

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

JOHN ARMSTRONG, et al.,

No. C 94-2307 CW

Plaintiffs,

AMENDED ORDER

v.

GRANTING

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

PLAINTIFFS'

Defendants.

RENEWED MOTION TO

REQUIRE DEFENDANTS

TO TRACK AND

ACCOMMODATE NEEDS

OF ARMSTRONG CLASS

MEMBERS HOUSED IN

COUNTY JAILS,

ENSURE ACCESS TO A

GRIEVANCE

PROCEDURE, AND TO

ENFORCE 2001

PERMANENT

INJUNCTION

(Docket No. 1912)

Plaintiffs move for an order requiring Defendants to track and accommodate the needs of Armstrong class members housed in county jails and to provide access to a workable grievance procedure. Defendants oppose the motion. The matter was heard on October 27, 2011. Having considered oral arguments and all of the materials submitted by both parties, the Court GRANTS Plaintiffs' motion.

BACKGROUND

This lawsuit was originally filed seventeen years ago by disabled prisoners and parolees against the California officials with responsibility over the corrections and parole systems. This Court certified Plaintiffs as representatives for a class

United States District Court
For the Northern District of California

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1 including "all present and future California state prisoners and
2 parolees with mobility, sight, hearing, learning, developmental
3 and kidney disabilities that substantially limit one or more of
4 their major life activities." Order Granting Pls.' Mots. to Am.
5 Compl. and Modify the Class, Docket No. 345, January 5, 1999, at
6 2.¹ On behalf of the class, Plaintiffs sought accommodations for
7 their disabilities, as required under federal statutes and the
8 United States Constitution.
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10 Initially, Plaintiffs sued two divisions of the then
11 California Youth and Adult Corrections Authority (the Agency).
12 The two divisions sued had separate areas of responsibility toward
13 prisoners and parolees: the Board of Prison Terms (BPT) had
14 authority over parole and parole revocation hearings, and the
15 California Department of Corrections (CDC) was responsible for all
16 other aspects of prisoners' and parolees' lives, including
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21 ¹ The Plaintiff class was certified on January 13, 1995. On
22 December 24, 1998, the parties stipulated to amend the class
23 definition to include "all present and future California state
24 prisoners and parolees with mobility, sight, hearing, learning and
25 kidney disabilities that substantially limit one or more of their
26 major life activities." Stipulation and Order Amending Pl. Class,
27 Docket No. 342, December 24, 1998, at 2. The class definition was
28 subsequently modified, as to Defendants Board of Prison Terms
(BPT) and Chairman of the BPT only, to add prisoners and parolees
with developmental disabilities on January 5, 1999. Order
Granting Pls.' Mots. to Am. Compl. and Modify the Class, January
5, 1999, at 2.

1 supervision of parolees.² By agreement of the parties, litigation
2 against the two divisions was initially bifurcated and proceeded
3 on two separate tracks.

4 On September 20, 1996, this Court ordered CDC and related
5 Defendants to develop plans to ensure that their facilities and
6 programs were compliant with the Americans With Disabilities Act
7 (ADA), 42 U.S.C. §§ 12131 et seq., and readily accessible to and
8 usable by prisoners and parolees with disabilities. The order
9 also required Defendants to develop policies to provide a prompt
10 and equitable disability grievance procedure, to allow approved
11 assistive aids for prisoners with disabilities in segregation
12 units and reception centers, and to ensure accessibility in new
13 construction and alterations. Remedial Order, Injunction and
14 Certification for Interlocutory Appeal, September 20, 1996. The
15 Court retained jurisdiction to enforce its terms. Id. at 5.³

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18 Following a bench trial in April and May 1999, the Court
19 found on December 22, 1999 that BPT and other Defendants
20 responsible for conducting parole proceedings were in violation of
21 the ADA, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.

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23 ² Since this lawsuit was originally commenced, the Agency has
24 been reorganized and superseded by the California Department of
25 Corrections and Rehabilitation (CDCR). BPT is now the Board of
26 Parole Hearings (BPH). CDC has been replaced by the Division of
27 Adult Institutions (DAI) and the Division of Adult Parole
28 Operations (DAPO).

³ The Ninth Circuit affirmed the injunction against the CDC
Defendants on appeal. See Armstrong v. Wilson, 124 F.3d 1019 (9th
Cir. 1997), cert. denied, 524 U.S. 937 (1998).

1 § 794, and the Due Process Clause of the Fourteenth Amendment.
2 Findings of Fact and Conclusions of Law, December 22, 1999, Docket
3 No. 523.

4 The Court's Findings of Fact and Conclusions of Law held
5 that:

6 Defendants cannot avoid ADA and Section 504 liability by
7 delegating responsibility for their delivery of
8 programs, services and activities, or for the facilities
9 in which they provide these programs, to the CDC or any
10 other entity. The implementing regulations of both the
11 ADA and Section 504 prohibit covered entities from
12 discriminating against individuals with disabilities
13 "directly or through contractual, licensing, or other
14 arrangements." The BPT is thus legally obliged to
15 ensure non-discrimination wherever programs, services or
16 activities are provided to Plaintiff class members.
17 Additionally, the BPT cannot avoid liability for
18 violations of the physical accessibility standards by
19 holding its programs in locations under the control of
20 other entities.

21 Findings of Fact and Conclusions of Law, at 90 (internal citations
22 omitted). At that time, the Court also found that certain large
23 jail facilities utilized by these Defendants for parole
24 proceedings, including the Los Angeles County Men's Jail, were
25 inaccessible for people with disabilities, which raised an
26 inference that this was a system-wide problem. Id. at 31-32. The
27 Court determined that these Defendants violated the rights of
28 class members in county facilities for parole revocation
proceedings in many of the same ways alleged in the instant
motion, including depriving them of assistive devices for mobility
problems or accommodations for hearing and vision impairments.
Id. at 32-38, 41-43, 45-47, 49-52, 60-66. The Court also

1 recognized that these Defendants did not have an adequate system
2 for tracking the facts of parolees' disabilities in their files,
3 or for allowing parolees to communicate their accommodation needs.
4 Id. at 38-40. Based on its Findings of Fact and Conclusions of
5 Law, the Court entered a permanent injunction as to these
6 Defendants. Permanent Injunction, Docket No. 524.⁴

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8 On January 3, 2001, the CDC Defendants amended their Court
9 Ordered Remedial Plan regarding the provision of programs and
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11 ⁴ On appeal, the Ninth Circuit affirmed the injunction
12 against the BPT Defendants with minor changes. See Armstrong v.
13 Davis, 275 F.3d 849, 879 (9th Cir. 2001), cert. denied, 537 U.S.
14 812 (2002). Several cases have since indicated that the Ninth
15 Circuit's decision in Armstrong was abrogated in part by Johnson
16 v. California, 543 U.S. 499, 504-05 (2005). See, e.g., Harris v.
17 Alvarado, 402 Fed. Appx. 180, 181 (9th Cir. 2010); Kirola v. City
18 of San Francisco, 2011 WL 1330853, at *4 (N.D. Cal.); Melendres v.
19 Arpaio, 2011 WL 6740711, at *19 (D. Ariz.). However, this is not
20 accurate.

21 In Johnson v. California, the Supreme Court held that the
22 CDC's policy of racially segregating inmates, like all racial
23 classifications imposed by the government, should be considered
24 under strict scrutiny, rather than under the deferential standard
25 articulated in Turner v. Safley, 482 U.S. 78 (1987), under which a
26 court considers whether regulations that burden the prisoners'
27 fundamental rights are reasonably related to legitimate
28 penological interests. 543 U.S. at 504-15.

