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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**[REDACTED] REPLY  
DECLARATION OF ELDON VAIL IN  
SUPPORT OF PLAINTIFFS' MOTION  
TO STOP DEFENDANTS FROM  
ASSAULTING, ABUSING AND  
RETAILIATING AGAINST PEOPLE  
WITH DISABILITIES AT R.J.  
DONOVAN CORRECTIONAL  
FACILITY**

Judge: Hon. Claudia Wilken  
Date: August 11, 2020  
Time: 2:30 p.m.  
Crtrm.: TBD

Case No. C94 2307 CW

REPLY DECL. OF ELDON VAIL ISO PLS.' MOTION TO STOP DEFS. FROM ASSAULTING, ABUSING &  
RETAILIATING AGAINST PEOPLE W/ DISABILITIES AT RJD

1 I, Eldon Vail, declare:

2 1. I have personal knowledge of the matters set forth herein, and if called as a  
3 witness, I could and would competently so testify. I make this reply declaration in support  
4 of Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against  
5 People with Disabilities at R.J. Donovan Correctional Facility.

6 **Assignment**

7 2. I prepared this declaration at the request of Plaintiffs' counsel. I have been  
8 asked by Plaintiffs' counsel to offer my opinion on the following topics:

9 (a) Whether there is a systemic problem at Richard J. Donovan  
10 Correctional Facility (RJD) with staff misconduct against incarcerated people, especially  
11 against incarcerated people with disabilities (including people with mental illness) and  
12 other vulnerable incarcerated people.

13 (b) Whether the systemic problems with staff misconduct against  
14 incarcerated people at RJD, if any, affect the ability of people with disabilities to request  
15 needed disability accommodations.

16 (c) Whether the systemic problems with staff misconduct against  
17 incarcerated people at RJD, if any, affect the ability of people with disabilities to complain  
18 about staff misconduct, including staff refusing to provide needed disability  
19 accommodations.

20 (d) What effects the systemic staff misconduct is having on the ability of  
21 the California Department of Corrections and Rehabilitation (CDCR) to run its prison and  
22 in particular meet the needs of people with disabilities.

23 (e) Whether the investigations conducted by CDCR into allegations of  
24 staff misconduct at RJD have been adequate.

25 (f) Whether the *Armstrong* accountability order is working to address  
26 staff misconduct against people with disabilities.

27 (g) Whether steps taken by CDCR at RJD have been sufficient to remedy  
28 any systemic problems with staff misconduct against incarcerated people.

1 (h) What steps should CDCR take to address systemic staff misconduct  
2 like the kind that has occurred at RJD?

3 **Summary of Qualifications**

4 3. I incorporate by reference my two previous declarations in this case. Since I  
5 submitted my resume, I have also served as an expert in:

6 *Frazier et al., v. Kelley, et al.,*  
Case No. 4:20cv434-KGB  
7 United States District Court, Eastern Division of Arkansas,  
Central Division,  
8 Testified May 7, 2020

9 *Valentine v. Collier*  
Case 4:20-cv-01115  
10 United States District Court, Southern District of Texas,  
Houston Division  
11 Testified, April 16, and July 21, 2020

12 **Bases For My Opinions**

13 4. I reviewed a variety of documents in my preparation for those declarations.  
14 Those materials are listed in those declarations and I rely on them for this report as well.

15 5. For this declaration, I have reviewed more materials, including seventeen  
16 additional declarations from incarcerated people about their experiences at RJD. I have  
17 also reviewed a variety of court documents related to this case including the declarations of  
18 Ken McGinnis, Ralph Diaz, Amy Miller and Jeff Macomber, as well as videos produced  
19 by CDCR in evidence. A complete list of the materials I reviewed is attached to this  
20 declaration as **Exhibit 1**.

21 6. I also rely on my own substantial experience as a correctional administrator,  
22 including presiding over a statewide prison system for more than a decade, and my  
23 knowledge of other prison systems that I have gained during my career in corrections and  
24 as a consultant and expert witness.

25 7. I have previously performed work as an expert in litigation related to CDCR.  
26 Working for Plaintiffs' counsel in 2013 and 2014 in the Coleman case, I inspected four  
27  
28

1 CDCR prisons,<sup>1</sup> authored four declarations,<sup>2</sup> and testified in trial regarding use of force  
 2 (UOF) against and disciplinary hearings for patients with mental illness on October 1, 2,  
 3 17 and 18, 2013. Working for Plaintiffs in the *Mitchell v. Cate* case in 2013, I inspected  
 4 three other CDCR prisons<sup>3</sup> and authored three declarations. From these activities, I am  
 5 familiar with the operation and culture of CDCR facilities.

### 6 **Summary of Opinions**

7 8. In my first declaration<sup>4</sup> in this case, I concluded, among other findings and  
 8 patterns, that:

- 9 • Excessive and Unnecessary Use of Force is Common in RJD;
- 10 • There is Verbal and Physical Abuse of Class Members;
- 11 • Officers Enlist Other Incarcerated People to Commit Assaults Against
- 12 Class Members;
- 13 • Investigations and Tracking of Investigations Are Inadequate;
- 14 • Class Members Fear and Experience if They File Complaints
- 15 • Other Remedies Have Failed.

16 9. As a result of my review of the materials made available for this declaration,  
 17 my opinions have been supported, reinforced and strengthened. The same serious problems  
 18 that place the incarcerated people at RJD at risk of harm continue to exist throughout that  
 19 prison. Class members at RJD are still at a significant risk of harm. I believe it is the same  
 20 risk as articulated in my prior declarations.

21  
22  
23  
24 <sup>1</sup> Kern Valley State Prison; California State Prison, Corcoran; California State Prison, Los  
 Angeles County; San Quentin State Prison (twice).

25 <sup>2</sup> Dkt. 4385, filed 3/14/13; Dkt. 4638-1, filed 05/29/13; Dkt. 4766-2, filed 8/23/13; Dkt.  
 5065-1, filed 02/12/14.

26 <sup>3</sup> Salinas Valley State Prison; California State Prison, Solano; High Desert State Prison

27 <sup>4</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt.  
 2922-6, filed 02-28-20.

### The Patterns Continue at RJD

10. Mr. [REDACTED] is an *Armstrong, Coleman and Clark* class member. He uses a walker to get around and is at the EOP (enhanced outpatient) level of care as he suffers from mental illness and has been designated as developmentally disabled. On March 31, 2020, he went “man down” in order to signal that he needed medical treatment. He was experiencing back pain. He was told that medical staff could not see him because they were busy due to the coronavirus. A Psych Tech told him she would report to mental health that he was suicidal. Mr. [REDACTED] said he was not; he only wanted help for his aching back. Custody staff then intervened and ordered Mr. [REDACTED] to submit to handcuffing. He tried to explain his situation to an officer but she did not answer and took out her pepper spray and threatened him with it. Mr. [REDACTED] then asked to be allowed to return to his cell. Again, he received no answer. Officers activated an alarm and a group of officers rushed into the unit and tackled Mr. [REDACTED]. His head hit the ground and he blacked out. He suffered further physical abuse from the officers that resulted in a broken nose. His eyes were black and blue and were swollen shut. He suffered a broken bone in his right foot.<sup>5</sup> Mr. [REDACTED] suffers from multiple disabilities that were not accommodated in this event. He offered a temporary solution to the conflict when he asked to return to his cell but his request was denied. Whether or not he was suicidal, a return to the security of his cell would have allowed CDCR to then attempt to de-escalate the situation by using the skills of the mental health staff. It is likely that the UOF may have been completely avoided had they implemented a controlled use of force as required by their own use of force policy.<sup>6</sup> In my experience, a controlled use of force is much safer for both officers and for incarcerated people. The advantage of time and circumstance in a controlled situation allows for de-escalation efforts that might cause the UOF to be unnecessary. If force still turns out to be necessary, there is time for planning in the controlled situation and to document the event with a hand-held camera. But in this situation with Mr. [REDACTED] CDCR

<sup>5</sup> Declaration of [REDACTED] 05-19-2020, ¶¶ 8-12.

<sup>6</sup> CDCR Department Operations Manual (DOM), 51020.4, Definitions and 51020.12.

1 officers engaged in an immediate UOF that was not necessary. Mr. [REDACTED] presented no  
 2 imminent threat. He experienced excessive use of force that resulted in serious injury,  
 3 including a broken nose and a broken foot.

4 Mr. [REDACTED] received and was found guilty of a related rules violation report  
 5 (“RVR”). He lost 150 days of sentence credit. Describing his hearing, Mr. [REDACTED] said,

6 At the RVR hearing, the Hearing Officer did not help me identify any  
 7 witnesses even though the incident happened in the dayroom and many  
 8 people saw the incident. I told the Hearing Officer that there were witnesses,  
 9 but I did not know their names. He did not seem to care. The Hearing Officer  
 10 also found that almost all of the questions that I asked staff were irrelevant,  
 even though that was not true. For example, the Hearing Officer found that a  
 question I posed to officers regarding the fact that my hands didn’t have any  
 redness or swelling after the incident was irrelevant, even though my hands  
 would have been if I had punched many of the officers like they said I did.<sup>7</sup>

11 Mr. [REDACTED] summarizes this experience near the end of his declaration. He said:

12 I am really mad about this incident because I did not do anything wrong. The  
 13 officers started the whole thing. Once they decided to start arguing with me,  
 14 I asked them to go into my cell. If they had just let me into my cell in the  
 15 first place, nothing would have happened. The officers, who worked  
 16 regularly in my building, knew that I sometimes don’t understand things  
 17 because I am DDP. I just wish they had taken the time to explain to me what  
 was going on and listened to me when I told them I wasn’t suicidal and just  
 wanted to go back to my cell. I also wish that they had just allowed me to  
 calm down by talking to a sergeant. Instead, the beat me up and now I have a  
 broken nose and foot. I am not sure my injuries will ever fully heal. In  
 particular, I am worried about my mobility, which was already not great, will  
 be even worse.<sup>8</sup>

18  
 19 CDCR’s use of force practices creates a risk of harm for all people with disabilities. For  
 20 Mr. [REDACTED] they resulted in actual harm. This is especially true because RVRs can prevent  
 21 incarcerated people from receiving good time credits and being eligible for parole.

22 11. Mr. [REDACTED] claim that others witnessed this event is confirmed in the  
 23 declaration of [REDACTED] [REDACTED]. He says that, in the end of March, he was playing chess  
 24 close to Mr. [REDACTED] cell and could see what transpired. He saw Mr. [REDACTED] request to  
 25

26  
 27 <sup>7</sup> *Ibid.*, ¶ 14.

28 <sup>8</sup> *Ibid.*, ¶ 17.

1 return to his cell and ask to speak with a sergeant. He then heard the alarm sound and  
2 watched the officers arrive on the scene.<sup>9</sup> He says,

3 The first officers who reached Mr. [REDACTED] grabbed him and, without saying  
4 anything or trying to deescalate the situation, threw him to the ground. As far  
5 as I could tell, Mr. [REDACTED] never moved toward, let alone tried to harm, any  
6 of the officers before they started using force on him. In fact, when the  
7 officers reached Mr. [REDACTED] he ducked down to protect himself rather than  
8 trying to fight the officers. After the officers threw him to the ground, there  
9 were so many officers on top of Mr. [REDACTED] that it was difficult for me to see  
10 what was happening. It looked like ants swarming a piece of food.

11 In my opinion, there was no reason for the officers to use any force against  
12 Mr. [REDACTED]. If Officer Sanchez had let Mr. [REDACTED] go back into his cell or talk  
13 with a sergeant, I am almost certain that Mr. [REDACTED] would have calmed  
14 down, making it unnecessary to sound an alarm. Instead, Officer Sanchez did  
15 not do enough to deescalate the situation. And even after the alarm was  
16 raised, I don't think the officers needed to pile onto Mr. [REDACTED] the way they  
17 did. Had they paused for a moment to assess the situation once they arrived  
18 in the building, I think they would have seen that Mr. [REDACTED] was not going  
19 to fight a huge group of officers. Yet, even though Mr. [REDACTED] did not move  
20 to harm any officers, none of the responding officers attempted to deescalate  
21 the situation. To me, the whole situation was avoidable.<sup>10</sup>

22 The statement of Mr. [REDACTED] is entirely consistent with that of Mr. [REDACTED] and should  
23 have been available to the Hearing Officer. Given Mr. [REDACTED] multiple layers of disability,  
24 he should have been assigned a staff advisor for his RVR hearing. I have not had access to  
25 his disciplinary file so do not know if he was. Nevertheless, this is an example of a faulty  
26 RVR hearing and given the loss of 150 days of sentence credit, should be reviewed by an  
27 independent party.

28 12. Another incarcerated person also reports he witnessed the abuse of  
Mr. [REDACTED]. Mr. [REDACTED] did not witness the initial assault on Mr. [REDACTED] but he did see  
some of the aftermath. He was outside the building when the alarm was sounded. He saw  
several officers carrying Mr. [REDACTED] out of the building.<sup>11</sup> He says:

The door to the building was open and I saw the officers hitting Mr. [REDACTED]  
in his side with the baton and I saw them dragging him along the side of the

<sup>9</sup> Supplemental Declaration of [REDACTED] 05-20-2020, ¶¶ 5-6.

<sup>10</sup> *Ibid.*, ¶¶ 6-7.

<sup>11</sup> Supplemental Declaration of [REDACTED] 05-13-2020, ¶ 6.



1 sallyport wall, banging his head against the wall as they carried him. I saw  
2 the officers ram his head against the metal door on their way out of the  
building.

3 Next, I saw the officers in the back drop Mr. [REDACTED] legs on the ground  
4 while the officers in the front were dragging him roughly by his handcuffed  
arms. I saw a larger Hispanic officer take a long, metal, Folger Adams  
5 skeleton key between his fingers and punch Mr. [REDACTED] in the leg with the  
key at least two times.

6 As soon as Officer Sanchez saw that incarcerated people were outside on the  
7 yard watching what was going on, she started yelling at us to turn our backs  
and "Look away, look away!"<sup>12</sup>

8 Assuming for the moment that Mr. [REDACTED] did actually assault correctional staff (I make no  
9 such assumption) the treatment of Mr. [REDACTED] described by Mr. [REDACTED] was inappropriate  
10 and excessive. Nothing in sound correctional practice would justify such abusive treatment  
11 of a person in custody. Had the RVR process any credibility, this information would and  
12 should have been discovered and presented at the hearing.

13 13. Mr. [REDACTED] who is also an *Armstrong* and *Coleman* class member, also has  
14 multiple disabilities. Later in his declaration he describes how witnessing the event with  
15 Mr. [REDACTED] impacted him. He says:

16 Witnessing the incident with Mr. [REDACTED] made me realize that nothing has  
17 changed at RJD since I left over a year ago and have since returned. When  
18 abuse happens and supervisors do nothing to intervene and stop this kind of  
behavior among subordinate staff, it makes me realize the abuse is not only  
19 excused but encouraged. I do not feel like there is any way I can get help  
from an officer at RJD if I need it. It is the same "business as usual" around  
here.<sup>13</sup>

20 Mr. [REDACTED] is correct. Nothing in the most recent records I have reviewed indicates that  
21 anything has changed at RJD.

