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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10  
11 JOHN ARMSTRONG, et al.,  
12 Plaintiffs,  
13 v.  
14 GAVIN C. NEWSOM, et al.,  
15 Defendants.

Case No. 94-cv-02307 CW

**ORDER SUSTAINING IN PART  
OBJECTIONS TO FURTHER  
PAROLE-RELATED REMEDIAL  
PLAN**

(Re: Dkt. No. 3600)

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17 On March 20, 2024, the Court granted in part and denied in part Plaintiffs’ motion to  
18 enforce the Revised Permanent Injunction. Docket No. 3583. On the same date, the Court  
19 ordered Defendants to develop a plan containing specific further remedial measures designed to  
20 ensure that they come into compliance with the Revised Permanent Injunction and the Americans  
21 with Disabilities Act (ADA) in the context of parole proceedings and to implement the plan within  
22 seventy-five days, after meeting and conferring with Plaintiffs. *See* Docket No. 3584. The Court  
23 permitted Plaintiffs to file objections to any disputed aspect of the plan if the parties were not able  
24 to resolve their disagreements during the meet-and-confer process. On June 3, 2024, Defendants  
25 filed a notice stating that they developed and implemented a plan that they claim contains the  
26 remedial measures required by the Court’s order of March 20, 2024 (hereinafter, further remedial  
27 plan). Docket No. 3596.  
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United States District Court  
Northern District of California

1 Now before the Court are Plaintiffs' objections to the further remedial plan. Docket No.  
2 3600. Defendants filed a response to the objections, Docket No. 3607, and Plaintiffs filed a reply,  
3 Docket No. 3608. For the reasons set forth below, the Court sustains Plaintiffs' objections in part  
4 and overrules them in part.

5 **I. Assistance with Writing Tasks**

6 In its order of March 20, 2024, the Court denied without prejudice Plaintiffs' request for an  
7 order "requiring Defendants to enact policies and procedures to ensure that there are sufficient  
8 staff at each prison who are required to provide parole-related writing assistance to class members  
9 with vision and hearing impairments, such as staff assistants or correctional counselors." *See*  
10 Docket No. 3583 at 32-33. The Court did so because, based on the evidence that Plaintiffs  
11 presented, the Court could not "find that class members with vision and hearing disabilities do not  
12 have sufficient assistance to draft documents for parole proceedings because of Defendants'  
13 current policies and procedures regarding staffing." *See id.* at 33. Specifically, the Court found  
14 that:

15 Plaintiffs filed class member declarations to support the staffing-  
16 related directive they request, but the vast majority of them do not  
17 support a finding that class members were prevented from, or had  
18 difficulty completing, writing parole-related documents because  
19 there was not enough staff available to assist them or because  
20 available staff refused to assist them. Class members declared,  
21 instead, that they were unable to write parole-related documents on  
22 their own and they did not feel comfortable asking staff (or other  
23 prisoners) for assistance. *See Jackson Decl.*, Ex. 52 ¶¶ 32-38; Ex.  
24 55 ¶ 16; Ex. 66 ¶ 26; Ex. 37 ¶¶ 39-42. Other class members  
25 declared that they were unable to draft parole-related documents  
26 but did not mention that staff-related issues played a role in their  
27 inability to do so. *See Jackson Decl.*, Ex. 50 ¶¶ 21-25; Ex. 63 ¶ 59;  
28 Ex. 32 ¶¶ 21-24.

23 *See id.* Because the declarations that Plaintiffs submitted collectively did not show that class  
24 members were unable to complete or had difficulty completing writing tasks due to the lack of  
25 sufficient staff that could assist them with those tasks, the Court concluded that ordering  
26 Defendants to change their staffing policies and procedures was not warranted.

