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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 JOHN ARMSTRONG, et al.,
21 Plaintiffs,
22 v.
23 GAVIN NEWSOM, et al.,
24 Defendants.
25

Case No. C94 2307 CW

**NOTICE OF MOTION AND MOTION
TO STOP DEFENDANTS FROM
ASSAULTING, ABUSING AND
RETLIATING AGAINST PEOPLE
WITH DISABILITIES;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Judge: Hon. Claudia Wilken
Date: July 21, 2020
Time: 2:30 p.m.
Crtrm.: TBD

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NOTICE OF MOTION AND MOTION

1
2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on July 21, 2020, at 2:30 p.m., or as soon thereafter
4 as the matter may be heard, in the Courtroom of the Honorable Claudia Wilken, located at
5 1301 Clay Street, Plaintiffs John Armstrong, *et al.*, will and hereby do move the Court for
6 an order to stop Defendants Gavin Newsom, *et al.*, from assaulting, abusing and retaliating
7 against people with disabilities (“Motion”).

8 This Motion is based on this Notice of Motion and Memorandum of Points and
9 Authorities, the Proposed Order, and the Declarations of Gay Crosthwait Grunfeld,
10 Michael Freedman, Thomas Nolan, and Jeffrey Schwartz, filed herewith, Plaintiffs’
11 Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against Incarcerated
12 People with Disabilities at R.J. Donovan Correctional Facility and supporting pleadings,
13 *see* Dkt. 2922 to 2922-8, all of which are incorporated herein by reference, the entire
14 record in this action, and such other materials and argument as may be presented before or
15 at the hearing.

16
17 DATED: June 3, 2020

Respectfully submitted,
ROSEN BIEN GALVAN & GRUNFELD LLP
By: /s/ Michael Freedman
Michael Freedman

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 On February 28, 2020, Plaintiffs filed the Motion to Stop Defendants From
3 Assaulting, Abusing and Retaliating Against People with Disabilities at R.J. Donovan
4 Correctional Facility (“RJD Motion”). *See* Dkt. 2922. Plaintiffs have filed the instant
5 Motion—which incorporates by reference all pleadings filed in support of the RJD Motion,
6 Dkts. 2922 to 2922-8, and relies on identical legal arguments—(1) to present further
7 evidence that systemic misconduct that violates the rights of people with disabilities is
8 occurring at many prisons within the California Department of Corrections and
9 Rehabilitation (“CDCR”), not just at RJD, and (2) to seek state-wide relief commensurate
10 with the scope of the violations. Plaintiffs have filed this separate Motion because
11 Defendants objected to Plaintiffs supplementing the record and submitting a broader
12 proposed order for the RJD Motion, even though the majority of new evidence was not
13 available to Plaintiffs when they filed the RJD Motion.

14 With this Motion, thirty-nine people with disabilities have submitted new
15 declarations describing shocking abuses they experienced or witnessed at CSP – Los
16 Angeles County (“LAC”), California Correctional Institution (“CCI”), Kern Valley State
17 Prison (“KVSP”), CSP – Corcoran (“COR”); and Substance Abuse and Treatment Facility
18 (“SATF”). Plaintiffs also collected nineteen additional declarations from incarcerated
19 people at RJD about assaults and retaliation that occurred in just the last four months.
20 Notwithstanding the ongoing abuse of people with disabilities and Defendants’ repeated
21 admissions that video surveillance would reduce staff misconduct, on May 14, 2020,
22 CDCR abandoned its previously-proposed plan to install video cameras at RJD and two
23 other prisons.

24 After the filing of the RJD Motion, Defendants also finally produced staff
25 investigation and disciplinary documents from RJD that Plaintiffs requested in November
26 2019. Plaintiffs’ expert on discipline and use of force, Jeffrey Schwartz, reviewed those
27 materials and has concluded that problems with the staff misconduct complaint,
28 investigation, and disciplinary processes result in gross failures to hold officers

1 accountable for their abuses of incarcerated people with disabilities. He further found that
 2 the profound shortcomings of the system allow staff to assault and retaliate against people
 3 with disabilities with near-impunity, only facing discipline in the rare cases when video
 4 evidence or staff reports make it impossible for CDCR to find that the misconduct did not
 5 occur. Mr. Schwartz concludes that CDCR's current system, even with the newly-
 6 implemented Allegation Inquiry Management Section, is incapable of punishing
 7 wrongdoers and keeping incarcerated people with disabilities safe.

8 The evidence filed in support of the instant Motion, combined with the evidence
 9 submitted in support of the RJD Motion, demonstrates that abuse of people with
 10 disabilities is a system-wide problem. So long as *Armstrong* class members are being
 11 assaulted because they have a disability and are too afraid to request needed disability
 12 accommodations and so long as the officers who terrorize people with disabilities go
 13 unpunished, Defendants will remain out of compliance with the Americans with
 14 Disabilities Act ("ADA"), the Rehabilitation Act ("RA"), and prior orders of this Court.
 15 Plaintiffs respectfully request that the Court enter their Proposed Order, filed herewith,
 16 requiring Defendants to develop a plan to implement a number of remedies, including, but
 17 not limited to, immediately installing surveillance cameras at the prisons with the most
 18 pervasive misconduct and reforming and allowing for additional oversight of the staff
 19 complaint, investigation, and discipline process. The time has come to put an end to the
 20 terrible abuses of and retaliation against class members.

21 **FACTUAL AND PROCEDURAL BACKGROUND**

22 **I. DEFENDANTS' ONGOING AND WIDESPREAD MISCONDUCT AND** 23 **DELAYS IN PRODUCING REQUESTED DISCOVERY HAVE** 24 **NECESSITATED THE FILING OF THIS ADDITIONAL MOTION**

25 Plaintiffs filed the RJD Motion on February 28, 2018. Dkt. 2922. In support of the
 26 Motion, Plaintiffs submitted, *inter alia*, declarations from fifty-four people with disabilities
 27 regarding assaults, abuse and retaliation they witnessed or experienced at RJD and other
 28 evidence of CDCR's failures to address the widespread misconduct, about which it has
 been aware for years. *See* RJD Mot. at 4-35. Plaintiffs also submitted evidence of

1 misconduct against people with disabilities occurring at other CDCR prisons. *See id.* at
2 35-37. In response to serial requests from Defendants for more time to respond to the RJD
3 Motion, Plaintiffs ultimately agreed that Defendants’ opposition would be due on June 9,
4 2020—an eighty-eight day extension—with a hearing on the motion scheduled for July 21,
5 2020. Decl. of Gay Crosthwait Grunfeld in Supp. of Motion (“Grunfeld Decl.”), filed
6 herewith, ¶¶ 3-5; *see also* Dkt. 2942.

7 As of the date Plaintiffs filed the RJD Motion, Defendants had produced almost
8 none of the staff investigation and disciplinary documents Plaintiffs requested on
9 November 21, 2019. Decl. of Gay Crosthwait Grunfeld in Supp. of RJD Mot. (“Grunfeld
10 RJD Decl.”), Dkt. 2922-1, ¶ 43 & Ex. L; Grunfeld Decl., ¶¶ 10-11. By mid-April, after
11 extensive meet and confer efforts, Defendants had produced a sufficient number of
12 complete files to permit an expert to conduct a meaningful review of the documents. *Id.*,
13 ¶ 13; Decl. of Michael Freedman in Supp. of Mot. (“Freedman Decl.”), filed herewith
14 under seal, Exs. 65-74. In addition, on May 15, 2020, nearly six months after Plaintiffs
15 served their Rule 30(b)(6) deposition notice, Defendants finally produced a person-most-
16 knowledgeable deponent on the topic of CDCR’s new Allegation Inquiry Management
17 Section (“AIMS”). Grunfeld Decl., ¶¶ 23-24. Plaintiffs have also continued to collect
18 declarations from people with disabilities at RJD and elsewhere, which Plaintiffs shared
19 with Defendants in April, May, and June 2020. *Id.*, ¶ 8; Freedman Decl., ¶¶ 3-6.

20 On May 27, 2020, Plaintiffs emailed Defendants to inform them that Plaintiffs
21 intended to supplement the record for the RJD Motion with newly-obtained evidence of
22 misconduct at RJD and other prisons and with an expert report regarding deficiencies in
23 Defendants’ staff complaint, investigation, and discipline process. Grunfeld Decl., ¶ 6 &
24 Ex. B. On June 1, 2020, Defendants indicated that they would move to strike any
25 supplemental evidence submitted in support of the RJD Motion. *Id.*, Ex. C. The parties
26 met and conferred that same day with the Court Expert and, even though Defendants have
27 not yet filed an opposition, Defendants continued to maintain their objection to Plaintiffs’
28 supplementing the evidence for the RJD Motion. *Id.*, ¶ 7.

