

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Case No. 94-cv-02307 CW
ORDER FOR ADDITIONAL REMEDIAL
MEASURES
Re: Dkt. No. 2922

For the reasons set forth in the Court's order granting in part Plaintiffs' motion to modify its prior remedial orders and injunctions, the Court hereby orders as follows:

1. No later than twenty-one days of the date this Order is filed, Defendants must draft and present to Plaintiffs for their review a plan for achieving compliance with the Armstrong Remedial Plan (ARP) and the Americans with Disabilities Act (ADA) that includes the components described below (the RJD Remedial Plan). To the extent possible, Defendants shall provide to Plaintiffs drafts of the components that must be included in the RJD Remedial Plan on a rolling basis prior to twenty-one days of the date this Order is filed.

1 2. Plaintiffs shall provide comments to Defendants as to
2 the drafts within seven days of receiving them.¹

3 3. The parties shall meet and confer promptly to resolve
4 any disagreements as to the adequacy of the RJD Remedial Plan or
5 any of its components. Defendants shall ensure that staff with
6 sufficient authority to amend and approve any plans, policies,
7 and procedures in the RJD Remedial Plan attend all meet-and-
8 confer sessions.

9 4. In the event that a disagreement is not resolved within
10 forty-two days of the date this Order is filed, Plaintiffs shall
11 file objections with the Court no later than forty-nine days of
12 the date this Order is filed in a brief of no more than ten
13 pages; Defendants may respond to the objections within seven days
14 thereafter in a brief of no more than fifteen pages; and
15 Plaintiffs may file a reply of no more than five pages within
16 four days thereafter. The Court will rule on the objections and
17 issue any necessary order, consistent with its rulings in its
18 Order granting in part Plaintiffs' motion to modify its prior
19 remedial orders and injunctions.

20 5. Within fourteen days of reaching agreement with
21 Plaintiffs, or receiving this Court's order resolving any
22 disagreements, Defendants shall issue the RJD Remedial Plan in
23 final form and implement its provisions pursuant to the terms
24 described below, unless the RJD Remedial Plan sets a different
25

26 ¹ Each side shall, respectively, provide copies of any drafts
27 and comments to the same to counsel for the parties in Coleman v.
28 Newsom, Case No. 90-cv-00529 (E.D. Cal.), and Plata v. Newsom,
Case No. 01-cv-01351 (N.D. Cal.), as well as to the special
master and receiver in those actions.

1 date for the implementation of a component of the RJD Remedial
2 Plan.

3 a. Cameras. Within ninety days of the finalization
4 of the RJD Remedial Plan, CDCR shall install operational
5 surveillance cameras that cover all areas of RJD to which class
6 members have access, including, but not limited to, all exercise
7 yards, housing units, sally-ports, dining halls, program areas,
8 and gyms. Within sixty days of the finalization of the RJD
9 Remedial Plan, CDCR must begin using body-worn cameras for all
10 correctional officers at RJD who may have any interactions with
11 class members. The RJD Remedial Plan shall describe the steps
12 that Defendants will take to achieve these deadlines.

13 b. The RJD Remedial Plan must contain policies and
14 procedures regarding the use of body-worn cameras and the use of
15 camera footage at RJD from any type of camera, including
16 requirements that all footage be retained for a minimum of ninety
17 days, that footage of use of force and other triggering events
18 involving class members at RJD be retained indefinitely, and that
19 footage, when available, be reviewed and considered as part of
20 the investigation of any incident. The RJD Remedial Plan also
21 must contain policies and procedures for training RJD staff
22 regarding how and when to use a body-worn camera and how to
23 ensure that footage is retained and reviewed.

24 c. Reforms to Staff Complaint, Investigation, and
25 Discipline Process at RJD. CDCR must develop measures to reform
26 the staff complaint, investigation, and discipline process
27 (Investigation and Discipline Section of the RJD Remedial Plan),
28 which shall be included in the RJD Remedial Plan, to ensure (1)

1 that CDCR completes unbiased, comprehensive investigations into
2 all allegations of staff misconduct violative of the rights of
3 any class member under the ARP or the ADA; (2) that CDCR imposes
4 appropriate and consistent discipline against employees who
5 engage in violations of the ARP or ADA with respect to class
6 members at RJD; and (3) that employees who engage in criminal
7 misconduct against class members at RJD in violation of the ARP
8 or ADA are appropriately investigated and, if warranted, referred
9 for prosecution. The Investigation and Discipline Section of the
10 RJD Remedial Plan also shall ensure that officers accused of
11 serial violations of the ARP or ADA with respect to class members
12 at RJD are reassigned. The Investigation and Discipline Section
13 of the RJD Remedial Plan also shall provide for effective
14 mechanisms for oversight over all staff complaints, use-of-force
15 reviews, and related staff disciplinary proceedings at RJD that
16 involve alleged violations of class members' rights under the ARP
17 or ADA. The Investigation and Discipline Section of the RJD
18 Remedial Plan shall require quarterly interviews of randomly-
19 selected class members at RJD using the methodology and interview
20 questionnaire utilized by the December 2018 investigators.

21 d. Third-Party Expert Monitoring of Defendants'
22 Investigation and Discipline Section of the RJD Remedial Plan.
23 The Court delegates to Edward Swanson, its court expert, pursuant
24 to Federal Rule of Evidence 706, the additional duties of
25 monitoring Defendants' implementation of their Investigation and
26 Discipline Section of the RJD Remedial Plan. Mr. Swanson shall
27 have access to all documents reasonably necessary for monitoring
28 Defendants' implementation of their Investigation and Discipline

1 Section of the RJD Remedial Plan. Mr. Swanson shall issue
2 quarterly reports regarding Defendants' implementation of the
3 Investigation and Discipline Section of the RJD Remedial Plan.
4 Prior to the issuance of each quarterly report, the parties and
5 Mr. Swanson shall meet and confer regarding his findings for the
6 quarter.

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

26 f. Staffing. CDCR must significantly increase
27 supervisory staff by posting additional sergeants on all watches
28 on all yards at RJD.

United States District Court
Northern District of California

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

9 h. Anti-Retaliation. CDCR shall develop mechanisms
10 to end and prevent any retaliation against class members who
11 report violations of their rights under the ARP or ADA and to
12 ensure their safety. These mechanisms shall be described in the
13 RJD Remedial Plan.

14 i. Other Remedies. CDCR shall develop a plan to
15 modify its policies to more effectively monitor and control the
16 use of pepper spray by RJD staff with respect to class members.
17 This plan shall be described in the RJD Remedial Plan.

18 6. Starting on the date this Order is filed, Defendants
19 shall include in the Court-ordered accountability log any
20 allegations of violations of class members' rights under the
21 ADA's anti-retaliation and anti-interference provisions.

22 7. The Court finds that these additional remedial measures
23 are consistent with the Prison Litigation Reform Act (PLRA),
24 18 U.S.C. § 3626(a).

25 IT IS SO ORDERED.

26 Dated: September 8, 2020



CLAUDIA WILKEN
United States District Judge

28