Armstrong, however, did not concern or discuss racial
classification; instead, it concerned appropriate accommodations
for prisoners and parolees with disabilities. In Armstrong, the
Ninth Circuit considered whether the state had provided a
legitimate penological justification for its failure to comply
with the ADA under the standard articulated in Turner v. Safley,
assuming, without deciding, for the purposes of its discussion
that this standard applied to both prisoners and parolees. 275
F.3d at 873-74. It did not review "race-based prison regulations"
as some courts apparently believe that it did. Harris v.
Alvarado, 402 Fed. Appx. at 181.

1 services to inmates and parolees with disabilities. The Remedial
2 Plan requires Defendants to ensure that prisoners and parolees
3 with disabilities are accessibly housed, that they are able to
4 obtain and keep necessary assistive devices, and that they receive
5 effective communication regarding accommodations. Id. at 1-7,
6 27-28, 32, 34, 46-47. The Remedial Plan also requires Defendants
7 to include in all contracts language that requires subcontractors
8 to comply with the ADA. Id. at 46.

9
10 The Court entered a Revised Permanent Injunction against the
11 BPT Defendants on February 11, 2002. The Revised Permanent
12 Injunction requires these Defendants to provide accommodations, at
13 all parole proceedings, to prisoners and parolees with
14 disabilities. Revised Permanent Injunction, February 11, 2002,
15 ¶ 17. The subsequent Order Granting Motion to Enforce Revised
16 Permanent Injunction issued on May 30, 2006, requires that
17 Defendants develop and implement a plan to ensure that necessary
18 accommodations are provided to class members without delay. Order
19 Granting Motion to Enforce Revised Permanent Injunction, May 30,
20 2006, at 8-9. In that Order, the Court found that Defendants did
21 not have an adequate system to track parolees with disabilities.
22 Id. at 4. The Court also found that, as a result, parolees with
23 disabilities were not being provided with required accommodations,
24 including mobility assistance for paraplegics and sign language
25 interpreters for deaf parolees. Id. at 5-6. At that time,
26 Defendants did not contest the extensive evidence that Plaintiffs
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1 submitted to demonstrate ongoing violations of the same type
2 alleged in the instant motion, such as evidence that a paraplegic
3 parolee had to drag himself up stairs. Id.

4 On September 11, 2007, in response to Plaintiffs' motion to
5 enforce the May, 2006 Order Granting Motion to Enforce Revised
6 Permanent Injunction, this Court Ordered:

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8 Within thirty days of this order, Defendants shall
9 report to Plaintiffs' counsel which housing units in
10 Alameda, Sacramento and Los Angeles County Jail
11 facilities are wheelchair accessible and how Defendants
12 ensure that class members at those institutions who are
13 designated DPW and DPO are housed in the accessible
14 facilities and receive necessary accommodations and
15 assistive devices in both their housing units and at
16 their hearings. Within ninety days of this order,
17 Defendants shall do the same with the remaining county
18 jails. A necessary component of both reports is how
19 Defendants track class members who are housed in county
20 facilities due to parole holds.

21 Order Granting in Part Plaintiffs' Motion to Enforce the May 30,
22 2006 Order, ¶ 19. At that time, the Court found that Defendants'
23 tracking system for information about disabilities of prisoners
24 and parolees was still inadequate. Id. at 4-6. The Court also
25 found that Defendants had failed to develop an adequate plan to
26 provide needed accommodations for parole proceedings in county
27 jails and rejected Defendants' assertion that "county jails
28 provide adequate access to necessary assistive devices for class
members" as without proof. Id. at 9-10.

On May 28, 2009, Plaintiffs filed a Motion to Require
Defendants to Track and Accommodate Needs of Armstrong Class

1 Members Housed in County Jails and Ensure Access to a Workable
2 Grievance Procedure.

3 On September 16, 2009, this Court held that Defendants are
4 responsible for ensuring that Armstrong class members receive
5 reasonable accommodations when Defendants elect to house them in
6 county jails. Order Granting Plaintiffs' Motion to Require
7 Defendants to Track and Accommodate Needs of Armstrong Class
8 Members Housed in County Jails and Ensure Access to a Workable
9 Grievance Procedure, September 16, 2009, at 7-9. The Court stated
10 that Plaintiffs had submitted evidence demonstrating that,
11 pursuant to their authority, Defendants were housing a significant
12 number of persons in county jails, including an average of 480
13 parolees a day in the San Mateo County Jail, an average of 1,000
14 parolees a day in the Sacramento County Jail, and 770 individuals
15 in In-Custody Drug Treatment Program (ICDTP) placements in county
16 jails. Id. at 4-5. The Court also held that Plaintiffs had
17 submitted sufficient evidence that class members being housed in
18 county jails were not receiving accommodations to which they were
19 entitled. Id. at 9-10. Accordingly, the Court entered an order
20 requiring that Defendants, within thirty days, submit a plan "for
21 ensuring timely and appropriate accommodations for Armstrong class
22 members in county jails[.]" Id. at 11. The September 16 Order
23 provided Defendants with flexibility to devise the specifics of
24 the plan, but also required that the plan contain certain
25 elements. Id. at 11-14. The Court also found, pursuant to
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1 requirements of the Prison Litigation Reform Act, 18 U.S.C.
2 § 3626(a)(1)(A), that the relief it ordered was "narrowly drawn,
3 extend[ed] no further than necessary to correct the violation of
4 federal rights, and [was] the least intrusive means necessary to
5 correct the violation of the federal rights[.]" Id. at 11.

6 Defendants appealed this Court's September 16 Order.
7 Nonetheless, on October 15, 2009, as required by the September 16
8 Order, Defendants provided "written notification and instruction
9 to all county jail facilities of their duty to comply with the ADA
10 in housing Armstrong class members and that defendants will
11 enforce those obligations." September 16 Order, at 11.

12 On April 1, 2010, after negotiations between the parties,
13 Defendants issued their County Jail Plan, entitled the "County
14 Jail Accommodation Process," in a further effort to comply with
15 the September 16 Order.
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17 On September 7, 2010, the Ninth Circuit affirmed in part and
18 vacated in part the September 16 Order, and remanded the case to
19 this Court for further proceedings. The Ninth Circuit affirmed
20 this Court's holdings that "defendants are responsible for
21 providing reasonable accommodations to the disabled prisoners and
22 parolees that they house in county jails." Armstrong v.
23 Schwarzenegger, 622 F.3d 1058, 1063 (9th Cir. 2010). The Ninth
24 Circuit held that: (1) the validly enacted ADA Title II
25 regulations provide that "a public entity, in providing any aid,
26 benefit, or service, may not, directly or through contractual,
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1 licensing, or other arrangements, discriminate against individuals
2 with disabilities[,]" id. at 1065 (quoting 28 C.F.R.
3 § 35.130(b)(1)); (2) the ADA requires that when Defendants house
4 state prisoners and parolees in county jails, the state is
5 responsible to ensure that the state prisoners and parolees with
6 disabilities can access the county jails' benefits and services
7 "to the same extent that they are provided to all other detainees
8 and prisoners," id. at 1068; (3) neither principles of federalism
9 nor deference to correctional authorities nor the Prison
10 Litigation Reform Act prohibited this Court's order requiring that
11 when Defendants "become aware of a class member housed in a county
12 jail who is not being accommodated, they either see to it that
13 that jail accommodates the class member, or they move the class
14 member to a facility . . . which can accommodate his needs[,]" id.
15 at 1069, or that when Defendants "become aware of a 'pattern' of
16 ADA noncompliance, they are to notify county jail officials and
17 take steps to remedy the pattern of noncompliance[.]" Id. at
18 1069-1070.

