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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

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

Case No. C94 2307 CW

**[PROPOSED] ORDER GRANTING
MOTION TO STOP DEFENDANTS
FROM ASSAULTING, ABUSING AND
RETLIATING AGAINST PEOPLE
WITH DISABILITIES AT R.J.
DONOVAN CORRECTIONAL
FACILITY AND REQUIRING
DEFENDANTS TO DEVELOP A
REMEDIAL PLAN**

Judge: Hon. Claudia Wilken
Date: May 19, 2020
Time: 2:00 p.m.
Crtrm: TBD, Oakland

1 Plaintiffs’ Motion to Stop Defendants from Assaulting, Abusing and Retaliating
 2 Against People with Disabilities at R.J. Donovan Correctional Facility (“RJD”) came on
 3 for hearing before this Court on May 19, 2020 at 2:00 p.m. The Court, having considered
 4 the parties’ pleadings, the arguments of counsel, and the entire record, GRANTS
 5 Plaintiff’s motion and makes the following findings:

6 This lawsuit was originally filed twenty-six years ago by incarcerated people and
 7 parolees with disabilities against the California officials with responsibility over the
 8 corrections and parole system. This Court certified Plaintiffs as representatives for a class
 9 including “all present and future California state prisoners and parolees with mobility,
 10 sight, hearing, learning, developmental and kidney disabilities that substantially limit one
 11 or more of their major life activities.” Order Granting Pls.’ Mots. to Am. Compl. and
 12 Modify the Class, Docket No. 345, Jan. 5, 1999, at 2.¹ On behalf of the class, Plaintiffs
 13 sought accommodations for their disabilities, as required under federal statutes and the
 14 United States Constitution.

15 Initially, Plaintiffs sued two divisions of the then California Youth and Adult
 16 Corrections authority (the “Agency”). The two divisions sued had separate areas of
 17 responsibility toward incarcerated people and parolees: The Board of Prison Terms
 18 (“BPT”) had authority over parole and parole revocation hearings, and the California
 19 Department of Corrections (“CDC”) was responsible for all other aspects of incarcerated
 20 people’s and parolees’ lives, including supervisions of parolees.² By agreement of the

21 _____
 22 ¹ The Plaintiff class was certified on January 13, 1995. On December 24, 1999, the parties
 23 stipulated to amend the class definition to include “all present and future California state
 24 prisoners and parolees with mobility, sight, hearing, learning and kidney disabilities that
 25 substantially limit one or more of their major life activities.” Stipulation and Order Am.Pl.
 Class, Dkt. 342, Dec. 24, 1993, at 2. The class definition was subsequently modified, as to
 Defendants Board of Prison Terms (“BPT”) and Chairman of the BPT only, to add
 incarcerated people and parolees with developmental disabilities on January 5, 1999.
 Order Granting Pls.’ Mots. to Am. Compl. and Modify the Class, Jan. 5, 1999, at 2.

26 ² Since this lawsuit was originally commenced, the Agency has been reorganized and
 27 superseded by the California Department of Corrections and Rehabilitation (“CDCR”).
 BPT is now the Board of Parole Hearings (“BPH”). CDC has been replaced by the
 28 Division of Adult Institutions (“DAI”) and the Division of Adult Parole Operations
 (“DAPO”).

1 parties, litigation against the two divisions was initially bifurcated and proceeded on two
2 separate tracks.

3 On September 20, 1996, this Court ordered CDC and related Defendants to develop
4 plans to ensure that their facilities and programs were compliant with the Americans With
5 Disabilities Act (“ADA”), 42 U.S.C. §§ 12131 *et seq.*, and the Rehabilitation Act (“RA”),
6 and readily accessible to and usable by incarcerated people and parolees with disabilities.
7 The order also required Defendants to develop policies to provide a prompt and equitable
8 disability grievance procedure, to allow approved assistive aids for incarcerated people
9 with disabilities in segregation units and reception centers, and to ensure accessibility in
10 new construction and alterations. Remedial Order, Injunction and Certification for
11 Interlocutory Appeal, September 20, 1996. The Court retained jurisdiction to enforce its
12 terms. *Id.* at 5.³ Subsequent proceedings against the BPT, now the BPH, are summarized
13 in the Court’s Order Granting Plaintiffs’ Renewed Motion to Require Defendants to Track
14 and Accommodate Needs of *Armstrong* Class Members Housed in County Jails, Ensure
15 Access to a Grievance Procedure, and to Enforce 2001 Permanent Injunction, Dkt. 1974,
16 Jan. 13, 2012, at 3-5 and 6-11, *aff’d* 732 F.3d. 955 (9th Cir. 2013), *cert. denied* 134 S.Ct.
17 2725 (2014).

18 On January 3, 2001, the CDC Defendants amended their Court Ordered Remedial
19 Plan regarding the provision of programs and services to incarcerated people and parolees
20 with disabilities. The *Armstrong* Remedial Plan (“ARP”) requires Defendants to ensure
21 that incarcerated people and parolees with disabilities are accessibly housed, that they are
22 able to obtain and keep necessarily assistive devices, and that they receive effective
23 communication regarding accommodations. The Remedial Plan also requires Defendants
24 to include in all contracts language that requires subcontractors to comply with the ADA.