22 14. The unnecessary and excessive use of force on Mr. [REDACTED] including broken  
23 bones, illustrates that the abuse of people with disabilities continues at RJD.

24 15. Several other incarcerated people describe witnessing or experiencing  
25 violence at the hands of CDCR in most recent months.

26 \_\_\_\_\_  
27 <sup>12</sup> *Ibid.*, ¶¶ 6-8.

28 <sup>13</sup> *Ibid.*, ¶ 11.



1           16.     Mr. [REDACTED] says that Officer Santana assaulted him on March 18, 2020  
 2 when he complained about the lack of social distancing among the officers in the face of  
 3 the COVID-19 pandemic. After he made the complaint, he returned to his cell and then the  
 4 officers opened his cell door. Officer Santana told him he needed to stop complaining  
 5 about the staff or "I'm gonna fuck you up." Mr. [REDACTED] reports Officer Santana then put  
 6 his hand on Mr. [REDACTED]'s walker and pushed him, causing him to fall backward.  
 7 Mr. [REDACTED] reported he suffered a scrape to his left arm and bruising to his ribs.  
 8 Mr. [REDACTED] was not let out of his cell until it was time for the evening meal. Once he was  
 9 let out he went to a supervisor's office and reported the assault. After he reported he was  
 10 placed in cuffs and taken to a holding cell in the gym, where he was stripped naked.  
 11 Following an assessment by a nurse, he was escorted to segregation. After a couple of  
 12 days, he was released and assigned to a different living unit, away from Officer Sanchez.<sup>14</sup>

13           17.     Given such treatment, I am amazed that so many of the people incarcerated  
 14 at RJD are still willing to come forward and describe what is happening to them. In my  
 15 opinion, that willingness is based on the degree of desperation and dangerous conditions  
 16 that continue to exist at the RJD, despite the risk of retaliation people face when coming  
 17 forward to make complaints.

18           18.     In the new declarations I have read it is clear that officers at RJD continue to  
 19 recruit incarcerated people to commit assaults.

20           19.     Mr. [REDACTED] says that he witnessed an incarcerated person being assaulted by  
 21 officers sometime in late April 2020. He described the victim as "mentally ill,  
 22 developmentally disabled" who was wrestled to the ground and kicked in the head three  
 23 times by Officer Barrientos, with a sergeant present as a witness. Later the same day he  
 24 was called to the office. He says:

25           When I entered the office, Officer Barrientos stated that the incarcerated  
 26 person had disrespected him. Next he stated that if he tries to come back in to  
 the unit, I should "take care of it." I took his statement to mean that he

27 <sup>14</sup> Declaration of [REDACTED] 05-20-2020, ¶¶ 9-14.  
 28

1 wanted me to fight with the incarcerated person if he came back to the  
2 housing unit. I let him know, I do not fight for the police.<sup>15</sup>

3 In regards to this incident, it is never appropriate to kick an incarcerated person in the  
4 head. That would be inconsistent with any known use of force training curriculum or  
5 policy. Yet such acts are continually described as happening at RJD. Equally troubling,  
6 recruiting an incarcerated person to assault another is at least borderline criminal behavior.  
7 Yet this practice appears to be persistent at RJD.

8 20. Mr. [REDACTED] reports that he has witnessed such requests on the part of  
9 officers at RJD. He says:

10 I overheard Officer Lizarraga tell the person that he should attack an  
11 incarcerated person who is known to commonly make inappropriate  
12 comments about female staff members. The yard crew worker said he did not  
13 want to get involved but promised Officer Lizarraga that he would arrange  
14 for someone else to do it.<sup>16</sup>

15 It is my understanding and belief that staff on Facility C commonly pay  
16 incarcerated people who work for them - such as yard crew workers and  
17 porters - to carry out assaults on other incarcerated people who are disliked  
18 by staff. In exchange for committing assaults, I have seen staff allow the  
19 assailants access to the victims' property while they were being treated at an  
20 outside hospital. I have also witnessed that staff give the people that work for  
21 them special privileges, like extra yard time, extra dayroom time, and more  
22 phone calls. It is my belief that staff pay incarcerated people to do their dirty  
23 work so that they can avoid detection and accountability.<sup>17</sup>

24 21. In all my years of experience as a correctional practitioner and consultant, I  
25 have never seen such a systemic approach of officers recruiting incarcerated people to  
26 commit assaults on their behalf. The existence of this practice at RJD is deeply troubling  
27 and demands that change occur in the officer culture at the facility. Such a practice is  
28 obviously wrong, morally and operationally, and completely erodes any belief by the  
incarcerated population of the legitimacy of the authority of institution staff. In my  
experience, erosion of legitimacy makes for a less safe and less secure institution. It is the

26 <sup>15</sup> Supplemental Declaration of [REDACTED] G., 05-13-2020, ¶¶ 4-6.

27 <sup>16</sup> Supplemental Declaration of [REDACTED] 05-19-2020, ¶ 9.

28 <sup>17</sup> *Ibid.*, ¶ 10.

1 opposite of what must be done to manage incarcerated people safely for both the  
2 incarcerated people and the officers.

3 22. It is rare that non-custody staff will speak out about the abuses occurring at  
4 RJD. But one ex-employee of the facility has done so, but only after she left employment  
5 with CDCR. Melissa Turner was employed at RJD from August 2017 to August 2018 as a  
6 social worker.<sup>18</sup> In her declaration, she reports that custody staff refused to bring  
7 incarcerated people to meet with her.<sup>19</sup> At one point, she complained of this practice to her  
8 supervisor who then reported it to the custody office. She then reports that officers started  
9 called her “a rat” and that the situation got worse.<sup>20</sup> She reports that custody staff would  
10 refuse to escort her across the prison yard and that when she believed an incarcerated  
11 person was stalking her that the officers would only laugh and offered no help.<sup>21</sup> At the  
12 end of her declaration, she summarizes what she saw when employed at the facility:

13 While at RJD, I overheard custody staff members say things like that they  
14 “hate” incarcerated people and that they do not deserve the help or services  
15 that it was my job to provide. I also witnessed staff make fun of incarcerated  
16 people. I frequently saw custody staff antagonize people with mental illness,  
it appeared, in order to set them off. Then staff would laugh when the  
mentally ill people would react, like they thought it was entertaining to  
provoke them. I saw this occur a few times every week.

17 Towards the end of my term at RJD, I witnessed an increase in fights  
18 between incarcerated people on Facility A. On multiple occasions, I saw  
19 staff intentionally ignore fights between incarcerated people. I know it was  
intentional because it was their job to stop the fighting and I saw them stand  
by and watch the fights without doing anything.<sup>22</sup>

### 20 The Death of Mr. [REDACTED]

21 23. In my first declaration to the court, I made reference to the tragic death of  
22 Mr. [REDACTED]<sup>23</sup> He had filed complaints against the staff at RJD. In the latest round of  
23

24 <sup>18</sup> Declaration of Melissa Turner, 04-20-20, ¶ 2.

25 <sup>19</sup> *Ibid.*, ¶ 4.

26 <sup>20</sup> *Ibid.*, ¶ 7.

27 <sup>21</sup> *Ibid.*, ¶ 11.

28 <sup>22</sup> *Ibid.*, ¶¶ 14-15.

<sup>23</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt.  
(footnote continued)

documents reviewed, I have discovered additional information surrounding that death. Mr. [REDACTED] declaration references what happened to Mr. [REDACTED] Mr. [REDACTED] was in the hospital with Mr. [REDACTED] after the assault occurred and Mr. [REDACTED] told him he had repeatedly asked for a change in his cell assignment. Mr. [REDACTED] says:

The next day, [REDACTED] told me more about what had happened. He said that he and his cellmate were not getting along because they had differences they couldn't work out. He also said that he had been repeatedly asking officers in Building 1 to move him to another cell. In particular, he told me that he had asked a floor officer in Building 1, Officer Rucker, for a cell move every day for multiple days before his cellmate attacked him. He said that Officer Rucker only responded each time "fuck or fight," meaning that he had to either learn to get along with his cellmate ("fuck") or attack his cellmate to get a cell move ("fight"). He said other officers had also told him that if he wanted to get moved to another cell he'd have to fight his cellmate. [REDACTED] told me that after his cellmate had been moved into his cell, Officer Rucker told him that he would only leave his cell if he was dead.<sup>24</sup>

Mr. [REDACTED] describes in his declaration that he witnessed the conflict between Mr. [REDACTED] and his cell partner, Mr. [REDACTED] who requested to move to another cell. Mr. [REDACTED] says he witnessed an officer tell Mr. [REDACTED] what he had to do to get a cell move. Mr. [REDACTED] goes on to explain:

I took this to mean that the officer was telling Mr. [REDACTED] that he needed to fight Mr. [REDACTED] in order to move to a new cell because it is commonly known that you will get moved if you and your cellie have a physical fight.

On multiple occasions when I have heard incarcerated people ask officers for cell moves, I have heard the officers respond that the person requesting a cell move and his cell mate need to "fuck or fight." My understanding of what the officers mean by "fuck or fight" is that the cellmates must either get along ("fuck") or fight each other (in which case one of them will be moved to another cell). Based on officers' frequent remarks like this, my understanding is that incarcerated people in my unit cannot get a cell change unless they fight their cellmate.<sup>25</sup>

Towards the end of his declaration, Mr. [REDACTED] reports what the officers in his living unit, including Officer Rucker, had to say about the death of Mr. [REDACTED]

2922-6, 02-28-2020, ¶ 45.

<sup>24</sup> Declaration of [REDACTED] 04-06-20, ¶¶ 8-11.

<sup>25</sup> Declaration of [REDACTED] 04-06-2020, ¶¶ 5-6.

1 Over the next few weeks, I heard multiple officers say repeatedly that  
 2 Mr. [REDACTED] deserved to die and that they had no remorse about his death.  
 3 I overheard multiple officers saying, again and again, comments like "He  
 4 liked to tell on cops," "He was a fag," "Fuck him," "He got what he had  
 coming", and other similar remarks. In particular I overheard Officer Rucker  
 say this to other people on the dayroom floor multiple times over the  
 following days.<sup>26</sup>

5 Such comments by correctional officers about the death of an incarcerated person known  
 6 to others in the same living unit are completely unprofessional and inappropriate. They are  
 7 reflective of the officer culture at RJD. But what is most disturbing about this case is the  
 8 behavior of Officer Rucker, an employee who was previously been disciplined for  
 9 misconduct in the death of Mr. White.<sup>27</sup>

10 24. On July 5, 2016, Officer Rucker hog-tied Mr. White and then lied about it  
 11 during the subsequent investigation.<sup>28</sup> Hog-tying is never authorized in a correctional  
 12 institution as it increases the risk of positional asphyxia. For these violations, Mr. Rucker  
 13 received a reduction in pay for 18 months. If I were the appointing authority, I would have  
 14 fired Mr. Rucker to make certain he could never abuse another incarcerated person.  
 15 Unfortunately that was not done and Mr. [REDACTED] suffered as a result.

16 25. There are many more recent examples that I have documented in each of my  
 17 declarations. I offer my second declaration as one of the most recent examples of the  
 18 physical abuse suffered by Mr. [REDACTED] and the retaliation that both he and Ms. [REDACTED]  
 19 experienced at RJD.<sup>29</sup> And I have been informed that the intimidation and retaliation  
 20 experienced by Mr. [REDACTED] has continued in the last few days, even though he has been  
 21 transferred to another institution. A threatening note was placed in his cell at RJD the night  
 22 before he left. Mr. [REDACTED] reported that the envelope had his name on the outside and that  
 23 inside the envelope was a note that said, "You don't fuck with C/O's. We will be your

24 \_\_\_\_\_  
 25 <sup>26</sup> *Ibid.*, ¶ 13.

26 <sup>27</sup> Declaration of Freedman ISO Motion to Stop Defs Assaulting, Abusing and Retaliating  
 Against People with Disabilities, Dkt. 2948-2, 06-03-2020, ¶¶ 15-16 & Exhibit 7.

27 <sup>28</sup> *Ibid.*

28 <sup>29</sup> Declaration of Vail ISO Preliminary Injunction, Dkt. 2999-4, 07-15-2020.

1 worst nightmare. Rat, rat, rat. Wherever you go you can't hide motherfucker. I will find  
 2 your old ass and cut your heart out. Rat." Mr. [REDACTED] reported the note was on torn blue  
 3 paper, written in red on both sides of the paper, and signed "[REDACTED]" which he said he  
 4 understood to mean "[REDACTED]". He stated that the note contained a heart dripping with  
 5 blood."<sup>30</sup> Given my years of experience in corrections, it is my belief that [REDACTED] stands for  
 6 "[REDACTED]" the name of a notorious officer gang in the California prison system that is  
 7 known for abusing incarcerated people and maintaining a code of silence.

8 26. It is very likely that it came from the staff at that facility. This indicates the  
 9 depth of the diseased culture not only at RJD but in other CDCR facilities.

10 27. I run out of words to describe the horror of such behavior on the part of  
 11 custody officers. Such behavior is completely counter to what I would expect as a  
 12 correctional administrator if this were my institution to run. It can only be understood by  
 13 accepting the depth and pervasive dysfunction of the officer culture at RJD. As an  
 14 experienced correctional professional, one would have to be oblivious to not know what is  
 15 going on in the institution. Accountability must be established for such mistreatment of the  
 16 incarcerated at RJD and given the frequency and pervasive nature of the staff misconduct,  
 17 I have no confidence that CDCR has the capacity to do so.

#### 18 **Mr. McGinnis' Declaration**

19 28. In his declaration, Mr. McGinnis concludes that things are improving at RJD  
 20 as indicated by what he identifies as "key indicators.". One of the key indicators he  
 21 describes is a reduction in use of force incidents at Facility C.<sup>31</sup>

22 29. I disagree. Assuming Mr. McGinnis' data is accurate,<sup>32</sup> if there has been a  
 23 reduction in Use of Force at Facility C, any reduction would be a positive step. But this

24 \_\_\_\_\_  
 25 <sup>30</sup> I viewed this note in a video taken at Mr. [REDACTED] current institution when it was being  
 placed into evidence by CDCR staff.

26 <sup>31</sup> Declaration of McGinnis ISO Defs' Response re Motion re Complaints of Excessive  
 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 22.

27 <sup>32</sup> I have not received the underlying data that Mr. McGinnis relied upon so cannot do my  
 28 own analysis.