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21 Although the Ninth Circuit affirmed this Court's rulings on
22 the requirements of the ADA, it ruled that the system-wide scope
23 of relief ordered required development of additional evidence
24 concerning the nature and extent of the violations. Id. at 1063,
25 1073-1074. It found that the type of relief ordered would be
26 appropriate if such additional evidence were presented. Id. at
27 1070-1074. In finding that the evidence was insufficient to
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1 justify the scope of September 16 Order, the Ninth Circuit stated
2 that this Court failed to identify any "past determinations that
3 show that class members housed in county jails are not being
4 accommodated . . . and thus, we are required to conclude, did not
5 rely on them when determining the scope of its order." Id. at
6 1073. The Ninth Circuit reversed the September 16 Order and
7 remanded to this Court "to allow it to take such additional
8 evidence as may be necessary concerning the nature and extent of
9 the violations of class members' rights taking place in the county
10 jails." Id. at 1073. The Ninth Circuit described Plaintiffs'
11 evidentiary burden on remand as "far from insurmountable" and
12 explained that "in light of the State's failure to track many of
13 the class members that it houses in the County Jails, not much
14 more evidence than that already provided may be required to
15 approve the [September 16 Order]." Id. at 1074.

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18 On October 1, 2011, state legislation commonly known as the
19 prison "realignment" law went into effect. Under realignment,
20 parolees who were already placed on state parole prior to October
21 1, 2011 remain under the supervision of Defendants. Cal. Penal
22 Code § 3000.09(b). Further, persons released from state prison on
23 or after October 1, 2011, who fall into certain categories,
24 including conviction of serious or violent felonies, continue to
25 be placed on state parole under the jurisdiction and supervision
26 of Defendants. Cal. Penal Code § 3000.08(a), (c). Under
27 realignment, low-level offenders who are released from state
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1 prison on or after October 1, 2011 and do not fall into the above-
2 mentioned categories are instead supervised on release by counties
3 under the newly created Post-Release Community Supervision
4 program. Cal. Penal Code § 3000.08(a), 3451.⁵ Realignment also
5 amended Penal Code section 3056, which now provides, in relevant
6 part:

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8 Prisoners on parole shall remain under the supervision
9 of the department. . . . [U]pon revocation of parole, a
10 parolee may be housed in a county jail for a maximum of
11 180 days. When housed in county facilities, parolees
12 shall be under the legal custody and jurisdiction of
13 local county facilities. When released from custody,
14 parolees shall be returned to the parole supervision of
15 the department for the duration of parole.

16 Cal. Penal Code § 3056(a).

17 Plaintiffs have submitted evidence that there are
18 currently over 100,000 parolees under Defendants'
19 supervision. Grunfeld Reply Decl. ¶ 25, Ex. O. In February
20 2011, Defendants classified approximately seven percent of
21 the incarcerated population as individuals with disabilities,
22 excluding learning disabilities and mental health concerns.
23 Grunfeld Decl. ¶ 53. According to Defendants' own estimates,
24 approximately half of the individuals released from prison in
25 the state after October 1, 2011 will be placed on state
26 parole under the jurisdiction and supervision of Defendants.

27 ⁵ Plaintiffs state that their present motion is not meant to
28 encompass individuals in the PRCS program, and is limited to state
prisoners and state parolees. Accordingly, the Court limits its
analysis and does not consider Defendants' responsibility to
individuals in the PRCS program, who are housed in county jails.

1 Grunfeld Decl. ¶ 43, Exs. FFF, HHH. Defendants also project
2 that thousands of parolees will be housed in county jails on
3 a daily basis. Id.

4 DISCUSSION

5 Defendants now no longer dispute that "California state
6 prisoners and parolees with mobility, sight, hearing, learning and
7 developmental disabilities" are not being provided proper
8 accommodations while housed at county jails or that they are
9 suffering harm as a result. Defendants also do not dispute that
10 these parolees do not have access to a proper grievance system.
11 Instead, Defendants primarily argue that, under the realignment
12 statute, state parolees are no longer members of the Armstrong
13 class when they are housed in county jails and thus that the
14 proposed injunction is broader than necessary to accommodate the
15 needs of class members. Defendants also contend that the proposed
16 injunction would violate the federalism principles set forth in
17 Printz v. United States, 521 U.S. 898 (1997), and that the relief
18 requested here concerns the same issues being litigated in other
19 pending federal class action cases, so this Court should abstain
20 from exercising jurisdiction here.

23 I. Responsibility for Providing Accommodations in County Jails

24 The Ninth Circuit has held that, under the ADA and the
25 Rehabilitation Act, Defendants have the legal responsibility to
26 ensure ADA-compliant conditions for Armstrong class members whom
27 they house in county jails. Armstrong, 622 F.3d at 1068, 1074.
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1 Defendants rely heavily on sections of the California Penal
2 Code that have not yet gone into effect. As these codes sections
3 are currently written, after July 1, 2013, control over parole
4 revocation proceedings and decisions will transfer from Defendants
5 to local courts, although Defendants will continue to supervise
6 parolees. However, this Court must apply the law currently in
7 effect and will not speculate as to what effect, if any, potential
8 changes to the applicable laws may have on its rulings in the
9 future.
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11 Defendants do not dispute that they continue to have
12 responsibility for certain groups of state prisoners and parolees
13 housed in county jails: those already there "as of October 1, 2011
14 pending parole revocation proceedings, offenders sentenced to life
15 terms who may return to state prison, and state inmates housed in
16 county jail for county proceedings." Opp. at 6. Defendants also
17 not dispute that they continue to house substantial numbers of
18 CDCR prisoners and parolees pursuant to various contracts and
19 other arrangements. These include contracts with Alameda and
20 Sacramento Counties that Defendants renewed only months before the
21 realignment statute went into effect and that provide for payments
22 to those counties of up to \$160 million over the next five years
23 to house as many as 1,150 state inmates per day. See Grunfeld
24 Decl. ¶ 38, Ex. DDD; Grunfeld Reply Decl. ¶ 33, Ex. Q. Defendants
25 also contract with a number of counties to house state prisoners
26 in jail-based ICDTPs. Grunfeld Decl. ¶ 33, Exs. MM, OO. See also
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1 Cal. Penal Code § 4115 (local counties "may enter into a contract
2 with the Department of Corrections and Rehabilitation to house
3 inmates who are within 60 days or less of release from the state
4 prison to a county jail facility for the purpose of reentry and
5 community transition purposes"). Defendants do not dispute that
6 they are still empowered, under various code sections, to hold
7 local county jails accountable for not adhering to minimum
8 standards prescribed by Defendants. See, e.g., Cal. Penal Code
9 § 4016.5 (allowing Defendants to withhold reimbursements to
10 counties for housing certain state prisoners if the county's
11 "facilities do not conform to minimum standards for local
12 detention facilities" and the county fails to make reasonable
13 efforts to correct the violations); Cal. Gov. Code § 76101
14 (providing that any jail or addition "constructed with moneys from
15 the Criminal Justice Facilities Construction Fund shall comply
16 with the 'Minimum Standards for Local Detention Facilities'
17 promulgated by the Board of Corrections").

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20 Defendants disclaim responsibility for state parolees who are
21 taken into custody for alleged parole violations or whose parole
22 is revoked and who are housed in county jails. They argue that
23 state law now provides that these state parolees are to be housed
24 in county jails and that, during the time of such incarceration,
25 the county has custody and jurisdiction over these state parolees.
26 Defendants aver that this relieves Defendants of responsibility
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1 toward those who may be Armstrong class members. See Cal. Penal
2 Code § 3056(a).