1 Plaintiffs have filed this Motion, which incorporates by reference all filings in and
 2 repeats the legal argument from the RJD Motion, out of an abundance of caution to ensure
 3 the Court can consider all evidence regarding staff misconduct that violates the rights of
 4 *Armstrong* class members and issue appropriate relief not limited to RJD. Given the
 5 tremendous overlap between the two motions, Plaintiffs believe it would be most efficient
 6 for briefing to be consolidated.

7 **II. STAFF AT PRISONS THROUGHOUT CDCR ARE ASSAULTING AND**
 8 **OTHERWISE ABUSING PEOPLE WITH DISABILITIES**

9 Plaintiffs have already presented overwhelming evidence that officers at RJD have
 10 engaged in a long-standing pattern of abusing people with disabilities. *See* RJD Motion at
 11 4-20. With this Motion, Plaintiffs are submitting thirty-nine declarations from people with
 12 disabilities¹ at LAC, CCI, COR, KVSP, and SATF, that reveal conduct of the same
 13 horrible quantity and quality as at RJD. Freedman Decl. Exs. 25-63. Plaintiffs also
 14 present nineteen additional declarations from people with disabilities at RJD that show that
 15 abuses have continued there, unabated. *Id.*, Exs. 3-5, 9-24. Including the RJD Motion,
 16 Plaintiffs have now submitted one hundred and twelve declarations from one hundred
 17 declarants regarding misconduct at six institutions demonstrating the system-wide
 18 violations of the rights of people with disabilities. *Id.*, ¶ 7.

19 **A. Horrific Abuses of People With Disabilities are Occurring at Multiple**
 20 **CDCR Prisons**

21 In the RJD Motion, Plaintiffs presented evidence of the state-wide scope of the staff
 22 misconduct problem, including reports from the Office of the Inspector General (“OIG”)
 23 regarding abuses at High Desert State Prison (2015) and Salinas Valley State Prison
 24

25 ¹ The declarants who have submitted declarations in support of this Motion are all
 26 *Armstrong* class members, people with serious mental illness who are class members in
 27 *Coleman v. Newsom*, 2:90-cv-0520 KJM DB (E.D. Cal.), and/or people with
 28 developmental disabilities who are class members in *Clark v. California*, 3:96-cv-01486-
 CRB (N.D. Cal.). *Coleman* and *Clark* class members are people with disabilities. *See* 42
 U.S.C. § 12102(1). Their experiences are highly relevant to whether Defendants are
 violating the rights of *Armstrong* class members.

1 (“SVSP) (2019), an admission by the Chief Ombudsman for CDCR of serious issues at
 2 California Institution for Women (“CIW”), and reports from Plaintiffs’ counsel regarding
 3 problems at LAC, COR, SATF, CIW, and CSP – Sacramento. *See* RJD Mot. at 35-37;
 4 Grunfeld RJD Decl., ¶¶ 23, 65-73 & Ex. H, at DOJ00013200-01; *id.*, Exs. Y, EE-KK;
 5 Decl. of Michael Freedman in Supp. of RJD Motion (“Freedman RJD Decl.”), Dkt. 2922-2
 6 to 2922-5, Exs. 77-82.

7 The thirty-nine declarations from people with disabilities regarding misconduct at
 8 LAC, CCI, KVSP, SATF, and COR leave little doubt that Defendants are abusing people
 9 with disabilities at prisons throughout the state. Just like at RJD, staff at these other
 10 institutions routinely use unnecessary and excessive force against people with disabilities,²
 11 often resulting in broken bones, loss of consciousness, stitches, or injuries that require
 12 medical attention at outside hospitals.³ In a number of instances, staff assaulted or
 13 discriminated against incarcerated people because of their disabilities or because they had
 14 requested disability accommodations.⁴ When staff use force against people with

15 _____
 16 ² Freedman Decl., Ex. 26, ¶¶ 11-18; Ex. 27, ¶¶ 10-12, 14-15, 25-30; Ex. 28, ¶¶ 19-23; Ex.
 17 30, ¶¶ 9-11; Ex. 31, ¶¶ 11-14; Ex. 38, ¶¶ 12, 21-22; Ex. 44, ¶¶ 8-12; Ex. 46, ¶¶ 19-23, 33;
 Ex. 48, ¶¶ 14-15, 19; Ex. 50, ¶¶ 13-18; Ex. 51, ¶¶ 9-12; Ex. 54, ¶¶ 7-11; Ex. 56, ¶¶ 8-10;
 Ex. 57, ¶¶ 8-11; Ex. 58, ¶¶ 15-19; Ex. 59, ¶¶ 9-15; Ex. 60, ¶ 8; Ex. 63, ¶¶ 7-9.

18 ³ Freedman Decl., Ex. 29, ¶ 21; Ex. 30, ¶ 10; Ex. 32, ¶ 16; Ex. 34, ¶¶ 27, 32; Ex. 37, ¶¶ 11,
 19 15; Ex. 38, ¶¶ 12, 14; Ex. 39, ¶¶ 9, 12-13; Ex. 41, ¶¶ 18, 24-25; Ex. 43, ¶ 11; Ex. 44, ¶¶ 24-
 20 25; Ex. 46, ¶ 23; Ex. 47, ¶ 23; Ex. 48, ¶¶ 18, 21; Ex. 49, ¶ 17; Ex. 54, ¶ 9; Ex. 56, ¶ 17; Ex.
 57, ¶ 18; Ex. 58, ¶ 22; Ex. 59, ¶ 18; Ex. 61, ¶ 21.

21 ⁴ Freedman Decl., Ex. 27, ¶¶ 25-30 (officer at LAC threw an individual out of his
 22 wheelchair for requesting help cleaning up cell after his catheter bag broke and leaked
 23 urine and blood); Ex. 50, ¶¶ 4-17 (officers at LAC assaulted *Armstrong* class member for
 24 refusing upper bunk assignment that violated his lower bunk accommodation); Ex. 35, ¶¶
 9-11 (officer at LAC refused to open cell door for ADA Worker to assist class member in
 25 wheelchair with help cleaning); Ex. 45, ¶¶ 7-10 (officer at LAC instructed *Coleman* class
 26 member to assault person with mental illness and developmental disabilities and called
 27 person “retarded”); Ex. 48, ¶¶ 28-30 (officers at LAC used waist chains to drag a person
 28 out of his wheelchair and across his cell because he could not stand due to his disability);
 Ex. 55, ¶ 29 (officers at CCI accused a person with disabilities of “faking it” or “milking
 the system.”); Ex. 35, ¶¶ 15-16 (officers at refused to let a person in a wheelchair use the
 accessible pathway to go to dining hall and issued an RVR for Battery on a Peace Office to
 class member when he attempted to do so and accidentally ran over an officer’s foot); Ex.
 61, ¶¶ 9-10, 19-20 (officers at KVSP assaulted *Armstrong* class member two times when
 they ordered him to prone out, even though he wears a mobility vest and told them he
 could not); Ex. 63, ¶¶ 7-9 (officers slammed hard of hearing class member with broken
 hearing aids to ground for being unable to hear order to come out of his cell).

1 disabilities it often results in people being unnecessarily thrown out of wheelchairs or
 2 dragged on the ground.⁵ Similar harm is occurring to people with mental illness, who staff
 3 frequently assault when reporting suicidality or when making other requests for mental
 4 health care.⁶ Officers frequently resort to violence with people with mental illness without
 5 making any or sufficient attempts at de-escalation.⁷ And when people complain about
 6 mistreatment, they face substantial threats and retaliation.⁸

7 Most troublingly, just like at RJD, incarcerated people with disabilities at these
 8 other CDCR facilities are terrified of staff. As a result, they refrain from asking for
 9 accommodations and other help that they require for their disabilities and avoid interacting
 10 with staff.⁹ The hostile environment leads people with mental illness to not report
 11 suicidality or need for treatment.¹⁰ And because they have seen what happens to people

12 _____
 13 ⁵ Freedman Decl., Ex. 27, ¶¶ 25-30 (officer at LAC flipped person out of wheelchair);
 14 Ex. 48, ¶¶ 28-30 (officers at LAC dragged person out of his wheelchair); Ex. 53, ¶¶ 14-21
 15 (officer at LAC tackled person out of wheelchair then assaulted him further); Ex. 61, ¶ 10
 16 (officers at KVSP assaulted person then forced him to walk without his cane, resulting in
 17 him falling, then dragged him to holding cage).