27 Plaintiffs object to the further remedial plan on the ground that it reduces the writing  
28 assistance that is available for class members with hearing and vision disabilities. Plaintiffs

1 contend that, prior to the Court's March 20, 2024, order, Defendants had authorized voluntary  
2 overtime for correctional counselors to assist class members with preparations for parole hearings.  
3 The further remedial plan does not include that voluntary overtime. Plaintiffs argue that the  
4 remaining sources of writing assistance that are currently available to class members with hearing  
5 and vision disabilities are insufficient because, for example, libraries are open during limited hours  
6 and panel attorneys assigned to assist class members with parole tasks are not appointed to  
7 represent class members until approximately four months before the scheduled parole suitability  
8 hearing. Docket No. 3600 at 3. Plaintiffs request that the Court order Defendants to amend the  
9 further remedial plan "to direct Correctional Counselors, or other similar personnel such as social  
10 workers and TCMP benefits workers, to provide writing assistance to parole candidates as  
11 needed." Docket No. 3608 at 3.

12 The Court finds that Plaintiffs' objection is not well-taken. It is undisputed that  
13 Defendants will no longer provide voluntary overtime for correctional counselors to assist class  
14 members with writing tasks related to parole preparation. But that action by Defendants is not  
15 inconsistent with the Court's orders of March 20, 2024, because those orders did not require  
16 Defendants to take (or to not take) any action with respect to their staffing policies in the context  
17 of providing writing assistance to class members. Plaintiffs have not shown that the removal of  
18 voluntary overtime for correctional counselors automatically renders the remaining writing  
19 resources (librarians, ADA workers, panel attorneys, and assistive devices) insufficient to permit  
20 class members with hearing and vision disabilities to complete parole-related writing tasks.

21 The arguments that Plaintiffs make in support of the staffing directive they request are not  
22 supported by evidence or are unpersuasive. Plaintiffs argue, for example, that library assistance is  
23 insufficient because library hours are limited, but they do not point to any evidence indicating that  
24 class members with hearing and vision disabilities were prevented from or have had difficulty  
25 completing writing tasks because library hours are limited. Plaintiffs also argue that ADA  
26 workers are not an adequate source of writing assistance for class members with hearing and  
27 vision disabilities because ADA workers are prisoners, and relying on other prisoners for writing  
28 assistance violates class members' privacy. However, Defendants point to evidence showing

1 ADA workers can assist a class member only if the class member consents to receiving assistance  
2 from an ADA worker. *See* Dawn Lorey Decl. ¶ 16. Plaintiffs’ only response to that evidence is  
3 that, despite their privacy concerns, class members with hearing and vision disabilities are  
4 effectively required to rely on ADA workers for assistance to complete writing tasks because other  
5 sources of writing assistance are inadequate. Docket No. 3608 at 2. But Plaintiffs point to no  
6 evidence showing that class members with vision and hearing disabilities rely on ADA workers  
7 for writing assistance because other sources of writing assistance are not adequate. Plaintiffs point  
8 to the same declarations that the Court reviewed in March 2024, but those declarations do not  
9 indicate that class members relied or rely on other prisoners for writing assistance because other  
10 sources of writing assistance are insufficient.

11 Plaintiffs also contend that deaf class members who rely on sign language to communicate  
12 cannot complete writing tasks with the assistance of library staff or ADA workers because  
13 Defendants do not provide them with a sign language interpreter to facilitate the communications  
14 between those class members and library staff and ADA workers. However, Plaintiffs do not  
15 explain how the order they request, which would require Defendants “to direct Correctional  
16 Counselors, or other similar personnel such as social workers and TCMP benefits workers, to  
17 provide writing assistance to parole candidates as needed,” Docket No. 3608 at 3, would solve that  
18 problem, assuming that it exists. Plaintiffs do not request an order requiring Defendants to  
19 provide sign language interpreters whenever a deaf class member who relies on sign language  
20 requires writing assistance. *See generally* Proposed Order, Docket No. 3600-2 at 6-7.

