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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**REPLY IN SUPPORT OF PLAINTIFFS’
MOTION TO STOP DEFENDANTS
FROM ASSAULTING, ABUSING AND
RETALIATING AGAINST PEOPLE
WITH DISABILITIES**

Judge: Hon. Claudia Wilken
Date: October 6, 2020
Time: 2:30 p.m.
Crtrm.: Remote

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INTRODUCTION

This Court recently granted relief to *Armstrong* class members at R.J. Donovan Correctional Facility (“RJD”) based on findings of widespread denials of accommodations, unnecessary and excessive use of force directed at people with disabilities, and Defendants’ failure to hold officers accountable for their brutality. *See* Order Granting in Part Mot. to Modify Remedial Orders and Injs. (“RJD Order”), Dkt. 3059. Defendants’ opposition to the Statewide Motion, which seeks to extend the relief to class members at other prisons, crumbles under the evidence of similar, horrific violations throughout Defendants’ prison system.

First, Defendants present some evidence—expert testimony, declarations from officers, and documents—that they contend shows that some of the abuses described in the thirty-nine declarations filed on June 3, 2020 by people with disabilities never happened. Yet, Defendants fail to dispute fifteen of the declarations. And as demonstrated by Plaintiffs’ experts’ thorough dismantling of Defendants’ evidence, Defendants’ attacks on the other declarants are shallow, contradicted by other evidence, and unpersuasive.

Second, Defendants insist that even if some officers did abuse people with disabilities, those abuses do not violate the Americans with Disabilities Act (“ADA”). Plaintiffs have, however, presented overwhelming evidence—the June 3 declarations, fifty-one new declarations filed herewith, reports from the Office of the Inspector General (“OIG”), and years of tour reports and advocacy letters—that officers throughout that state routinely deny people needed disability accommodations, assault them for requesting accommodations, or interfere with their rights under the ADA. The abuse is inescapable and reaches into every corner of Defendants’ prisons. As but one example, just a few weeks ago, Inmates 2 and 3—who were transferred from RJD because of the retaliation they faced for submitting declarations in support of the RJD Motion—were called “rats” by an officer at their new prison.

Third, Defendants assert that even if their officers have abused people with disabilities, Defendants’ discipline system holds officers accountable. All available evidence, however, suggests that Defendants’ system is built to exonerate staff and discredit incarcerated people. Plaintiffs’ expert on discipline, having now reviewed relevant files from RJD and CSP – Los

1 Angeles County (“LAC”), has found serious problems at every level of the process. Since 2017,
 2 Defendants have terminated only a single officer at LAC for misconduct that victimized an
 3 incarcerated person, notwithstanding mountains of evidence of abuses there. A recent report from
 4 the OIG highlights that officers at another prison received a slap on the wrist when they were
 5 caught on camera repeatedly punching a mentally-ill person without justification.

6 Fourth, Defendants argue that the record is insufficient to support Plaintiffs’ proposed
 7 relief, which includes fixed and body-worn cameras at seven additional institutions (LAC, CSP –
 8 Corcoran (“COR”), California Correctional Institution (“CCI”), Substance Abuse Treatment
 9 Facility (“SATF”), California Institution for Women (“CIW”), Kern Valley State Prison (“KVSP”),
 10 and Salinas Valley State Prison (“SVSP”) (collectively, “Statewide Prisons”)), reforms to and
 11 third-party oversight of the staff investigation and discipline process, and increased staffing and
 12 training. The evidence shows, however, that the same fundamental problem that led the Court to
 13 grant relief at RJD—Defendants’ inability to hold officers accountable for ADA violations—exists
 14 throughout California’s prisons. The same remedies are therefore needed to finally put an end to
 15 the harm being suffered by *Armstrong* class members.

16 ARGUMENT

17 I. OFFICERS THROUGHOUT CDCR ARE VIOLATING THE ADA RIGHTS OF 18 PEOPLE WITH DISABILITIES

19 Defendants contend that Plaintiffs have failed to establish that officers at prisons other than
 20 RJD have violated the ADA, *Armstrong* Remedial Plan (“ARP”), or prior Court orders.
 21 Defendants are wrong. The evidence paints a vivid picture of an out-of-control prison system
 22 whose culture is broken and in which people with disabilities are routinely abused by officers.

23 A. The June 3 Declarations Describe Disability Discrimination and Interference 24 with ADA Rights at Many CDCR Prisons

25 The thirty-nine declarations filed on June 3 describe officers inflicting a wide range of
 26 serious, disability-related abuse on people with disabilities.¹ *See* Statewide Mot. at 6-9.

27
 28 ¹ The declarations describe officers unnecessarily throwing people out of wheelchairs, Freedman
 (footnote continued)

Declarants at multiple institutions swore that the abuses they experienced or witnessed have made them so afraid of staff that they refrain from requesting accommodations or other help they need or complaining when staff mistreat them. *See* Statewide Mot. at 7-8 & nn.9-11. The declarations describe Defendants interfering with incarcerated people's rights under the ADA, including by threatening them for speaking with Plaintiffs' counsel. *See id.* at 7, n.8. The Court has already held that such conduct violates the ADA, ARP, and prior Court orders. *See* RJD Order at 17-31, 56-61. Incredibly, Defendants claim that many of these incidents are unrelated to disability, suggesting that Defendants do not understand their obligations under federal law.²

B. Defendants' Challenges to the Credibility of the June 3 Declarants Fail

Defendants have not submitted any countervailing evidence to challenge fifteen of the declarations. *See* Freedman Statewide Decl., Dkt. 2948-2, Exs. 25, 29, 33-34, 36-42, 45-46, 49, 52. These "declarants' version of the incidents is, therefore, uncontroverted." RJD Order at 25.