25 Plaintiffs’ counsel began monitoring compliance with the ARP around the time of
26

27 ³ The Ninth Circuit affirmed the injunction against the CDC Defendants on appeal. *See*
28 *Armstrong v. Wilson*, 124 F.3d 1019 (9th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998).

1 its implementation, and have filed a series of enforcement motions in the years since. On
 2 January 18, 2007, in light of significant evidence of multiple violations of the Remedial
 3 Plan, the Court issued an Injunction that addressed these violations and ordered
 4 Defendants to comply with sections of the Remedial Plan. *See* Dkt. No. 1045.⁴ A key
 5 aspect of the 2007 Injunction was a section on accountability:

6 [Defendants, in cooperation with the Office of the Inspector General and the
 7 Receiver in *Plata v. Schwarzenegger*, shall develop a system for holding
 8 wardens and prison medical administrators accountable for compliance with
 9 the *Armstrong* Remedial Plan and the orders of this Court. This system shall
 10 track the records of each institution and the conduct of individual staff
 11 members who are not complying with these requirements. Defendants shall
 12 refer individuals with repeated instances of non-compliance to the Office of
 13 Internal Affairs for investigation and discipline, if appropriate.

14 *Id.* at 7.

15 On March 22, 2012, Plaintiffs filed a Request for an Order to Show Cause and
 16 Notice of Motion and Motion for an Order Holding Defendants in Contempt of Court (the
 17 “Accountability Motion”). *See* Dkt. No. 2024. Plaintiffs argued in the Accountability
 18 Motion that Defendants were violating the accountability section of the 2007 Injunction by
 19 “fail[ing] to take any action to track ... reported instances of staff member non-
 20 compliance, or to refer repeated instances of non-compliance to the [Office of Internal
 21 Affairs].”

22 On August 22, 2012, this Court issued an Order Denying Motion for Contempt,
 23 Denying as Moot Motion to Strike, and Modifying Permanent Injunction. Dkt. 2180. As
 24 the Court explained in this Order, the accountability provisions of the 2007 Injunction
 25 “required Defendants to develop effective internal oversight and accountability procedures
 26 to ensure that Defendants learned what was taking place in their facilities, in order to find
 27 violations, rectify them, and prevent them from recurring in the future, without
 28

⁴ Plaintiffs subsequently filed enforcement motions, and the Court issued orders,
 addressing the lack of sufficient beds for people who need wheelchairs full-time, Dkt.
 No. 1661, the unavailability of sign language interpreters for deaf people in education and
 medical settings, Dkt. No. 2345, and the unlawful retention of people in administrative
 segregation due to a lack of accessible beds. *See* Dkt. No. 2495.

1 involvement by Plaintiffs’ counsel or the Court.” *Id.* at 10. The Court further explained
 2 that “investigations, including the documentation of the results, are necessary to ensure
 3 that grievances are addressed and to identify staff error or misconduct and institutional
 4 deficiencies that violate class members’ rights.” *Id.* at 11.

5 The Court found that Defendants had failed to track or investigate “numerous ...
 6 incidents” of violations of the ARP and Court orders. *Id.* at 12. The Court further held
 7 that “Defendants’ accountability system ... has not been effective.” *Id.* at 15-16.

8 While denying Plaintiffs’ motion to hold defendants in contempt, the “Court
 9 [found] the 2007 Injunction should be clarified and made more detailed, to make clear
 10 what is expected of Defendants and to allow Defendants to conform their future behavior
 11 to its terms.” *Id.* at 16. The Court modified the Injunction to

12 require Defends to track all allegations of non-compliance with the ARP and
 13 the orders of this Court.... This must be done regardless of the source of the
 14 allegations. The only difference is that this order also requires Defendants to
 15 list when the investigation was initiated, the name and title of the
 investigator, the date the investigation was completed, the results of the
 investigation, and the number of prior allegations of non-compliance against
 the involved employee or employees.

16 *Id.* at 17. The Court further held that Defendants would be required to initiate a timely
 17 investigation, within 10 business days,

18 to ensure that allegations are investigated while memories are fresh, the facts
 19 surrounding the allegations are still in existence, and the violation can be
 20 remedied. Further, in order to reconcile disagreements between the parties
 21 resulting from investigations, [the] ... Court finds that Plaintiffs’ counsel
 must have access to the results of the investigation, including all sources of
 information relied on to substantiate or refute the allegations.

22 *Id.* at 18. The Court went on to hold that with referrals to the Office of Internal Affairs
 23 (“OIA”) for investigation and discipline of non-complying employees, Defendants would
 24 be required to “comply with the Employee Disciplinary Matrix set forth in the CDCR
 25 Departmental Operations Manual, Chapter 3, Article 22.” *Id.* The Court further found it
 26 necessary “to create a process for resolving disputes between the parties regarding whether
 27 an incident constitutes a violation of the ARP and this Court’s orders[]” *Id.* at 19.

