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

JOHN ARMSTRONG, et al., on behalf  
of themselves and as  
representatives of the class,

Plaintiffs,

v.

EDMUND G. BROWN, JR., Governor of  
the State of California;  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION;  
MICHAEL MINOR, Director of the  
Division of Juvenile Justice; DR.  
JEFFREY A. BEARD, Secretary of  
the California Department of  
Corrections and Rehabilitation;  
JENNIFER SHAFFER, the Executive  
Officer of the Board of Parole  
Hearings; DIANA TOCHE, Acting  
Director of the Division of  
Correctional Health Care  
Services; CHRIS MEYER, Director  
of the Division of Facility  
Planning, Construction and  
Management; KATHLEEN DICKINSON,  
Director of Adult Institutions;  
and DAN STONE, Director of  
Division of Adult Parole  
Operations,

Defendants.

No. C 94-2307 CW

ORDER GRANTING  
MOTION FOR A  
FURTHER  
ENFORCEMENT ORDER  
AND DENYING  
MOTION TO HOLD  
DEFENDANTS IN  
CONTEMPT OF COURT  
(Docket No. 2236)

\_\_\_\_\_/

Plaintiffs move to enforce, and hold Defendants in contempt  
for violating, the Court's prior orders, on the basis that  
Defendants have consistently failed to provide sign language  
interpreters (SLIs) during education and vocational programs at  
the Substance Abuse Treatment Facility (SATF) and for failing to  
provide SLIs during psychiatric technicians' rounds for patients  
housed in administrative segregation housing units. Defendants

1 oppose Plaintiffs' motion. For the reasons set forth below, the  
2 Court GRANTS the motion to enforce its prior orders and DENIES the  
3 motion to hold Defendants in contempt.

4 BACKGROUND

5 In a series of orders between 1996 and 2002, the Court found  
6 that Defendants' treatment of prisoners with disabilities violated  
7 the American with Disabilities Act (ADA) and section 504 of the  
8 Rehabilitation Act.

9 On January 3, 2001, Defendants issued the amended Armstrong  
10 Remedial Plan (ARP) setting forth their own policies and plans to  
11 come into compliance with their obligations under these federal  
12 laws. See Kendrick Decl. ¶ 2, Ex. 1 (ARP).

13 Among other things, the ARP addressed effective communication  
14 for deaf inmates. It recognized, "Because of the critical  
15 importance of communication involving due process or health care,  
16 the standard for equally effective communication is higher when  
17 these interests are involved." Kendrick Decl. ¶ 2, Ex. 1, 4,  
18 § II.E.2. The ARP mandates that an "inmate's ability to lip read  
19 shall not be the sole source used by staff as a means of effective  
20 communication involving due process or medical consultations,  
21 unless the inmate has no other means of communication." Id. at 6,  
22 § II.E.2.f. The ARP also provides, "Qualified sign language  
23 interpreters . . . will be provided for all due process functions  
24 and medical consultations that fall within the scope of those  
25 described below when sign language is the inmate's primary or only  
26 means of effective communication, unless the inmate waives the  
27 assistance of an interpreter, reasonable attempts to obtain one  
28 are not successful, and/or delay would pose a safety or security

1 risk." Id. at 5, § II.E.2.d. In the event that "a qualified sign  
2 language interpreter is not available, or is waived by the inmate,  
3 and communication is attempted," staff are required to "employ the  
4 most effective form of communication available, using written  
5 notes; staff interpreters who are able to interpret effectively,  
6 accurately and impartially, both receptively and expressively,  
7 using any necessary specialized vocabulary; or any other  
8 appropriate means." Id. at 5-6. Covered medical consultations  
9 included, for example, those pertaining to "[e]xplanation of  
10 procedures, tests, treatment, treatment options, or surgery," and  
11 "mental health evaluations, group and individual therapy,  
12 counseling and other therapeutic activities." Id. at 6. The list  
13 of medical consultations is "neither exhaustive nor mandatory, and  
14 shall not imply that there are no other circumstances when it may  
15 be appropriate to provide interpreters for effective communication  
16 nor that an interpreter must always be provided in these  
17 circumstances." Id. The ARP also requires equal access for deaf  
18 prisoners, providing, "Accommodations shall be made to afford  
19 equal access to the court, to legal representation, and to health  
20 care services, for inmates/parolees with disabilities; e.g.,  
21 vision, speech, hearing, and learning disabled." Id. at 7,  
22 § II.G.<sup>1</sup>

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25 <sup>1</sup> The ARP designates as DPH "Inmates/parolees who are  
26 permanently deaf or who have a permanent hearing impairment so  
27 severe that they must rely on written communication, lip reading,  
28 or signing because their residual hearing, with aids, does not  
enable them either to communicate effectively or hear an emergency  
warning." Kendrick Decl. ¶ 2, Ex. 1, 3, § II.C.2. The Court uses  
the term DPH and deaf interchangeably herein.

1           The federal ADA regulations define "qualified interpreter" as  
2 "an interpreter who . . . is able to interpret effectively,  
3 accurately, and impartially, both receptively and expressively,  
4 using any necessary specialized vocabulary." 28 C.F.R. § 35.104.  
5 The ARP defines "qualified sign language interpreter" to include  
6 "a person adept at American Sign Language." Kendrick Decl. ¶ 2,  
7 Ex. 1, 6, § II.E.3. Under the ARP, to "qualify as an ASL  
8 interpreter, an individual must pass a test and qualify in one of  
9 the five categories established by the National Association for  
10 the Deaf (NAD), one of the three categories established by the  
11 Registry of Interpreters for the Deaf (RID), or as a Support  
12 Services Assistant Interpreter from the California Department of  
13 Rehabilitation." Id. at 6-7.<sup>2</sup> Under the ARP, each institution is  
14 required "to establish a contract or service agreement with a  
15 local signing interpreter service organization in order to provide  
16 interpretive services for hearing impaired inmates during due  
17 process functions and medical consultations." Id.

