21-15614

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN ARMSTRONG, et al.,

Plaintiffs-Appellees,

v.

G. NEWSOM, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

No. 4:94-cv-02307 CW
The Honorable Claudia Wilken, Judge

APPELLANTS' OPENING BRIEF

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

INTRODUCTION

Over two decades ago in this Americans with Disabilities Act and Rehabilitation Act (collectively, ADA) action, inmates with mobility, sight, hearing, learning, and kidney disabilities were certified as the *Armstrong* class. The class complained about structural barriers and denial of access to programs, services, and activities in California's state prisons. The district court granted injunctive relief to address those issues, formalizing the details in a booklet called the *Armstrong* Remedial Plan, which the parties negotiated.

Recently, however, the court issued two new injunctions unrelated to those accessibility and programming issues to respond to allegations of a different nature—use of force and retaliation against inmates. The first injunction covered the R.J. Donovan Correctional Facility (RJD), and Defendants appealed that injunction. The court then issued a similar injunction extending reforms to five more prisons—California Institution for Women (CIW), Substance Abuse and Treatment Facility (SATF), Kern Valley State Prison (KVSP), California State Prison-Corcoran (COR), and California State Prison-Los Angeles County (LAC). This injunction not only affords substantially different relief than the original injunction but also improperly extends relief to a different class of inmates, the *Coleman* class,

which is under the jurisdiction of a different court. *See Coleman v. Newsom*, No. 90-cv-00529 (E.D. Cal.). Defendants filed this appeal.

The Five-Prison Order extends copious relief beyond the *Armstrong* class to address allegations not pled in the original complaint or addressed in the negotiated remedial plan. It requires Defendants to change how they investigate misconduct and discipline staff, use pepper spray, staff the prison yards, and train their officers. It mandates additional third-party monitoring and imposes redundant remedies, requiring both installation of stationary surveillance cameras and use of body-worn cameras, development of an early-warning tracking system, and sharing of information with various stakeholders. None of these cumulative remedies remove structural barriers or increase programming opportunities for the *Armstrong* class. And Defendants already determined to undertake some of the measures without a judicial mandate.

The district court erred in four ways. First, because a court's remedial power is limited by the nature and extent of the violations initially found, there must be a nexus between those violations (as framed by the class claims) and the remedies imposed. The court below exceeded this jurisdictional limitation by addressing allegations of excessive force and retaliation that are fundamentally different from the class ADA allegations about structural

barriers and access to prison programming. The court erred by permitting the Plaintiffs to use *Armstrong* as a vehicle to address alleged ADA violations not encompassed by the scope of the governing complaint and remedial plan.

Second, the court improperly expanded the *Armstrong* Remedial Plan to cover *Coleman* class members receiving the highest level of outpatient mental-health care, over whom its jurisdiction does not extend. This sudden expansion, made without notice to Defendants, is inconsistent with the rules of class certification and the class certified in this case. Further, this expansion violated the Prison Litigation Reform Act's (PLRA's) strict standards that require any relief be necessary to correct the *particular plaintiffs*' alleged ADA violations.

Third, the injunction violates the PLRA's command that prospective relief extend no further than necessary, be narrowly tailored, and impose the least intrusive means to correct a federal violation. By layering on multiple, detailed elements of relief—mandating both stationary and body-worn cameras, additional training, additional staffing, reform to the staff complaint and discipline process, and an early-warning tracking system, among other things, all to remedy the same alleged violations—the injunction is disruptive, cumulative, and intrusive.

Fourth, this vast relief was based on thin and flawed evidence. The court misapplied the federal rules, accepted as evidence statements ostensibly relayed to Plaintiffs' counsel, and restricted Defendants' ability to meaningfully respond, permitting just 10 depositions to refute 179 out-of-court statements attributed to nearly 150 inmates, and further limiting those depositions by requiring a heightened evidentiary showing to first be made. The court also allowed Plaintiffs to repeatedly submit new evidence without giving Defendants a fair chance to respond.

After tying Defendants' hands and overlooking Plaintiffs' evidentiary deficiencies, the court issued a sweeping injunction covering five prisons on thin and objectionable evidence. This Court should reverse that injunction.

JURISDICTION STATEMENT

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. On March 11, 2021, the court issued two post-judgment orders (collectively, the "Five-Prison Order"), the first holding that the *Armstrong* Remedial Plan and ADA had been violated and imposing injunctive relief, and the second summarizing remedies and imposing additional requirements. (1-ER-2-79.) Defendants timely appealed on April 2, 2021. (6-ER-1196-97.)

This Court has jurisdiction under 28 U.S.C. § 1291 because the Five-Prison Order is a final, appealable decision. *Armstrong v.*

Schwarzenegger, 622 F.3d 1058, 1064-65 (9th Cir. 2010). Alternatively, jurisdiction exists under 28 U.S.C. § 1292(a)(1) because the court granted new injunctive relief.

ISSUE STATEMENT

1. Because a court's jurisdiction to grant remedial relief is limited by the nature and extent of the violation initially found, the injury underlying an injunction must be of the same character as the conduct asserted in the complaint. Did the district court exceed its jurisdiction by granting relief to address allegations of retaliation and use of force that are distinct from the complaint-raised issues of access to programming and physical facilities for disabled inmates?

2. The PLRA limits the court's power to correct federal violations alleged by the *Armstrong* plaintiffs. Did the district court err by remedying alleged violations asserted by *Coleman* members?

3. Did the injunction contravene the PLRA's needs-narrowness-intrusiveness mandate where the court: (1) imposed numerous reforms based on scant evidence and without regard to their cumulative effect, (2) ordered relief that was already being independently implemented or developed by Defendants, and (3) overtook prison operations?

4. During briefing, Plaintiffs freely submitted new evidence with each filing down to their sur-rebuttal, including 179 hearsay statements, and incorporated by reference all evidence from a previous motion for injunctive relief. Yet the court limited Defendants to a mere ten depositions and required them to first satisfy the court's heightened discovery standard, forbade cross-examination solely to test witness credibility, imposed tight deadlines for Defendants to investigate and respond, and provided incomplete relief when they asked for a moderate extension of the page limitation. Were Defendants denied the fair and just proceeding that due process requires?

5. Because the scope of injunctive relief is limited by the extent of the violation established, substantial evidence is required to justify system-wide relief. Where no past determination addressed acts of excessive force or retaliation affecting class members, did the district court err by imposing prison-wide relief based on a minority of disputed hearsay statements that alleged isolated incidents?

STATUTORY PROVISIONS

The relevant statutory texts—18 U.S.C. § 3626(a)(1)(A) (PLRA limitations on prospective relief) and 42 U.S.C. §§ 12132 and 12203(b) (ADA anti-discrimination and access, and anti-interference provisions)—are included in the Addendum.

STATEMENT OF THE CASE

I. OVER TWO DECADES AGO, THE DISTRICT COURT ISSUED AN INJUNCTION ADDRESSING STRUCTURAL BARRIERS AND PROGRAMMING-ACCESS ISSUES.

In 1994, Plaintiffs—a class of California state prisoners with "mobility, sight, hearing, learning and kidney disabilities that substantially limit one or more of their major life activities"—sued Defendants. (5-ER-1132-336 (order amending class); CR ("Court Record") 1 (original complaint); CR 27 (order certifying class).) The operative complaint asserts that California state prisons did not accommodate these class members under the ADA, 42 U.S.C. §§ 12131-34, and Rehabilitation Act, 29 U.S.C. § 794. (5-ER-1117, *see, e.g.,* 1125-26 (alleging that building renovations did not comply with federal accessibility standards and affected *Armstrong* members' access to educational, vocational, and other programs and services).)

In 1996, the parties agreed to a Stipulation and Order for Procedures to Determine Liability and Remedy. (5-ER-1138-141, 1150.) The district court concluded that the ADA applied to state prisoners and the California Department of Corrections and Rehabilitation's (CDCR's) then-existing policies and procedures were inadequate because services, programs, and activities were not reasonably accessible to class members; effective communication was lacking; auxiliary aids and services were needed;

buildings were inaccessible; and a separate grievance procedure was needed for resolving ADA complaints. (*Id.*; 5-ER-1141-148.)

The court entered a remedial order, negotiated by the parties, that required CDCR to implement policies to address accessibility and structural features and identify and accommodate qualified individuals with specified disabilities so they could participate in prison programs and activities. (5-ER-1142-43.) With court oversight, CDCR developed processes for evaluating housing, requesting accommodations, accessing programs, and providing effective communication. (*Id.*) CDCR also developed disability-specific grievance procedures, addressed delays in reception-center processing, provided instructive aids and programming, and developed accommodations and physical-accessibility features. (*Id.*) The remedial order also authorized discovery relevant to "whether defendants' guidelines, plans, policies, procedures and evaluations comply with the ADA," and the court retained jurisdiction to enforce these terms. (5-ER-1144.)

The policies, processes, and procedures were memorialized in the *Armstrong* Remedial Plan, which was later revised. (5-ER-1003-114; CR 337.) The Remedial Plan sought to bring California prisons' structural accommodations and programming opportunities into compliance with the ADA. (5-ER-1033, 1050-1114.) In 2001, the court issued a permanent

injunction enforcing the Plan's requirements, from accessible beds to worktime-credit adjustments to better access to facilities, equipment, programs, and services. (5-ER-1043-49.) Since then, accommodation procedures and policies have been modified and monitored to ensure ADA compliance.

II. PLAINTIFFS SOUGHT NEW INJUNCTIVE RELIEF TO ADDRESS CONCERNS OF A DIFFERENT NATURE: STAFF MISCONDUCT.

In 2020, Plaintiffs moved for injunctive relief to address concerns unrelated to remedying structural barriers and programming access: alleged uses of force and retaliation against *Armstrong* class members. (CR 2922, 2948.) Plaintiffs initially moved for injunctive relief at RJD and the district court issued an injunction. (CR 3059-60.) Defendants appealed that order. (*Armstrong v. Newsom,* 9th Cir. 20-16921.)

With the RJD motion pending, Plaintiffs sought injunctive relief at seven additional prisons. (CR 2948.)

A. Plaintiffs Moved for Injunctive Relief at Additional Prisons Based Largely on Statements from Their Counsel and An Expert Who Essentially Did No Investigation.

Rather than move to enforce the Remedial Plan, Plaintiffs sought new injunctive relief to remedy allegations of abuse and retaliation against disabled inmates. (*Id*.) But these allegations were not in the operative complaint, and

there has never been a finding of class-wide commonality concerning such allegations under Federal Rule of Civil Procedure 23(a). (5-ER-1115-336.) Plaintiffs asked for surveillance cameras to be installed in all areas accessible to inmates and every officer to use body-worn cameras. They also requested, among other things, additional staff training; more supervising staff; reforms to the staff-complaint, investigation, and discipline process; an early-warning tracking system; and increased third-party oversight. (*Id.*; 1-ER-4-8.)

In support of their request, Plaintiffs submitted evidence that primarily highlighted incidents at RJD even though the motion did not seek relief there. (33-ER-9468 through 34-ER-9585.) And, as the district court recognized, Plaintiffs' evidence barely addressed the conditions at the prisons targeted. (2-ER-336 (describing it as "not so much evidence"); 35-ER-09938-41.) For the five prisons at issue, the evidence contained:

- **15** ***Armstrong*** (and 14 *Coleman*) statements concerning **LAC**;
- **2** ***Armstrong*** (and 1 *Coleman*) statements concerning **KVSP**;
- **1** ***Armstrong*** statement concerning **SATF**;
- **0** ***Armstrong*** (and 2 *Coleman*) statements concerning **COR**; and
- **0** statements concerning **CIW**.

(*See* 34-ER-9586 through 36-ER-10187.)[1] None of these inmates submitted sworn statements; instead, they spoke to Plaintiffs' counsel over the phone and counsel submitted declarations purporting to retell the inmates' statements. (*See, e.g.,* 34-ER-9541.)

Plaintiffs' counsel submitted a declaration about their advocacy efforts at LAC, focusing on the *Coleman* class while noting that *Armstrong* members also reported misconduct. (32-ER-9095-211.) Counsel also submitted an expert opinion targeting RJD. (32-ER-8948-9094.) But the expert did not review prison records about the five prisons, tour those prisons, speak to staff or inmates, or address the allegations of misconduct, access issues, or targeting of class members. (32-ER-8947-9211; 33-ER-9213-442.)

B. Defendants Sought Additional Time to Address the Allegations.

Citing the volume of moving evidence and scope of the requested injunction, Defendants conservatively estimated they would need 180 days to investigate the allegations at the seven prisons, obtain expert opinions, and prepare a response, and sought a corresponding extension of the briefing deadline. (CR 2954, p. 5.) The court granted just 85 days (CR 2961 at 3), and

[1] As for the remaining two prisons, Plaintiffs presented four statements concerning California Correctional Institution and no statements concerning Salinas Valley State Prison.

then allowed Plaintiffs to submit additional evidence with each subsequent filing.

