 Vos v. City of Newport Beach, 892 F.3d 1024, 1037 (9th Cir.  
15 2018), cert. denied sub nom. City of Newport Beach, Cal. v. Vos,  
16 139 S. Ct. 2613 (2019) (same). When applied in the prison  
17 context, it follows that the second element of a § 12132 claim  
18 can be satisfied where a correctional officer could have used  
19 less force or no force during the performance of his or her  
20 penological duties with respect to a disabled person.<sup>28</sup>

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21  
22 <sup>28</sup> The OIG's interpretation of CDCR's use-of-force policy is  
23 consistent with the notion that correctional officers have an  
24 obligation under the ADA to reasonably accommodate an inmate's  
25 disabilities when considering the use of force in the performance  
26 of their penological duties. See OIG Report, Monitoring the Use-  
27 of-Force Review Process of the California Department of  
28 Corrections and Rehabilitation (July 13, 2020) at 5, Grunfeld  
Decl., Ex. VV ("According to departmental policy, when  
determining the best course of action to resolve a particular  
situation, staff must evaluate the totality of the circumstances,  
including an inmate's demeanor, mental health status and medical  
concerns (if known), and the inmate's ability to understand and

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

4 Here, the first element is met with respect to members of  
5 the Armstrong class and members of the Coleman class who are  
6 designated as EOP, as these inmates are qualified individuals  
7 with a disability within the meaning of the ARP and ADA by virtue  
8 of having a physical or mental impairment that substantially  
9 limits their ability to perform a major life activity and that is  
10 not expected to improve within six months. At issue is whether  
11 Plaintiffs have shown, as required by the second and third  
12 elements of a claim under § 12132, that staff denied disabled  
13 inmates the benefits of their prison's services, programs, or  
14 activities, or otherwise discriminated against them, by reason of  
15 their disabilities.

16 As discussed in more detail in the Findings of Fact, the  
17 Court has found that staff failed on numerous occasions to  
18 reasonably accommodate the disabilities of disabled inmates. For  
19 example, staff refused disabled inmates' requests for alternative  
20 methods for communication (in the case of deaf inmates); for ADA  
21 showers (for inmates with incontinence problems); for  
22 accommodations in light of manifestations or symptoms of a severe  
23 mental disorder (for Coleman class members designated as EOP);  
24 and for adequate transportation methods (for mobility-impaired

25  
26  
27 \_\_\_\_\_  
28 comply with orders. Policy further states that staff should  
attempt to verbally persuade, whenever possible, to mitigate the  
need for force.").

1 inmates). Accordingly, the second element is met as to these  
2 incidents.

3 The Court also has found that staff failed to provide  
4 reasonable accommodations for disabled inmates' disabilities when  
5 staff failed to use less force or no force when performing their  
6 penological duties, such as throwing disabled inmates out of  
7 wheelchairs, punching them, kicking them, or using pepper spray  
8 where the undisputed evidence shows that the disabled inmates  
9 posed no threat to staff that would warrant the use of such  
10 force. The second element also is met as to these incidents.

11 As to the third element, whether these failures to provide  
12 reasonable accommodations were due to the disabled inmates'  
13 disabilities, the Court found that this element is met based on  
14 the totality of the evidence. Inmates state in their  
15 declarations that they believe, based on their own experiences  
16 and observations, that staff target inmates with disabilities and  
17 other vulnerable inmates for mistreatment. These beliefs are  
18 consistent with the other evidence discussed in more detail  
19 above, including the opinions of Plaintiffs' experts. Defendants  
20 have not proffered any evidence from which the Court could infer  
21 an alternative cause for the incidents in question, such as a  
22 legitimate penological interest or the lack of a reasonable  
23 accommodation that staff could have provided to disabled inmates.

24 Accordingly, the Court finds that Defendants have violated  
25 Section I of the ARP and the Court's prior orders by violating  
26 § 12132.

27

28

1 C. Staff interfered with the ADA rights of qualified  
2 inmates with disabilities

3 Plaintiffs contend that staff have interfered with disabled  
4 inmates' exercise of their rights under the ARP and ADA in  
5 violation of the ADA's anti-interference provision, 42 U.S.C.  
6 § 12203(b), which provides:

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

15 Section 12203(b) was not expressly incorporated into the  
16 ARP. Nevertheless, the Court concludes that Defendants are  
17 required to comply with § 12203(b), which is a part of the ADA.  
18 The stipulated order that the Court entered at the outset of the  
19 remedial phase of this litigation makes clear that "the intent"  
20 of the parties was "to require defendants to operate programs,  
21 activities, services and facilities of the California Department  
22 of Corrections in accordance with the Americans with Disabilities  
23 Act and § 504 of the Rehabilitation Act of 1973[.]" Stipulation  
24 and Order ¶ 12, Docket No. 148. The purpose of the ARP was to  
25 set forth specific actions that Defendants would take to bring  
26 their programs, activities, services, and facilities into  
27 compliance with the ADA and the RA. One such action was to set  
28 up a system to facilitate disabled inmates' requests for  
reasonable accommodations and ADA-related grievances. When staff  
frustrate the effectiveness of that system by threatening,  
coercing, or intimidating disabled inmates into foregoing their  
rights to request reasonable accommodations or file ADA-related

1 grievances, that constitutes a violation of the ARP and the  
2 Court's prior orders and injunctions regarding the same.

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

17 As discussed in more detail in the Findings of Fact, the  
18 Court has found that staff members have interfered with certain  
19 disabled inmates' enjoyment of their rights under the ADA and ARP  
20 in violation of § 12203(b) by intimidating, threatening, or  
21 coercing them into abstaining from making requests for reasonable  
22 accommodations or filing ADA grievances. As a result of the  
23 intimidation, threats, and coercion, these disabled inmates  
24 suffered injury in the form of giving up their rights to make  
25 requests for reasonable accommodations or to file ADA grievances,  
26 or in the form of severe emotional distress. See Brown, 336 F.3d  
27 at 1193 (holding that the plaintiff alleged an injury within the  
28 meaning of § 12203(b) by alleging that she "suffered short-term

1 memory problems and felt extremely stressed, harassed, and  
2 pressured" by her employer's threats).

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

6 D. Defendants failed to comply with their Court-ordered  
7 accountability obligations

8 As discussed above, Plaintiffs have also shown that  
9 Defendants have violated their Court-ordered accountability  
10 obligations by failing to track alleged violations of the ARP and  
11 ADA; failing to promptly and properly investigate alleged  
12 violations of the ARP and ADA; failing to provide Plaintiffs'  
13 counsel with information about the status and results of their  
14 investigations; and failing to implement an effective system for  
15 holding wardens and other staff accountable for non-compliance  
16 with the ARP and ADA. Plaintiffs also have shown that  
17 Defendants' failure to comply with their accountability  
18 obligations has led to the violations of disabled inmates' rights  
19 under the ARP and ADA by perpetuating a staff culture that  
20 condones staff abuse against disabled inmates.

21 II. The implementation of additional remedial measures at LAC,  
22 COR, SATF, CIW, and KVSP is necessary to ensure Defendants'  
compliance with the ARP and ADA

23 The Court retained jurisdiction to enforce the terms of the  
24 Remedial Order and Injunction, as well as to issue "any order  
25 permitted by law, including contempt, necessary to ensure that  
26 defendants comply with the guidelines, policies, procedures,  
27 plans and evaluations" required by the Remedial Order and  
28 Injunction. Remedial Order and Injunction at 5, Docket No. 158.

1 The Court has found that the additional remedial measures  
2 discussed above are necessary to ensure that Defendants comply  
3 with their obligation under the ARP and ADA to provide reasonable  
4 accommodations for qualified inmates with disabilities and to  
5 otherwise refrain from discriminating against qualified inmates  
6 with disabilities by reason of their disabilities. They also are  
7 necessary to effectuate the parties' and the Court's intent "to  
8 require defendants to operate programs, activities, services and  
9 facilities of the California Department of Corrections in  
10 accordance with the Americans with Disabilities Act and § 504 of  
11 the Rehabilitation Act of 1973[.]" Stipulation and Order ¶ 12,  
12 Docket No. 148. Accordingly, the Court will modify its prior  
13 orders and injunctions to require Defendants to develop a plan to  
14 implement the additional remedial measures that the Court has  
15 found to be necessary to bring Defendants into compliance with  
16 the ARP and ADA.

17 III. The additional remedial measures ordered herein are  
18 consistent with the PLRA

19 As noted, the PLRA provides that courts "shall not grant or  
20 approve any prospective relief [with respect to prison  
21 conditions] unless the court finds that such relief is narrowly  
22 drawn, extends no further than necessary to correct the violation  
23 of the Federal right, and is the least intrusive means necessary  
24 to correct the violation of the Federal right." 18 U.S.C. §  
25 3626(a)(1)(A). The Court is required to give substantial weight  
26 to "any adverse impact on public safety or the operation of a  
27 criminal justice system caused by" the prospective relief. Id.  
28 Whether prospective relief is appropriate in light of the PLRA

1 depends on whether the Court finds, in light of the "order as a  
 2 whole," "that the set of reforms being ordered—the 'relief'—  
 3 corrects the violations of prisoners' rights with the minimal  
 4 impact possible on defendants' discretion over their policies and  
 5 procedures."<sup>29</sup> Armstrong v. Schwarzenegger, 622 F.3d at 1071.