21 Finally, Plaintiffs argue that the writing assistance that panel attorneys provide is  
22 insufficient because panel attorneys are not available to class members with hearing and vision  
23 disabilities at least one year before their parole suitability hearings and at least six months  
24 thereafter; instead, panel attorneys are appointed approximately four months before each class  
25 member’s parole suitability hearing and the appointment ends when parole is granted or denied or  
26 when the parole hearing is postponed or waived. The Court is not persuaded that the current  
27 appointment time period for panel attorneys warrants the staffing directive that Plaintiffs request,  
28 because Plaintiffs have not shown that other writing assistance resources available to class

1 members with hearing and vision disabilities (librarians, ADA workers, assistive devices) are not  
2 sufficient to enable them to complete writing tasks during time periods when panel attorneys are  
3 not assigned to assist them to complete those tasks.

4 In light of the foregoing, the Court overrules this objection. Plaintiffs may renew their  
5 request for an order directing Defendants to change their staffing policies and procedures to  
6 require correctional counselors or other suitable staff to provide parole-related writing assistance  
7 to class members with hearing and vision disabilities, but any such renewed request must be  
8 supported by evidence showing that writing assistance resources currently available to class  
9 members with vision and hearing disabilities are not sufficient to permit them (or certain subsets  
10 of them, given their specific disabilities) to complete parole-related writing tasks, and that an order  
11 requiring correctional counselors or other suitable staff to provide those class members with  
12 parole-related writing assistance is necessary to ensure that class members are able to complete  
13 those tasks and prepare adequately for parole proceedings.

## 14 **II. Video-Recorded Sign Language Translations for Deaf Signer Class Members**

15 In its order of March 20, 2024, the Court granted Plaintiffs' request for an order requiring  
16 Defendants to provide video-recorded sign-language translations of parole suitability hearings and  
17 certain parole-related documents, including the Comprehensive Risk Assessment (CRA)<sup>1</sup>, to deaf  
18 class members who "Defendants have already identified as using sign language as their primary  
19 method of communication and who have difficulty understanding written English[.]" *See* Docket  
20 No. 3583 at 9, 13; Docket No. 3584 at 5. Specifically, the Court ordered Defendants to develop  
21 policies and procedures that, with respect to deaf class members whom they have identified as  
22 using sign language as their primary method of communication and who have difficulty  
23 understanding written English, require Defendants (1) to record sign-language-interpreted parole  
24 suitability hearings by video and to provide the video recording to each class member at the time

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26 <sup>1</sup> The CRA is the opinion of the Board of Parole Hearing's forensic clinical psychologist  
27 regarding a prisoner's potential risk for future violence. *See* Docket No. 3583 at 6. It is based on  
28 the psychologist's interview with the prisoner, the prisoner's institutional record, and the  
psychologist's evaluation of the prisoner's offense, institutional programming, mental state,  
behaviors, and attitudes. *See id.* It is served to the prisoner about two months before a parole  
suitability hearing. *See id.* The prisoner may object to errors in the CRA. *See id.*

1 the printed hearing transcript would be served to him; (2) translate the CRA into sign language at  
2 the time class members are served with a copy of the document, record the translations by video,  
3 and provide the video recordings to class members in a timely manner; and (3) create upon request  
4 video-recorded sign-language translations of other parole-related documents, such as Rules  
5 Violation Reports and the Probation Officer's Report, and serve the video recordings to class  
6 members in a timely manner. *Id.* at 5-6.

7 Plaintiffs object to the further remedial plan because it relies on a standardized reading test  
8 score of 4.0 or below, which indicates a fourth-grade reading level or below, to identify the deaf  
9 signer class members who have difficulty understanding written English and who may receive the  
10 video-recorded translations that the Court ordered on March 20, 2024. Plaintiffs request that the  
11 Court order Defendants to revise the further remedial plan to provide that *all* deaf class members  
12 who use sign language as their primary method of communication shall receive the video-recorded  
13 translations required by the Court's order of March 20, 2024, Docket No. 3584.

