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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 JOHN ARMSTRONG, et al., ) No. C-94-2307 CW  
11 )  
Plaintiffs, )  
12 )  
v. ) **STATEMENT OF STIPULATED**  
13 ) **FACTS** (For Settlement  
PETE WILSON, et al., ) Purposes Only)  
14 )  
Defendants. )

16 Armstrong v. Davis



18 PC-CA-001-001

22 *not entered*  
23 *in log*

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1 The parties, through their respective attorneys, hereby  
2 agree that the facts set forth below are undisputed and  
3 constitute the settled facts in this case.

4 I.

5 GENERAL FACTS

6 1. The California Department of Corrections (the  
7 "CDC") operates over 31 prisons housing in excess of 130,000 male  
8 and female inmates.

9 2. For the last several years, CDC's requests for  
10 specific funding to implement Title II of the Americans with  
11 Disabilities Act ("ADA") have been denied at various phases of  
12 the funding process.

13 3. Some programs of the CDC receive federal financial  
14 assistance.

15 4. CDC's total budget for fiscal year 1995-96 is  
16 approximately 3.8 billion dollars.

17 5. CDC has conducted various surveys to identify  
18 certain inmates with disabilities, the most recent of which  
19 occurred in January 1995 and January 1996. Inmates with learning  
20 disabilities were not included to be identified or counted in  
21 these surveys.

22 6. In its survey of January 1996, CDC counted 1375  
23 inmates with mobility, sight, hearing or speech impairments out  
24 of a total inmate population of 131,632. The survey reflected  
25 that ~~345 inmates use wheelchairs due to a permanent disability.~~  
26 ~~The survey reflected that 650 inmates had a permanent lower~~  
27 ~~extremity mobility impairment which substantially limited walking~~  
28 and which may have required the use of an assistive device such

1 as a cane, prosthesis, or walker.

2 7. The survey reflected that 15 CDC institutions  
3 housed at least one inmate who used a wheelchair due to a  
4 permanent disability. Almost all institutions house prisoners  
5 with other mobility impairments.

6 8. The survey reflected that 141 inmates are deaf or  
7 have a hearing impairment such that their hearing, even when  
8 augmented with a hearing aid, did not enable them to hear  
9 effectively or to hear emergency warnings.

10 9. The survey reflected that most CDC institutions  
11 housed at least one inmate with a hearing impairment.

12 10. The survey reflected that 219 inmates are blind or  
13 have vision that cannot be corrected to 20/200 even with  
14 corrective lenses.

15 11. The survey reflected that most of the inmates who  
16 are blind or who have severe vision impairments are housed in one  
17 of four prisons and that most prisons house some prisoners with  
18 vision impairments.

19 12. CDC has clustered and continues to cluster other  
20 specialized inmate populations. HIV-positive inmates are placed  
21 in various units in facilities throughout the system. Inmates  
22 with mental health concerns are clustered and frequently  
23 separated from other inmate populations.

24 II.

25 **MISCELLANEOUS ADA PROVISIONS**

26 13. In April 1995, posted written notice of the ADA  
27 was provided to CDC inmates and parolees and was read to some  
28 inmates with vision impairments.

1           14. CDC has appointed a system-wide ADA coordinator  
2 and has appointed an ADA coordinator at each of its prisons.  
3 Some of the institution ADA coordinators have other  
4 responsibilities that prevent them from spending significant  
5 amounts of time on ADA issues.

6           15. CDC initiated its self-evaluation in 1995, but has  
7 not completed it. The CDC is in the process of preparing a  
8 transition plan.

### 9                           III.

#### 10                           1824 GRIEVANCE PROCEDURE

11           16. On or about April 15, 1995, CDC established and  
12 implemented a new administrative grievance procedure to provide  
13 inmates and parolees with disabilities with a special process to  
14 submit grievances or requests for accommodations/modifications on  
15 matters related to their disabilities. This new procedure makes  
16 use of a special form designated as a "CDC 1824."

17           17. Once the form is completed, it is submitted to the  
18 appeals coordinator of the facility, bypassing the informal level  
19 of the normal appeals process.