6 A. Narrowly tailored

7 The Court concludes that the additional remedial measures  
 8 discussed above meet the requirements of the PLRA. They are  
 9 narrowly tailored because they require action only with respect  
 10 to the prisons at which Plaintiffs have shown that Defendants  
 11 have violated disabled inmates' rights under the ARP and ADA,  
 12 namely LAC, COR, SATF, CIW, and KVSP, and because they are the  
 13 least that can be done to protect disabled inmates from further  
 14 violations of their rights under the ARP and ADA. Id. at 1072  
 15 (holding that the scope of permissible injunctive relief "is  
 16 dictated by the extent of the violation established") (citation  
 17 and internal quotation marks omitted). As discussed above, the  
 18 substantial evidence that Plaintiffs have presented shows that  
 19 the violations of disabled inmates' rights are not limited to  
 20 isolated incidents. The ARP and ADA violations described in the  
 21 inmates' declarations were widespread in every sense of the word;  
 22 they affected inmates who suffer from a wide range of  
 23  
 24

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25 <sup>29</sup> The PLRA, 18 U.S.C. § 3626(a)(1)(B), also requires that  
 26 the Court make certain findings to the extent that any  
 27 prospective relief requires a government official to exceed his  
 28 or her authority under state or local law. Defendants have not  
 identified any state or local law that they must violate to  
 implement the additional remedial measures ordered herein.  
 Accordingly, the Court need not make any findings under 18 U.S.C.  
 § 3626(a)(1)(B).

1 disabilities; they were caused or observed by many identified  
2 staff members; and they took place at a variety of locations at a  
3 variety of prisons.

4 As discussed, the incidents appear to be the result of the  
5 ineffectiveness of Defendants' system for investigating and  
6 disciplining violations of the ARP and ADA. It remains possible,  
7 under the current policies and procedures, for staff members to  
8 continue to violate disabled inmates' ARP and ADA rights while  
9 potentially avoiding accountability for their actions. The  
10 additional remedial measures in question are specifically  
11 designed to remedy this, and they are therefore necessary to  
12 prevent further violations of disabled inmates' rights under the  
13 ARP and ADA. See, e.g., Armstrong v. Brown, 768 F.3d at 984  
14 (affirming order requiring CDCR Defendants to implement remedial  
15 measures intended to enhance CDCR's accountability); Armstrong v.  
16 Schwarzenegger, 622 F.3d at 1073-74 (noting the importance of  
17 accountability measures in ensuring ADA compliance); Morales  
18 Feliciano v. Rullan, 378 F.3d 42, 55-56 (1st Cir. 2004) (noting  
19 the importance of accountability in ensuring the long-term  
20 success of the health care system in Puerto Rico's prisons).

21 Defendants rely on Lewis v. Casey, 518 U.S. 343, 357 (1996),  
22 for the proposition that the relief that Plaintiffs seek is  
23 unjustified in light of number of violations of the ARP and ADA  
24 that they have shown. In Lewis, the Supreme Court reversed an  
25 injunction that granted systemwide relief across all of Arizona's  
26 correctional facilities on the ground that the only evidence in  
27 the record that supported such relief was evidence that two  
28 inmates at two different prisons were unable to receive

1 assistance they needed to litigate a claim in court. The Supreme  
2 Court held that the "two instances were a patently inadequate  
3 basis for a conclusion of systemwide violation and imposition of  
4 systemwide relief." Id. at 359. Lewis is distinguishable  
5 because, here, the Court has not ordered systemwide relief;  
6 instead, the Court has found that, commensurate with the  
7 violations of the ARP and ADA that Plaintiffs have shown at LAC,  
8 COR, SATF, CIW, and KVSP, the implementation of additional  
9 remedial measures at these prisons is warranted. Thus, the scope  
10 of the additional remedies is tailored to the scope of the ARP  
11 and ADA violations shown.

12 B. Least Intrusive

13 The additional remedial measures ordered herein are not  
14 impermissibly intrusive because they do not micromanage  
15 Defendants' operations. Defendants have the discretion to craft  
16 policies and procedures to implement the additional remedial  
17 measures. Armstrong v. Schwarzenegger, 622 F.3d at 1071  
18 ("Intrusiveness is a particularly difficult issue for defendants  
19 to argue, as by ordering them to draft and promulgate a plan, the  
20 district court left to defendants' discretion as many of the  
21 particulars regarding how to deliver the relief as it deemed  
22 possible. Allowing defendants to develop policies and procedures  
23 to meet the ADA's requirements is precisely the type of process  
24 that the Supreme Court has indicated is appropriate for devising  
25 a suitable remedial plan in a prison litigation case."). That  
26 the Court describes the additional remedial measures with some  
27 specificity does not change this conclusion. See Armstrong v.  
28 Brown, 768 F.3d at 986 (holding that "[a] court may, as the

1 district court did here, provide specific instructions to the  
2 State without running afoul of the PLRA”).

