20-16921

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN ARMSTRONG, et al.,

Plaintiffs-Appellees,

v.

G. NEWSOM, et al.,

Defendants-Appellants.

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

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

APPELLANTS' OPENING BRIEF

ROB BONTA
Attorney General of California
MONICA N. ANDERSON
Senior Assistant Attorney General
NEAH HUYNH
Supervising Deputy Attorney General
JAIME M. GANSON
Deputy Attorney General
State Bar No. 230206
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7351
Fax: (916) 324-5205
Email: Jaime.Ganson@doj.ca.gov
Attorneys for Defendants-Appellants Gavin Newsom and California Department of Corrections and Rehabilitation

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

COURT RULES

OTHER AUTHORITIES

INTRODUCTION

For more than two decades in this institutional reform case, the district court has issued orders designed to address structural barriers and provide disabled inmates with reasonable access to programs, services, and activities in California's state prisons. In 1996, the district court entered a Remedial Order and Injunction requiring Defendants to develop ways to bring their facilities and programs into compliance with the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA). Two years later, Defendants produced a comprehensive plan called the *Armstrong* Remedial Plan (the Plan). Since then, modifications to the Plan and additional remedies have been ordered.

The September 8, 2020 injunction from which Defendants appeal is different. This injunction imposes new, intrusive prison-wide relief to curb alleged incidents of excessive force and retaliation against class members at the Richard J. Donovan Correctional Facility (RJD) even though the class did not bring claims under the Eighth or First Amendment. The broad injunctive relief ranges from reforming the California Department of Corrections and Rehabilitation's (CDCR) staff complaint, investigation, and disciplinary process, to mandating that Defendants install additional stationary surveillance cameras, implement body-worn cameras, retain video

footage indefinitely, develop new pepper spray policies, increase supervisory staffing, provide additional staff training, allow for third-party monitoring, and share information with various stakeholders.

To be sure, Defendants take seriously the allegations of excessive force and retaliation by class members, and are continuing to take substantial measures to address and prevent abuse. However, the degree to which the court ordered relief—via a host of cumulative reforms, including reforms that CDCR was already committed to making, that impose redundant mechanisms for monitoring and oversight—would be problematic in any case. That the relief was issued in an ADA and RA case that concerns structural barriers and programming opportunities, coupled with the fact that the Prison Litigation Reform Act (PLRA) imposes substantial limits on prospective relief to deter courts from micromanaging prisons, underscores that the order runs afoul of both jurisdictional and statutory limits.

A district court's remedial power is limited by the nature and extent of the particular violations found, so the claims in the operative complaint and the grant of injunctive relief must be of the same character. The district court here erred by remedying alleged incidents of excessive force and retaliation that are fundamentally different from the class's allegations that Defendants

had systemically failed to operate programs, activities, services, and facilities in accordance with the ADA and RA.

But even if the allegations in the complaint and the recent injunction are of the same character, the injunction violates the PLRA's command that prospective relief extends no further than necessary, be narrowly tailored, and imposes the least intrusive means to correct an ADA or RA violation. If, as everyone predicts, blanketing the prison with cameras will dramatically reduce and deter staff misconduct, then the addition of body worn cameras, reforms to CDCR's staff complaint, investigation, and discipline process, or the other policy and monitoring requirements are cumulative and unnecessary.

The district court, through its injunction, enmeshed itself in prison administration at a granular level beyond what is necessary to ensure access to facilities, programs, and services. This Court should reverse the injunction.

STATEMENT OF JURISDICTION

Subject matter jurisdiction in the district court was based on 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights). On September 8, 2020, the district court issued a pair of post-judgment orders (collectively, the "RJD Order") imposing prospective injunctive relief. (1-Excerpts of Record

(ER)-2–7, 8–79.) The first order explains the district court found that the *Armstrong* Remedial Plan and the ADA had been violated and details the relief ordered; the second order summarizes the remedies and imposes additional requirements. (*Id*.) Defendants timely appealed on September 25, 2020. (3-ER-401–02.)

There are two grounds for appellate jurisdiction. This Court has jurisdiction under 28 U.S.C. § 1291 because the RJD Order was a final, appealable decision of the district court. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1064–65 (9th Cir. 2010). Alternatively, this Court has jurisdiction under § 1292(a)(1) because the RJD Order expressly "modif[ied] its prior orders and injunctions" (1-ER-2, 42, 70, 71, 79.)—after all, it is captioned as "Order Granting in Part Motion to Modify Remedial Orders and Injunctions" (1-ER-8.) *See Karnoski v. Trump*, 926 F.3d 1180, 1198 (9th Cir. 2019) (per curiam) ("Pursuant to 28 U.S.C. § 1292(a)(1), we have jurisdiction to review an order granting, continuing, modifying . . . injunctions.").

ISSUE STATEMENT

1. Because a federal court's jurisdiction to grant remedial relief is limited by the nature and extent of the violation initially found, the injury underlying a grant of injunctive relief must be of the same character as the

conduct asserted in the operative complaint. Did the district court exceed this jurisdiction by granting injunctive relief to address claims of retaliation and physical abuse, which are distinct from the issues of access to programming and physical facilities for inmates with disabilities addressed in the operative complaint?

2. Did the injunction contravene the PLRA's need-narrowness-intrusiveness mandate: (1) where the court-ordered remedies already were being implemented or developed independent of the injunction, with a demonstrated effect; and (2) where numerous reforms were simultaneously imposed, without regard to their cumulative effect?

STATUTORY PROVISIONS INVOLVED

The PLRA's relevant provision, 18 U.S.C. § 3626(a)(1)(A), restricts federal courts' authority to order prospective relief within the prison system:

> Appropriate remedies with respect to prison conditions
>
> (a) Requirements for relief.
>
> (1) Prospective relief.
>
> (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal

> right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

The ADA's anti-discrimination and access provision, 42 U.S.C. § 12132, provides:

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

The ADA's anti-interference provisions, 42 U.S.C. § 12203(b), prohibits interference, coercion, or intimidation:

> (b) Interference, coercion, or intimidation
>
> It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

STATEMENT OF THE CASE

I. THE *ARMSTRONG* CLASS ACTION

In 1994, the Plaintiffs—a class of all present and future California state prison inmates and parolees with certain disabilities—sued the state officials

responsible for CDCR's operation.[1] (CR 1 (Complaint); CR 27 (Order certifying class); 2-ER-325–41 (operative complaint).) The operative complaint asserts that California's prisons did not adequately accommodate disabled prisoners under the ADA, 42 U.S.C. §§ 12131–34, and the RA, 29 U.S.C. § 794. (2-ER-343–44.)

In 1996, the parties reached an agreement on a Stipulation and Order for Procedures to Determine Liability and Remedy. (2-ER-354–60.) A series of district court decisions established that the ADA and RA applied to state prisoners, and determined that California's then-existing prison policies and procedures were inadequate because: all services, programs, and activities were not reasonably accessible to class members; effective communication was not being established; auxiliary aids and services were needed to provide reasonable access; facilities were not constructed in an accessible manner; and no separate grievance procedure existed for resolving ADA complaints. (*Id*.; 2-ER-343–44.)

The district court entered a remedial order that required CDCR to implement policies (1) to address accessibility and structural features

[1] The litigation concerning parolees was bifurcated and proceeded on a separate track, *see Armstrong v. Davis*, 275 F.3d 849, 855 (9th Cir. 2001), and is not at issue here.

affecting disabled inmates and (2) identify and accommodate individuals with disabilities so they could participate in the programs and activities for which they were otherwise qualified. (2-ER-347–48.) The order also required CDCR to develop processes for evaluating housing placement, requesting accommodations, accessing programs, and providing effective communication. (*Id.*) And it mandated that CDCR develop disability-specific grievance procedures, address delays in reception-center processing, provide instructive aids and programming, develop accommodations and physical accessibility features, and create new credit-earning criteria for medical assignments. (*Id.*)

The remedial order also authorized discovery relevant to "whether defendants' guidelines, plans, policies, procedures and evaluations comply with the ADA or [RA]," and the district court retained jurisdiction to enforce the terms of that order. (2-ER-349.)

The *Armstrong* Remedial Plan was implemented, and later revised. (2-ER-213–17, 218–41, 242–52, 260–324; CR 337.) The plan set forth policies and procedures designed to bring California's prisons into compliance with the ADA and RA through structural accommodations and programming opportunities. (2-ER-243–250 (indicating purpose), 260–324; 1-ER-68.)

In 2001, the district court entered a permanent injunction enforcing the *Armstrong* Remedial Plan to require various accommodations, including accessible reception center beds, worktime credit adjustments, accessible structural features and equipment, modifications to the disability-accommodation process, and reasonable access to substance abuse programs. (2-ER-253–56.) The *Armstrong* Remedial Plan also was used as a model to craft individual policies tailored to each institution, including RJD. (CR 781–2; CR 784-2 (RJD individual plan).)