Plaintiffs' experts reviewed the documents and declarations that Defendants submitted to

Statewide Decl., Dkt. 2948-2, Ex. 27, ¶¶ 25-30; *id.*, Ex. 53, ¶¶ 15-24; *id.*, Ex. 48, ¶¶ 28-30; beating a person for failing to comply with an order to get down on the ground even though his doctor issued him a "no get down" accommodations for his disabilities, *id.*, Ex. 61, ¶¶ 9-14; throwing a hard-of-hearing person to the ground for reaching for his glasses so that he could read the officers' lips, *id.*, Ex. 63, ¶¶ 6-9; assaulting someone with a lower bunk chrono for refusing to sleep on an upper bunk, *id.*, Ex. 50, ¶¶ 9-17; refusing to provide a wheelchair user with access to an ADA worker to help him transfer to and from his wheelchair, *id.*, Ex. 35, ¶¶ 9; accusing a person of faking a disability, *id.*, Ex. 55, ¶ 29; obstructing the accessible path of travel for a person in a wheelchair, *id.*, Ex. 35, ¶¶ 15-16; and forcing a person to walk without a prescribed assistive device, then dragging him once he fell, *id.*, Ex. 61, ¶ 10. The declarations also describe many failures by Defendants to accommodate and help people with mental illness. *See* Statewide Mot. at 7, nn.6, 7, 10. Such declarations "are relevant and probative as to whether class members' rights under the ARP and ADA were violated" RJD Order at 25. And though Plaintiffs do not discuss in this brief any declarations regarding abuses at RJD that the Court already considered in the RJD Order, those declarations are relevant here because they are evidence, entirely undisputed by Defendants, of ADA violations occurring within CDCR. *Id.* at 17-31, 56-62. Plaintiffs incorporate by reference all prior filings in this case, including the RJD Motion and the Motion for a Temporary Restraining Order.

² Defendants and their experts swear that the following incidents have nothing to do with the ADA: (1) an officer attacked a person in a wheelchair battling cancer in retaliation for asking for a housing change so that he did not need to walk as far in his weakened state to receive his medications, Cate Decl., Dkt. 3083-5, ¶ 68; Vail Statewide Reply Decl., filed herewith under seal, ¶ 26; (2) officers handcuffed a person behind his back in violation of a front-cuffing chrono, Baldwin Decl., Dkt. 3083-4, ¶ 50; Vail Statewide Reply Decl., ¶¶ 136, 141; (3) officers assaulted an incarcerated person with a "no get down" chrono because he failed to comply with an order to get on the ground. *See* Warner Decl., Dkt. 3083-6 ¶ 30; Vail Statewide Reply Decl., ¶ 150.

1 challenge the remaining declarations and found, in nearly every case, that Defendants’ evidence
 2 did little to disprove that the disability-related abuses had happened and often corroborated that the
 3 misconduct had occurred. *See* Vail Statewide Reply Decl., ¶¶ 27-28; 31-37; 39-46; 49-57; 65-69;
 4 71-98; 106-116; 125-135; 142-150; 152-155; 157-161; 171-183; 191-196; 203-211; Schwartz
 5 Statewide Reply Decl., filed herewith under seal, ¶¶ 170-192, 222-244 263-286.³ In only a few
 6 cases, Defendants’ evidence creates a dispute of fact over what happened.⁴ Even in those cases,
 7 the equities strongly favor the declarants—who have nothing to gain from submitting declarations
 8 and much to lose given the rampant retaliation in CDCR—over Defendants and their officers—
 9 who have much to gain from avoiding findings that they have violated the rights of those they
 10 have sworn to protect. Accordingly, notwithstanding Defendants’ challenges, the declarations
 11 establish a pattern of widespread abuse of people with disabilities throughout CDCR.

12
 13
 14 ³ Defendants’ experts superficially reviewed only a few cases and their reviews were flawed, *See*
 15 Grunfeld Statewide Reply Decl., filed herewith under seal, ¶¶ 126-201. As a few examples,
 16 Mr. Warner agreed with KVSP’s decision not to sustain findings of misconduct because there
 17 “were no contrary reports by other inmates or staff witnesses.” Warner Decl., Dkt. 3083-6, ¶ 26.
 18 In fact, two incarcerated people reported information consistent with the declarant’s version of
 19 events. Vail Statewide Reply Decl., ¶ 45. In another case, Mr. Warner agreed with KVSP’s
 20 decision not to sustain findings of misconduct, Warner Decl., Dkt. 3083-6, ¶ 32. Mr. Warner,
 21 however, failed to identify material inconsistencies in the reports of involved officers, inappro-
 22 priately disregarded evidence corroborating the allegation, and neglected to mention that one of
 23 the main witnesses was never interviewed. Vail Statewide Reply Decl., ¶ 80-89. In another case,
 24 Mr. Cate concurred with LAC’s decision not to sustain findings of misconduct. Cate Decl., Dkt.
 25 3083-5, ¶ 65. Mr. Cate, however, inappropriately dismissed the corroborating statements of multi-
 26 ple witnesses, mischaracterized the officer’s report as “corroborated” when no other officers sub-
 27 mitted statements about the event at issue, failed to identify multiple discrepancies in the officer’s
 28 report, and inaccurately reproduced quotes from the officer’s report. Schwartz Statewide Reply
 Decl., ¶¶ 170-192. Mr. Cate criticized parts of one investigation at LAC, but still concluded that
 the institution appropriately found no misconduct occurred. Cate Decl., Dkt. 3083-5 ¶ 69.
 Mr. Schwartz strongly disagrees that the result of the investigation was appropriate and found that
 Mr. Cate did not consider key facts, including that investigators appear to have intentionally
 omitted from their report unreliable portions of testimony from an incarcerated witness (that were
 contradicted by eight other incarcerated witnesses and the reports of officers involved) but
 included portions of his testimony that exculpated the officers. Schwartz Statewide Reply Decl.,
 ¶¶ 222-244. Mr. Baldwin opined that COR conducted a “genuine investigation” into one
 allegation, but the investigation failed entirely to explain how the class member sustained a broken
 jaw. Baldwin Decl., Dkt. 3083-4, ¶ 46; Vail Statewide Reply Decl., ¶¶ 128-132.