18           The ARP further states, "It is the policy of CDC to ensure  
19 that all inmates, regardless of any type of disability,  
20 participate in educational/vocational, and work programs." Id. at  
21 29, § IV.I.14.a. Thus, it provided, "Reasonable  
22 modifications/accommodations shall be provided to ensure access  
23 when appropriate for qualified inmates with disabilities to  
24 participate in all programs, services, or activities including  
25 vocational assignments," and "Reasonable

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27           <sup>2</sup> Plaintiffs state that NAD and RID merged their tests into a  
28 single examination called the NIC after the issuance of the ARP.  
Pls.' Reply at 5 n.6.

1 modifications/accommodations shall be provided to ensure access to  
2 academic programs." Id. at 30, § IV.I.16-17; see also id. at 7,  
3 § II.F ("The Department shall provide reasonable accommodations or  
4 modifications for known physical or mental disabilities of  
5 qualified inmates/parolees."). "Examples of reasonable  
6 accommodations include special equipment (such as readers, sound  
7 amplification devices, or Braille materials), inmate or staff  
8 assistance, [and] bilingual or qualified sign language  
9 interpreters." Id. at 7, § II.F.

10 On January 18, 2007, the Court found that Defendants had not  
11 met their obligations to comply with federal law and the Court's  
12 orders and continued to violate the rights of prisoners with  
13 disabilities in four significant areas. Docket No. 1045, 2. As  
14 relevant here, the Court found,

15 Contrary to law and the Armstrong Remedial Plan,  
16 defendants consistently and systemically deny sign  
17 language interpreters to deaf prisoners. Within  
18 designated prisons, the violations occur most frequently  
19 at deaf [prisoners'] medical and mental health  
20 appointments. Plaintiffs have also presented pervasive  
21 evidence of violations with regard to suicidal  
22 prisoners; in education, work, and other programming;  
and during classification hearings, harming deaf signers  
by forcing them to rely on ineffective and inadequate  
forms of communication such as lip reading and written  
notes. As such, deaf signers are unable to understand  
or comprehend significant due process proceedings and  
medical care provided to them.

23 Id. at 3. The Court ordered Defendants to "establish as permanent  
24 civil service positions qualified sign language interpreters for  
25 each prison designated to house prisoners whose hearing  
26 disabilities impact their placement (DPH)" and to "employ, through  
27 whatever salary is necessary, sufficient qualified interpreters to  
28 serve the needs of the DPH prisoners housed at each institution."

1 Id. at 8. The Court also required Defendants to comply with the  
2 policies and procedures contained in the ARP related to these  
3 issues, specifically including those regarding effective  
4 communication for deaf prisoners contained in Section II.E. Id.  
5 at 9.

6 On October 20, 2009, the Court found that "Plaintiffs have  
7 demonstrated that Defendants have violated the rights of prisoners  
8 with disabilities under the ADA and Section 504 by . . . denying  
9 sign language interpreters to prisoners who need them in  
10 educational and substance abuse programs." Docket No. 1661, 2.  
11 The Court found specifically that "Defendants continue to deny  
12 deaf inmates access to adequate sign language interpretation in  
13 educational programs" and that "sign language interpretation may  
14 not be adequate in Defendants' substance abuse programs." Docket  
15 No. 1700, 5. The Court noted, for example, that in one instance,  
16 when an inmate complained that "her inmate interpreter cannot keep  
17 up with the course instructor," in response, "Defendants provided  
18 her with written notes and lip reading," which the Court already  
19 found to be inadequate in the 2007 order. Id.

20 To remedy these violations, the Court ordered Defendants to  
21 "develop a Plan that includes funding, staffing, training,  
22 resources and an implementation schedule." Docket No. 1661, 2.  
23 The Court directed Defendants to file the plan within sixty days  
24 and ordered that the plan "must provide for rapid implementation  
25 and funding," with "no implementation date in the Plan . . . later  
26 than August 14, 2010." Id. at 2-3. The Court required that  
27 Defendants include a "plan to provide sufficient certified sign  
28 language interpreters at, or remove deaf inmates from, prisons

1 that do not have interpreters in education and substance abuse  
2 programs," or "alternatively, a plan for providing sign language  
3 interpretation through the Receiver's videoconferencing capacity  
4 including explanation of how any problems or delays in  
5 implementing such plan will be resolved." Id. at 4.<sup>3</sup> The Court  
6 also ordered that "CDCR staff shall comply with the policies and  
7 procedures contained in their Armstrong Remedial Plan relevant to  
8 the issues outlined above," specifically including all of the  
9 provisions quoted above, such as Sections II.E, II.F, IV.I.14,  
10 IV.I.16 and IV.I.17. Id. at 4-5.

11 On December 21, 2009, Defendants filed their plan to comply  
12 with the October 20, 2009 order. Docket No. 1686.

13 On January 11, 2010, Plaintiffs filed their objections to  
14 this plan. Docket No. 1690.

15 On February 3, 2010, the Court noted that it "has not ordered  
16 Defendants to implement their plan" to comply with the October 20,  
17 2009 order "or any other," and that "Plaintiffs indicate that they  
18 intend to move for implementation of Defendants' plan, with  
19 modifications." Docket No. 1700, 6. The Court stated that it  
20 would entertain Plaintiffs' motion. Id.