Since then, Defendants have evaluated and modified their accommodation procedures and policies, and Plaintiffs have monitored compliance with the injunctions and *Armstrong* Remedial Plan, including seeking enforcement through the district court. (2-ER-218–24.) For example, in 2007, an injunction was issued to address housing accessibility, sign language interpreters, medically prescribed assistive devices, disability accommodation request responses, and disability tracking. (*Id.* at 243–50.) The district court later modified the injunction to clarify Defendants' reporting and accountability obligations (*Id.* at 226–27, 233), and to require them to track complaints (*Id.* at 214–16.)

II. RICHARD J. DONOVAN CORRECTIONAL FACILITY EXPERIENCED ISSUES STEMMING FROM STAFF MISCONDUCT.

More than two decades after the remedial order providing structural accommodations and programming opportunities was entered, reports of possible staff misconduct at RJD began to surface. (1-ER-13, 23.) In August 2018, several parties—including Plaintiffs' counsel, court-appointed expert Ed Swanson, CDCR representatives, and the California Correctional Health Care Services—conducted a joint compliance review of RJD's Disability Placement Program. (2-ER-198.) The review generated a memorandum that detailed interviews with twelve inmates, seven of whom alleged serious staff misconduct on Facility C. (*Id*.)

In response, CDCR took immediate actions to improve inmate-staff interactions and provide training and mentorship. (2-ER-196–97.) CDCR also conducted an internal compliance review, which revealed further allegations of staff misconduct, including the forceful removal of inmates from their wheelchairs, unnecessary force being used against inmates in restraints, and staff attempting to justify uses of force by falsely accusing inmates of being the aggressors. (1-ER-14.)

In December 2018, CDCR deployed a strike team comprised of ombudsmen and investigative staff. (1-ER-15.) Interviews were conducted

and a number of inmates asserted that disabled inmates had been targeted for abuse, staff had engaged in gang-like behavior, and complaints of misconduct had been met with retaliatory disciplinary actions or force. (*Id*.) The strike team recommended installing stationary cameras to monitor blind spots and reviewing the prison's inmate-grievance process, disciplinary reports, and staff complaints. (*Id.* at 16.) The team also directed a targeted follow-up investigation. (*Id.* at 17–18.)

III. CDCR TOOK INVESTIGATIVE, CORRECTIVE, AND PREVENTATIVE ACTION TO IDENTIFY AND REMEDY STAFF MISCONDUCT COMPLAINTS AT THE PRISON.

CDCR undertook numerous actions in response to the strike team's findings and imposed major personnel changes—including a new associate warden, investigative services lieutenant, appeals coordinator, and litigation coordinator—aimed at positively shifting the approach for improving and professionalizing line staff's conduct to improve the staff culture and interactions with the inmate population at RJD. (2-ER-201–11; 4-ER-704, 738–43, 762.) These staffing changes included dedicating a full-time ombudsman position, empowered to mitigate complaints and address problems and potential areas of critical concern, to RJD for six months. (2-ER-185.)

A. CDCR Directed Further Inquiries Into the Allegations of Staff Misconduct.

CDCR directed two Office of Internal Affairs agents, supported by several lieutenants and sergeants from other prisons, to conduct further inquiries into the misconduct allegations that surfaced during the December 2018 strike team interviews. (2-ER-201.) The Office of Internal Affairs is an independent unit tasked with completing unbiased investigations to help ensure fairness and consistency. (*Id.* at 202.) Its agents can conduct witness and subject interviews, review audio and video surveillance, and obtain forensic information, including e-mails. (*Id.* 201–03.)

In January 2019, CDCR assigned two sergeants and a lieutenant from other prisons to conduct additional interviews and focus on the issues raised in Plaintiffs' advocacy letters and the staff complaints discussed in the strike team interviews. (2-ER-201.) These officials recommended that further inquiries be made into a number of the complaints. (*Id*.)

For four months in 2019, CDCR directed a lieutenant and sergeant to focus on the issues raised in the advocacy letters submitted by Plaintiffs' counsel and the staff complaints identified by the strike team interviews. (2-ER-201.) And, from August through November 2019, CDCR assigned two

Office of Internal Affairs agents to review over one hundred staff complaints to identify and address staff misconduct at RJD. (*Id*.)

B. CDCR Instituted Systemic Policy Changes Aimed at Reducing Instances Of Staff Misconduct and Increasing Detection and Accountability.

CDCR made many systemic changes to RJD operations to reduce the risk of disruptive or abusive staff behavior and increase detection and accountability. (2-ER-206–07.)

Staff assignments were adjusted so that supervisors would have a greater physical presence during mass movements and meals. (2-ER-199–200, 206–07.) CDCR also changed how mass movements occur by, for example, staggering yard releases to create a reduced and more orderly flow of inmates that, in turn, decreased the likelihood that any confrontation would go undetected. (*Id*.)

To deter staff misconduct, CDCR restricted access in specified areas where staff misconduct was alleged to have occurred, including the back door of the Facility C gym. (2-ER-206–07.) CDCR also relocated Facility C's associate warden's and captain's offices onto the facility to encourage more hands-on control and better management and mentorship of staff. (*Id.* at 200.) Moving the associate warden's office to the Facility C gym provided increased supervisory presence in a location inmates had labeled as a "blind

spot" for staff misconduct. (*Id*.) This placement also allowed for increased observation of routine staff conduct. (*Id*.)

Facility C's inmate grievance collection process was altered to utilize independent staff who were not assigned to the facility. (2-ER-207.) Under the new procedure, staff from other areas of the prison collected the grievances and provided them to the hiring authority (the warden or acting warden) for review. (*Id*.)

CDCR implemented an electronic Case Management System to provide a real-time repository and data entry system to track and maintain investigation requests, results, and outcomes. (2-ER-202–03.) RJD also ramped up disciplinary efforts. (*Id.* at 205–06.)

Ombudsmen frequently visit RJD. (2-ER-207.) They monitor conditions, listen, answer questions, explain policies, and advocate for fairness; they also provide advice, apprise the administration about significant trends, and recommend changes in policies and procedures. (*Id*.)

In January 2020, CDCR sent an experienced lieutenant from another prison to help update local operational procedures to ensure consistency with departmental policies and expectations and assist with inquiries into staff misconduct. (2-ER-206.)

C. CDCR Provided RJD Staff Targeted Training and Mentorship on Professionalism and Leadership.

CDCR provides comprehensive and regular training. (2-ER-186–88.) Mental health staff received training on how to report staff misconduct. (*Id.* at 199.) All RJD staff received targeted training on topics such as professionalism; courtesy; mental-health challenges; the importance of communication, accountability, and ownership; decreasing violence; improving staff morale; and inmate rehabilitation and programming. (*Id*. at 186–88.)

In October 2018, Reception Center Associate Director Kim Seibel visited the prison to provide training and lead a discussion regarding cultural leadership to all managers and key supervisors. (2-ER-199.) The training explained, from a social science standpoint, the psychological effects of becoming a prisoner and prison guard and the effects on the behavior of those within a prison setting to help overcome the cognitive distortions and stereotypes that often lead to unprofessional behavior. (*Id*.) She also met separately, one-on-one, with the chief deputy warden, associate wardens, and captains to discuss the need for cultural understanding and professionalism. (*Id*.)

The next month, visiting Warden Callahan provided training to staff assigned to the morning and day shifts regarding CDCR's expectations, including attitude, adaptability, and respectfulness in the workplace. (2-ER-199.)

In 2019, two sergeants provided extra training and supervision at RJD, one of whom did it for two months and the other sergeant did it for a full year. (2-ER-207.) These sergeants monitored mass movements; provided instruction concerning meal supervision, searches, and inmate interactions; and trained staff to implement effective communication and de-escalation techniques. (*Id.*)

CDCR also assigned various high-level officials with experience and expertise from other institutions to assist at RJD:

- Former ADA Associate Warden Castro filled in as the ADA Coordinator;
- Associate Warden Phillips was brought in to assist with Business Services operations[2];
- Former Chief of Appeals Voong filled in as the Associate Warden of Operations and helped manage inmate appeals;

[2] The Office of Business Services administers non-information technology contract services and procurement activities; property and records management programs; the mail center, reproduction and correspondence control operations; Small Business and Disabled Veterans Business Enterprise activities; and the Merit Award Program. (2-ER-208.)

- Retired Warden Vasquez drew on prior experience to provide leadership mentoring;
- Recognized use-of-force expert Associate Warden Stewart joined the leadership team as the acting Chief Deputy Warden, oversaw use-of-force training for over a year, and, for three months afterward, served as an associate warden;
- Captain Ross and Analyst Laird provided training concerning appropriate use and reporting of force;
- Retired Chief Ombudsman Hurdle presented leadership and accountability training; and
- Retired Director for the Division of Adult Institutions Harrington mentored Acting Warden Covello.