3 However, as prior to the enactment of the realignment
4 statute, state parolees housed by Defendants in county jails are
5 in the custody and control of the county, while simultaneously in
6 the continuing custody and control of Defendants. See, e.g.,
7 Samson v. California, 547 U.S. 843, 851 (2006) (noting, prior to
8 realignment, that "an inmate-turned-parolee remains in the legal
9 custody of the California Department of Corrections through the
10 remainder of his term"). As before the realignment statute went
11 into effect, Defendants continue to maintain control and authority
12 over whether the state parolees under their supervision are to be
13 taken into custody and placed into a county jail. Parolees are
14 placed into county jails by virtue of their status as state
15 parolees and do not cease being state parolees while they are also
16 county jail inmates. Defendants BPH and Brown continue to be the
17 only ones able to place a parole hold on a parolee and to have the
18 parolee taken into custody for an alleged violation of parole
19 terms without being eligible for bail. Cal. Penal Code §§ 3056,
20 3062; In re Law, 10 Cal. 3d 21, 24-26 (1973). Under Defendants'
21 implementing policies, county jails are not typically permitted to
22 turn away parolees who have been medically cleared and whom
23 Defendants bring to the county jails, but if they do so,
24 Defendants must "maintain custody" of the parolee while Defendants
25 determine how to resolve the situation. Grunfeld Reply Decl., Ex.
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1 K at 4. State law does not appear to prevent Defendants from then
2 placing the parolee in a different county jail. Further, under
3 Defendants' policies, when county authorities release a parolee
4 before revocation processing is complete, Defendants retain the
5 discretion to return the parolee to custody or to allow the
6 parolee to remain in the community. Grunfeld Reply Decl., Ex. L
7 at 4. Under current law, Defendants BPH and Brown alone have the
8 authority to adjudicate whether a parolee has in fact violated his
9 parole or to decide his sanction, including detention in a county
10 jail. Cal. Penal Code §§ 3000(b)(8), 3000.09(d), 3060, 3062.
11 State law does not mandate this sanction, and it does not
12 designate the particular county facility where the parolee is to
13 be held; these are decisions left to Defendants, who can choose to
14 transfer parolees away from facilities that unable to meet their
15 needs. Defendants also continue to compensate counties for
16 housing state parolees in county jails during the revocation
17 process and during the term of the revocation, now through the use
18 of newly established Local Community Corrections Accounts, which
19 compensates a county based on the number of prisoners that the
20 county is expected to supervise and house, an amount that thus
21 could be reduced if Defendants chose to house parolees in other
22 county jails instead. Cal. Government Code §§ 30025, 30029(c).
23 The fact that state parolees are under the control and custody of
24 the county, as well as of Defendants, during the time of their
25 incarceration does not relieve Defendants of their independent
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1 obligations and responsibilities toward to these individuals. See
2 Armstrong, 622 F.3d at 1072.

3 Accordingly, Defendants continue to house state prisoners and
4 parolees in county jails pursuant to their authority under both
5 contracts and state law, as they did at the time of the Ninth
6 Circuit's earlier opinion in this case. Thus, as the Ninth
7 Circuit previously held, Defendants are obliged to ensure
8 ADA-compliant conditions for the prisoners and parolees that they
9 house under their own authority in county jails.
10

11 II. Evidence of Violation of Class Members' Rights

12 Plaintiffs' evidence demonstrates that, both before and after
13 Defendants issued the County Jail Plan, Armstrong class members
14 have suffered significant violations of their ADA rights while
15 housed in county jails. Plaintiffs submitted substantial
16 evidence, including more than sixty declarations from class
17 members, demonstrating that class members in jails throughout the
18 State are injured and are denied access to housing, programs, and
19 services because of Defendants' failure to accommodate their
20 disabilities.⁶ Although Defendants again disclaim their
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23 ⁶ In their reply, Plaintiffs clarified that the county-based
24 Post-Release Community Supervision (PRCS) program was not covered
25 by the instant motion. On October 20, 2011, a week after
26 Plaintiffs filed their reply, Defendants filed objections to the
27 declarations that Plaintiffs had submitted with their opening
28 brief and with their reply. Defendants challenged the
admissibility of the declarations on the grounds that the
declarants do not make clear what their commitment offenses were
and thus if they are state parolees or part of the PRCS program.
However, under the provisions of re-alignment, the declarants
could not be part of the PRCS program. Each declarant attests

1 responsibility toward these individuals as discussed above,
2 Defendants do not dispute that these violations are still
3 occurring more than a decade after this Court first found that
4 Defendants were failing to accommodate the needs of class members
5 in County facilities. The overwhelming and disturbing evidence is
6 summarized below.

7
8 Class members with mobility impairments were denied assistive
9 devices, or had assistive devices taken away from them, while
10 housed in county jails, even though Defendants had previously
11 determined the assistive devices were necessary for the class

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13 that he or she was on parole prior to October 1, 2011. Under
14 state law, the PRCS program only began prospectively on that date;
15 that is, state law provides that those already on parole prior to
16 October 1, 2011 are not eligible to participate in it. Cal. Penal
17 Code § 3451(a).

18
19 Four days later, on October 24, 2011, without seeking leave
20 of Court to do so, Defendants filed further objections to the
21 evidence that Plaintiffs had submitted with their reply. Civil
22 Local Rule 7-3 allows a party, without seeking prior Court
23 approval, to file a single document objecting to new evidence
24 submitted with a reply within seven days after the reply is filed.
25 See Civil Local Rule 7(d). Defendants' supplementary objections
26 were untimely and unauthorized by Local Rule 7-3, because
27 Defendants had already filed an objection to Plaintiffs' reply
28 evidence.

21
22 In this document, Defendants argue that evidence Plaintiffs
23 offered with their reply, including eight additional declarations,
24 should not be considered, as it was "procedurally improper" to
25 offer it in this way. It is true that "[u]nder such
26 circumstances, the court has discretion to 'decline to consider'
27 the new evidence." Mercado v. Sandoval, 2009 U.S. Dist. LEXIS
28 63267, at *6 (E.D. Cal.). Unlike in the cases cited by
29 Defendants, however, Defendants here have had the opportunity to
30 address this new evidence at a subsequent hearing. See, e.g.,
31 Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1031
32 (9th Cir. 2001). Accordingly, the Court overrules Defendants'
33 objections to the reply evidence submitted by Plaintiffs, because
34 the objections were submitted in violation of Local Rule 7-3 and
35 because Defendants had the opportunity to respond to this evidence
36 at the hearing.