C. Plaintiffs Moved to Block Cross-Examination of Their Inmate-witnesses.

When Defendants sought to depose the inmate-witnesses, Plaintiffs moved for a protective order barring all depositions (CR 3074-75) and attached three more unsworn statements alleging misconduct at RJD and LAC (32-ER-8915-946). Defendants opposed the motion and the new evidence, explaining that discovery was open and cross-examination was needed to evaluate the witnesses' veracity and the accuracy of the out-of-court retelling, especially since contrary evidence undermined several statements. (27-ER-7535-7580; CR 3102-04, 3106.)

For example, one inmate [LAC-6] submitted a grievance complaining about a female officer, "Officer Ms. A. Williams," claiming she retaliated against him by stealing his property. (28-ER-7942.) Investigating staff responded that no such officer worked at the prison during the relevant period. (28-ER-7942-44 (also noting that male Officer D. Williams denied any involvement).) Rectifying the issue with the non-existent female officer, the inmate simply said, in his statement submitted to the court, an "Officer Williams" was responsible for the alleged theft. (34-ER-9619-20; 28-ER-

7941-49.) Another inmate [LAC-10] claimed he was hospitalized with severe injuries following a violent assault, but sworn testimony and medical records showed only a scratch on his hand. (29-ER-8057-59; 34-ER-9607-15.) With few exceptions, Defendants were precluded from cross-examining the inmates about their respective allegations. (2-ER-368-69; CR 3104, 3106.)

D. Defendants Opposed the Motion for Injunctive Relief.

In opposing the requested injunction, Defendants argued that Plaintiffs' evidence was sparse, incompetent, and did not establish systemic misconduct against class members. (CR 3082, pp. 4-5, 25-29; 2-ER-299, 316, 325, 340, 348, 357.) As for Plaintiffs' advocacy communications (an unverified email, prison-tour reports, and letters), Defendants argued they were hearsay, and both the court and Plaintiffs agreed. (2-ER-344.)

Defendants filed countervailing evidence including sworn statements, prison records, and expert opinions. (27-ER-7581 through 31-ER-8913.) Corrections experts Matthew Cate (former California Inspector General and Secretary of Corrections), John Baldwin (Advisory Board member for the National Institute of Corrections), and Bernard Warner (who held executive-leadership roles at correctional institutions in four states), found no widespread targeting of disabled inmates. (28-ER-7842, 7862, 7865, 7897, 7903, 7915-19.) These experts also found that CDCR was actively working to

reduce the frequency of use-of-force incidents. (28-ER-7865, 7877-78, 7893-94, 7921.)

These experts found that the isolated occurrences where inmates claimed they had refrained from seeking accommodations stood in stark contrast to the over 9,000 ADA requests, staff complaints, healthcare appeals, and non-healthcare appeals *Armstrong* members at the five prisons submitted in 2019 alone.[2] (28-ER-7758-837, 7867-71.) These experts found no evidence that inmates were deprived of accommodations because of staff abuse, and noted that accommodations could be requested without involving an officer. (28-ER-7842-45, 7897, 7915.)

E. After Defendants Highlighted the Evidentiary Deficiencies, Plaintiffs Filed a Reply with Over 3,500 Pages of New Evidence.

Plaintiffs' reply attached the bulk of their evidence—over 3,500 pages and nearly 50 statements—and raised new allegations of misconduct. (15-ER-4010 through 27-ER-7534.) The evidence included advocacy communications, statements about prisons not targeted by the motion, and:

- **2 new *Armstrong*** (and 1 *Coleman*) statements concerning **CIW**;
- **1 new *Armstrong*** (and 1 *Coleman*) statement regarding **SATF**;

[2] The experts also analyzed the data from the remaining two prisons and made similar findings.

- **3 new *Armstrong*** (and 4 *Coleman*) statements regarding **KVSP**;
- **8 new *Armstrong*** (and 10 *Coleman*) statements regarding **COR**;
- **6 new *Armstrong*** statements (and 7 *Coleman*) regarding **LAC**;
- New expert opinions;
- A lengthy counsel declaration; and
- 3 deposition transcripts.[3]

(25-ER-6816 through 27-ER-7534; 21-ER-5655; 17-ER-4473 through 19-ER-5138; 3-ER-390-404.)

The new expert opinions—declarations of Vail and Schwartz—addressed for the first time the inmate statements from the moving papers. (25-ER-6816 through 27-ER-7534.) The counsel declaration contained legal argument and conclusions, and editorialized the evidence. (3-ER-390-404.)

Plaintiffs conceded they sought relief at CIW because, besides the two class members who alleged misconduct, "Defendants had already committed…to installing cameras" there. (CR 3110, p.13.)

F. Defendants Moved to Strike Plaintiffs' Reply Evidence or, Alternatively, Sought a Fair Opportunity to Investigate and Address It.

Defendants moved to strike Plaintiffs' reply evidence or for a 60-day

[3] Plaintiffs did not submit new statements regarding Salinas Valley State Prison or California Correctional Institution. (21-ER-5655.)

extension to investigate and respond to the new evidence, including 25 pages for briefing. (CR 3116.) Defendants also challenged the competency of Plaintiffs' reply evidence on various grounds, including hearsay, incompetency, misleading, confusing, argumentative, and lack of foundation. (*Id.*)

G. The Court Authorized Additional Briefing but Severely Limited Defendants' Ability to Investigate and Test the Evidence.

The district court recognized Plaintiffs' moving evidence had "problems or weaknesses"; it did not show widespread deficiencies and relied on statements from non-class members. (CR 3123 (minute order), 1-ER-81; 2-ER-336.) The court also acknowledged the reply included "new matter," and held counsel's declaration was argumentative, extended beyond counsel's purview, and contained new arguments. (2-ER-336, 341.) Rather than strike these materials or deny relief, the court directed supplemental briefing. (2-ER-365-66.)

Despite Plaintiffs' submission of over 3,500 pages that included nearly 50 new, unsworn statements, the court significantly restricted Defendants' ability to respond, and:

- Barred any deposition unless independent evidence was first presented contesting the witness's statement;[4]
- Forbade depositions solely to uncover inconsistencies, bias, or testing the witnesses' veracity and required a different "articulable reason" for each deposition;
- Allowed for 10 depositions maximum based on pandemic-related concerns despite Plaintiffs' concessions that Defendants lacked access to their witnesses and "the parties could negotiate appropriate protocols…for the depos";
- Gave Defendants 1 week to investigate, review documents, and interview staff to meet the "independent evidence" requirement and identify the deponents;
- Gave Defendants only 30 days (instead of the 60 requested) to coordinate with Plaintiffs to schedule the depositions and safely conduct them during the pandemic;
- Allowed only 20 pages of sur-reply briefing (instead of the 25 requested).[5]

(1-ER-81; *see also* 2-ER-338, 342-43, 348-49, 365-69.)

Defendants explained that depositions were critical to their defense because the statements were unsworn, and cross-examination was the only means to challenge the allegations where the inmates did not identify the staff involved or Defendants had no record of the alleged events. (2-ER-340-49, 367-69.) The court was not persuaded. (2-ER-368-69.)

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[4] (*See* CR 3042, p.45:16-23 ("the way to dispute it legally is by presenting countervailing evidence…such as a declaration from a witness.").)

[5] The court later faulted Defendants for not asking for additional pages. (1-ER-20.)

H. Defendants Filed Their Sur-Reply with Countervailing Evidence and Moved to Strike Statements of Inmates Who Refused to Testify about Their Allegations.

Defendants' sur-reply provided countervailing evidence including a supplemental expert declaration, sworn statements challenging the allegations, and prison records. (10-ER-2623 through 15-ER-4009.) Defendants explained that the court's discovery restrictions and tight deadlines precluded a full investigation. (CR 3162.) Defendants had identified ten inmates for deposition, but Plaintiffs objected when Defendants could not meet the court's heightened standard and agreed to only five. (8-ER-1898-1913, 1915-22.) One deposition was canceled for reasons beyond Defendants' control, so only four were taken. (*Id*.) Of those, at the advice of counsel, three inmates refused to answer questions about their allegations, invoking their right against self-incrimination. (8-ER-1998-00, 11-ER-2357-58, 2744-55; 12-ER-3042-54, 3065-77, 3083; 13-ER-332-34.)

I. Plaintiffs Filed a Sur-Rebuttal That, again, Attached Extensive New Evidence.

Plaintiffs responded to Defendants' sur-reply with extensive new evidence, totaling over a thousand pages of discovery documents, statistics,

medical records, a newspaper article, and CDCR reports.[6] (7-ER-1463 through 10-ER-2622.)

III. SUMMARY OF RELEVANT EVIDENCE OF ALLEGED PRISON-WIDE STAFF MISCONDUCT AND ALLEGED CHILLING EFFECT.[7]

In all, Plaintiffs submitted 179 statements in stages: 58 with the moving papers, 48 with the reply, 60 incorporated-by-reference from the RJD proceedings, 3 with the motion for protective order, and 10 with other filings. (21-ER-5654-55.) These statements are attributed to inmates that fall into three categories:

- *Armstrong* members;
- *Coleman* members at the Enhanced Outpatient level of mental-health care ("*Coleman*-EOP"), who became covered by the *Armstrong* Remedial Plan only after briefing; and
- *Coleman* members not included in the other categories ("*Coleman*-only").

A. California Institution for Women.

Only about 8% of CIW's population, which includes transgender inmates, are *Armstrong* class members. (28-ER-7800.) Only three unsworn statements regarding CIW were provided, one came from a *Coleman*-only class member who alleged no ADA deficiency (24-ER-6604-09; 14-ER-3781-

[6] These reports include CDCR's Comparative Statistics (COMPSTAT) data.

[7] Unless otherwise noted, the 2019 statistics are cited.

86), and just two came from *Armstrong* members (21-ER-5665; 33-ER-9454-55)—representing less than 1% of CIW's *Armstrong* population.

The first class member [CIW-1] claimed an officer was rude, pushed him, and improperly handcuffed him (24-ER-6594-99), but no accommodation chrono had been produced to support front-handcuffing and the restraints were corrected once the accommodation was verified. (24-ER-6594-6601 (accommodation honored in another instance and staff encouraged him to submit a grievance).) The officer countered that the inmate repeatedly disregarded orders and advanced aggressively with clenched fists, forcing the officer to push him away in self-defense. (14-ER-3774-80.) Medical reports supported this account. (24-ER-6601 (observing two "minor, superficial" and "barely perceptible" marks), 6602 ("he yank and push me," "denies []he fell" and "denies any pain").)

The second class member [CIW-2] allegedly experienced wrist tenderness from tight handcuffing, was shoved, and asserted that she felt helpless, yet she continued to seek accommodations from nursing staff and some custody staff were responsive to her needs. (24-ER-6619-22.)

Prison administration expert Baldwin comprehensively assessed the conditions at CIW, reviewed the evidence, and interviewed staff and the Director for CDCR's Division of Correctional Policy Research and Internal

Oversight. (28-ER-7913-28.) Baldwin found that the majority of staff complied with policy, and CDCR actively reinforced positive behavior and was "making positive strides in implementing policies and procedures that will produce better outcomes." (28-ER-7915.) The data showed that *Armstrong* class members were a small fraction of the use-of-force incidents a CIW. (28-ER-7915-17.) Baldwin found no evidence of systematic deprivations related to the accommodation-request or grievance processes (28-ER-7914-15), and data confirmed that *Armstrong* members used the administrative ADA, staff-complaint, and grievance processes more frequently than their non-disabled counterparts. (28-ER-7800-04.)[8]

B. Substance Abuse Treatment Facility.

Just 16% of the inmates at SATF are *Armstrong* class members. (*See* 28-ER-7831.) Plaintiffs presented statements from just one-tenth of 1% of SATF's *Armstrong* population; the remaining statements either focused on other prisons and alleged no *Armstrong*-related misconduct at SATF (*see* 35-ER-9861-68; 34-ER-9516-20, 9801-08; 22-ER-5924-26; 21-ER-5916-23), or did not concern an *Armstrong* member (21-ER-5670; 33-ER-9456). Thus, just

[8] While *Armstrong* members comprised just 7.5% of CIW's population, they submitted 44% of ADA, 8% of staff-complaint, 17% of non-healthcare, and 21% of healthcare grievances. (28-ER-7800-04.)

two *Armstrong* members submitted statements about SATF. (35-ER-9932-35; 16-ER-4167-178.)

One class member [SATF-1] alleged he "could not hear well" due to broken hearing aids and refused to exit his cell. (35-ER-9932-35.) He admitted he heard two orders, but refused to comply with them. (29-ER-8158-60; 28-ER-8000-01, 8031-34, 8043-45, 8048.) He then advanced on an officer with clenched fists and the officer deployed pepper spray, with no effect. (*Id.*; 28-ER-8050-55.) As the inmate was taken to the ground he attempted to reach for nearby shelves where two sharpened weapons were later recovered. (*Id.*; 28-ER-8000-01, 8012.)