18 ⁶ Freedman Decl., Ex. 25, ¶¶ 16-21, 34-36; Ex. 32, ¶¶ 8-14; Ex. 33, ¶ 19; Ex. 37, ¶ 8-11;
 19 Ex. 38, ¶¶ 3-4, 31; Ex. 41, ¶¶ 11-19, ; Ex. 45 ¶¶ 33-34; Ex. 47, ¶¶ 14-19, 47; Ex. 49, ¶¶
 20 11-14, 23; Ex. 55, ¶ 29; Ex. 56, ¶¶ 8-9, 12, 19.

21 ⁷ Freedman Decl., Ex. 29, ¶¶ 10, 14-20; Ex. 46, ¶¶ 3-4, 10-20.

22 ⁸ Freedman Decl., Ex. 26, ¶ 9 & Ex. 62 (staff at LAC and KVSP called same person a
 23 “Coleman Snitch”); Ex. 27, ¶¶ 44-45; Ex. 38, ¶¶ 21-23, 29; Ex. 51, ¶¶ 28-30; Ex. 59, ¶¶ 7-
 24 10 (*Coleman* class member at COR was beaten by officers while trying to submit 602 and
 25 officer snatched 602 form out of his hand); Ex. 60, ¶¶ 11, 21, 27; Ex. 62, ¶ 7-18 (officer at
 26 KVSP threatened to deploy pepper spray, destroy property, plant a weapon, falsely report a
 27 rules violation, and kill an individual who reported misconduct to Plaintiffs’ counsel in
 28 *Coleman and Armstrong*).

⁹ Freedman Decl., Ex. 26, ¶ 9; Ex. 27, ¶ 41; Ex. 31, ¶ 25; Ex. 35, ¶¶ 9-13, 20 (class
 member at LAC who uses wheelchair no longer showers outside cell and does not ask for
 incontinence supplies, instead rips up bedsheets to clean himself); Ex. 36, ¶ 35; Ex. 37,
 ¶¶ 37-38; Ex. 38, ¶ 33; Ex. 41, ¶ 43; Ex. 44, ¶¶ 29-30, 33 (person at LAC with
 incontinence does not ask for showers after accidents); Ex. 46, ¶ 35; Ex. 50, ¶ 26 (person at
 LAC assaulted for requesting lower bunk now avoids requesting anything from officers);
 Ex. 51, ¶ 34; Ex. 53, ¶ 38 (“The staff misconduct I experienced [at LAC] on August 27,
 2019 has forever changed how I interact with custody staff I felt like if I asked for
 anything from staff, they might attack me. I no longer asked officers for ... any other
 disability accommodations or medical accommodations.”) Ex. 52, ¶ 28; Ex. 57, ¶¶ 22, 24;
 Ex. 61, ¶¶ 29-35.

¹⁰ Freedman Decl. Ex. 25, ¶ 41; Ex. 26, ¶ 9; Ex. 33, ¶ 21; Ex. 45, ¶¶ 32-33; Ex. 46, ¶ 36;
 Ex. 47, ¶ 47 (“[O]ften times, I am depressed, and sometimes suicidal, and instead of asking
 to speak with mental health, I choose to hurt myself. Sometimes I bite myself, or slam my

1 who complain, they refrain from filing grievances when they do not receive the
2 accommodations or help that they need or staff otherwise mistreat them.¹¹

3 Among the worst incidents at these institutions:

- 4 • Officers at LAC threw an *Armstrong* and *Coleman* class member out of his
5 wheelchair for requesting a cell move, then took him to the gym to assault
6 him further. Freedman Decl., Ex. 53, ¶¶ 15-24.
- 7 • Staff at LAC body slammed an *Armstrong* class member who had just had
8 back surgery, worsening his disability such that he is now reliant on a
9 wheelchair, and then issued him a false Rules Violation Report (“RVR”) to
10 cover up the misconduct. *Id.*, Ex. 44, ¶¶ 23-26.
- 11 • Staff at KVSP slammed an *Armstrong* class member’s face into a table after
12 they ordered him to get down on the ground, in violation of his “no-get-
13 down” accommodation. *Id.*, Ex. 61, ¶¶ 9-14.
- 14 • Officers at SATF threw a hard-of-hearing class member with broken hearing
15 aids to ground for being unable to hear an order to come out of his cell.
16 Ex. 63, ¶¶ 6-9.
- 17 • Officers at LAC assaulted an *Armstrong* class member with a lower bunk
18 accommodation after he refused to sleep on the upper bunk to which officers
19 had assigned him. *Id.*, Ex. 50, ¶¶ 9-17.
- 20 • Staff at LAC punched an *Armstrong* and *Coleman* class member in the face
21 multiple times, knocking him unconscious. *Id.*, Ex. 30, ¶¶ 9-17.
- 22 • Staff at CCI inappropriately grabbed a *Coleman* class member’s genitals,
23 then pepper sprayed and assaulted him, all because he requested a grievance
24 form to complain that staff had refused to provide him with a razor blade.
25 *Id.*, Ex. 57, ¶¶ 8-11.
- 26 • Officers at COR beat a *Coleman* class member, knocking him unconscious
27 multiple times and breaking his jaw, resulting in his jaw being wired shut for
28

head against the wall. I understand that this is not a good coping mechanism, but at least I
am in control and do not have to risk a staff assault.”); Ex. 49, ¶ 32; Ex. 51, ¶¶ 30-32;
Ex. 52, ¶ 28 (“I am afraid to show the officers my cuts when I need help because they do
not help and do not take my mental health issues seriously. I have never told officers when
I am suicidal, because I have seen other people be assaulted for reporting that they are
suicidal. Also, the officers use people being suicidal as a reason to enter their cells and
assault them.”); Ex. 56, ¶ 19; Ex. 57, ¶ 22; Ex. 58, ¶ 34, 41.

¹¹ Freedman Decl., Ex. 25, ¶ 41; Ex. 27, ¶ 41; Ex. 33, ¶ 22; Ex. 38, ¶ 33; Ex. 39, ¶ 25;
Ex. 41, ¶ 46; Ex. 43, ¶ 14 (from a *Coleman* class member assaulted at LAC, resulting in
four broken bones: “I have not filed a 602 about this incident because I am afraid. I also
refused my use of force videotape that was offered to me the day after I was assaulted. I
was afraid to speak with staff about what had happened to me and afraid they would
retaliate against me if I reported what happened.”), Ex. 45, ¶ 18; Ex. 47, ¶ 48 (“Each time I
report something at LAC, I am afraid for my life.... I am afraid to report anything.”);
Ex. 54, ¶ 16; Ex. 55, ¶¶ 15-16; Ex. 57, ¶ 24 (“I would simply agree to everything custody
said [at CCI]. I was living in fear.”); Ex. 58, ¶ 40.

1 three months, because he attempted to file a grievance form to complain
2 about an aggressive search. *Id.*, Ex. 59, ¶¶ 10-18.

- 3 • Officers at LAC beat a transgender *Coleman* class member, restrained her,
4 and then dragged her a long distance on her stomach, causing permanent
5 scarring. *Id.*, Ex. 29, ¶¶ 15-25.
- 6 • Staff at LAC pushed a *Coleman* class member head first into the floor after
7 the individual refused to be housed in a cell with a person suspected of
8 having COVID-19. *Id.*, Ex. 46, ¶¶ 10-20, 25-26.