1 case is about more than Facility C and horrific events have occurred and continue to occur  
 2 in other facilities at RJD. Most recently, as documented in my declaration regarding  
 3 Mr. [REDACTED] and Ms. [REDACTED] the triggering use of force event and assault of Mr. [REDACTED]  
 4 occurred in Facility A.<sup>33</sup>

5 30. Mr. McGinnis seems to suggest that staff are equal opportunity offenders as  
 6 far as use of force is concerned and that *Armstrong* class members are no more likely to be  
 7 assaulted than others.<sup>34</sup> In reality, I would expect, given the age and ability of the  
 8 *Armstrong* class, many of whom are in wheelchairs, are blind, elderly, or otherwise would  
 9 not appear to pose much physical threat to staff, that they would constitute a very small  
 10 fraction of use of force events. I find the number of incidents involving *Armstrong* class  
 11 members, between 22-32 percent, to be surprisingly high.

12 31. Equally important, this case is about more than use of force. It is also about  
 13 the fact that RJD fails to recognize and accommodate class members' disabilities; that  
 14 class members are afraid to report allegations of staff misconduct for fear of retaliation;  
 15 that RJD officers sometimes recruit incarcerated people to assault class members; and that  
 16 the RVR hearing process discounts the testimony of incarcerated people and fails to call  
 17 their witnesses. All of these issues are addressed in my first declaration but little is said  
 18 about them in the declaration of Mr. McGinnis. Notably, the retaliation and risk of harm  
 19 experienced by Mr. [REDACTED] and Ms. [REDACTED] occurred in Facility A.<sup>35</sup>

20 32. A second key indicator described by Mr. McGinnis is a purported reduction<sup>36</sup>  
 21 in staff misconduct complaints by incarcerated people at Facility C. There are multiple  
 22 concerns expressed by the incarcerated people at RJD of retaliation over time and it is not  
 23

24 <sup>33</sup> Declaration of Vail ISO Preliminary Injunction, Dkt. 2999-4, 07-15-2020.

25 <sup>34</sup> Declaration of McGinnis ISO Defs' Response re Motion re Complaints of Excessive  
 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 13.

26 <sup>35</sup> Declaration of Vail ISO Preliminary Injunction, Dkt. 2999-4, 07-15-2020.

27 <sup>36</sup> I have also not been provided the underlying data that supports Mr. McGinnis'  
 conclusion.



1 surprising that some may no longer be willing to take the risk of making such claims. One  
2 of the most dramatic examples comes from a recent declaration by Mr. [REDACTED] He said:

3 When I helped out on this case and told the *Armstrong* attorneys what I saw,  
4 I was just trying to do the right thing. I especially wanted to help my friend,  
5 Mr. [REDACTED] In return, my life has been made a hell. I really thought the  
6 officer that assaulted me was going to kill me. I do not feel safe at RJD. I am  
7 now suicidal and this situation has me completely stressed out. I feel like it  
8 would be easier to be dead. I will not stick my neck out again and try to help  
9 in the *Armstrong* case because the harassment is not worth dying for.<sup>37</sup>

10 33. The pattern of retaliation at RJD is deep-seated and has been in existence for  
11 a long period of time. As I described in my first declaration in this case, “in December of  
12 2018 a CDCR team was deployed to RJD ‘with the purpose of conducting a series of  
13 inmate interviews in an attempt to find facts related to a serious complaint brought forward  
14 by plaintiffs’ attorneys during recent tours of the facility.’”<sup>38</sup> In that declaration I go on to  
15 say:

16 I have had the opportunity to review notes taken by the CDCR team of their  
17 interviews with 82 different incarcerated persons, many of whom have not  
18 filed declarations in this case, in other words people who had not filed formal  
19 complaints. The notes are remarkably consistent in describing the culture of  
20 physical brutality and fear of retaliation if incarcerated persons report staff  
21 misconduct at RJD. These interview notes offer powerful evidence of the  
22 pervasive fear of retaliation the people incarcerated at are RJD  
23 experiencing.<sup>39</sup>

24 I then offered specific examples that I will not repeat here. I also said:

25 In addition, the interview team selected 150 prisoners, or 20% from  
26 Facility C at RJD to be interviewed. Nearly a third refused to participate in  
27 the interviews, another indicator that there is widespread fear of retaliation  
28 and as Ms. Seibel says, adds credibility to the allegations. There is clearly a  
pattern of threats of retaliation and actual retaliation at RJD when people  
incarcerated at that facility file complaints about staff misconduct. This  
problem must be addressed.<sup>40</sup>

37 Supplemental Declaration of [REDACTED] 06-25-20, ¶ 12.

38 Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt. 2922-6, filed 02-28-20, ¶ 66

39 *Ibid.*, ¶ 67.

40 Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt. 2922-6, filed 02-27-20, ¶ 66 (internal citation omitted).

1           34.     Given the history of retaliation at RJD, I am not convinced that a reduction  
2 in staff misconduct complaints at Facility C represents progress. It may just as well reflect  
3 the result of the systemic practice of retaliation at RJD that is causing incarcerated people  
4 to be unwilling to file complaints.

5           35.     I disagree that these two indicators offered by Mr. McGinnis support his  
6 conclusion that CDCR is capable of changing the culture of RJD.<sup>41</sup>

7           36.     Mr. McGinnis speaks highly of the CDCR use of force policy.<sup>42</sup> For the most  
8 part, I would not argue with this conclusion. But I would point out that, based on my  
9 experience and understanding, this policy has largely been driven by litigation and the  
10 findings of Federal Courts. What matters more than the policy is the actual practice. As I  
11 have illustrated in this declaration and in my declarations submitted previously, the actual  
12 practice at RJD is not consistent with the CDCR use of force policy.

13           37.     Some of those areas where practice does not align with policy have to do  
14 with incidents where the force was unnecessary, or excessive, or when RJD officers failed  
15 to follow CDCR policy regarding controlled use of force. In my first declaration I describe  
16 multiple examples of the problems with actual practice.<sup>43</sup> Mr. McGinnis appears to agree  
17 with my conclusion when he says:

18           A review of the incident reports and individual Inmate Declarations that  
19 were cited in the Vail report indicate a pattern of excessive force and  
20 incidents of intimidation primarily in Facility C. Instances of this type occur  
21 virtually everywhere, but the volume and number of incidents indicate a  
22 more systemic problem in Facility C. In reviewing the use of force incidents  
23 as a whole, and based on the acknowledgements of a concern by the CDCR  
24 over the application of use of force at RJD as reflected by Deputy Director  
25 Seibel's comments noted above and reported in the Bishop report of  
26 December 10, 2018,<sup>44</sup> the more important aspect of this review at this point  
27 in time is what has happened since December 2018 and the submission of the

24 <sup>41</sup> Declaration of McGinnis ISO Defs' Response re Motion re Complaints of Excessive  
25 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 39.

26 <sup>42</sup> *Ibid.*, pages 7-9.

27 <sup>43</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt.  
28 2922-6, filed 02-27-20, ¶ 13-21, 22-49.

<sup>44</sup> The actual date of the "Bishop report" was December 10, 2018.

1 Bishop report.<sup>45</sup>

2 38. But from my review of the material made available, the problems that I have  
3 identified and the examples I have offered, many have occurred very recently. In my first  
4 declaration, I offered a chart of what has occurred since the Bishop report of December  
5 2018 into the first months of 2020.<sup>46</sup> And in this report, I offer other examples from  
6 2020.<sup>47</sup> It is very clear to me that the problems at RJD continue into the most recent  
7 months. The problems are deep and systemic and will not go away absent significant  
8 changes in the culture of the institution.

9 39. Mr. McGinnis also speaks highly of the personnel changes that have taken  
10 place at RJD.<sup>48</sup> But given the ongoing prevalence of the problems described immediately  
11 above, I must disagree. While I truly hope these personnel changes will eventually help to  
12 improve the conditions for class members at RJD, so far the continued abuse of  
13 incarcerated people at the facility has continued, and there are many such examples since  
14 these new personnel have come on board. Another issue illustrating my concern about the  
15 effectiveness of the new personnel, Mr. McGinnis reports that the follow up investigations  
16 into the cases identified in the Bishop report, authored in December 2018, took until  
17 February of 2020 to complete.

18 I reviewed eight additional cases that summarized interviews conducted  
19 during the month of February 2020. Each of these noted that the interviews  
20 were a result of a request by the hiring authority, RJD, to have a three-  
21 member panel of Basic Investigators review the allegations of cases included  
22 in the Bishop Report. Each of the cases include a summary of the allegations  
23 and conclusion of the investigation. Each case reviewed was rejected as no  
24 misconduct was identified. The documentation attached to each case was

23 <sup>45</sup> Declaration of McGinnis ISO Defs' Response re Motion re Complaints of Excessive  
24 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 15.

24 <sup>46</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt.  
25 2922-6, filed 02-27-20, ¶ 86.

26 <sup>47</sup> See sections on Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] in this report and my declaration  
27 regarding the assault on Mr. [REDACTED] Dkt. 2999-4.

27 <sup>48</sup> Declaration of McGinnis ISO Defs' Response re Motion re Complaints of Excessive  
28 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 19.

1 extensive and comprehensive and supported the decision to reject the case.<sup>49</sup>

2 40. I find it convincing that the length of time taken to initiate follow up  
3 investigative activities for events that occurred prior to December 2018 until February  
4 2020 does not speak well for either CDCR and the new personnel at RJD and their  
5 purported efforts to change the culture of the institution.

6 41. I briefly reviewed the confidential closure memos, which correspond to the  
7 Strike Team allegations. I would have preferred more time to review these documents but  
8 it is my understanding that they were not produced in total and the ones that were produced  
9 that I was able to review came to Plaintiffs' counsel on July 24, 2020, after Defendants'  
10 Response was filed and just days before this report is due. It is also my understanding from  
11 Plaintiffs' counsel that Defendants' expert, Mr. McGinnis, did not review these  
12 documents. It is difficult for me to understand how Mr. McGinnis could conclude that the  
13 follow up to the Strike Team allegations was complete, comprehensive and supported, if  
14 he did not review the confidential closure memoranda prepared by the Strike Team  
15 investigators. I disagree with Mr. McGinnis and find the follow-up investigations, or lack  
16 thereof, shocking. Further, the confidential memoranda demonstrate flawed investigative  
17 techniques and bias against incarcerated people.

18 42. I reviewed allegation C-19-003, by an incarcerated person, Mr. [REDACTED]  
19 [REDACTED] who alleged that staff orchestrated assaults on incarcerated people. The memo  
20 states that, during the course of this investigation:

21 "[A witness named] [REDACTED] was asked if he had any knowledge and/or  
22 information of staff opening up cell doors and allowing inmates' to commit  
23 assaults on other inmates. [REDACTED] reported Officer [REDACTED] allowed these  
24 acts to happen. [REDACTED] explained when an inmate is moved into the  
25 building Officer [REDACTED] would show him the inmates' conviction records and  
26 pictures via SOMS and he along with other unidentified inmates would  
27 assault them in their cells or in the dayroom. [REDACTED] reported Officer  
28 [REDACTED] would personally allow them into the cells to conduct the assaults.  
Additionally, [REDACTED] reported Officer [REDACTED] tried to have inmates  
assaulted for filing grievances and lawsuits against staff.

<sup>49</sup> *Ibid.*, page 21.

1 [REDACTED] was asked if he had any knowledge and/or information of staff  
 2 opening up cell doors and allowing inmates' to go in to steal other inmates'  
 3 personal property. [REDACTED] reported Officer [REDACTED] personally allowed him  
 into cells to steal property and that he did it often.<sup>50</sup>

4 43. Despite the self-incriminating statements of the witness, this allegation was  
 5 determined to be "unfounded" and closed with no further inquiry:

6 [REDACTED] reported he observed specific staff allowing other inmates to go into  
 7 inmates' cells to assault them. This allegation is unfounded, as there was no  
 8 evidence discovered which supported [REDACTED] [sic] claim... [REDACTED]  
 9 reported he had firsthand knowledge of staff allowing inmates' [sic] into  
 other inmates' cells to commit assaults and theft. [REDACTED] indicated he took  
 part in this behavior at the direction of Officer [REDACTED] and [REDACTED]. However,  
 [REDACTED] refused to provide any specific details of incidents that transpired.  
 As a result the allegation could not be corroborated and is unfounded...<sup>51</sup>

10  
 11 The RJD Warden concurred with this finding.

12 44. It defies logic that a self-incriminating allegation by an incarcerated person  
 13 that a named staff member allowed him to enter cells and assault people would be closed  
 14 as "unfounded" simply because it apparently occurred more than once and therefore it  
 15 could not be tied to any one particular incident.

16 45. I reviewed allegation C-19-004, by an incarcerated person, Mr. [REDACTED]  
 17 [REDACTED] regarding a staff assault on Mr. [REDACTED] Mr. [REDACTED] allegations include:  
 18 (1) an allegation that staff orchestrate assaults, (2) that staff assaulted an older person, and  
 19 (3) that staff jumped on someone in a wheelchair.<sup>52</sup>

20 46. Witnesses [REDACTED] and [REDACTED] corroborate the second allegation:

21 [REDACTED] indicated he had a direct line of sight of the incident and observed 3  
 22 or 4 officers kicking and punching an inmate in the building rotunda."  
 23 [REDACTED] stated, 'The inmate was a heavy set fat dude wearing an ADA vest  
 and had a cane. They were giving him the treatment. Kicking and stomping  
 him while he was on the ground hollering.' [REDACTED] reported the inmate was

24  
 25 <sup>50</sup> February 12, 2020 Confidential Memoranda signed by Lt. [REDACTED] for Mr. [REDACTED]  
 page 5.

26 <sup>51</sup> *Ibid.*, pages 7-8.

27 <sup>52</sup> See Declaration of Jeffrey Schwartz, Dkt. 2948-4, ¶¶ 279-291, for discussion of the  
 28 second allegation involving Mr. [REDACTED] (OIA case S-RJD-455-18-R).

1 not resisting.<sup>53</sup>

2 47. It is striking that Mr. [REDACTED] whose allegations were identified for follow  
3 up by the Strike Team, was not interviewed until February 10, 2020—over a year later.<sup>54</sup>  
4 According to the confidential memo, his first allegation was closed as unfounded stating,  
5 “Given the time since this allegation took place accompanied with the little information  
6 provided by [REDACTED] it is unlikely any facts to substantiate this allegation will be  
7 discovered.”<sup>55</sup>

8 48. The second allegation involving Mr. [REDACTED] was originally rejected by OIA  
9 on January 23, 2019.<sup>56</sup> There is no documentation that CDCR further investigated this  
10 allegation, until Mr. [REDACTED] was again interviewed more than a year after OIA had  
11 rejected the case. However, included in the confidential memo is a statement indicating,  
12 “After a thorough review of all the evidence it is believed that allegation #2 has merit and  
13 should be forwarded to the Hiring Authority for review for possible misconduct and policy  
14 violation.”<sup>57</sup> Thus, despite the initial rejection from OIA indicating that there was no  
15 reasonable belief that misconduct occurred, the case is now apparently open again. I agree  
16 that this case requires further investigation and follow up.