14 Plaintiffs contend that Defendants' decision to limit the video-recorded translations that the  
15 Court ordered to deaf signer class members who read at a fourth-grade level or below arbitrarily  
16 excludes deaf signer class members who have difficulty reading parole-related documents even  
17 though their reading level is 4.0 or higher. Plaintiffs argue that parole-related documents such as  
18 the CRA contain technical language that deaf prisoners who use sign language are unlikely to  
19 understand regardless of their reading level. Plaintiffs' expert on deafness and sign language  
20 communications, Roger C. Williams, opined that the CRA, which Plaintiffs represent is the most  
21 crucial document for parole candidates to study in preparation for a parole suitability hearing, is  
22 written at a tenth-grade reading level or higher. *See Williams Decl.* ¶¶ 15-19, Docket No. 3524-7.  
23 Plaintiffs' expert further opined that he did not expect even "very strong readers who are deaf to  
24 know many of the terms that appear in their CRA" because of challenges that deaf individuals who  
25 use sign language face, regardless of their reading level, in comprehending technical terminology,  
26 such as the terminology used in the CRA. *See id.* ¶ 15. Plaintiffs' expert concluded that sign  
27 language translations of the CRA should be provided in a video-recorded format to individuals  
28 who use sign language as a primary language, in light of the foregoing, and because video-

1 recorded translations permit those individuals to understand information in printed documents to  
2 the best of their ability and to review the information in a manner similar to how non-disabled  
3 prisoners are able to review printed documents, as the recordings can be accessed at a time that is  
4 most convenient to the class member, can be viewed at each class member's own pace, and can be  
5 replayed as many times as desired. *See id.* ¶¶ 6-30.

6 With respect to video recordings of sign language translations that occurred during parole  
7 suitability hearings, Plaintiffs argue that all deaf class members whose primary method of  
8 communication is sign language, regardless of reading test score, must receive them to be able to  
9 effectively request parole decision review or prepare parole-related grievances. Plaintiffs point to  
10 the Court's March 20, 2024, findings that any sign language translation provided during a parole  
11 suitability hearing is not captured on the written transcript for the hearing and that, unless there is  
12 a video recording of the sign language testimony and translation provided during a parole  
13 suitability hearing, it would not be possible to establish that there were errors in the sign language  
14 translation provided during the hearing. *See* Docket No. 3583 at 14.

15 Plaintiffs also argue that Defendants would be minimally burdened by having to provide  
16 the video-recorded sign language translations ordered on March 20, 2024, to all deaf class  
17 members who use sign language as their primary method of communication, regardless of their  
18 reading test score, because there are only forty-eight such individuals across the state.

19 Defendants respond that reading test scores are a reliable method for evaluating deaf class  
20 members' ability to understand written English and argue that Plaintiffs have not pointed to any  
21 "contrary evidence." Docket No. 3607 at 10. Defendants do not dispute, however, that Plaintiffs'  
22 evidence shows that CRAs are written at a tenth-grade reading level or higher and thus require a  
23 reading level that is much higher than 4.0 to comprehend; that Plaintiffs' expert opined that even  
24 strong readers who are deaf signers would be unlikely to understand the technical terminology in  
25 CRAs; and that Plaintiffs' expert opined that video-recorded translations of the CRA should be  
26 provided to individuals who use sign language as a primary language because of the difficulty that  
27 even deaf signers who are strong readers would face in understanding many terms in the CRA and  
28 because the video-recorded translations permit those individuals to understand information in

