

United States District Court  
Northern District of California

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

JOHN ARMSTRONG, et al.,  
Plaintiffs,  
v.  
GAVIN C. NEWSOM, et al.,  
Defendants.

Case No. 94-cv-02307 CW  
ORDER FOR ADDITIONAL REMEDIAL  
MEASURES AT LAC, COR, SATF,  
CIW, AND KVSP  
Re: Dkt. No. 2948

For the reasons set forth in the Court's order granting in part Plaintiffs' motion to modify its prior remedial orders and injunctions to require the implementation of new remedial measures to prevent further violations of the ARP and ADA at California State Prison, Los Angeles County (LAC); California State Prison, Corcoran (COR); Substance Abuse Treatment Facility (SATF); California Institute for Women (CIW); and Kern Valley State Prison (KVSP) (collectively, the five prisons), the Court hereby orders as follows:

1. No later than twenty-one days of the date this Order is filed, Defendants must draft and present to Plaintiffs for their review a plan for achieving compliance with the Armstrong

United States District Court  
Northern District of California

1 Remedial Plan (ARP) and the Americans with Disabilities Act (ADA)  
2 that includes the components described below (the Five Prisons  
3 Remedial Plan). To the extent possible, Defendants shall provide  
4 to Plaintiffs drafts of the components that must be included in  
5 the Five Prisons Remedial Plan on a rolling basis prior to  
6 twenty-one days of the date this Order is filed.

7 2. Plaintiffs shall provide comments to Defendants as to  
8 the drafts within seven days of receiving them.<sup>1</sup>

9 3. The parties shall meet and confer promptly to resolve  
10 any disagreements as to the adequacy of the Five Prisons Remedial  
11 Plan or any of its components. Defendants shall ensure that  
12 staff with sufficient authority to amend and approve any plans,  
13 policies, and procedures in the Five Prisons Remedial Plan attend  
14 all meet-and-confer sessions.

15 4. In the event that a disagreement is not resolved within  
16 forty-two days of the date this Order is filed, Plaintiffs shall  
17 file objections with the Court no later than forty-nine days of  
18 the date this Order is filed in a brief of no more than ten  
19 pages; Defendants may respond to the objections within seven days  
20 thereafter in a brief of no more than fifteen pages; and  
21 Plaintiffs may file a reply of no more than five pages within  
22 four days thereafter. The Court will rule on the objections and  
23 issue any necessary order, consistent with its rulings in its  
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26 <sup>1</sup> Each side shall, respectively, provide copies of any drafts  
27 and comments to the same to counsel for the parties in Coleman v.  
28 Newsom, Case No. 90-cv-00529 (E.D. Cal.), and Plata v. Newsom,  
Case No. 01-cv-01351 (N.D. Cal.), as well as to the special  
master and receiver in those actions.

1 Order granting in part Plaintiffs' motion to modify its prior  
2 remedial orders and injunctions.

3 5. Within fourteen days of reaching agreement with  
4 Plaintiffs, or receiving this Court's order resolving any  
5 disagreements, Defendants shall issue the Five Prisons Remedial  
6 Plan in final form and implement its provisions pursuant to the  
7 terms described below, unless the Five Prisons Remedial Plan sets  
8 a different date for the implementation of a component of the  
9 Five Prisons Remedial Plan.

10 a. Cameras. Within ninety days of the finalization  
11 of the Five Prisons Remedial Plan, CDCR shall install operational  
12 surveillance cameras that cover all areas of LAC, COR, SATF, CIW,  
13 and KVSP to which disabled inmates have access, including, but  
14 not limited to, all exercise yards, housing units, sally-ports,  
15 dining halls, program areas, and gyms. Within sixty days of the  
16 finalization of the Five Prisons Remedial Plan, CDCR must begin  
17 using body-worn cameras for all correctional officers at LAC,  
18 COR, SATF, CIW, and KVSP who may have any interactions with  
19 disabled inmates. The Five Prisons Remedial Plan shall describe  
20 the steps that Defendants will take to achieve these deadlines.

21 b. The Five Prisons Remedial Plan must contain  
22 policies and procedures regarding the use of body-worn cameras  
23 and the use of camera footage at LAC, COR, SATF, CIW, and KVSP  
24 from any type of camera, including requirements that all footage  
25 be retained for a minimum of ninety days, that footage of use of  
26 force and other triggering events involving disabled inmates at  
27 LAC, COR, SATF, CIW, and KVSP be retained indefinitely, and that  
28 footage, when available, be reviewed and considered as part of

1 the investigation of any incident. The Five Prisons Remedial  
2 Plan also must contain policies and procedures for training staff  
3 at LAC, COR, SATF, CIW, and KVSP regarding how and when to use a  
4 body-worn camera and how to ensure that footage is retained and  
5 reviewed.

