

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 JOHN ARMSTRONG, et al.,

No. C 94-2307 CW

5                                    Plaintiffs,

ORDER REVISING THE  
MODIFIED  
INJUNCTION  
(Docket No. 2180)

6                                    v.

7 EDMUND G. BROWN, JR., et al.,

8                                    Defendants.

9 \_\_\_\_\_/

10                                    This order revises Sections D.2. and D.3. of this Court's  
11 Modified Injunction (Docket No. 2180). It is made pursuant to the  
12 Ninth Circuit's recent opinion in Armstrong v. Brown, 2014 WL  
13 4783091 (9th Cir.) In that opinion, the Ninth Circuit held that  
14 Sections D.2. and D.3. of this Court's Modified Injunction  
15 delegated too much authority to the Court-appointed expert witness  
16 to resolve disputes between Plaintiffs' counsel and the State. It  
17 then vacated those sections, and instructed this Court to revise  
18 those sections to be consistent with its opinion.

19                                    BACKGROUND

20                                    Section D.2. provides the procedure to be used with regard to  
21 disputed allegations of non-compliance. It provides, in relevant  
22 part, "If the parties are unable to resolve the dispute  
23 informally, Plaintiffs' counsel may request that the Court's  
24 expert review and resolve the matter." Armstrong v. Brown, 2012  
25 WL 3638675, at \*11 (N.D. Cal.), aff'd in part, vacated in part,  
26 remanded, by 2014 WL 4783091 (9th Cir.). Furthermore, it states,  
27 "Administrative decisions made by the Court's expert pursuant to  
28

1 this section shall be final as between Plaintiffs and Defendants."

2 Id.

3 Section D.3. provides, in relevant part, that with regard to  
4 incidents in dispute as presented in the parties' pleadings, the  
5 Plaintiffs "shall attempt to resolve these disputes through  
6 negotiation with Defendants. If negotiations fail, the disputes  
7 may be referred to the Court's expert pursuant to paragraph D.2.,  
8 above." Id.

9 The Ninth Circuit held that this delegation of authority to  
10 the Court's expert is "impermissible" as it extends "beyond the  
11 scope of the duties that may be assigned to a Rule 706 expert."  
12 Armstrong, 2014 WL 4783091, at \* 10 ("While we have approved the  
13 appointment of non-judicial officers to make recommendations and  
14 resolve disputes ancillary to complex litigation, those  
15 appointments specifically limited the expert to making  
16 recommendations subject to review by the district court.").

17 Accordingly, the Court revises the modified injunction as  
18 follows:

19 In Section D.2., strike the following sentence:

20 "Administrative decisions made by the Court's expert pursuant to  
21 this section shall be final as between Plaintiffs and Defendants"  
22 and replace it as follows: "Administrative recommendations made by  
23 the Court's expert pursuant to this section shall be reviewable by  
24 this Court on a motion by any party dissatisfied with the expert's  
25 decision. The review shall be conducted pursuant to the  
26 requirements of 28 U.S.C. § 636(b) (1) (C), the procedure for the  
27 review of a report and recommendation by a magistrate judge."  
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1 Because Section D.3. derives its meaning from Section D.2., there  
2 is no reason to alter its language.

3 CONCLUSION

4 Within seven days of this order, Plaintiffs shall prepare and  
5 submit, for the Court's review, a second modified injunction  
6 incorporating these changes.

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8 IT IS SO ORDERED.

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10 Dated: December 5, 2014

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12 CLAUDIA WILKEN  
13 United States District Judge  
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