⁴ In those disputed cases, Plaintiffs’ experts opine that the impossibility of determining what
 happened cries out for the need for cameras. Vail Statewide Reply Decl., ¶¶ 41, 68, 83, 98, 179;
 Schwartz Statewide Reply Decl., ¶ 90. For the most part, Defendants’ experts agree. Grunfeld
 Statewide Reply Decl., ¶¶ 137-138, 145(c), 177, 187-189.

C. Defendants Do Not Address Other Evidence Submitted By Plaintiffs

Defendants ignore the other evidence that Plaintiffs submitted in support of the Statewide Motion, including OIG reports regarding misconduct at High Desert State Prison and SVSP and problems regarding Defendants' use-of-force reviews, *see* Grunfeld RJD Decl., Dkt. 2922-1, Exs. EE, GG; Grunfeld RJD Reply Decl., Dkt. 3024-1, Ex. VV; and Plaintiffs' tour reports and letters to Defendants regarding misconduct at LAC, CIW, COR, SAC, and SATF, *see* Freedman RJD Decl., Dkt. 2922-2, Exs. 76, 78, 80-82, 85-87; Nolan Statewide Decl., Dkt. 2948-3. This un rebutted evidence establishes that Defendants have been aware for years that their officers have been targeting people with disabilities for abuse.

D. New Declarations from People with Disabilities Regarding Misconduct at Ten CDCR Institutions Describe Similar Violations of the ADA

Fifty-one new declarations, most of which describe recent incidents and are supported by medical records and other documents, from eleven CDCR institutions⁵ show that the same misconduct continues to occur and is widespread.⁶ *See* Grunfeld Statewide Reply Decl., Exs. 2-3, 6-18, 20-36, 41-43, 50-52, 54-59, 67-70, 81-83. For example:

⁵ These declarations describe incidents of misconduct at COR, LAC, Mule Creek State Prison ("MCSP"), SATF, CIW, RJD, California Health Care Facility ("CHCF"), California Medical Facility ("CMF"), KVSP, Correctional Training Facility ("CTF"), and CSP – Sacramento ("SAC").

⁶ For declarations where staff failed to provide accommodations or otherwise discriminated against people with disabilities, *see, e.g.*, Grunfeld Statewide Reply Decl., Ex. 33, ¶¶ 11-15; Ex. 29, ¶¶ 12-14; Ex. 25, ¶¶ 9-10; Ex. 67, ¶¶ 8, 11; Ex. 70, ¶¶ 18-19, 24, 27; Ex. 43, ¶ 10; Ex. 68, ¶¶ 23-24. For declarations where people are so scared of staff that they refrain from requesting disability accommodations or other help they require or do not report suicidality or need for mental health or medical treatment, *see, e.g., id.*, Ex. 13, ¶¶ 19, 21; Ex. 67, ¶ 20; Ex. 70, ¶ 40; Ex. 43, ¶ 12; Ex. 31, ¶ 20; Ex. 21, ¶¶ 11, 18; Ex. 11, ¶ 20; Ex. 58, ¶ 36; Ex. 55, ¶¶ 39-40; Ex. 27, ¶ 47; Ex. 54, ¶ 75; Ex. 30, ¶ 18; Ex. 26, ¶ 29; Ex. 7, ¶ 30. For declarations where staff threatened people for speaking with Plaintiffs' counsel about misconduct, *see, e.g., id.*, Ex. 18, ¶¶ 7-21; Ex. 17, ¶ 29. For declarations regarding unnecessary and excessive force, *see, e.g., id.*, Ex. 33, ¶¶ 11-16; Ex. 29, ¶¶ 12-14; Ex. 25, ¶¶ 9-10; Ex. 35, ¶¶ 9-14; Ex. 10, ¶¶ 9-19; Ex. 31, ¶¶ 10-12; Ex. 6, ¶¶ 11-14, 17-20; Ex. 57, ¶¶ 9-16. For declarations where staff abuse people for reporting suicidality or making other requests for mental health care, *see, e.g., id.*, Ex. 30, ¶¶ 8-10; Ex. 26, ¶¶ 8-10; Ex. 10, ¶¶ 9-18; Ex. 34, ¶ 16-29; Ex. 68, ¶¶ 8-14. For declarations where staff failed to de-escalate confrontations with people with mental illness, *see, e.g., id.*, Ex. 36, ¶¶ 24-31; Ex. 59, ¶¶ 7-16. For declarations where people faced retaliation for reporting misconduct, *see, e.g., id.*, Ex. 33, ¶¶ 31-34; Ex. 25, ¶¶ 14, 18; Ex. 83, ¶¶ 6-9; Ex. 21, ¶¶ 7-17; Ex. 58, ¶¶ 10-17, 29; Ex. 8, ¶¶ 13-19; Ex. 12, ¶¶ 5-8; Ex. 50, ¶¶ 7-11; Ex. 9, ¶¶ 9-18; Ex. 28, ¶¶ 8-28. For declarations where people refrain, out of fear, from complaining about misconduct, *see, e.g., Ex. 6, ¶¶ 11-14, 17-24.*