3 Defendants’ expert, Matthew Cate, opines that a less  
4 intrusive means of ending the ongoing violations exists, namely  
5 “ensur[ing] that inmates have better access to accommodation  
6 requests, by, for example placing the request forms in a location  
7 available to all inmates, and having ADA and Grievance  
8 Coordinators walk the buildings to ensure disabled inmates can  
9 make requests.” Cate Decl. ¶ 6, Docket No. 3160-60.

10 The Court finds that such a proposal is not a viable  
11 alternative to the additional remedial measures ordered herein,  
12 because the record shows that the root cause of the ongoing  
13 violations of the ARP and ADA is not the lack of access to forms  
14 or other methods for requesting accommodations, but rather the  
15 ineffectiveness of the current system for investigating and  
16 disciplining violations of the ARP and ADA and the resulting  
17 staff culture that condones abuse and retaliation against  
18 disabled inmates.

19 The goal and intent of the parties and the Court’s Remedial  
20 Order and Injunction at the outset of the remedial phase of this  
21 litigation was to bring all of CDCR’s prisons into compliance  
22 with the ADA and the RA. Almost twenty-four years after the  
23 issuance of that order and injunction, Defendants are not yet in  
24 compliance. This is so even though the parties and the Court  
25 have attempted various iterations of remedial measures that are  
26 narrower and less intrusive than the ones now ordered. The Court  
27 has found, as discussed in more detail above, that the policies  
28 and system currently in place, which are the product of the

1 parties' and the Court's prior efforts to bring Defendants into  
2 full compliance, are insufficient to end the ongoing violations  
3 of disabled inmates' rights. Accordingly, the Court's  
4 implementation of additional and broader remedial measures is  
5 warranted. Armstrong v. Brown, 768 F.3d at 986 (noting that,  
6 where "the district court has attempted narrower, less intrusive  
7 alternatives—and those alternatives have failed," the court has  
8 discretion to order relief that might have raised concerns about  
9 breadth and intrusiveness under the PLRA in the first instance)  
10 (citation and internal quotation marks omitted).

11 The Court has carefully considered and weighed the arguments  
12 and evidence presented by Defendants, and it has found that  
13 Defendants have not shown that the additional remedial measures  
14 would have any adverse impact on public safety or the operation  
15 of a criminal justice system. Defendants object to the  
16 additional remedial measures on the ground that they are  
17 unnecessary. The Court disagrees with Defendants on this point  
18 based on the evidence discussed at length above. Defendants also  
19 object to the additional measures on the ground that they would  
20 be burdensome to implement in the time frame that Plaintiffs have  
21 proposed. Even if it were the case that implementing the  
22 additional remedial measures in the time frame that Plaintiffs  
23 have proposed would be burdensome for Defendants, "[a]  
24 demonstration that an order is burdensome does nothing to prove  
25 that it was overly intrusive" or otherwise inconsistent with the  
26 requirements of the PLRA. Armstrong v. Schwarzenegger, 622 F.3d  
27 at 1071. Where, as here, the Court has found that the additional  
28 remedial measures are necessary to ensure Defendants' compliance

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1 with the ARP and ADA, and that no viable less restrictive  
2 alternative exists, the question of whether the additional  
3 remedial measures require some expenditure of resources by  
4 Defendants is not determinative. See id. ("With Congress having  
5 made the decision to recognize the rights of disabled persons,  
6 the question is not whether the relief the court ordered to  
7 vindicate those rights is expensive, or difficult to achieve, but  
8 whether the same vindication of federal rights could have been  
9 achieved with less involvement by the court in directing the  
10 details of defendants' operations.").

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

14 CONCLUSION

15 The Court GRANTS IN PART Plaintiffs' motion to modify its  
16 prior orders and injunctions to require Defendants to design, and  
17 then implement, a plan that requires additional remedial measures  
18 at LAC, COR, SATF, CIW, and KVSP. The Court will issue a  
19 separate order describing the additional remedial measures that  
20 Defendants' plan must include.

21 IT IS SO ORDERED.

22 Dated: March 11, 2021

23   
24 \_\_\_\_\_  
25 CLAUDIA WILKEN  
26 United States District Judge  
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