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May 4, 2021

VIA E-MAIL AND U.S. MAIL

<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
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Re: *Armstrong v. Newsom*: Plaintiffs' Demand for Remedial Measures to
Address Discrimination Against Parolees with Disabilities
Our File No. 0581-09

Dear Tamiya and Nick:

The California Department of Corrections and Rehabilitation ("CDCR"), including its Division of Adult Parole Operations ("DAPO") and its Division of Rehabilitative Programs ("DRP"), must take immediate steps to address their systemic failure to accommodate parolees with disabilities by providing the minimum supports necessary for them to succeed on parole, and by adopting other remedial measures to prevent discrimination against parolees with disabilities. Defendants' failure to provide these services and protections violates the Americans with Disabilities Act ("ADA"), and the *Armstrong* Remedial Plans. Plaintiffs request that we begin a series of meetings targeted at correcting these longstanding problems. The minimum standards and remedial measures that Defendants must implement to protect our clients' rights are listed in **Exhibit A** to this letter.

To illustrate the scope of the violations, Plaintiffs' counsel are uploading to you via ShareFile 14 declarations from class members on parole who are struggling with a lack of basic supportive services and inadequate parole preparation and planning. Defendants must investigate the declarants' allegations and include them in the *Armstrong* accountability logs. Per regulation, these declarations should also be subject

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to AIMS inquiries. However, I am informed that DAPO has decided not to implement AIMS.

Pursuant to the prohibition on communications with a represented party, neither Defendants nor Defendants' counsel may communicate with the declarants or class members referenced in the declarations regarding the allegations in the declarations. *See* California Rule of Professional Conduct 4.2. Any communications with the declarants or class members referenced in the declarations about the content of the declarations must be made through Plaintiffs' counsel or with Plaintiffs' counsel present.

The declarations are subject to the protective orders in this case and shall be kept confidential. Due to credible fears of retaliation, we expect that Defendants will limit access to the declarations to only those individuals necessary to respond to and investigate the allegations. *See* Order For Additional Remedial Measures (Sept. 8, 2020), ECF No. 3060, at 6, ¶ 6 (“Defendants shall include in the Court-ordered accountability log any allegations of violations of class members’ rights under the ADA’s anti-retaliation and anti-interference provisions”); *see also* Order Granting in Part Motion to Modify Remedial Orders and Injunctions (Sept. 8, 2020), ECF No. 3059, at 63 (discussing retaliation and accountability).

I. Defendants Are Discriminating Against Parolees with Disabilities and Impeding Their Full Re-Entry Into Society.

As of the first quarter of 2021, there were at least 11,929 *Armstrong* class members on parole, not counting class members with only mental health disabilities. *See* February 2021 Quarterly Parolee Addresses List. Of these parolees, 758 were classified as DPW; 1,023 were classified as DPO; 1,845 were classified as DPM; 318 were classified as DPV; 144 were classified as DPH; and 2,093 were classified as either DD1, DD2, or DD3. *Id.*

Countless more—by one estimate, approximately 44 percent of all parolees—have a mental health disability. *See* Houser, K.A., Vîlcică, E.R., Saum, C.A. & Hiller, M.L., “Mental Health Risk Factors and Parole Decisions: Does Inmate Mental Health Status Affect Who Gets Released,” *Int’l J. Envl. Research & Public Health* 16, no.16:2950 (2019), <https://doi.org/10.3390/ijerph16162950>. The *Armstrong* Remedial Plan (“ARP”) covers class members with mental health disabilities, as illustrated by the inclusion of the Parole Outpatient Clinic as part of the original remedy in this case, *see* ARP § IV.S.8, and as supported by the Court’s recent staff misconduct order. *See* Order Granting in Part Motion to Modify Remedial Orders and Injunctions (Mar. 11, 2021), ECF No. 3217, at 15:2-4.

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The transition from prison to parole is fraught with danger for all parolees, but especially those with disabilities. A seminal Washington State study found that during the first two weeks after release from prison, parolees were nearly 13 times more likely to die than other state residents. *See* Binswanger, I.A., Stern, M.F., *et al.*, “Release from Prison — A High Risk of Death for Former Inmates,” *New England Journal of Medicine* 2007: 356:157-65. Longitudinal studies of people released from prison show that “being released homeless or marginally housed” puts parolees “in almost immediate risk of failure, especially with regard to revocation for noncompliance and readmission to prison for a new offense.” Lutze, F.E., Rosky, J.W. & Hamilton, Z.K., “Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State’s Reentry Housing Program for High Risk Offenders,” *Criminal Justice and Behavior* 41 (Dec. 4, 2019): 471-91, at 484. Once someone is jailed on a parole violation, their risk of homelessness increases further, creating a downward spiral of housing instability. *See* Herbert, C.W., Morenoff, J.D. & Harding, D.J., “Homelessness and Housing Insecurity among Former Prisoners,” *Russell Sage Foundation Journal of the Social Sciences* 1(2): 44-79, at 74.

Given these scholarly findings and the lack of foundational supportive services provided by CDCR for parolees, it is not surprising that the most recent January 2020 CDCR Recidivism Report found an overall CDCR three-year recidivism rate of 46.5% for offenders released in 2015. *See* January 2020 CDCR Office of Research, “Recidivism Report for Offenders Released from the CDCR in 2015,” at vi.