28 Defendants appealed the Modified Injunction. The Ninth Circuit affirmed the

1 Court's order in all respects except with regard to the dispute resolution process. *See*
2 *Armstrong v. Brown*, 768 F.3d 975 (2014). On remand, this Court issued an order
3 addressing the Ninth Circuit opinion and mandating that Plaintiffs submit a second
4 Modified Injunction incorporating the changes required by the Ninth Circuit. *See* Order
5 Revising Modified Injunction, Dec. 5, 2014, Dkt. No. 2462.

6 On December 29, 2014, the Court issued an Order Modifying January 18, 2007
7 Injunction. *See* Dkt. No. 2479. This Modified Injunction governs accountability for
8 CDCR staff misconduct and violations of the ARP and Court orders. Pursuant to the
9 Modified Injunction, CDCR has issued two memoranda governing CDCR's process for
10 reporting, logging, conducting an "inquiry" into the alleged non-compliance, and
11 investigating allegations. Currently, Defendants track accountability issues through logs
12 generated by software purchased from Salesforce.

13 In 2013, the Court ordered the parties to work together to develop better means for
14 monitoring Defendants' compliance with the ADA, the Remedial Plan, and this Court's
15 orders. Order Regarding Monitoring, Dkt. No. 2344. The Court directed "the parties to
16 meet and confer, with the assistance of the court's expert as needed, on how to resolve
17 [monitoring] ... issues and improvements that might be made on the monitoring process."
18 *Id.* at 2.

19 Since July 2013, the parties have met regularly under the supervision and with the
20 guidance of the Court Expert to draft and refine a joint monitoring tool. The parties have
21 also conducted a number of joint audits of Defendants' prisons for compliance with the
22 ARP and this Court's orders. *See* CMC Statements. The thrust of both the Joint Audit
23 Process and the Accountability Memorandum and Modified Injunction are to share
24 information among the parties with the goals of ultimately having Defendants monitor
25 their own compliance and of creating a sustainable, ADA-compliant system that protects
26 the rights of *Armstrong* class members.

27 The parties' efforts to create a sustainable remedy have been undermined by an
28 epidemic of staff abuse and excessive use of force at CDCR's high security prisons. In

1 December 2015, the OIG issued a report at the request of the California Legislature and the
2 Prison Law Office detailing numerous incidents at High Desert State Prison (“HDSP”).

3 By January 2018, reports of serious abuse of people with disabilities were
4 emanating from the California Institute for Women (“CIW”) and Salinas Valley State
5 Prison (“SVSP”). In response to monitoring by Plaintiffs’ counsel, the OIG issued a report
6 detailing the inadequacy of CDCR’s investigative process for finding and remedying staff
7 misconduct and excessive use of force.

8 These issues have regularly been reported to the Court in the parties’ Case
9 Management Statements. *See, e.g.*, Dkt. Nos. 2821, 2844, 2863, 2874, 2887 & 2896.
10 Plaintiffs have presented evidence of abuse and retaliation targeted at people with
11 disabilities at a number of prisons, including HDSP, CIW, SVSP, California State Prison –
12 Los Angeles County (“LAC”), and California State Prison – Corcoran (“COR”).

13 Plaintiffs have brought the instant Motion to stop officers at RJD from assaulting,
14 abusing, and retaliating against people with disabilities at RJD. Plaintiffs’ counsel have
15 been notifying Defendants of incidents of staff misconduct and violence at RJD against
16 *Armstrong* class members in tour reports and letters for three-and-a-half years. This issue
17 was first discussed in a Case Management Conference Statement on July 14, 2017. Dkt.
18 No. 2688 at 4.

19 RJD, which houses nearly 4,000 people in San Diego, is one of CDCR’s most
20 important prisons with respect to accommodating people with disabilities and caring for
21 people with physical and mental health problems. RJD has the second largest population
22 of incarcerated people with disabilities in the CDCR system. As of November 2019, there
23 were nearly 1,000 *Armstrong* class members at RJD, including 297 people who use
24 wheelchairs, 217 people who are deaf or hard of hearing (including more than 10 who use
25 sign language as their primary method of communication), and 13 blind class members.

26 RJD houses more than 2,000 class members in *Coleman v. Newsom*, Case No. 2:90-
27 cv-00520-KJM-DB (E.D. Cal.), including more than 700 individuals in CDCR’s enhanced
28 mental health program; 92 class members in *Clark v. California*, Case No. 3:96-cv-01486-

1 CRB (N.D. Cal.) with developmental disabilities; and more than 1,500 people who CDCR
2 has deemed as having high risk medical conditions.

3 Plaintiffs' counsel has filed fifty-four declarations from people with disabilities
4 describing well over one hundred discrete instances of abuse of and discrimination and
5 retaliation against people with disabilities occurring since 2016. This horrific conduct has
6 occurred in almost every area of the prison, including on all five yards at RJD. The
7 declarants identify, by name, eighty-nine different correctional officers who have
8 participated directly in the misconduct, including thirty-nine who are identified as having
9 participated in more than one incident. The names of dozens of other officers who
10 participated directly in the misconduct are unknown to the declarants.