17 49. I reviewed allegation C-19-016, from an incarcerated person, Mr. [REDACTED]  
18 who incriminates himself in misconduct by staff, assaulting incarcerated people at  
19 direction of staff.<sup>58</sup> Mr. McGinnis finds that this allegation was properly rejected by  
20 OIA.<sup>59</sup>

21 \_\_\_\_\_  
22 <sup>53</sup> March 3, 2020 Confidential Memoranda signed by Lt. [REDACTED] for Mr. [REDACTED] pages  
23 5-6.

24 <sup>54</sup> *Ibid.*, page 1.

25 <sup>55</sup> *Ibid.*, page 12.

26 <sup>56</sup> *Ibid.*, page 18.

27 <sup>57</sup> *Ibid.*, page 27.

28 <sup>58</sup> See Declaration of Jeffrey Schwartz, Dkt. 2948-4, ¶¶ 225-233, for discussion of the case  
involving Mr. [REDACTED] (OIA case S-RJD-141-19-R).

<sup>59</sup> Declaration of McGinnis ISO Defs’ Response re Motion re Complaints of Excessive  
Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 21, footnote 23.



1        50. The confidential memo notes that:

2        During the interview, Inmate ██████ made several claims of staff misconduct.  
 3        The following are the allegations he made:

- 4        • ██████ claimed he witnessed several incidents, involving Officers ██████  
 5        and ██████ beating up inmates.
- 6        • ██████ claimed he witnessed Officer ██████ send multiple inmates to  
 7        assault inmate ██████
- 8        • ██████ claimed Officer[s] provided him information, that inmate ██████  
 9        gave information about ██████ having contraband in his cell,  
 resulting in ██████ battering ██████
- 10        • ██████ claimed Officer ██████ had told him to assault other inmates on his  
 11        behalf for disrespect.<sup>60</sup>

12        51. On April 17, 2019, this referral was rejected via the Central Intake Panel's  
 13        Decision Letter. Upon a second review, nearly nine months after the referral was rejected,  
 14        the author of this memorandum, Lieutenant ██████ stated, "I do believe Inmate  
 15        ██████ claims to be unsubstantiated, and recommend no further inquiry into these  
 16        claims of staff misconduct."<sup>61</sup> The warden closed the case. It appears that five correctional  
 17        officers and two incarcerated people were interviewed. Incidentally, the officers who were  
 18        interviewed appear in multiple allegations raised by the Strike Team. Officer ██████ appears  
 19        in at least four different allegations. Yet, it appears that the self-incriminating allegation in  
 20        this case that Officer ██████ hired him to assault other incarcerated people was unfounded  
 21        due to lack of evidence. It is difficult to imagine what sort of evidence could be found to  
 22        corroborate this allegation. Officer ██████ admitting that he did so? Other incarcerated  
 23        people incriminating themselves? It seems this allegation is compelling enough, combined  
 24        with multiple other allegations against this officer, to conduct a more intensive  
 25        investigation in to misconduct.

26        52. Regarding the installation of surveillance cameras at RJD, Mr. McGinnis  
 27        opines, "I believe the request of the plaintiffs that this system be installed and operation

28        <sup>60</sup> March 9, 2020 Confidential Memoranda signed by Lt. G. ██████ for Mr. ██████  
 pages 1-2.

<sup>61</sup> *Ibid.*, page 7.



1 within 90 days is unrealistic and impossible” and “I believe a 12-month period for  
2 acquisition and installation is more realistic.”<sup>62</sup> Based on my own experience and research,  
3 I disagree.

4 53. In my opinion installation of cameras at RJD as soon as possible is critical in  
5 order to protect the class members at that facility. I viewed a few videos produced by  
6 Defendants for this declaration. As I said in my first declaration, “In my review of the  
7 records, staff misconduct is not found unless there is video evidence or counter testimony  
8 from a staff member.”<sup>63</sup> The videos I reviewed support this opinion.

9 54. One video I viewed related to Mr. [REDACTED] clearly shows that, on December 9,  
10 2018, immediate use of force was implemented against him without evidence of any  
11 imminent threat. He was thrown to the ground from his wheelchair.<sup>64</sup> The related reports of  
12 three involved officers did not accurately describe what actually occurred and all three  
13 were dismissed from employment from CDCR for this misconduct.<sup>65</sup>

14 55. In another video I reviewed from July 3, 2018, you can see a prolonged  
15 conversation between an officer and an incarcerated person, Mr. [REDACTED]. The behavior of  
16 the officer is aggressive during the conversation as you can see him move to an unsafe  
17 distance, coming too close to Mr. [REDACTED]. At one point, it appears the conversation is over  
18 but the officer returns to confront Mr. [REDACTED] and then goes “hands on” initiating  
19 immediate use of force. From the video, there is clearly no reason to do so. There was no  
20 imminent threat. The officer then body slams Mr. [REDACTED] who suffered several injuries  
21 including a right clavicle fracture, a temporal bone fracture, a subdural fracture,  
22

23 <sup>62</sup> Declaration of McGinnis ISO Defs’ Response re Motion re Complaints of Excessive  
Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 27.

24 <sup>63</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt.  
2922-6, filed 02-28-20, ¶ 57.

25 <sup>64</sup> [REDACTED] – Surveillance 1.MP4

26 <sup>65</sup> Declaration of Freedman ISO Motion to Stop Defs Assaulting, Abusing and Retaliating  
Against People with Disabilities, Dkt. 2948-2, 06-03-2020, Exhibit 78.

27 <sup>66</sup> [REDACTED] – DOJ00110072.

1 subarachnoid bleed, rib fracture and a transverse process fracture.<sup>67</sup> As a result of the video  
 2 evidence, the officer was dismissed from his employment from CDCR<sup>68</sup> but was later  
 3 reinstated to employment after being suspended from July 5, 2019 to November 30,  
 4 2019.<sup>69</sup> Given the severity of the class member's injuries, I find this reduction in lieu of  
 5 termination to be inappropriate.

6 56. I also viewed two videos from March 28, 2017.<sup>70</sup> In the video, you can  
 7 clearly see an officer pull Mr. [REDACTED] wheelchair backwards, dumping Mr. [REDACTED]  
 8 on the ground.<sup>71</sup> As a result, the officer received a 5% reduction of pay for three months<sup>72</sup>,  
 9 later reduced to a Letter of Instruction.<sup>73</sup>

10 57. I also viewed two videos related to an incident that occurred on January 21,  
 11 2019 regarding Mr. [REDACTED].<sup>74</sup> This is the first time I have seen these videos. However, I  
 12 documented this incident in my first declaration in this case. I said:

13 As a result of the video footage these three officers were dismissed. In my  
 14 review of the records, staff misconduct is not found unless there is video  
 15 evidence or counter testimony from a staff member. Without that video  
 record this incident would have disappeared and no one would have been  
 held accountable.<sup>75</sup>

16 The videos I viewed further support this opinion.

17 58. Like my opinion regarding the [REDACTED] incident, none of the officers involved  
 18 in these incidents above would have disciplined without the existence of the videos. It is  
 19

20 <sup>67</sup> [REDACTED] Exs. to OIA Report, page 31.

21 <sup>68</sup> [REDACTED] 402 + 403, pages 1-3.

22 <sup>69</sup> [REDACTED] SPB approval of settlement, page 4.

23 <sup>70</sup> See Declaration of Jeffrey Schwartz, Dkt. 2948-4, ¶¶ 108-126, for discussion of this case.

24 <sup>71</sup> DOJ00018850.MOV and DOJ000188551.MOV

25 <sup>72</sup> [REDACTED] 402-403.

26 <sup>73</sup> [REDACTED] Skelly Recommendation, page 2 & Withdrawal of NOAA [REDACTED]

27 <sup>74</sup> Exhibits 89 & 90 to Freedman Declaration, Filed Under Seal.

28 <sup>75</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt. 2922-6, filed 02-28-20, ¶¶ 56-57.

1 critical that RJD move forward rapidly to improve the video surveillance of their facility. I  
2 return to this subject later in this declaration.

3 59. I have reviewed the declarations of Jeff Macomber which indicates that  
4 CDCR believes it cannot install a functioning Audio Visual Surveillance System  
5 (“AVSS”) at RJD in less than a year.<sup>76</sup> For a number of reasons, I am quite skeptical of the  
6 time estimate for the project put forward by Defendants.

7 60. On July 24, 2020, I, along with Plaintiffs’ counsel spoke with two  
8 representatives of CML Security, <https://cmlsecurity.us/>, Steve Stonehouse and Keith  
9 Cheney, an owner of the company. They reported that they have performed a lot of work  
10 for the State of California and in fact installed the AVSS system in the newly built yard at  
11 RJD about two years ago. They reported that, in general, they can put cameras on a facility  
12 within a month. It takes 2 to 3 weeks to design and get the materials and then in week four  
13 they install. The average job, from placement of the cameras to full deployment of the  
14 system, takes 90 to 120 days, though they reported that estimate could be sped up through  
15 the use of overtime. They reported that the estimate above includes time for network  
16 switches and cabling, which has to be prepared in such a way to prevent inmate  
17 interference. They reported that one of the biggest obstacles to camera projects in CDCR  
18 prisons is obtaining a custody staff escort. For example, they stated that when they worked  
19 at RJD, they often had to wait 45 minutes for an escort. Years ago at San Quentin a  
20 disgruntled gate guard made them wait two hours to get in. These factors can significantly  
21 delay a project. In my experience overseeing a variety of construction projects in the State  
22 of Washington DOC, we solved this problem. Specific officers were assigned to the  
23 project for its duration. They were essentially instructed that during the project their  
24 primary responsibility was to facilitate the contractor’s access to their various work sites.  
25 We in fact often funded their salaries as part of the construction budget. With dedicated  
26

27 <sup>76</sup> Declaration of Macomber ISO Defs’ Response re Motion re Complaints of Excessive  
28 Force, Retaliation at RJD, Dkt. 3006-5, 07-15-2020, ¶ 13.

1 escort staff assigned to the camera installation crew to eliminate delays, I believe, based on  
 2 reports from CML, that full deployment of fixed cameras on the first two yards could be  
 3 completed within four months of assigning the project.

4 61. Regarding body worn cameras Mr. McGinnis says, “However, I believe that  
 5 much more study of this option should be undertaken prior to implementing in the manner  
 6 proposed by the plaintiffs.”<sup>77</sup>

7 62. And, the Defendants assert that, “after fully considering the attributes of  
 8 body-worn cameras, CDCR has decided that it will not implement the regular use of body-  
 9 worn cameras within its institutions, including R.J. Donovan, at this time.”<sup>78</sup> In support of  
 10 this position, Defendants cite (1) the lack of research regarding the efficacy of body  
 11 cameras and their superiority to fixed cameras in correctional settings, (2) that body  
 12 cameras cannot capture incidents that occur in spaces with barriers, (3) that body cameras  
 13 can be turned off by individuals, (4) that body cameras may capture sensitive or private  
 14 information and (5) the “significant staff overhead.”<sup>79</sup>

15 63. I disagree. I conducted research on the efficacy of body cameras in  
 16 correctional settings and found support for their efficacy and usefulness in such settings.  
 17 Attached hereto as **Exhibit 2** is a true and correct copy of a video titled, “Body-Worn  
 18 Cameras in Correctional Settings.” The video is accessible on YouTube. *See*  
 19 [https://www.youtube.com/watch?v=IMXWGrRc0n4&feature=emb\\_title&t=0s](https://www.youtube.com/watch?v=IMXWGrRc0n4&feature=emb_title&t=0s), last  
 20 accessed July 23, 2020. The video was produced by the Body-worn Camera Training and  
 21 Technical Assistance (“BWCTTA”) program, which is operated by the U.S. Department of  
 22 Justice’s Bureau of Justice Assistance (“BJA”). The video is a recording of a webinar  
 23 hosted by the BWCTTA on January 29, 2020 featuring: Lieutenant Dan Brodie, Internal  
 24

25 <sup>77</sup> Declaration of McGinnis ISO Defs’ Response re Motion re Complaints of Excessive  
 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 29.

26 <sup>78</sup> Decl of Diaz ISO Defs Response re Motion re Complaints of Excessive Force,  
 Retaliation at RJD, Dkt. 3006-4, 07-15-2020, ¶ 16.

27 <sup>79</sup> *Ibid.*, ¶¶ 17-19.

1 Affairs, Alameda County Sheriff's Office; Deputy Director Wes Kirkland, Institutional  
 2 Operations, Florida Department of Corrections ("FDOC"); and First Deputy  
 3 Superintendent Scott Kelly, New York State Department of Corrections and Community  
 4 Supervision ("NYS DOCCS"). Attached hereto as **Exhibit 3** is a true and correct copy of  
 5 transcribed excerpts from that video.

6       64. The information provided by these correctional experts substantially  
 7 undermines Defendants' position on body-worn cameras. The BWCTTA Technology  
 8 Advisor, Elliot Harkavy, begins with a discussion of a 2014 New Zealand Department of  
 9 Corrections study, a true and correct copy of which is attached hereto as **Exhibit 4**, which  
 10 he characterizes as the "most thorough study [of body-worn cameras in correctional  
 11 contexts] to date."<sup>80</sup> According to Mr. Harkavy, that study found that body-worn cameras  
 12 "increased officer and inmate safety, fewer uses of force, they were able to have video to  
 13 support investigations of either internal misconduct by officers or prosecutions of  
 14 misconduct by inmates and it definitely provided training and development opportunities  
 15 of the officers."<sup>81</sup>

16       65. The correctional experts similarly opine that body-worn cameras have  
 17 improved outcomes at the facilities they oversee. Lieutenant Brady of Alameda County  
 18 states that, "We find that the system [i.e., body-worn cameras], the training, the time, it  
 19 pays for itself in complaints and in lawsuits. In Internal Affairs, I'm able to see all of the  
 20 benefits that came out of getting us a robust body-worn camera program."<sup>82</sup> Similarly,  
 21 NYS DOCCS First Deputy Superintendent Kelly reports that, "In our female facilities ...  
 22 their direction is, anytime they are not being covered by a fixed camera, they are to  
 23  
 24  
 25

26 <sup>80</sup> Exhibit 3, at timestamp 00:10:05; Exhibit 4, page 1.

27 <sup>81</sup> *Ibid.*

28 <sup>82</sup> Exhibit 3, at timestamp 00:32:15; Exhibit 4, pages 1-2.