(2-ER-207–08.)

CDCR also conducted staff complaint training, in late October 2019, to promote accurate and thorough inquiries into allegations of staff misconduct. (2-ER-209.)

D. CDCR Took Tangible Steps to Improve Inmate and Staff Communications.

CDCR took steps to improve communication among staff and between staff and inmates. (2-ER-209.) Captains began holding biweekly meetings to discuss policies, including those concerning effective communication with inmates. (*Id*.) Facility C Captains also began meeting with the inmate-led Men's Advisory Council every two weeks. (*Id*.) Additionally, RJD staff also encouraged the inmate council to reach out to them on an ad hoc basis. (*Id*.)

E. CDCR Voluntarily Implemented the New Allegation Inquiry Management Section (AIMS) System to Track Staff Complaints at RJD

Starting in late January 2020 at certain institutions, and in April 2020 statewide, CDCR activated its new Allegation Inquiry Management Section (AIMS) within its Office of Internal Affairs. (2-ER-209–10.) This new system removed local investigative services unit and supervisory staff from the inquiry process for certain grievances, and placed that responsibility with non-institution staff from the Office of Internal Affairs to provide an independent review. (*Id*.) CDCR staffed AIMS with additional personnel so RJD could be included with the initial January 2020 launch despite being outside the target geographical area. (*Id*.)

The AIMS system redesigned the process for reviewing and responding to staff complaints by creating a process for independent inquiries conducted by personnel outside the originating institution. (4-ER 757 -58; 2-ER-209–10.) Grievances are deposited into a lockbox and retrieved by designated staff from a different facility. (*Id*.) The grievance would be forwarded to AIMS if a warden or chief deputy warden finds that adverse action would likely result if the allegations are true but reasonable belief has not yet been established that the misconduct occurred. (*Id*.)

AIMS staff review all available evidence, and can conduct their own fact gathering activities, before providing a report to the warden. (2-ER-210) Based on this report, the warden determines whether to send the matter to the Office of Internal Affairs for a formal investigation, can take direct adverse action, or take other appropriate action. (*Id*.)

The State Office of the Inspector General provides independent monitoring and feedback on this process. (*See* Mission Statement, Office of the Inspector General, available at https://www.oig.ca.gov/about-us/ (last accessed May 10, 2021) (reflection mission "To safeguard the integrity of the State's correctional system by providing oversight and transparency through monitoring, reporting, and recommending improvements"); Cal. Pen. Code § 6125 (establishing the OIG as an independent governmental entity). This built-in oversight mechanism already has provided an initial assessment of the AIMS process and identified numerous areas for improvement. (OIG Staff Misconduct Process Report, https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-Staff-Misconduct-Process-Report-2021.pdf (last accessed May 10, 2021).)

IV. PLAINTIFFS SOUGHT INJUNCTIVE RELIEF CONCERNING RJD.

Plaintiffs moved the district court to stop alleged asserted abuses at RJD.[3] (CR 2922, 2948.) Plaintiffs' motion, supported by declarations from sixty-six inmates, was framed as a motion for injunctive relief—to stop prison staff from assaulting, abusing, and retaliating against people with disabilities—and not as a motion for enforcement of the *Armstrong* Remedial Plan. (CR 2948.) The motion asserted that RJD staff had unnecessarily directed force at *Armstrong* class members and retaliated against those who reported abuse. (*Id.*; 1-ER-13, 24.)

Plaintiffs' expert opined that class members had been targeted and preyed upon by staff, and some inmates were afraid to file grievances or participate in investigations. (1-ER-19.) Another expert claimed that force was routinely used after staff failed to recognize or reasonably accommodate class members' disabilities. (*Id.* at 20–22.) The prison's investigative process was found to be biased. (*Id.*) Plaintiffs attributed the situation to a "dysfunctional staff culture" that could "not be changed quickly or easily,"

[3] The RJD motion (CR 2922) was initially consolidated with another motion that raised matters concerning seven other prisons (CR 2948, CR 2949), but the district court ultimately addressed the motions in separate orders (1-ER-12), which were separately appealed.

and noted that discipline generally resulted only if there was video evidence or if staff had reported the misconduct. (*Id.* at 20.)

Plaintiffs sought to increase the presence of supervisory staff; create new non-uniformed supervisorial positions; mandate additional stationary surveillance cameras in all areas accessible to inmates; require all officers to use body-worn cameras; require weighing of pepper spray canisters before and after use; and implement various changes to data collection, staff-complaint oversight, use-of-force reviews, and disciplinary processes. (1-ER-20.)

The court issued a briefing schedule (CR 2949) and, while the motion was pending, ordered that two class members be transferred to other prisons based on retaliation concerns stemming from their participation in the Plaintiffs' motions. (CR 2978, CR 2979, CR 3025.)

Defendants opposed the motion for injunctive relief, detailing the affirmative steps—including staffing, extensive training efforts, and new policies and procedures—they took to improve conditions at RJD. (CR 3006 (Opposition); CR 3007 (Request for Judicial Notice).) CDCR acknowledged that breakdowns and failures in the decisions of those involved in the investigation and disciplinary processes had resulted in inappropriate outcomes. (1-ER-20; 2-ER-729–30.) Defendants also detailed the changes

they had effected, including implementing the AIMS system to provide additional oversight over the staff grievance process and remove investigations from the local staff; making policy and leadership changes, restricting access to blind spots; conducting extensive investigations; and increasing supervision, training, and staff discipline. (1-ER-20; 2-ER-198–211, 729–30.) Defendants also reaffirmed their commitment to installing additional stationary cameras as soon as possible, although the planned installation had been delayed because of the budgetary crisis created by the COVID-19 pandemic. (1-ER-17 at n.7; 2-ER-171–72.)

V. THE DISTRICT COURT ORDERED ADDITIONAL REMEDIAL TERMS FOR RJD.

Following a hearing (2-ER-90–167), the district court granted Plaintiffs' motion almost in full, stating it would "modify its prior orders and injunctions" to require Defendants to develop and implement the additional remedial measures based on its determination that *Armstrong* class members had been targeted for mistreatment. (1-ER-2–3, 13, 30 42.) The court construed the misconduct—which consisted of incidents of unnecessary or excessive force and retaliation—as a disability accommodation denial. (1-ER-64–67.) From this, the court concluded Defendants violated the ADA's anti-discrimination and access provision, 42 U.S.C. § 12132, which

is incorporated into the *Armstrong* Remedial Plan, as well as the ADA's anti-interference provisions, 42 U.S.C. § 12203(b), which is not part of the Plan. (1-ER-24, 38.)

Section 12132 commands that public entities cannot discriminate against or exclude otherwise qualified individuals because of a disability. 42 U.S.C. § 12132. The court found there was a staff culture of targeting inmates with disabilities for mistreatment, abuse, retaliation, and other improper behavior and held that some of the misconduct—such as an inmate's forcible removal from his wheelchair or a cell door closing on a person who walks slowly—could only be committed because the victim was disabled. (1-ER-31, 33 –34.) The court opined that "[a] failure to provide a reasonable accommodation can occur where a correctional officer could have used less force or no force during the performance of his penological duties with respect to a disabled person." (1-ER-24.)

The district court also found a violation of the ADA's anti-interference provisions, 42 U.S.C. § 12203(b), which is not incorporated into the *Armstrong* Remedial Plan. Section 12203(b) prohibits interference, coercion, or intimidation with a person exercising or enjoying rights protected by the ADA. (1-ER-37–38.)

The per capita incidents where force was used decreased following CDCR's implementation of concerted corrective measures in the fall of 2018, but the district court focused only the difference in the number of reports between 2017 and 2019. (1-ER-44–45.) The district court did not consider the per capita report rates (i.e., the number of reports in relation to the number of inmates), the annual increase in *Armstrong* class members housed at RJD each year, or the decrease in per capita report rates between 2018 (when CDCR began implanting concerted remedial efforts) and 2019 (when the remedial efforts were ongoing). (*Id*.)

The district court credited select class members' statements that they had refrained from requesting accommodations or filing grievances because of staff misconduct and found that Defendants' data did not "negate the possibility that class members refrained from filing ADA requests of grievances" because of threats, intimidation, or coercion. (*compare* 1-ER-37–38; *with* 4-ER-770–75 (showing over 3,800 ADA-specific grievances and accommodation requests submitted by class members at RJD from 2017 to 2019), *and* 772–846 (showing that Plaintiffs' inmate declarants submitted over 1,000 grievances and requests from January 2017 to March 2020).)

The court also found that RJD's policies and procedures were not properly utilized and applied, the newly implemented investigative process

was ineffective, and the prison had not adequately logged instances of non-compliance with the *Armstrong* Remedial Plan and ADA in the court-ordered accountability logs. (1-ER-38, 40–41.)