11 Correctional officers at RJD have repeatedly assaulted or otherwise engaged in
12 misconduct against people with disabilities because of their disabilities or because they
13 have requested disability accommodations. Officers at RJD demonstrate a deep disregard
14 for and discriminatory animus toward individuals with disabilities and other vulnerable
15 groups of people. Without adequate or sometimes any justification, staff threw people out
16 of wheelchairs or beat them so badly that they fell out of their wheelchairs. Officers have
17 attacked victims who were using their walkers at the time of the assault. Officers have
18 routinely and intentionally closed cell doors on people with disabilities and elderly people
19 who move slowly. Staff have accused people of faking disabilities or used discriminatory
20 language to refer to people with disabilities and other minorities. Staff have created a
21 near-universal perception among incarcerated people that staff target people with
22 disabilities for misconduct. Staff have engaged in a pattern and practice of targeting abuse,
23 violence, discrimination and retaliation toward class members and other vulnerable
24 incarcerated people.

25 Staff or incarcerated people working at staff's behest have broken victims' arms,
26 wrists, ribs, legs, orbital sockets, teeth, feet, fingers, and jaws; many of the broken bones
27 required surgical repairs. At least twelve of the assaults by staff resulted in the victim
28 being transported from RJD to a hospital for medical attention.

1 Following attacks by custody staff, some *Armstrong* class members' disabilities
2 have become more severe, including a few for whom doctors changed the class members'
3 disability designations to reflect higher levels of impairment.

4 In addition to the untold human suffering for the direct victims, the medical care for
5 these unnecessary injuries is all paid for by the taxpayers. Staff regularly exposed to this
6 conduct can be traumatized, which can negatively impact their mental health, productivity,
7 and attendance, all of which also affects the public fisc.

8 When people complain about staff misconduct or staff's failure to provide accom-
9 modations, staff frequently engage in or threaten serious retaliation. Officers use the Rules
10 Violation Report (RVR) process to retaliate against and punish people, fabricating RVRs
11 against the people they assault to cover up inappropriate and excessive uses of force.

12 CDCR is well aware of this pattern, having sent a strike team of investigators to
13 conduct interviews with more than one hundred incarcerated people on Facility C at RJD
14 in December 2018. The associate warden who led the strike team and CDCR's own
15 investigators concluded that staff at RJD were targeting people with disabilities because of
16 their disabilities, finding that "custody staff actively retaliat[e] against inmates for filing
17 appeals or staff complaints or requesting assistance with safety concerns." They further
18 concluded that "within 24 hours of an inmate dropping off an appeal ... retaliation begins."
19 The retaliation has included assaulting complainants in places with limited visibility;
20 arranging for incarcerated people in gangs to assault the complainant; seizing a com-
21 plainant's property; announcing to other incarcerated people that the complainant had a
22 disfavored commitment offense; or announcing that the complainant was responsible for
23 other incarcerated people not receiving programs (i.e., televisions, dayroom, showers, etc.)
24 Retaliation has also been leveled against staff members who participate in efforts to
25 discipline officers.

26 Because of the violent misconduct and retaliation at RJD, incarcerated people are
27 terrified of custody staff. To avoid becoming the next victim, people with disabilities
28 forgo requesting from staff the disability accommodations they need to participate in

1 CDCR programs, services and activities. The same fear causes class members to refrain
 2 from complaining, either informally or using an 1824 or 602 grievance, when staff deny
 3 them accommodations to which they are entitled. Defendants' own investigators
 4 concluded that "[t]he inmate allegations, taken as a whole, seem to describe an
 5 environment with no relief mechanism for inmates who feel mistreated by staff." As a
 6 result of custody staff's concerted efforts to stifle and punish complaints, "[i]nmates ...
 7 'hide' within their daily routines and suffer minor abuse in order to avoid greater abuses."

8 CDCR has been aware for more than three years of the problems at RJD with staff
 9 abuse of and discrimination against people with disabilities. Beginning in September
 10 2016, a series of Plaintiffs' monitoring reports and letters, a letter from Defendants' Office
 11 of Court Compliance, and Defendants' own ombudsman and staff have documented the
 12 ongoing violence and retaliation at RJD against people with disabilities. The Chief
 13 Ombudsman for CDCR, who reports to Secretary Diaz and who was part of the RJD strike
 14 team, wrote the following in an email to CDCR's Director of Adult Institutions:

15 [W]hat we heard was overwhelming accusations of abuse by the Officers
 16 with Sgt's and Lt's looking in the other direction. **I have never heard**
 17 **accusations like these in all my years.** I would strongly suggest placing a
 18 strike team on this yard immediately. Many of the inmates have expressed
 19 fear of what will happen to them tomorrow when the team is not there....
 20 **This is a very serious situation and needs immediate attention. If there**
 21 **is any means of installing cameras immediately I would strongly suggest**
 22 **it, at least in the blind spots and the back door by the gym. A review of the**
 23 **appeal process, RVR's and staff complaints off that yard also needs to**
 24 **take place ASAP.** (Emphasis added.)