21 No such motion was filed. In subsequent joint case status  
22 statements, the parties represented that Defendants modified their  
23 plan after Plaintiffs filed their objections, provided Plaintiffs  
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26 <sup>3</sup> In the 2009 order, the Court did not intend the word  
27 "certified" to carry a different meaning than the word "qualified"  
28 that was used in the ARP and the 2007 order. Accordingly, as  
discussed at the hearing without opposition from the parties, the  
Court substitutes the word "qualified" for "certified" in the 2009  
order.

1 with their updated plan on May 3, 2010 and began providing  
2 in-person sign language interpretation in educational and  
3 substance abuse programs in August 2010. See Docket No. 1706,  
4 9-10; Docket No. 1720, 9-12; Docket No. 1729, 8; Docket No. 1799,  
5 8. The parties also indicated that Plaintiffs were monitoring  
6 Defendants' compliance with the modified plan.

7  
8 LEGAL STANDARD

9 A district court has the authority to make an enforcement  
10 order to secure compliance with its earlier orders and governing  
11 law. See, e.g., March 21, 2006 Permanent Injunction, Docket No.  
12 694, 4-5; Sept. 20, 1996 Remedial Order, Docket 158, 5.

13 A district court also has the inherent authority to enforce  
14 compliance with its orders through a civil contempt proceeding.  
15 International Union, UMWA v. Bagwell, 512 U.S. 821, 827-28 (1994).  
16 A contempt sanction is considered civil if it "is remedial, and  
17 for the benefit of the complainant." Id. A contempt fine is  
18 considered civil and remedial if it either "coerce[s] the  
19 defendant into compliance with the court's order, [or] . . .  
20 compensate[s] the complainant for losses sustained." United  
21 States v. United Mine Workers, 330 U.S. 258, 303-304 (1947).

22 "The standard for finding a party in civil contempt is well  
23 settled: The moving party has the burden of showing by clear and  
24 convincing evidence that the [non-moving party] violated a  
25 specific and definite order of the court." FTC v. Affordable  
26 Media, LLC, 179 F.3d 1228, 1239 (9th Cir. 1999) (quoting Stone v.  
27 City & Cnty. of San Francisco, 968 F.2d 850, 856 n.9 (9th Cir.  
28 1992)). The contempt "need not be willful, and there is no good  
faith exception to the requirement of obedience to a court order."



1 In re Dual-Deck Video Cassette Recorder Antitrust Litig., 10 F.3d  
2 693, 695 (9th Cir. 1993). "But a person should not be held in  
3 contempt if his action appears to be based on a good faith and  
4 reasonable interpretation of the court's order." Id. (internal  
5 formatting and quotation marks omitted). "'Substantial  
6 compliance' with the court order is a defense to civil contempt,  
7 and is not vitiated by 'a few technical violations' where every  
8 reasonable effort has been made to comply." Id. (citing Vertex  
9 Distrib., Inc. v. Falcon Foam Plastics, Inc., 689 F.2d 885, 891  
10 (9th Cir. 1982)).

11 Thus, the Court may grant a motion for an order of contempt  
12 if it finds that Defendants (1) violated a court order, (2) beyond  
13 substantial compliance, (3) not based on a good faith and  
14 reasonable interpretation of the order, (4) by clear and  
15 convincing evidence. Id. Once the moving party has met its  
16 burden, the burden "shifts to the contemnors to demonstrate why  
17 they were unable to comply" with the court order. Stone, 968 F.2d  
18 at 856 n.9 (citing Donovan v. Mazzola, 716 F.2d 1226, 1240 (9th  
19 Cir. 1983)). "They must show they took every reasonable step to  
20 comply." Id. (citing Sekaquaptewa v. MacDonald, 544 F.2d 396, 406  
21 (9th Cir. 1976)).

22 Civil sanctions are appropriate, at the court's discretion,  
23 to encourage Defendants to comply with its order. United States  
24 v. United Mine Workers, 330 U.S. 258, 303-04 (1947). In deciding  
25 whether to impose a civil contempt sanction, the Court should  
26 consider: the harm from non-compliance; the probable effectiveness  
27 of the sanction; the contemnor's financial resources; and the  
28 burden the sanctions may impose. Id. at 303-304.

DISCUSSION

As noted, Plaintiffs move for an enforcement order and to hold Defendants in contempt for setting a policy that SLIs would not be provided during psychiatric technicians' rounds for patients housed in administrative segregation housing units, and for consistently failing to provide qualified SLIs during education programs at SATF, a facility that houses a large number of deaf inmates.

I. Mental health encounters in segregated housing units

Plaintiffs contend that Defendants are violating the ARP by failing to provide an SLI for hearing-impaired inmates during the rounds that psychiatric technicians conduct for prisoners housed in the segregation units. As quoted above, and acknowledged by both parties, the ARP provides that, when sign language is the inmate's primary or only means of effective communication, qualified sign language interpreters must be provided for medical consultations that fall within the scope of a list of examples, including mental health evaluations and other therapeutic activities.