1 members to access programs and services while in custody. Class
2 members were not provided with accessible housing, making it
3 difficult and dangerous for them to access their beds, toilets,
4 showers, chow halls, exercise yards, meetings with attorneys, and
5 parole proceedings. One class member was forced to sleep on the
6 floor for sixteen nights. Other class members crawled or limped
7 in pain to hearings and meetings in county jails. Still others
8 received wheelchairs while in revocation hearing rooms, but not in
9 transit to and from those same hearing rooms. A class member
10 housed at the Yuba County Jail had his wheelchair taken away and
11 not returned, and was unable to shower as a result. This also
12 happened during the same class member's separate stay at the
13 Sutter County Jail. Both jails informed this prisoner that there
14 was no appeals process. Another class member with a mobility
15 impairment being held at the San Francisco County Jail was
16 initially informed by an officer that he could not use his
17 wheelchair to travel long distances, despite a written
18 verification from his doctor. The jail refused to allow this
19 prisoner any assistive devices inside his cell, which sometimes
20 required him to hop around his cell. He had to sleep on a
21 mattress on the floor for approximately seven days because the
22 jail would not provide him with a lower bunk. Staff at Stanislaus
23 County Jail took away the wheelchair of a parolee who required it
24 to travel more than ten feet. As a result, another prisoner was
25 required to hold him up and help him to the shower. The prisoner
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27
28

1 was told there was no appeals process at the jail. Similarly,
2 staff at the Alameda County Jail in Santa Rita denied a wheelchair
3 to another prisoner with a severe mobility impairment, making it
4 painful and difficult for him to get around. Jail staff also
5 failed to provide him with a shower chair, which made it difficult
6 and dangerous for him to shower. Staff at Sonoma, Sutter, and
7 Sacramento County jails have removed canes from class members,
8 making it painful and hard for them to walk distances, shower, and
9 go up and down stairs.
10

11 Class members with hearing and vision impairments did not
12 receive accommodations necessary for effective communication while
13 housed in county jails. Sign language interpreting services were
14 not regularly available to class members housed in county jails.
15 Class members with hearing impairments were not provided with sign
16 language interpreters for important medical and mental health care
17 appointments, which impeded or obstructed their access to those
18 services. One parolee with severe hearing loss was provided with
19 a sign language interpreter only once in the seventy-five days he
20 was at the Santa Rita jail, and went to medical appointments on
21 three or four occasions without being provided access to a sign
22 language interpreter.
23

24 Deaf class members could not access the telecommunications
25 devices for the deaf (TDD/TTY telephones) they need to prepare
26 their defenses and communicate with family and the outside world.
27 Because the Santa Rita TDD/TTY telephone was broken, a deaf
28

1 parolee was only able to use the telephone three times in the
2 seventy-five days he was in the jail. Another deaf parolee had a
3 similar experience at Santa Rita.

4 A class member housed by Defendants at the Los Angeles County
5 Jail's Twin Towers facility was not provided with a sign language
6 interpreter for medical visits or psychiatric appointments,
7 despite his request for one. A deaf parolee housed at the San
8 Diego Jail was also denied a sign language interpreter for medical
9 and dental appointments. Because some officers did not know this
10 prisoner was deaf, officers would "get mad" at him when he did not
11 respond to verbal commands. This prisoner missed meals, yard,
12 appointments, and canteen call because he was unable to hear the
13 events announced over the loudspeaker and no one notified him of
14 the events. He was also unable to participate in psychiatric
15 treatments and therapy groups and had trouble communicating with
16 jail staff about his need for the TDD/TTY telephone. A blind
17 class member was denied a tapping cane at the San Francisco County
18 Jail.
19 Jail.

21 Armstrong class members housed in county jail are frequently
22 forced to rely upon other prisoners to help them access programs
23 and services as a result of the failure by Defendants and the
24 county jails to provide reasonable accommodations. Reliance on
25 other prisoners for access to basic services, such as food, mail,
26 showers and toilets by prisoners with disabilities leaves them
27 vulnerable to exploitation and is a dangerous correctional
28

1 practice.

2 Class members do not have access to functional and timely
3 grievance procedures at county jails to request and obtain
4 disability accommodations. As noted above, at some jails, class
5 members were informed that no grievance procedure exists. At
6 other jails, class members were able to submit grievances but
7 never received a response or did not receive a response in a
8 timely manner.
9

10 III. Defendants' Failure to Address System-wide Violations

11 Plaintiffs contend, and Defendants do not dispute, that
12 Defendants' efforts to comply with the ADA, the Rehabilitation Act
13 and prior orders of this Court, and to provide accommodations to
14 class members housed in county jails, have been wholly inadequate
15 and ineffective on a system-wide level, resulting in widespread
16 and continuing violations of class members' rights as described
17 above. The Court finds it troubling that Defendants continue to
18 oppose Plaintiffs' request for relief while apparently recognizing
19 that all of the evidence demonstrates that it is needed.
20

21 Although Defendants have developed a computerized, real-time
22 system called the Disability and Effective Communication System
23 (DECS) for tracking disabilities and effective communication needs
24 of prisoners housed in CDCR prisons and on parole, Defendants
25 still have not developed any system, electronic or otherwise, for
26 identifying or tracking such disabilities and needs of CDCR
27 prisoners housed in county jails and facilities. Defendants still
28

1 do not know the specific location at which those class members are
2 housed, and what accommodations in housing, programs, services,
3 and effective communication those class members require.

4 The contracts between Defendants and Alameda and Sacramento
5 Counties for the housing of CDCR prisoners in those jails violate
6 the March 21, 2001 Permanent Injunction because they do not
7 include the following provision or one substantially similar, as
8 required by Paragraph 8 of the Injunction: "By signing this
9 contract, Contractor assures the State that it complies with the
10 Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101
11 et seq., which prohibits discrimination on the basis of
12 disability, and with applicable regulations and guidelines issued
13 pursuant to the ADA."
14

15 Defendants also contract with several counties to provide
16 drug counseling in lieu of parole revocation through the
17 In-Custody Drug Treatment Program (ICDTP). Armstrong class
18 members continue to have only limited access to ICDTPs offered at
19 county jails because several of Defendants' ICDTP contracts
20 violate the ADA through their Local Jail Exclusionary Criteria
21 which ban persons with disabilities from participation.
22 Defendants' own tracking system shows that one parolee in a
23 wheelchair was rejected from the ICDTP due to a mobility
24 impairment. Another parolee's file indicates that the fact that
25 he is in a wheelchair may limit his ICDTP-jail placement.
26
27

28 The County Jail Plan as drafted and implemented by Defendants

1 has been inadequate and ineffective in remedying the ongoing
2 violations of the rights of class members housed in county jails.
3 It is troubling that Defendants do not defend the sufficiency of
4 the Plan in any way or show that they have properly implemented
5 even the basic mandates of their own Plan. Defendants also do not
6 respond to the declarations that demonstrate that class members
7 continue to suffer harm after their Plan was purportedly
8 "operating appropriately." The Plan does not have any provision
9 for Defendants promptly to provide the County Jails with
10 information about previously-identified disabilities or necessary
11 accommodations for class members housed in county jails. It also
12 does not have any provision for Defendants to determine whether a
13 CDCR prisoner or parolee who is housed at a county jail requires
14 any accommodations. In the Plan, Defendants elected to rely on
15 the existing grievance procedures available at the county jails,
16 but failed to confirm that the county jails' grievance procedures
17 were adequate or appropriate as written or in practice.
18 Defendants do not monitor grievances of class members in the
19 county jails or have a means for providing to Plaintiffs' counsel
20 a copy of every disability-related grievance filed by an Armstrong
21 class member housed in a county jail.

22
23
24 Defendants' County Jail Plan is, on its face, insufficient to
25 ensure the accommodation of class members housed in county jails.
26 Only a single provision in the Plan--that Division of Adult Parole
27 Operation (DAPO) and BPH employees must contact the county jail if
28

1 a parolee held in the jail pending revocation requests an
2 accommodation or if the employees observe or become aware of the
3 need for an accommodation--might result in the accommodation of a
4 class member who otherwise would not be accommodated while in
5 county jail. The County Jail Plan does not, however, require that
6 Defendants' staff do anything to verify that class members are in
7 fact being accommodated by the county jails. Nor it does it
8 provide for Defendants to share information regarding class
9 members' disabilities and accommodation needs with the county
10 jails, even though Defendants have a computerized tracking
11 system--DECS--dedicated to that purpose. The County Jail Plan
12 also has no provisions whatsoever that could result in the
13 accommodation of class members housed in county jail who are not
14 parolees pending parole revocation. This include parolees serving
15 their revocation terms, CDCR prisoners who are "out-to-court," and
16 prisoners at jail-based In-Custody Drug Treatment Programs. The
17 Plan does not even provide that these class members may be moved
18 away from a facility that is unable to meet their needs.