- 1 • An officer at COR slammed a mobility-impaired class member to the ground, breaking his
2 nose and causing his disability to worsen from DNM to DPM, after he requested the
3 officer not force his legs wider than his disability physically permitted. Officers then
4 threatened the class member after he filed a complaint. *Id.*, Ex. 33, ¶¶ 11-19, 31-34.
- 5 • Officers at COR carried a person who uses a wheelchair when he returned from a hospital
6 without his assistive devices, then dropped and started kicking him. *Id.*, Ex. 29, ¶¶ 12-14.
- 7 • In response to a request by an *Armstrong* class member at COR to be allowed to bring his
8 wheelchair inside his cell, five officers kicked, punched, and beat him with batons,
9 knocking him unconscious, then dragged him into his cell and left him there without even
10 his cane. *Id.*, Ex. 25, ¶¶ 9-15.
- 11 • Two hard-of-hearing class members at LAC and KVSP who were assaulted by officers for,
12 respectively, refusing to take psychiatric medications and filing a staff misconduct lawsuit,
13 no longer ask officers to repeat themselves if they cannot hear them. *Id.*, Ex. 13, ¶¶ 8, 19;
14 *Id.*, Ex. 54, ¶¶ 11-24, 75.
- 15 • An officer at MCSP threw an *Armstrong* class members' walker against a wall and then,
16 once the person started walking with his walker, tried to push the person over. The officer
17 then challenged the person to a fight, saying "you can't prove it. I've got green on and
18 you've got blue." *Id.*, Ex. 67, ¶¶ 8-11.
- 19 • An officer at SATF mocked a hard-of-hearing class member, saying "You're not even
20 deaf," and "You're not special," when he was accessing the TDD. When the person filed a
21 request for accommodation about the issue, officers endangered his life by spreading
22 rumors that the person was responsible for an unfavorable change in programming.
23 Because of the harassment, the person no longer asks for accommodations for his
24 telephone calls. *Id.*, Ex. 70, ¶¶ 18-21, 24-31, 33, 39-40.
- 25 • A class member whom staff at CIW failed to accommodate with special cuffing and who
26 witnessed officers assault a person who was restrained, now refrains from asking officers
27 for accommodations for her hearing disability because she is afraid of how officers will
28 respond. *Id.*, Ex. 43, ¶¶ 8-12.
- On multiple occasions, officers at CIW assaulted a person with a mobility disability who is
transgender for requesting that staff comply with his chrono to be handcuffed in front of
his body. *Id.*, Ex. 41, ¶¶ 10-11, 15.
- Officers at COR, without justification, knocked a *Coleman* class member unconscious,
shattered his jaw, fractured his spine, and caused him a traumatic brain injury. The person
can no longer stand up straight and now requires a cane to walk. He is so scared of staff
that he refrains from requesting an egg crate mattress to accommodate his back and neck
injuries caused by the assault. *Id.*, Ex. 31, ¶¶ 10-11, 18-20.
- Officers at COR made fun of and then assaulted an incarcerated person who could not
walk standing up straight. *Id.*, Ex. 32, ¶¶ 20-26.
- Officers at COR stomped on a mentally-ill person's hand after a verbal dispute over
Islamophobic comments by staff, breaking his hand and dislocating his thumb (requiring
surgery). He is trying to learn to write using his other, non-dominant hand so that he does
not have to ask staff for help writing. *Id.*, Ex. 24, ¶¶ 6-19, 24-30, 37.
- Officers at LAC called a hard-of-hearing class member who filed a declaration on June 3 a
"snitch" and "the asshole that wrote a declaration for Rosen, Bien, Galvan," then assaulted

1 him while in restraints, and charged him with a false Rules Violation Report (“RVR”). *Id.*,
 2 Ex. 18, ¶¶ 7-21, 26.

- 3 • Officers at COR beat a mentally-ill person, fracturing his orbital bone. The person was
 4 then transferred to LAC. After completing a confidential call with Plaintiffs’ counsel about
 5 the COR assault, an officer told him “It’s best if you refuse talking to them ... so that you
 6 can make it home.” *Id.*, Ex. 17, ¶¶ 9-15, 29.
- 7 • After officers at MCSP assaulted a developmentally-disabled person, told him that “that
 8 George Floyd shit is played out” when he said he could not breathe, and mockingly asked
 9 him “are you being victimized? Do you need any help,” he has stopped asking for
 10 assistance from staff. *Id.*, Ex. 68, ¶¶ 8-12, 23-24.

11 Plaintiffs’ correctional expert, Eldon Vail, has reviewed 170 declarations filed by Plain-
 12 tiffs, including these new declarations. *See* Vail Statewide Reply Decl., ¶ 8. He found that “the
 13 declarations describe a culture of discrimination against and neglect of people with disabilities
 14 among custody staff at multiple institutions.” *See id.*, ¶ 12. Mr. Vail elaborated: “[i]n no other
 15 jurisdiction have I seen the systemic physical brutality that I see in ... CDCR prisons.” *Id.*, ¶ 220.

16 Along with this reply, Plaintiffs have also submitted tour reports and advocacy letters in
 17 which Plaintiffs raised with Defendants misconduct at COR, CIW, CTF, KVSP, and SATF.
 18 Grunfeld Statewide Reply Decl., Exs. 37-40, 44-48, 53, 60-66, 70-80.