On January 3, 2013, Defendants promulgated a new policy detailing sign-language interpretation requirements for medical and mental health encounters. Kendrick Decl., Ex. 31; Eargle Decl. ¶ 4, Ex. A; see also Defs.' Opp. at 6. This policy provides in relevant part,

Licensed Psychiatric Technician (PT) rounds are required for all inmates housed in an Administrative Segregation Unit (ASU) and Security Housing Units (SHU). These rounds are conducted in ASU's daily seven days a week and weekly for Mental Health Services Delivery System (MHSDDS) inmates or biweekly for non-MHSDDS inmates in SHU's. The interaction between an inmate and the PT on

1 these rounds does not typically require gathering or the  
2 exchange of medical information or making a mental  
3 health evaluation or assessment. Instead, the PT  
4 observes the inmate and notes what he/she sees. If the  
5 inmate indicates a problem by using "hand gestures" (see  
6 below) or other means of communication, or if a psych  
7 tech has a concern as a result of his/her observation,  
8 the PT should contact the physician or other clinician  
9 on duty for a clinical evaluation/assessment with the  
10 assistance of the SLI on duty (or a contractor if need  
11 be). In such a situation staff shall maintain one-on-  
12 one observation of the inmate until appropriate clinical  
13 intervention is obtained. Although the Coleman MHS  
14 Program Guide notes that the PT is to attend to the  
15 mental health needs of the inmates in ASU, that does not  
16 mean that every encounter between a PT and an inmate is  
17 an evaluation covered by the Armstrong Remedial Plan  
18 (ARP) or that observations of the inmate on rounds are  
19 equivalent to evaluation.

20 CDCR realizes that mental health clinician encounters  
21 require effective communication. Initial placement in  
22 ASU can occur on any day of the week, at any time of the  
23 day. At the pre-placement screen an SLI will be  
24 provided. At that time the PT and the I/P (with the  
25 assistance of the SLI) will establish additional hand  
26 signals to indicate levels of stress (low, medium, and  
27 high) for the inmate to use during PT rounds at which an  
28 SLI is not present or available. . . .

Eargle Decl. ¶ 4, Ex. A.

Dr. Amy Eargle, the Chief Psychologist of the Headquarters  
Clinical Support Unit for CDCR's Mental Health Program, states  
that no SLI assistance is needed during the psychiatric  
technicians' rounds, because they "observe inmates' appearance and  
behavior and note their observations," and "the exchange of  
important medical information takes place" instead during the  
"first interaction with the Primary care Provider . . . , which  
happens at the initial placement meeting for ASI or SHU Housing  
where an SLI is present. Eargle Decl. ¶ 6. Dr. Timothy Belavich,  
the Acting Director of the Division of Health Care Services of  
CDCR, states that the "daily or weekly rounds are brief,  
unstructured, interpersonal interactions, typically occurring at

1 cell front," which "are conducted to ensure an inmate-patient's  
2 general well-being and/or determine the potential need for  
3 services." Belavich Decl. ¶ 8. He states that the interaction  
4 "during rounds does not require the [licensed psychiatric  
5 technician (LPT)] to gather or exchange medical information." Id.  
6 "Rather, during rounds, the LPT observes the inmate-patient and  
7 notes what he or she sees." Id.

8 As acknowledged in the January 2013 policy, CDCR's MHSDS  
9 Program Guide states that these rounds are to be conducted daily  
10 in administrative segregation units and weekly or bi-weekly in  
11 security housing units "to attend to the mental health needs" of  
12 inmates. Pls.' Request for Judicial Notice (RJN), Ex. 1, 12-8-7.<sup>4</sup>  
13 It provides that the interactions in these clinical rounds "shall  
14 be sufficient to ascertain the inmate's mental condition  
15 particularly during the first ten days" that they are in  
16 administrative segregation. Id. at 12-7-5. During the rounds,  
17 the psychiatric technician is expected to identify "inmates who  
18 have not been previously identified as having mental health  
19 treatment needs but exhibit possible signs and symptoms of a  
20 serious mental disorder" and refer to them for a clinical  
21 evaluation, and to document any "unusual findings that may require  
22 closer observation." Id. at 12-8-7. The psychiatric technicians  
23 apparently expect to talk to the inmates; the Program Guide  
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27 <sup>4</sup> Plaintiffs request, and Defendants do not oppose, that the  
28 Court take judicial notice of excerpts of Defendants' MHSDS  
Program Guide, which was filed in Coleman v. Brown, Case No.  
90-520.

1 states, "If an inmate refuses to talk to the LPTs, the LPT will  
2 discuss the inmate's functioning with custody staff." Id.

3 Defendants argue that the psychiatric technician rounds are  
4 not clinical assessments or evaluations and thus that there is no  
5 Court order that they have violated by failing to provide a sign  
6 language interpreter at these interactions. However, the  
7 descriptions of these interactions provided by Defendants'  
8 witnesses and their own materials show that these are interactions  
9 in which the inmates' mental health status is evaluated or  
10 assessed in some manner. Thus, under the ARP, with which this  
11 Court has ordered Defendants to comply, they are required to  
12 provide a qualified sign language interpreter at these encounters.