Against this background of parolees struggling to gain a footing in the community, our clients with disabilities face significant extra hurdles that CDCR must act to eliminate. Class members are expressly excluded from numerous CDCR-funded transitional housing and parole programs. Those that do manage to get accepted into a CDCR-funded program often find the program is inaccessible, and when they try to complain, there is no formal ADA grievance process in place and 1824 forms are not available to them, ensuring there is no accountability.¹ Oftentimes class members are forced to leave CDCR-funded programs because of their inaccessibility. Moreover, there is no system to track and ensure parolees with disabilities in these programs have necessary accommodations and are not discriminated against. Parolees with mobility disabilities who are

¹ Although Defendants agreed to make changes in how new Specialized Treatment for Optimized Programming (“STOP”) programs report their accessibility to CDCR, and to develop a training video and resource manual for CDCR’s new STOP subcontractors, these planned resources have been in the works for more than 15 months, and they do not address disability discrimination by 869 *current* CDCR-funded contractors. The discriminatory exclusions of parolees with disabilities from many current CDCR-funded programs continue unabated.

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homeless and/or have leg paralysis or nerve damage, and parolees with developmental, cognitive/intellectual, and mental health disabilities, are routinely denied commonsense accommodations they need to keep their GPS devices charged and avoid reincarceration. Benefits planning is often neglected or done incorrectly, resulting in denial of benefits, homelessness, and/or harmful delays in getting benefits. Critical identification cards, needed for everything from renting a hotel room to starting Medi-Cal benefits and paying for medications, are not ready for many parolees when they leave prison. During the period while parolees with disabilities wait for their benefits to start, CDCR fails to provide them with a basic floor of financial support for short-term housing, short-term food assistance, transportation assistance, and job training.

The failure to provide these services makes it much more likely people with disabilities will fail on parole and be reincarcerated, and have their parole terms extended again and again. *See* CDCR Adult Institutions, Programs, and Parole Operations Manual (2020) § 81010.9 (“Time during which parole is revoked extends the parole period automatically by the amount of days served in custody for the violation.”).

CDCR also fails to provide class members with services and information while still in prison to prepare them to live independently in the community, such as benefits planning, information about paratransit agencies and independent living organizations in their parole locations, and training in skills to help them live independently, such as sign language, Braille, and the use of tapping canes. These support services and resources are critical for people with disabilities to have an equal opportunity to access the benefits of parole and avoid reincarceration.

All of these problems have also been exacerbated by the pandemic, which has made being homeless on parole life-threatening.

II. Defendants Are Required to Administer Parole and Transition to Parole Programs in a Manner that Provides Reasonable Accommodations to People with Disabilities and Prevents Disability Discrimination.

Defendants are obligated under the ADA and the *Armstrong* Remedial Plans to operate their transition to parole and parole programs in a non-discriminatory manner, by providing parolees with disabilities with reasonable accommodations, including through the provision of basic support services, so that they receive an equivalent opportunity as parolees without disabilities to succeed on parole, transition to life in the community, and avoid reincarceration. *See* 42 U.S.C. § 12132; ARP, Parole Field Operations at 1; *Armstrong* Board of Parole Remedial Plan (“ARP II”) § I.

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Defendants are required by state law to provide assistance with the transition between imprisonment and successful discharge from parole, including by providing support services and programming to parolees. *See* Cal. Penal Code § 3000(a)(1); *see also In re Palmer*, 479 P.3d 782, 793-94 (Cal. 2021) (explaining that “parole’s primary objective is, through the provision of supervision and counseling, to assist in the parolee’s transition from imprisonment to discharge and reintegration into society,” and that the services California must provide to parolees include “medical and psychological treatment, drug and alcohol dependency services, job counseling, and programs that enable the parolee to obtain a general equivalency certificate” (internal quotation marks omitted)). Parole and transition to parole services are thus clearly programs, services or activities under the ADA, and “the plain language of the ADA extends its anti-discrimination guarantees to the parole context.” *Thompson v. Davis*, 295 F.3d 890, 898 (9th Cir. 2002) (per curiam). CDCR is required to provide meaningful access to these programs, services and activities to parolees with disabilities, including through additional supportive services and other reasonable accommodations to ensure they receive equivalent access to the benefits of parole as parolees without disabilities. *See* 28 C.F.R. § 35.130(b).

The integration mandate of Title II of the ADA, as set forth in its implementing regulations and *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), also requires Defendants to provide class members with sufficient supportive services so as to permit them to live independently and not cause them to be reincarcerated as a result of their disability-related needs. In the years since *Olmstead*, courts of appeals, including the Ninth Circuit, consistently have held that the integration mandate applies where a “challenged state action creates a serious risk of institutionalization.” *See, e.g., M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012); *Davis v. Shah*, 821 F.3d 231, 263 (2d Cir. 2015); *Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013); *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 608 (7th Cir. 2004); *Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003).