9 The assaults and retaliation at LAC, documented in twenty-nine of the declarations,
10 are particularly disturbing, as Plaintiffs' counsel has been communicating reports of
11 serious misconduct at the prison to Defendants for years. Since 2017, Plaintiffs' counsel
12 has, in tour reports and letters in *Armstrong* and *Coleman*, notified CDCR of more than
13 one hundred and forty allegations of misconduct at LAC perpetrated against *Armstrong*
14 class members and other people with disabilities. Declaration of Thomas Nolan in Supp.
15 of Mot. ("Nolan Decl."), filed herewith under seal, ¶ 7. Defendants have not responded at
16 all to many of the allegations and have frequently failed to include them on the *Armstrong*
17 Accountability Logs. *Id.*, ¶¶ 8, 32, 38-39 & Ex. O. In each and every case for which
18 Defendants have provided a substantive response, Defendants have not confirmed the
19 allegations. *Id.*, ¶¶ 7, 9-50. As far as Plaintiffs' counsel is aware, Defendants have not
20 imposed discipline against a single officer or made a single change in policy or practice at
21 LAC in response to the reports of misconduct raised by Plaintiffs' counsel. *Id.*, ¶ 7.¹²

22 ¹² The physical abuse of people with disabilities is but one manifestation of CDCR's
23 discriminatory and intolerant culture. As the RJD strike force found, "[m]entally
24 disordered offenders, developmentally disabled offenders, sex offenders, and homosexual/
25 transgender offenders [are] being targeted for assault and/or abuse by staff." Freedman
26 RJD Decl., Ex. 2, at 1. Many of the incidents involve officers' use of degrading, offensive,
27 and inappropriate language against people with disabilities. Consistent with these
28 attitudes, CDCR officers have made posts on social media that show their hatred and
disdain for people with disabilities and other vulnerable people. Grunfeld Decl., ¶¶ 42-
43 & Exs. W, X. Officers have also harassed non-custody staff who show any kindness
and compassion toward incarcerated people, as demonstrated in a declaration from a
former RJD social worker who quit because of the intolerable working conditions created
by officers. Freedman Decl., Ex. 64; *see also* RJD Mot. at 17-18 (retaliation against
psychologist who reported staff misconduct).

1 **B. Staff at RJD Continue to Assault and Retaliate Against People with**
 2 **Disabilities**

3 Since the filing of Plaintiffs' Motion, staff at RJD have continued to terrorize
 4 incarcerated people with disabilities. Officers are still using unnecessary or excessive
 5 force against people with disabilities;¹³ still throwing people in walkers to the ground
 6 without any justification;¹⁴ still breaking people's bones or otherwise seriously injuring
 7 them;¹⁵ still retaliating against or threatening people who complain (including by the filing
 8 of false Rules Violation Reports);¹⁶ still using incarcerated people to threaten and assault
 9 people with disabilities;¹⁷ and still trapping people who use wheelchairs and walkers in cell
 10 doors.¹⁸ People with disabilities remain so afraid of staff that they frequently refrain from
 11 asking for disability accommodations and other help they require.¹⁹ These appalling
 12 abuses have occurred even **after** the filing of the RJD Motion and even though, on
 13 March 20, 2020, CDCR posted anti-retaliation notices to which the parties agreed at
 14 locations throughout RJD. *See* Dkt. 2931. In fact, some of the perpetrators are the same
 15 officers identified as wrongdoers in the declarations filed with the RJD Motion.²⁰

16 Despite the widespread and ongoing abuses documented in the RJD Motion and the
 17 instant Motion, interrogatory responses from Defendants served after the filing of the RJD
 18

19 _____
 20 ¹³ Freedman Decl., Ex. 9, ¶ 9; Ex. 10, ¶ 10; Ex. 11, ¶ 8; Ex. 13, ¶¶ 9-10; Ex. 14, ¶ 6;
 Ex. 16, ¶¶ 4-5; Ex. 18, ¶ 6; Ex. 19, ¶¶ 6-7; Ex. 20, ¶ 9; Ex. 23, ¶¶ 9-10.

21 ¹⁴ Freedman Decl., Ex. 10, ¶ 7.

22 ¹⁵ Freedman Decl., Ex. 13, ¶¶ 8-9; Ex. 20, ¶¶ 9, 17; Ex. 23, ¶ 12.

23 ¹⁶ Freedman Decl., Ex. 9, ¶¶ 6, 9, 11, 14-15, 17, 23-25; Ex. 10, ¶¶ 9-10; Ex. 12, ¶¶ 5-12,
 14, 16-17; Ex. 15, ¶ 9; Ex. 17, ¶ 9; Ex. 18, ¶ 7; Ex. 19, ¶ 10; Ex. 22, ¶¶ 6-10; Ex. 23, ¶ 13.

24 ¹⁷ Freedman Decl., Ex. 9, ¶¶ 23-24; Ex. 11, ¶ 9; Ex. 12, ¶¶ 4-5, 9-12; Ex. 16, ¶¶ 5-6;
 Ex. 18, ¶¶ 9-10; Ex. 22, ¶¶ 6-10.

25 ¹⁸ Freedman Decl., Ex. 13, ¶¶ 13-14; Ex. 24, ¶¶ 4-5.

26 ¹⁹ Freedman Decl., Ex. 3, ¶ 16; Ex. 9, ¶ 26; Ex. 12, ¶¶ 19; Ex. 13, ¶¶ 15-16; Ex. 15, ¶ 11;
 Ex. 17, ¶ 12; Ex. 20, ¶ 23.

27 ²⁰ *Compare* Freedman Decl., Ex. 13, ¶¶ 13-15 *with* Freedman RJD Decl., ¶¶ 33, 55, 81, 84,
 28 238, 253; *compare* Freedman Decl., Ex. 18, ¶ 9 *with* Freedman RJD Decl., ¶ 247; *compare*
 Freedman Decl., Ex. 22, ¶¶ 6-10 *with* Freedman RJD Decl., ¶ 194; *compare* Freedman
 Decl., Ex. 3, ¶ 13-14, Ex. 4, ¶¶ 10-11, Ex. 5, ¶¶ 6-7 *with* Freedman RJD Decl., ¶¶ 76, 253.

1 Motion confirm that very few officers have been disciplined for harming incarcerated
 2 people. Since January 1, 2017, only nine RJD officers have been terminated for five
 3 incidents of misconduct against incarcerated people. Grunfeld Decl., Ex. G, at 2-3.²¹
 4 Tellingly, the victims in all five incidents were people with disabilities (four were
 5 *Armstrong* class members and one was a *Coleman* class member), suggesting that the most
 6 serious misconduct is aimed at people with disabilities. *Id.* And all four incidents where
 7 staff victimized an *Armstrong* class member involved either video evidence of the
 8 misconduct or staff willing to report their co-workers for abusing an incarcerated person.
 9 *See* Decl. of Jeffrey Schwartz in Supp. of Mot., filed herewith under seal, ¶¶ 53, 126, 127,
 10 172, 210, 219; Freedman Decl., ¶¶ 91-94 & Exs. 77-80.²²

11 **C. Staff's Failure to Take Seriously an RJD Declarant's Safety Concerns**
 12 **Resulted in His Death in February 2020**

13 Plaintiffs also submit additional evidence that officers at RJD are culpable in the
 14 death of an *Armstrong* and *Coleman* class member and declarant for the RJD Motion, who
 15 was killed by his cell mate in February 2020. *See* Freedman Decl., Exs. 3-5; RJD Mot. at
 16 13, 33; Freedman RJD Decl., ¶¶ 72-74 & Exs. 22a, 22b. According to multiple witnesses,
 17 before the fatal altercation, the declarant and his cell mate repeatedly requested that the
 18 officers move them to separate cells because of safety concerns. Freedman Decl., Ex. 3,
 19 ¶ 5; Ex. 4, ¶10; Ex. 5, ¶¶ 6-8. In response to those requests, officers repeatedly told the
 20 declarant and his cell mate to “fuck or fight,” i.e., get along or fight to prove they were
 21 incompatible. *See id.*, Ex. 3, ¶¶ 5-; Ex. 4, ¶¶ 10-11; Ex. 5, ¶¶ 6-7. When the declarant and
 22 his cell mate did finally fight in their cell, officers failed to respond for 15-30 minutes. *Id.*,
 23

24 ²¹ Defendants' tracking of incidents, investigations, and discipline is so poor that
 25 Defendants had to amend their interrogatory responses two times to represent the accurate
 26 number of officers who have been terminated for misconduct that victimized an
 27 incarcerated person. Grunfeld Decl., ¶¶ 16-19 & Exs. E-G; *see also* RJD Mot. at 31-32.

28 ²² The Chair of the Assembly Subcommittee on Public Safety, when read a portion of the
 RJD Motion at a hearing on March 2, 2020, said “I find it very alarming that these things
 are still taking place in our prisons, and I read a lot of the stories and they're absolutely
 horrible, absolutely horrible, that they are committed by our staff I find it totally
 unacceptable” Grunfeld Decl., Ex. N, at 6.