The second class member [SATF-2] claimed he was left in a leaky cell, but a contemporaneous inspection found no signs of water intrusion. (16-ER-4176; 13-ER-3514-517.) SATF-2 also alleged delays in accessing a telecommunication device and claimed staff commented negatively about his hearing. (16-ER-4167-178; 13-ER-3513-519.) An officer denied the allegations. (13-ER-3513-519.) Following SATF-2's housing change, staff repeatedly provided access to the device and tried to assist him, and the ADA coordinator provided another accommodation when he reported the device was broken. (16-ER-4170-178.) Another class member had been using the

device without issue and, when staff confirmed it was working properly, SATF-2 refused to use it. (13-ER-3513-519.). (*Id.*)

Prison administration expert Warner comprehensively assessed the conditions at SATF, reviewed evidence, toured the prison, and interviewed staff. (28-ER-7838-48.) Warner found the data undermined Plaintiffs' claim that *Armstrong* members felt they could not request accommodations, file grievances, or otherwise alert the prison to ADA issues. (28-ER-7842-45.) *Armstrong* members submitted over 1,000 ADA-related accommodation requests annually. (28-ER-7831-34, 7842-45.) And while class members comprised less than 16% of the population, they were responsible for well over a quarter of all administrative grievances. (28-ER-7831-37.)[9]

C. Kern Valley State Prison.

Only about 6% of the inmates at KVSP are *Armstrong* class members. (*See* 28-ER-7808.) Plaintiffs submitted statements from inmates who either reported no ADA-related misconduct at KVSP (35-ER-9858, 9870-73; 34-ER-9587-93; 9607-15, 9730-42; 22-ER-5924-26, 6114-23; 21-ER-5916-23; 12-ER-2747) or were not *Armstrong* members. (21-ER-5667-68; 33-ER-9455-

[9] *Armstrong* members comprised less than 16% of SATF's population but submitted over 76% of ADA, 28% of staff-complaint, 40% of non-healthcare, and 44% of healthcare grievances. (28-ER-7831-37.)

56). Just 1% of *Armstrong* members (only five of them) submitted statements. (28-ER-7848-50; 35-ER-9928-29; 24-ER-6797-99; 13-ER-3497-98; 24-ER-6690-704).

The first class member [KVSP-1] identified three incidents, all of which were refuted by countervailing evidence. (28-ER-7848-50; 29-ER-8021-23; 31-ER-8617-20; 28-ER-7849-50; 29-ER-8074-78; 31-ER-8617-20.) Also, it was clear KVSP-1 used the administrative-grievance process regularly, without impediment. (*See* 35-ER-9917-18, 9922-25; 28-ER-7813-14; 24-ER-6797-99.)

The second class member [KVSP-2, LAC-8], who complained of staff misconduct to a *Coleman* attorney (33-ER-9342, 441; 35-ER-9928-29), had a history of making false misconduct allegations to manipulate prison transfers. (29-ER-8163-66.) The dates of KVSP-2's staff-misconduct allegations corresponded with disciplinary charges against him, were investigated, and were found to be not credible and geared at obtaining a transfer. (29-ER-8163-66.) KVSP-2 submitted a grievance and, when interviewed, limited his complaint to one specific officer. (*Id.*)

The third class member [KVSP-3] claimed officers attacked him without provocation. (24-ER-6797-99.) But the evidence showed he became

combative after triggering a metal detector, striking an escort officer's face with his head. (14-ER-3696-99.)

The fourth class member [KVSP-4], offended by an officer's use of the word "inmate" when referring to him, called the officer a "pig" and threatened him. (15-ER-3868-91, 4013, 4022; 13-ER-3497-502.) The officer handcuffed KVSP-4 without incident. (*Id.*) Medical records disproved the class member's claims of cracked teeth, cuts, and bruises, and showed no objective signs of serious injury. (15-ER-4013-22, 4024 (6/6 "No injuries"), *see also* 15-ER-3886, 4029, 4038-39, 4084 (series of appointments confirming same).) Photographic evidence belied his claims of injury too. (13-ER-3498, 3504.)

This class member [KVSP-4] had no issue using the grievance process or reporting alleged staff misconduct. He submitted five staff complaints concerning his allegations, dozens of other grievances, logged over 400 legal mailings, and was litigating six civil lawsuits. (15-ER-3967-74; 13-ER-3276 (conceding vexatious-litigant), 3279-80 (and PLRA three-striker status), 3287-304, 1409.) KVSP-4 also alleged that he experienced "issues [with] getting accommodations," yet his example showed he was given a wheelchair when he stated that walking would cause him pain. (15-ER-4020.)

The fifth class member [KVSP-5] claimed he was falsely written up for exposing himself to justify a random assault; but staff denied the allegations.

(24-ER-6690-704; 14-ER-3684-87, 3747-50.) The inmate also claimed staff recruited other inmates to assault him twice over three days, but sworn statements showed he was the aggressor, striking first in both instances. (*Id*.)

After assessing the conditions at KVSP, reviewing evidence, touring the prison, and interviewing staff, expert Warner found no widespread evidence that *Armstrong* members were not requesting accommodations, filing grievances, or alerting the prison to ADA issues. (28-ER-7838-48, 7852-54.) To the contrary, class members submitted over 200 ADA-related grievances annually and used prison administrative processes more frequently than their non-disabled counterparts. (28-ER-7807-11.)[10]

D. Corcoran State Prison.

Only approximately 6% of COR's population are *Armstrong* members. (28-ER-7816.) Two-thirds of Plaintiffs' evidence concerned non-class members or complained about other prisons, and alleged no ADA-related misconduct at COR. (21-ER-5061-64; 33-ER-9445; 35-ER-9821-26, 9913-26; 34-ER-9617-25; 23-ER-6389.) The remaining eight statements included three "unverified" *Armstrong* class members (28-ER-7816), and even counting

[10] While *Armstrong* members comprised less than 6.5% of KVSP's population, they submitted over 63% of ADA, 16% of staff-complaint, 19% of non-healthcare, and 30% of healthcare grievances. (28-ER-7807-11.)

them, these statements represented less than 2% of COR's *Armstrong* population.

The first class member [COR-1] claimed he was beaten, including with batons, for five minutes. (23-ER-6242-43.) Not one of the 25 people interviewed, including 17 inmates, corroborated his claim. (14-ER-3541-52; 23-ER-241-57.) COR-1 reported a slip-and-fall instead. (14-ER-3544-45.)

The second class member [COR-2] claimed he was assaulted, but the evidence showed that only reasonable force was used to overcome COR-2's resistance when he attempted to elbow an officer in the face during a pat-down search. (23-ER-6432-38, 6445; 14-ER-3660-66, *see also* 3677-86 (questioning need for walker and cane because inmate observed running daily).) COR-2 also alleged that his toe hit the lip of the shower when an officer sexually harassed and pushed him, but photographs showed the shower does not have a lip (14-ER-3816-25, 3826 (photo)), and his psychologist suspected paranoia (23-ER-6438-40, 6454).

The third class member [COR-3] recalled witnessing two cell extractions but provided no context, names, or disability nexus. (22-ER-6203-07.) Though he expressed hesitancy to request mental-health services following the extractions, access to mental-health care is not a part of *Armstrong*. (*Id.*)

The fourth class member [COR-4] also alleged issues with accessing mental-health services and asserted particular staff members in two units did not respond quickly enough and mocked him. (23-ER-6368-80; 14-ER-3646-54.) However, he conceded "[m]ost staff at [Corcoran] are good." (23-ER-6376.)

The fifth class member [COR-5] claimed that unidentified officers carried him to his cell since his assistive devices were unavailable, but dropped and beat him for ten minutes because he complained about an assault that occurred 17 years earlier. (23-ER-6344-48.) However, medical records showed no injuries, let alone ones consistent with a ten-minute beating. (13-ER-3529-32; 23-ER-6365 ("Pt stated he only said he was suicidal 'to get attention'").)

The sixth inmate [COR-6], an unverified *Armstrong* member, claimed he was battered but the accused officers denied the allegations, a medical assessment recorded no injury, and an investigation uncovered no witnesses. (13-ER-3506-12.)

The seventh inmate [COR-7], another unverified *Armstrong* member, claimed that staff attacked him because he refused to return a trafficked phone that was slid into his cell. (23-ER-6387-90.) Sworn testimony showed that officers found the inmate injured in his cell during institutional count and sent

him to medical, where hospital staff discovered the phone wrapped and concealed in his anal cavity. (14-ER-3714-20; 11-ER-2668-81, *see* 2676 ("I thought I removed it, Man that wasn't mine.").)

The eighth inmate's [COR-8] statement was excluded by the district court. (1-ER-15 (n.4); 12-ER-3046-49 (estimating he is litigating 40 lawsuits against staff).)

Expert Baldwin reviewed the evidence, interviewed staff and high-level administrators, and comprehensively assessed the conditions at COR. (28-ER-07913-14.) He found that most staff complied with policies and CDCR actively encouraged positive behavior. (28-ER-7915 (also noting that even the best-run facilities will have some noncompliance).) Baldwin found that staff were not using force against *Armstrong* class members at a disproportionate rate, and no evidence showed any systematic targeting of disabled inmates. (28-ER-7912-23, 7926-28.) He cautioned against drawing broad conclusions about COR based on a handful of anecdotes, as isolated incidents occur in all prison systems. (*Id*.) Data confirmed that COR *Armstrong* members submitted

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244 ADA-related requests and used the administrative processes at a higher rate than their non-disabled counterparts. (28-ER-7816-20.)[11]

E. California State Prison, Los Angeles County.

Only about 12% of the inmates at LAC are *Armstrong* class members. (28-ER-7758.) Just 21 of the statements submitted came from *Armstrong* class members (less than 3% of the *Armstrong* population). (21-ER-5657-60; 33-ER-9450-54.) Defendants countered two-thirds of these statements.

Staff used reasonable force to take one class member [LAC-1] to the ground when he disregarded orders and reached for an unknown object in his pocket during a pat-down search. (29-ER-8101-05.)

Sworn statements contradicted four other class members' [LAC-2, through LAC-5's] allegations, and showed that staff responded to the inmates' physical aggression and did not target them because of their disabilities. (29-ER-8060-64; 28-ER-7950-60, 7988-91, 8099-100; 15-ER-3854-57; 14-ER-3626-40.) In three of these incidents [LAC-3, LAC-4, LAC-5], the class members also disobeyed orders, struck staff, and resisted until handcuffs were applied. (*Id.*)

[11]While *Armstrong* members comprised just over 6% of COR's population, they submitted about 45% of ADA, 11% of staff-complaints, 13% of non-healthcare, and 16% of healthcare grievances. (28-ER-7816-20.)

The sixth class member [LAC-6] initially claimed a female "Officer Williams" had stolen his property but no such officer existed. (28-ER-7941-49, *see* Section II.C, above.) He offered no explanation for the error.

The seventh class member [LAC-7] alleged that an officer barred his phone call, used excessive force, and falsely charged him for threatening to "gas" staff by throwing feces. (21-ER-5875-78.) The officer denied any misconduct and explained that a building alarm precluded LAC-7's use of the phone. (15-ER-3919-22.)

Staff also disputed the eighth class member's [LAC-8's (also KVSP-2)] allegations that a female officer assaulted him and excessive force was used during a subsequent escort. (28-ER-7930-35; 29-ER-8163-66 (documenting false safety claims asserted at KVSP).) LAC-8 had a vendetta against the female officer and tried to recruit another inmate to attack her. (*Id.*) Reasonable force was used during the escort when LAC-8 elbowed an officer, and the officer who allegedly intervened to stop the purported assault was not working that day. (*Id.*) LAC-8 was criminally charged with battery and terrorist threats for his conduct. (*Id.*; 27-ER-7582-87.)

The ninth class member [LAC-9] claimed other inmates threatened to attack him because staff revealed his HIV status. (21-ER-5804-13.) But evidence showed he was the aggressor and repeatedly stabbed another inmate

in a premeditated attack. (15-ER-3975-80 (showing he pre-packed his belongings and obtained an eight-inch sharpened weapon before the stabbing).) In any event, LAC-9's disability accommodations were honored following the attack. (15-ER-3991-98.)

Defendants disputed other allegations, too.[12]

Expert Cate conducted a thorough review, toured LAC, and observed inmate-staff interactions but found no widespread misconduct. (28-ER-7863-66.) He found that disabled inmates had ready access to, and were using, the accommodation and grievance processes. (28-ER-7868-72; 10-ER-2624-25.) *Armstrong* members at LAC submitted 498 ADA requests annually, and used the administrative processes more than twice as often as their non-disabled counterparts. (28-ER-7758-62.)[13]

A grievance system, newly implemented in 2020, reduced the grievance-rejection rate, and achieved a 95% acceptance and resolution rate. (28-ER-

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[12] *See:*

1) 28-ER-7936-39, 29-ER-8056-59 [LAC 10];
2) 14-ER-3622-25, 13-ER-3477-80 [LAC 11];
3) 28-ER-7993-98 [LAC 12];
4) 14-ER-3618-21, 13-ER-3472-76 [LAC 13];
5) 14-ER-3562-71 [LAC 14].