13 Defendants argue that they have complied with the Court's  
14 orders, the ARP and the ADA because it is sufficient to meet the  
15 needs of these prisoners to provide qualified sign language  
16 interpreters during other mental health encounters or to use the  
17 predetermined hand signals to communicate. They state that,  
18 according to their policy, if the psychiatric technician has any  
19 concerns about the inmate based on his or her observations during  
20 rounds, he or she is required to contact a clinician to conduct an  
21 assessment, which would be conducted with the assistance of an  
22 SLI. However, these rounds may be the only mental health  
23 encounters for some or all of the deaf inmates in administrative  
24 segregation and they occur much more frequently than other such  
25 encounters. The Court also has previously found that Defendants  
26 harm deaf prisoners by forcing them to rely on inadequate and  
27 ineffective forms of communication, such as reading lips and  
28 written notes. Docket No. 1045, 3. The limited hand signals that

1 Defendants use here--in essence, thumbs up or thumbs down--are not  
2 adequate "to ascertain the inmate's mental condition" as the  
3 technicians are supposed to do here. If the technician and a deaf  
4 inmate cannot communicate effectively during rounds, the  
5 technician does not have a comparable opportunity to evaluate a  
6 deaf inmate for concerns that would lead him or her to contact a  
7 clinician for a full assessment, as for an inmate without a  
8 disability. The declarations submitted by class members further  
9 demonstrate that they felt that they could not communicate their  
10 feelings adequately with the technicians. See, e.g., Kendrick  
11 Reply Dec., Ex. 4.<sup>5</sup>

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13 <sup>5</sup> Defendants object to portions of Plaintiffs' reply and  
14 supplemental evidence on the basis that it is untimely and should  
15 have been submitted with their moving papers. Defendants move to  
16 file evidence regarding additional SLI positions created at SATF,  
17 which took place after they filed their opposition brief. In the  
18 interest of considering a full evidentiary record, the Court  
19 GRANTS Defendants' motion to submit additional evidence, OVERRULES  
20 Defendants' objections to Plaintiffs' reply and supplemental  
21 evidence and DENIES Defendants' motion to strike. Both sides had  
22 an opportunity to address the additional evidence at the hearing  
23 on this motion. Further, the evidence submitted by Plaintiffs  
24 with their reply properly responds to issues raised by Defendants  
25 in their opposition.

26 Defendants also object that the inmate declarations submitted  
27 with Plaintiffs' reply brief are inadmissible because they were  
28 written with the assistance of sign language interpreters, who did  
not submit declarations addressing their qualifications and the  
accuracy of their translations. Even if authentication by the  
interpreters who assisted the inmates with the preparation of  
these declarations were required, Plaintiffs have since provided  
such declarations, see Docket Nos. 2284-6, and Defendants have not  
argued that they suffered any prejudice as a result of the  
interpreter declarations being filed subsequently. To the extent  
that Defendants argue that the inmate declarations are hearsay,  
this is unavailing. The inmates themselves signed the  
declarations and attested to the truthfulness of their contents  
under penalty of perjury, regardless of who prepared the documents  
themselves.

1 Plaintiffs have offered clear and convincing evidence that  
2 Defendants have adopted a policy not to provide these interpreters  
3 and have not substantially complied with the Court's orders. To  
4 ensure compliance with the Court's past orders, the Court issues  
5 an enforcement order requiring Defendants, for all deaf prisoners  
6 whose primary means of communication is sign language, to provide  
7 a qualified sign language interpreter during all regularly-  
8 scheduled mental health rounds and all other encounters within the  
9 definition of the ARP. Because there appears to have been a good  
10 faith misunderstanding about whether these mental health  
11 encounters fell within the terms of the ARP and the Court's prior  
12 orders, which have now been clarified in this order, the Court  
13 declines to impose sanctions at this time.

14 Defendants do not argue that they were unable to comply with  
15 the Court's orders or that it would be impossible to do so in the  
16 future. Instead, they argue that Plaintiffs' requested monetary  
17 sanctions--"\$1,000 for each failure to provide an interpreter for  
18 mental health professionals' rounds when deaf prisoners are housed  
19 in segregated housing units," Pls.' Proposed Order, Docket No.  
20 2240, 5--are not warranted because Plaintiffs have not shown that  
21 any inmates have been harmed or that the policy to use  
22 pre-arranged hand signals does not work to evaluate the mental  
23 health of a deaf inmate.

24 Although monetary sanctions will not be imposed at this time,  
25 the Court notes that Plaintiffs have shown that Defendants' lack  
26 of compliance on this issue has created a substantial and  
27 unnecessary risk to class members. Plaintiffs have offered  
28 substantial evidence that inmates who are in administrative

1 segregation are at a substantially increased risk of having mental  
2 health needs, self-harm and suicide. Thirty-four percent of all  
3 suicides in CDCR were in segregated housing. The Coleman Special  
4 Master found that "the likelihood of a CDCR inmate committing  
5 suicide in segregated housing units in CDCR prisons is 33.09 times  
6 greater than it is in non-segregated housing units, based on total  
7 suicides in 2011." Stewart Reply Decl. ¶ 25, Ex. C, 16-17;<sup>6</sup> see  
8 also RJN, Ex. 2 (Coleman Special Master's report showing that  
9 thirty-four percent of the inmates who committed suicide in 2010  
10 were housed in ASU at the time of their deaths). Defendants  
11 object that these statistics are irrelevant because they are not  
12 specific to deaf prisoners in segregated housing units. However,  
13 these statistics include those prisoners; they show an increased  
14 risk to all inmates in segregated housing units, not only to those  
15 who are not deaf.<sup>7</sup> Plaintiffs also have offered declarations from  
16 deaf prisoners who have been in administrative segregation, who  
17 felt depressed and who wanted or attempted to hurt themselves.  
18 Kendrick Reply Decl., Exs. 4, 5. They said that they wanted to

19 \_\_\_\_\_  
20 <sup>6</sup> Defendants object to Dr. Stewart's declaration as improper  
21 expert witness testimony because "he is not qualified as an expert  
22 on effective communication with hearing-impaired individuals."  
23 Docket No. 2279, 1. However, he has shown that he is an expert on  
24 mental health treatment and suicide prevention in prisons,  
25 including in segregated housing units. See, e.g., Stewart Reply  
26 Decl. ¶¶ 1-14. Thus, he is qualified to testify on the standards  
27 of mental health practices in such settings, which is the subject  
28 on which he opines.