1 Ex. 3, ¶¶ 8-11; Ex. 5, ¶¶ 9-11. The declarant died from his serious injuries fifteen days
 2 later. *Id.*, Ex. 4, ¶¶ 14-15; *id.*, Ex. 6; Freedman RJD Decl., Exs. 22a, 22b. Officers’
 3 refusal to take the reported safety concerns seriously and encouragement for incarcerated
 4 people to fight led to the violent death of a witness and class member in this case.

5 Tragically, in 2016, CDCR let one of the implicated officers keep his job after
 6 finding that he used and failed to report unreasonable force that resulted in the death of
 7 another incarcerated person. *See* Freedman Decl., Ex. 7, at EX7_07, EX7_09. Pursuant to
 8 CDCR’s Department Operation Manual (“DOM”), the base penalty for his failure to report
 9 his own unreasonable use of force was dismissal, the highest possible penalty (Level 9).
 10 *See id.* at EX7_09; Grunfeld RJD Decl., Ex. LL, at 246, 252 (DOM
 11 §§ 33030.16, 33030.19). However, the RJD warden only imposed a Level 6 penalty of
 12 10% salary reduction for eighteen months. Freedman Decl., Ex. 7, at EX7_09. The officer
 13 lost approximately \$12,500 in salary, remained employed by CDCR at RJD, and continued
 14 to work in a position where he was able to harm other incarcerated people, including the
 15 now-deceased declarant. *See* Freedman Decl., ¶ 17 & Ex. 8.

16 Making matters even worse, one of the witnesses who provided information
 17 regarding the declarant’s death faced significant retaliation from staff for speaking with
 18 Plaintiffs’ counsel about the incident. *See* Freedman Decl., Ex. 9.

19 **III. CDCR’S SYSTEM FOR INVESTIGATING AND DISCIPLINING STAFF
 20 WHO ENGAGE IN MISCONDUCT IS BROKEN, LEAVING ABUSES
 UNDETERRED AND UNPUNISHED**

21 At the time Plaintiffs filed the RJD Motion, Plaintiffs suspected that shortcomings
 22 in CDCR’s complex system for investigating and disciplining staff were to blame for
 23 relentless and unchecked staff misconduct against people with disabilities at RJD and other
 24 CDCR prisons.²³ As discussed above, though Plaintiffs requested investigation files in
 25

26 ²³ A complaint about staff misconduct generally goes through a number of stages: First,
 27 staff at the prison or investigators at the newly-created AIMS conduct a local inquiry.
 28 Second, the warden decides, based on the information gathered in the inquiry, whether to
 refer the case to the Office of Internal Affairs (“OIA”). Third, the Central Intake Unit
 (“CIU”) of OIA decides whether to accept the referral for an investigation, to grant the
 warden authority to issue direct adverse action (where the information gathered in the

1 November 2019, Defendants produced almost no files prior to the filing of the RJD Motion
 2 and did not produce a meaningful number of mostly-complete files until mid-April 2020.
 3 *See* Grunfeld RJD Decl., ¶ 43 & Ex. L; Grunfeld Decl., ¶¶ 11-13.

4 Once Plaintiffs finally obtained the documents, Jeffrey Schwartz, Plaintiffs' expert
 5 on discipline and use of force, conducted a comprehensive review. Mr. Schwartz
 6 confirmed Plaintiffs' fears. From his review, he found that that CDCR's system for
 7 investigating misconduct and disciplining staff is wholly ineffective and fails to hold
 8 officers accountable for harming incarcerated people. *See generally* Schwartz Decl.

9 As a starting point, Mr. Schwartz concluded that until CDCR installs fixed
 10 surveillance cameras with full coverage of its facilities and requires the use of body-worn
 11 cameras, CDCR will never be able to adequately investigate misconduct because CDCR
 12 will, in most cases, have deliberately avoided collecting the type of evidence most useful
 13 in determining whether misconduct occurred. Schwartz Decl., ¶¶ 32, 87, 94-98; *see also*
 14 Decl. of Eldon Vail in Supp. of RJD Mot. ("Vail Decl."), Dkt. 2922-6, ¶¶ 83, 94-101.

15 Cameras will not solve all of the systems' problems, however. As described by
 16 Mr. Schwartz, the current investigation system is not resulting in the discipline, including
 17 terminations and criminal prosecutions, necessary to hold officers accountable and protect
 18 incarcerated people. Mr. Schwartz found the local inquiries conducted by staff at RJD
 19 were incomplete, unprofessional, and profoundly biased against incarcerated complainants
 20 and witnesses. Schwartz Decl., ¶¶ 40-47, 84, 181, 187, 273, 276, 327. Mr. Schwartz's
 21 findings in this respect are consistent with CDCR's own admissions and conclusions of the
 22 OIG, including in a June 2, 2020 Report. *See* Grunfeld RJD Decl., Ex. GG, at 3-6, 89;

23
 24 _____
 25 inquiry supports discipline), or to reject the referral. The CIU rejects referrals if the
 26 evidence submitted by the warden does not support a reasonable belief misconduct
 27 occurred that would likely result in adverse action. If the CIU rejects a case, the warden
 28 cannot impose any adverse action. Fourth, if the CIU accepts a referral, OIA conducts an
 investigation and produces an investigation report, which it sends to the warden. Fifth, the
 warden, based on the investigation report, decides whether to find the employee violated
 policy, and, if yes, what discipline to impose based on the Employee Discipline Matrix in
 DOM. *See* Schwartz Decl., ¶¶ 16-19, 75, 77; *see also* Grunfeld Decl., Exs. P-Q; *id.*, Ex. J,
 33, 36-42.

1 Grunfeld Decl., Ex. V, at 2, 36-52, 75-81; *see also* Vail Decl., ¶¶ 62-63. Furthermore,
 2 Defendants’ creation of AIMS—a new unit within OIA that will conduct some local
 3 inquiries into staff complaints instead of local prison staff—will not solve these problems.
 4 AIMS (a) will not conduct inquiries into many staff complaints (including some claims of
 5 excessive and unnecessary force), and (b) will only conduct inquiries following a written
 6 complaint by the victim of misconduct (excluding oral reports of misconduct and reports
 7 from third parties). Schwartz Decl., ¶¶ 90-91; *see also* Grunfeld Decl., ¶¶ 31-33 & Exs. J,
 8 at 70-72, 80-99; *id.* at Exs. O-R.

9 The OIA Central Intake Unit (“CIU”)—which functions as the gatekeeper for all
 10 discipline of CDCR employees—blocked many potentially meritorious complaints against
 11 RJD staff from even being investigated by OIA, an issue Plaintiffs have been bringing to
 12 CDCR’s attention for years. Schwartz Decl., ¶¶ 54-57, 266; Grunfeld. Decl., Ex. U.
 13 Mr. Schwartz found (1) that the CIU misapplied the “reasonable belief” standard in a
 14 number of cases and (2) that the standard is inappropriate to use as an exclusionary criteria
 15 before a formal investigation has even been conducted. Schwartz Decl., ¶¶ 54-57, 266.

16 Mr. Schwartz observed that wardens at RJD—who, like all wardens in CDCR, have
 17 the authority to decide whether to find an officer has violated policy and to impose
 18 discipline—exercised their discretion poorly and inconsistently. *Id.*, ¶¶ 77-78. In some
 19 cases, the wardens elected not to sustain allegations fully supported by the facts. *Id.* In
 20 others, wardens made inconsistent decisions in finding misconduct and imposing penalties
 21 where allegations of misconduct were substantially similar. *Id.*, ¶¶ 172, 176-181.

22 Mr. Schwartz also found that the Employee Disciplinary Matrix—which sets forth
 23 presumptive penalties for different types of misconduct—is seriously flawed and leads to
 24 penalties that are too low for serious misconduct that harms incarcerated people. *Id.*,
 25 ¶¶ 75-76, 138; Grunfeld RJD Decl., Ex. LL. Mr. Schwartz found staff members accused
 26 of serious misconduct were nearly always permitted to remain in positions with control
 27 over incarcerated people, sometimes including their victims, and receive their salaries
 28 during the pendency of investigations. Schwartz Decl., ¶¶ 51, 220. Mr. Schwartz found

1 that, where evidence indicated that officers had engaged in criminal conduct, CDCR rarely
 2 referred the cases to local prosecutors. *Id.*, ¶ 52, 211, 248. Lastly, Mr. Schwartz
 3 concluded that CDCR only disciplines officers when there is video evidence or staff
 4 reports of misconduct. *Id.*, ¶¶ 53, 126, 127, 172, 208, 210, 219. In sum, Mr. Schwartz
 5 concluded that the current system is not capable of fulfilling its basic purposes—to
 6 determine if staff violated policy and/or the law and to discipline them appropriately.