III. Defendants Are Failing to Meet Their Legal Obligations.

Despite these clear legal mandates, Defendants have fallen short by operating their transition to parole and parole programs in a manner that discriminates against individuals with disabilities. In response to Plaintiffs’ repeated advocacy regarding these issues, Defendants contend that they are free to disregard the needs of parolees with disabilities on parole because they disregard the basic needs of all parolees—claiming that Plaintiffs’ are seeking “special rights” for class members. For example, in the March 2021 Status Conference Statement, Defendants asserted that “to create an obligation to secure housing for all class members would be discriminatory toward non-class

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members.” Joint Case Status Statement (Mar. 15, 2021), ECF No. 3227, at 34:22-23. This dismissive reverse discrimination argument is not well founded.

First, Defendants already provide transition to parole services such as housing, transportation, cash and food vouchers that they are not often not using for class members or that exclude class members. Defendants assert the assistance they can offer parolees is limited, yet they have no clear guidelines for administering these valuable resources. Defendants state they are administered at the discretion of parole agents, but have not produced any information on what criteria (if any) are used to decide which parolees receive these services. The lack of criteria for administering limited parole resources has the “effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities,” in blatant violation of the ADA and its implementing regulations. 28 C.F.R. § 35.130(b)(3).

Second, Defendants cannot continue to bury their head in the sand regarding their responsibility to provide accommodations to parolees with disabilities by asserting they are treating them exactly the same as other parolees. Title II of the ADA mandates “meaningful access” to programs, services and activities of public entities. *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (quoting *Alexander v. Choate*, 469 U.S. 287, 301-02 (1985)). **And meaningful access often requires that, as a practical matter, a public entity affirmatively provide additional support to individuals with disabilities.** *See McGary v. City of Portland*, 386 F.3d 1259, 1266-67 (9th Cir. 2004) (“A plaintiff need not allege either disparate treatment or disparate impact in order to state a reasonable accommodation claim,” because “[t]he purpose of the ADA’s reasonable accommodation requirement is to guard against the facade of ‘equal treatment’ when particular accommodations are necessary to level the playing field.”).

Third, courts and the Civil Rights Division of the United States Department of Justice (“USDOJ”) are increasingly requiring augmentation of parole resources in many jurisdictions around the country to prevent unnecessary reincarceration of parolees with disabilities. Just last month, the USDOJ found that Alameda County and the Santa Rita Jail were violating the ADA rights of mentally ill parolees by failing to provide the services needed to prevent re-incarceration. *See* April 22, 2021 U.S. Department of Justice Notice Regarding Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail and Report re Same (**Exhibit B**) at 8, 11-16 (“Deficiencies in the community-based service system ... at times also contribute to the incarceration of people with mental health disabilities in Santa Rita Jail.”). Among the remedies sought are: “permanent supported housing slots,” *id.* at 42; “sufficient community-based services including case management, personal care services to assist with activities of daily living, and supported employment services,” *id.* at 43; the provision of “transition and discharge planning, beginning upon [jail] admission, for prisoners with mental health

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disabilities ... to prevent needless psychiatric institutionalization,” *id.*; and a system in the jail to ensure that “people with mental health disabilities can initiate and maintain connections with community-based services while incarcerated and transition seamlessly into such services upon release,” *id.*

In December 2018, the USDOJ amended a prior settlement with Los Angeles County to require an “enhanced release planning process” at its jails, and to commission “an independent research or educational organization to perform an evidence-based assessment of release planning at the Jails.” *See* December 10, 2018 Joint Stipulation to Dismiss Intervener’s Claims and Order in *United States v. Los Angeles (Exhibit C)*. The new agreement also required more intensive and individualized release planning that “will consider the need for housing,” and include an “individualized assessment of the prisoner’s needs” undertaken “in collaboration with the prisoner.” *See* December 6, 2018 Joint Stipulation to Amend Paragraph 34 of the Joint Settlement Agreement in *United States v. Los Angeles (Exhibit D)*. The agreement also requires assistance with benefit applications, transportation, medical services, mental health services and substance abuse treatment, and in establishing connections to family and community supports. *Id.* at 3-7.

Despite this clear legal authority, the evidence summarized below shows that Defendants are systemically failing to provide support services and accommodations as needed to ensure accessible transition to parole services, and to prevent risk of reincarceration and facilitate transition to the community for parolees with disabilities.

IV. Defendants are Violating the Rights of Parolees with Disabilities.

A. Defendants’ Inadequate Transition to Parole Services Cause Disproportionate Harm to Individuals with Disabilities.

Defendants’ provision of parole planning services to incarcerated individuals prior to their release from prison—including transitional housing placements, benefits application assistance, transportation assistance, and other supportive services to link incarcerated individuals to community resources—discriminates against individuals with disabilities by making them disproportionately likely to fail on parole because of their disability-related needs. *See* 28 C.F.R. § § 35.130(b)(3). To benefit from parole in the same manner as people without disabilities, class members often require reasonable accommodations in the form of accessible transitional housing placements, transportation assistance, short term-financial assistance, and seamless access to Supplemental Security Income (“SSI”), Medi-Cal insurance, California identification cards (“Cal-ID”), and other benefits that are necessary to gain the stability to be successful on parole.