25 <sup>7</sup> Plaintiffs request that the Court take judicial notice of  
26 the Special Master's first report, which was filed in the Coleman  
27 case. Defendants object on the basis that the subject matter of  
28 the report is not limited to hearing-impaired prisoners. Because  
the Court has overruled Defendants' only basis for objection, the  
Court grants Plaintiffs' request for judicial notice of the  
report.



1 tell the mental health staff about their feelings but could not  
2 communicate with them. Id. To the extent that Defendants argue  
3 that deaf prisoners were not harmed because none have actually  
4 succeeded at committing suicide since this policy was implemented,  
5 the Court need not wait until a death to require compliance with  
6 its orders. The Court already found in the 2007 order that  
7 Defendants had consistently and systematically denied sign  
8 language interpreters to deaf prisoners, including to suicidal  
9 prisoners, causing them significant harm. Docket No. 1045, 2-3.

10 Accordingly, the Court GRANTS Plaintiffs' motion for an  
11 enforcement order and directs Defendants to provide qualified sign  
12 language interpreters during psychiatric technician rounds, and  
13 DENIES the motion for contempt.

14 II. Education and vocational programs at SATF

15 As of March 22, 2013, there were forty-one deaf inmates at  
16 SATF who require SLIs. Ramirez Decl. ¶ 5. Of these, twelve are  
17 currently enrolled in vocational or educational classes. Id. at  
18 ¶ 6. At the time that this motion was briefed, SATF employed one  
19 full-time SLI, who provided interpretation services primarily for  
20 due process encounters. For SLI services for vocational or  
21 educational classes, SATF utilized three companies under contracts  
22 with CDCR. Id. at 7.

23 Plaintiffs contend that Defendants have consistently failed  
24 to provide SLIs at many educational and vocational classes  
25 attended by deaf prisoners at SATF. In support of this  
26 contention, they offer evidence of the SLI logs that were prepared  
27 by the SLI scheduler at SATF. See Kendrick Decl. ¶¶ 5-13, 15,  
28

1 Exs. 2-10, 12; Kendrick Reply Decl. ¶¶ 4-5, Ex. 1;<sup>8</sup> see also  
2 Sweeny Decl. ¶¶ 6-7, 11-17 & Exs. B, C. Defendants acknowledge  
3 that these logs "reflect every session of a course where a DPH  
4 inmate is enrolled" and "whether or not a certified SLI was  
5 present for a class." Sweeny Decl. ¶¶ 6-9, 11-17; see also Opp.  
6 at 11. There is no dispute that the logs show that an SLI was not  
7 present at more than a quarter of the classes in which a deaf  
8 inmate was enrolled between August 14, 2010 and February 15,  
9 2013.<sup>9</sup> Further, there is no dispute that, between November 1,  
10 2012 and February 15, 2013, the time period covered by the most  
11

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12  
13  
14 <sup>8</sup> Defendants object to the statement in the Kendrick  
15 declarations that SLIs were "needed" but not provided in various  
16 class sessions but do not appear to object to the admissibility of  
17 the logs, which are attached as exhibits to these declarations and  
18 which Defendants have independently offered as evidence and  
19 authenticated. The Court overrules their objection. The Court  
20 understands the statements in the Kendrick declaration to mean  
21 that these were class sessions in which a DPH inmate was enrolled  
22 and no SLI was provided. To the extent that the parties dispute  
23 whether the SLIs were "needed" or not in these instances, the  
24 Court addresses the substance of their dispute later in this  
25 order.

26 <sup>9</sup> Defendants submit the declaration of Aniah Sweeny, who  
27 prepared the SLI scheduling logs. Ms. Sweeny attests that, in  
28 addition to tracking education and vocational classes, the logs  
also track the "medical and due process encounters at SATF where  
an SLI was scheduled to attend." Sweeny Decl. ¶ 9. She states  
that, of the 5,805 total encounters tracked on the logs between  
August 14, 2010 and February 15, 2013, "SLIs were not present for  
553 of the encounters (or 9.5%)." Id. She also states that 4,055  
of these encounters "were medical, mental health, dental or due  
process (disciplinary) appointments," and of these 4,055  
encounters, "an SLI was not present for 57 of the encounters  
(1.4%)." Id. at ¶ 10. Subtracting the latter numbers from the  
total numbers reveals that, of the remaining approximately 1,750  
encounters, which were the educational and vocational classes, an  
SLI was not present in about 496 instances, or about 28% of the  
time. Cf. Pls.' Reply, 4 & n.5 (calculating "a 28% error rate"  
for this time period).

1 recent log produced by Defendants,<sup>10</sup> the entries show that there  
2 was no SLI present for at least twenty-five percent of the classes  
3 that included deaf inmates.<sup>11</sup>

4 Plaintiffs also submit evidence that deaf prisoners at SATF  
5 have filed grievances about the lack of SLIs in their educational  
6 and vocational classes. See Kendrick Decl. ¶¶ 17-18, Exs. 14 &  
7 15. In one of these, dated June 20, 2012, a deaf prisoner wrote  
8 that he had not had an interpreter for over a month in his class  
9 and that this was disruptive to him. Id. at ¶ 17, Ex. 14. In  
10 response, the warden admitted that

11 the State has a contract with three companies that  
12 provide Sign Language Interpreters (SLI). The SLI are  
13 freelance and the institution has no control over when  
14 they choose to work. It is noted there are not enough  
15 SLIs for one to be assigned to all classes within the  
16 Education and Vocational classes. Moreover, the  
17 institution does not have back up interpreters.