[13] While *Armstrong* members comprised only 12% of LAC's population, they submitted over 61% of ADA grievances, 24% of staff complaints, 31% of non-healthcare, and 33% of healthcare grievances. (28-ER-7758-62.)

7864-76.) Further, 200 inmate workers were compensated to assist disabled inmates. (28-ER-7870, 7875.)

Cate found uses of force were thoroughly documented and reviewed, and decisions not to sustain misconduct allegations generally were supported by evidence other than an officer's denial, such as physical evidence, witness statements, or medical records. (28-ER-7865-66, 7876.) On Facility D, where incidents involving disabled inmates had been occurring more frequently, the warden took actions that reduced the number of incidents. (28-ER-7877-78.) At the time of Cate's review, staff were not using force against *Armstrong* class members at a disproportionate rate; and uses of force involving class members comprised just a fraction of the incidents where force was used. (28-ER-7877 (showing class members comprised 15% of LAC's population, but were involved in just 6.6% of incidents where force was used).)

Cate found no meaningful connection between the alleged misconduct and the issue of disability accommodations, either because the misconduct was not linked to the inmate's disability or because evidence undermined the inmate's claim. (28-ER-7878-79; 10-ER-2624-25.) In Cate's view, the inmate statements concerning LAC comprised isolated allegations and did not show widespread misconduct. (28-ER-7878-88; 10-ER-2624-25.)

IV. THE DISTRICT COURT IMPOSED SWEEPING INJUNCTIVE RELIEF.

Construing the alleged incidents of unnecessary force and retaliation as a denial of ADA accommodations, the district court granted Plaintiffs' motion and imposed "new remedial measures" at five of the seven prisons. (1-ER-2-9, 13-14, 66-67.) To support this conclusion, the court opined that "[a] failure to provide a reasonable accommodation can occur where a correctional officer could have used less force or no force during the performance of his penological duties with respect to a disabled person." (1-ER-67.)

The court held that a causal link could be inferred between the alleged misconduct and the qualifying disability where a staff culture condones targeting disabled inmates. (1-ER-19-20, 23.) The court then "inferred from the totality of the allegations" that such a culture existed. (*Id*.) Although the statements were all written by Plaintiffs' counsel and almost entirely exempt from cross-examination, the court found them to be "remarkably consistent," and opined that the inmates "appear to lack any incentive to fabricate the incidents" described. (*Id.*)

The court found further support for a negative staff-culture inference in Plaintiffs' sur-rebuttal evidence, concluding that "disabled inmates [were] overrepresented" in incidents where staff discipline resulted. (1-ER-49-51.) But the court did not explain why a higher staff-discipline rate for accusations

levied by inmates represented by counsel in one or more class actions—whose counsel regularly tour the institutions, monitor operations, and prepare advocacy letters—indicated that class members had been singled out for mistreatment because of their disabilities. (*Id.*)

The court expressed concern that a large portion of the incidents resulting in discipline "involved misconduct directed at an Armstrong or Coleman class member," but it made no distinction concerning what proportion (if any) involved *Armstrong* members, or even *Coleman*-EOP members.[14] (*Id.*; *see also* 1-ER-22-23 (distinguishing *Coleman*-EOP members as covered by the *Armstrong* Remedial Plan).)

The court simultaneously expanded the *Armstrong* Remedial Plan to include *Coleman*-EOP members, used that expansion to justify its decision to consider *Coleman* class members' statements when deciding the motion, and

[14] Few of the cited discipline events involved *Armstrong* members:

	***Armstrong* Members**	*Coleman* members	**Members of both classes**	Non-class members
LAC: 6 discipline events	**0**	3	**0**	3
COR: 18 discipline events	**0**	16	**2**	0
KVSP: 24 discipline events	**0**	15	**1**	8

(1-ER-22-23 (citing 7-ER-1468-71).)

discounted Defendants' experts for not considering those statements. (1-ER-23, 50.)

The court concluded that Defendants violated the ADA's anti-discrimination and access provision, 42 U.S.C. § 12132, which is incorporated into the Remedial Plan, as well as the ADA's anti-interference provisions, 42 U.S.C. § 12203(b), which is not incorporated into the Remedial Plan. (1-ER-24-25, 28-29, 70-71.)

STANDARD OF REVIEW

A district court's factual findings are reviewed for clear error, the scope of an injunction is reviewed for abuse of discretion, and the legal conclusions underlying the decision are reviewed de novo. *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 653 (9th Cir. 2002); *Pacific Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 635 (9th Cir. 2015). "[A]n overbroad injunction is an abuse of discretion." *California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018).

Whether a proceeding comports with due process is a question of law reviewed de novo. *Puri v. Khalsa*, 844 F.3d 1152, 1157 (9th Cir. 2017) (applying standard to "legal determinations, including constitutional rulings, and…determinations on mixed questions of law and fact that implicate constitutional rights.").

SUMMARY OF THE ARGUMENT

The district court exceeded its jurisdiction by imposing sweeping reforms fundamentally different in character than the core class claims that prompted this litigation and that underlie the longstanding negotiated settlement. These measures do not fall within the accessibility and accommodation reforms contemplated by the operative complaint, *Armstrong* Remedial Plan, or prior remedial orders, and instead are aimed at remedying alleged instances of staff misconduct that have not been proven on a classwide basis.

The court also improperly enforced the *Armstrong* Remedial Plan to include inmates with a particular level of mental illness, thereby encompassing *Coleman*-EOP members, over whom jurisdiction does not exist. Because the *Armstrong* class-certification order is explicitly limited to inmates with learning and specified physical disabilities (but not mental illness), this expansion violates the PLRA's mandate that relief extend no further than necessary to correct violations of the particular plaintiffs' rights. And the court improperly implemented this expansion without proper notice and amid Plaintiffs' motion for injunctive relief.

The court then issued an injunction covering five prisons without satisfying the PLRA's directive that prospective injunctive relief be narrowly

drawn, necessary to correct the ADA violation, and the least intrusive means possible. On the thinnest of evidence—sometimes as few as two anecdotes from *Armstrong* members—the court imposed cumulative and overbroad remedies, including measures that Defendants were already implementing independent of the injunction.

In so doing, the court entwined itself in prison administration at a granular level. The court dictated that increased supervision would be achieved through a blanket assignment of additional sergeants on each yard and every shift. The court imposed redundant mechanisms for monitoring and oversight, all purportedly aimed at addressing the same violation: alleged acts of retaliation and excessive force. The injunction required both stationary surveillance and body-worn cameras, increased staffing allocations, additional training, staff-complaint reforms, and third-party monitoring. All this violated the PLRA.

The court also allowed Plaintiffs to submit evidence after new evidence, accepted as competent hearsay statements from Plaintiffs' counsel on what inmates told them, and denied Defendants the ability to fully investigate, conduct discovery, cross-examine witnesses, respond to the voluminous allegations, or otherwise mount a full defense. Simply put, Defendants were

not afforded a full and fair opportunity to defend against the alleged staff misconduct.

This Court should vacate the injunction.

ARGUMENT

I. THE DISTRICT COURT EXCEEDED ITS JURISDICTION BY EXTENDING INJUNCTIVE RELIEF BEYOND THE CLAIMS IN THE OPERATIVE COMPLAINT.

In imposing new remedial measures, the court stated it had "wide discretion" to modify the existing injunction based on changed circumstances. (1-ER-2, 9, 62 (citing *Sys. Fed'n No. 91 v. Wright*, 364 U.S. 642, 647 (1961).) But that power is not as wide as the court believed, because its "authority to modify an injunction is more limited than its authority to formulate an injunction in the first instance." *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1097-98 (9th Cir. 2021). Two principles curb the court's power. First, jurisdictional rules require a nexus between the class claims (or initial violations found) and the remedies imposed. *Pacific Radiation Oncology,* 810 F.3d at 633-34, 636. Second, modifications are permissible only when a changed condition makes compliance with the existing decree more onerous, unworkable, or detrimental to the public interest. *Am. Unites for Kids*, 985 F.3d at 1097-98.

As explained below, Plaintiffs failed to establish a nexus between the class claims about access to programs, services, activities and CDCR's physical plants, and the newly issued remedies to curb allegations of staff misconduct. Even if a nexus exists, the proper remedy would be to modify the Remedial Plan's existing terms, not issue a new injunction mandating widespread camera installation and use, overtaking personnel matters, and making staffing and operational changes. Because "an overbroad injunction is an abuse of discretion," *Azar*, 911 F.3d at 582, this Court should reverse the injunction.

A. Jurisdictional Rules Limit a Court's Remedial Power.

Federal remedial jurisdiction is limited by the violation initially found. *Missouri v. Jenkins*, 515 U.S. 70, 92-93 (1995); *Freeman v. Pitts*, 503 U.S. 467, 489 (1992) ("The authority of the court is invoked at the outset to remedy particular…violations."); (1-ER-72 (noting jurisdiction was retained to "enforce the terms of the Remedial Order and Injunction" or "any order permitted by law"). Thus, court-imposed remedies are justifiable if they advance "the ultimate objective of alleviating the initial…violation." *Freeman*, 503 U.S. at 489. This requires a "sufficient nexus" between the remedy imposed and the conduct asserted in the underlying complaint. *Pacific Radiation Oncology*, 810 F.3d at 633-34, 636.

For example, an inmate cannot bring an Eighth Amendment action and then seek injunctive relief based on alleged acts of retaliation, because retaliation is "entirely different and separate from" Eighth Amendment claims. *Id*. at 636 (discussing and approving *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994)). This Court also approved a denial of preliminary injunctive relief to address privacy claims stemming from the parties' discovery efforts because those claims were not sufficiently related to the unfair-trade-practice claims raised in the underlying complaint. *Id.* at 638. Thus, a new injunction in the remedial phase of a class action could be appropriate if it is "of the same character as that" of the original injunction, but "[a]bsent that relationship or nexus, [a] district court lacks authority to grant the relief requested." *Id*. at 636.

B. Jurisdiction Was Exceeded Because the Alleged Instances of Physical Abuse and Retaliation Are Categorically Distinct from the Class Claims.

Here, the district court's injunction is jurisdictionally defective because the alleged instances of staff misconduct are categorically distinct from the institutional denials of programs, services, activities, and accommodations litigated by the class. (*Compare* 1-ER-70 ("The purpose of the [Remedial Plan] was to set forth specific actions that [CDCR] would take to bring their programs, activities, services, and facilities into compliance with the ADA

and the RA.") *with* CR 2948 ("Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People with Disabilities").)

The alleged retaliatory and abusive conduct was not pled in the complaint (5-ER-1115-131), addressed in the parties' agreement on a Stipulation and Order for Procedures to Determine Liability and Remedy (5-ER-1149-194), or covered by the original injunction, the Remedial Plan, or prior injunctions (5-ER-49-1148).

The court cited only one provision of the Remedial Plan that Defendants allegedly violated: Section I, which generally requires compliance with the ADA's anti-discrimination and access provisions, 42 U.S.C. § 12132. (1-ER-9-79.) Although this provision broadly prohibits public entities from denying programs, services, or activities to qualified individuals, it does not authorize the expansion of this ADA action to include claims of staff misconduct. 42 U.S.C. § 12132. (1-ER-66-67.) Section 12132 is a general obey-the-law provision that does not address retaliation or excessive force. (*Id.*)

Presumably recognizing that § 12132 was insufficient to bring asserted incidents of retaliation and unjustified force into this action, the district court improperly expanded the scope of the action to include the ADA's anti-interference provision (42 U.S.C. § 12203(b)), which is found in the "Miscellaneous Provisions" section of Title III of the Act. But the class claims

never encompassed retaliatory and abusive conduct, nor did the Remedial Plan incorporate § 12203(b) or otherwise contemplate the inclusion of such claims. (5-ER-1052-114, 1115-31, 1141-47.) Moreover, allowing this expansion would allow the court to issue unbounded new injunctions, based on any violation whatsoever, without reference to the underlying litigation.

The Five-Prison Order exceeded the scope of the complaint and the Remedial Plan to overtake prison security, use-of-force reviews, and the staff-misconduct inquiry process; and imposed additional oversight to remedy instances where employees allegedly retaliated or used unnecessary force. (1-ER-2-79.) The court's remedial jurisdiction covers only institutional disability-accommodation policies and structural-accessibility features, not these newly raised claims. (5-ER-1115-31.) *See Freeman*, 503 U.S. at 489 (looking to particular violation initially raised); *Brumfield v. Louisiana State Bd. of Educ*., 806 F.3d 289, 299 (5th Cir. 2015) ("The correct analysis of the scope of the court's continuing jurisdiction begins by identifying the constitutional infirmity [initially] addressed by this case"); Fed. R. Civ. P. 8, 10 (requiring claims to be stated in the pleading).

The court's 1996 remedial order is similarly grounded in ADA accessibility of prison programming and structures—not staff misconduct, retaliation, or unnecessary force. (5-ER-1141-47.) The court limited discovery

to these ADA claims and retained jurisdiction to enforce only these claims. (5-ER-1145 ("The Court shall retain jurisdiction to enforce the terms of this Order and any order approving the guidelines, policies, procedures, plans or evaluations set forth above.").) The permanent injunctions are similarly limited. (5-ER-1003-49.)