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CDCR also systematically fails to provide individuals with disabilities the training and skills they need to live independently on parole, including providing information about accessible transportation options and teaching skills such as sign language, Braille and tapping cane use. For example, ██████████ ██████████ ██████████, DPV, went blind during his 36 years of incarceration, but CDCR never taught him how to properly use a tapping cane, never taught him Braille (although he once briefly took a correspondence class in Braille), and failed to help him learn about guide dogs or the other accommodations and techniques that help blind and low vision people live independently in the community. *See* Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶¶ 3-6, 29, 32-39; *see also* Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶ 5 (deaf class member not provided education or training on how to obtain sign language interpretation services in community).

Defendants also frequently fail to locate accessible housing for parolees with disabilities prior to their release, and often are unable to timely submit applications for SSI and other benefits that enable parolees with disabilities to pay for housing, food, clothing, and other necessities. *See, e.g.*, Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶¶ 11-12, 18 (DPO class member paroled homeless after Defendants failed to meet with him to discuss pre-parole planning prior to release); Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶¶ 8, 13-14 (DPM class member paroled homeless and without any benefits applications submitted by Defendants); Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶¶ 9, 14-15, 18 (DLT class member at risk of homelessness because Defendants did not submit SSI application until less than a month before release); Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶¶ 9-10 (DPM and DNH class member paroled without any benefits applications submitted); ██████████ ██████████ Decl. ¶ 12 (DPV class member had not yet received SSI benefits three months after release because Defendants sent application late and to wrong office); Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶ 14 (DPV and EOP class member forced to refile SSI application while on parole due to Defendants’ filing error, causing delay in obtaining benefits needed for housing and basic necessities); Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶¶ 9-11 (DPH class member had to navigate submitting SSI application on his own after release and did not receive SSI benefits until nine months after release).

These difficulties are exacerbated by CDCR’s failure to provide a Cal-ID card to many parolees upon release, which can delay the start of needed benefits and which can prevent someone from even renting a hotel room for the night. For example, ██████████ ██████████ ██████████ DPM, was unable to apply for food stamps or county relief because of his lack of a Cal-ID. Declaration of ██████████ ██████████ (“██████████ Decl.”) ¶ 4 (lack of Cal-ID card partly responsible for delayed medical treatment for condition causing mobility disability); *see also* ██████████ ██████████ Decl. ¶ 15 (DPV and EOP class member unable to secure motels for himself due to lack of proper identification); ██████████ ██████████ Decl. ¶ 17 (unable to open a post office box and other problems due to lack of Cal-ID card); ██████████ ██████████ Decl. ¶ 30

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(took three months in community before finally got his Cal-ID card); [REDACTED] Decl. ¶ 8 (lack of Cal-ID responsible for delay in deaf class member's ability to get telephone that enables videophone and video relay services).

While being released from prison without housing causes difficulties for all parolees, homelessness causes disproportionate harm to class members, as living on the streets often exacerbates their disabilities by making it more difficult to obtain medications and other treatment that they need, and can make it almost impossible to comply with key conditions of parole, such as consistently keeping a GPS monitor charged, or attending mandatory meetings and appointments. For example, Defendants never met with [REDACTED], DPO, prior to his release, even though he submitted multiple Forms 22, an 1824, and an emergency 602 about his need for transitional housing. [REDACTED] Decl. ¶¶ 11, 14-15. Mr. [REDACTED] expects to be homeless on parole and fears how he "will do on the streets with [his] disabilities, including being in [his] wheelchair," and "do[es] not know where [he] will plug in [his] CPAP machine," which he requires to help him breathe while he sleeps. *Id.* ¶ 12; *see also* Declaration of [REDACTED] ([REDACTED] Decl.) ¶¶ 5, 11, 18-27, 32 (DPM parolee's homelessness worsened his disability and contributed to repeated reincarcerations for failures to charge his GPS monitor).

Defendants also release many parolees with disabilities without any transportation plan for how they will reach the parole office from prison. [REDACTED] DPM, was required to travel from Corcoran to the parole office in Santa Rosa, nearly 300 miles away. [REDACTED] Decl. ¶ 7. Mr. [REDACTED] was dropped off at the train station by Defendants, and had to undertake an eight-hour "challenging journey" on a train and two buses; he was forced to stow his walker with the luggage, and had to "slowly and painfully climb up the stairs onto each bus and into [his] seat," and struggled to get to and from the bathroom. *Id.* Mr. [REDACTED] arrived at the parole office at nighttime: "It was dark. It was also raining. I did not have anything to eat. I only had a pair of shorts and a sweatshirt, so I was cold. I waited outside the parole office for it to open in the morning." *Id.* ¶ 8; *see also* [REDACTED] Decl. ¶¶ 13-14, 16 (DPM parolee who uses a walker dropped off at the train station in the middle of the night with no gate money or transportation voucher, and had to travel on multiple trains and a bus to get to the parole office). The failure to provide transportation assistance to these parolees with disabilities placed them at risk of reincarceration for failing to comply with reporting requirements.