18 Id. The warden stated that, although teachers inform the SLIs  
19 when they "are scheduled to lecture, . . . the SLIs are not  
20 available." Id. In another grievance, an inmate requested an SLI  
21 in his electronics vocational course. Id. at ¶ 18, Ex. 15. In

22 \_\_\_\_\_  
23 <sup>10</sup> Defendants argue that Plaintiffs did not provide with their  
24 moving papers any logs covering a period more recent than October  
25 2012. However, Defendants did not turn over the more recent logs  
26 from November 2012 through February 2013 until March 7, 2013, a  
27 week after Plaintiffs filed their motion on February 28, 2013.  
28 See Kendrick Reply Decl. ¶ 4; Docket No. 2236. In addition,  
Defendants submitted the updated logs with their opposition brief  
and Plaintiffs also offered them with their reply brief, to which  
Defendants did not object.

<sup>11</sup> Defendants' evidence indicates that the "log entries . . .  
show a certified SLI was present for 74.4% of the classes during  
this time period." Sweeny Decl. ¶ 7. Plaintiffs calculate from  
the logs that there were ninety-one classes without an SLI, out of  
a total of 334 classes during this time period, resulting in  
twenty-seven percent of classes being without an SLI. Kendrick  
Reply Decl. ¶ 5.

1 response, on September 25, 2012, the associate warden wrote,  
2 "Continuous efforts have been made to provide SLI services;  
3 however there are not enough SLI interpreters to facilitate the  
4 need." Id. He added that the institution would "continue  
5 diligent efforts to provide SLI services on a rotational basis  
6 depending upon availability of the SLI's." Id.

7 Defendants further argue that the logs do not show those  
8 instances where they use the services of an inmate sign language  
9 aide (SLA) instead of a qualified SLI to interpret for a deaf  
10 prisoner in a class. Id. at 11-12. Plaintiffs respond that  
11 Defendants did not show how often these SLAs were in classes or  
12 that these individuals were qualified as required by the Court's  
13 order. The Court has previously found that Defendants were  
14 continuing to deny deaf inmates access to adequate sign language  
15 interpretation in education and vocational programs and that the  
16 unqualified inmate interpreters were not sufficient for this  
17 purpose. Docket No. 1700, 4-5; see also Docket No. 523, 11  
18 (recognizing that "using unqualified interpreters may hinder  
19 communication"). Defendants have not offered evidence that the  
20 SLAs are qualified under the ARP or the ADA.<sup>12</sup> The Court notes  
21 that, because of the failure to provide adequate interpretation,  
22 it has already ordered Defendants to establish permanent civil  
23

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24 <sup>12</sup> Defendants have provided evidence that the "inmate job  
25 description" for SLAs includes as a requirement that the inmate be  
26 "Able to communicate using American Sign Language" as "determined  
27 by Mr. Shaewitz, the certified sign language interpreter on  
28 permanent staff at SATF." Ramirez Decl. ¶¶ 9-10 & Ex. F, 3. No  
evidence is provided to show, among other things, that the SLAs  
are adept at American Sign Language, are able to interpret  
effectively, accurately, and impartially, or have passed any of  
the required tests or qualifications.

1 service positions for qualified sign language interpreters at each  
2 prison designated to house prisoners with hearing disabilities.

3 Defendants also contend that their logs are insufficient to  
4 show that they failed to comply with any requirement that they  
5 provide qualified interpreters in that the logs do not track  
6 instances where the class did not require an interpreter "because  
7 the lesson plan did not require verbal communication for that  
8 session," where the deaf student refused the SLI's services, where  
9 a class was cancelled or where the deaf student was absent from  
10 the class in which he was enrolled. Defs.' Opp. at 11. However,  
11 the logs do identify at least some instances in which the deaf  
12 prisoner was absent, the class was cancelled or the deaf prisoner  
13 refused the services of an SLI. See, e.g., Aniah Decl., Ex. B, 48  
14 (indicating "Inmate Refused"); Aniah Decl., Ex. C, 24 (indicating  
15 "CLASS CANCELLED"); Aniah Decl., Ex. C, 37 (indicating "INMATE NOT  
16 IN CLASS"). Defendants have not offered evidence of how many  
17 classes listed on their logs had lesson plans that did not require  
18 verbal communication. Defendants, not Plaintiffs, control what  
19 information is or is not logged and Defendants, but not  
20 Plaintiffs, could have chosen to document these reasons. Because  
21 Defendants failed to log consistently the information that might  
22 show that an SLI was not required for a particular class meeting,  
23 and in light of the written acknowledgments from the wardens about  
24 the reasons that SLIs were not always provided as needed, the  
25 Court declines to infer that Defendants' claimed vitiating  
26 circumstances existed regularly. Thus, the Court finds that these  
27 arguments do not undermine Plaintiffs' prima facie showing that  
28 Defendants did not provide SLIs in many education and vocational

1 classes in which deaf inmates were enrolled.