1 activate their body camera. What we found out actually, very early on, is our PREA  
2 [Prison Rape Elimination Act] allegations at those facilities decreased by about 50%.”<sup>83</sup>

3 66. Superintendent Kelly also comments on the symbiosis between body-worn  
4 cameras and fixed camera systems, noting that being able to review video from both  
5 systems can be critical to getting to the bottom of what happened in a incident, “One,  
6 frequently those fixed cameras don’t come with audio. And two, we’ve found at times  
7 where the fixed camera really tells a different story than the body camera after-the-fact.  
8 And we had an incident very recently where the body-worn camera, once that footage was  
9 reviewed, the officer’s actions were completely justified, where, during an initial review of  
10 the fixed camera, it didn’t appear that way.”<sup>84</sup>

11 67. In the introduction to the webinar, Mr. Harkavy notes that, “[A] key factor,  
12 and this is something that goes across body-worn cameras or for that matter, any  
13 technology, the ability to get benefit—in this case, the ability to modify behavior—is tied  
14 to how the camera is used, the policies the procedures and the tools and techniques for the  
15 review.”<sup>85</sup> The correctional experts echo this point. Lieutenant Brady notes that the  
16 Alameda County Sheriff trains his staff such that staff know that, “point blank, very  
17 bluntly, that [the Sheriff] will fire you if you do not activate your camera, and he has fired  
18 someone for not activating his camera, and that helped a lot with implementation and  
19 adoption of the program. We suggest training from day 1. We have a large regional  
20 academy here, and we issue cameras the minute they start. And we start training that  
21 muscle memory of activating that camera automatically, during scenarios, during  
22 everything else, and we find that it’s very helpful.”<sup>86</sup> Given what I know about officers in  
23 CDCR in general and RJD in particular, this same admonishment and training should be in  
24 place should body worn cameras be implemented in RJD.

25 <sup>83</sup> Exhibit 3, at timestamp 00:35:34; Exhibit 4, page 2.

26 <sup>84</sup> Exhibit 3, at timestamp 00:37:50; Exhibit 4, page 2.

27 <sup>85</sup> Exhibit 3, at timestamp 00:10:05; Exhibit 4, page 1.

28 <sup>86</sup> Exhibit 3, at timestamp 00:31:23; Exhibit 4, page 1.

68. Similarly, on the issue of privacy, Superintendent Kelly notes that the agency's policies and practices are critical to determining whether body-worn cameras pose an unreasonable risk to the privacy of incarcerated people: "The access to the footage is very limited. We have tiered-access, and it's our upper level supervisors, up to and including the superintendent, and the audit trail that comes on each of these platforms is excellent regardless of who you choose. We can clearly monitor who is actually reviewing, copying, et cetera the video footage."<sup>87</sup>

69. An unidentified BJA speaker concludes the event by describing the BJA's role in expanding the use of body-worn cameras in correctional settings: "This program is predicated on the purchase of body-worn camera and essentially, there's what we call the \$2,000 per camera metric, which means you can request up to \$2,000 per camera in federal funds and that can cover any allowable expense: obviously the cost of the cameras, but anything ancillary to that as long as it's not storage. So, a lot of times people will fund a training, they'll fund staffing enhancements..."<sup>88</sup>

70. On July 27, 2020, I, along with Plaintiffs' counsel spoke with Shane Page, National Director – Axon Corrections. Axon is a company that sells equipment to corrections and law enforcement agencies, including body worn cameras.<sup>89</sup> He informed us that he could get body worn cameras up and running in a correctional institution in "a couple of months" for a cost of about \$1,100 per camera. This would include costs for the hardware, licensing and training. The training component would include training for trainers so the local prison could train their own officers. Length of the training would be about two hours.

71. In my opinion, a distinct advantage to body worn cameras is that they capture audio as well as video. Surveillance cameras often do not capture audio, and even

<sup>87</sup> Exhibit 3, at timestamp 01:02:00; Exhibit 4, page 2.

<sup>88</sup> Exhibit 3, at timestamp 01:16:10; Exhibit 4, page 2.

<sup>89</sup> <https://www.axon.com/industries/corrections>



1 when they do, their distance from an event makes it difficult to determine what was  
 2 actually said. The videos from the few surveillance cameras at RJD that I have reviewed  
 3 do not have audio. Given the wide disparity in accounts between incarcerated people and  
 4 RJD officers about what was said in many events, having an audio record of what  
 5 transpired would be immensely helpful to document what action did occur.

6 72. Mr. McGinnis is critical of the recommendation made by Mr. Schwartz and I  
 7 that cameras be brought to the scene as soon as possible in an immediate use of force  
 8 event. He says:

9 In the situations described by Schwartz the incidents occur without any  
 10 advanced notice and to acquire and set up video capability in these situations  
 is impossible and impractical.<sup>90</sup>

11 I profoundly disagree with Mr. McGinnis here. I have seen this practice in place in other  
 12 jurisdictions, including my own, and it is neither impossible nor impractical. The presence  
 13 of cameras, in my experience, often has a calming effect on both the officers and on  
 14 incarcerated people. In addition, even if the initial use of force is over and the person is in  
 15 restraints, there are still issues of concern that occur during escort, a continued issue in this  
 16 case where incarcerated people have suffered additional abuse even after being restrained.  
 17 If cameras were present once a person is in restraints it is much less likely that such abuse  
 18 will occur.

19 73. Mr. McGinnis also is critical of my recommendation that pepper spray  
 20 canisters be weighed. He opines it "...to be unnecessarily burdensome and has the  
 21 potential of delaying the movement of officers to their posts..."<sup>91</sup> Regarding his comment  
 22 that this practice would be "unnecessarily burdensome," that is simply the nature of  
 23 change. Change is burdensome. In order to make the changes necessary to impact the  
 24 abusive culture at RJD, many changes will be required. It is likely that many of them could  
 25

26 <sup>90</sup> Declaration of McGinnis ISO Defs' Response re Motion re Complaints of Excessive  
 27 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 30.

28 <sup>91</sup> *Ibid.*

1 be described as burdensome. In my experience there are several ways to get this done but it  
2 would require CDCR to change their procedures.

3 74. He also indicates he is “unclear” how the issue of weighing the canisters  
4 relates to this case.<sup>92</sup> I will explain. In my first declaration I said:

5 There is frequently in the record a great discrepancy in the accounts of the  
6 officers who report using a few second burst of pepper spray and the class  
7 member accounts that significantly longer than a few seconds. In my  
8 experience this creates a controlling effect on the officer using the spray.<sup>93</sup>

9 I offer as a specific example what happened to Mr. [REDACTED] He reported that multiple cans of  
10 pepper spray were unloaded directly to his face.<sup>94</sup> This change should be implemented at  
11 RJD to end the dispute over how much spray was used and to protect the incarcerated  
12 population.

13 75. Mr. McGinnis also addressed training. He reviewed CDCR’s curriculum for  
14 use of force training<sup>95</sup> and found it to be “consistent with national standards.”<sup>96</sup> He goes on  
15 to say:

16 I am unable to determine with certainty how effective these modules have  
17 been in achieving compliance with department policy, procedures and  
18 practices.

19 And,

20 It is clear that some staff have chosen not to fully comply with these  
21 requirements and thus become subject to corrective active. This is a normal  
22 occurrence that can be observed even in the most well managed facilities.<sup>97</sup>

23 Again, I disagree. The curriculum may or may not be adequate but the consistent evidence  
24 of frequent abuse during use of force incidents at the RJD is far beyond the “normal  
25

26 <sup>92</sup> *Ibid.*

27 <sup>93</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt.  
28 2922-6, filed 02-28-20, ¶ 102.

<sup>94</sup> Declaration of [REDACTED] G., 01-08-20, ¶ 10.

<sup>95</sup> I was not provided this curriculum.

<sup>96</sup> Declaration of McGinnis ISO Defs’ Response re Motion re Complaints of Excessive  
Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 9.

<sup>97</sup> *Ibid.*, page 10.

1 occurrence” that I have seen in other jurisdictions. The problems at RJD illustrate a culture  
 2 among the officers that goes beyond use of force training. Training alone will not solve  
 3 their problems and end the abuse that occurs during use of force incidents at RJD. What is  
 4 required in addition to training is closer supervision and accountability to ensure that  
 5 incarcerated people are treated with respect and dignity, activities that must occur on a  
 6 daily basis in the operation of their living units.

7 76. Mr. McGinnis indicates that training in “cultural leadership” took place in  
 8 September and October of 2018 and that the training is ongoing.<sup>98</sup> Given that this training  
 9 began a few months shy of two years ago, there is little indication that it has been  
 10 effective.

11 77. One of the most encouraging pieces of information I take from  
 12 Mr. McGinnis’ is that there is apparently a plan, “to work with mental health staff on a  
 13 process for reporting allegations and misconduct consistent with policy and practice.”<sup>99</sup> In  
 14 my opinion, if this training is effective, it can have an impact on RJD. It is rare from my  
 15 review of the records in this case that mental health staff reports officer misconduct. If they  
 16 do so, they too face retaliation. If this training helps them learn how to navigate that terrain  
 17 and there is protection provided to them when they do report staff misconduct, this could  
 18 have a controlling effect on some of the officers in certain situations.

19 78. Mr. McGinnis rejects my recommendation from my first declaration that  
 20 non-uniformed supervisors be assigned to each living unit at RJD.<sup>100</sup> He says:

21 It seems from my experience the plaintiffs are requesting that the CDCR  
 22 adopt a unit management system for staffing and supervisory oversight of the  
 23 housing units. A unit management approach to staffing is based in part on a  
 24 treatment approach to correctional management. The basis of unit  
 management is that the housing unit staffing should operate as a team led by  
 a civilian staff position. The security staff ultimately report through the unit  
 manager although variations of this approach have been developed and

25 <sup>98</sup> *Ibid.*, page 11.

26 <sup>99</sup> *Ibid.*, page 16.

27 <sup>100</sup> Declaration of Vail ISO Motion to Stop Defs from Assaulting Abusing Retaliating, Dkt.  
 28 2922-6, filed 02-28-20, ¶ 103.

1 implemented.

2 Over time many jurisdictions abandoned the approach primarily due to cost  
3 and a determination that the approach did not achieve its original intent.  
4 Many found that what occurred was that facilities created an additional layer  
of management that was being staffed by correctional staff who simply  
changed from a corrections uniform into civilian dress.<sup>101</sup>

5 Mr. McGinnis accurately describes what I am familiar with as the “unit team”. But not  
6 only does the unit manager supervise the correctional officers assigned to the unit, they  
7 also supervise the assigned counselors and caseworkers assigned to the unit. The unit  
8 manager has responsibility for the operation of the living unit 24 hours a day, 7 days a  
9 week. What goes on in the unit is the responsibility of the unit manager. The value of  
10 having that person supervise the officers and the counselors/caseworkers brings a different  
11 perspective to management of the unit, in my experience one that takes into account what  
12 is going on with individual incarcerated people, which has a positive effect on the  
13 incarcerated population. Promotion to the position of unit manager (roughly equivalent to  
14 the position of Lieutenant) sometimes does come from the officer and sergeant ranks but  
15 also sometimes comes from those with experience as a prison counselor or caseworker. It  
16 is a bit more expensive but coming from a jurisdiction that has utilized the unit team  
17 approach for at least four decades, it is my opinion that this is a significant reason why the  
18 State of Washington has been able to continue to reduce the level of violence in their  
19 prison system. I stand by this recommendation for RJD.

20 79. In summary, I do not agree with Mr. McGinnis that the activities taken to  
21 date to improve the practices at RJD have been sufficient. I had the opportunity to listen to  
22 four hours of Mr. McGinnis’ deposition taken on July 27, 2020. I heard nothing in his  
23 deposition that caused me to change any of my opinions. As I have described in this  
24 declaration abusive practices against class members continue and the risk of serious harm  
25 remains. More significant change must occur.

26  
27 <sup>101</sup> Declaration of McGinnis ISO Defs’ Response re Motion re Complaints of Excessive  
28 Force, Retaliation at RJD, Dkt. 3006-2, 07-15-2020, Exhibit B, page 32.

## Conclusion

80. The problems at RJD are deep, systemic and ongoing and are similar to the practices from other CDCR institutions that I have observed.. They reflect an officer culture that does not respect the rights or the dignity of incarcerated class members. There are many horrific examples.

81. The efforts to date at RJD have not had a meaningful impact, as I have documented that the abuse of the incarcerated population continues to occur. Those efforts may be well intentioned but they have not impacted the culture deeply enough to make change meaningful and significant. I have read the declarations of Mr. Diaz and Ms. Miller and I am not impressed. They reflect the same opinions and describe the changes implemented at RJD very similar to what has been offered by Mr. McGinnis.

82. In my experience, change is difficult but not impossible. The efforts must be fundamental and the training, role modeling and accountability must begin at a very basic level—on the floor of the living units.

83. When I was the Secretary of the Washington Department of Corrections, we had a segregation unit at one of our high security prisons and the unit was out of control with constant acting out by the incarcerated population and use of force was a too frequent event. We brought in a new unit manager. He began with the basics. He instructed his officers that incarcerated people were always to be addressed as Mr. Doe, Smith, Jones, etc. He established a rule that his officers were not to use profanity in the unit or in any other way speak or act in manner that was rude or demeaning to the people in the unit. Then he spent much time working the floor to role model what he expected of the officers. This simple approach was highly effective. The unit calmed down, acting out nearly ceased and use of force events went way down, as did grievances and complaints about staff behavior. Over time, the officers changed their behavior, learning that the new approach made it safer for them and the incarcerated population. This unit became a model for the agency. As the officers learned what actually works to manage incarcerated people they helped the unit manager set up a step down program so people could work their way

1 out of segregation. Many of the officers actually taught the course work for the program.  
 2 Researchers from the University of Washington studied the success of the program. They  
 3 reported that for those who graduated from the program the odds for post segregation  
 4 success in general population were six times better than for a control group.<sup>102</sup> In my  
 5 opinion this is clear evidence that the culture of prison living units can change, but that the  
 6 change must be basic and fundamental, that it starts with teaching and role modeling that  
 7 incarcerated people must be treated with dignity and respect and that the officers are held  
 8 accountable for doing so. Such change is possible at RJD and in CDCR but it will take a  
 9 commitment far greater than their efforts to date.

10 84. The *Coleman* lawsuit was filed in 1990, and in June of 1994, the magistrate  
 11 judge found that CDCR's delivery of mental health care to class members violated the  
 12 Eighth Amendment. Over twenty years later, in 2013, I was retained by Plaintiffs' counsel  
 13 to serve as their use of force expert in the *Coleman* case. I inspected facilities, reviewed  
 14 documents, wrote declarations and testified in federal court based on my findings in  
 15 October of 2013. In my first declaration I summarized my findings:

- 16 • The CDCR, as a matter of practice and sometimes by policy, engages in  
 17 unnecessary and excessive use of force against mentally ill inmate patients.
- 18 • The CDCR's RVR process is seriously compromised for mentally ill inmate  
 19 patients, and does not systematically account for their mental illness when  
 20 adjudicating prison rule violations.
- 21 • The CDCR allows custody staff to dominate and interfere with mental health  
 22 treatment.<sup>103</sup>

23 After the hearing in October 2013, the parties engaged in mediation to try and find  
 24 solutions to the ongoing problems of managing people with mental illness in CDCR. I  
 25 worked with Plaintiffs' counsel to seek resolutions. I was impressed with the process and

26 \_\_\_\_\_  
 27 <sup>102</sup> CBCC ITP Evaluation, David Lovell, University of Washington, July 20, 2010.