To bridge this gap between programming and building access, on the one hand, and staff misconduct, on the other, the court relied largely on *Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211 (9th Cir. 2014), for the proposition that the failure to temper the force used when interacting with a mentally ill inmate in the course of carrying out penological duties can violate the ADA. (1-ER-67.).[15] That the court resorted to an inapposite case like *Sheehan* to bridge the gap between the new allegations and the original class claims underscores how unmoored the new injunction is from the underlying complaint.

In *Sheehan*, police officers sought to transport a woman experiencing a mental-health crisis, but she locked herself in a room and threatened anyone who entered. *Id*. at 1218, 1225, 1233. The officers forced entry, then retreated. *Id*. When the officers again forced entry without waiting for backup, the

[15] Rev'd in part, *City & Cnty. of San Francisco v. Sheehan,* 575 U.S. 600 (2015).

woman brandished a knife, and the officers responded with deadly force. *Id*. The officers' second entry and use of force would have been reasonable had the woman not been disabled. *City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 612-13 (2015); *Sheehan v. City & Cnty. of San Francisco*, 793 F.3d 1009 (9th Cir. 2015).

Applying the ADA to police investigations and arrests, *Sheehan* held that a violation can occur where police fail to reasonably accommodate the person's disability, causing the person to suffer greater injury or indignity than they otherwise would have experienced. 743 F.3d at 1232. Thus, *Sheehan* held the second forced entry could violate the ADA if the officers did not account for the woman's mental illness or employ generally accepted police practices for peaceably resolving a confrontation with a person with mental illness. *Id*.

Noting that prison policies also require officers to consider mental illness, the court below extended *Sheehan* to hold that the ADA can be violated in the prison context when an officer could have used less or no force on a disabled person. (1-ER-67.) But this Court has never extended *Sheehan* to this context and the underlying complaint below did not address using force on disabled inmates without accounting for their mental illnesses. (5-ER-1115-131.) Indeed, mental illness is not even among the disabilities certified

for class inclusion in this action. (5-ER-1133-34.) So *Sheehan* does not support the district court's rationale.

Even if, as in *Sheehan*, using force without regard to an arrestee's mental condition can amount to disability discrimination, it does not follow that every use of force against a disabled inmate categorically implicates the ADA, or that jurisdiction existed for the district court to consider such conduct in this matter.

Further, the alleged acts of staff misconduct are not well suited for class treatment. Assessing these allegations requires evaluating the factual circumstances of each inmate's disability and conducting an individualized analysis concerning the reasonableness of each officer's actions, whether each officer was motivated by disability, responded appropriately, and properly tempered any force used. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688 (2001) ("refusal to consider [an individual's] personal circumstances in deciding whether to accommodate his disability runs counter to…the ADA"). These fact-intensive issues are inappropriate for class disposition because they do not pose common questions that can be answered en masse, and were never subject to the rigorous standards of proof for class actions. *See Kerr v. City of W. Palm Beach*, 875 F.2d 1546, 1557-58 (11th Cir. 1989) (acknowledging that determinations concerning the reasonableness of an officer's actions in light

of unique factual circumstances cannot be made en masse, making "such suits…especially unsuited to class disposition").

Because every governmental conduct an inmate dislikes can arguably be retaliatory, unnecessary, or excessive, the court's power over prison operations would be unbounded if all employee misconduct claims could be remedied in this ADA class action. By granting injunctive relief on new and categorically different claims of First Amendment retaliation and Eighth Amendment excessive force, the district court went beyond making prison buildings accessible and ensuring access to programs, services, and activities; it transformed this ADA action into an ADA plus § 1983 action. Jurisdictional limitations do not permit this judicial overreach.

C. The Court Did Not Cite Any Changed Circumstance to Justify Modification of the Remedial Plan, and Regardless, Such Change Would Not Justify Entirely New Relief.

The court erred by modifying the remedial plan absent any changed condition that hindered Defendants' compliance with the existing decree. *Am. Unites for Kids*, 985 F.3d at 1097-98. Indeed, neither Plaintiffs nor the court cited evidence showing any widespread change that affected the existing remedial plan. Data confirms a lack of any significant downward trends in class members' usage of the administrative processes. (28-ER-7758-62; 7800-04; 7807-11; 7816-20; 7831-35.) Had such a change occurred, the proper

remedy would be a modification of the remedial plan, and not an entirely new, intrusive injunction.

II. THE DISTRICT COURT IMPROPERLY EXPANDED THE *ARMSTRONG* REMEDIAL PLAN TO INCLUDE CERTAIN *COLEMAN* CLASS MEMBERS.

The PLRA limits relief to the "particular…plaintiffs" before the court, and reversal is appropriate when a court issues injunctive relief beyond those plaintiffs. 18 U.S.C. § 3626(a)(1)(A). *Brown v. Plata*, 563 U.S. 493, 531 (2011) (determining scope of relief "with reference to the constitutional violations established by the specific plaintiffs before the court."); *Orantes-Hernandez v. Thornburgh,* 919 F.2d 549, 558 (9th Cir. 1990) ("an injunction must be narrowly tailored to give only the relief to which plaintiffs are entitled").

A. The District Court Erroneously Expanded the *Armstrong* Remedial Plan Beyond the Plaintiff Class.

The PLRA limits injunctive relief to the "particular plaintiff[s]"—here, the *Armstrong* class members. 18 U.S.C. § 3626. The class-certification order defines those members as inmates with "mobility, sight, hearing, learning and kidney disabilities." (5-ER-1132-336.)[16] Fed. R. 23(c)(1)(B) ("An order that

[16] *See also* "Mental Impairment," TheFreeDictionary's Medical dictionary, ("a disorder *characterized by* the display of an intellectual

certifies a class action must define the class."). The parties negotiated the terms of the Remedial Plan knowing that the class-certification order defined this limited class. (5-ER-1117, 1132-336.)

When the district court construed the *Armstrong* Remedial Plan to capture certain *Coleman* members over whom it does not have jurisdiction (1-ER-2, 20-23), it effectively minted *Coleman*-EOP members as *Armstrong* class members. (1-ER-2-22.) The *Coleman* class consists of "seriously mentally ill persons in California prisons." *Brown*, 563 U.S. at 551 (dissent). Mental illness is not a ground for *Armstrong* class inclusion. (5-ER-1132-336.) The plaintiff class here was, for over two decades, limited to persons with specified learning and physical disabilities. (*Id.*; 5-ER-1117.)[17]

Plaintiffs excluded individuals with mental illness from their complaint by limiting the proposed class to only those with "mobility, sight, hearing, learning and kidney and developmental impairments." (5-ER-1117 (operative complaint).)

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defect.") (emphasis added), available at https://medical-dictionary.thefreedictionary.com/mental+impairment (accessed September 30, 2021).

[17] "Major life activities are functions such as caring for one's self, performing essential manual tasks, walking,…speaking,…learning, and working." (5-ER-1056.)

The district court did the same in the class-certification order, limiting the "plaintiff class" to inmates "with mobility, sight, hearing, learning and kidney disabilities." (5-ER-1133-34 (order amending class).) As the order makes clear, mental illness was excluded.

And the parties stipulated that the phrase "learning disabilities" did not encompass mentally ill individuals, but instead meant:

> a disorder in one or more of the basic psychological processes involved in understanding or in using language…which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations…[and]…does not include …learning problems which are primarily the result…of emotional disturbance.

(5-ER-1174-76.)

Because mental illness (which may be wholly treatable or impair only limited areas of functioning while preserving an individual's capacity to function competently) and learning disabilities (which involve cognitive deficiencies that affect the ability to make the basic decisions and cope independently) are distinct, the district court erred by expanding the *Armstrong* litigation to include *Coleman*-EOP members.

Neither the Remedial Order's general mandate that Defendants comply with the ADA nor the negotiated Remedial Plan's inclusion of the ADA's general anti-retaliation provision (1-ER-20-21) are grounds for expanding this

litigation to include *Coleman*-EOP members. These general obey-the-law provisions do not operate to modify the certified Plaintiff class—inmates with specified learning and physical disabilities—who brought suit and survived the stringent requirements for class certification. (5-ER-1117, 1132.)

The court next looked to the "Standards" section of the Remedial Plan, which defines "qualified inmate" to include individuals with a "physical or mental impairment which substantially limits the [] ability to perform a major life activity." (5-ER-1056; 1-ER-21-22.) The term "physical or mental impairment" is a shorthand reference for the disabilities specified in the class-certification order, and does not purport to define the scope of the class. (5-ER-1056, 1132-336.) But because the Plan does not specifically define "mental impairment," the court looked to the ADA's text for a broader definition and used that definition to expand the Remedial Plan to cover *Coleman*-EOP members. (1-ER-21-22, 64.) This was improper. (*See* 5-ER-1117, 1133-34, 1174-76 (excluding mental illness).)

The court's second rationale for including *Coleman*-EOP members also is incorrect. The court said because the Remedial Plan directs Defendants to "provide reasonable accommodations or modifications for known physical or mental *disabilities* of qualified inmates/parolees," the class must include *Coleman*-EOP inmates given they suffer from serious "mental *disorders*" or

"*illnesses*" that prevent them from functioning in the general prison population. (1-ER-12, 23 (emphasis added); 5-ER-1062.) But however "mental disabilities" is defined, that definition cannot expand the *Armstrong* litigation beyond the scope of the certified class. (1-ER-22, 42, 50, 64-66.) That a remedial plan may benefit non-class members is not ground for expanding the litigation to include such persons. 18 U.S.C. § 3626.

This legal error also creates a potential conflict with class actions under the jurisdiction of other courts. Piling *Armstrong* oversight atop *Coleman* oversight unnecessarily and impermissibly increases the courts' intrusion into California's prison management, and could lead to conflicting directives since there are decades-old protocols in *Coleman* to protect mentally ill inmates. 18 U.S.C. § 3626(a); *Lewis v. Casey*, 518 U.S. 343, 349, 363 (1996) (cautioning against courts thrusting themselves into prison administration). This Court found a similar overreach a decade ago when it held that the district court abused its discretion by granting system-wide relief based on sparse evidence, including hearsay evidence from "individuals who were not necessarily *Armstrong* class members." *Armstrong*, 622 F.3d at 1073.

The PLRA cabins a federal court's grant of injunctive relief to the particular plaintiffs who brought suit. 18 U.S.C. § 3626. The court erred by disregarding the certified class, expanding the Remedial Plan to include

Coleman-EOP members, endowing their statements with undue weight, and allowing those statements to drive the injunctive relief. (1-ER-21-22.)

B. The District Court Erred by Expanding the *Armstrong* Litigation without Further Class Certification, in the Midst of a Motion for Injunctive Relief.

By expanding the scope of the Remedial Plan to encompass *Coleman*-EOP members and granting greater weight to their statements, the court improperly treated *Coleman* members as *Armstrong* class members. (1-ER-20-21.) Moreover, that the court endorsed this expansion during the remedial phase of litigation without considering whether class-certification requirements had been met and did so in the midst of ruling on Plaintiffs' motion for injunctive relief, violated due process and the rules governing class actions.

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to…cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 267-69 (1970); *Jenkins v. McKeithen*, 395 U.S. 411, 428-29 (1969) ("the right to…cross-examine…is a fundamental aspect of procedural due process"); *see also Ivers v. United States*, 581 F.2d 1362, 1371 (9th Cir. 1978) (acknowledging "full panoply of due process rights inherent in a judicial proceeding").

The court impermissibly expanded the scope of the litigation beyond the Plaintiff class that brought suit without performing a class-certification analysis. Fed. R. Civ. P 23(c)(1)(C); *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013) (requiring plaintiffs to prove the class-certification prerequisites by a preponderance of the evidence). Class-certification requirements effectively limit class claims to those fairly encompassed by the named plaintiffs' claims, and ensure the claims raise a common contention capable of class-wide resolution such that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. at 35. Fed. R. Civ. P. 23 (requiring showing of commonality, typicality, and adequacy).

Without advance notice of the litigation's expansion to include *Coleman*-EOP members, Defendants were denied a full and fair opportunity to oppose it. *Goldberg*, 397 U.S. at 267-68 (requiring a meaningful opportunity to be heard, "at a meaningful time and in a meaningful manner.")

Moreover, by expanding the litigation *after* briefing on Plaintiffs' motion for injunctive relief, the court also denied Defendants a meaningful opportunity to oppose the motion for injunctive relief. *Goldberg*, 397 U.S. at 267-68. Ninth Circuit precedent—established in this action—cautions against relying on evidence "related to individuals who were not necessarily

Armstrong class members." *Armstrong*, 622 F.3d at 1073. The court initially expressed that concern, commenting that one of the "problems or weaknesses" with Plaintiffs' motion was its "reliance on *Coleman* declara[nts] who aren't *Armstrong* declarants." (2-ER-336 (italics added).) Thus, throughout the briefing, the statements concerning *Coleman*-EOP members carried significantly less weight. (*Id.*)

The district court simultaneously expanded the *Armstrong* Remedial Plan to include *Coleman*-EOP members and held "[f]or the foregoing reasons, the Court considers the declarations of Coleman classmembers when deciding the present motion." (1-ER-23.) This expansion impermissibly transformed the importance of the *Coleman*-EOP statements after briefing was complete. The court then discredited Defendants' experts because they had not considered the statements attributed to the newly-minted unofficial *Armstrong* members. (1-ER-42, 50, 64-66.)