21 The evidence shows, and Defendants do not dispute, that
22 Defendants rarely comply with the provision of the County Jail
23 Plan requiring them to request disability accommodations from
24 county jails on behalf of class members. Out of many thousands of
25 BPH Form 1073 documents completed over the past year, only a
26 handful reflect appropriate follow-up by CDCR officials with
27 knowledge of a class member's disability needs.
28

1 Moreover, Defendants substantially delayed the implementation
2 of critical provisions of their County Jail Plan. For example,
3 the County Jail Plan explicitly provides that BPH would modify the
4 BPH 1073 form to create a space for Notice Agents, and other staff
5 who interact with CDCR prisoners in county jails, to indicate when
6 they had contacted county jail staff, to request an accommodation
7 for a class member. Defendants took more than six months to
8 modify the electronic version of the BPH 1073 form and took more
9 than thirteen months to modify the paper version of the form.
10 DAPO never trained its staff regarding how to use the new
11 functionalities of the revised electronic BPH 1073 form.

12 Defendants do not dispute that they have failed to provide
13 appropriate training and supervision for the staff responsible for
14 implementing the County Jail Plan. Defendants did not effectively
15 monitor or supervise their own employees to determine if they were
16 complying with the Plan or whether the Plan was effective in
17 assuring that class members were receiving accommodations while
18 housed in county jails. BPH waited more than two and a half
19 months after the Plan was purportedly implemented even to inform
20 its staff of their obligations under the Plan. Despite the Plan's
21 reliance on the Correctional Standards Authority (CSA) to "monitor
22 this matter" and describe "problems," Defendants did not even
23 inform the CSA that the final County Jail Plan had been issued,
24 much less instruct the CSA to monitor for ADA compliance. No
25 monitoring by the CSA has occurred.

1 Defendants have abdicated their responsibility for
2 accommodating Armstrong class members to the county jails.
3 Defendants possess little to no knowledge regarding whether the
4 county jail facilities in which they house Armstrong class members
5 are physically accessible to wheelchair users. Defendants'
6 knowledge of the wheelchair accessibility of the county jails is
7 derived from a 2007 survey whereby Defendants sent a letter to the
8 counties requesting that they self-report the accessibility of
9 cells in their jails. Defendants then compiled the answers that
10 they received into a single document. In its final form, the
11 survey results lacked information for many of the county
12 facilities. Moreover, Defendants never endeavored to confirm that
13 the information provided to them by the counties was accurate.
14 Defendants are aware of court orders and litigation pending
15 against Orange and Los Angeles Counties regarding the inadequacy
16 of their wheelchair accessible housing. Defendants are also aware
17 that certain facilities in San Diego County lack wheelchair
18 accessible housing. Yet Defendants have taken no steps to ensure
19 that Armstrong class members are protected when housed in those
20 counties.
21
22

23 Defendants do not dispute that they have not taken any steps
24 to investigate the allegations of ADA violations made in the
25 declarations of Armstrong class members housed in county jails
26 that Plaintiffs have provided to Defendants from September 2009
27 forward.
28

1 Defendants' communication of the County Jail Plan to the
2 counties--in a single letter from CDCR's General Counsel on April
3 12, 2010--did not adequately convey to the counties their existing
4 obligations under the ADA and Rehabilitation Act. In particular,
5 CDCR's statement in that letter that the County Jail Plan "does
6 not require county jails to change any policies or procedures
7 already in place" renders meaningless any report that Defendants
8 might make to the counties of patterns of ADA non-compliance.
9 Given this statement, any county informed of such a pattern will
10 believe that it is not required to do anything to address or
11 resolve such a pattern. In addition, the evidence shows that
12 Defendants did not follow up with any counties regarding the
13 implementation of the County Jail Plan after that letter.
14

15 Defendants have never engaged in any comprehensive effort to
16 verify that the disability-related county jail policies and
17 procedures, including grievance procedures, are adequate to ensure
18 the accommodation of class members. Despite claiming to rely on
19 these policies and procedures as adequate for this purpose,
20 Defendants gathered these policies for only a handful of counties.
21 In February 2011, Plaintiffs provided Defendants with more than
22 5,000 pages of county disability-related policies and procedures
23 that Plaintiffs had collected through California Public Records
24 Act requests. Defendants do not dispute that they have done
25 nothing to review or analyze the policies.
26
27

28 The Court adopts the findings and opinions of Plaintiffs'

1 well-qualified expert, Jeanne Woodford, former warden at San
2 Quentin State Prison and former acting Secretary of the CDCR. Ms.
3 Woodford examined a number of disability-related county jail
4 policies and procedures and found many of them to be deficient in
5 their mechanisms timely and effectively to identify, track, and
6 ensure the provision of accommodations to prisoners with
7 disabilities. Defendants have not challenged Ms. Woodford's
8 report or its findings. Ms. Woodford concluded that many counties
9 lack a comprehensive plan describing the basic ADA policies and
10 procedures for their jail systems or have ADA-related policies
11 that are so vague and indefinite as to be almost useless.
12 Ms. Woodford found that many counties had policies prohibiting
13 prisoners from possessing assistive devices, such as canes,
14 walkers, and wheelchairs, based upon unfounded fears about
15 prisoners using assistive devices as weapons. Ms. Woodford also
16 identified a number of counties that lacked timely and effective
17 grievance procedures to provide prisoners a mechanism for seeking
18 accommodations. She further noted that many county jail policies
19 provide for the segregation of prisoners with disabilities from
20 the general population and, by so doing, likely deprive prisoners
21 with disabilities of equal access to programs and services within
22 the jail.

23 IV. Scope of Appropriate Relief

24 Defendants have only identified two objections that
25 Plaintiffs' proposed relief is not narrowly tailored to the
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1 violations shown.

2 First, Defendants state that the functions of their agents
3 that are referred to in the proposed injunction "will likely be
4 assumed by various county personnel" at a future date, if further
5 legislative changes take effect, and after that time, they will no
6 longer have representatives regularly visiting county jail
7 facilities. Thus, it would purportedly be unduly burdensome for
8 Defendants to be required to interview those who recently have
9 arrived on a parole hold and to collect grievance forms, should
10 Defendants choose not to rely on the county jail's grievance
11 procedures. However, at the hearing, Defendants acknowledged that
12 their parole agents are currently going to county jails twice per
13 week as part of the parole revocation process. Accordingly, it
14 will not be unduly burdensome for them to perform these tasks
15 during these regular visits. Alternatively, Defendants may avoid
16 performing these tasks if they can certify that the jail has an
17 adequate disability grievance procedure.