The district court opined that "the root cause" of these violations was a systemic lack of adequate investigation and discipline, and that the policies, procedures, and monitoring mechanisms in place were ineffective at curbing the violations. (1-ER-42–43.) The court held that official reporting and investigating requirements were rendered ineffective by a deeply ingrained staff culture of looking the other way when staff misconduct was alleged, and by the reluctance of inmates and staff to assist with the investigations into staff misconduct for fear of retaliation, with each factor feeding the other in a cycle that was difficult to break. (*Id*.)

The district court directed Defendants to develop a plan with specific remedial measures to improve the prison's policies and procedures for supervising staff, investigating staff misconduct, and disciplining staff. (1-ER-50.) These remedial measures include: (1) both body-worn and stationary cameras to capture interactions with class members; (2) indefinite retention of any footage that captures "use of force and other triggering events," and a minimum retention requirement of ninety days for all other interactions with class members; (3) reformation of the staff complaint,

investigation, and discipline process to provide unbiased, comprehensive, investigations, consistent discipline, and (when appropriate) referrals for criminal prosecution; (4) changes to the pepper spray policy (citing only two incidents of improper usage); (5) imposition of training; (6) increased supervision by requiring additional sergeants to be assigned to every yard during every shift, without regard to the staffing and other changes that CDCR made to improve supervision; (7) additional monitoring and information sharing; and (8) imposition of an anti-retaliation provision. (*Id.* at 4–7, 50–61.)

Addressing the PLRA's stringent requirements, the court concluded that the relief imposed was narrowly tailored because it applied only at RJD,[4] was the least that could be done to remedy the asserted violations, and was not impermissibly intrusive because it did not micromanage prison operations. (1-ER-73–74.)

STANDARD OF REVIEW

A district court's factual findings are reviewed for clear error, the scope of the injunction is reviewed for abuse of discretion, and the legal

[4] The court subsequently issued a similar injunction covering five additional state prisons (CR 3217, CR 3218), which has been separately appealed.

conclusions underlying the decision are reviewed de novo. *See Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 653 (9th Cir. 2002); *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 635 (9th Cir. 2015).

"[A]n overbroad injunction is an abuse of discretion." *California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018).

SUMMARY OF THE ARGUMENT

This Court should reverse the RJD injunction.

1. The district court exceeded its jurisdiction when it imposed sweeping injunctive measures that are of a fundamentally different character than the claims that prompted this litigation. The remedial measures do not fall within the institutional accessibility disability accommodation reforms contemplated by the operative complaint, *Armstrong* Remedial Plan, and remedial orders, and instead are aimed at distinct instances of staff misconduct that are of a wholly different nature than from the original disability accommodation claims.

2. Judicial intervention was unnecessary because CDCR's concerted remedial efforts already had begun improving the staff culture at RJD. The district court relied on an erroneous interpretation of the statistical evidence concerning the frequency with which force was used to justify its broad

judicial takeover. But these statistical conclusions were skewed because they considered only the number of use of force reports without regard to corresponding increases in the prison's population and without focusing on the time period following CDCR's implementation of concerted corrective measures. When including these relevant factors, the statistical evidence shows that CDCR's efforts already had begun to effect measurable, positive changes.

3. The district court's injunction did not comply with the PLRA's requirements that prospective injunctive relief be narrowly drawn, necessary to correct (as relevant here) the ADA violation, and the least intrusive means to remedy that violation. The court imposed cumulative and overbroad remedies, including measures that Defendants were already implementing and fine-tuning independent of the injunction. The court transgressed the limits imposed by the PLRA by entwining itself in prison administration at a granular level, for example by dictating the retention period for surveillance footage and directing how increased supervision would be achieved, down to directing the assignment of additional sergeants on each yard and every shift. The court also imposed redundant mechanisms for monitoring and oversight, all purportedly aimed at addressing the same violation: it required both stationary video surveillance cameras and body-worn cameras, reforms

to the staff complaint, investigation, and discipline process; mandated information sharing (to potentially include privileged documents);, and third-party monitoring.

The injunctive relief imposed oversteps the district court's authority and should be reversed.

ARGUMENT

I. THE DISTRICT COURT EXCEEDED ITS JURISDICTION BY GRANTING INJUNCTIVE RELIEF THAT EXTENDS BEYOND THE SCOPE OF THE CLAIMS IN THE OPERATIVE COMPLAINT.

A. A District Court's Authority to Grant Equitable Relief Is Restricted to the Particular Claims Initially Recognized.

In the context of this ADA action concerning the accessibility of programming and structural features of the physical plant, the district court's imposition of cumulative mechanisms to overtake prison security operations, impose third-party oversight and information sharing, and otherwise monitor staff misconduct and uses of force is impermissible.

Federal remedial jurisdiction is limited. *Missouri v. Jenkins*, 515 U.S. 70, 92–93 (1995). The courts' remedial powers are limited by the nature and extent of the violation initially found to have existed. *Id*.; *Freeman v. Pitts*, 503 U.S. 467, 489 (1992) ("The authority of the court is invoked at the outset to remedy particular [] violations."). Thus, "[a] remedy is justifiable

only insofar as it advances the ultimate objective of alleviating the initial [] violation." *Freeman*, 503 U.S. at 489. "An overbroad injunction is an abuse of discretion." *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991).

The threshold requirement for imposing injunctive relief is "a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint." *Pacific Radiation Oncology, LLC v. Doe*, 810 F.3d 631, 636 (9th Cir. 2015). In *Pacific Radiation Oncology*, this Court explained that there must exist a "sufficient nexus" between the injunctive relief granted and the claims asserted in the complaint. *Id*. at 633–34. The relationship between the injunctive relief and the underlying complaint is "sufficiently strong" where the injunction "would grant 'relief of the same character as that which may be granted finally.'" *Id*. at 636 (citing *De Beers Consol. Mines v. U.S.*, 325 U.S. 212, 220 (1989)).

This Court adopted the nexus requirement from *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994) (per curiam). *Pacific Radiation Oncology*, 810 F.3d at 636. The *Devose* prisoner's lawsuit asserted Eighth Amendment violations but he sought injunctive relief based on claims that he had been retaliated against for his litigation. *Devose*, 42 F.3d at 471. The Eighth

Circuit held that the asserted retaliation could not provide the basis for a preliminary injunction because it was "based on new assertions of mistreatment that are entirely different from the claim raised and the relief requested in his inadequate medical treatment lawsuit." *Id*.

In *Pacific Radiation Oncology*, this Court considered whether injunctive relief could be granted based on newly asserted privacy claims concerning disclosure of patient information that was entwined with the parties' litigation of an underlying unfair trade practices claim. 810 F.3d at 633–38. The plaintiffs sought an injunction to preclude the defendants from obtaining patient records from a third party during discovery, and to address their inadvertent public filing of a patient list. *Id*. This Court held that the district court properly declined to grant injunctive relief because the operative complaint did not contain any claim alleging the improper review or use of confidential patient information. *Id*.

As detailed below, the injunctive relief here, like that in *Devose* and *Pacific Radiation Oncology*, stems from alleged misconduct of a different character than that at issue in the underlying litigation.

B. The Alleged Instances Of Physical Abuse and Retaliation Are Categorically Distinct from the Complaint's Allegations That Defendants Had Failed to Comply with the ADA and RA.

The RJD injunction exceeds the district court's jurisdiction because it was implemented to address instances of staff misconduct that are categorically distinct from the institutional denials of programs, services, activities, and accommodations litigated by the class. (Compare 1-ER-68 ("The purpose of the ARP was to set forth specific actions that [CDCR] would take to bring their programs, activities, services, and facilities into compliance with the ADA and the RA.") with CR 2922 ("Motion to Stop Defendants From Assaulting, Abusing, and Retaliating Against People with Disabilities").)

The court cited only one provision of the *Armstrong* Remedial Plan that Defendants allegedly violated: Section I, which generally requires Defendants to comply with the ADA's anti-discrimination and access provisions, 42 U.S.C. § 12132. (1-ER-63–67.) This provision broadly prohibits public entities from denying the benefits of the services, programs, or activities to qualified individuals by reason of a disability. 42 U.S.C. § 12132.

The district court's remedial order goes well beyond the scope of that statute. It overtakes correctional security operations, use-of-force review protocols, and the staff-misconduct inquiry process, as well as creates additional oversight, to remedy instances where employees engaged in conduct amounting to retaliation or excessive or unnecessary force. (1-ER-67–70.) The district court's remedial jurisdiction cannot be expanded to encompass these newly raised claims. *See Freeman*, 503 U.S. at 489 (looking to particular violation initially raised); *Brumfield v. Louisiana State Bd. of Educ*., 806 F.3d 289, 299 (5th Cir. 2015) ("The correct analysis of the scope of the court's continuing jurisdiction begins by identifying the constitutional infirmity [initially] addressed by this case").