20           18. Although the form was available to most inmates  
21 soon after the procedure was implemented, some institutions  
22 failed to make the form available to all inmates as late as  
23 September 1995, and there are still significant problems in  
24 implementing this procedure.

### 25                           IV.

#### 26                           COMMON FEATURES OF CDC PRISONS

27           19. Prisons share common features. All contain  
28 housing units which are either dormitories (open spaces with

1 bunks or lockers) and/or cells. Cells are equipped with a  
2 toilet, sink and bed or bunk. Most cells have a shelf and table.  
3 Many housing units have a dayroom area which contains drinking  
4 fountains, telephones, televisions and tables. All housing units  
5 have shower facilities. Every prison has at least one yard for  
6 outdoor recreation. Yards usually have drinking fountains,  
7 toilets, sinks, and showers. Yards may have basketball or  
8 handball courts, weight piles, and other recreational equipment.

9           20. Each prison has an administrative segregation unit  
10 which consists of celled housing. Administrative segregation  
11 units typically have their own yards which contain drinking  
12 fountains, showers and toilets.

13           21. Each prison has visiting areas. There is  
14 generally a large room or patio with tables where inmates have  
15 contact visits, and another section where inmates have noncontact  
16 visits. Noncontact visits occur in booths, some of which require  
17 communications by a telephone. The visiting rooms normally  
18 contain attorney visiting areas, both contact and noncontact.  
19 Some prisons have family visiting units for overnight visits.

20           22. Each prison has at least one law library.

21           23. CDC inmates who require assistance in the handling  
22 of legal matters or use of the law library are provided with  
23 clerical assistance from inmate library clerks or library staff.  
24 Inmates may also use the services of other untrained inmates to  
25 prepare legal documents.

26           24. Each prison has at least one hearing room that is  
27 used for hearings before the Board of Prison Terms. Inmates  
28 typically wait for their hearings in holding cells which may



1 by inmates within the CDC's prisons where construction commenced  
2 after January 26, 1992, were built in accordance with state  
3 accessibility standards. However, H unit at San Quentin, which  
4 is the largest renovation project, was not built in accordance  
5 with those standards.

6 **VI.**

7 **RECEPTION CENTERS**

8 34. When an inmate enters the CDC system, he or she is  
9 first processed through, and temporarily housed at, a reception  
10 center. There are a total of 13 operational reception centers in  
11 the CDC system.

12 35. Inmates are processed through particular reception  
13 centers depending upon which county they are coming from,  
14 regardless of the inmates' ultimate classification score or  
15 custody level, and regardless of the presence of any disability.

16 36. The reception center screening process does not  
17 include a thorough assessment of prisoners' disabilities.  
18 Inmates who are processed through reception centers are screened  
19 through a medical examination, psychological testing and an  
20 educational grade level assessment.

21 37. Except for the newest reception center, all of the  
22 reception centers have received inmates with disabilities, and no  
23 reception center may exclude any prisoner.

24 38. As of December 1995, CDC did not have a uniform  
25 policy or procedure to identify inmates with disabilities for  
26 transfer to designated institutions. However, as of December  
27 1995, some reception centers understood that inmates who use  
28 wheelchairs could only be transferred to California Medical



1 Facility ("CMF") or Avenal State Prison.

2 39. Some inmates who use wheelchairs and those on  
3 dialysis have spent significantly longer periods of time (ranging  
4 from several months to a year) in reception centers than the  
5 average inmate.

6 40. Inmates in reception centers earn 1/3 sentence  
7 credit (one day credit for every two days served). They are not  
8 provided with the opportunity to earn 1/2 sentence credit (one  
9 day credit for every day served) through participation in work  
10 assignments, educational courses or vocational programs. Inmates  
11 in reception centers generally do not have the same privileges as  
12 inmates in mainline institutions, such as contact visits, family  
13 visits and telephone calls.

14 41. Most reception centers are not built to  
15 accessibility standards.