6 c. Reforms to Staff Misconduct Complaint,  
7 Investigation, and Discipline Process at LAC, COR, SATF, CIW, and  
8 KVSP. CDCR must develop measures to reform the staff misconduct  
9 complaint, investigation, and discipline process (Investigation  
10 and Discipline Section of the Five Prisons Remedial Plan), which  
11 shall be included in the Five Prisons Remedial Plan, to ensure  
12 (1) that CDCR completes unbiased, comprehensive investigations  
13 into all allegations of staff misconduct violative of the rights  
14 of any qualified inmate with a disability under the ARP or the  
15 ADA; (2) that CDCR imposes appropriate and consistent discipline  
16 against employees who engage in violations of the ARP or ADA with  
17 respect to disabled inmates at LAC, COR, SATF, CIW, and KVSP; and  
18 (3) that employees who engage in criminal misconduct against  
19 disabled inmates at LAC, COR, SATF, CIW, and KVSP in violation of  
20 the ARP or ADA are appropriately investigated and, if warranted,  
21 referred for prosecution or reassignment. The Investigation and  
22 Discipline Section of the Five Prisons Remedial Plan also shall  
23 ensure that officers accused of serial violations of the ARP or  
24 ADA with respect to disabled inmates at LAC, COR, SATF, CIW, and  
25 KVSP are reassigned. The Investigation and Discipline Section of  
26 the Five Prisons Remedial Plan also shall provide for effective  
27 mechanisms for oversight over all staff misconduct complaints,  
28 use-of-force reviews, and related staff disciplinary proceedings

1 at LAC, COR, SATF, CIW, and KVSP that involve alleged violations  
2 of disabled inmates' rights under the ARP or ADA. The  
3 Investigation and Discipline Section of the Five Prisons Remedial  
4 Plan shall require quarterly interviews of randomly-selected  
5 disabled inmates at LAC, COR, SATF, CIW, and KVSP using the  
6 methodology and interview questionnaire utilized by the December  
7 2018 investigators in connection with the Bishop Report at  
8 Richard J. Donovan Correctional Facility.

9 d. Third-Party Expert Monitoring of Defendants'  
10 Investigation and Discipline Section of the Five Prisons Remedial  
11 Plan. The Court delegates to Edward Swanson, its expert,  
12 pursuant to Federal Rule of Evidence 706, the additional duties  
13 of monitoring Defendants' implementation of their Investigation  
14 and Discipline Section of the Five Prisons Remedial Plan. Mr.  
15 Swanson shall have access to all documents reasonably necessary  
16 for monitoring Defendants' implementation of their Investigation  
17 and Discipline Section of the Five Prisons Remedial Plan. Mr.  
18 Swanson shall issue quarterly reports regarding Defendants'  
19 implementation of the Investigation and Discipline Section of the  
20 Five Prisons Remedial Plan. Prior to the issuance of each  
21 quarterly report, the parties and Mr. Swanson shall meet and  
22 confer regarding his findings for the quarter.

23 e. Early-Warning System. CDCR shall develop an  
24 electronic system for tracking all staff misconduct incidents  
25 involving disabled inmates at LAC, COR, SATF, CIW, and KVSP by  
26 date, time, location, staff involved, and disabled inmates  
27 involved, that includes information about the nature of the  
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1 disabled inmates' disabilities, any injuries they suffered, and  
2 related medical records.

3 f. Information Sharing with Plaintiffs' counsel and  
4 the Court's expert. CDCR must produce to Plaintiffs' counsel and  
5 the Court's expert, Mr. Swanson, on a quarterly basis, all  
6 documents related to LAC, COR, SATF, CIW, and KVSP staff  
7 misconduct complaints in which the alleged victim is a qualified  
8 inmate with a disability and alleges violations of his or her  
9 rights under the ARP or ADA, including, but not limited to,  
10 grievances, incident reports, documents from staff misconduct  
11 inquiries, documents from Institutional Executive Review  
12 Committee inquiries in which the qualified inmate with a  
13 disability alleges excessive use of force or other staff  
14 misconduct in violation of his or her rights under the ARP or  
15 ADA, 989 forms and all supporting documents, responses of the  
16 Central Intake Unit of OIA to 989 forms, investigation reports  
17 produced by the OIA, and 402 and 403 forms issued by the hiring  
18 authority. CDCR must also provide Plaintiffs' counsel with  
19 monthly, written updates regarding progress on the implementation  
20 of the Five Prisons Remedial Plan at LAC, COR, SATF, CIW, and  
21 KVSP, including data regarding staff misconduct complaints and  
22 use of force involving a qualified inmate with a disability where  
23 there is a possible violation of the disabled inmate's rights  
24 under the ARP or ADA.

25 g. Staffing. CDCR must significantly increase  
26 supervisory staff by posting additional sergeants on all watches  
27 on all yards at LAC, COR, SATF, CIW, and KVSP.

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United States District Court  
Northern District of California

1           h.     Training.   CDCR must develop and implement  
2 training intended to eliminate violations of the ARP and ADA at  
3 LAC, COR, SATF, CIW, and KVSP, such as human rights, de-  
4 escalation, and cultural training, for all custody, mental  
5 health, and medical staff at LAC, COR, SATF, CIW, and KVSP who  
6 interact with disabled inmates. The training must include  
7 discussion of reporting requirements, whistleblowing, non-  
8 retaliation, and treatment of incarcerated people with  
9 disabilities.

10           i.     Anti-Retaliation.   CDCR shall develop mechanisms  
11 to end and prevent any retaliation against disabled inmates who  
12 report violations of their rights under the ARP or ADA and to  
13 ensure their safety. These mechanisms shall be described in the  
14 Five Prisons Remedial Plan.

15           j.     Other Remedies.   CDCR shall develop a plan to  
16 modify its policies to more effectively monitor and control the  
17 use of pepper spray by staff at LAC, COR, SATF, CIW, and KVSP  
18 with respect to disabled inmates. This plan shall be described  
19 in the Five Prisons Remedial Plan.

20           6.     The Court finds that these additional remedial measures  
21 are consistent with the Prison Litigation Reform Act (PLRA),  
22 18 U.S.C. § 3626(a).

23           IT IS SO ORDERED.

24           Dated: March 11, 2021



25           CLAUDIA WILKEN  
26           United States District Judge