Because Defendants were not given fair notice and a meaningful opportunity to be heard before the litigation was expanded and relief was ordered to benefit *Coleman* members, their due process right to a fair proceeding was violated.

III. THE INJUNCTION DID NOT COMPLY WITH THE PLRA'S DEMANDING STANDARD FOR PROSPECTIVE RELIEF.

A. There Was No Substantial Evidence of Prison-Wide Abuse against *Armstrong* Class Members.

Plaintiffs failed to provide the substantial evidence necessary to demonstrate a widespread deficiency that could warrant prison-wide relief. *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1073 (9th Cir. 2010) ("an appeals court must defer to a district court's determination that system-wide relief is required '[s]o long as [its] conclusion is based upon adequate findings supported by substantial evidence in the record.'")

In *Armstrong v. Schwarzenegger*, this Court vacated an injunction requiring Defendants to accommodate the disability needs of parolees in county jails based on four isolated incidents. *Id.* The Court held that the evidence of ADA violations against *Armstrong* members could not "be described as 'substantial' [where] it [was] composed largely of single incidents that could be isolated." *Id.*

Similarly, the evidence here was insubstantial because it largely comprised single hearsay incidents that could be isolated: two hearsay anecdotes from *Armstrong* members for CIW and SATF each, a handful of hearsay anecdotes for KVSP and COR, and just a fraction of the *Armstrong* population for LAC. Below is the breakdown in percentage points:

- Less than 1% (2 of 263 members) of CIW's *Armstrong* class;
- About one-tenth of 1% (2 of 1,383 members) of SATF's *Armstrong* class;
- 1.2% (5 of 417 members) of KVSP's *Armstrong* class;
- 1.6% (7 of 434 members) of COR's *Armstrong* class;[18]
- 2.9% (21 of 712 members) of LAC's *Armstrong* class.[19]

(28-ER-7700, 7758, 7808, 7816, 7831; 1-ER-15 (n.4).)

The data also shows *Armstrong* members at the five prisons filed over 9,000 ADA requests, staff complaints, and grievances in 2019 alone. (28-ER-7758-837.) Moreover, as a whole, class members used these administrative processes more frequently than their non-disabled counterparts. (28-ER-7758-62, 7800-04, 7807-11, 7816-20, 7831-37.) Defense experts interpreting the data reached the same conclusion, yet the court gave their opinions "little weight" because they did not consider that "*some* disabled inmates" could have refrained from submitting requests or grievances due to threats, intimidation, or coercion. (1-ER-20 (emphasis added).) But whether "some"

[18] This calculation does not include the *Armstrong* statement the district court excluded. (1-ER-15 (n.4).)

[19] Defendants disputed numerous statements, but their response, especially at LAC, was hindered by the severe restrictions imposed on their ability to conduct basic discovery, cross-examine witnesses, and adequately respond to the voluminous evidence that Plaintiffs were permitted to submit with each filing below. (*See infra*, Argument IV.)

class members might have been deterred is not enough. *See Armstrong,* 622 F.3d at 1073. The evidence does not show that *Armstrong* class members *as a whole* could not access the accommodation and grievance processes because of rampant abuse by staff and, absent substantial evidence, no deference is owed to the decision below. *Id.* The injunction was not supported by substantial evidence of widespread ADA violations, and should be vacated.

B. An Injunction Must Both Be Backed by Substantial Evidence and Satisfy the PLRA's Needs-Narrowness-Intrusiveness Requirement.

The PLRA limits prospective injunctive relief in prison-condition actions. 18 U.S.C. § 3626(a); *Lewis*, 518 U.S. at 349, 363. Any grant of prospective relief must be "narrowly drawn, extend [] no further than necessary to correct the violation of the Federal right, and [be] the least intrusive means necessary to correct the violation." 18 U.S.C. § 3626(a)(1). These limitations ensure that the relief will "heel close to the identified violation," *Armstrong v. Brown*, 768 F.3d 975, 983-84 (9th Cir. 2014) (internal marking omitted), and account for the deference to experienced prison administrators faced with the difficult and dangerous task of housing large numbers of convicted criminals, *see Bell v. Wolfish*, 441 U.S. 520, 547-548 (1979).

Trial courts "must make the findings mandated by the PLRA" before granting prospective injunctive relief. *Oluwa v. Gomez*, 133 F.3d 1237, 1239 (9th Cir. 1998). And the evidence must be "substantial." *Armstrong*, 622 F.3d at 1073.

While courts may provide guidance and set objectives, the PLRA does not permit attempts to micro-manage prison administration. *Armstrong*, 768 F.3d at 983. State prisons must be granted "the widest latitude in the dispatch of [their] own internal affairs." *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th Cir. 2001) (citation omitted). Thus, the overarching inquiry is whether the same vindication of federal rights could be achieved with less court involvement "in directing the details of defendants' operations." *Armstrong*, 622 F.3d at 1071.

The district court's order violates these well-settled principles.

C. The Injunction Is Disruptive, Cumulative, Intrusive, and Non-Deferential.

Despite this Court's admonition that an injunction must operate "with the minimal impact possible on defendants' discretion over their policies and procedures," *Armstrong*, 622 F.3d at 1070, the injunction here is anything but minimal and deferential. The Five-Prison Order contains a laundry list of remedies that are disruptive, intrusive, cumulative, and non-deferential, in the

violation of the PLRA. If some remedy was necessary—which Defendants do not concede—the injunction should have started and ended with stationary cameras.

Stationary cameras. The court's injunction begins with mandating the installation of stationary cameras in "all areas…to which disabled inmates have access," within 90 days from the finalization of the Five-Prison plan. (1-ER-4, 53-54.) This remedy essentially requires Defendants to blanket all five prisons with stationary cameras because disabled inmates have the same level of access as other inmates. (1-ER-4.) But CDCR already was independently committed to installing stationary cameras across the state, and had established plans for installations at CIW, KVSP, COR, and LAC as part of a multi-year rollout. (7-ER-1585, 1591-92, 1626-27; CR 3110 at 13.)

Thus, the court could have avoided excessive judicial micromanagement of prisons, as Congress intended with the PLRA, by first allowing the planned stationary cameras to take effect before considering whether additional remedies were necessary. (1-ER-4-8.) *See Plata*, 563 U.S. at 531 (requiring a proportional fit, such that the ordered relief extends no further than necessary to remedy the violation). The court instead opted for immediate installation of stationary cameras at all five prisons and more remedies atop that mandate.

Body-worn cameras. Not satisfied with just stationary cameras, the court also ordered Defendants to equip all officers "who may have any interactions with disabled inmates" with body-worn cameras. (1-ER-4.) This requirement essentially mandates body-worn cameras for all officers, because any of them could interact with disabled inmates during their employment. Although body-worn cameras are not standard in the prison context (28-ER-7899), the court nonetheless imposed this requirement after watching a YouTube video about them, believing they were "likely to improve" staff-misconduct investigations and reduce violations. (1-ER-55-56 (citing 3023-9).) But "likely to improve" does not mean "necessary," as required by 18 U.S.C. § 3626(a)(1). "[P]laintiffs are not entitled to the most effective available remedy; they are entitled to a remedy that eliminates the constitutional injury." *Ball v. LeBlanc*, 792 F.3d 584, 599 (7th Cir. 2015).

Since Plaintiffs conceded that stationary cameras could dramatically reduce staff misconduct and definitively resolve the vast majority—upwards of 75%—of use-of-force inquires (32-ER-8967-68), the body-worn camera requirement is unnecessary.

Recording and retaining video footage. After mandating stationary and body-worn cameras, the court required Defendants to record and indefinitely retain all videos capturing uses of force and other "triggering events involving

disabled inmates" regardless of whether *Armstrong* members were involved in the incident. (1-ER-4, 45.) There remains no good reason to require retention of video footage of nonparties or for periods outside of applicable statutes of limitations.[20] If either camera requirement stands, this Court should limit recording to *Armstrong* members.

Pepper-spray policy. The court ordered Defendants to reform their pepper-spray policy at all five prisons (1-ER-16-17) even though there were no reported cases of misuse at **CIW** (24-ER-6594-99, 6604-09, 6619-22) and only one reported case against a class member at **SATF** (35-ER-9932-35; 29-ER-8160; 28-ER-8000-01 (describing single burst with no effect, [SATF-1])).

The evidence against the remaining three prisons was just as thin. Plaintiffs presented just two reported incidents of pepper-spray use over a three-year period at **KVSP**, and none involved *Armstrong* members. (24-ER-6770-80, 6389, 35-ER-9901-19 (the two *Coleman* members involved could not agree on what had happened); 14-ER-3787-91).) Plaintiffs also presented three reported cases over three years at **COR**, but only one involved an *Armstrong* member and that statement was excluded by the district court. (1-ER-15 (n.4, excluding [COR-8]).) The remaining two incidents involved

[20] During subsequent negotiations, the parties have discussed a five-year retention period.

Coleman members and were disputed (22-ER-6149-50; 15-ER-3844 (single burst during ongoing altercation where *Coleman* member charged and assaulted staff)[21]; 22-ER-6215-22 (*Coleman* member denied any disability, stating he managed his mental health "without medication, therapy, or groups").) As for **LAC**, the court relied on three examples that involved no *Armstrong* members (1-ER-16-17, 61-62), and two were contested with sworn declarations from Defendants. (34-ER-9662; 14-ER-3608-12, 3641-45.)

These isolated incidents—most of which did not involve *Armstrong* members—cannot justify the injunction requiring pepper-spray policy reforms at any prison, let alone at five of them.

Additional training. Rather than pointing to substantial evidence that CDCR's training contributed to the ADA violations, the court simply assumed it was deficient because there were purported ADA violations. (1-ER-2-79.) But this assumption is not a substitute for making the PLRA's required findings of needs, narrowness, and intrusiveness. *See Armstrong*, 622 F.3d at 1073 (requiring substantial evidence to support the court's findings). 18 U.SC. § 3636(a)(1)(A). Otherwise, the court's circular analysis could be used to justify reforming every prison policy affecting disabled inmates.

[21] This inmate also allegedly witnessed officers spray another inmate who is not disabled.

The court went after Defendants' robust training program, calling it "ineffective at stopping" ADA violations. (1-ER-8, 60.) The court ordered Defendants to develop additional training covering human rights, de-escalation, cultural training, reporting requirements, whistleblowing, non-retaliation, and treatment of disabled inmates; and to require all custody, mental-health, and medical staff who interact with disabled inmates to attend them. (*Id.*)

But CDCR already provides significant training—over fifty-five hours annually—that encompasses much of the court-imposed content. (28-ER-7297.) Existing training includes topics from Corrections Fatigue to Fulfillment to Multiple Interactive Learning Object (MILO) training. (28-ER-7926-27.) MILO is an interactive simulator that provides live feedback to staff to improve their communication and de-escalation techniques, and to recognize signs and symptoms of mental illness and cognitive disabilities. (*Id.*) This training has been shown to positively impact staff-offender interactions. (*Id.*)

Supervisory staffing. The court used the same circular analysis to order Defendants to post "additional sergeants on all watches on all yards" at all five prisons, stating that Defendants' staffing levels were ineffective at stopping alleged ADA violations. (1-ER-7, 59.) But if, as Plaintiffs concede,

stationary cameras will significantly reduce or deter staff misconduct, then mandating additional staffing atop stationary cameras is unnecessary. (32-ER-8967-68.)

Further, by requiring sergeants on certain shifts in certain places, the court gave no deference to prison authorities about how increased supervision should be effected. (1-ER-7.) Nor is the blanket assignment of sergeants prison-wide appropriately tailored to focus on the areas where *Armstrong* members are assigned. *Brown*, 563 U.S. at 531 (requiring a proportional fit between the remedy's ends and the means chosen to accomplish those ends).

Mandating changes to personnel actions and decisions. The court ordered Defendants to reform how they receive complaints against staff, investigate allegations, and discipline staff to achieve more employment sanctions, referrals for criminal prosecutions, and job reassignments. (1-ER-5-6, 56.) The level of oversight imposed—down to mandating inmate interviews be conducted quarterly using a specific questionnaire—constitutes the sort of excessive judicial micromanagement that the PLRA seeks to curtail. 18 U.S.C. § 3626.

California already provides for third-party oversight of CDCR. Cal. Pen. Code § 6125-41. The Office of the Inspector General (OIG) oversees CDCR, assesses deficiencies, and identifies areas for improvement. *Id.* This process

provides monitoring of CDCR's processes for employee discipline, staff complaints, inmate grievances, and use-of-force reviews. (*Id.*; 4-ER-913.) The state legislature and CDCR's Office of Audits and Court Compliance provide additional oversight. (14-ER-733, 53.)