## 16 VII.

### 17 EMERGENCY PROCEDURES

18 42. The CDC has emergency policies and procedures,  
19 such as for evacuation of facilities in the event of fire,  
20 earthquake or other disaster, and provides training to its staff  
21 in implementing emergency policies and procedures.

22 43. Prisoners with disabilities may require special  
23 accommodations in order to ensure that they are evacuated in the  
24 event of an emergency.

25 44. Many CDC facilities do not have written policies  
26 or procedures that specifically address the evacuation of  
27 prisoners with disabilities.

28 45. Prisons are staffed with custodial officers 24

1 hours a day, seven days a week. Custodial staff are trained to  
2 evacuate prison facilities in the event of an emergency, but are  
3 not specifically trained to evacuate disabled inmates.

4 46. Some CDC facilities do not have visual alarms or  
5 strobe lights to warn prisoners with hearing impairments of  
6 emergencies.

7 47. The CDC does not have a system-wide  
8 process/procedure for visual identification of inmates with  
9 disabilities while not in their cells. Emergency situations  
10 arise within the prisons in areas other than living units, such  
11 as yards. As a result of their disabilities, some inmates may  
12 not be aware of, or be able to respond to, an emergency warning  
13 or impending danger.

#### 14 VIII.

#### 15 CLASSIFICATION AND INMATE ASSIGNMENTS

16 48. After a classification process that considers a  
17 multitude of factors inmates are assigned a custody level and one  
18 of four classification levels, with level I being minimum custody  
19 and level IV being maximum security. Although an inmate cannot  
20 choose where he or she will be incarcerated or the program, if  
21 any, to which he or she will be assigned, the inmate's  
22 preferences are considered by prison officials when they make  
23 these decisions.

24 49. Most inmates who participate in educational  
25 classes, vocational training, or who have work assignments,  
26 including those inmates with disabilities, earn one-half time  
27 sentence credits to reduce their time in custody.

28 50. Health care providers can identify inmates as

1 "totally medically disabled," "medically unassigned," or "light  
2 restricted duty." A "totally medically disabled" classification  
3 allows the inmate to earn one-half time sentence credits without  
4 being required to participate in programming, while a "medically  
5 unassigned" classification allows the inmate to earn one-third  
6 time sentence credits. A "light restricted duty" designation  
7 allows the inmate to participate in programming in accordance  
8 with a specified restriction to due a physical or mental  
9 condition.

10 51. Some inmates with severe disabilities have been  
11 inappropriately classified and identified as medically unassigned  
12 rather than totally medically disabled and therefore only earn  
13 one-third instead one-half time credits against their sentence.

14 52. Inmates designated as "light restricted duty" may  
15 be assigned jobs that are inappropriate for their physical  
16 limitations.

17 53. Inmates with disabilities are automatically  
18 excluded from prison camps because of their disability.

19 54. Most CDC facilities have waiting lists for work  
20 assignments.

21 55. Prison programs are not designed or intended to be  
22 available equally to all inmates. Programs vary greatly among  
23 institutions.

24 56. Some inmates with disabilities currently  
25 participate in at least the following vocational programs:  
26 Avenal: computer-related technology, electronics, graphic arts  
27 and printing, and mechanical drawing; California Institution for  
28 Men ("CIM"): animal grooming, computer repair, drafting, graphic

1 arts and printing, and shoe repair; California Institution for  
2 Women ("CIW"): clothing & textile manufacturing; CMF:  
3 horticulture and landscaping and office services; CCWF:  
4 maintenance, mill and cabinet, office services, and upholstery;  
5 Pleasant Valley State Prison ("PVSP"): graphic arts, masonry,  
6 mill and cabinet, silk screening, computer technology, office  
7 services, landscape, and upholstery. However, the range of  
8 programs available to prisoners with disabilities is more limited  
9 than the range of programs available to other prisoners.

10 **IX.**

11 **ADMINISTRATIVE SEGREGATION AND SHU**

12 57. Inmates may be placed in an administrative  
13 segregation unit pending a disciplinary violation, for protective  
14 custody, or for other administrative reasons. Inmates may be  
15 placed in a segregated housing unit ("SHU") for a disciplinary  
16 infraction, or for other reasons related to the safety and  
17 security of the institution.