25 Later in the email chain, the Chief Ombudsman wrote:

26 **[T]here has been little to no progress since September....** I am not
 27 typically an alarmist, but again, **I have never heard such despair,**
 28 **hopelessness, and fear from inmates** and I have been on quite a few of
 these teams to review and interview inmates. The CIW tour results don't
 come close to this and CIW was very bad. (Emphasis added.)

The Office of the Inspector General conducted its own review of CDCR's responses
 to Plaintiffs' advocacy letters and found a "pervasive lack of timely follow through,"
 including that CDCR "ignored" many allegations, failed to investigate twenty-eight
 allegations not previously known to CDCR, and failed to refer pertinent information to the

1 Office of Internal Affairs when warranted.

2 CDCR has provided very little information about its investigations of staff
3 misconduct and its decisions to impose little or no discipline on the officers at RJD who
4 have perpetrated the staff misconduct against class members.

5 Those few investigations that resulted in CDCR terminating officers involved video
6 of the incident or a statement from a CDCR employee who witnessed the misconduct.
7 CDCR gives little to no weight to the testimony of incarcerated people who were either
8 victims or witnesses.

9 With respect to the crisis at RJD, Defendants have failed to meet their obligations
10 pursuant to this Court's orders regarding accountability. Defendants failed to include on
11 their non-compliance logs at least twelve allegations of staff misconduct (1) that Plaintiffs'
12 counsel raised with Defendants in advocacy letters and tour reports and (2) that are directly
13 related to Defendants' compliance with the ADA, the RA, the ARP, and prior orders of
14 this Court. Defendants also failed to include on the accountability logs incidents
15 documented by their own investigators. Many of the items that Defendants did log were
16 logged many months after Plaintiffs' counsel reported the allegations to Defendants in
17 advocacy letters or tour reports. On the accountability logs for RJD for September 2016 to
18 December 2019, Defendants have confirmed only one allegation of staff misconduct
19 against a class member and have made only two referrals to OIA.

20 Contrary to the spirit of the Court's orders regarding accountability and the order
21 aimed at improving monitoring in this case, Defendants have not been transparent with
22 Plaintiffs regarding the serious problems at RJD. The August 2018 joint audit at RJD,
23 conducted as part of those collaborative efforts, served as one of the first moments when
24 CDCR recognized it had a problem with staff misconduct at RJD. Yet CDCR has
25 repeatedly failed to share information with Plaintiffs' counsel regarding CDCR's attempts
26 to diagnose and treat the staff misconduct epidemic at RJD.

27 CDCR's remedial efforts to date have been inadequate and ineffective. CDCR has
28 failed (1) to discipline officers who have engaged in misconduct; (2) to investigate all of

1 the allegations of misconduct about which it was aware; (3) to install cameras in all areas
2 to which incarcerated people have access; and (4) to take any steps to determine whether
3 misconduct was occurring in areas of the prison other than Facility C or whether its effort
4 to reduce staff misconduct have been successful. The few efforts CDCR has made
5 primarily involve minor changes in staffing and training. Because CDCR has refused to
6 take the problem seriously, staff misconduct continues to occur at an alarming rate.

7 CDCR has only terminated five officers for misconduct against incarcerated people.
8 CDCR also has not referred any officers for criminal prosecution related to misconduct
9 against incarcerated people. Furthermore, many of CDCR's investigations into
10 misconduct have been inadequate.

11 Notwithstanding broad agreement by its own investigators and administrators and
12 by the OIG that cameras are critical for deterring misconduct and holding accountable
13 officers who engage in misconduct, CDCR has not added any camera coverage at RJD or
14 other prisons with reports of violence and abuse. As was the case in December 2018, the
15 vast majority of RJD, including most of the areas in which misconduct has occurred, has
16 no camera coverage.

17 CDCR could have sought emergency funding from the legislature, as CDCR has
18 done to address other emergencies, to fund cameras at RJD. CDCR chose not to. Instead,
19 CDCR waited until January 2020 to submit a budget change proposal ("BCP") for the
20 purchase and installation of some cameras at RJD, as well as for CIW and SVSP. If
21 approved, the BCP would not result in additional operational cameras at RJD until June
22 2021 at the earliest. CDCR has no plan to purchase or use body-worn cameras, which are
23 essential for achieving full camera coverage, including in cells and other areas in which the
24 budget change proposal cameras will not reach, and for capturing sound. CDCR also has
25 no plan to deploy cameras at other prisons experiencing violence and abuse,
26 notwithstanding its own studies showing that installation of cameras at HDSP resulted in a
27 50% reduction in violence.

28 Defendants have failed to implement other recommendations their own staff made

1 in response to the epidemic of violence and abuse at RJD, including increased supervisory
2 staff, enhanced training, a review to reduce the impact of gangs on Facility C, enforcement
3 of its policy regarding uniforms to deter officer gang activity, or issuance of a corrective
4 action plan.

5 CDCR's initiative to create a new group called the Allegation Inquiry Management
6 Section ("AIMS") housed within the Office of Internal Affairs is not yet fully implemented
7 and is underfunded. As it stands, use of force allegations have been excised from the new
8 process. Without better tools for gathering evidence of staff misconduct, including
9 cameras and better enforcement of reporting requirements for staff, AIMS will suffer from
10 the same problems as the current system, where allegations of staff misconduct are rejected
11 for lack of corroborating evidence and officers go undisciplined and undeterred.