The OIG's use-of-force monitoring shows that compliance with CDCR policy is the rule rather than the exception. (10-ER-2626 (showing just 3% error related to the actual use of force), 2634 (reflecting overall satisfactory rating with respect to force used).) And when issues arise, CDCR's specialized Allegation Inquiry Management Section (AIMS), a division of the Office of Internal Affairs, investigates staff misconduct. (28-ER-7925-26, 7872; 4-ER-732-33.) AIMS was created in 2020 and, as with any new process, refinements are ongoing. (*Id.*) Although the OIG expressed concerns about the effectiveness of the new AIMS investigation process, it also found a low rate of error related to actual uses of force. (1-ER-39; 10-ER-2626, 2634.) Thus, the OIG's concerns do not support the district court's conclusion that judicial intervention was necessary.

Finally, the court-mandated reassignment of officers who are merely *accused* of misconduct contravenes the PLRA because it requires reassignment absent any reasonable belief or evidence that misconduct actually happened, and absent any federal violation. (28-ER-7899-900 (also

noting that actual evidence of serious misconduct already triggers an assignment change or time off in most cases).) This requirement creates serious security concerns because it allows inmates to manipulate staffing with mere accusations, which could be fabricated in retaliation for staff confiscating contraband or enforcing prison rules. (*Id*.) Thus, this mandate creates a path for ill-intentioned inmates to interfere with the prison's primary functions of maintaining custody and keeping staff and inmates safe. (*Id.*)

Given these facts and concerns, the court should have given CDCR time to improve the AIMS process, which was already in progress based on the OIG report and legislative hearings, before taking over personnel decisions. At a minimum, the court should have awaited the outcome from the stationary cameras before entangling itself in personnel actions and decisions.

Early-warning tracking systems. Still not satisfied with the remedies above, and notwithstanding the already burdensome reporting requirements under the *Armstrong* Remedial Plan, the court ordered CDCR to develop an electronic early-warning system at all five prisons to track "all incidents…by date, time, location, staff involved, and incarcerated people involved." (1-ER-6-7, 61-62.) The tracking system must also capture information about the inmates' disabilities, any injuries suffered, and related medical records. (*Id*.) The early-warning tracking requirement is a cumulative remedy because it

would flag patterns of misconduct already captured by cameras and AIMS reforms. It is excessive because it has nothing to do with providing disabled inmates access to programs, services, or activities, or removing structural barriers. And its need would be obviated if, as both sides predict, stationary cameras will significantly reduce the number of staff-misconduct inquiries. ((32-ER-8967-68.)

More information-sharing. Finally, the district court directed information sharing with Plaintiffs' counsel and the court expert to include "all documents related to…staff misconduct complaints" where the alleged victim is a qualified disabled inmate, and provide monthly updates on Defendants' implementation of the injunction and data regarding staff misconduct complaints and uses of force where there is a possible Remedial Plan or ADA violation. (1-ER-6-7, 58.)

This requirement is overbroad because it obligates Defendants to share documents about nonparties and makes no exception for applicable privileges. (1-ER-6-7, 58.) And when viewed with the other remedial, monitoring, and oversight reforms, the district court imposed more reforms than are necessary and failed to accord Defendants the "widest latitude in the dispatch of its own internal affairs." *Gomez*, 255 F.3d at 1128.

In short, even if some relief was justified here, which Defendants do not concede, the court should have started with stationary cameras and awaited the result before ordering additional remedies. Such an approach would have avoided the judicial micromanagement of the five prisons, and hewed to the PLRA's command that prospective relief extend no further than necessary, be narrowly tailored, and impose the least intrusive means to correct a federal violation. 18 U.S.C. § 3626(a)(1)(A).

IV. THE COURT RELIED ON INCOMPETENT AND SPARSE EVIDENCE, PRECLUDED CROSS-EXAMINATION, AND FREELY ALLOWED PLAINTIFFS TO SUBMIT EVIDENCE WHILE SEVERELY LIMITING DEFENDANTS' ABILITY TO RESPOND.

The district court, through a series of unbalanced rulings, trampled Defendants' right to a fair hearing and hindered their ability to defend against the motion for injunctive relief. The court allowed Plaintiffs to bombard Defendants with new evidence, submit 179 out-of-court statements spread throughout eight filings, and add hundreds upon hundreds of pages of new evidence with each filing, including the sur-rebuttal to their motion. (1-ER-2-79.)

The court simultaneously imposed restrictions that barred Defendants from testing the veracity of the inmates' statements by cross-examination, effectively precluding the depositions of all but four inmates. (2-ER-338.)

Three of the four inmates who submitted to deposition refused to testify about allegations central to their statements and the court declined to consider those statements, leaving Defendants with only 1 deposition to counter the remaining 176 statements. (1-ER-15 (n.4)) The court discredited Defendants' experts because they had not considered the statements attributed to the newly minted unofficial class members. (1-ER-42, 50, 64-66.) Finally, the court considered Plaintiffs' sur-rebuttal evidence without providing Defendants a fair opportunity to address it. (1-ER-49-50.)

These cumulative errors denied Defendants a fair opportunity to oppose the motion, violating their due-process rights.

A. The District Court's Evidentiary Errors Tainted the Record and Prejudiced Defendants.

The district court erroneously accepted inadmissible hearsay statements as evidence. Although Plaintiffs' counsel submitted a bevy of inmate statements, not one was signed by the inmate to which the statement was attributed. (*See, e.g.,* 34-ER-9541.) Rather, Plaintiffs submitted attorney declarations relaying to the court what the inmates had told counsel over the phone, as Plaintiffs' counsel readily acknowledged. (*Id.*) And the district court accepted those statements as true. (1-ER-15-20, 49.) The court violated 28 U.S.C. § 1746 (requiring declarant's signature) and Federal Rules of Evidence

801-05 (prohibiting hearsay). As explained below, the court compounded this evidentiary error when it denied Defendants a fair chance to respond to the allegations, particularly in light of the circumstances in which the declarations were prepared, thereby violating Defendants' right to due process.

The district court also imposed restrictions that violated Defendants' due-process right to a fair and just proceeding, including the right to cross-examine adverse witnesses under oath and test the veracity of their allegations. *Jenkins v. McKeithen*, 395 U.S. 411, 428-29 (1969); *Greene v. McElroy,* 360 U.S. 474, 492 (1959). The court expressly prohibited Defendants from cross-examining any inmate solely to test the inmate's veracity and directed that no deposition could be taken unless Defendants first specified a different "articulable reason" for the deposition. (2-ER-338, 368.)

Where, as here, "important decisions turn on questions of fact," due process requires "an effective opportunity to defend by confronting any adverse witnesses and by presenting [] arguments and evidence." *Goldberg v. Kelly*, 397 U.S. 254, 267-69 (1970). This means allowing a party to cross-examine an accuser at a deposition or in court because there is no other comparable safeguard for testing the truthfulness of "human statements." *Greene*, 360 US at 497-98. Cross-examination can uncover biases, exaggerations, lies, poor memories, inconsistencies, vindictiveness, malice, or

other ulterior motives. *Greene*, 360 U.S. at 498; *Goldberg*, 397 U.S. at 269-70; *Pennsylvania v. Ritchie*, 480 U.S. 39, 51-52 (1987).

Here, the truthfulness of the 179 statements, as relayed by Plaintiffs' counsel, was crucial to Plaintiffs' motion. Defendants demonstrated that a number of the statements were erroneous, contradictory, or unreliable. For example, one inmate [SATF-1] asserted that force was unnecessarily used to effect a cell search when he could not hear orders because his hearing aids were broken, but his contemporaneous statements showed he understood the order, disobeyed it, and advanced on staff. (29-ER-8158-60 (grievance); 28-ER-8000-01, 31-34, 43-45, 48, 50-55.)

Another inmate represented that his daughter had died in a car accident on January 1, but when deposed he claimed that she passed away on January 7 and he attempted suicide when he learned of her passing. (23-ER-6289; 11-ER-2743-44.) This inmate also had an admitted history of lying, including lying to medical staff to deny recent drug use despite testing positive for amphetamine, methamphetamine, and opioids. (11-ER-2789-97, 2851, 2870.) And medical and grievance records showed that he had reported only chest pains, not a suicidal ideation or attempt. (11-ER-2741-44, 2753-54, 2824-26, 2829, 2833, 2843, 2854; 23-ER-6289.)

Finally, an inmate [LAC-6] initially accused "Officer Ms. A Williams" of stealing his property but no such officer existed; to make his claim plausible, the inmate simply told Plaintiffs' counsel that "Officer Williams" was responsible. (34-ER-9619-20; 28-ER-7941-49.)

The district court imposed restrictions on Defendants' ability to depose and cross-examine witnesses during routine discovery, prejudicing their defense while giving Plaintiffs all the leeway to make their case. (2-ER-338, 368.) To be sure, Defendants do not contend they needed to depose every inmate; but they should have been allowed to take more than 10 depositions to refute the 179 submitted statements, free of the court's heightened standard for them.

When Defendants proposed 10 deponents, Plaintiffs objected that Defendants did not meet the court's heightened standard for any of the depositions but, in the end, they agreed to allow 5. (8-ER-1898-1913, 1915-22.) Ultimately, only four inmates were deposed because the fifth deposition had to be canceled through no fault of Defendants. (*Id.*)

Three deponents refused to answer questions about their allegations on the advice of class counsel. (11-ER-2357-58, 2744, 2755; 12-ER-54, 83; *see also* 42-46, 65, 68-77; 13-ER-332-34.) So, Defendants got only one proper

deposition. The record illustrates the devastating effect these one-sided restrictions had on Defendants' ability to respond to Plaintiffs' motion.

For example, the district court cited the statement of an inmate who claimed he was ignored when he "requested to see his clinician because he was still feeling suicidal." (1-ER-18; 22-ER-6121.) But the inmate's statement did not identify the officer—not by name, general description, or shift where the interaction purportedly occurred. (22-ER-6121.) Without this information, Defendants could not satisfy the court's heightened standard, and the request to take his deposition was denied. (8-ER-1898, 1899-20, 1906.) Thus, Defendants could not ask probing questions to determine whether or how the inmate had conveyed to the officer that his mental health was at issue.

Prejudice also arose when the court impinged on Defendants' constitutional right to cross-examine Plaintiffs' witnesses by mandating that Defendants first obtain counter-evidence from willing nonparty inmates or unrepresented staff. The court also got the process backwards, as cross-examination is "necessarily exploratory." *NLRB v. Doral Bldg. Servs., Inc.*, 666 F.2d 432, 433 (9th Cir. 1982), supplemented, 680 F.2d 647 (9th Cir. 1982) (finding prejudicial error where administrative law judge made factual and legal findings based on statements from witnesses without permitting their cross-examinations). "Prejudice ensues from a denial of the *opportunity* to

place the witness in his proper setting and put the weight of his testimony and his credibility to a test." *Alford v. United* States, 282 U.S. 687, 692 (1931) (emphasis added); *NLRB*, 666 F.2d at 433.

After severely restricting Defendants' ability to cross-examine and limiting the number of depositions, the court found the inmates' statements credible because they apparently "lack[ed] any incentive to fabricate the [described] incidents." (1-ER-19, 20.) But this is an empty finding absent the cross-examination that would have tested those statements for truthfulness. *Alford*, 282 U.S. at 692. An inmate could lie or be mistaken for various reasons: faulty memory, erroneous assumption, or ulterior gain.

Reversal is warranted because the restrictions on cross-examination and depositions were improper and prejudicial.

B. The District Court Erred by Qualifying Defendants' Demand for Depositions as Mere Discretionary Discovery That Could Be Limited.

Although there had been no prior litigation about officer misconduct at the five prisons, the district court analogized Plaintiffs' motion for injunctive relief to a motion to enforce a judgment. (2-ER-9-10.) With the motion so characterized, the court opined it had wide discretion to limit Defendants' ability to conduct discovery. (1-ER-88-89.) The court was mistaken. Plaintiffs did not move to enforce a judgment but rather sought to implement new

remedial measures based on new evidence,[22] and the court captioned its injunction as "Order for Additional Remedial Measures at [the five prisons]." (1-ER-2.)

Further, in curtailing discovery, the court mistakenly relied on *California Department of Social Services v. Leavitt,* 523 F.3d 1025, 1033 (9th Cir. 2008), which discusses a court's discretion to limit discovery when noncompliance with a judgment is alleged. (1-ER-88-89.) Even in that context, *Leavitt* mandates that "careful attention" be given to requests for discovery and sets a permissive standard for allowing discovery, requiring only a showing that the discovery requested "*might have* generated information that could raise significant questions concerning compliance". *Id.* Where "significant questions regarding noncompliance have been raised," *Leavitt* directs "appropriate discovery should be granted." *Id.* at 1033-35.