1 printed documents to the best of their ability and to review the information in a manner similar to  
2 how non-disabled prisoners are able to review printed documents. Defendants argue that  
3 “Plaintiffs’ request for all deaf signers to receive the same accommodation [video-recorded sign  
4 language translations] regardless of their individualized need ignores Defendants’ ‘well-settled’  
5 duty ‘to undertake a fact-specific investigation to determine what constitutes a reasonable  
6 accommodation’ for each class member,” and that deaf signer class members who need additional  
7 assistance with reading the CRA or other parole-related documents can be adequately  
8 accommodated by requesting staff assistance or by requesting a new reading test. *See* Docket No.  
9 3607 at 10-11. Defendants do not respond to Plaintiffs’ argument that every deaf class member  
10 who uses sign language as a primary method of communication requires a video recording of the  
11 sign language translation provided during his parole suitability hearing to be able to effectively  
12 request parole decision review or prepare parole-related grievances based on translation errors.  
13 Defendants also do not dispute Plaintiffs’ argument that providing video-recorded translations of  
14 the CRA and parole suitability hearing to all deaf signer class members, regardless of reading  
15 score, would not be burdensome.

16 The Court sustains Plaintiffs’ objection in part and overrules it in part. The Court finds  
17 that providing video recordings of the sign language translation that occurred during parole  
18 suitability hearings to deaf class members who use sign language as their primary method of  
19 communication, regardless of reading test score, is a reasonable accommodation that is necessary  
20 to enable them to effectively prepare decision review requests and related grievances. *See* Revised  
21 Permanent Injunction ¶¶ 32, 33 (providing that Defendants are required to make accommodations  
22 for prisoners with disabilities to assist them in preparing for parole proceedings and in preparing  
23 requests for parole decision review). Defendants do not dispute that, without the video-recorded  
24 translations at issue, deaf class members who use sign language as their primary form of  
25 communication cannot establish translation errors that may have occurred during their parole  
26 suitability hearings for the purpose of requesting decision review or filing parole-related  
27 grievances. Defendants are required under the Revised Permanent Injunction to grant Plaintiffs’  
28 request for the video-recorded translations at issue as an accommodation for deaf class members



1 who use sign language as their primary method of communication, because Defendants have failed  
2 to show that providing them would be unreasonable for specific, articulated reasons allowable  
3 under the ADA, or that another effective accommodation is available that would permit those class  
4 members to challenge sign language translation errors that may have occurred during their parole  
5 hearings in requests for parole decision review or parole-related grievances. *See* Revised  
6 Permanent Injunction ¶ 17 (providing that a prisoner or parolee's request for a particular type of  
7 accommodation shall be given primary consideration and shall be granted unless the request is  
8 unreasonable for specific, articulated reasons allowable under the ADA, or unless other effective  
9 accommodations are available). Accordingly, to bring Defendants into compliance with  
10 Paragraphs 32, 33, and 17 of the Revised Permanent Injunction, the Court orders Defendants to  
11 amend the further remedial plan within fourteen days of the date of this order to provide that all  
12 deaf class members who use sign language as their primary method of communication shall  
13 receive video recordings of the sign language translations that occurred during their parole  
14 suitability hearings, as set forth in the Court's order of March 20, 2024, Docket No. 3684.

15 The Court also finds that providing video recordings of sign language translations of the  
16 CRA to deaf class members who use sign language as their primary method of communication,  
17 regardless of reading test score, is a reasonable accommodation that is necessary to enable them to  
18 prepare adequately for parole proceedings as required under Paragraphs 32 and 33 of the Revised  
19 Permanent Injunction. Defendants do not dispute that the CRA is one of the most critical  
20 documents for a prisoner to review to prepare for a parole suitability hearing; that the CRA is  
21 written at least at a tenth-grade level; that the CRA contains many terms that even deaf signer  
22 class members who are strong readers would be unlikely to understand; and that Plaintiffs' expert  
23 opined that video-recorded translations of the CRA should be provided to individuals who use  
24 sign language as a primary language because of the difficulty that even deaf signers who are  
25 strong readers would face in understanding many terms in the CRA and because video-recorded  
26 translations permit those individuals to understand information in printed documents to the best of  
27 their ability and to review the information in a manner similar to how non-disabled prisoners are  
28 able to review printed documents. Given those undisputed facts, the Court is persuaded that,

1 without receiving the video recordings at issue as an accommodation pursuant to the terms of the  
2 Court's March 20, 2024, order, deaf class members who use sign language as their primary  
3 method of communication will not be capable of preparing effectively for their parole suitability  
4 hearings to the best of their ability and to a similar degree as non-disabled prisoners can.