7 Though Mr. Schwartz only reviewed staff investigation files from RJD, his
 8 conclusions regarding the problems with the staff complaint, investigation, and discipline
 9 system apply to CDCR as whole. The primary failings he identified—lack of video
 10 surveillance, biased and poor-quality inquiries, inappropriate rejections of referrals by the
 11 CIU, inadequate investigations by OIA, and improper exercise by wardens of their
 12 authority to discipline—are endemic to the system created by CDCR. Schwartz Decl.,
 13 ¶¶ 84-87; *see also* RJD Mot. at 23-26; Grunfeld Decl., Ex. V.

14 The only other system within CDCR for holding officers accountable is this Court's
 15 Accountability Orders. *See* Grunfeld RJD Decl., ¶¶ 3-9 & Exs. B-D. As discussed in the
 16 RJD Motion, Defendants failed to place the majority of RJD allegations on the *Armstrong*
 17 Accountability Logs, much less investigate them through the process outlined in the
 18 Court's Modified Injunction. RJD Motion at 34. The Accountability Logs for January and
 19 February 2020, which Defendants produced after the filing of the RJD Motion, also do not
 20 include any of the staff misconduct allegations raised in the declarations attached to the
 21 RJD Motion, all of which Plaintiffs' counsel provided to Defendants in January and
 22 February 2020. *See* Grunfeld Decl., ¶ 39; Freedman Decl., Ex. 75; Freedman RJD Decl.,
 23 ¶ 9. Similarly, Defendants have failed to log many instances of staff misconduct at LAC
 24 that Plaintiffs have included in recent tour reports and have not confirmed any of the
 25 allegations. *See* Nolan Decl., ¶ 8; Freedman Decl., Ex. 76.

26 **IV. CDCR NO LONGER PLANS TO INSTALL NEW SURVEILLANCE**
 27 **CAMERAS AT ANY PRISONS**

28 One area of agreement between the parties in this dispute is that video surveillance

1 would help reduce misconduct against people with disabilities. As Plaintiffs wrote in the
 2 RJD Motion, “[t]he December 2018 strike team, CDCR’s Chief Ombudsman, both of
 3 CDCR’s persons most knowledgeable, and the OIG all agree that cameras are critical for
 4 deterring misconduct and holding accountable officers who engage in misconduct.” RJD
 5 Mot. at 26-27. Both of Plaintiffs’ experts agree that CDCR cannot begin to eradicate the
 6 staff misconduct scourge until it installs fixed surveillance cameras and mandates the use
 7 of body-worn cameras. *See* Schwartz Decl., ¶¶ 87, 94-98; Vail Decl., ¶¶ 83, 94-101.

8 As of the filing of the RJD Motion, the Governor had included a \$21.6 million
 9 budget change proposal (“BCP”) in the fiscal year 2020-2021 budget to install fixed
 10 surveillance cameras at RJD, SVSP, and CIW. *See* RJD Mot. at 27-28; Grunfeld RJD
 11 Decl., Ex. Y. Though the BCP would have had no impact on LAC, CCI, COR, KVSP, and
 12 SATF, it was a necessary, albeit insufficient, step toward stopping the abuse of people with
 13 disabilities at RJD.

14 On May 14, 2020, however, the Governor withdrew the BCP. Grunfeld Decl.,
 15 Ex. L, at 87. Defendants now appear to have no current plan or funding for installing
 16 surveillance cameras at RJD or any other prison in CDCR. Grunfeld Decl., ¶ 29.

17 In his report, finalized on June 1, 2020, Mr. Schwartz wrote:

18 [O]ur country is in the midst of a national crisis brought on by the death of
 19 George Floyd at the hands of police officers. I am struck by the similarities
 20 between that awful case and what is unfolding in CDCR; multiple allegations
 21 of staff misconduct against the responsible officer and an utter failure to hold
 22 staff accountable before it is too late. There is one stark difference in the
 George Floyd case—the nation is outraged by the conduct because a video of
 the misconduct exists. Unfortunately, we do not have video of alleged
 misconduct at RJD, or throughout CDCR, and that is a travesty.

23 Schwartz Decl., ¶ 22. Defendants’ recent decision not to install additional cameras at any
 24 of its prisons ensures the travesty identified by Mr. Schwartz will continue. And while the
 25 COVID-19 pandemic has placed burdens on California’s budget, so too have the wanton
 26 and unjustified attacks on incarcerated people with disabilities. In many of the
 27 declarations filed with this Motion and the RJD Motion, a person with a disability had to
 28 be transported to a hospital for expensive treatment. By serving as a deterrent to

1 misconduct, cameras will reduce these costs and untold human suffering.²⁴

2 ARGUMENT

3 I. DEFENDANTS ARE VIOLATING THE ADA, RA, AND ORDERS OF THIS 4 COURT BY ALLOWING SYSTEMIC ABUSE AIMED AT ARMSTRONG 5 CLASS MEMBERS

6 Officers at many CDCR prisons are assaulting, abusing, retaliating against, and
7 otherwise terrorizing people with disabilities because they have disabilities. This conduct
8 violates the ADA, the RA, and prior orders of this Court.

9 Title II of the ADA provides that “no qualified individual with a disability shall, by
10 reason of such disability, be excluded from participation in or be denied the benefits of the
11 services, programs, or activities of a public entity, or be subjected to discrimination by any
12 such entity.” 42 U.S.C. § 12132; *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir.
13 2001).²⁵ In 2007, the Court ordered Defendants to comply with this provision. *See*
14 *Grunfeld RJD Decl., Ex. B (“2007 Injunction”)*, at 9; *Grunfeld RJD Decl., Ex. A (ARP)*,
15 § I (copying language from 42 U.S.C. § 12132). The ADA also prohibits any individuals,
16 including public entities, from retaliating against people who exercise their rights under
17 Title II. *See* 42 U.S.C. § 12203(a) (“No person shall discriminate against any individual
18 because such individual has opposed any act or practice made unlawful by this chapter or
19 because such individual made a charge, testified, assisted, or participated in any manner in
20 an investigation, proceeding, or hearing under this chapter.”).

21 The evidence is overwhelming that CDCR is allowing officers to attack and
22 retaliate against people with disabilities by reason of their disabilities or for exercising
23 their rights under the ADA. *See* Factual and Procedural Background, § II, *supra*; RJD

24 ²⁴ In the 2019-2020 budget, the OIG was provided with new authority to conduct its own
25 investigations, audits, and reviews of CDCR policies and procedures. *See* *Grunfeld Decl.,*
26 *Ex. T*, at 10. In the May Revise for the 2020-2021 budget, however, the Governor
27 removed all funding for that purpose, making it “unlikely that the OIG will be able to
28 make use of its new authority” and eliminating one much-needed means of oversight of
29 CDCR. *Id.*

²⁵ “The [ADA and Rehabilitation Act] provide identical remedies, procedures and rights.”
Vos v. City of Newport Beach, 892 F.3d 1024, 1036 (9th Cir. 2018) (internal quotation
marks omitted); *Armstrong v. Wilson*, 942 F. Supp. 1252, 1258 (N.D. Cal. 1996).

1 Mot. at 4-18. It is difficult to conceive of conduct that more squarely violates the statute
 2 than assaulting a person for requesting a disability accommodation, for complaining about
 3 an officer's failure to provide an accommodation, or for being unable, because of
 4 disability, to hear an officer's order.

5 Furthermore, the unnecessary and excessive force used by officers against people
 6 with disabilities violates the ADA. Law enforcement officers violate the ADA if, in the
 7 course of an arrest, they "caus[e] the person [with a disability] to suffer greater injury or
 8 indignity in that process than other arrestees." *See Sheehan v. City and County of San*
 9 *Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014) (holding police officers who shot a person
 10 in mental health crisis who was threatening to harm herself and others violated the ADA
 11 by failing to use de-escalation techniques to avoid use of force), *rev'd in part on other*
 12 *grounds*, 575 U.S. 600 (2015); *Vos v. City of Newport Beach*, 892 F.3d 1024, 1036-38 (9th
 13 Cir. 2018) (same). The same principle applies here. When officers have used force to
 14 unnecessarily throw people out of wheelchairs and walkers or have intentionally closed
 15 cell doors on people with disabilities who move slowly, the people with disabilities suffer
 16 "greater injury or indignity" than people without disabilities.