28 <sup>103</sup> Expert Declaration of Eldon Vail, Dkt. 4385, filed 03-14-2013, page 12, IV-A-34.

1 commitment of both parties and was pleased with the final work product. It included the  
 2 best curriculum I have ever seen to train mental health staff how to intervene in a potential  
 3 controlled or planned UOF incident. But that curriculum seems to have been lost or  
 4 forgotten at RJD.

5 85. Six years later, I was retained by the Plaintiffs in this case and again was  
 6 asked to take a look at CDCR UOF practices, this time to include *Armstrong* class  
 7 members.

8 86. Nothing in the information that was provided to me for all of my declarations  
 9 has changed my opinions. I am appalled as a corrections professional by the decades long  
 10 pattern of abusive treatment of people with mental and physical disabilities in the CDCR.  
 11 It is deeply rooted, systemic and permeates the correctional officer culture. There have  
 12 been many changes to CDCR UOF policies over the last couple of decades but the reality  
 13 on the ground at RJD, and unfortunately at other CDCR facilities, is that little has changed.  
 14 The abuse of incarcerated people with disabilities reflected in their declarations from every  
 15 one of these facilities is quite profound. It is time for strong and effective actions to be  
 16 taken to stop the abuse at RJD and other CDCR institutions..

17 87. I stand by the recommendations made in my first declaration and summarize  
 18 them here.

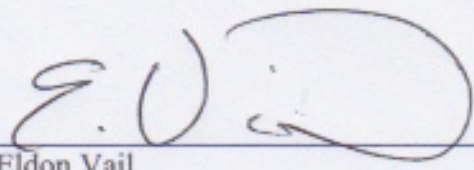
- 19 • Cameras must be installed as soon as they possibly can.
- 20 • Officers should wear body cameras.
- 21 • Require in policy that hand held cameras be brought to the scene of an
- 22 immediate use of force.
- 23 • Require in policy that any video be reviewed in all investigations of use of
- 24 force and staff misconduct complaints. If no video is available, the report
- 25 must document why.
- 26 • Weigh pepper spray canisters to determine how much was used in any
- 27 particular event.
- 28 • Assign non-uniformed supervisors to each living unit at the same rank as a



CDCR Lieutenant.

- Increase the partnership between mental health, medical and custody staff.
- Increase the amount of training time devoted to managing the disabled, mentally ill and transgender populations.
- Support mental health and medical staff when they report officer misconduct.
- Medical staff needs to track and report on injuries received by class members.
- Collect and analyze data on staff misconduct complaints, use of force events and self-harm or suicide attempts.
- Similar to what PREA requires, create guidelines providing for follow up for any incarcerated person who files a staff complaint to make certain they are not suffering retaliation for at least 90 days.
- The RVRs imposed on the declarants should be reviewed by a neutral third party or expert to determine if they were justified or retaliatory, and if the latter, the RVRs should be expunged from the C-file of the incarcerated person.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at this 28<sup>th</sup> day of July, 2020.

  
Eldon Vail

**INDEX OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
1	List of documents reviewed in preparation of declaration
2	Video titled, “Body-Worn Cameras in Correctional Settings.” accessible at <a href="https://www.youtube.com/watch?v=IMXWGrRc0n4&amp;feature=emb_title&amp;t=0s">https://www.youtube.com/watch?v=IMXWGrRc0n4&amp;feature=emb_title&amp;t=0s</a> , last accessed July 23, 2020.
3	Transcribed excerpts of video at Exhibit 2
4	Beales and Marsh, Practice: The New Zealand Corrections Journal, vol. 4 issue 1, August 2016, <i>On body cameras in prison</i> , available at <a href="https://www.corrections.govt.nz/resources/newsletters_and_brochures/journal/volume_4_issue_1_august_2016/on_body_cameras_in_prison">https://www.corrections.govt.nz/resources/newsletters_and_brochures/journal/volume_4_issue_1_august_2016/on_body_cameras_in_prison</a> , accessed 07-23-20


# **EXHIBIT 1**

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

California Code of Regulations, Title 15, Division 3, Rules and Regulations of Adult Institutions, Programs, and Parole, Department of Corrections and Rehabilitation, updated through June 1, 2018
CDCR Department Operations Manual (DOM), updated through January 1, 2019
Fiscal year 2020-21 CDCR Budget Change Proposal: Correctional Video Surveillance/Drug Interdiction Project Continuation
U.S. Department of Justice, “Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies FY 2019 Competitive Grant Announcement”, release date April 5, 2019
Bureau of Justice Assistance, U.S. Department of Justice, “Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies FY 2019 Competitive Grant, Frequently Asked Questions”, last updated March 14, 2019
Kristy N. Matsuda, Jim Hess, Susan F. Turner, and Adrienne Credo, Center for Evidence-Based Corrections, <i>The Effect of Camera Installation on Violence at High Desert State Prison</i> , revised May 9, 2018
Court Ordered Remedial Plan, <i>Armstrong v. Davis</i> , USDC Northern District Case No. C 94-2307 CW, Amended January 3, 2001 (“ <i>Armstrong</i> Remedial Plan”)
CDCR form 1845 Disability Placement Program Verification (DPPV) (Rev. 2/14)
Letter from Gay Crosthwait Grunfeld to Russa Boy and Nicholas Weber, CDCR Office of Legal Affairs, re: Staff Misconduct at Richard J. Donovan Correctional Facility, with enclosures, dated November 13, 2019 (“Demand Letter”)
Email from Russa Boyd to Gay Crosthwait Grunfeld, Michael Freedman, Penny Godbold, and Ed Swanson re: RJD updates, dated January 24, 2020
RBGG chart entitled “RJD Staff Misconduct against <i>Armstrong</i> and <i>Coleman</i> Class member: Advocacy Letters from Plaintiffs’ Counsel and CDCR Responses,” last updated January 14, 2020 (“RJD SM Advocacy Letter & Response Chart”)

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Plaintiffs' Advocacy Letters and CDCR responses listed in the above-referenced RJD SM Advocacy Letter & Response Chart, last updated January 14, 2020 as follows:

Date of Plaintiffs' Counsel Advocacy Letter	Subject of Letter	Date of Defendants Letter in Response (if any)
March 2, 2018		
March 14, 2018		June 12, 2018
November 9, 2018		
November 14, 2017		
January 8, 2019		July 17, 2019
February 26, 2019		November 1, 2019
February 26, 2019		October 23, 2019
February 26, 2019		
March 21, 2019		July 31, 2019
April 18, 2019		July 25, 2019
May 24, 2019		
May 31, 2019		December 30, 2019
June 28, 2019		January 9, 2020
July 12, 2019		
July 12, 2019		December 30, 2019
July 17, 2019		November 19, 2019
October 4, 2019		December 26, 2019 and October 11, 2019 acknowledgment
October 10, 2019		October 30, 2019
October 23, 2019		
October 29, 2019		
Letter from Ursula Stuter, Office of Legal Affairs, to Penny Godbold re Advocacy Letter re <i>Armstrong</i> and Coleman Class Member,  dated February 3, 2020		

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Documents produced in *Armstrong v. Newsom* relating to investigation in connection with advocacy for [REDACTED] at Bates Nos:

- DOJ00001360 – 1380 (Highly Confidential – Attorneys Eyes Only)
- DOJ00003364
- DOJ00003365 – 3368
- DOJ00003386 – 3389
- DOJ00003390

Documents produced in *Armstrong v. Newsom* relating to investigations as follows:

- DOJ00000913 - 999
- DOJ00001260 – 1280 (designated Highly Confidential – Attorneys Eyes Only)
- DOJ00003683 – 3690 (designated Highly Confidential – Attorneys Eyes Only)
- DOJ00012971 – 12983 (designated Confidential)

Documents produced by CDCR PMK Tricia Ramos in February 4, 2020 deposition in *Armstrong v. Newsom* as follows:

- Handwritten notes by Tricia Ramos re investigation Log No. S-RJD-086-19-A
- Internal Affairs Investigation Report – Confidential - by Special Agent [REDACTED] to Marcus Pollard, Warden (A), RJD, re Case Number S-RJD-096-19-A, dated November 27, 2019
- Internal Affairs Investigation Report – Supplemental Report Confidential - by Special Agent [REDACTED] to Marcus Pollard, Warden (A), RJD, re Case Number S-RJD-096-19-A, dated January 7, 2020

Transcript of Deposition of OIG Roy Wesley, taken January 22, 2020 in *Armstrong v. Newsom*

Office of the Inspector General, “Monitoring the Use of Force” (Exhibit 8 to the Transcript of the Deposition of Roy Wesley), issued June 2019

Office of the Inspector General, “Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation, Semiannual Report January-June 2019, issued November 2019



**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Transcript of the Deposition of Kimberly Seibel, taken January 29, 2020 (both confidential and non-confidential portions) in <i>Armstrong v. Newsom</i>
Confidential Exhibit 13 to Deposition of Kimberly Seibel, taken January 29, 2020
Transcript of the Deposition of Patricia Ramos, taken February 4, 2020 in <i>Armstrong v. Newsom</i>
Transcript of the Deposition of Jessica Bolton, taken February 13, 2020 in <i>Armstrong v. Newsom</i>
Memorandum dated December 10, 2018 from J.L. Bishop, Associate Warden, California Institution for Men, to Kimberly Seibel, Associate Director Reception Center Mission, CDCR, entitled "Findings of Inmate Interviews at Richard J. Donovan Correction Facility, December 4-5, 2018, produced in <i>Armstrong v. Newsom</i> at DOJ00000358-374 and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
Memorandum dated January 26, [2019] from [REDACTED] Correctional Sergeant, Investigative Services Unit, California Institution for Men, to P. Covello, Acting Warden, Richard J. Donovan Correctional Facility, re: Richard J. Donovan Correctional Facility, Facility C, further investigation/referral, produced in <i>Armstrong v. Newsom</i> at DOJ00000050-57 and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
Memorandum dated January 26, [2019] from [REDACTED] Correctional Sergeant, Investigative Services Unit, California Institution for Men, to P. Covello, Acting Warden, Richard J. Donovan Correctional Facility, re: Richard J. Donovan Correctional Facility, Facility C, non-referrals, produced in <i>Armstrong v. Newsom</i> at DOJ00000418-426 and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
<p>RJD Inquiry, Inmate Interview Worksheets, for interviews conducted December 4-5, 2018, produced in <i>Armstrong v. Newsom</i> at Bates Nos.:</p> <ul style="list-style-type: none"> <li>• DOJ00003827-3832</li> <li>• DOJ00003833-3838</li> <li>• DOJ00003839-3844</li> <li>• DOJ00003845-3850</li> </ul>



**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

- DOJ00003851-3856
- DOJ00003857-3862
- DOJ00003863-3868
- DOJ00003869-3874
- DOJ00003875-3880
- DOJ00003881-3886
- DOJ00003887-3892
- DOJ00003893-3898
- DOJ00003899-3904
- DOJ00003905-3910
- DOJ00003911-3916
- DOJ00003917-3922
- DOJ00003923-3826
- DOJ00003923-3928
- DOJ00003929-3934
- DOJ00003935-3940
- DOJ00003941-3946
- DOJ00003947-3952
- DOJ00003953-3958
- DOJ00003959-3964
- DOJ00003965-3970
- DOJ00003971-3976
- DOJ00003977-3982
- DOJ00003983-3988
- DOJ00003989-3994
- DOJ00003995-4000
- DOJ00004001-4006
- DOJ00004007-4012

**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

- DOJ00004013-4018
- DOJ00004019-4030
- DOJ00004031-4036
- DOJ00004037-4042
- DOJ00004043-4048
- DOJ00004049-4054
- DOJ00004055-4060
- DOJ00004061-4066
- DOJ00004067-4072
- DOJ00004073-4078
- DOJ00004079-4084
- DOJ00004085-4090
- DOJ00004091-4096
- DOJ00004097-4102
- DOJ00004103-4108
- DOJ00004109-4114
- DOJ00004115-4294
- DOJ00004295-4300
- DOJ00004301-4306
- DOJ00004307-4312
- DOJ00004313-4318
- DOJ00004319-4324
- DOJ00004325-4330
- DOJ00004331-4336
- DOJ00004331-4354
- DOJ00004337-4342
- DOJ00004343-4348
- DOJ00004349-4330

**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

- DOJ00004355-4360
- DOJ00004361-4366
- DOJ00004367-4372
- DOJ00004373-4378
- DOJ00004379-4384
- DOJ00004385-4390
- DOJ00004391-4396
- DOJ00004397-4402
- DOJ00004403-4408
- DOJ00004409-4414
- DOJ00004415-4420
- DOJ00004421-4426
- DOJ00004427-4432
- DOJ00004433-4438
- DOJ00004439-4444
- DOJ00004445-4450
- DOJ00004451-4456
- DOJ00004457-4462
- DOJ00004463-4468
- DOJ00004469-4474
- DOJ00004475-4480
- DOJ00004481-4486
- DOJ00004487-4492
- DOJ00004493-4498
- DOJ00004499-4504

and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY  
(cited collectively as "01\_DOJ00003827 – 083\_DOJ00004499")