5 Defendants have not shown otherwise. They argue that they are justified in using the 4.0  
6 reading test score to determine whether a deaf class member who uses sign language requires the  
7 video-recorded translations at issue because public entities are entitled to require reasonable  
8 evidence of a disability before providing accommodations.<sup>2</sup> The Court is not persuaded. It is  
9 undisputed that all class members for whom Plaintiffs request the video-recorded translations at  
10 issue are deaf and primarily use sign language to communicate; thus, Defendants cannot refuse to  
11 provide the video recordings at issue due to a lack evidence that deaf signer class members are  
12 disabled. When it comes to determining what constitutes a reasonable accommodation for deaf  
13 signer class members, Defendants are required by the Revised Permanent Injunction to give  
14 primary consideration to Plaintiffs' request for a particular type of accommodation unless  
15 Defendants can show that the request is unreasonable for specific, articulated reasons allowable  
16 under the ADA, or unless other effective accommodations are available. *See* Revised Permanent  
17 Injunction ¶ 17. Defendants have not done so here. Defendants have not shown that Plaintiffs'  
18 request for the video-recorded translations at issue for all deaf signer class members is  
19 unreasonable, nor could they, given the undisputed evidence discussed above, which, among other  
20 things, indicates that the CRA is written at a reading level much higher than 4.0 and that,  
21 regardless of reading level, it is unlikely that a deaf person who relies on sign language to  
22 communicate would fully comprehend a CRA by reading it because of the many technical terms it

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23  
24 <sup>2</sup> Defendants also argue that their reliance on the 4.0 reading test score as a cut-off is  
25 permissible because the Armstrong Remedial Plan II (ARP II) specifically relies on a standardized  
26 reading test and sets a threshold reading level score of 4.0 or less to identify class members who  
27 may require assignment of a panel attorney as a reasonable accommodation for parole-related  
28 proceedings or to ensure effective communication with staff. *See* Docket No. 3607 at 8-9. The  
provisions of the ARP II to which Defendants point are irrelevant to the resolution of the present  
motion because they pertain to class members who have learning disabilities. Defendants point to  
no provision in the ARP II that indicates that reading scores can be used to determine reasonable  
accommodations for class members who are deaf and primarily use sign language to  
communicate.

1 contains. *See* Williams Decl. ¶¶ 15-19. Defendants also have not shown that an effective  
2 alternative accommodation exists. Defendants contend that, as an alternative to receiving the  
3 video-recorded translations at issue, deaf signer class members who have a reading test score of  
4 4.0 or higher can request staff assistance to read the CRA or can request a new reading test.  
5 However, the Court is not persuaded that staff assistance would be as effective as the video-  
6 recorded translations at issue in enabling deaf signer class members to understand the contents of  
7 the CRA to the best of their ability and to review the CRA in a manner similar to how non-  
8 disabled prisoners are able to review written documents. *See* Williams Decl. ¶¶ 6-30. Further, a  
9 new reading score would not solve the problem identified by Plaintiffs' expert, which is that,  
10 regardless of reading score, deaf individuals who use sign language are unlikely to understand  
11 many of the terms in a CRA.

12 Accordingly, to bring Defendants into compliance with Paragraphs 32, 33, and 17 of the  
13 Revised Permanent Injunction, the Court orders Defendants to amend the further remedial plan  
14 within fourteen days of the date of this order to provide that all deaf class members who use sign  
15 language as their primary method of communication shall receive video recordings of sign  
16 language translations of their CRA, as set forth in the Court's order of March 20, 2024, Docket  
17 No. 3684.