Parolees are also provided with only a 30-day supply of medications upon release, including psychiatric medications required as accommodations for mental health disabilities. Because of this short-term supply, parolees are often at risk of running out of medications due to delays with setting up Medi-Cal prior to their release, and lack of assistance from parole agents in navigating access to health care. *See, e.g.*, [REDACTED]

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Decl. ¶ 13 (DLT parolee prescribed psychiatric medications is “rationing [his] medication to try to get it to last longer than 30 days because [he] do[es] not know when [he] will get more”); [REDACTED] Decl. ¶¶ 25-29 (DPM parolee hospitalized due to medical emergency after medications and medical supplies ran out before his Medi-Cal started); *see also* [REDACTED] Decl. ¶ 22; [REDACTED] Decl. ¶¶ 14-15; [REDACTED] Decl. ¶¶ 10, 16-18; Declaration of [REDACTED] [REDACTED] (“[REDACTED] Decl.”) ¶¶ 7-8. This lack of health care is especially alarming as studies show that people experience “worse health outcomes after they leave prison.” *See* Reuben Jonathan Miller, *HALFWAY HOME* 325 n.5 (Little, [REDACTED] & Co. 2021).

Often, the only resources provided to parolees upon release is \$200 in gate money on a debit card, the same amount CDCR has provided since 1973, when it was worth the equivalent of approximately \$1200 today.² *See* [REDACTED] Decl. ¶ 9 (DLT class member went a week without food after gate money ran out); [REDACTED] Decl. ¶¶ 13, 19 (DPM class member not provided any gate money because he was released from prison after midnight). Even that inadequate amount of gate money is sometimes reduced by the time parolees with disabilities are able to use it. *See* [REDACTED] Decl. ¶ 31; [REDACTED] Decl. ¶ 11. Sometimes parolees with disabilities are not even released with the durable medical equipment prescribed to them by CDCR doctors as accommodations for their disabilities, in violation of the ARP. *See* ARP § IV.F.3 (“[H]ealth care appliances shall be maintained and retained by inmates upon release on parole ...”); *see, e.g.*, [REDACTED] Decl. ¶ 12 (released without orthotic shoes); [REDACTED] Decl. ¶¶ 22-24 (released without wheelchair, walker and cane).

The story of [REDACTED] [REDACTED] [REDACTED] DPM, exemplifies CDCR’s failure to provide reasonable accommodations in the form of transition-to-parole services. Mr. [REDACTED] was released from prison shortly after being discharged from a hospital, without his wheelchair, walker and cane. *See* [REDACTED] Decl. ¶¶ 22-24. His parole agent’s refusal to assist him with a Medi-Cal application during this crucial time left him without health insurance for several months, depriving him of the hospital-based medical care he needed to keep his neurological condition from getting worse and exacerbating his mobility disability. *Id.* ¶ 29. Mr. [REDACTED] is now at extreme risk of being homeless, despite multiple requests for transitional housing in Riverside County, his county of commitment where his children live. *Id.* ¶¶ 25, 27-28. His parole agent refused housing assistance in Riverside County, stating “there’s no help for you out here,” and insisted instead that Mr. [REDACTED] transfer his parole hundreds of miles away to live with his parents in Sacramento. *Id.* ¶ 27. By refusing to provide housing assistance in Riverside County as

² Mia Armstrong & Nicole Lewis, “What Gate Money Can (And Cannot) Buy,” The Marshall Project (Sept. 10, 2019), <https://www.themarshallproject.org/2019/09/10/what-gate-money-can-and-cannot-buy>.

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a reasonable accommodation, CDCR placed Mr. ██████ in an impossible situation as a result of his disability—in effect asking him to choose between housing or his children. Mr. ██████ predicament was made worse because CDCR did not submit applications for SSI, Medi-Cal, or a Cal-ID before his release, and his parole agent refused to help him with these applications. *Id.* ¶¶ 23, 25, 27-29. Without a Cal-ID, Mr. ██████ has also been unable to apply for food stamps or financial assistance from the county while waiting for his SSI benefits to be approved. *Id.* ¶ 28. CDCR’s failure to provide reasonable accommodations in the form of assistance with disability benefits, food, identification and housing has exacerbated Mr. ██████ significant disabilities and impeded his successful transition to the community.

██████ ██████ ██████ DPM, who cycled between homelessness and reincarceration for two-and-a-half years, spent about two months in a hotel during the COVID-19 pandemic. ██████ Decl. ¶ 27. This period of being housed was one of the longest stretches he stayed out of jail since he paroled, “because [he] had a place to stay, rather than trying to comply with all [his] parole conditions while living on the streets, which is very difficult to do because of [his] disabilities.” *Id.* Yet Mr. ██████ was not provided with other housing assistance from CDCR and has almost never been provided transportation assistance, even though he struggled to get around using a walker because of his disability. *Id.* ¶¶ 11, 13-14. In fact, CDCR stood in the way of attempts by others to assist him, including Mr. ██████ public defender, who found him a housing program for veterans experiencing homelessness. *Id.* ¶ 33. Mr. ██████ parole agent failed to act upon multiple requests to transfer his parole to San Francisco County so that Mr. ██████ could enroll in the program. *Id.* It was only after the public defender subpoenaed the parole office for all records of Defendants’ efforts to find housing for Mr. ██████ since he was last out of jail, which confirmed that they had made none, *id.* ¶ 34, and after Plaintiffs’ counsel sent an advocacy letter, that Defendants finally acted on the transfer request and allowed Mr. ██████ to enter a housing program in mid-April 2021, for the first time since his release on parole in November 2018.