2 Defendants also represent that they have made an effort to  
3 schedule a qualified SLI at each class in which a deaf student was  
4 enrolled since the middle of 2010 by utilizing contractors, but  
5 that the contractors they use are sometimes unable to provide SLIs  
6 and that the facility "cannot obtain SLI coverage through other  
7 contractors because [it is] required to use the three state-  
8 approved contractors." Sweeny Decl. ¶ 3; see also Ramirez Decl.  
9 ¶ 6 (noting that the state was required to "accept the lowest-  
10 priced proposal" when contracting for these services). However,  
11 this excuse is unavailing. The Court previously required  
12 Defendants to establish permanent civil service positions, at  
13 whatever salary necessary, in order to provide adequate services  
14 for these purposes. Defendants are required to have sufficient  
15 SLIs on staff to provide the needed interpretation services.  
16 Although there may be instances in which an SLI is unavailable,  
17 for example, if a staff member is unexpectedly ill and no  
18 substitute can be located, failing to provide an interpreter in  
19 education and vocational classes twenty-five percent of the time,  
20 without addressing the problem, for years before Plaintiffs filed  
21 a motion for contempt, simply does not constitute making a  
22 reasonable effort to comply with the Court's prior orders.

23 Defendants could have sought approval for additional civil  
24 service positions or increased contractor services but failed to  
25 do so, until after Plaintiffs brought this motion. Since that  
26 time, Defendants obtained approval to increase the funding for  
27 contract SLIs by the equivalent of one full-time position,  
28 bringing its total contract SLIs from 2.5 to 3.5 full-time

1 equivalents. Sweeny Decl. ¶ 5. The increased contractor services  
2 went into effect on April 8, 2013. Between April 8, 2013<sup>13</sup> and  
3 April 30, 2013, the SLIs did not attend eleven of the one hundred  
4 scheduled classes; the logs indicate that the reasons for these  
5 absences were that a contract "SLI called in sick" or there was  
6 "no SLI available per contractor." Sweeny Suppl. Decl. ¶ 2, Ex.  
7 A.<sup>14</sup> After this motion was briefed, Defendants submitted evidence  
8 that they have also obtained authorization to increase from one to  
9 three the number of full-time qualified SLIs at SATF that they  
10 employ directly in civil service positions. Defendants contend  
11 that this increase will make them less reliant on contract SLI  
12 services. Knowles Suppl. Decl. ¶ 8 & Exs. A-C. At the hearing,  
13 Defendants also represented that they planned to begin  
14 consistently logging additional information, including if a class  
15 was cancelled or if a deaf inmate was absent from a class meeting.

16 Because of Defendants' extended failure to provide SLIs in  
17 many education and vocational classes in violation of the Court's  
18 prior orders, the Court GRANTS Plaintiffs' motion to enforce those  
19 orders. Because Defendants have demonstrated that they are  
20 presently making substantial efforts to reach compliance with the  
21 Court's orders and the ADA requirements by voluntarily increasing  
22 both the contract and civil services positions for qualified SLIs  
23 at SATF, the Court finds that no civil contempt sanctions are  
24 \_\_\_\_\_

25 <sup>13</sup> It appears that there were no classes scheduled between  
26 April 3 and 8. Sweeny Suppl. Decl. ¶ 2, Ex. A.

27 <sup>14</sup> The Court notes that the logs do not show whether  
28 Defendants made efforts to find a substitute SLI when one called  
in sick or whether none of the three contractors was able to  
provide an SLI.

1 needed at the present time to coerce their compliance.  
2 Accordingly, Plaintiffs' motion for contempt for their failure to  
3 provide qualified SLIs at educational and vocational classes at  
4 the facility is DENIED. This denial is without prejudice to  
5 renewal if Defendants fail to provide proper services in the  
6 future.

7 CONCLUSION

8 For the reasons set forth above, the Court GRANTS Plaintiffs'  
9 motion to enforce and DENIES the motion to hold Defendants in  
10 contempt (Docket No. 2236). This order also resolves Docket Nos.  
11 2297 and 2304.

12 The Court hereby orders:

13 1) For all deaf prisoners whose primary means of  
14 communication is sign language, Defendants shall provide a  
15 qualified sign language interpreter during all regularly-scheduled  
16 mental health rounds, as well as all other encounters within the  
17 definition of the Armstrong Remedial Plan.

18 2) Defendants shall implement their plan regarding sign  
19 language interpretation in educational and substance abuse  
20 programs, provided to Plaintiffs on May 3, 2010. As required in  
21 the Court's prior orders, Defendants shall establish permanent  
22 civil service positions for qualified sign language interpreters  
23 for SATF, for as long as it is designated to house DPH prisoners.  
24 Defendants shall employ, through whatever salary is necessary,  
25 sufficient qualified interpreters to serve the needs of the DPH  
26 prisoners housed at SATF, including at all educational and  
27 vocational classes in which a DPH inmate is enrolled, barring  
28 unforeseen circumstances. Defendants may seek relief from this



1 provision at SATF if their video conferencing facilities become  
2 sufficient to provide all necessary sign language services at that  
3 institution.

4 3) Defendants shall continue to maintain logs on all  
5 educational and vocational programs at SATF to document whether  
6 deaf prisoners who rely upon sign language as their primary means  
7 of communication were provided a qualified sign language  
8 interpreter during the program and who the interpreter was. If a  
9 qualified sign language interpreter was not provided, Defendants  
10 shall document the reason therefor. Defendants must produce the  
11 previous month's logs to counsel for Plaintiffs by the fifteenth  
12 of each month.

13 The Court finds that the relief ordered herein is narrowly  
14 drawn, extends no further than necessary to correct the violation  
15 of federal rights, and is the least intrusive means necessary to  
16 correct the violation of the federal rights.

17 IT IS SO ORDERED.

18  
19 Dated: 6/4/2013

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21 \_\_\_\_\_  
22 CLAUDIA WILKEN  
23 United States District Judge  
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