19 **E. Officers Continue to Threaten Inmates 2 and 3**

20 Inmates 2 and 3 are now housed in the same unit at the same prison at which the Court
 21 ordered Defendants to transfer Inmate 2 to keep him safe from retaliation at RJD. Grunfeld
 22 Statewide Reply Decl., Ex. 2, ¶ 2; *id.*, Ex. 3, ¶ 2. On two separate occasions in the last few weeks,
 23 an officer called the men “rats” in reference to their participation as witnesses in these federal
 24 proceedings. *Id.*, Ex. 2, ¶¶ 5-13; *id.*, Ex. 3, ¶¶ 4-9; *id.*, Exs. 4-5 (video corroborating declarations).
 25 The continued harassment of Inmates 2 and 3, notwithstanding this Court’s preliminary injunction,
 26 indicates that retaliation against those who report misconduct is deeply ingrained into CDCR’s
 27 DNA. The “gang-like” behavior is by no means limited to RJD. RJD Order at 8.

28 **II. DEFENDANTS ROUTINELY FAIL TO HOLD OFFICERS ACCOUNTABLE FOR VIOLATING CLASS MEMBERS’ RIGHTS**

In the RJD Order, the Court found that “the root cause of the violations of the ARP and
 class members’ ADA rights is the systemic and long-term failure by CDCR to effectively

1 investigate and discipline violations of the ARP and class members’ ADA rights by RJD staff.”
 2 RJD Order at 35. That same fundamental problem—a broken system for holding officers
 3 accountable—plagues all of CDCR.

4 **A. The Problems with the Staff Investigation and Discipline Process Are Systemic**
 5 **and Statewide**

6 Defendants’ expert, Matthew Cate, CDCR’s former Secretary, criticizes Mr. Schwartz’s
 7 conclusion that the problems with Defendants’ staff investigation and discipline system “are
 8 endemic statewide” because Mr. Schwartz only reviewed cases from RJD for his initial
 9 declaration. *See* Cate Decl., Dkt. 3083-5, ¶ 73. Mr. Cate, however, fails to acknowledge that
 10 nearly all of the components of the process that Mr. Schwartz criticizes—lack of video
 11 surveillance, biased and poor-quality inquiries, inappropriate rejections of referrals by the Central
 12 Intake Unit, inadequate and biased investigations by the Office of Internal Affairs (“OIA”), and
 13 improper exercise by wardens of their authority to discipline—are either centrally administered or
 14 are the product of policies that apply statewide. *See* Schwartz Statewide Decl., Dkt. No. 2947-9,
 15 ¶¶ 51-57, 75-78, 138, 172, 176-181, 211, 220, 248, 266. Moreover, neither Defendants nor
 16 Mr. Cate have disputed a single one of the twenty-five, detailed case reviews, laid out over 95
 17 pages of Mr. Schwartz’s initial report, upon which he based his opinions.

18 Though the evidence from RJD is sufficient to establish statewide problems with the
 19 discipline process, documents from LAC (requested by Plaintiffs in April 2020 but not fully
 20 produced by Defendants until August 2020) confirm that the problems are not limited to RJD.
 21 Grunfeld Statewide Reply Decl., ¶ 124. Mr. Schwartz found that every shortcoming he identified
 22 at RJD was also present at LAC. Schwartz Statewide Reply Decl., ¶ 78. Of particular note, the
 23 files display profound and pervasive bias against incarcerated victims and witnesses and
 24 indefensible efforts by investigators to exonerate staff. *Id.*, ¶ 33; *see generally id.*, ¶¶ 111-305
 25 (Mr. Schwartz’s case reviews). In the most shocking example, which Mr. Schwartz describes as a
 26 “smoking gun,” the Chief Deputy Warden at LAC wrote an email to an investigative lieutenant,
 27 stating “[d]ue to the number of inmate witnesses agreeing with inmate [redacted]’s allegations of
 28 excessive UOF, **I believe we need to conduct additional interviews to show due diligence on**

1 **our part to refute [redacted]’s allegations.”** *Id.*, ¶ 194 (emphasis added). The explicit purpose
 2 of the investigation was to “refute” the complaint, not to determine what happened. Relatedly,
 3 Mr. Schwartz also confirmed that officers only face discipline where evidence other than
 4 testimony from incarcerated people—video footage or reports of misconduct from staff—exists.
 5 *Id.*, ¶¶ 48, 285, 299. So long as Defendants take this approach to discipline, they will never come
 6 into compliance with the ADA because they will never hold their officers accountable for abusing
 7 *Armstrong* class members.

8 Recent reports from the OIG further show that CDCR’s discipline system is rotten to its
 9 core. One report describes a case in which officers were captured on video punching a *Coleman*
 10 class member thirteen times in retaliation for the person having spit on an officer; the officers then
 11 lied about the incident. Grunfeld New Material Decl., Dkt. 3052-1, Ex. O (OIG report); Grunfeld
 12 Statewide Reply Decl., Exs. 107-113 (videos of incident). Rather than terminating the officers,
 13 CDCR negotiated a settlement for loss of pay of less than \$5000 and removal of the discipline
 14 from one of the officers’ files after six months. Grunfeld New Material Decl., Dkt. 3052-1, Ex. O,
 15 at 6. Mr. Vail opines that the result reached in this case, standing alone, serves as profound
 16 evidence of the inadequacies of Defendants’ system. Vail Statewide Reply Decl., ¶¶ 213-219.
 17 Another recent OIG report describes how CDCR improperly decided not to impose any discipline
 18 against an officer who assaulted his girlfriend and then lied to the police and OIA. Grunfeld State-
 19 wide Reply Decl., Ex. 139. Prior OIG reports, already admitted into evidence here, also include
 20 findings about entrenched bias against incarcerated people and the officer code of silence. *See*
 21 Grunfeld RJD Decl., Dkt. 2922-1, Ex. GG; *id.*, Ex. KK; Grunfeld RJD Reply Decl., Dkt. 3024-1,
 22 Ex. WW.⁷

23
 24
 25
 26 ⁷ The contract between Defendants and the officers’ union further undermines accountability by
 27 providing for the purge of disciplinary documents from officers’ personnel files after three years
 28 and other officer protections. Grunfeld Statewide Reply Decl., ¶¶ 216-218. The newly-signed
 contract includes a side letter that **reduces** officers’ classroom training. *Id.*, ¶ 222. That change,
 as well as examples in social media of an abusive culture, *see* Grunfeld Statewide Reply Decl., ¶¶
 224-226, do not bode well for officer accountability.