18 58. CDC's written policies and procedures regarding  
19 administrative segregation and SHU do not specifically address  
20 inmates with disabilities.

21 59. CDC has no specific written policies or procedures  
22 regarding the use, removal, or restriction of auxiliary aids,  
23 ambulatory devices, or prosthetic limbs for inmates in  
24 administrative segregation or SHU.

25 60. In some instances, auxiliary aids, ambulatory  
26 aids, wheelchairs or and prosthetic limbs have been removed from  
27 inmates with disabilities while in administrative segregation or  
28 SHU without regard to the inmate's medical needs or disciplinary

1 record.

2 61. CDC inmates who require assistance in  
3 administrative segregation hearings may request and may be  
4 assigned an investigative employee and/or staff assistant. These  
5 assistants and employees may provide effective communication in  
6 some cases and not in others.

7 X.

8 **INMATES WITH MOBILITY IMPAIRMENTS**

9 62. The CDC currently has at least the same number of  
10 accessible beds as there are inmates who use wheelchairs, but not  
11 for all inmates with mobility impairments. However, some inmates  
12 with mobility impairments, including those who use wheelchairs,  
13 are housed in cells that are not built in compliance with access  
14 codes, and are not fully accessible to and usable by them.

15 63. Some prisoners cannot fit their wheelchairs into  
16 their cells. Some prisoners cannot turn around or maneuver  
17 within their cells. Some prisoners with mobility impairments  
18 cannot use showers and toilets or cannot use them safely.

19 64. Other inmates are housed in infirmaries or  
20 hospitals that offer some accessibility features, but are denied  
21 access to programs accorded other inmates because of their status  
22 as infirmary/hospital patients.

23 65. Still other inmates are placed in housing units  
24 that are in substantial compliance with access standards, but  
25 have limited program opportunities because many of the  
26 programming spaces are not built to access standards.

27 66. Historically, inmates who use wheelchairs spent a  
28 longer time in reception centers than do other inmates because

1 there were not enough accessible placements.

2           67. CDC does not currently have enough wheelchair  
3 accessible vehicles, but is purchasing three of them for use in  
4 each of the three CDC-designated geographical regions, North,  
5 Central, and South. These vehicles are in addition to other  
6 wheelchair-accessible vehicles operated or available at the  
7 institutional level.

8   **XI.**

9                               **INMATES WITH HEARING IMPAIRMENTS**

10           68. Prisoners with hearing impairments have a range of  
11 ability to communicate. Some can read and speak English; others  
12 do not. Some prisoners can communicate most effectively through  
13 American Sign Language ("ASL"), some can communicate through  
14 gestures and signs, and a small minority can lip read  
15 effectively.

16           69. For some inmates with hearing impairments, hearing  
17 aids will enable them to communicate effectively, while for  
18 others hearing aids are ineffective.

19           70. CDC does not have a standardized method of  
20 identifying and assessing hearing impaired inmates at the  
21 reception center.

22           71. CDC does not have any policies or procedures that  
23 specifically address the needs of hearing impaired inmates.

24           72. Neither qualified sign language interpreters nor  
25 assistive listening devices, such as amplification devices, are  
26 normally provided for CDC programs, such as educational and  
27 vocational classes, self-help programs such as AA and religious  
28 services.

1           73. At some institutions, one or two staff, who may  
2 not have formal training as interpreters, know ASL with varying  
3 proficiency and are occasionally used as interpreters. CDC has  
4 no standardized process for evaluating the proficiency of these  
5 staff members.

6           74. The dominant mode of exchanging information at  
7 formal hearings and during medical visits for inmates with severe  
8 hearing impairments is written communication. For informal  
9 contacts, prison officials rely on the prisoner to read lips,  
10 respond to gestures, write notes, or use an informal staff or  
11 inmate interpreter. Someone who uses ASL may not be able to read  
12 in English, unless specifically taught to do so. Typically lip  
13 reading is a limited form of communication because even the best  
14 lip readers understand only about 40% of the spoken words.