12 CDCR has little or no information regarding the current scope of problems at RJD
13 and other prisons, and no reliable means of collecting and using data as an early warning
14 system to signal if there are problematic officers, locations, or times of day with respect to
15 misconduct.

16 Defendants had years to solve the problems at RJD on their own and failed. The
17 crisis at RJD—now in its fourth year—and at other prisons requires CDCR to undertake
18 robust and immediate action to address widespread violations of the ADA, RA, the
19 Constitution, and this Court's prior orders, and to end untold human suffering.

20 The widespread and egregious abuse and violence at RJD violates the ADA, the
21 RA, and prior orders of this Court because staff are hurting, permanently injuring and
22 retaliating against people with disabilities because they have disabilities. *See* 42 U.S.C.
23 §§ 12132; *see also* Dkt. 1045, at 9.

24 The ADA also prohibits any individuals, including public entities, from retaliating
25 against people who exercise their rights under Title II. *See* 42 U.S.C. § 12203(a) ("No
26 person shall discriminate against any individual because such individual has opposed any
27 act or practice made unlawful by this chapter or because such individual made a charge,
28 testified, assisted, or participated in any manner in an investigation, proceeding, or hearing

1 under this chapter.”).

2 The evidence is overwhelming that Defendants are allowing systemic attacks on
3 people with disabilities at RJD by reason of their disabilities and retaliating against them
4 for exercising their rights under the ADA. This conduct violates the statute and the
5 Court’s prior orders. *See* 42 U.S.C. §§ 12132, 12203(a); *Vos v. City of Newport Beach*,
6 892 F.3d 1024, 1036-38 (9th Cir. 2018) (same); *Sheehan v. City and County of San*
7 *Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014), *rev’d in part on other grounds*, 575 U.S.
8 600 (2015); Dkt. 1045, at 9.

9 The pervasive violence and retaliation at RJD have made *Armstrong* class members
10 too afraid to exercise their right under the ADA, RA, ARP, and prior orders of this Court
11 to request and receive reasonable accommodations needed to participate in CDCR
12 programs, services, and activities. *See Updike v. Multnomah Cty.*, 870 F.3d 939, 949 (9th
13 Cir. 2017). The ADA’s implementing regulations require that “[a] public entity shall make
14 reasonable modifications in policies, practices, or procedures when the modifications are
15 necessary to avoid discrimination on the basis of disability, unless the public entity can
16 demonstrate that making the modifications would fundamentally alter the nature of the
17 service, program, or activity.” 28 C.F.R. § 35.130(b)(7)(i). The Court has ordered CDCR
18 to abide by this requirement. *See* Dkt. 1045 at 9. The Court has also ordered CDCR to
19 provide a special grievance process for incarcerated people to request accommodations.
20 *Id.*

21 The ADA also includes a broad anti-interference provision which makes it
22 unlawful to coerce, intimidate, threaten, or interfere with any individual in
23 the exercise or enjoyment of, or on account of his or her having exercised or
24 enjoyed, or on account of his or her having aided or encouraged any other
individual in the exercise or enjoyment of, any right granted or protected by
[Chapter 126, which includes Title II].
25 42 U.S.C. § 12203(b). This provision prohibits not only retaliation against people who
26 expressly exercise their rights under the ADA, but also conduct that has a chilling effect on
27 others’ exercise of their ADA rights. *See Brown v. City of Tucson*, 336 F.3d 1181 (9th Cir.
28 2003); *EEOC v. Day & Zimmerman NPS, Inc.*, 265 F. Supp. 3d 179 (D. Conn. 2017).

1 People with disabilities are so afraid of becoming the next victim of staff
2 misconduct at RJD that they refrain from requesting accommodations they require to
3 participate in CDCR programs, services, and activities. Defendants, by tolerating such an
4 environment, are preventing a prompt and equitable grievance procedure and interfering
5 with Plaintiffs' ADA rights, all in violation of 42 U.S.C. § 12203(b), 28 C.F.R.
6 § 35.130(b)(7)(i), 28 C.F.R. § 35.107(b), and the Court's 2007 Injunction.

7 Defendants are also in violation of this Court's Modified Injunction, Dkt. No. 2462,
8 regarding accountability. Defendants have failed to log and investigate many allegations
9 of non-compliance related to staff violence and abuse of people with disabilities at RJD.
10 Defendant have also failed to comply with the requirement that allegations of non-
11 compliance be logged within ten business days of Defendants' discovery of the allegation.
12 Defendants' violations of this Court's Modified Injunction have prevented them from
13 having a complete record of searchable allegations by officer and allegation type. A
14 complete accountability log would also have allowed CDCR to impose progressive
15 discipline and to engage the OIA more thoroughly in stopping the officer misconduct,
16 including through criminal referrals.