B. The Court Should Disregard Mr. Cate's Unfounded Opinions Regarding the Adequacy of Defendants' Investigation and Discipline System

Mr. Cate concludes—based on an extraordinarily limited review of investigations related to four declarations filed in support of the Statewide Motion—that the discipline process works properly. *See* Cate Decl., Dkt. 3083-5 ¶¶ 45-73.⁸ Mr. Cate admits two of the cases are problematic. *Id.*, ¶¶ 66-69; Grunfeld Statewide Reply Decl., ¶ 139. None of the cases reviewed by Mr. Cate were referred to OIA, let alone involved an OIA investigation or a decision regarding discipline by a hiring authority. *See id.*, ¶¶ 45-73. Mr. Schwartz found that two of the investigations of which Mr. Cate approved were improper and inadequate. *See* Schwartz Statewide Reply Decl., ¶¶ 170-192, 222-244. Thus, whereas Mr. Schwartz's opinions regarding the discipline process rest on sound footing and methodology, Mr. Cate's opinions do not. Grunfeld Statewide Reply Decl., ¶¶ 133-136.

C. At LAC, Only One Officer Has Been Terminated for Harming an Incarcerated Person

The lack of discipline of officers at LAC, where Plaintiffs have raised scores of allegations of misconduct, also shows Defendants' system does not work. *See* Nolan Decl., Dkt. 2948-3. Since January 1, 2017, CDCR has only disciplined eleven and terminated one staff members at LAC for misconduct that harmed incarcerated people.⁹ Grunfeld Statewide Reply Decl., Ex. 94,

⁸ Defendants' two other experts offer no opinions on whether Defendants' system holds officers accountable. Bernard Warner reviewed some investigation documents related to declarations submitted by Plaintiffs and concluded that the institutions properly found no misconduct had occurred. Warner Decl., Dkt. 3083-6, ¶¶ 23-33. Mr. Warner did not, however, offer any opinions about Defendants' discipline system. Moreover, Plaintiffs' experts dispute Mr. Warner's conclusions regarding the propriety of the three investigations he reviewed. Vail Statewide Reply Decl., ¶¶ 39-46; 80-99; 142-151. Defendants' third expert, John Baldwin, reviewed documents related to six declarations submitted by Plaintiffs. Baldwin Decl., Dkt. 3083-4 ¶¶ 38-60. Mr. Baldwin does not even opine that any of the investigations into the six incidents he reviewed were adequate, let alone that Defendants' entire system holds officers accountable for misconduct. In fact, he stated that at least one of the incident reports he reviewed "should have been more thorough, which makes it difficult to determine what actually happened in that incident." *Id.*, ¶ 35. In any event, Plaintiffs' expert had multiple criticisms of the cases about which Mr. Baldwin approved. Vail Statewide Reply Decl., ¶¶ 125-132, 136-141, 152-155, 171-183, 203-212.

⁹ Defendants did not produce answers to interrogatories served on August 6, 2020 about discipline imposed at CCI and KVSP, or make a Person Most Knowledgeable deponent available, prior to this reply. *See* Grunfeld Statewide Reply Decl., ¶¶ 116-123.

1 Ex. A. Plaintiffs have submitted 133 declarations from people with disabilities about incidents of
 2 misconduct at RJD and LAC; Defendants have disciplined a total of four officers for involvement
 3 in two of those incidents. Grunfeld Statewide Reply Decl., ¶ 123. Defendants’ position—that
 4 essentially all of the declarations are fabricated—cannot be squared with the record here.

5 **D. That Class Members Have Access to Disability Grievance and Staff Complaint**
 6 **Processes Is Irrelevant**

7 Defendants devote many pages to discussing the physical availability of the ADA
 8 grievance and staff complaint processes. Defendants miss the point. Plaintiffs have submitted
 9 substantial evidence that the complaint processes are functionally unavailable because of the ever-
 10 present threat of retaliation. Vail Statewide Reply Decl., ¶¶ 13-16, 48, 90-91, 103, 130-132, 142,
 11 144, 152, 161-162, 166, 168-169, 202, 212; Schwartz Statewide Reply Decl., ¶ 146-147, 191, 228,
 12 282. The Court has already held that such evidence establishes violations of the ADA. *See* RJD
 13 Order at 30-31. The data that Defendants have submitted showing that some “class members filed
 14 some ADA requests and grievances” does “not negate” the evidence presented by Plaintiffs “that
 15 class members refrained from filing ADA requests or grievance that they would have filed but for
 16 the threats, intimidation, or coercion” by Defendants’ officers. *Id.* at 30-31.

17 **E. The OIG’s Reports Regarding Use of Force and Discipline Do Not Establish**
 18 **that Defendants’ System Holds Officers Accountable**

19 Defendants assert that some OIG reports show that no changes are needed to the staff
 20 investigation and discipline process. Again, Defendants are wrong.