17 **II. THE ENVIRONMENT AT MANY CDCR PRISONS—WHERE**
 18 **ARMSTRONG CLASS MEMBERS ARE TOO AFRAID OF STAFF TO**
 19 **REQUEST ACCOMMODATIONS FOR THEIR DISABILITIES—**
 20 **VIOLATES THE ADA, RA, AND PRIOR ORDERS OF THIS COURT**

21 The pervasive violence at many CDCR prisons has made *Armstrong* class members
 22 too afraid to exercise their right to request and receive reasonable accommodations needed
 23 to participate in CDCR programs, services, and activities. "Title II and § 504 include an
 24 affirmative obligation for public entities to make benefits, services, and programs
 25 accessible to people with disabilities." *Updike v. Multnomah Cty.*, 870 F.3d 939, 949 (9th
 26 Cir. 2017). The ADA's implementing regulations require that "[a] public entity shall make
 27 reasonable modifications in policies, practices, or procedures when the modifications are
 28 necessary to avoid discrimination on the basis of disability, unless the public entity can
 demonstrate that making the modifications would fundamentally alter the nature of the

1 service, program, or activity.” 28 C.F.R. § 35.130(b)(7)(i). The Court has ordered CDCR
 2 to abide by this requirement. *See* Grunfeld RJD Decl., Ex. B, at 9; *id.* Ex. A, § II.F (“The
 3 Department shall provide reasonable accommodations or modifications for known physical
 4 or mental disabilities of qualified inmates/parolees.”).

5 Title II’s accommodation mandate is generally triggered once a person with a
 6 disability requests an accommodation. *See Kiman v. New Hampshire Dep’t of Corr.*, 451
 7 F.3d 274, 283 (1st Cir. 2006). As such, the ADA’s implementing regulations recognize
 8 the importance of a process for requesting accommodations, mandating that all public
 9 entities “adopt and publish a grievance procedure providing for prompt and equitable
 10 resolution” of requests for accommodation. 28 C.F.R. § 35.107(b). The Court has ordered
 11 CDCR to provide a special grievance process for incarcerated people to request
 12 accommodations. *See* Grunfeld RJD Decl., Ex. B, at 9; *id.* Ex. A, § IV.I.23 (setting forth
 13 procedures for people with disabilities to “request an accommodation”).

14 The ADA also includes a broad anti-interference provision, which makes it
 15 unlawful to coerce, intimidate, threaten, or interfere with any individual in
 16 the exercise or enjoyment of, or on account of his or her having exercised or
 17 enjoyed, or on account of his or her having aided or encouraged any other
 individual in the exercise or enjoyment of, any right granted or protected by
 [Chapter 126, which includes Title II].

18 42 U.S.C. § 12203(b). This provision prohibits not only retaliation against people who
 19 expressly exercise their rights under the ADA, but also conduct that has a chilling effect on
 20 others’ exercise of their ADA rights. *See Brown v. City of Tucson*, 336 F.3d 1181, 1190-
 21 92 (9th Cir. 2003) (noting broad sweep of ADA’s anti-interference provision); *EEOC v.*
 22 *Day & Zimmerman NPS, Inc.*, 265 F. Supp. 3d 179, 206 (D. Conn. 2017) (disclosing name
 23 of employee who filed an ADA complaint to other employees would violate anti-
 24 interference provision because such disclosure “could have the effect of interfering with or
 25 intimidating the [other employees] with respect to communicating with the EEOC about
 26 possible disability discrimination”); *Purcell v. Pennsylvania Dep’t of Corr.*, No. CIV. A.
 27 95-6720, 1998 WL 10236, at *4, 9-10 (E.D. Pa. Jan. 9, 1998) (plaintiff-prisoner
 28 established triable issue of fact for purposes of ADA interference claim premised, in part,

1 on evidence that prison superintendent sent “derogatory letters” relating to his disabilities).

2 As reflected in declaration after declaration, people with disabilities are so terrified
 3 of becoming the next victim of staff misconduct that they refrain from requesting
 4 accommodations they require to participate in CDCR programs, services, and activities or
 5 from complaining when staff fail to provide accommodations. *See* Factual and Procedural
 6 Background, § II, *supra*; RJD Mot. at 18-20. Defendants, by tolerating such an
 7 environment, violate 42 U.S.C. § 12203(b), 28 C.F.R. § 35.130(b)(7)(i), 28 C.F.R.
 8 § 35.107(b), and the Court’s 2007 Injunction. Put simply, Defendants cannot satisfy their
 9 obligations to people with disabilities, including the court-ordered requirement for a
 10 disability-specific grievance procedure, so long as a climate of fear prevents people from
 11 asking for accommodations in the first place.

12 **III. DEFENDANTS ARE IN VIOLATION OF THIS COURT’S ORDERS**
 13 **REGARDING ACCOUNTABILITY**

14 To help Defendants create a durable remedy in this case, the Court has required
 15 Defendants to log and investigate allegations of non-compliance with the ADA, RA, ARP,
 16 and orders of the Court. *See* Grunfeld RJD Decl., ¶¶ 3-9 & Exs. B-D (“Accountability
 17 Orders”). Pursuant to the 2007 Injunction, Defendants must “track the record of each
 18 institution and the conduct of individual staff members” who were non-compliant and
 19 “refer individuals with repeated instances of noncompliance to the [OIA] for investigation
 20 and discipline, if appropriate.” *Id.*, Ex. B, at 7. An important purpose of the accountability
 21 process was to ensure that CDCR develop “effective internal oversight and accountability
 22 procedures to ensure that Defendants learned what was taking place in their facilities, in
 23 order to find violations, rectify them and prevent them from recurring in the future, without
 24 involvement by Plaintiffs’ counsel or the Court.” *Id.*, Ex. C, at 10. In 2012, the Court
 25 found that Defendants were not complying with the accountability process and modified it
 26 to mandate that Defendants timely investigate allegations of non-compliance and provide
 27 Plaintiffs with the documents underlying the investigation. *Id.* at 10-12, 18. The Court
 28 ordered Defendants to log and initiate investigations within ten days of receipt of all

1 allegations of non-compliance. *Id.*, Ex. D, at 1-2.

2 Defendants have failed to log and investigate many allegations of ADA non-
3 compliance related to staff misconduct at RJD and LAC. *See* Freedman RJD Decl., ¶ 280;
4 Grunfeld Decl., ¶ 39; Nolan Decl., ¶ 8; Freedman Decl., Ex. 75-76. Defendants have also
5 failed to log all allegations within ten business days of receipt. Freedman RJD Decl.,
6 ¶ 281. Accordingly, Defendants are violating the careful accountability protections put in
7 place by this Court. Grunfeld RJD Decl., Ex. D, at 1-2.

8 Defendants' compliance with their accountability obligations would not, standing
9 alone, have solved the problems at RJD, LAC, or other prisons. Nevertheless, had
10 Defendants complied, they would have possessed a complete record of searchable
11 allegations by officer and allegation type. Grunfeld RJD Decl., Ex. C, at 20-21. A
12 complete accountability log would also have made it possible for CDCR to impose
13 progressive discipline and to engage the OIA more thoroughly in the officer misconduct at
14 issue here, including through criminal referrals.

15 Furthermore, CDCR's inability to keep people with disabilities safe at many of its
16 prisons has rendered the Court's Accountability Orders futile and feckless. For the
17 accountability remedies to work, Defendants must have mechanisms for self-monitoring
18 non-compliance. If, however, *Armstrong* class members are too afraid to complain when
19 staff violate their rights, and if Defendants hide or ignore findings by their own staff, *see*
20 RJD Mot. at 23-24; Freedman RJD Decl., ¶ 282, CDCR has lost a central means for
21 discovering, logging, investigating, and remedying non-compliance, including through
22 imposing discipline on officers.