**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

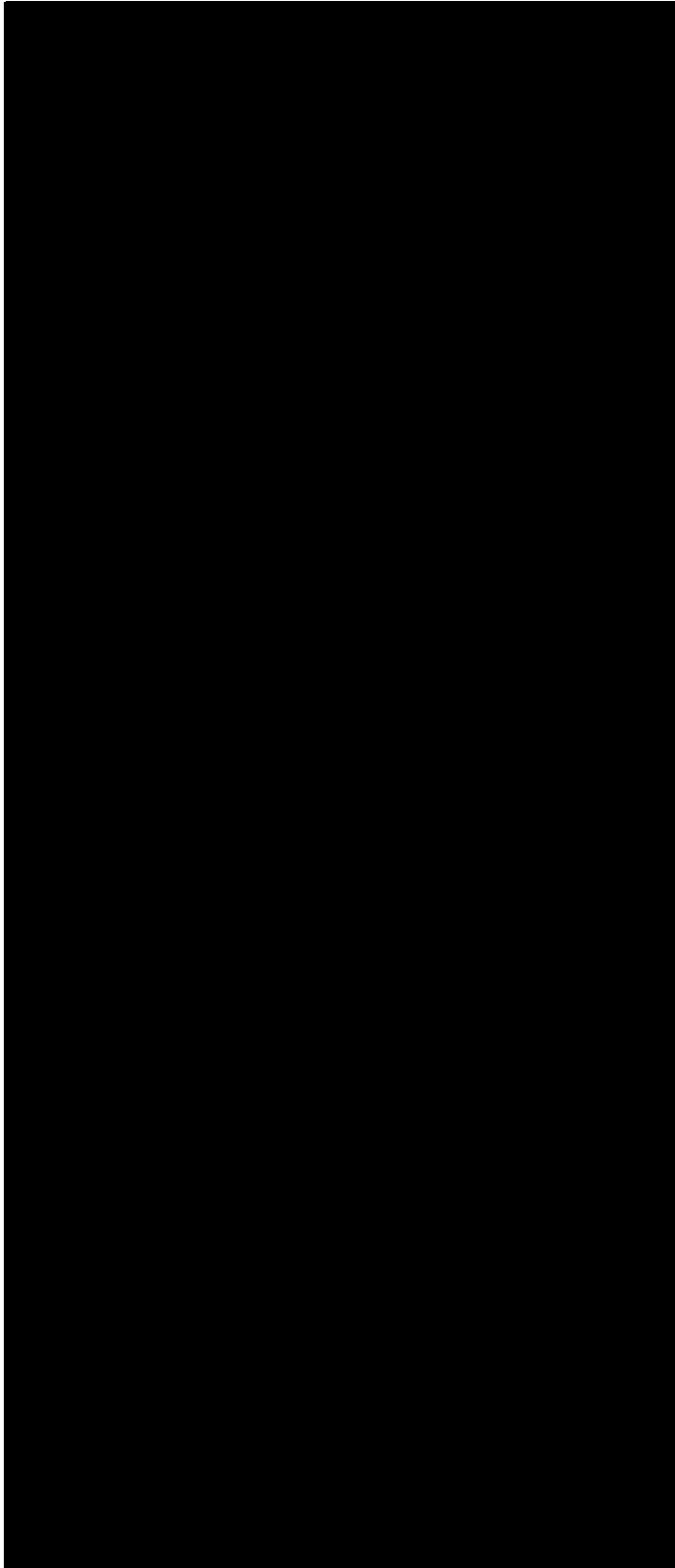
Email string dated December 5 – December 11, 2018 between Sara Malone, Connie Gipson, Jeff MacComber, Sandra Alfaro re: RJD, produced at DOJ00013199 – 13202 in *Armstrong v. Newsom*

Signed Confidential Declarations from *Armstrong* and *Coleman* class members as follows [Last Name, CDCR Number, date signed]:



**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

	
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**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

	Document created by Rosen Bien Galvan & Grunfeld entitled “List of Repeat Staff Offender Implicated in <i>Armstrong</i> and <i>Coleman</i> Class Member Declarations
	Reporter’s Transcripts re: Evidentiary Hearing in <i>Coleman v. Brown</i> , USDC Eastern District Case No. CIV-S-90-0520 LKK, for hearings conducted October 1, 2 and 17, 2013
	Order granting in part motion for enforcement of court orders and affirmative relief related to use of force and disciplinary measures and granting in part motion for enforcement of judgment and affirmative orders related to segregated housing, in <i>Coleman v. Brown</i> , USDC Eastern District Case No. CIV-S-90-0520 LKK, filed April 10, 2014
	Settlement Agreement Between the United States of America and Hinds County, Mississippi Regarding the Hinds County Jail, in <i>United States of America v. Hinds County, et al.</i> , United States District Court, Southern District of Mississippi, Northern Division, Case No. 3:16cv489 WHB-JCG, filed July 19, 2016
	Consent Judgment in <i>Jones, et al. v. Gusman</i> , United States District Court, Eastern District of Louisiana, Civil Action No. 2:12-cv-00859-LMA-ALC, filed June 6, 2013
	Weill and Haney, <i>Mechanisms of Moral Disengagement and Prisoner Abuse</i> , Analyses of Social Issues and Public Policy, Vol. 17, No., 2017, pp. 286-318
	Steve J. Martin, <i>Staff Use of Force in United States Confinement Settings</i> , 22 Wash. U. J.L. & Pol’y 145 (2006)
	Jane Kahn, <i>Safety Concerns of a Prisoner Rights Lawyer</i> , Los Angeles Daily Journal, February 4, 2011
	Excerpt from Venters, <i>Life and Death in Rikers Island</i> (2019)
	<i>Evaluating the Effectiveness of Residential Treatment for Prisoners With Mental Illness</i> , Lovell, D., et al., Criminal Justice and Behavior, Vol. 28, No. 1, February 2001

**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

*Callous and Cruel, Use of Force Against Inmates with Mental Disabilities in US Jails and Prisons*, Human Rights Watch, 2015

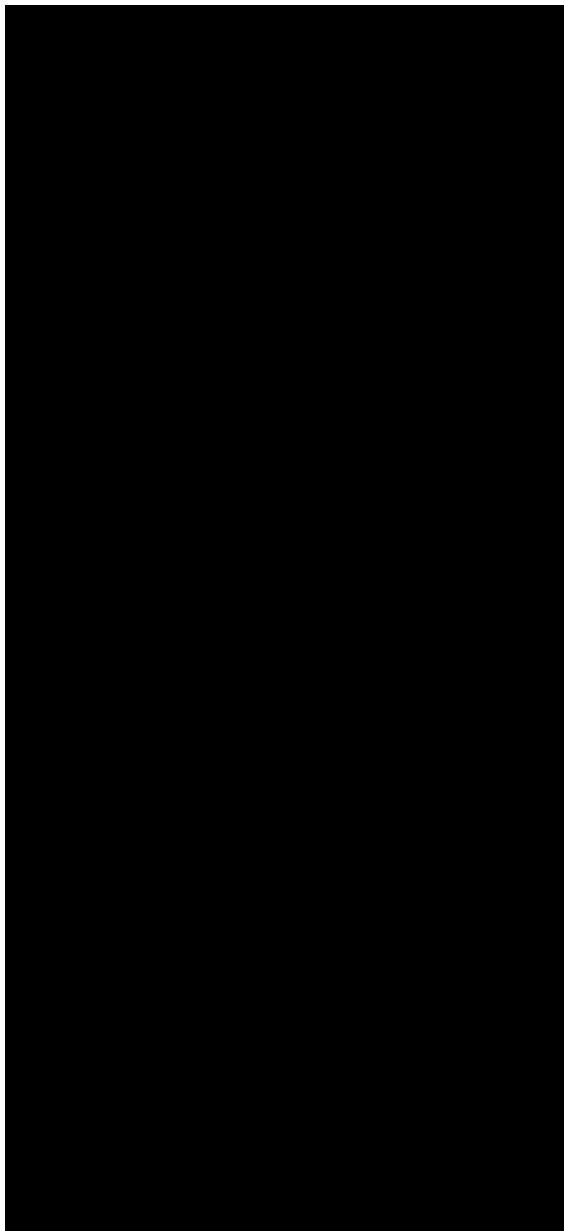


**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

**DOCUMENTS PROVIDED BY RBGG FEBRUARY 28, 2020 – JULY 27, 2020**




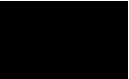
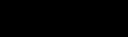
Signed Confidential Declarations from *Armstrong* and *Coleman* class members regarding staff misconduct at California State Prison – Lancaster (LAC) as follows [Last Name, CDCR Number, date signed]:



Signed Supplemental Confidential Declarations from *Armstrong* and *Coleman* class members regarding staff misconduct at RJD as follows [Last Name, CDCR Number, date signed]:

**EXHIBIT 1**

**COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

	
<p>Signed Confidential Declarations from <i>Armstrong</i> and <i>Coleman</i> class members regarding staff misconduct at prisons other than RJD or LAC as follows [Last Name, CDCR Number, prison, date signed]:</p> <ul style="list-style-type: none"><li>• </li></ul>	
<p>Declaration of Melissa Turner, LCSW at RJD, signed April 20, 2020</p>	
Disciplinary Documents re 	<ul style="list-style-type: none"><li>•  - NOAA (S-RJD-261-16-A)</li><li>•  - 402 (S-RJD-261-16-A)</li></ul>

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

<ul style="list-style-type: none"> <li>• [REDACTED] - 403 (S-RJD-261-16-A)</li> </ul>
<p>Documents reviewed in connection with TRO:</p> <ul style="list-style-type: none"> <li>• Declaration of [REDACTED] signed June 30, 2020</li> <li>• Third Supp Declaration of [REDACTED] signed June 25, 2020</li> <li>• Supplemental Declaration of [REDACTED] signed June 25, 2020</li> <li>• Second Supplemental Declaration of [REDACTED] signed July 3, 2020</li> <li>• Rules Violation Report re [REDACTED] dated 06/23/2020</li> </ul>
<p>Video of July 17, 2020 Interview of class member [REDACTED] file name "GH017616"</p>
<p>Documents and video relating to January 21, 2019 incident of staff misconduct at RJD involving class member [REDACTED]</p> <ul style="list-style-type: none"> <li>• Surveillance video of January 21, 2019 incident, attached as Exhibits 89 and 90 to the Declaration of Michael Freedman in Support of Plaintiffs' Motion to Stop Defendants from Abusing, Assaulting and Retaliating against People with Disabilities at RJD, filed February 28, 2020</li> <li>• DOJ00057659 – 00057663 (OIA Report)</li> <li>• DOJ00077596 – 00077695 (Exhs 1-15 to OIA Report)</li> <li>• DOJ00077698 – 00077785 (Exhs 16-24 to OIA report)</li> <li>• Exhibit 11 to Deposition of CDCR PMK Tricia Ramos</li> <li>• DOJ00077786 - 00077787 (Memo to OIA)</li> <li>• DOJ00077575 – 00077592 (OIA Investigation Report)</li> <li>• DOJ00051777 – 00051821 (989 Packet)</li> <li>• DOJ00077170 – 00077271 (989 Packet and Acceptance)</li> <li>• DOJ00077788 – 00077794 (Supplemental Report)</li> </ul>
<p>Officer disciplinary documents relating to incident of staff misconduct at RJD involving class member [REDACTED]:</p> <ul style="list-style-type: none"> <li>• Disciplinary documents re Officer [REDACTED] <ul style="list-style-type: none"> <li>○ DOJ00076238 – 00076239 (402)</li> <li>○ DOJ00076240 (403)</li> <li>○ DOJ00076883 – 00076884 (ATO)</li> <li>○ DOJ00076885 – 00076886 (Closure Memo)</li> <li>○ DOJ00076879 (Dismissal Notice)</li> <li>○ DOJ00076887 – 00077138 (NOAA)</li> </ul> </li> </ul>

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

- DOJ00077164 – 00077165 (Skelly)
- DOJ00077169 (SPB)
- Disciplinary documents re Officer [REDACTED]
  - DOJ00076241 – 00076242 (402)
  - DOJ00076243 (403)
  - DOJ00077558 – 00077559 (ATO)
  - DOJ00077281 – 00077282 (Closure Memo)
  - DOJ00077276 (Dismissal Notice)
  - DOJ00077283 – 00077533 (NOAA)
  - DOJ00077560 – 00077561 (Skelly)
  - DOJ00077277 (SPB)
- Disciplinary documents re Officer [REDACTED]
  - DOJ00076244 – 00076245 (402)
  - DOJ00077801 (403)
  - DOJ00077802 – 00077803 (ATO)
  - DOJ00077804 – 00077805 (Closure Memo)
  - DOJ00077795 (Dismissal Notice)
  - DOJ00077806 – 00078056 (NOAA)
  - DOJ00077796 – 00077797 (Skelly)
  - DOJ00077798 (SPB)
- DOJ00077166 – 00077168 (Skelly Recommendations)

Documents and video relating to March 28, 2017 incident of staff misconduct at RJD involving class member [REDACTED]

- DOJ00018850 (surveillance video re incident involving class member [REDACTED])
- DOJ00018851 (surveillance video re incident involving class member [REDACTED])
- DOJ00048330 – 00048393 (989 packet)
- DOJ00072876 – 00072884 (OIA report)
- DOJ00072818 – 00072875 (Exhibits to OIA report)
- DOJ00074940 – 00074951 (Second Level Appeal Response)
- Officer disciplinary docs:
  - DOJ00090793 – 00090794 (402 and 403 re Officer [REDACTED])
  - DOJ00072817 – 00072818 (402 and 402 re Officer [REDACTED])
  - DOJ00091094 – 00091023 (NOAA re Officer [REDACTED])
  - DOJ00091032 – 00091033 (Skelly Recommendations re [REDACTED])
  - DOJ00091080 (withdrawal of [REDACTED] NOAA)

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Documents relating to July 3, 2018 incident of staff misconduct at RJD involving class member [REDACTED]

- DOJ00110072 (surveillance video re incident involving class member [REDACTED])
- DOJ00108741 – 00108743 (402 and 403 re Officer [REDACTED])
- DOJ00108768 – 00108770 (OIA case acceptance re Officer [REDACTED])
- DOJ00108899 – 00108912 (OIA report)
- DOJ00108771 – 00108896 (Exs. to OIA report)
- DOJ00108754 – 00108751 ([REDACTED] Pre-settlement Statement)
- DOJ00108766 – 00108767 ([REDACTED] Skelly decision)
- DOJ00108913 – 00108915 ([REDACTED] Skelly recommendation)
- DOJ00108916 – 00108921 ([REDACTED] SPB approval of settlement)
- DOJ00108752 – 00108753 ([REDACTED] SPB discovery request)
- DOJ00108754 – 00108757 ([REDACTED] SPB Stipulation)

Documents and video relating to December 9, 2018 incident of staff misconduct at RJD involving class member [REDACTED]

- Surveillance video produced by Defendants, file name “[REDACTED] - Surveillance 1”
- DOJ00076256 – 00076341 (989 packet and CIB acceptance)
- DOJ00076342 – 00076427 (exhibits to 989 packet)
- DOJ00076860 – 00076878 (OIA report)
- DOJ00076621 -00076855 (exhibits to OIA report)
- Disciplinary records for officers involved in incident:
  - DOJ00090788 – 00090789 (402 & 403 re Officer [REDACTED])
  - DOJ00091180 – 00091390 (NOAA re [REDACTED])
  - DOJ00091391 ([REDACTED] Skelly)
  - DOJ00076254 – 00076255 (402 & 403 re Officer [REDACTED])
  - DOJ00076616 – 00076617 ([REDACTED] closure memo)
  - DOJ00076428 – 00076604 ([REDACTED] NOAA)
  - DOJ00090786 – 00090787 (402 & 403 re Officer [REDACTED])
  - DOJ00091593 – 00091603 ([REDACTED] NOAA)
  - DOJ00091606 ([REDACTED] Skelly)

Memos from RJD Master Allegation Tracking Log, produced by Defendants July 24, 2020