18 The Court declines, at this time, to require Defendants to modify the further remedial plan  
19 to provide that all deaf class members who use sign language as their primary method of  
20 communication, regardless of reading score, shall receive video recordings of sign language  
21 translations of parole-related documents other than the CRA pursuant to the Court's March 20,  
22 2024, order. Plaintiffs have not pointed to evidence that would permit the Court to find that, to be  
23 able to prepare effectively for parole proceedings, all deaf signer class members with a reading test  
24 score higher than 4.0 require video-recorded sign language translations of parole-related  
25 documents other than the CRA. For example, Plaintiffs do not point to evidence regarding the  
26 reading level required to understand parole-related documents other than the CRA, or to evidence  
27 showing that non-CRA documents contain a significant amount of technical terminology that even  
28 deaf signer class members who have a high reading test score would not understand. The parties

1 shall meet and confer to attempt to agree on a method or process for determining whether deaf  
2 signer class members who have a reading score higher than 4.0 should be provided with video-  
3 recorded translations of parole-related documents other than the CRA if they request such an  
4 accommodation.

5 **III. Accommodations for Class Members Who Refuse Vision Assessments**

6 In its order of March 20, 2024, the Court granted Plaintiffs' request for an order requiring  
7 Defendants to conduct individualized assessments of blind and low-vision class members and to  
8 identify, document, and track the accessible format or auxiliary device that best ensures effective  
9 communication of printed material to those class members in the context of parole proceedings.

10 Docket No. 3584 at 2.

11 Plaintiffs object to the further remedial plan because it contains policies and procedures  
12 that require Defendants to perform individual assessments of blind and low-vision class members  
13 by a vision specialist, but it does not contain a provision requiring them to document and track the  
14 primary method of accommodation for blind and low-vision class members who refuse to  
15 participate in the individual assessments by a vision specialist. Plaintiffs contend that, for the  
16 further remedial plan to comply with the Court's order of March 20, 2024, it must contain  
17 provisions that require Defendants to document and track the primary visual accommodation of  
18 blind and low-vision class members who refuse individual vision assessments so that those class  
19 members are not forced to make individual requests for accommodations each time they need  
20 documents in an accessible format.

21 Defendants do not dispute that the further remedial plan, as currently drafted, does not  
22 require them to document and track the primary visual accommodation for class members who  
23 refuse individual vision assessments by a vision specialist, nor do they dispute that class members  
24 who refuse individual assessments by a vision specialist are required under the further remedial  
25 plan to make individual requests for accommodations each time they need documents in an  
26 accessible format. *See* Lorey Decl. ¶ 11 n.1, Docket No. 3607-3. However, Defendants represent  
27 in the declaration of Dawn Lorey, who is CDCR's Assistant Deputy Director of the Program  
28 Operations in the Division of Adult Institutions, that they have "reconsidered their position" on

1 documenting and tracking the primary visual accommodation for class members who refuse  
2 individual assessments by a vision specialist. *See id.* As described in the Lorey Declaration,  
3 Defendants have agreed to do the following: when a class member refuses an individual  
4 assessment by a vision specialist, the class member’s request for a visual accommodation will be  
5 rerouted through the Reasonable Accommodation Process (RAP) and any visual accommodations  
6 approved will be documented in CDCR’s Strategic Offender Management System (SOMS), thus  
7 obviating the need for the class member to make individual accommodation requests for  
8 documents in an accessible format going forward. *See Lorey Decl.* ¶ 11.

9 In their reply, Plaintiffs state that Defendants’ proposal in the Lorey Declaration  
10 “addresses their concerns,” and they request that the Court sustain their objection “and order  
11 Defendants to comply with the procedures set forth in the Lorey Declaration with respect to  
12 documenting the accommodation needs of class members with vision disabilities who refuse the  
13 vision specialist evaluation.” Docket No. 3608 at 5.