15           75. Prisons have public address systems which are used  
16 to make general announcements. With the exception of California  
17 Men's Colony ("CMC"), prisons do not have formalized procedures  
18 for notifying inmates with hearing impairments of announcements.  
19 At these prisons, some efforts may or may not be taken to notify  
20 inmates with hearing impairments of announcements but some  
21 correctional officers do not know all the inmates who have  
22 hearing impairments.

23           76. As of December 1995, one or two prisons in the CDC  
24 system did not have a Telecommunication Device for the Deaf  
25 ("TDD"). Most prisons do not have volume control phones for  
26 inmate use.

27           77. Some prisons do not have televisions in inmate  
28 common areas that are closed captioned.

1 78. All prisons have noncontact visiting areas for  
2 inmates who have restrictions on their visiting privileges. In  
3 some instances, noncontact visits are conducted in booths where  
4 communication occurs through a telephone. These telephones are  
5 not equipped with volume control, nor can TDD's be used in these  
6 booths.

7 79. Institutions have different procedures for  
8 replacing hearing aid batteries. Some inmates who use hearing  
9 aids have had to go without them for significant time periods.

10 **XII.**

11 **INMATES REQUIRING DIALYSIS**

12 80. Inmates with kidney impairments severe enough to  
13 require dialysis generally must receive dialysis two or three  
14 times per week. Dialysis patients can benefit from a specialized  
15 diet.

16 81. Few prisons have in-prison dialysis units. Most  
17 prisons housing inmates who need dialysis have contracts with  
18 outside medical providers to perform necessary dialysis  
19 treatments.

20 82. Inmates who require kidney dialysis are excluded  
21 from CRC's drug rehabilitation program and prison camps.

22 83. Most inmates housed on the mainline who need  
23 dialysis are classified as totally medically disabled.

24 **XIII.**

25 **INMATES WITH VISION IMPAIRMENTS**

26 84. At most prisons in which inmates with vision  
27 impairments are housed, notices or announcements and other  
28 printed material have not been made directly accessible to the



1 inmates with vision impairments by means of audio tape, large  
2 print, or braille.

3 85. Computerized assistive devices for inmates with  
4 vision impairments are only available at some prisons. Only one  
5 prison, CMF, has a "Reader's Edge" computer that scans a printed  
6 page and reads it back in a synthesized voice. Most vision  
7 impaired prisoners at CMF are unable to use this computer because  
8 they have not yet been trained to use it.

9 86. Some inmates with vision impairments have had to  
10 rely on other inmates or officers to read or prepare printed  
11 documents, including legal materials, medical forms and personal  
12 letters.

13 87. Many inmates with significant vision impairments  
14 develop their impairment while incarcerated. No prison offers  
15 daily living skills courses for inmates with vision impairments.

16 88. At least two prisons have formalized programs in  
17 which untrained non-disabled inmates provide assistance to  
18 inmates with vision impairments through work assignment  
19 positions. Educational materials are not available from the CDC  
20 in alternative formats for use by visually impaired inmates.

#### 21 XIV.

#### 22 INMATES WITH LEARNING DISABILITIES

23 89. There are inmates with learning disabilities  
24 within the CDC.

25 90. The phrase learning disability is not defined by  
26 the ADA or the regulations implementing it. A learning  
27 disability is defined by the Individuals with Disabilities  
28 Education Act as a disorder in one or more of the basic

1 psychological processes involved in understanding or in using  
2 language, spoken or written, which may manifest itself in an  
3 imperfect ability to listen, think, speak, read, write, spell, or  
4 to do mathematical calculations. The term includes such  
5 conditions as perceptual handicaps, brain injury, minimal brain  
6 disfunction, dyslexia, and developmental aphasia. The term does  
7 not include persons who have learning problems which are  
8 primarily the result of visual, hearing, or motor handicaps, of  
9 mental retardation, of emotional disturbance, or of  
10 environmental, cultural, or economic disadvantage.

11           91. The CDC does not normally undertake particularized  
12 efforts to evaluate and assess whether inmates have learning  
13 disabilities.