B. Defendants Fail to Provide Accessible Transitional Housing and Transportation Accommodations to Parolees with Disabilities.

Defendants’ failure to address express disability discrimination by contractors contributes to their inability to provide accessible transitional housing to many class members. Numerous STOP programs and other CDCR-funded transitional housing programs expressly exclude people with disabilities, in violation of the ADA. According to the March 19, 2021 STOP Community Directory, **827 out of 869 CDCR-funded programs (or 95%) expressly exclude people with at least one type of disability.** The directory reveals that 156 programs (or 18%) exclude people who are deaf or hard of hearing, 101 programs (or 12%) exclude people who are blind or have low vision, 112

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programs (or 13%) exclude people with mobility disabilities, 195 programs (or 22%) exclude people with mental health disabilities, and 524 programs (or 60%) exclude people who use wheelchairs. *See Exhibit E* (March 19, 2021 CDCR and DAPO Funded Programs Community Directory). Given these discriminatory exclusions, it is unsurprising that so many parolees with disabilities are unable to secure transitional housing placements.

One consequence of Defendants' ad hoc, under-resourced and discriminatory approach to housing parolees with disabilities is that many of the accessible placements that are available are in residential drug treatment programs. These programs sometimes reject parolees with disabilities with no history of substance abuse or, alternatively, have strict rules and requirements. This puts parolees with disabilities in a Hobson's choice that other parolees do not face: either subject themselves to stringent requirements that are not relevant to their success on parole, or be denied any housing assistance from Defendants. *See, e.g.* ██████████ Decl. ¶ 7 (DLT class member declined placement into drug treatment program due to lack of history of substance abuse and fear of negative impact on mental health, and was offered no other housing options); ██████████ Decl. ¶ 12 (DLT class member with no history of substance abuse required to walk long distances to drug treatment program three days a week, which was very difficult due to his disability); ██████████ Decl. ¶ 35 (DPM class member forced to attend substance abuse programming at transitional housing program despite lack of history of substance abuse).

To make matters worse, many parole agents decline to provide housing vouchers to help with temporary housing while class members are on wait lists for accessible transitional housing placements and/or awaiting disability benefits so they can pay for their own housing. For example, ██████████, DLT, was temporarily staying in a hotel room rented for him by his wife and told his parole agent that he would soon be homeless until his SSI benefits started. ██████████ Decl. ¶¶ 14-15. The parole agent told Mr. ██████████ that there was "a long waiting list" for transitional housing, and refused to provide him with a hotel voucher "just for this time between [his] wife leaving and when [he] get[s] his SSI benefits." *Id.* ¶ 15. The agent instead suggested that Mr. ██████████ either go to a homeless shelter or have his wife "continue to pay for a hotel for [him] until her money runs out." *Id.* Parolees who depend on disability benefits for support should receive reasonable accommodations, including housing assistance, food vouchers and other support that DAPO has discretion to provide to all parolees, in order to help bridge the gap after release and before benefits or employment are secured.

When Defendants do provide transitional housing placements for class members, they often find that the CDCR-funded housing program is not accessible, putting them in danger and forcing some to leave the programs. ██████████, DPM, was placed into CDCR-funded housing that was inaccessible because all of the bedrooms

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were upstairs, even though he is unable to climb stairs because of his mobility disability; Mr. [REDACTED] was forced to sleep on a couch downstairs or on a picnic table outside. *See* [REDACTED] Decl. ¶ 34; *see also* [REDACTED] Decl. ¶ 11 (DLT placed in STOP program that lacked accessible bathroom); [REDACTED] Decl. ¶¶ 10-15 (STOP program failed to provide sign language interpretation for deaf class member at many of his substance abuse group meetings).

[REDACTED] [REDACTED] [REDACTED], DPV, who is blind, was also placed in a CDCR-funded housing program that was not accessible to him, and the program staff provided him with no assistance in learning to navigate around the facility and the neighborhood in which it is located. [REDACTED] Decl. ¶¶ 16-18, 21-23, 36-44. As a result, he spent much of the first few months on parole alone in his room, unable and afraid to go outside. He declared:

I often feel stuck in my room here at the GEO facility. No one comes to check on me or to offer to take me out. I spend a lot of time in my room and it can make me feel lonely and isolated. I only go outside when people who live here on my floor volunteer to take me out. Some weeks I have spent so much time in my room here that it feels like being in Administrative Segregation in a prison. I have told the staff here that more than 10 times. In some ways it is worse than an Administrative Segregation Unit, because in an Administrative Segregation Unit in the CDCR you would get outside more regularly, and you would not miss meals. I am free now and want the freedom to go outside and to live more independently. However, I am not being given the tools to do this, and I was not prepared in prison for what it would be like to be blind in the community.

Id. ¶ 40. When Mr. [REDACTED] complained to program staff about his need for assistance, they told him “we are not going to babysit you.” *Id.* ¶ 18.

Parolees housed in inaccessible CDCR-funded programs are also not informed that they can file an 1824 grievance about it. As [REDACTED] [REDACTED] a mobility impaired class member who left his STOP program after falling repeatedly in the shower and being denied a shower chair, declared:

No one in the STOP program explained to me that there was a process available to file grievances about ADA issues. My parole officer also failed to explain to me that I could file an 1824 reasonable accommodation request regarding the accommodations I needed and was not receiving on parole and in the STOP program. I had no idea until now that I could file a grievance on parole, or that staff would be able to help me with that paperwork

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██████ Decl. ¶ 15; *see also* ██████ Decl. ¶ 26.