Having freely allowed Plaintiffs to submit 179 hearsay statements and treating Plaintiffs' motion as raising, in the words of *Leavitt*, "significant

[22] Plaintiffs also did not move for contempt or meet the civil contempt standard, which requires clear and convincing evidence that a specific and definite order of the court was violated. *See International Union, UMWA v. Bagwell*, 512 U.S. 821, 827-28 (1994) (approving civil contempt proceedings to enforce compliance with court orders); *Parsons v. Ryan*, 949 F.3d 443, 454 (9th Cir. 2020) (using contempt power to effectuate enforcement of a settlement agreement).

questions regarding noncompliance" with past orders, the court's restriction on inmate depositions was unreasonable. Thus, even under *Leavitt*, the court should have allowed more than a paltry ten depositions with strict conditions. *Id*. at 1033.

The circumstances where this Court has approved a court's exercise of discretion to limit discovery are distinguishable. In *Hallet v. Morgan,* this Court approved a decision to deny further discovery where a two-week evidentiary hearing was held, evidence regarding compliance was "thoroughly aired," and the court's in-camera review confirmed that the remaining evidence sought was "barely relevant." 296 F.3d 732, 751 (9th Cir. 2002). Here, no evidentiary hearing was held, efforts to obtain evidence via cross-examination were largely barred, and the court merely assumed the veracity of witness statements at the core of the request for relief. (1-ER-48-49, 2-ER-338, 368.)

C. The District Court Erroneously Credited Speculative Out-of-Court Statements Regarding Officer Motivation to Establish a Disability Nexus.

The district court improperly credited speculative and conclusory out-of-court statements regarding officers' motivations, to find the descriptions of staff culture "remarkably consistent" even though they were drafted by the

same gatekeepers (Plaintiffs' counsel), and were untested by cross-examination. Fed. R. Evid. 801-05, 607-08, 611.

The court erred by crediting Plaintiffs' conclusory statements regarding disability nexus; they are speculative, hearsay, and lack adequate foundation. Fed. R. Evid. 602, 701-02, 801-05; *Anheuser-Busch. Inc. v. Natural Beverage Distribs*., 69 F.3d 337, 345 (9th Cir. 1995) (finding conclusory or speculative testimony insufficient); *Villiarimo v. Aloha Island Air Inc*., 281 F.3d 1054, 1061 (9th Cir. 2002) (discounting self-serving testimony). Additionally, these statements fail to establish any meaningful nexus between the misconduct alleged and disability or class-member status:

CIW. The first cited statement [CIW-2] discussed two incidents involving inmates who are not disabled, and the inmate's own experiences (tight handcuffing, shoving, and waiting ten minutes for a plunger after asking an officer who was already engaged in conversation with someone else). (1-ER-48-49; 24-ER-6620-22.) Because the inmate offered no foundation for her bare assertion that staff targeted disabled inmates because they "know that we talk with people from outside organizations and they get worried that their misconduct will come to light," the court's disability nexus assumptions are speculative and inadmissible. (*Id.*)

The second statement [CIW-1] concluded—based solely on the inmate's own interactions—that staff target people who are transgender, have physical disabilities, mental illness, and long sentences; and speculated that staff "could care less about somebody's mental health" and are "very mean to people who are seriously mentally ill." (24-ER-6594.) The treatment of mentally ill inmates is the subject of the *Coleman* litigation, not *Armstrong*. (5-ER-1132-336.) Moreover, this inmate's experience (a single incident where a front-handcuffing accommodation was not honored absent a chrono, and rude statements, including being called "shorty") fails to establish any widespread disability nexus. (24-ER-6594-601 (also confirming the handcuffs were removed when the accommodation was verified, accommodation was honored in another instance, and an officer encouraged the inmate to file a grievance).)

SATF. The cited statement from SATF [SATF-2] is similarly deficient. (1-ER-48-49.) The inmate's speculation that "[i]ncarcerated people, especially those with disabilities, face hostility and abuse from staff when they try to use the appeals system. I know this because I have experienced it myself" is overbroad and lacks foundation. (16-ER-4177.) The inmate did not claim to have observed any mistreatment of other inmates for using the grievance system, and did not discuss prison-wide misconduct. (*Id.*)

As detailed above, the inmate's staff-misconduct allegations surrounding a telecommunication device were disputed, and the asserted deprivation was limited to one inmate. (13-ER-3514-15, 3519 (also documenting his refusal to use the device, communications without it; and another inmate's ongoing use of the device).) This inmate's statement showed that many staff members attempted to help him with the device. (16-ER-4170.) He also alleged that certain staff members retaliated against him for complaining about other inmates receiving extra privileges and identified him as "the guy with the hearing aids," but other staff responded to a threat to his safety that arose from an alias he recently used because they "thought he was involved." (16-ER-4171-75.) These allegations—asserting isolated instances of misconduct on no more than two facilities while showing that others provided assistance—fail to demonstrate widespread hostility or targeting of disabled inmates. (16-ER-4170.)

KVSP. The court relied on a single statement [KVSP-1] that fails to establish any widespread disability nexus. (1-ER-48-49; 35-ER-9924-26.) The inmate was assigned to only two locations, and the alleged misconduct appears limited to one yard on Facility C. (35-ER-9913-26.) Further, the allegations were untested by cross-examination, and include only the inmate's own experiences and an incident involving two *Coleman* members. (*Id.*)

COR. The district court cited no statements regarding COR. Regardless, these statements suffer similar infirmities and, thus, fall short of demonstrating the required disability nexus.

LAC. The three cited statements concerning LAC fare no better. (1-ER-48-49.) One inmate, a *Coleman*-EOP member, was assigned to the prison for four years, but reported a single incident of excessive force, alleged to have occurred during a manic episode, while the inmate was refusing medications. (34-ER-9628-29 ("my perception was somewhat distorted").) The inmate allegedly panicked, pulled the fire alarm, and attempted to exit via the fire door. (34-ER-9629-30.) Staff testimony, however, shows that staff acted in self-defense when the inmate charged at them with clenched fists. (14-ER-3608-12.) The inmate's speculative conclusion that "staff at LAC often abuse some EOP patients. I believe staff target vulnerable people, and that [because of my gender identity] I am vulnerable" (34-ER-9634), lacks foundation.

The second inmate, a *Coleman*-only member, opined:

> staff definitely target anyone that they believe to be vulnerable, such as people with mental illness and disabilities…They enjoy taking advantage of incarcerated people who are struggling and will not fight back. These are incarcerated people with wheelchairs, who are elderly, and who are severely mentally ill.

(34-ER-9667.) But this conclusion is grounded in just two alleged incidents of misconduct, nearly two years apart. (34-ER-9663-67.)

The third inmate, an *Armstrong* member [LAC-12], alleged he had difficulty obtaining accommodations from LAC's B-yard staff. (34-ER-9679-83; *but see* 28-ER-7993-98.)

These statements fall short of demonstrating any widespread disability nexus.

D. The District Court Should Have Struck Plaintiff's Sur-Rebuttal Evidence Because Defendants Did Not Have a Fair Opportunity to Respond.

The district court also erred by considering the evidence submitted with Plaintiffs' sur-rebuttal without providing Defendants a fair opportunity to respond. *JG v Douglas Cnty. Sch. Dist.,* 552 F.3d 786, 803 n.14 (9th 2008); *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164-65 (10th Cir. 1998) (requiring the opposing party be allowed a reasonable opportunity to respond when a court relies on new material in a reply brief).

CONCLUSION

This Court should reverse the Five-Prison Order. The district court exceeded its jurisdiction when it sought to remedy alleged acts of staff misconduct that are not sufficiently related to the *Armstrong* class claims, and violated the PLRA when it allowed *Coleman*-EOP members to drive the

relief. Further, the court-imposed reforms are needlessly cumulative and contravene the PLRA's needs-narrowness-intrusiveness requirements.

The court also denied Defendants a fair and just proceeding, improperly limited their ability to conduct basic discovery and cross-examine their accusers, while disregarding the rules of evidence to freely allow Plaintiffs to submit incompetent and untimely evidence. The court then relied on insubstantial evidence to issue wide-ranging, overbroad relief on issues not contained in this class action.

Dated: October 8, 2021

Respectfully submitted,

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20-16921

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN ARMSTRONG, et al.,

Plaintiffs-Appellees,

v.

G. NEWSOM, et al.,

Defendants-Appellants.

STATEMENT OF RELATED CASES

The following related case is pending: *Armstrong v. Newsom* (9th Cir. No. 20-16921), which concerns similar injunctive relief imposed at RJD.

Dated: October 8, 2021

Respectfully Submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 21-15614

I am the attorney or self-represented party.

This brief contains 15,606 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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21-15614

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN ARMSTRONG, et al.,

Plaintiffs-Appellees,

v.

G. NEWSOM, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

No. 4:94-cv-02307 CW
The Honorable Claudia Wilken, Judge

APPELLANTS' ADDENDUM (NINTH CIRCUIT RULE 28-2.7)

Dated: October 8, 2021

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APPELLANTS' ADDENDUM

TABLE OF CONTENTS

ADDENDUM A

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 229. Postsentence Administration (Refs & Annos)
Subchapter C. Imprisonment

18 U.S.C.A. § 3626

§ 3626. Appropriate remedies with respect to prison conditions

Effective: November 26, 1997
Currentness

(a) Requirements for relief.--

(1) Prospective relief.--(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless--

(i) Federal law requires such relief to be ordered in violation of State or local law;

(ii) the relief is necessary to correct the violation of a Federal right; and

(iii) no other relief will correct the violation of the Federal right.

(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

(2) Preliminary injunctive relief.--In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically

expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

(3) Prisoner release order.--(A) In any civil action with respect to prison conditions, no court shall enter a prisoner release order unless--

(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that--

(i) crowding is the primary cause of the violation of a Federal right; and

(ii) no other relief will remedy the violation of the Federal right.

(F) Any State or local official including a legislator or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of prison facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.

(b) Termination of relief.--

(1) Termination of prospective relief.--(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener--

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) Immediate termination of prospective relief.--In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

(3) Limitation.--Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

(4) Termination or modification of relief.--Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

(c) Settlements.--

(1) Consent decrees.--In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

(2) Private settlement agreements.--(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

(d) State law remedies.--The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

(e) Procedure for motions affecting prospective relief.--

(1) Generally.--The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) Automatic stay.--Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period--

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) Postponement of automatic stay.--The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) Order blocking the automatic stay.--Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

(f) Special masters.--

(1) In general.--(A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact.

(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

(2) Appointment.--(A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master.

(B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

(C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

(3) Interlocutory appeal.--Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

(4) Compensation.--The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

(5) Regular review of appointment.--In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

(6) Limitations on powers and duties.--A special master appointed under this subsection--

(A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;

(B) shall not make any findings or communications ex parte;

(C) may be authorized by a court to assist in the development of remedial plans; and

(D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

(g) Definitions.--As used in this section--

(1) the term "consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

(2) the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison;

(3) the term "prisoner" means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

(4) the term "prisoner release order" includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison;

(5) the term "prison" means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

(6) the term "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(7) the term "prospective relief" means all relief other than compensatory monetary damages;

(8) the term "special master" means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court; and

(9) the term "relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

CREDIT(S)

(Added Pub.L. 103-322, Title II, § 20409(a), Sept. 13, 1994, 108 Stat. 1827; amended Pub.L. 104-134, Title I, § 101[(a)] [Title VIII, § 802(a)], Apr. 26, 1996, 110 Stat. 1321-66; renumbered Title I, Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327; amended Pub.L. 105-119, Title I, § 123(a), Nov. 26, 1997, 111 Stat. 2470.)

Notes of Decisions (189)

18 U.S.C.A. § 3626, 18 USCA § 3626
Current through PL 117-36 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

ADDENDUM B

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter II. Public Services (Refs & Annos)
Part A. Prohibition Against Discrimination and Other Generally Applicable Provisions

42 U.S.C.A. § 12132

§ 12132. Discrimination

Currentness

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

CREDIT(S)

(Pub.L. 101-336, Title II, § 202, July 26, 1990, 104 Stat. 337.)

Notes of Decisions (1036)

42 U.S.C.A. § 12132, 42 USCA § 12132
Current through PL 117-36 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

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ADDENDUM C

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
Subchapter IV. Miscellaneous Provisions

42 U.S.C.A. § 12203

§ 12203. Prohibition against retaliation and coercion

Currentness

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or 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 this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to subchapter I, subchapter II and subchapter III, respectively.

CREDIT(S)

(Pub.L. 101-336, Title V, § 503, July 26, 1990, 104 Stat. 370.)

VALIDITY

<For constitutionality of sections 101 and 503 of Pub.L. 101-336, as applied, see Hosanna--Tabor Evangelical Lutheran Church and School v. E.E.O.C., U.S.2012, 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed.2d 650, holding that the Establishment and Free Exercise clauses of the First Amendment bar certain actions brought under the ADA.>

Notes of Decisions (788)

42 U.S.C.A. § 12203, 42 USCA § 12203
Current through PL 117-36 with the exception of PL 116-283, Div. A, Title XVIII, which takes effect January 1, 2022.

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