21 The OIG found in its 2019 report on use of force that, in nearly 50% of cases, staff failed
 22 to comply with policy governing conduct before, during, or after a use of force. Grunfeld
 23 Statewide Reply Decl., Ex. 138, at 26. CDCR rated particularly poorly on metrics related to
 24 videotaping interviews with incarcerated people making staff complaints, a central policy for
 25 stopping misconduct. *See id.* at 71. Staff who review uses of force performed abysmally, failing
 26 in 35% of cases to identify policy violations. *Id.* at 78. And some of the OIG’s conclusions—
 27 such as that officers only used excessive force in 6 of 2,296 incidents monitored by the OIG—
 28 strain credulity. *See id.* at 37. Such findings highlight the limits of the OIG’s use-of-force

1 reviews, which are admittedly based only on a one-sided review of the officers' accounts of
 2 events, are hampered by the lack of video footage, and do not include unreported uses of force.
 3 *See* Schwartz Statewide Reply Decl., ¶ 255.

4 Defendants' reliance on the OIG's reports regarding discipline is equally misplaced. For
 5 the period from January 2019 to June 2020, the OIG reviewed 116 cases (24.1%) that involved
 6 allegations of custody staff harming incarcerated people. Grunfeld Statewide Reply Decl., ¶ 231.
 7 Of these 116 cases, the OIG rated 28 cases as "poor" (24.1%). *Id.*, ¶ 232. In 73 of those cases
 8 (62.9%), the OIG rated as poor at least one of the six indicators it monitors. *Id.* The OIG's
 9 reports amplify Mr. Schwartz's findings of problems with the discipline process. And in the five
 10 cases that both Mr. Schwartz and the OIG reviewed, Mr. Schwartz identified numerous problems
 11 where the OIG rated CDCR's performance as "satisfactory," suggesting that the OIG's reviews are
 12 hampered by limitations in the review process. *See id.*, ¶¶ 233-238.

13 **F. Defendants Do Not Address Plaintiffs' Evidence That Defendants Are Not In**
 14 **Compliance With The Court's Accountability Orders**

15 Nowhere in their opposition do Defendants even acknowledge Plaintiffs' argument that
 16 Defendants are in violation of the Court's Accountability Orders. *See* Statewide Mot. at 15.
 17 Defendants continue to fail to log allegations of denials of access to services, programs, activities,
 18 accommodations, or assistive devices required by the ARP, ADA, or prior Court orders. *See*
 19 Grunfeld Statewide Reply Decl., ¶¶ 239-240. These failures to comply with the Accountability
 20 Orders are consistent with other evidence that Defendants do not take seriously their obligation to
 21 discipline officers who violate class members' rights.

22 **III. PLAINTIFFS' PROPOSED REMEDIES ARE NECESSARY AND TARGETED AT**
 23 **ELIMINATING THE VIOLATIONS OF ARMSTRONG CLASS MEMBERS'**
RIGHTS

24 **Fixed surveillance and body-worn cameras** – Defendants misapprehend the nature of the
 25 violations that underpin the Statewide Motion and ignore that Defendants are responsible for the
 26 operation of one, interconnected prison system, in which incarcerated people frequently transfer
 27 from prison to prison. The record establishes that the abuse of people with disabilities is occurring
 28 throughout CDCR. The fact that harassment has followed Inmates 2 and 3 to their new prison

1 shows that class members at every prison are unsafe. When misconduct does occur, Defendants'
 2 discipline system, including the processes put in place by this Court's Accountability Orders, fails
 3 to hold officers accountable. Yet, in their opposition, Defendants do not identify a single new
 4 remedial measure they have taken or are planning to implement to address the misconduct
 5 allegations raised by Plaintiffs at the Statewide Prisons. Defendants are in denial, believing that
 6 their broken system does not requires any fixing.

7 Fixed and body-worn cameras are a necessary step toward achieving ADA compliance.
 8 See RJD Order 44-46. Defendants experts all agree. See Cate Decl., Dkt. 3083-5, ¶ 97; Warner
 9 Decl., Dkt. 3083-6, ¶ 35; Grunfeld Statewide Reply Decl., ¶¶ 137-138, 145(c), 177, 187-189; *id.*,
 10 ¶ 190 (wardens at CCI, COR, and CIW want cameras). Plaintiffs' experts' have opined that
 11 Defendants will never comply with the ADA until they use cameras. Vail Statewide Reply Decl.,
 12 ¶¶ 222-224; Schwartz Statewide Reply Decl., ¶¶ 25, 81, 88-90, 276.

13 The Statewide Prisons were chosen because of the direct evidence of abuse against people
 14 with disabilities at those facilities (LAC, COR, KVSP, CCI, CIW, SATF) or because Defendants
 15 had already committed in their budget change proposal to installing cameras at the prisons (CIW,
 16 SVSP). The record therefore amply supports Plaintiffs requested relief regarding cameras.

17 With respect to timing, Plaintiffs request fixed cameras within 90 days and body-worn
 18 cameras within 180 days. See Proposed Order, Dkt. 2948-6, at 17. Given the ongoing harm being
 19 experienced by class members, those deadlines are reasonable, especially since the Court has
 20 already held that Defendants can install fixed surveillance cameras within 90 days and implement
 21 body-worn cameras within 60 days at RJD, Dkt. 3060, at 3, and because LAC and CCI have
 22 already been cabled for cameras, Grunfeld Statewide Reply Decl., ¶¶ 114-115.