18
19
20 Secondly, Defendants argue that system-wide relief is not
21 necessary to address the injuries suffered by the reduced number
22 of class members housed in county jails after October 1, 2011.
23 However, the Court is not persuaded that the number of class
24 members will decrease. Regarding the individuals for whom
25 Defendants do not dispute they have responsibility, Defendants
26 state only that they anticipate the numbers of these individuals
27 will decrease in the future, in part because they may choose to
28

1 move offenders sentenced to life terms to state prison. Based on
2 this conjecture, Defendants argue that the relief sought will be
3 broader than necessary to protect the remaining individuals. Id.
4 Defendants do not address the individuals held in county jails
5 pursuant to contracts, those who are in ICOTPs in county jails or
6 the state inmates housed in county jail for county proceedings.
7 Regarding state parolees, they argue only that these individuals
8 are no longer class members; the Court already held above that
9 they continue to be class members. According to Defendants' own
10 projections, the numbers of these individuals in county jails will
11 increase under realignment. Thus, the relief is not too broad for
12 this reason.
13

14 Further, Defendants do not dispute that there will continue
15 to be class members in county jails. The Ninth Circuit has
16 repeatedly held in prior decisions related to this case that "'if
17 the injury is the result of violations of a statute . . . that are
18 attributable to policies or practices pervading the whole system
19 (even though injuring a relatively small number of plaintiffs),'
20 then '[s]ystem-wide relief is required.'" Armstrong v.
21 Schwarzenegger, 622 F.3d at 1072-73 (quoting Armstrong v. Davis,
22 275 F.3d 849, 870 (9th Cir. 2001)). Defendants do not dispute
23 that there are currently class members still housed in county
24 jails or that Defendants' system-wide policies and practices have
25 caused, and continue to cause, substantial injury to class
26 members, even if they dispute the size of this group.
27
28

1 Given the ineffectiveness of Defendants' County Jail Plan,
2 Defendants' consequent reliance on the county jails to accommodate
3 Armstrong class members, and the deficiencies identified in the
4 disability-related county jail policies and procedures and in
5 certain facilities' housing, the Court finds that the types of ADA
6 violations experienced by the class member-declarants have been,
7 and will continue to be, experienced by many other class members
8 who have been and will be housed in county jails throughout
9 California. The serious violations of the rights of class members
10 while housed in county jails are systemic, persistent, and
11 continuing throughout the State and are directly attributable to
12 Defendants' failure to implement appropriate policies and
13 procedures to identify, track, and accommodate these class
14 members, to communicate appropriate information to the county
15 jails, and to monitor compliance by the county jails. The Court
16 finds that the harm experienced by class members is caused not
17 only by Defendants' statewide policies (or lack thereof) regarding
18 the housing of Armstrong class members in county jails, but also
19 by Defendants' ongoing failure to train, supervise, and monitor
20 CDCR employees and agents concerning their responsibilities,
21 ongoing failure to communicate with county jails regarding the
22 known needs of class members, and ongoing failure to take
23 responsibility for and to assert influence over county jails
24 through contracts, regulations, letters, meetings, or other
25 communications. The Court therefore finds that only system-wide
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1 injunctive relief could prevent Armstrong class members from
2 experiencing future ADA violations when housed in county jails.

3 V. Constitutionality under Printz v. United States and New York
4 v. United States

5 Defendants repeat an argument previously made and rejected by
6 the Ninth Circuit that the relief sought would "commandeer" them
7 "to enforce federal law," in violation of Printz v. United States,
8 521 U.S. 898 (1997) and New York v. United States, 505 U.S. 144
9 (1992). Opp. at 8-9. Defendants argue that, under realignment,
10 they no longer "choose to house" parolees in county jails, and
11 thus that the relief sought would "require Defendants to ensure
12 ADA-compliant conditions not for class members, but rather for
13 offenders being held under the counties' authority." Opp. at 8.

14
15 First, as the Ninth Circuit already recognized, unlike in
16 Printz and New York, this is not an action by the federal
17 government seeking to commandeer a local entity to carry out a
18 federal obligation; it is instead an action by private parties--
19 parolees who fit the class definition--seeking to enforce their
20 constitutional rights, and thus these cases are not relevant here.
21 Armstrong, 622 F.3d at 1089. Further, as already discussed above,
22 the relief that Plaintiffs seek would require only that Defendants
23 ensure ADA-compliant conditions for state prisoners and parolees
24 who are being held in county facilities pursuant to Defendants'
25 contractual and statutory authority. Thus, the order does not
26 mean that the State would have to ensure that county jails follow
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1 federal law, but rather that the State itself must follow federal
2 law. Id. at 1069. Accordingly, the proposed injunction does not
3 violate the principles set forth in Printz and New York.

4 VI. Abstention

5 Defendants state that this Court should decline to exercise
6 its jurisdiction over matters pertaining to county jails because
7 of two class action suits addressing conditions of confinement in
8 particular jails, Pierce v. County of Orange, No. 01-00981 (C.D.
9 Cal.)⁷ and Johnson v. Los Angeles Co. Sheriff's Dep't, No. 08-3515
10 (C.D. Cal.), a consent decree concerning jail conditions in Santa
11 Clara County, Padilla v. Ryan, No. 98-2309 (N.D. Cal.), and a
12 settlement between the U.S. Department of Justice and Alameda
13 County concerning jail conditions.

14
15 However, none of these cases upon which Defendants rely
16 counsel abstention in the instant situation. In Pacesetter Sys.,
17 Inc. v. Medtronic, Inc., 678 F.2d 93 (9th Cir. 1982), the Ninth
18 Circuit upheld the district court's dismissal of an action because
19 an identical complaint involving the same parties and issues had
20 first been filed in another court. Id. at 94-97. In Church of
21 Scientology v. U.S. Dep't of Army, 611 F.2d 738 (9th Cir. 1979),
22 the Ninth Circuit recognized that, under comity, a court generally
23 defers to previously filed litigation, but decided to defer to a
24
25

26 ⁷ While Defendants represent that issues similar to the ones
27 at hand are currently being litigated in Pierce, a judgment was
28 entered in that case on June 28, 2011 and the only issue presently
being litigated is attorneys' fees.

1 subsequently filed case, because that litigation, which presented
2 an identical issue, had already progressed through several
3 substantial litigation steps. Id. at 749-50. In Crawford v.
4 Bell, 599 F.2d 890 (9th Cir. 1979), the court dismissed an
5 individual case where the plaintiff was a class member in an
6 ongoing class action addressing the same issues. Id. at 893.

7
8 None of the other actions to which Defendants point
9 necessitate abstention in this case. None present the same issues
10 or parties. Each is limited to one or two jails within a single
11 county and was brought against county defendants. None were
12 brought against state defendants or involve state parolees held in
13 jails throughout the State. Further, this action was brought well
14 before any of the other cases and has already required a
15 tremendous amount of litigation prior to this point. Accordingly,
16 this Court does not decline jurisdiction over this matter in light
17 of the cases that Defendants raise.

18 CONCLUSION

19
20 In order to remedy the ongoing harm to Armstrong class
21 members, to ensure that Defendants meet their obligations under
22 the ADA and Rehabilitation Act and prior Court orders, and to
23 enforce the March 21, 2001 Permanent Injunction, and based on the
24 entire record in this action, the Court hereby ORDERS the
25 following relief, all of which it finds is narrowly drawn, extends
26 no further than necessary to correct the violations of federal
27 rights, and is the least intrusive means necessary to correct the
28

1 violations of the federal rights:

2 1. Within thirty days of this Order, Defendants shall
3 develop a revised plan for ensuring timely and appropriate
4 accommodations for Armstrong class members in county jails that
5 includes, at a minimum, the following elements:

6 a. On a daily basis, Defendants shall send to each
7 county a list of all Armstrong class members being housed in the
8 county jail facilities of that county. For each class member, the
9 list shall include the class member's name, CDCR identification
10 number, CDCR disability placement program classification and all
11 accommodations in housing and programming that the Disability and
12 Effective Communication System (DECS) states the class member
13 receives when in custody in one of Defendants' facilities.