The operative complaint concerns institutional disability-accommodation policies and structural accessibility features, not staff misconduct, and it does not address any incidents where retaliation or unnecessary force was directed at an inmate. (2-ER-325–41); Fed. R. Civ. P. 8 (requiring a short and plain statement of the claim showing that the pleader is entitled to relief); Fed. R. Civ. P. 10 (requiring a party to state its claims in the pleading); *Swierkiewicz v. Sorema*, 534 U.S. 506, 514-15 (2002) (holding that the federal notice-pleading standard "was adopted to focus litigation on the merits of a claim.").

The district court's 1996 remedial order is similarly grounded in disability accommodations to prison programming and building structures under the ADA and RA—and not staff misconduct, retaliation, or unnecessary force. (2-ER-346–53.) The district court expressly limited discovery to these ADA and RA claims and retained jurisdiction to enforce only those claims. (*Id*. at 350 ("The Court shall retain jurisdiction to enforce the terms of this Order and any order approving the guidelines, policies, procedures, plans or evaluations set forth above.").) The remedial plan and permanent injunction are similarly limited. (*Id.* at 253–59, 260–324.)

C. The District Court Exceeded Its Jurisdiction When It Granted Injunctive Relief on New and Categorically Different Claims During the Remedial Phase of Litigation.

The district court's consideration of new allegations that were never litigated or established in this class action is improper for another reason. Class actions are an exception to the general rule requiring litigation to be conducted only on behalf of individual named parties. *WalMart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). To justify such a departure, the federal class certification rules demand that the named plaintiffs demonstrate that they are appropriate representatives of the class whose claims they wish to litigate by showing that they possess the same interests and suffer the same injury. Fed. R. Civ. P. 23. The class claims are limited to those fairly

encompassed by the named plaintiffs' claims. *Wal-Mart Stores, Inc*., 564 U.S. at 350.

These rules ensure that class claims will depend upon a common contention that is capable of class-wide resolution, "which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc*., 564 U.S. at 350. No such determination was made with respect to allegations underlying the order granting injunctive relief. (1-ER-8–79.)

The district court also cannot rely on the ADA's anti-interference provision, 42 U.S.C. § 12203(b), to bring asserted incidents of retaliation and unjustified force committed by nonparty employees into this action. The class claims never encompassed this sort of misconduct and the *Armstrong* Remedial Plan did not incorporate § 12203(b) or otherwise contemplate the inclusion of such claims. (1-ER-260–324, 325–341, 346–53.)

This class action is not of unlimited scope; it does not encompass every conceivable harm that may befall a disabled inmate or every theoretical violation of the ADA. The district court exceeded its jurisdiction, which is limited to enforcement of the *Armstrong* Remedial Plan. Because the district court granted injunctive relief on new and categorically different claims

during the remedial phase of litigation, the injunctive relief order should be reversed.

D. The Asserted Retaliatory and Abusive Conduct Does Not Fall under the Purview Of the Remedial Order and Injunction That the District Court Sought to Enforce.

Since the retaliatory and abusive conduct asserted here does not fall under the purview of the *Armstrong* Remedial Plan or prior injunctions—which concern only bringing CDCR's programs and facilities into compliance with the ADA and the RA (1-ER-64–66, 68)—the district court largely relies on *Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211 (9th Cir. 2014)[5], to bridge the gap. *Sheehan*, however, is distinguishable.

In *Sheehan*, police officers were called for assistance transporting a woman who was experiencing a mental health crisis to an inpatient facility. *Id*. at 1218, 1233. By the time the officers arrived, the woman had locked herself in a room and threatened anyone who entered. *Id*. The officers forced entry, then retreated. *Id*. Then, when the officers again forced entry without waiting for backup, the woman threatened them with a knife, causing the officers to use deadly force. *Id*. There was no dispute that the officers' second entry and use of force would have been reasonable had the woman

[5] Rev'd in part, cert. dismissed in part sub nom., *City & Cty. of San Francisco v. Sheehan*, 575 U.S. 600 (2015).

not been disabled. *Id.* at 1218, 1225, 1233; *City & Cty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 612–13 (2015).

Sheehan held that the ADA applies to arrests and a violation can occur where the police fail to reasonably accommodate the person's disability in the course of investigation or arrest, "causing the person to suffer greater injury or indignity in that process than other arrestees." 743 F.3d at 1232. Thus, a reasonable jury could find that the second forced entry violated the ADA if the officer had failed to account for the woman's mental illness or employ generally accepted police practices for peaceably resolving a confrontation with a person with mental illness. *Id.*

Noting that prison policies also require officers to take mental illness into account, the district court here extended *Sheehan* to hold that an ADA violation could occur in the prison context where a correctional officer could have used less force or no force during the performance of his penological duties with respect to a disabled person. (1-ER-66.) But this Court has never extended *Sheehan* to this context.

And as a threshold matter, regardless of whether *Sheehan* establishes the potential for ADA liability, the cited incidents of officer misconduct—through retaliation and excessive force—are not fairly included in this

litigation. Certainly, such conduct was not part of the parties' agreement on a Stipulation and Order for Procedures to Determine Liability and Remedy (2-ER-354–78; 3-ER-380–400), and was not contemplated by the remedial order entered (2-ER-346 –53). Thus, the district court acted beyond its jurisdiction by remedying violation of an entirely different character than the disability accommodation policies and structural accessibility features at issue in this litigation.

Moreover, even if a use of force without regard to the arrestee's mental condition in the course of an otherwise lawful arrest can amount to disability discrimination that does not mean that every use of force against a disabled inmate in the prison setting categorically implicates an ADA claim. This action should not be extended to encompass retaliation and use-of-force incidents resulting from officer misconduct. Investigations into allegations of retaliation and excessive force under the ADA necessarily are fact-intensive, and the allegations here have never been subject to the rigorous standards of proof in the context of class action litigation and found sufficient to support system-wide relief, particularly in light of the nature of the ADA claim in this context. Because Plaintiffs have not shown the existence of pervasive use-of-force incidents actionable under the ADA, the

district court's judicial takeover of prison policies and security operations and imposition of other onerous requirements was improper.

II. JUDICIAL INTERVENTION WAS UNNECESSARY BECAUSE CDCR'S CONCERTED CORRECTIVE MEASURES HAD ALREADY BEGUN DECREASING THE PER CAPITA INCIDENTS INVOLVING FORCE.

The district court found that a broad judicial takeover was justified based on an erroneous interpretation of the statistical evidence concerning the frequency with which force was used at RJD. However, the district court erred by relying on statistical conclusions that are not probative to the determination of whether CDCR's remedial efforts were effective.

The district court interpreted the statistical evidence to find that CDCR's measures were ineffective because the number of reports of violence had increased on two facilities. But the court's findings were skewed because the court failed to consider the change in prison population or focus on the time period following CDCR's implementation of concerted corrective measures in the fall of 2018. Taking these factors into consideration, the per capita frequency with which force was used at RJD *decreased* in 2019, dropping by more than 30% prison-wide:

TABLE A: USE-OF-FORCE INCIDENTS AT RJD					
	Column A	Column B	Column C	Column D	Column E
	RJD Inmate Population	RJD *Armstrong* Population[6]	RJD Reported Use-of-Force Incidents	Number of Reports Relative to Class Size $[\frac{Column\ C}{Column\ B}]$	Per Capita Change in Use-of-Force Incidents for Class Members $[\frac{Column\ D_{(2019)} - Column\ D_{(year\ x)}}{\lvert Column\ D_{(year\ x)} \rvert}]$
2017	6,124	1,661	242	0.146	[*baseline*]
2018	6,735 *+611 inmates from 2017.*	1,882 *+221 class members from 2017 (13% increase).*	304	0.162	[*baseline*]
2019	6,675 *+551 inmates from 2017;* *-60 inmates from 2018.*	1,977 *+316 class members from 2017 (19% increase);* *+95 class members from 2018 (5% increase).*	196	0.099	• **32% decrease from 2017;** • **39% decrease from 2018**.

(4-ER-770 (prison population data) [Columns A and B], 694–95 (use-of-force data) [Column C]; 2-ER-198–212 (documenting concerted corrective measures beginning in fall 2018).) Even if some inmates had refrained from reporting, the evidence demonstrates a downward trend in use-of-force

[6] The record shows that the proportion of RJD inmates who are *Armstrong* class members, or $[\frac{Column\ B}{Column\ A}]$, consistently increased over the three-year period (27% in 2017, 28% in 2018, and 29% in 2019).

incidents following CDCR's targeted response in the fall of 2018 despite an increase in class size.[7] (*Id.*)

The district court focused on calculations that it interpreted as showing an increase in use-of-force reports on two facilities. (1-ER-45; see also 2-ER-118–19, 121–23.) This constitutes error for two reasons. First, the calculations on which the court relied consider only the number of use-of-force reports, without regard to significant changes in the prison's population size. (1-ER-45 (citing Grunfeld Decl. ¶¶ 64-65[8]); 4-ER-770 (showing population changes).) And second, by focusing on the reporting changes between 2017 and 2019, the court disregarded the improvements resulting from CDCR's concerted remedial efforts. (*Id.*; 2-ER-198–212 (documenting concerted corrective measures beginning in fall 2018); *see also* TABLE A, above, (showing decrease in per capita use of force in 2019, when the remedial efforts were ongoing).) When taking all of his information into account, the record paints a very different picture: the incidents involving force decreased on both facilities.