23 **Reforms to and oversight of staff complaint, investigation, and discipline process –**

24 The Court has already rejected Defendants' argument that reforms to the discipline process are
 25 unnecessary because Defendants have adequate use-of-force and discipline policies. See RJD
 26 Order at 49. Mr. Cate's opinions on the discipline process, based on his profoundly limited
 27 review, are all but meaningless. They do not undermine the central fact that Defendants operate
 28 one system, applicable state-wide, that is, according to Plaintiffs' experts and the OIG,

malfunctioning. Moreover, given the scope of ongoing violations established by Plaintiffs, the
 OIG's oversight has been inadequate to solve the problems. Lastly, the Allegation Inquiry
 Management Section ("AIMS")—which the OIG described as "pretty broken" and the Court held
 is not a "panacea"—has serious problems of implementation and bias, is overly complicated,
 excludes many complaints, and only affects inquiries. RJD Order at 41; Grunfeld Statewide Reply
 Decl., ¶¶ 145(e), 199-201, 204-206. As requested in the Proposed Order, the Court should appoint
 Edward Swanson as the Court Expert to oversee Defendants' implementation of reforms to the
 discipline process, provide Plaintiffs with ongoing access to disciplinary documents, and require
 greater oversight by CDCR headquarters.

Reassignment of officers accused of serious misconduct – Plaintiffs agree that not every
 allegation of misconduct should result in reassignment. But for cases that involve allegations that
 an officer harmed an incarcerated person, where some evidence exists to support the allegations,
 and where the allegations could lead to dismissal, it is unconscionable to permit officers to remain
 in their posts where they can continue to injure *Armstrong* class members. *See* Schwartz
 Statewide Reply Decl., ¶¶ 46, 60, 100; Schwartz Statewide Decl., Dkt. 2948-4, ¶ 220.

Early-warning system ("EWS") – Defendants previously claimed that they already had
 an EWS through their Enterprise Risk Management Branch. *See* Dkt. 3006 at 38-39. Now,
 Defendants assert that AIMS is their EWS. *See* Opp'n at 22. But CDCR's person most
 knowledgeable previously testified that AIMS tracking system is limited, does not track if victims
 are class members, cannot run reports to identify patterns of misconduct, and is not integrated with
 CDCR's incident report or OIA tracking systems. *See* Grunfeld Statewide Decl., Dkt. 2948-1,
 Ex. J, at 194:22-201:11. The Court should order Defendants to create an actual system to warn of
 problems with abuse of *Armstrong* class members. Schwartz Statewide Reply Decl., ¶¶ 62-68.

Increases in supervisory staff – The ADA violations here are a product of CDCR's
 dysfunctional culture. Vail Statewide Reply Decl., ¶ 220. Increased supervisory presence,
 including non-uniformed supervisors in housing units, is necessary to change that culture. Vail
 RJD Decl., Dkt. 2922-6, ¶¶ 103, 109; Vail Reply RJD Decl., Dkt. 3024-3, ¶ 78. As it did at RJD,
 the Court should order increases in supervisory staffing at all of the Statewide Prisons.

1 **Training** – Defendants have already admitted that “training is an essential part of ensuring
 2 a comprehensive correctional program that is safe and effective” RJD Opp’n, Dkt. 3006, at
 3 37. The current training is inadequate to stop officers from abusing people with disabilities.

4 **Weighing pepper-spray canisters** – The record is full of incidents involving excessive
 5 use of pepper spray. *See* Vail Statewide Reply Decl., ¶¶ 226-228; Freedman Statewide Decl., Dkt.
 6 2948-2, Ex. 29, ¶ 18-22; *id.*, Ex. 55, ¶ 19; Grunfeld Statewide Reply Decl., Ex. 7, ¶¶ 9-11; *id.*,
 7 Ex. 81, ¶¶ 12-13. Moreover, Defendants misunderstand the relief sought by Plaintiffs. Plaintiffs
 8 do not seek to have every canister weighed after every shift, but only after a canister has been
 9 used. One of Defendants’ experts ran a facility with such a policy. Vail Statewide Reply Decl.,
 10 ¶ 226, 228. Such relief is necessary to avoid continued abusive use of pepper spray.

11 **Review of RVRs** – The record contains ample evidence of class members receiving false
 12 RVRs. *See, e.g., id.*, ¶¶ 22-24. These RVRs can negatively affect incarcerated people’s
 13 consideration for parole, eligibility for early release, and credits toward release. *See* Grunfeld
 14 Statewide Reply Decl., Ex. 137; Grunfeld RJD Reply Decl., Dkt. 3024-1, ¶ 23 & Ex. V; Vail RJD
 15 Reply Decl., Dkt. 3024-3, ¶ 10; Vail Statewide Reply Decl., ¶ 24. The Court should order the
 16 review of all RVRs issued to declarants and class members at RJD and the Statewide Prisons.

17 **IV. THE COURT SHOULD DISREGARD DEFENDANTS’ EXPERTS’ OPINIONS**
 18 **AND OVERRULE DEFENDANTS’ EVIDENTIARY OBJECTIONS**

19 The Court should strike or afford little weight to the reports from Defendants’ three
 20 neophyte experts, two of whom are consummate CDCR insiders. Grunfeld Statewide Reply Decl.,
 21 ¶¶ 126-201. The experts failed to review relevant information, failed to provide a basis for many
 22 of their opinions, used questionable evaluative methods (including interviewing class members
 23 outside the presence of Plaintiffs’ counsel and observing an unoccupied housing unit), have
 24 conflicts of interest, and failed to timely produce their notes. *Id.* The Court should also overrule
 25 Defendants’ evidentiary objections. *See* RJD Order at 6, 7, 9, 11, 17.

26 **CONCLUSION**

27 For the aforementioned reasons, Plaintiffs request that the Court grant the Statewide
 28 Motion and issue Plaintiffs’ Proposed Order.

1 DATED: September 25, 2020

Respectfully submitted,

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3 By: /s/ Michael Freedman

4 Michael Freedman

Attorneys for Plaintiffs

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