The fact that Defendants have hired contractors to provide some of the programs, services and activities they provide to parolees does not change their duty to administer those programs in a manner that does not violate the ADA. 28 C.F.R. § 35.130(b)(1), (b)(3)-(5) (prohibiting disability discrimination done “directly or through contractual, licensing, or other arrangements”); *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1074 (9th Cir. 2010) (state defendants “cannot shirk their obligations to plaintiffs under federal law by housing them in facilities operated by third-part[ies]”).

Defendants also routinely fail to provide transportation accommodations to parolees with disabilities, in violation of the ADA and the ARP. *See* ARP, Parole Field Operations Section at 3; *id.* at 5 (providing that “DAPO will utilize cash assistance” to obtain transportation services for parolees with disabilities “when necessary”). Defendants rarely provide information about or assistance accessing paratransit services, and regularly fail to offer rides or public transit vouchers to parolees with disabilities who have difficulty getting to mandatory programs or appointments, or accessing community-based services because of their disabilities. *See, e.g.*, ██████ Decl. ¶¶ 17, 40-41; ██████ Decl. ¶¶ 8, 19; ██████ Decl. ¶¶ 25, 27-28; ██████ Decl. ¶¶ 19, 21; ██████ Decl. ¶¶ 12, 16; ██████ Decl. ¶ 10. J. ██████ ██████ ██████, DPW, who is 85 years old and uses a wheelchair and walker, has struggled greatly on parole due to Defendants refusal to provide him such transportation assistance. Declaration of ██████ ██████ (“██████ Decl.”) ¶¶ 8-9. He was required to complete an arduous journey on two buses that could take up to two hours to report to his mandatory counseling meetings each week. *Id.* ¶¶ 8, 10-11. Mr. ██████ once fell out of his wheelchair when returning from the bus stop, and laid on the side of the road in the dark in “terrible pain” as cars drove by because he “did not have the strength in [his] arms or legs” to get up, until someone eventually stopped to help him. *Id.* ¶ 13. On another occasion, he lost control and fell when rolling in his wheelchair down a hill to the bus stop, and tore his rotator cuff. *Id.* ¶ 14.

C. Defendants Fail to Accommodate Parolees’ Disabilities Regarding Their Ability to Comply with Parole Conditions, Leading to Reincarceration Due to Failure to Accommodate Disabilities.

Defendants systemically fail to consider the impact of parolees’ disabilities on their ability to comply with their conditions of parole. Parolees with developmental, cognitive/intellectual, and significant mental health disabilities often require reasonable accommodations in order to understand and comply with parole conditions, yet parole agents frequently fail to provide such accommodations and fail to take their disabilities into account when determining the consequences for parole violations. The story of ██████ ██████ ██████ exemplifies this problem. Mr. ██████ has significant mental

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health disabilities and a likely cognitive/intellectual disability. He has “the mind of a 10- or 12-year-old” and is living under his father’s conservatorship in a board and care home for people with disabilities. Declaration of ██████████ (“██████████ Decl.”) ¶¶ 2-3, 5-7. Since his parole term began in May 2018, Mr. ██████████ has been jailed at least eight times because of alleged violations of his GPS monitor requirement. *Id.* ¶ 12. Although his parole agents are aware that Mr. ██████████ disabilities make him struggle to wear his GPS monitor and keep it charged—he has even tried to cut off the GPS monitor in the presence of his parole officer—they have not taken his disability’s effect on his ability to comply with these parole conditions into account. *Id.* ¶¶ 11-18. Instead, Defendants simply reincarcerate Mr. ██████████ on technical parole violations and make disparaging comments like, “let’s see how long he can stay out [of jail] this time.” *Id.* ¶ 24. Because of the revocations, Mr. ██████████ has spent the majority of his time on parole in jail, and his parole repeatedly has been extended. *Id.* ¶ 19; *see also* Declaration of ██████████ (“██████████ Decl.”) ¶¶ 9-15 (DPW and EOP parolee with cognitive disability reincarcerated multiple times for failure to charge his GPS monitor, despite parole agent knowing he struggles to remember due to his disabilities).

Homeless parolees with mobility disabilities are also at greater risk of violating their parole conditions because they have difficulty getting around to find charging locations. ██████████ ██████████ DPM, who has been homeless for most of his two-and-a-half years on parole and without transportation assistance from his parole agents, has been reincarcerated at least five times for failure to charge his GPS device. ██████████ Decl. ¶ 20. Mr. ██████████ struggles to find locations where he is allowed to charge his GPS device, a particularly difficult task given his significant mobility disability, which in turn has worsened from two years of living on the streets due to lack of housing assistance from Defendants. *Id.* ¶ 21-27. Mr. ██████████ disability, which includes nerve damage in his leg, also makes it hard for him to feel the GPS monitor’s vibrations when its battery is running low. *Id.* ¶ 25. About two years into his parole term, in November 2020, Mr. ██████████ learned for the first time that DAPO can provide GPS monitors that provide audible low battery warnings, and filed an 1824 requesting one as an accommodation for his disability, but the 1824 was never answered. *Id.* ¶ 30; *see also* ██████████ Decl. ¶ 11 (DPW class member cannot feel vibrations on GPS monitor when battery is running low due to leg paralysis).