14           92. The CDC prisons have educational programs that  
15 include academic and vocational instruction.

16           93. Inmate participation in CDC's educational program  
17 is by assignment made by a classification committee from an array  
18 of programming options. Assignment to an educational program is  
19 not the elective choice of the inmate, although the inmate's  
20 preference is considered.

21           94. CDC inmates are given an individualized assessment  
22 to determine their grade level upon their arrival at a reception  
23 center. When an inmate's grade level is lower than the sixth  
24 grade, it is CDC policy to place the inmate in an academic  
25 program.

26           95. CDC's educational program is based on a competency  
27 based curriculum. CDC has no "special education" programs.

28           96. CDC's competency based curriculum differs from

1 non-competency based programs in that its curriculum is geared  
2 toward individualized instruction rather than concentration on  
3 traditional group instruction.

4 97. There are varying methods and techniques to treat  
5 or remediate a learning disability. There is no one method that  
6 is most effective. The effectiveness of any one particular  
7 method varies from student to student, from teacher to teacher,  
8 and from program to program.

9 98. Some CDC inmates who have learning disabilities  
10 attend academic classes or vocational programs.

11 99. In some instances regular classroom teachers can  
12 successfully teach students with learning disabilities.

13 100. CDC employs approximately 30 teachers who are  
14 special education qualified and/or credentialed. However, they  
15 do not teach in special education classes.

16 101. There is no CDC policy or procedure that  
17 specifically addresses accommodating inmates with learning  
18 disabilities.

19 102. Some CDC inmates have requested specialized  
20 accommodations on the basis of a learning disability.

21 103. Various vocational programs and work assignments  
22 require a minimum education level for inmate participation.

23 104. Prisoners with learning disabilities may require  
24 accommodations to participate in programs and activities and to  
25 engage in communications which require reading, writing, speaking  
26 and hearing skills.

27 105. A CDC inmate who is unable to attend, or refuses  
28 to attend, academic classes is eligible to be assigned to

1 alternative programming through which the inmate acquires 1/2  
2 sentence credits.

3 **XV.**

4 **PAROLE**

5 106. The parole and community services division of the  
6 CDC is responsible for some community based centers that house  
7 inmates and/or parolees. These include community correctional  
8 centers and community correctional re-entry centers (commonly  
9 called work furlough). There is also a substance abuse treatment  
10 unit and a restitution center.

11 107. Although inmates with mobility, sight or hearing  
12 disabilities are not excluded by policy, mobility impaired  
13 inmates who require a catheter or Foley bag or inmates on  
14 dialysis are excluded from programs at community based centers.  
15 In January 1996, a CDC survey reflected that there were four  
16 inmates with mobility, sight or hearing impairments at any of the  
17 community based facilities.

18 108. Most inmates released from incarceration are  
19 required to serve a three year parole period. Projections for  
20 1996 indicate that there are approximately 90,000 parolees in  
21 California.

22 109. Prior to being released on parole, parolees are  
23 provided with written notice of their conditions of parole, which  
24 they are required to sign. Once released from prison, they must  
25 maintain regular contact with their parole officer, usually by  
26 going to a parole office or by speaking with their parole officer  
27 on the phone. If a parole officer believes a parolee has  
28 violated the terms of his or her parole, the parole officer may

1 cause the parolee to be arrested for a parole violation. A  
2 parolee receives written notice of the alleged parole violation.

3 110. Written notice commonly provided to parolees,  
4 including conditions of parole and written notice of parole  
5 violations, are not provided in alternative formats. CDC does  
6 not have any policies or procedures that specifically address the  
7 communication needs of hearing impaired parolees.

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IT IS SO STIPULATED.

Dated: May \_\_, 1996

PETER SIGGINS, Senior  
Assistant Attorney  
General

Attorney for Defendants

Dated: May \_\_, 1996

DONALD SPECTER

Attorney for plaintiffs.

The statement of facts set forth above is hereby approved  
and accepted for purposes of settlement only.

Dated:

CLAUDIA WILKEN, JUDGE  
UNITED STATES DISTRICT COURT