[7] Because there is no evidence that the proportion of nonreporting inmates increased over this period, the existence of nonreporting inmates does not undermine this analysis.

[8] This citation is located in the record at 4-ER-694–95.

The district court's finding that the number of use-of-force reports on Facility A increased by 16% from 2017 to 2019 is misplaced. In 2019, during CDCR's concerted staffing, training, mentorship, and leadership improvements, Facility A's per capita use-of-force reports *decreased 14% from the prior year*.[9] (4-ER-726 (facility population data), 694–95 (use-of-force data); 2-ER-198–212 (documenting concerted corrective measures beginning in fall 2018).)

Likewise, the district court cited calculations showing that the number of reports of force on Facility D had increased by 50% between 2017 and 2019. (1-ER-45; *but see* 4-ER-726 (showing corresponding population increase).) Again, looking at 2019—the year following the start of CDCR's ongoing concerted efforts and also considering the increased number of inmates on the facility—the per capita report rate did not increase and, if anything, *decreased* slightly from the prior year.[10] (4-ER-726 (prison population data) [Columns A and B], 694–95 (use-of-force data) [Column

[9] Facility A had 53 reports with 716 class members in 2018 (a rate of 0.0740) and 44 reports with 694 class members in 2019 (a rate of 0.0634). This represents a 14% decrease (or $\frac{0.0634-0.0740}{|0.0740|}$).

[10] Facility D had 20 reports with 831 class members in 2018 (a rate of 0.02406) and 21 reports with 876 class members in 2019 (a rate of 0.02397). This represents a 0.37% decrease (or $\frac{0.02397-0.02406}{|0.02406|}$).

C]; 2-ER-198–212 (documenting concerted corrective measures beginning in fall 2018).)

These statistics show that CDCR's remedial efforts were already having a positive effect.

III. THE INJUNCTION EXCEEDS THE PLRA'S LIMITATIONS RESTRICTING THE SCOPE AND AVAILABILITY OF INJUNCTIVE RELIEF IN PRISON-CONDITION CASES.

A. The PLRA Limits Grants Of Prospective Relief Concerning Prison Conditions.

The PLRA limits federal courts' power to grant prospective injunctive relief by restricting the availability and scope of prospective injunctive relief in actions concerning prison conditions. 18 U.S.C. § 3626(a); *Lewis v. Casey*, 518 U.S. 343, 349, 363 (1996) (cautioning against courts thrusting themselves into prison administration).

Congress enacted the PLRA to "revive the hands-off doctrine" by removing the judiciary from prison management and restore "judicial quiescence derived from federalism and separation of powers concerns." *Gilmore v. California*, 220 F.3d 987, 991, 996–97 (9th Cir. 2000). Thus, the PLRA "operates simultaneously to restrict the equity jurisdiction of federal courts and to protect the bargaining power of prison administrators." *Id*. at 999 (also noting that the PLRA precludes courts from granting or approving

relief that binds prison administrators to "do more than the constitutional minimum.")

Courts have long recognized the need for deference to experienced and expert prison administrators faced with the difficult and dangerous task of housing large numbers of convicted criminals. *Bell v. Wolfish*, 441 U.S. 520, 547–548 (1979). Consistent with that understanding, before granting prospective injunctive relief, trial courts "must make the findings mandated by the PLRA." *Oluwa v. Gomez*, 133 F.3d 1237, 1239 (9th Cir. 1998).

The PLRA directs that any grant of prospective relief must be "narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and [be] the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1). This analysis ensures that the injunctive relief imposed will "heel close to the identified violation." *Armstrong v. Brown*, 768 F.3d 975, 983–84 (9th Cir. 2014) (internal quotation marks and brackets omitted).

While courts may provide guidance and set clear objectives, the PLRA does not permit attempts to micro-manage prison administration. *Armstrong*, 768 F.3d at 983. State prisons must be granted "the widest latitude in the dispatch of its own internal affairs" to avoid unnecessary disruption to the "normal course of proceeding." *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th

Cir. 2001) (quoting *Rizzo v. Goode*, 423 U.S. 362, 378–79 (1976)). Thus, the overarching inquiry is whether the same vindication of federal rights could be achieved with less court involvement "in directing the details of defendants' operations." *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1071 (9th Cir. 2010). With respect to the RJD Order, it can.

B. The Surveillance Mandates Are Not Necessary, Narrowly Tailored, Or the Least Intrusive Means to Remedy the ADA and RA Violation.

The district court's surveillance directives do not meet the PLRA's needs-narrowness-intrusiveness requirement. 18 U.SC. § 3636(a)(1)(A).

First, the court erred by including fixed surveillance cameras among the remedial measures imposed. Aside from an installation delay that resulted from the on-going pandemic, CDCR was already independently committed to installing fixed surveillance cameras that will effectively blanket the prison. (2-ER-171–72, 182–83).) Thus, a court order mandating such surveillance is unnecessary, not narrowly tailored, and needlessly overtakes prison operations. *Gomez*, 255 F.3d at 1128 (requiring courts to "observe the requirement that the government be granted the 'widest latitude in the dispatch of its own internal affairs.'").

Absent necessity, the PLRA precludes courts from becoming entangled in prison policy and operations, as occurred here when the district court

imposed the video surveillance remedy, accompanied by ongoing reporting, monitoring, and court oversight for the indefinite future.

Second, the district court erred by mandating body-worn cameras in addition to the fixed cameras. Employing cumulative surveillance tools is neither necessary nor "narrowly drawn." 18 U.S.C. § 3626(a)(1); (1-ER-73 (concluding that the remedial measures were narrowly tailored because they were limited to one prison).) Narrow tailoring requires a proportional fit between the remedy's ends and the means chosen to accomplish those ends, such that the ordered relief extends no further than necessary to remedy the violation. *Brown v. Plata*, 563 U.S. 493, 531 (2011). Body-worn cameras are a cumulative remedy because the fixed surveillance footage will cover all areas to which RJD inmates have access, including exercise yards, housing units, sally-ports, dining halls, program areas, and gyms.[11] 18 U.S.C. § 3626(a)(1). (1-ER-15, 17, 50).

Plaintiffs' own expert acknowledges that fixed surveillance cameras are "one of the single most important things a prison can do to dramatically

[11] RJD has a number of fixed cameras outside its five housing units, six cameras in the gym, and ninety cameras in Facility E (a newer facility that included cameras when it was built). (1-ER-15.) The district court held that these cameras, except those on Facility E, were older models with poor clarity that did not eliminate all blind spots. (*Id*.)

reduce staff misconduct." (4-ER-878–89, 898–90.) Indeed, the installation of fixed cameras in problem areas was responsible for "a 50% reduction in violence" in the areas where installed at one prison and "all but . . . eliminated" reports of physical abuse at another prison. (4-ER-907–910.) The fixed cameras here should be even more effective because they will not be limited to problem areas—CDCR already has blanketed the institution with stationary cameras. (1-ER-4, 15, 17, 50.)

The body-worn camera mandate is also improper. First, the district court found that body-worn cameras were merely "likely" to improve investigations of staff misconduct and reduce the incidence of violations. (1-ER-53–54.) Indeed, unlike fixed cameras, there is little existing evidence regarding the effectiveness of body-worn cameras in the prison context and "likely to improve" is distinct from the statutory requirement that any remedy imposed be "necessary to correct the violation of the Federal right." *Compare* 18 U.S.C. § 3626(a)(1) *with* "Likely" Merriam-Webster.com https://www.merriam-webster.com/dictionary/likely (last accessed May 10, 2021) (defining "likely" as "having a high probability of occurring," "apparently qualified," "reliable," or "promising"). Any "likely" benefit falls short of the PLRA's "necessary" mandate. *Ball v. LeBlanc*, 792 F.3d 584, 599 (7th Cir. 2015) ("[P]laintiffs are not entitled to the most effective

available remedy; they are entitled to a remedy that eliminates the constitutional injury.").

And further, there is substantial overlap between any information body-worn cameras provide and that captured by the fixed cameras because both will operate in the same areas. (1-ER-4, 53; 2-ER-184–85.)

These cumulative surveillance reforms—some of which CDCR had already independently committed to adopt (2-ER-186–88, 208–09)—extend far beyond the "least intrusive means necessary" and impermissibly fail to accord adequate deference to the judgment of the prison authorities. 18 U.S.C. § 3626(a)(1); *Armstrong*, 622 F.3d at 1070 (requiring court-directed reforms to correct the asserted federal violation "with the minimal impact possible on defendants' discretion over their policies and procedures."); *Gomez*, 255 F.3d at 1128 (demanding that a government be granted "the 'widest latitude in the dispatch of its own internal affairs.'").