17 CDCR's inability to put an end to the violence, abuse and retaliation at RJD has
18 vitiated the Court's Accountability Order and undermined joint monitoring. For the
19 accountability remedies to work, Defendants must have mechanisms for self-monitoring
20 non-compliance. Because *Armstrong* class members at RJD are too afraid to complain
21 when staff violate their rights, CDCR has lost the central means for discovering, logging,
22 and investigating non-compliance and ultimately appropriately disciplining officers.

23 CDCR's action and inaction not only violate the ADA, RA, and this Courts' prior
24 orders, but also the Eighth and Fourteenth Amendments to the United States Constitution,
25 further empowering this Court to order relief here. Officers' harassment, retaliation, and
26 use of egregious violence against incarcerated people, along with prison officials'
27 intransigence and willful lack of responsiveness in the face of pervasive and systemic
28 abuse of class members, demonstrate CDCR and RJD staff members' malicious and

1 sadistic, let alone deliberately indifferent, attitude toward incarcerated people at RJD. *See*
 2 *Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Hudson v. McMillian*, 503 U.S. 1, 5-6
 3 (1992); *Chess v. Dovey*, 790 F.3d 961, 972-73 (9th Cir. 2015); *Hoptowit v. Spellman*, 753
 4 F.2d 779, 784 (9th Cir. 1985). CDCR's action and inaction also have directly impeded
 5 class members' basic Fourteenth Amendment Due Process rights, including, for example,
 6 their abilities to have fair hearings regarding RVRs and to prepare for Board of Parole
 7 Hearings without false RVRs leveled against them. *See, e.g., Wolff v. McDonnell*, 418
 8 U.S. 539, 563-67 (1974).

9 In order to remedy the ongoing harm to *Armstrong* class members, to ensure that
 10 Defendants meet their obligations under the ADA, RA, prior Court orders, and the United
 11 States Constitution, and to enforce the 2007 Injunction and the orders regarding
 12 accountability, and based on the entire record in this action the Court hereby ORDERS the
 13 following relief:

14 1. Within thirty days of this Order, Defendants shall develop a plan for
 15 stopping violence, abuse and retaliation against *Armstrong* class members at RJD that
 16 includes, at a minimum, the following elements:

17 (a) **Cameras** – Within ninety days, CDCR must install operational
 18 surveillance cameras that have coverage of all areas of RJD in which incarcerated people
 19 have access, including, but not limited to, all exercise yards, housing units, sally-ports,
 20 dining halls, program areas, and gyms. Within one-hundred-and-eighty days, CDCR must
 21 purchase and begin using body-worn cameras for all correctional officers at RJD.

22 Within ninety days of the deployment of each type of camera, CDCR must
 23 adopt policies and procedures regarding the use of camera footage, including requirements
 24 that all footage be retained for a minimum of ninety days, that footage of use of force and
 25 other triggering events (staff complaints, self-harm, medical emergencies, RVRs, etc.) be
 26 retained indefinitely, and that footage, when available, be reviewed and considered as part
 27 of the consideration of the incident. CDCR must also train RJD staff regarding how and
 28 when to request that footage be retained and reviewed.

1 (b) **Staffing** – CDCR must significantly increase supervisory staff on all
2 watches on all yards at RJD. CDCR must create non-uniformed positions in each housing
3 unit fully empowered to supervise correctional staff in those units, with a focus on
4 improving the relationships between uniformed staff and incarcerated people.

5 (c) **Training** – CDCR must development and implement Human Rights,
6 de-escalation, and cultural training for all custody, mental health staff, and medical staff at
7 RJD to include discussion of reporting requirements, whistleblowing, non-retaliation, and
8 treatment of incarcerated people as patients.

9 (d) **Data Collection and Early Warning System** – CDCR must
10 immediately develop an effective, electronic system to track all incidents at RJD, including
11 use of force, staff misconduct complaints, fights between incarcerated people, rule
12 violations, injuries suffered by incarcerated people, suicide attempts, cell extractions,
13 medical emergencies, found contraband, vandalism, escapes and escape attempts, and fires
14 by date, time, location, staff involved, incarcerated people involved, and whether the
15 incarcerated people are *Armstrong* class members. The RJD tracking system should
16 include data from CDCR’s Electronic Health Record regarding use of force injuries and
17 fatalities and injuries and fatalities that are not consistent with the victim’s health or age or
18 the information provided. CDCR should work with the Receiver in *Plata v. Newsom*, No.
19 4:01-cv-01351 (N.D. Cal) and the Special Master in *Coleman v. Newsom*, Case No. 2:90-
20 cv-00520-KJM-DB (E.D. Cal.), through the coordination process to ensure medical
21 tracking at RJD is robust and health care workers feel safe.

22 (e) **Oversight** – CDCR headquarters must exercise oversight over all
23 staff complaints, use of force reviews, and related staff disciplinary proceedings at RJD in
24 which an employee is accused of engaging in misconduct against an incarcerated person.
25 CDCR must conduct quarterly interviews of randomly-selected incarcerated people at RJD
26 using the methodology and interview questionnaire utilized by the December 2018
27 investigators.