14 b. Within three business days of the arrival of a
15 prisoner at a county jail facility pursuant to a parole hold,
16 Defendants' agent (whether Parole Agent, Notice Agent, Board
17 Revocation Representative, or other agent) shall check DECS,
18 interview the parolee, and review any available 1073 forms and
19 source documents to determine what, if any, reasonable
20 accommodations in housing, programming, or parole proceedings the
21 parolee requires under the Armstrong Remedial Plan, the ADA,
22 and/or the Rehabilitation Act and whether these accommodations
23 have been provided to the parolee by the county jail. If DECS,
24 the file review, and/or the interview show that an accommodation
25 is required and has not been provided, within four business days
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28

1 of the parolee's arrival, Defendants' agent must notify a
2 designated staff member at the county jail facility of the
3 accommodations in housing and programming that the class member
4 requires and must document that notification on an appropriate
5 form such as the BPH Form 1073.

6 c. Class members housed in county jails must have
7 ready access to disability grievance forms, either the CDCR's
8 Reasonable Modification or Accommodation Request form (CDC 1824)
9 or a separate county jail grievance form. If Defendants elect to
10 utilize the CDC 1824 form in any of the counties, Defendants shall
11 collect the grievance forms from class members no less than twice
12 a week, and shall provide copies to a designated person at the
13 county jail. Defendants shall respond to all grievances within
14 fifteen calendar days of receipt and make their best efforts to
15 ensure that necessary and reasonable accommodations are provided.
16 If a class member identifies the grievance as urgent or an
17 emergency (i.e., if it alleges a condition which is a threat to
18 the parolee's health or safety, or is necessary for participation
19 or effective communication in a parole revocation proceeding),
20 Defendants shall respond to such a grievance within five calendar
21 days of receipt and make their best efforts to ensure that
22 necessary and reasonable accommodations are provided on an interim
23 basis. For the first six months in which the plan is in effect,
24 Defendants must produce to Plaintiffs' counsel on a monthly basis
25 all grievances collected by Defendants pursuant to this
26
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1 subsection. Production may shift to two times a year after the
2 first six months.

3 d. If Defendants contend that the process outlined in
4 Paragraph (1)(c) is unnecessary because a jail has an adequate
5 disability grievance process, Defendants must certify, within
6 thirty days of the acceptance of their plan, that each such jail's
7 disability grievance policy contains the following elements:

8 i. Is readily available to all class members
9 housed in that county's jail facilities;

11 ii. Has an initial response deadline of no later
12 than fifteen calendar days from receipt by the designated jail
13 staff member;

14 iii. Contains a provision for expediting a response
15 if the appeal alleges a condition which is a threat to the
16 parolee's health or safety, or is necessary for participation or
17 effective communication in a parole revocation proceeding;

19 iv. Includes a provision for review of the
20 parolee's request by medical staff, if necessary;

21 v. Provides a right to appeal denials; and

22 vi. Requires that a copy of each and every
23 grievance and response be provided to Defendants at the same time
24 it is provided to the Armstrong class member.

25 e. If Defendants contend that the process outlined in
26 Paragraph (1)(c) is unnecessary because a jail has an adequate
27 disability grievance process, for the first six months in which
28

1 the plan is in effect, Defendants must produce to Plaintiffs'
2 counsel on a monthly basis all grievances provided to Defendants
3 pursuant to subsection (d)(vi) of this paragraph. Production may
4 shift to two times a year after the first six months.

5 f. If, either through a grievance or otherwise,
6 Defendants become aware of a class member who is housed in a
7 county jail and not receiving accommodations that he or she
8 requires, Defendants shall immediately take steps with county jail
9 staff to ensure that such accommodations are promptly provided or
10 transfer the class member to a facility that is able to provide
11 accommodations.

12 g. If Defendants become aware, either through a
13 grievance or otherwise, of a pattern of denials of disability
14 accommodations, such as improper housing and/or denial of
15 assistive devices to class members at a particular county jail
16 facility, or grievance process delays or obstacles, they shall
17 take the following steps:
18

19 i. Within five calendar days of becoming aware of
20 the pattern, Defendants shall notify the county jail facility
21 administrator in writing of the issue, providing specific dates
22 and incidents, and demanding that the conduct cease and desist;
23

24 ii. At the same time, provide a copy of this
25 notification to Plaintiffs' counsel; and
26

27 iii. Assign a staff person to investigate the
28 county jail facility and report back to Defendants within thirty

1 days, with a copy to Plaintiffs' counsel, regarding the pattern
2 and steps to be taken to remedy it, including any available
3 monetary fines and penalties for continued violations.

4 2. Within forty-five days of this Order, Defendants shall
5 issue the plan in final form and disseminate it to all jail
6 facilities in the fifty-eight counties. Defendants shall also
7 disseminate the plan to all relevant personnel employed by
8 Defendants and conduct training of such personnel on the plan upon
9 its dissemination and thereafter on an annual basis.
10

11 3. Defendants shall permit Plaintiffs' counsel to monitor
12 the plan and the accommodations provided to Armstrong class
13 members while housed in county jails. Reasonable monitoring shall
14 include, at a minimum:

15 a. The ability to conduct a sufficient number of tours
16 per year of county jail facilities in which Armstrong class
17 members are held to determine compliance with this order;

18 b. The right during the aforementioned monitoring
19 tours to conduct interviews with county jail staff members and
20 with Armstrong class members housed in county jails, and to review
21 all files and documents pertaining to Armstrong class members,
22 including class members' jail custody and medical files and jail
23 policies and procedures affecting prisoners with disabilities;
24

25 c. The opportunity to review and comment on materials
26 used to train Defendants' staff who work in or with county jails
27 about the ADA, the Rehabilitation Act, and the Armstrong case
28

1 sufficiently in advance of training sessions and to observe those
2 sessions.

3 d. A monthly document production that includes all
4 memoranda, DECS County Jail Accommodations Reports, BPH Form
5 1073s, tracking logs, and other documents related to the plan.

6 4. Pursuant to this Court's March 21, 2001 Permanent
7 Injunction, Defendants must add the following language, or
8 substantially similar language, to any existing or future
9 contracts with a county for the housing of CDCR prisoners,
10 parolees, or supervised releasees in county jails, including
11 Defendants' contracts for the housing of CDCR prisoners in the
12 jail facilities of Alameda and Sacramento Counties and Defendants'
13 contracts with any counties to operate jail-based In-Custody Drug
14 Treatment Programs: "By signing this contract, Contractor assures
15 the State that it complies with the Americans with Disabilities
16 Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., which prohibits
17 discrimination on the basis of disability and with applicable
18 regulations and guidelines issued pursuant to the ADA."
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21 5. The parties shall agree on a mechanism for promptly
22 addressing concerns raised by Plaintiffs' counsel regarding
23 individual class members housed in county jails and emergencies.

24 6. Defendants must present drafts of all plans, policies,
25 and procedures developed pursuant to this Order to Plaintiffs'
26 counsel at least fifteen days in advance of the deadlines. Both
27 parties must make all possible efforts to resolve any
28

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1 disagreements as to their adequacy. Defendants shall ensure that
2 staff with sufficient authority to amend and approve procedures
3 attend all meet and confer sessions. In the event that
4 disagreements cannot be resolved, Defendants shall implement the
5 procedures as written on the date ordered and Plaintiffs' counsel
6 shall file objections with the Court. The Court will rule on the
7 objections and issue orders amending procedures as necessary.
8

9 7. This Order shall apply to Defendants, their agents,
10 employees, successors in office, and all persons with knowledge of
11 it. The Court shall retain jurisdiction to enforce the terms of
12 this Injunction.

13 IT IS SO ORDERED.

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15 Dated: 4/11/2012

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17 CLAUDIA WILKEN
18 United States District Judge
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