And regardless, as explained above, it was not necessary for the court to mandate stationary cameras because CDCR already had committed to installing them. (2-ER-172, 182–183.)

C. Mandatory Indefinite Retention Of Video Footage Capturing Uses Of Force and "Other Triggering Events" Is Unnecessary, Not Narrowly Tailored, and Not the Least Intrusive Remedy Available.

The video-surveillance retention policy contravenes each element of the PLRA's needs-narrowness-intrusiveness requirement because the district court has directed that qualifying recordings be retained *indefinitely*:

> The [] Remedial Plan must contain policies and procedures regarding the use of body-worn cameras and the use of camera footage [] from any type of camera, including requirements that all footage be retained for a minimum of ninety days, that *footage of use of force and other triggering events involving class members at RJD be retained indefinitely*, and that footage, when available, be reviewed and considered as part of the investigation of any incident.

(1-ER-4 (emphasis added).)

By its terms, the indefinite-retention policy extends far beyond what is "necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1). Indeed, even the courts' authority to act to correct federal violations is subject to a statute of limitation. *See Klein v. City of Beverly Hills*, 865 F.3d 1276, 1278 (9th Cir. 2017) (applying two-year limitation period to personal injury claims under § 1983); *Sharkey v. O'Neal*, 778 F.3d 767, 773 (9th Cir. 2015) (applying three-year limitation period under the ADA), *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 959 (9th Cir. 2006)

(acknowledging duty to preserve evidence during litigation). Requiring the retention of footage so far beyond the limitation period serves no substantive purpose: it will not help identify, address, or correct any violation that may have occurred.

Additionally, the indefinite retention policy here provides no reasonable exceptions, even though there are obvious situations where continuing to maintain the footage will serve no purpose. (1-ER-4.) For example, retaining footage would serve little purpose when the resulting claim already has been litigated to a decision on the merits, or when the limitations period has long since expired. Thus, this policy exceeds what is "needed" because it is overbroad in both duration and scope.

The district court erroneously concluded that the indefinite video-retention policy is "narrowly drawn" simply because it was limited to one prison. *See* 18 U.S.C. § 3626(a)(1). (1-ER-73.) The PLRA's narrowness requirement demands more than geographical limitations. 18 U.S.C. § 3636(a)(1)(A). Narrow tailoring requires "a fit between the remedy's ends and the means chosen to accomplish those ends." *Brown v. Plata*, 563 U.S. 493, 531 (2011) (internal markings omitted). This requires proportionality between the scope of the remedy and the scope of the violation, such that the ordered relief extends no further than necessary to remedy the violation. *Id*.

An unbounded indefinite retention policy extends far beyond that which is needed to address any federal violation that arises, and thus is not "narrowly drawn."

Finally, mandating the maximum possible retention period for all specified incident footage is unnecessarily intrusive. 18 U.S.C. § 3626(a)(1) (limiting relief to the "least intrusive means necessary"). Court-directed reforms should correct the asserted violations "with the minimal impact possible on defendants' discretion over their policies and procedures." *Armstrong*, 622 F.3d at 1070.

The court here broadly opined that the remedial measures are permissible because they do not micromanage prison operations and Defendants are left with "discretion to craft policies and procedures to implement the additional remedial measures." (1-ER-74.) But the bold directive mandating *indefinite* retention of *all* video footage involving class members that contain *any* use of force or triggering event leaves no significant discretion to prison administrators. (1-ER-10.)

The core concern of the intrusiveness inquiry is whether the district court has "enmeshed [itself] in the minutiae of prison operations" beyond what is necessary to vindicate plaintiffs' federal rights. *See Lewis*, 518 U.S. at 362 (*quoting Bell*, 441 U.S. at 562); *Gomez*, 255 F.3d at 1128 (requiring

courts to "observe the requirement that the government be granted the 'widest latitude in the dispatch of its own internal affairs.'").

In *Lewis v. Casey*, the Supreme Court disapproved of sweeping remedial measures intended to ensure court access that specified the hours the prison library would remain open and the amount of access inmates would receive. *Lewis*, 518 U.S. at 347–48, 361–63. Like the relief imposed in *Lewis*, the retention policy here is "inordinately—indeed, wildly—intrusive" and it "fails to accord adequate deference to the judgment of the prison authorities." *Id*. Because the same vindication of federal rights could have been achieved with less involvement by the court in directing the details of the retention policy, *Armstrong v. Schwarzenegger*, 622 F.3d at 1071, the indefinite retention policy cannot stand.

D. The Mandated Reforms to CDCR's Pepper Spray Policy Contravene the PLRA's Needs-Narrowness-Intrusiveness Requirements.

The district court's directive to reform CDCR's existing pepper spray policy as it relates to class members without pointing either to a pervasive problem or to a failure in the policy contravenes the PLRA's needs-narrowness-intrusiveness requirement. 18 U.SC. § 3636(a)(1)(A).

Citing only two examples where pepper spray was used against class members in the absence of an imminent threat, the district court nonetheless required CDCR to modify its policies on pepper spray. (1-ER-34–36.)

This directive is improper because the record does not demonstrate any pervasive use of pepper spray on class members. A remedial order must be limited by the extent of the violation found. *Lewis*, 518 U.S. at 549; *Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406, 420 (1977) ("[O]nly if there has been systematic impact may there be systematic relief."); *see, e.g.*, *Armstrong*, 622 F.3d at 1073 ("The evidence of ADA violations in the jails with regard to class members, however, cannot be described as 'substantial': it is composed largely of single incidents that could be isolated."). Indeed, in *Armstrong v. Schwarzenegger*, 622 F.3d at 1073, this Court vacated an injunction requiring state prisons to accommodate the disability needs of parolees housed in county jails based on four isolated incidents. Since the decision here rests on only two incidents, the remedial requirements regarding pepper spray should be overturned.

E. The Court-Imposed Training Requirements Are Unnecessary and Impermissibly Intrusive.

The court-imposed training requirements are unnecessary and impermissibly intrusive because they needlessly micromanage CDCR's

training operations. 18 U.SC. § 3636(a)(1)(A). Although Plaintiffs concede that RJD's staff culture will "not be changed quickly or easily" (1-ER-20), the district court found that the targeted training efforts that had been in effect for just over one year were not effective at stopping violations of class member's rights. (1-ER-59–60.) As explained above, this conclusion is misplaced. Even if the speculation that some inmates refrained from reporting were true, the evidence demonstrates a downward trend in use-of-force incidents once CDCR began implementing targeted training in the fall of 2018. (*See*, Argument, Section II (showing a decrease in use-of-force incidents prison wide).)

Further, the court-imposed training requirements are unnecessary because CDCR already provides the training that the district court directed it to develop and implement, including 6, 59–60.)

- Among other things, each correctional officer receives comprehensive, in-depth training upon hiring that addresses most of these topics, including human rights, communication and de-escalation, culture, ethics, treatment of offenders, mental-health awareness, diversity, and adherence to various mandates including the *Armstrong* Remedial Plan and CDCR's prohibition of the code of silence. (2-ER-186–88.)
- New officers attend a presentation that focuses on staff conduct; (*Id*.)

- New officers make multiple site visits to focus on rehabilitation and policies and procedures—including those pertaining to protected class members. (*Id*.)

- Custody staff receive an additional sixty-six hours of training each year that include appeals, access to care, offender mental-health needs, and court remedial plans that affect protected class members. (*Id.* at 187.) Every institutional staff member also attends a practical application class and uses an interactive simulator to practice conflict de-escalation and crisis resolution. (*Id.* at 187–88.)

- Additionally, CDCR provides wellness and culture-oriented training to help staff cope with stress, become more resilient, improve perspectives concerning the inmate population, and contribute to a more positive prison environment. (*Id.* at 188.)

- Supervision and leadership training reinforces the use-of-force policies and procedures, including reporting requirements. (*Id*.) Further, every staff member is trained regarding discrimination, harassment, and retaliation. (*Id*.)

- CDCR also provides RJD staff with targeted training on professionalism, courtesy, addressing mental-health challenges, the importance of communication, accountability, and ownership; decreasing violence; improving staff morale; and inmate rehabilitation and programming. (*Id.* at 199.)

- Mental health staff receive training on reporting staff misconduct. (*Id*.)

- And, beginning in the fall of 2018, CDCR engaged numerous experienced leaders from other institutions to provide both formal and informal training, mentorship, and leadership. (*Id*.)

    - This included a targeted cultural leadership training that was provided to all managers and key supervisors to address the effects on behavior within the prison setting that was aimed to help overcome the cognitive distortions and stereotypes that often lead to unprofessional behavior. (*Id*.)

