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

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

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

Defendants.

No. C 94-2307 CW

ORDER GRANTING
MOTION FOR FURTHER
ENFORCEMENT
(Docket No. 2436)

Plaintiffs Armstrong, et al., move for an order for further enforcement of the 2007 injunction, applicable to all California Department of Corrections and Rehabilitation (CDCR) prisons. They allege that Defendants Brown, et al., continue to place Class Members in administrative segregation due to a lack of accessible housing. Having considered the parties' briefs and their arguments at the January 29, 2015 hearing, the Court finds that Defendants are regularly housing Armstrong class members in administrative segregation due to lack of accessible housing, in violation of this Court's previous orders and the Americans with Disabilities Act (ADA). Accordingly, the Court GRANTS Plaintiffs' motion.

BACKGROUND

In a series of orders between 1996 and 2002, the Court found that Defendants' treatment of prisoners with disabilities violated the American with Disabilities Act (ADA) and § 504 of the Rehabilitation Act. On January 3, 2001, Defendants issued the

1 amended Armstrong Remedial Plan (ARP) setting forth their own
2 policies and plans to come into compliance with their obligations
3 under these federal laws. Among other things, the ARP addressed
4 the housing of class members in administrative segregation.

5 In 2012, the parties developed jointly a system by which
6 Armstrong class members are moved out of administrative
7 segregation as CDCR looks for an accessible bed. See Docket No.
8 2209 at 6-7. In relevant part, the parties' agreement stated:

9 (b) Defendants agreed to provide internal documents showing
10 all Armstrong class members housed in administrative
11 segregation and housed two levels above their designated
12 security level due to lack of bed space, (c) Defendants
13 agreed to make their best effort to classify and transfer
14 prisoners housed two levels out of their security level
15 within 30 days, (d) Defendants agreed to draft model Local
16 Operating Procedures (LOPs) that state that it is
17 departmental policy not to house prisoners in administrative
18 segregation due to lack of bed space and requiring
19 institutions to take immediate action to transfer such
20 prisoners, including contacting CDCR headquarters to expedite
21 the transfer if not resolved within 72 hours.

22 Id. Despite this agreement, according to CDCR's logs from July
23 2013 through July 2014, 211 Class Members were held in
24 administrative segregation for some period of time, thirty-five of
25 them in July 2014 alone. These time periods ranged from less than
26 twenty-four hours to a month or more. See Docket No. 2436 at 11.

27 DISCUSSION

28 The Court finds that housing disabled class members in
administrative segregation solely because of their disabilities
violates this Court's prior orders, including the 2001 Injunction,
which declares that the "CDCR has a duty to maintain in operable
working condition structural features and equipment necessary to
make the prison system's services, programs, and activities
accessible to disabled inmates." Mar. 21, 2001 Permanent

1 Injunction, Docket No. 694, at ¶ 4. The practice also violates
2 the 2007 Injunction, which prohibits CDCR from "hous[ing] [class
3 members] at any placements without adequate accessible housing
4 . . ." and orders adherence to the Armstrong Remedial Plan
5 requirement that no prisoner with a disability "shall, because of
6 that disability, be excluded from participation in or denied the
7 benefits of services, programs, or activities of the Department or
8 be subjected to discrimination." 2007 Injunction at 6, 9,
9 Armstrong Remedial Plan, Sec. I, p. 1.

10 Defendants' practice also violates the ADA and its
11 implementing regulations, which prohibit prison officials from
12 placing prisoners "with disabilities in inappropriate security
13 classifications because no accessible cells or beds are available"
14 and from placing prisoners with disabilities "in facilities that
15 do not offer the same programs as the facilities where they would
16 otherwise be housed." 28 CFR § 35.152(b) (2).

17 Accordingly, the Court finds that in order to ensure
18 compliance with this Court's orders and with the ADA and its
19 implementing regulations, it is necessary to prohibit Defendants
20 from housing Armstrong class members in administrative segregation
21 due to a lack of accessible bed space. The Court finds that the
22 Order set forth below complies with the PLRA; it is narrowly
23 drawn, extends no further than necessary to correct the violation
24 of the federal rights of Armstrong class members, and is the least
25 intrusive means necessary to correct that violation. While it is
26 true that the majority of instances of this practice took place at
27 one institution, the practice occurred at other institutions as
28 well. Further, transfers into non-complying institutions come

1 from other institutions, with the involvement of CDCR officials
2 with state-wide jurisdiction. Thus, it would not be efficacious
3 to limit the within order only to the least compliant receiving
4 institution. The Court's prior orders have applied state-wide.

5 Accordingly, Defendants are prohibited from housing Armstrong
6 class members in administrative segregation because no accessible
7 cells or beds are available. The Court orders that if Defendants
8 place an Armstrong class member in administrative segregation due
9 to the lack of an accessible bed, they must fully document their
10 reasons for doing so. The documentation shall explain why the
11 prisoner was sent to a prison that could not accommodate his or
12 her disability, the status of all the accessible beds in the
13 facility, such that compaction is not an option, and all of the
14 steps taken to find an accessible bed before placing the class
15 member in administrative segregation. The reports shall continue
16 to document how many class members were placed in administrative
17 segregation due to their disabilities and for how long, expressed
18 in actual hours, not "business" hours. This report must be
19 provided to Plaintiffs' counsel.

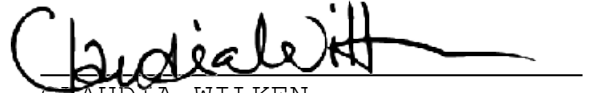
20 While the Court does not, at this time, impose any particular
21 method by which Defendants must comply with this Order, it notes
22 that Defendants already have at their disposal several means by
23 which to comply. For example, Defendants may make use of their
24 current bed management system to ensure that a class member is not
25 transferred to a facility without first confirming that an
26 accessible bed is available. They may also continue to use their
27 RJD corrective action plan, with enhanced monitoring procedures
28 and specialized training, and expand it to other facilities.

1 Defendants may use beds designated for other purposes, such as
2 medical beds, to house an Armstrong class member while an
3 accessible bed is found. Defendants may also use another form of
4 overflow housing that does not house Armstrong class members in a
5 manner prohibited by this Order. Finally, Defendants could
6 implement some of Plaintiffs' suggestions, including having the
7 ADA coordinators at both the receiving and sending institutions
8 communicate to ensure that, prior to a class member's transfer, an
9 accessible bed is available and that the receiving institution can
10 hold that bed until the class member arrives.

11 Within thirty days of the date of this Order, Defendants
12 shall submit a report to this Court and Plaintiffs' counsel
13 describing the steps they have taken to comply with the Order, and
14 attesting to their compliance with the Order.

15 IT IS SO ORDERED.

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17 Dated: February 3, 2015


18 CLAUDIA WILKEN
19 United States District Judge
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