14 The Court sustains Plaintiffs’ objection to the further remedial plan’s lack of provisions  
15 requiring Defendants to document and track a primary accommodation for blind and low-vision  
16 class members who refuse individual vision assessments by a vision specialist. To comply with  
17 the Court’s order of March 20, 2024, the further remedial plan must contain such provisions.  
18 Accordingly, within fourteen days of the date of this order, Defendants shall modify the further  
19 remedial plan to include the procedures set forth in the Lorey Declaration, Docket No. 3607-3, for  
20 documenting and tracking accommodations for class members who refuse individual vision  
21 assessments by a vision specialist.

#### 22 **IV. Panel Attorney Assistance for DNV Class Members**

23 In its March 20, 2024, order, the Court granted Plaintiffs’ request for an order requiring  
24 Defendants to develop policies and procedures “to ensure that those panel attorneys hold  
25 additional meetings and spend significantly more time on their representation of class members  
26 *with hearing and vision disabilities* than currently required under the Panel Attorney Program  
27 Guide for the Parole Suitability Hearing Process (Guide).” Docket No. 3584 at 7 (emphasis  
28 added). That directive applies to all “class members with hearing and vision disabilities,”

1 regardless of their disability code. *See id.* In response to the Court’s order, Defendants included  
2 in the further remedial plan an Addendum to the Guide, which requires panel attorneys to spend  
3 “significantly more time” on their representation of a class member who has a DPV or DPH  
4 disability code, to conduct additional legal visits with class members with a DPV or DPH  
5 disability code, and to attest that they have complied with those requirements with respect to class  
6 members identified as DPV or DPH. *See* Docket No. 3596 at 13. These requirements do not  
7 apply to class members with a DNV disability code. DPV class members have severe vision  
8 disabilities; DNV class members have less severe vision disabilities than DPV class members; and  
9 DPH class members have severe hearing disabilities.

10 Plaintiffs object to the further remedial plan because the Addendum’s provisions that  
11 require panel attorneys to spend “significantly more time” on their representation of class  
12 members do not apply to all class members with “hearing and vision disabilities,” as required by  
13 the Court’s order of March 20, 2024. Plaintiffs argue that the Addendum, as currently drafted,  
14 applies only to class members with the DPV and DPH disability codes but should apply to class  
15 members with a DNV disability code as well, because the Court’s order applies to all class  
16 members with “hearing and vision disabilities,” regardless of disability code. Plaintiffs request  
17 that the Court order Defendants to include DNV class members in the Addendum’s provisions.

18 Defendants do not dispute that the Addendum, as currently drafted, does not apply to class  
19 members with a DNV code. Defendants argue that the Court should overrule Plaintiffs’ objection  
20 because “the accommodation [Plaintiffs] seek to establish is met by other policies proposed in  
21 response to the Court’s order,” which include provisions that require panel attorneys to  
22 accommodate all clients with disabilities so that each class member is able to participate in parole  
23 proceedings to the best of his abilities. Docket No. 3607 at 17.

24 The Court finds that Plaintiffs’ objection is well-taken. The “significantly more time”  
25 provisions of the Court’s order of March 20, 2024, apply to all class members with hearing and  
26 vision disabilities, including class members with a DNV code. The Addendum’s “significantly  
27 more time” provisions apply only to class members with DPV and DPH codes but not to class  
28 members with a DNV code. To comply with the Court’s order of March 20, 2024, Defendants

1 shall, within fourteen days of the date of this order, modify the Addendum’s provisions to also  
2 apply to class members with a DNV code. The Court finds that the other policies to which  
3 Defendants point in their opposition are not sufficient to “ensure” that panel attorneys “hold  
4 additional meetings and spend significantly more time on their representation of class members”  
5 with vision disabilities who have a DNV code, as required by the order of March 20, 2024.

6 IT IS SO ORDERED.

7 Dated: July 31, 2024

  
8 CLAUDIA WILKEN  
9 United States District Judge

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United States District Court  
Northern District of California