23 **IV. THE SYSTEMIC ADA VIOLATIONS REQUIRE SIGNIFICANT CHANGES**
24 **TO CDCR OPERATIONS**

25 To remedy Defendants' violations of the 2007 Injunction, Accountability Orders,
26 ADA, and RA, the Court should require Defendants to develop, within forty-five days, a
27 plan to end assaults, abuse, and retaliation against class members. This Court has the
28 inherent power to issue further remedial orders to effectuate its prior injunctions. *See, e.g.,*

1 *Parsons v. Ryan*, 949 F.3d 443, 454 (9th Cir. 2020) (recognizing court’s inherent power
 2 to effectuate prior order); *see also Brown v. Plata*, 563 U.S. 493, 542-43 (2011) (holding
 3 that a court exercising equitable powers has the “duty and responsibility to assess the
 4 efficacy and consequences” of prior orders and “to make further amendments ... as
 5 warranted by the exercise of its sound discretion”). This Court also has the power to issue
 6 additional injunctive relief under Federal Rule of Civil Procedure 65. *See Arizona Dream
 7 Act Coalition v. Brewer*, 855 F.3d 957, 977 (9th Cir. 2017).

8 A strong remedial order is especially warranted and well within the Court’s power,
 9 because CDCR’s actions not only violate the ADA and prior Court orders, but also the
 10 Eighth and Fourteenth Amendments to the United States Constitution. Officers’
 11 harassment, retaliation, and use of violence against incarcerated people, along with prison
 12 officials’ willful lack of responsiveness in the face of systemic abuse of class members,
 13 demonstrate CDCR staff members’ malicious and sadistic, let alone deliberately
 14 indifferent, attitude toward incarcerated people. *See Farmer v. Brennan*, 511 U.S. 825,
 15 833 (1994); *Hudson v. McMillian*, 503 U.S. 1, 5-6 (1992); *Chess v. Dovey*, 790 F.3d 961,
 16 972-73 (9th Cir. 2015); *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985).²⁶
 17 CDCR’s actions and inactions also have directly impeded class members’ basic Fourteenth
 18 Amendment Due Process rights, including, for example, their abilities to have fair hearings
 19 regarding their RVRs. *See, e.g., Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974)
 20 (requiring adequate notice of and opportunity to present a meaningful defense in
 21 disciplinary proceedings); *Armstrong v. Davis*, 275 F.3d 849, 865 (9th Cir. 2001); *Ashker
 22 v. Newsom*, No. 09-CV-05796-CW (RMI), 2019 WL 330461, *13 (N.D. Cal. Jan. 25,
 23 2019) (knowing reliance on fabricated evidence in prison disciplinary hearing violates due
 24 process). RVRs that are false or that incarcerated people are too afraid to challenge will
 25 lengthen prison sentences and undermine class members’ ability to obtain their release

26 _____
 27 ²⁶ Regardless of the standard the Court applies to evaluate Defendants’ subjective state of
 28 mind—deliberate indifference, *see Farmer*, 511 U.S. at 834, or malicious and sadistic, *see
 Hudson*, 503 U.S. at 5-6—the evidence amply supports finding an Eighth Amendment
 violation.

1 through the Board of Parole Hearings.

2 Given the scope of the horrific violations of class members' rights, Defendants'
3 plan must be comprehensive. As described in greater detail in Plaintiffs' Proposed Order,
4 Defendants' plan should include, at a minimum, the following elements:

5 **Cameras** – Within 90 days, CDCR should install and make operational fixed
6 surveillance cameras with coverage of all areas to which incarcerated people have access
7 at RJD, LAC, CCI, CIW, KVSP, COR, SVSP, and SATF (“the prisons”). Within 180
8 days, CDCR should purchase and begin using body-worn cameras for all correctional
9 officers at the prisons. CDCR should adopt appropriate policies and procedures and then
10 conduct training regarding the use of camera footage. *See* Schwartz Decl., ¶¶ 94-98; Vail
11 Decl., ¶¶ 83, 94-101.

12 **Reforms to Staff Complaint, Investigation, and Discipline Process** – CDCR
13 should develop a plan to reform its staff complaint, investigation, and discipline process to
14 ensure unbiased, comprehensive investigations into allegations made by *Armstrong* class
15 members, appropriate and consistent discipline, and, where warranted, criminal
16 investigations and referrals for prosecution (“Investigation and Discipline Plan”). CDCR’s
17 plan must also ensure that officers accused of serious misconduct are reassigned so they
18 cannot further harm their victims. *See* Schwartz Decl., ¶ 99-103, 106; Vail Decl., ¶ 49.

19 **Third-Party Expert Monitoring of Defendants Staff Investigation and**
20 **Discipline Plan** – The Court should appoint an expert pursuant to Federal Rule of
21 Evidence 706 to monitor Defendants' implementation of their Investigation and Discipline
22 Plan. *See* Schwartz Decl., ¶ 103.

23 **Information Sharing** – CDCR should produce to Plaintiffs' counsel on a quarterly
24 basis all documents related to staff complaints in which the alleged victim is an *Armstrong*
25 class member. CDCR should also provide Plaintiffs' counsel with monthly, written
26 updates regarding progress in implementing its plan to stop staff misconduct, including
27 data regarding staff complaints and use of force. *See* Schwartz Decl., ¶ 103.

28 **Data Collection and Early Warning System** – CDCR should immediately

1 develop an effective, electronic system to track all incidents so that it can identify non-
 2 compliance and proactively address staff misconduct and other problems. *See* Schwartz
 3 Decl., ¶ 104; Vail Decl., ¶¶ 114-118.

4 **Staffing** – CDCR should significantly increase supervisory staff on all watches on
 5 all yards at the prisons and create non-uniformed supervisory positions in housing units to
 6 improve relationships between officers and incarcerated people. *See* Vail Decl., ¶ 103.

7 **Training** – CDCR should develop and implement Human Rights, de-escalation,
 8 and cultural training for all custody, mental health staff, and medical staff to include
 9 discussion of reporting requirements, whistleblowing, non-retaliation, and treatment of
 10 incarcerated people as patients. *See* Vail Decl., ¶¶ 111-113.

11 **Oversight** – CDCR headquarters should exercise additional oversight over all staff
 12 complaints, use of force reviews, staff disciplinary proceedings, and RVRs at the prisons
 13 and should conduct quarterly interviews of randomly-selected incarcerated people to
 14 determine if the changes are working. *See* Vail Decl., ¶ 89.

15 **Anti-Retaliation** – CDCR should put an end to retaliation against class members
 16 and staff. 42 U.S.C. § 12203(a).

17 **Other Remedies** – CDCR should adopt a policy requiring that all pepper spray
 18 canisters be weighed before and after use; review all RVRs issued in the last three years to
 19 individuals who filed declarations in support of this Motion and the RJD Motion; monitor
 20 the conduct and treatment of incarcerated people who file staff complaints to ensure staff
 21 are not engaging in retaliation; issue a policy of requiring that staff collect the names of all
 22 staff and incarcerated people witnesses to all uses of force; and issue a policy requiring
 23 medical and mental health staff to document and report suspicious injuries to incarcerated
 24 people. *See* Schwartz Decl., ¶ 105; Vail Decl., ¶¶ 68-72, 102, 117.

25 **Other Prisons** – CDCR must also explain why it should not install cameras and
 26 undertake the remedies listed here at institutions other than the prisons.

27 **Suspension of State Law** – If any provisions of state law interfere with CDCR’s
 28 ability to enact remedies necessary to remedy the violations of the ADA, RA, ARP, and

1 orders of this Court, CDCR should request a court order suspending those provisions.

2 If Defendants fail to develop an appropriate plan or to timely implement their plan,
3 *Armstrong* class members should have the option to request and receive transfer from the
4 prisons and CDCR should stop transferring *Armstrong* class member to the prisons.

5 These remedies are all consistent with the Prison Litigation Reform Act’s
6 requirement that the Court’s orders be narrowly drawn, extend no further than necessary to
7 correct the violation of a federal right, and be the least intrusive means necessary to correct
8 the violation. *See* 18 U.S.C. § 3626(a)(1)(A). Anything short of these remedies will not
9 put an end to Defendants’ ongoing and pervasive violation of *Armstrong* class members’
10 rights. Given CDCR’s failure to adequately address the staff misconduct crisis, the
11 specificity of the remedies is appropriate. *See Armstrong v. Brown*, 768 F.3d 975, 985-86
12 (9th Cir. 2014) (“[A] court may ... provide specific instructions to the State without
13 running afoul of the PLRA,” and has “considerable discretion in fashioning relief” where,
14 as here, the Court has supervised the litigation for a long time).

15 **CONCLUSION**

16 For the aforementioned reasons, Plaintiffs respectfully request that the Court grant
17 this Motion and issue the Proposed Order.

18

19 DATED: June 3, 2020

Respectfully submitted,

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