Plaintiffs acknowledge that Defendants are statutorily required to track certain parolees with GPS devices. But the ongoing use of antiquated GPS devices that must be charged at least twice a day for one hour each time defies logic.³ In cases like these,

³ Plaintiffs’ online research on GPS ankle monitors found devices that only need to be charged every 40 hours and that offer back up batteries the parolees can swap out. *See* SCRAM GPS Ankle Monitoring Description at <http://www.scramsystems.com> (noting

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Defendants must provide a reasonable accommodation such as a tracking device that does not require a person with an intellectual disability to remember to charge the device frequently or that does not require a homeless parolee who uses a wheelchair or walker and has difficulty ambulating to find an accessible public location where they can plug in a device for about an hour twice a day during a pandemic. These devices, and the lack of charging accommodations, lead to repeated reincarcerations and, in turn, repeated extensions of class members' parole terms. *See* CDCR Departmental Operating Manual (2020) § 81010.9. For example, the DAPO accommodation summary for one parolee with a developmental disability shows that he has received approximately 15 parole violations since 2015. Our understanding is that parolees with disabilities are at significant risk of having their parole terms extended.

V. Defendants Must Take Immediate Steps to End the Revolving Door of Reincarcerating Parolees with Disabilities.

Defendants are well aware that their failure to provide basic support services and other reasonable accommodations is denying parolees with disabilities an equal opportunity to succeed on parole and transition to a successful free life in the community. In effect, Defendants' policies condemn many parolees with disabilities to an endless cycle of homelessness and reincarceration.

Since before October 2016, Plaintiffs have been notifying Defendants about the harms resulting from their failure to accommodate parolees with disabilities in letters regarding deficient overall policies, in frequent individual class member advocacy, and in status conference statements.⁴ We have also written five reports about our video-tours of Regional STOP contractors' offices, with numerous questions and requests for production of documents in each report, and have received responses to none of them, and only a handful of documents. Before and after a February 25, 2021 meeting with Defendants about transition-to-parole policies, we requested a variety of documents and confirmation regarding the current status of various policies and procedures related to parole, but again we have not received a response to most of these requests. *See*

40-hour battery life, and a "50% reduction in battery alerts" [in video on the same page] and an on body charger that "enables clients to charge on the go"[brochure on same page.]; Description of BO LOC8 GPS Monitor, available at <https://bi.com/products-and-services/loc8-gps-monitoring-device-remote-location-technology/> (comes with easy to swap back up battery).

⁴ *See, e.g.*, April 5, 2019 Letter from Thomas Nolan to Russa Boyd; July 14, 2017 Letter from Thomas Nolan to Russa Boyd; May 8, 2017 Letter from Thomas Nolan to Katie Riley; October 10, 2016 Letter from Gay Grunfeld to Wendy Locke.

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February 23, 2021 Email from Thomas Nolan to Nicholas; March 5, 2021 Follow-Up Email from Thomas Nolan to Nicholas Meyer.

Thus far, Defendants have met Plaintiffs' urgent requests to accommodate class members on parole primarily with indifference. *See, e.g.*, Email from Nathalie Welch to Nicholas Meyer re: Advocacy for ██████████ at RJD (Mar. 8, 2021) (person with below-the-knee amputation who requires a wheelchair and CPAP machine received no pre-parole planning and will parole homeless) (no response to homelessness concern as of the date of this letter). When Defendants do respond, it is typically with blanket assertions that the failure to provide housing, transportation, benefit applications, and identification cards are not covered by the ARP or required by the ADA. *See, e.g.*, Letter from Nicholas F. Meyer to Michael Freedman re: Advocacy for ██████████ DPW at CHCF (Apr. 20, 2021) (asserting failure to secure housing and submit benefit applications "does not allege any violations of the *Armstrong* Remedial Plan or the ADA"); Letter from Nicholas F. Meyer to Ben Bien-Kahn re: Transition to Parole Advocacy re: ██████████ DPM (April 6, 2021) (same); Letter from Nicholas F. Meyer to Thomas Nolan re: Transition to Parole Survey re ██████████, ██████████ CHCF (April 2, 2021) (same); Joint Case Status Statement (Mar. 15, 2021), ECF No. 3227, at 33-33; *id.* at 34 (asserting plaintiffs' advocacy letters "demonstrate no nexus" to ADA).

However, as Plaintiffs have repeatedly explained, and as made clear by the class member declarations uploaded with this letter, parolees with disabilities are not similarly situated to other parolees. Federal law requires the provision of reasonable accommodations to ensure equal access to the benefits of parole programs, services and activities, including successful transition to the community to prevent reincarceration.

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Defendants must take immediate action to devise a reasonable plan to remedy these systemic violations of the ADA and the *Armstrong* Remedial Plans. We look forward to discussing these issues further with you at the May 19 All Parties meeting and in the weeks that follow.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:TN:cg

Enclosures

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