28 (f) **Criminal Referrals and Staff Discipline** – CDCR must come up

1 with a plan to enhance accountability at RJD through greater OIA referrals, discipline of
 2 employees who engage in or fail to report misconduct, prosecution of employees who
 3 commit crimes against incarcerated people, increased OIG oversight, and discipline
 4 consistent with the Accountability Order and Department Operations Manual Employee
 5 Discipline Matrix.

6 (g) **Information Sharing with Plaintiffs' counsel and the Court**

7 **Expert** – CDCR must produce to Plaintiffs' counsel and the Court Expert on a quarterly
 8 basis all documents related to RJD staff complaints in which the alleged victim is an
 9 *Armstrong* class member, including, but not limited to, grievances, incident reports,
 10 documents from staff misconduct inquiries, documents from Institutional Executive
 11 Review Committee inquiries in which the person alleges excessive use of force or other
 12 staff misconduct, 989 forms and all supporting documents, responses of the Central Intake
 13 Unit of OIA to 989 forms, investigation reports produced by the OIA, and 402 and 403
 14 forms issued by the hiring authority. CDCR must also provide Plaintiffs' counsel with
 15 monthly, written updates regarding progress on the elements of its plan to stop staff
 16 misconduct at RJD, including data regarding staff complaints and use of force.

17 (h) **Anti-Retaliation** – CDCR must put an end to retaliation against class
 18 members and staff at RJD who report staff misconduct and must ensure complainants'
 19 safety.

20 (i) **Other Remedies** – CDCR must create a policy requiring that all
 21 pepper spray canisters at RJD be weighed before and after use. CDCR must review all
 22 RVRs issued at RJD in the last three years to *Armstrong* class members and individuals
 23 who filed declarations in support of this motion to determine if the charges were false and
 24 whether RJD afforded the individuals due process. CDCR must create a policy requiring
 25 monitoring, for a period of ninety days following a person filing a staff complaint at RJD,
 26 of the person's conduct and treatment to ensure staff are not engaging in retaliation.

27 (j) **Other Prisons** – CDCR must explain whether additional prisons,
 28 including its high-security missions, should adopt the remedies listed here based on such

1 factors as violence against vulnerable people with disabilities, number of homicides and
2 suicides, number of complaints, presence of contraband, prevalence of overdoses and other
3 similar factors, and if not, why not. CDCR cannot wait years to address abuse of and
4 retaliation against people with disabilities when it knows this conduct is occurring. The
5 remedies developed here to address this unfortunately prevalent conduct should be
6 extended across the prison system as soon as possible.

7 (k) **Suspension of State Law** – If any provisions of state law interfere
8 with CDCR’s ability to enact remedies necessary to remedy the violations of the ADA,
9 RA, ARP, the Constitution, and orders of this Court, CDCR must request a court order
10 suspending those provisions including the suspension of state law if necessary to achieve
11 these purposes.

12 2. Within forty-five days of this Order, after reviewing comments from
13 Plaintiffs’ counsel, Defendants shall issue the plan in final form and implement its
14 provisions forthwith. Defendants must present drafts of all plans, policies, and procedures
15 developed pursuant to this Order to Plaintiffs’ counsel at least fifteen days in advance of
16 the deadlines. Both parties must make all possible efforts to resolve any disagreements as
17 to their adequacy. Defendants shall ensure that staff with sufficient authority to amend and
18 approve procedures attend all meet-and-confer sessions. In the event that disagreements
19 cannot be resolved, Defendants shall implement the procedures as written on the date
20 ordered and Plaintiffs’ counsel shall file objections with the Court. The Court will rule on
21 the objections and issue orders and amended procedures as necessary.

22 3. If Defendants fail to come up with a plan within 45 days to address staff
23 misconduct against persons with disabilities at RJD which includes the above provisions,
24 Defendants will be required to begin the transfer out of RJD of any *Armstrong* class
25 member who wishes to transfer, and the closure of RJD to intake of *Armstrong* class
26 members, until such time as a plan is developed. Once a plan is adopted and benchmarks
27 for compliance with the plan are agreed on, if Defendants fail to meet the benchmarks,
28 Plaintiffs’ counsel can move the Court to initiate the transfer out of RJD of any *Armstrong*

1 class member who wishes to transfer, and the closure of RJD to intake of *Armstrong* class
2 members, until such time as Defendants begin to follow their plan.

3 4. These remedies are all consistent with the Prison Litigation Reform Act's
4 requirement that the Court's orders be narrowly drawn, extend no further than necessary to
5 correct the violation of a federal right, and be the least intrusive means necessary to correct
6 the violation. *See* 18 U.S.C. § 3626(a)(1)(A). Anything short of these remedies will not
7 put an end to Defendants' ongoing and pervasive violation of *Armstrong* class members'
8 rights at RJD and other prisons. Given CDCR's failure to adequately address the staff
9 misconduct crisis at RJD and other prisons over the past three-plus years, the specificity of
10 the remedies is appropriate. *See Armstrong v. Brown*, 768 F.3d 975, 985-86 (9th Cir.
11 2014).

12 IT IS SO ORDERED.

13 DATED: _____, 2020

14 Honorable Claudia Wilken
15 United States District Judge
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