- Separate one-on-one meetings were held with the chief deputy warden, associate wardens, and captains to emphasize the need for cultural understanding and professionalism. (*Id*.)

- The next month, line staff assigned to the day shift received training concerning CDCR's expectations, including attitude, adaptability, and respectfulness in the workplace. (*Id*.)

- Numerous training sessions followed. A retired warden drew on prior experience to provide leadership mentoring and a retired chief ombudsman provided leadership and accountability training. (*Id.* at 207–08.) Training was provided on the appropriate use and reporting of force, and a recognized expert joined the leadership team and oversaw use-of-force training for over a year. (*Id.*) Further, multiple high-level staff were assigned to assist and mentor RJD staff. (*Id.* at 208.)

- CDCR also conducted staff complaint training, in late October 2019, to promote accurate and thorough inquiries into allegations of staff misconduct. (*Id.* at 209.)

The evidence demonstrates that RJD's concerted efforts have made strides. While staff culture may "not be changed quickly or easily" (1-ER-207), the evidence shows that CDCR's concerted training efforts from the fall of 2018 through 2019 coincide with a marked decrease in use-of-force reports throughout 2019. (*See* Argument II, Table A (citing 4-ER-726, 694–95; 2-ER-198–212.) Compared with the prior year, use-of-force incidents decreased on every facility in 2019 and dropped by 39% prison-wide. (*Id.*)

That CDCR has already been providing the increased training the court is now ordering renders this aspect of the injunction unnecessary, not narrowly tailored, and not the least intrusive means to ensure compliance with the ADA and RA.

F. The Mandated Increase in Supervisory Staffing Is Unnecessary, Not Narrowly Drawn, and Overly Intrusive.

The court also failed to heed the PLRA's needs-narrowness-intrusiveness requirement when it mandated an increase in supervisory staffing to include posting additional sergeants on all yards, prison-wide, during all shifts. 18 U.SC. § 3636(a)(1)(A).

The required increase in supervisory staff is neither necessary nor "narrowly drawn." 18 U.S.C. § 3626(a)(1); *Brown*, 563 U.S. at 531 (requiring a proportional fit between the remedy's ends and the means chosen to accomplish those ends).

To justify this staffing requirement, the court noted that the strike team's report had recommended increasing supervisory staffing. (1-ER-58–59.) But the strike team report predated numerous changes, including the targeted training, staggering of inmate releases, and relocation of supervisory officers on Facility C. (2-ER-200–212.) Other changes also reduced the need for additional supervision. CDCR had already committed

to essentially blanket RJD with stationary cameras, which Plaintiffs concede should be highly effective at reducing or deterring staff misconduct. (4-ER-878–89, 899–900, 907–10; 2-ER-171–72, 182–83; 1-ER-17, 51.) The district court failed to consider the effect that these changes would have and, thus, incorrectly ordered a cumulative remedy that is not narrowly drawn.

The staffing requirement is also unnecessarily intrusive because it more than minimally impacts Defendants' discretion over staffing. 18 U.S.C. § 3626(a)(1); *Armstrong*, 622 F.3d at 1070; *Gomez*, 255 F.3d at 1128 (requiring courts to "observe the requirement that the government be granted the 'widest latitude in the dispatch of its own internal affairs.'"). The court did not accord adequate deference to the judgment of the prison authorities when issuing this staffing order.

G. The Mandated Investigation and Discipline Reforms Are Unnecessary, Not Narrowly Drawn, and Overly Intrusive.

The district court improperly implemented a directive requiring CDCR to develop measures to reform the staff complaint, investigation, and discipline process for class members, including consistently disciplining officers, referring matters for criminal prosecution (when warranted), and reassigning any officer accused of serial ADA or *Armstrong* Remedial Plan violations. (1-ER-55–57.)

The degree to which the court is overseeing CDCR's process for investigating staff misconduct and disciplining staff members—down to how often Defendants should interview inmates about alleged staff misconduct (quarterly) and which questionnaire they should use for these quarterly interviews (the one used by the December 2018 investigators) (*id.*)—reverts to the days of excessive judicial micromanagement of prisons that Congress expressly sought to curtail via the PLRA.

To be sure, CDCR acknowledges that there were breakdowns and failures in the decisions of those involved in the investigation and disciplinary processes that have resulted in inappropriate outcomes. (4-ER-729–30) But CDCR also took measures to improve the process. CDCR implemented the AIMS process (4-ER-757–60), and state law already provides for a process in which an independent monitoring agency—the Office of the Inspector General—oversees CDCR, assesses deficiencies, and identifies areas for improvement. (*See* Mission Statement, Office of the Inspector General, available at https://www.oig.ca.gov/about-us/ (last accessed May 10, 2021) (providing oversight, monitoring, reporting, and improvement recommendations); OIG Staff Misconduct Process Report, https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-Staff-Misconduct-

Process-Report-2021.pdf (last accessed May 10, 2021).); *See also* Cal. Pen. Code § 6125.

Further, the installation of fixed security cameras—a remedy that is expected to drastically reduce acts of staff misconduct—will significantly alter the landscape by both deterring staff misconduct and documenting any abuse for use in the staff discipline process. (4-ER-878–89, 899–900, 907–10; 2-ER-171–72, 182–83; 2-ER-184–85; 1-ER-17, 50–52.) The district court acknowledged that video evidence has been effective in supporting termination decisions. (1-ER-17, 50–52.) With the reduction of problem behavior and wide availability of video footage to support the investigation and discipline process, the additional required reforms to the investigation disciplinary processes are rendered unnecessary, overbroad, and intrusive.

H. The Remaining Cumulative Monitoring Reforms Also Contravene the PLRA's Needs-Narrowness-Intrusiveness Limitation.

The district court also contravened the PLRA's needs-narrowness-intrusiveness mandate by imposing reforms for monitoring and oversight that are redundant, unnecessary, overbroad, and unnecessarily intrusive. 18 U.SC. § 3636(a)(1)(A). On top of the cumulative and overlapping reforms detailed above, the district court also directed the appointment of a court expert to make the implementation of these reforms "more effective." (1-

ER-57.) But "plaintiffs are not entitled to the most effective available remedy; they are entitled to a remedy that eliminates the constitutional injury." *See Ball*, 792 F.3d at 599.

The court also directed information-sharing with Plaintiffs' counsel and the court expert of all documents related to staff complaints by class members (without regard for applicable privileges), and mandated that Defendants provide monthly written updates regarding the implementation of any additional remedial measures. (1-ER-58.)

When viewed in light of the other remedial, monitoring, and oversight reforms, the district court has imposed more reforms than are necessary to correct the violation, and has failed to accord Defendants "the 'widest latitude in the dispatch of its own internal affairs.'" *Gomez*, 255 F.3d at 1128.

CONCLUSION

This Court should reverse the RJD Order because the court below exceeded its jurisdiction when imposing this relief and sought to remedy violations that are not sufficiently related to the class claims on which the litigation initially proceeded. Alternatively, the Court should reverse the RJD order because it imposes reforms that are needlessly cumulative and

overly intrusive, thus, contravening the PLRA's needs-narrowness-intrusiveness requirements.

Dated: May 10, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MONICA N. ANDERSON
Senior Assistant Attorney General
NEAH HUYNH
Supervising Deputy Attorney General

/s/ Jaime M. Ganson

JAIME M. GANSON
Deputy Attorney General
Attorneys for Defendants-Appellants Gavin Newsom and California Department of Corrections and Rehabilitation

SF2020401360
35050845.docx

20-16921

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN ARMSTRONG, et al.,

Plaintiffs-Appellees,

v.

G. NEWSOM, et al.,

Defendants-Appellants.

STATEMENT OF RELATED CASES

The following related case is pending: *Armstrong v. Newsom* (9th Cir. No. 21-15614).

Dated: May 10, 2021

Respectfully Submitted,

ROB BONTA
Attorney General of California
MONICA N. ANDERSON
Senior Assistant Attorney General
NEAH HUYNH
Supervising Deputy Attorney General

/s/ Jaime M. Ganson

JAIME M. GANSON
Deputy Attorney General
Attorneys for Defendants-Appellants Gavin Newsom and California Department of Corrections and Rehabilitation

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 20-16921

I am the attorney or self-represented party.

This brief contains 11,545 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[X] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[ ] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
- [ ] it is a joint brief submitted by separately represented parties;
- [ ] a party or parties are filing a single brief in response to multiple briefs; or
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature */s/ Jaime M. Ganson* **Date** May 10, 2021

CERTIFICATE OF SERVICE

Case Name: ***Armstrong, John, et al. v. Newsom, et al.***
Case No.: **20-16921**

I hereby certify that on **May 10, 2021**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **APPELLANTS' OPENING BRIEF**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **May 10, 2021**, at Sacramento, California.

D. Kulczyk	*/s/ D. Kulczyk*
Declarant	Signature