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Plaintiffs' Motion to Stop Defendants from Abusing, Assaulting and Retaliating Against People With Disabilities, including supporting documents, filed February 28, 2020 at Docket 2922 – 2922-8, and unredacted versions of Freedman Declaration attached to Administrative Motion to Seal, filed February 27, 2020 at Docket 2921
Plaintiffs' Renewed Motion to Stop Defendants from Abusing, Assaulting and Retaliating Against People With Disabilities, including all supporting documents ("Statewide Motion"), filed June 3, 2020 at Docket 2948, including unredacted versions of Declarations of Michael Freedman, Thomas Nolan and Jeffrey Schwartz attached to Administrative Motion to File Under Seal, filed June 3, 2020 at Docket 2947
Unredacted Version of Plaintiffs' Motion for Temporary Restraining Order and supporting documents, attached to Administrative Motion to File Under Seal, filed July 1, 2020 at Docket Nos. 2969-5, 2969-7, and 2969-9
Temporary Restraining Order, issued July 2, 2020 at Docket 2972
Unredacted Version of Defendants' Response to Order to Show Cause Regarding Preliminary Injunction, attached to Administrative Motion to File Under Seal, filed on July 10, 2020 at Docket 2981
Unredacted Version of Declaration of Francisco Armenta in Response to Order [ECF NO. 2972] on Plaintiffs' Motion for TRO, with all Exhibits, attached to Administrative Motion to File Under Seal, filed on July 10, 2020 at Docket 2981
Defendants' Response to Plaintiffs' Motion re Complaints of Excessive Force & Retaliation at RJD_ Objections to Evidence, and all supporting documents, filed July 15, 2020 at Docket Nos. 3006-3006-6 and Docket 3007
Unredacted Versions of Declarations of Sean Lodholz and Ken McGinnis, filed under seal on July 15, 2020 at Docket Nos 3002, 3003 and 3004
Excerpts from Gov. Newsom's May 2020 Revised Budget
June 2020 OIG Complaint-Intake-and-Field-Inquiries-Report
June 2020 OIG Discipline-Monitoring-Report
OIG Report, "Monitoring the Use-of-Force Review Process of the California Department of Corrections and Rehabilitation", July 2020

**EXHIBIT 1****COMPLETE LIST OF DOCUMENTS REVIEWED  
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Jamie Biggs, “NC jail implements body cameras for COs”, The Courier Tribune, accessed July 23, 2020
Eric Kurhi, “Santa Clara Co: Body cams for jail guards, sheriff deputies”, Bay Area News Group / The Mercury News, January 25, 2017
Lynh Bui, “Maryland county equips some detention officers with body cameras”, The Washington Post, February 13, 2016
Beales and Marsh, Practice NZ Corrections Journal, vol. 4 issue 1, August 2016, <i>On body cameras in prison</i> , accessed 07-23-20
Home webpage for Axon Corrections, accessed July 23, 2020
Transcript of January 29, 2020 USDOJ BWCTTTA webinar, “Body-Worn Cameras in Correctional Settings” <a href="https://www.youtube.com/watch?v=IMXWGrRc0n4&amp;feature=emb_title&amp;t=0s">https://www.youtube.com/watch?v=IMXWGrRc0n4&amp;feature=emb_title&amp;t=0s</a> , accessed 07/23/20
Webinar “Body-Worn+Cameras+in+Correctional+Settings”, <a href="https://youtu.be/IMXWGrRc0n4">httpsyoutu.be/IMXWGrRc0n4</a> , accessed 072320.mp4



# **EXHIBIT 2**

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RITA K. LOMIO – 254501  
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**EXHIBIT 2 TO THE REPLY  
DECLARATION OF ELDON VAIL IN  
SUPPORT OF PLAINTIFFS' MOTION  
TO STOP DEFENDANTS FROM  
ASSAULTING, ABUSING AND  
RETALIATING AGAINST PEOPLE  
WITH DISABILITIES AT R.J.  
DONOVAN CORRECTIONAL  
FACILITY**

Judge: Hon. Claudia Wilken  
Date: August 11, 2020  
Time: 2:30 p.m.  
Crtrm.: TBD

Case No. C94 2307 CW

**Manual Filing Notification**

Regarding: Exhibit 2 to the Reply Declaration of Eldon Vail

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office. If you are a participant in this case, this filing will be served in hard-copy shortly. For information on retrieving this filing directly from the court, please see the court's main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

This filing was not e-filed for the following reason(s):

1. ☐ Unable to Scan Documents
2. ☐ Physical Object (please describe):
3. ☒ Non-Graphic/Text Computer File (audio, video, etc.) on CD or other media
4. ☐ Item Under Seal in Criminal Case
5. ☐ Conformance with the Judicial Conference Privacy Policy (General Order 53)
6. ☒ Other (please describe):

DATED: July 29, 2020

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Gay Crosthwait Grunfeld  
Gay Crosthwait Grunfeld

Attorneys for Plaintiffs

# **EXHIBIT 3**

**January 29, 2020 USDOJ BWCTTTA Webinar,  
“Body-Worn Cameras in Correctional Settings”**

[https://www.youtube.com/watch?v=IMXWGrRc0n4&feature=emb\\_title&t=0s](https://www.youtube.com/watch?v=IMXWGrRc0n4&feature=emb_title&t=0s),  
accessed 07/23/20

**00:10:05 – Elliot Harkavy, BWCTTA Technology Advisor**

The first documented multi-facility prison deployment, and probably the most thorough of the research studies to date, was in 2014 with the New Zealand Department of Corrections. They did a six month highlight across two units and their K9 unit and their findings were very interesting. A lot of the stuff that one would expect. Increased officer and inmate safety, fewer uses of force, they were able to have video to support investigations of either internal misconduct by officers or prosecutions of misconduct by inmates and it definitely provided training and development opportunities of the officers. But one of the most interesting things is that they found that they were able to use the video for coaching inmates in how to behave better and what the inmates were doing that they could be doing better and getting more benefit from. But a key factor, and this is something that goes across body-worn cameras or for that matter, any technology, the ability to get benefit—in this case, the ability to modify behavior—is tied to how the camera is used, the policies the procedures and the tools and techniques for the review.

**00:15:20 – Alameda County Lieutenant Brady**

Not only do we have 1,000 [peace officers] sworn with cameras, we have 200 civilians with cameras...we currently only operate one jail, our Santa Rita Jail. It has a 4,000 inmate capacity but hovers at around 2,500 inmates per day.

**00:20:39 – Alameda County Lieutenant Brady**

We started that implementation in July of 2017 and we were fully implemented in December of 2017.

**00:22:37 – Alameda County Lieutenant Brady**

We run the cameras, we have privacy for searches and medical. So if you're doing a strip search, we don't, of course, film the strip search, but we do try if we can on a strip-search to get a sound only [recording].

**00:31:23 – Alameda County Lieutenant Brady**

[Referring to training around body-worn cameras] The Sheriff says, point blank, very bluntly, that he will fire you if you do not activate your camera, and he has fired someone for not activating his camera, and that helped a lot with implementation and adoption of the program. We suggest training from day 1. We have a large regional academy here, and we issue cameras the minute they start. And we start training that muscle memory of activating that camera automatically during scenarios, during everything else, and we find that it's very helpful.

**00:32:15 – Alameda County Lieutenant Brady**

We find that the system [i.e., body-worn cameras], the training, the time, it pays for itself in complaints and in lawsuits. In Internal Affairs, I'm able to see all of the benefits that came out of getting us a robust body-worn camera program.

**00:35:34 – NY DOCCS First Deputy Superintendent Scott Kelly**

In our female facilities...their direction is, anytime they are not being covered by a fixed camera, they are to activate their body camera. What we found out actually, very early on, is our PREA [Prison Rape Elimination Act] allegations at those facilities decreased by about 50%.

**00:37:50 – NY DOCCS First Deputy Superintendent Scott Kelly**

One, frequently those fixed cameras don't come with audio. And two, we've found at times where the fixed camera really tells a different story than the body camera after-the-fact. And we had an incident very recently where the body-worn camera, once that footage was reviewed, the officer's actions were completely justified, where, during an initial review of the fixed camera, it didn't appear that way.

**01:02:00 – NYS DOCCS First Deputy Superintendent Scott Kelly**

[Responding to a question about privacy concerns] The access to the footage is very limited. We have tiered-access, and it's our upper level supervisors, up to and including the superintendent, and the audit trail that comes on each of these platforms is excellent regardless of who you chose. We can clearly monitor who is actually reviewing, copying, et cetera the video footage.

**01:16:10 – Unidentified Speaker with BJA**

As Chip said, we do encourage agencies to include research or even evaluation of their own programs, but the robust research we're not supporting through this program. This program is predicated on the purchase of body-worn camera and essentially, there's what we call the \$2,000 per camera metric, which means you can request up to \$2,000 per camera in federal funds and that can cover any allowable expense: obviously the cost of the cameras, but anything ancillary to that as long as it's not storage. So, a lot of times people will fund a training, they'll fund staffing enhancements...

# **EXHIBIT 4**



# On body cameras in prison

## Neil Beales

*Chief Custodial Officer, Department of Corrections*

## Leigh Marsh

*Manager Operations Support, Department of Corrections*

### Author biographies:

*Neil Beales is the Chief Custodial Officer (CCO) at the Department of Corrections. He joined the English & Welsh Prison Service 25 years ago, starting as an officer and then progressing up through the ranks to operational manager and deputy governor. He moved to New Zealand in 2009 where he took up the role of prison manager of Auckland Prison, a position he held until November 2012 at which time he accepted the role of CCO.*

*Leigh Marsh is the Manager Operations Support at the Department of Corrections. He joined Corrections in 2005 as a corrections officer at Hawkes Bay Regional Prison and progressed through the ranks to principal corrections officer and area programmes manager before moving to the Department's National Office in 2009. During the last 10 years Leigh has held roles in operational assurance, risk management and programme management. From 2013-15 Leigh led the Corrections Staff Safety Programme.*

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*"An officer is obliged to issue a warning from the start that an encounter is being filmed, impacting the psyche of all involved by conveying a straightforward, pragmatic message: we are all being watched, videotaped and expected to follow the rules." – Dr. Barak Ariel of the Institute of Criminology at the University of Cambridge in England.*

## Technology and prison

New and emerging technology presents a range of challenges and opportunities for corrections services worldwide. We collectively face challenges posed by technology such as cellular phones, data storage devices, handheld tablets and the increasing use of drones. We are acutely aware that the advance of technology means that we have to remain ever-vigilant as new and emerging technologies present risks we have never experienced before and may not be currently equipped to thwart. We do however recognise that technology has a real place in helping us manage incidents, communicate effectively, protect our prison borders and stay safe.

## The use of camera technology in prisons

Camera technology has long been used in prisons to monitor activity and enhance our ability to manage, secure and control our environment. Traditionally this type of technology has been broadly limited to overt Closed Circuit Television (CCTV). In most prisons in New Zealand and abroad, CCTV is installed in abundance, normally monitored by staff from a central location (e.g. master control room) or a combination of master control rooms and guard houses.

CCTV is a powerful tool in assisting in the safe management and control of prisons and is invaluable in capturing evidence of wrongdoing or serious incidents in order for us to bring perpetrators to account. Some researchers have used deterrence theory to describe the psychology underpinning the effectiveness of cameras; individuals are likely to modify their behaviour if they believe they are being watched (Farrar, 2013). At the lowest level this can be seen in public self awareness. In public, by and large, people behave in a socially acceptable manner and experience a heightened need to co-operate with the rules (Dilulio, 2011), for example, singing or swearing in public, or choosing how we dress if we think we are, or will be, observed. From a criminology point of view, the introduction of a capable guardian, whether it is a physical or passive presence means tools such as CCTV\*, can reduce the likelihood of a crime being committed.

Although awareness of cameras may modify an individual's behaviour, the effectiveness of the camera as a deterrent can be impacted by normalisation. In 2009, Welsh and Farrington demonstrated that the effectiveness of high street CCTV to deter crime is significantly diminished due to the presence of multiple people and the environmental blending that occurs (around 16% effective) (Welsh & Farrington, 2009). This is compared to a CCTV camera, in a setting such as an underground car park, where there may only be the perpetrator and the camera present (this increases to 51% effective). Personalisation of the recording device through direct, targeted and overt application can significantly increase the deterrent factor in offending.

Whilst CCTV remains an extremely useful and necessary tool, there are some limitations. CCTV generally captures only video, not audio, thereby potentially reducing its effectiveness. With just video being recorded, it is often difficult for prison staff to fully understand what has taken place, and who and what else may have been involved or contributed to an incident.

In a prison environment, CCTV is, for obvious reasons, placed out of reach and not always in the immediate line of sight. The normalisation effect discussed earlier means that over time the deterrence factor may be diminished as prisoners either choose to ignore that the cameras are there, or forget that they are there altogether.

## Enhancing staff safety with on body cameras

In November 2012 the Department embarked upon a programme to improve and address issues affecting staff safety. Following a series of regional workshops, large scale consultation and engagement with key stakeholders, a draft plan was developed that sought to address the key issues and introduce new initiatives and innovation that would improve safety for staff on the frontline.

From the outset of the staff safety programme the chief executive appointed an Expert Advisory Panel to investigate and analyse staff safety, offer advice on potential solutions and endorse the draft plan. One of the issues considered by the Expert Advisory Panel was how to reduce confrontational interactions between two parties escalating into verbal and physical assaults in prison. The custodial environment means that the factors that can contribute to escalating incidents are exacerbated and heightened. Research demonstrated that an officer is most likely to be involved in an assaultive incident when in a high security environment, during or immediately after an escalating verbal interaction. In their initial report, the Panel indicated that the use of overt recording devices during incidents of escalating conflict could potentially significantly reduce the severity of such incidents, and the likelihood of the situation escalating further.

This idea was supported by an international trend of enforcement agencies introducing on body cameras (OBCs) for frontline staff. The most common users of OBCs internationally are enforcement agencies such as police, councils and security personnel. This includes multiple police departments across the USA and Canada, police districts and prisons in the UK, Australia, Hong Kong and some privately managed immigration centres in the UK. The experience of these agencies has been a 50-60% decrease in drawing of weapons, use of force, and complaints and allegations against staff within a 12 month period. Users of OBCs report a reduction in general aggressive behaviour and attitude when interacting with the public and offenders. In addition, OBCs present an opportunity to improve training and debriefing for staff, through the use of the recordings of real events.

A Cambridge University Study (Farrar, 2013) provides strong evidence of the positive effects of the use of OBCs. For example, it found the number of complaints filed against officers involved in the study dropped from 0.7 complaints per 1,000 contacts to 0.07 per 1,000 contacts.

There were also New Zealand examples of the use of OBC, including Hamilton City Council successfully trialling and using them, and NZ Fisheries Officers holding trials with promising results.

The concept of introducing OBCs at Corrections was discussed and considered at regional workshops. The tools already at the disposal of custodial staff, such as tactical communication and tactical exit, assist custodial officers to identify escalating situations and take steps to manage or withdraw from them. The OBC idea was pursued to test the theory that the introduction of an OBC to the interaction, before it escalated, would decrease the likelihood of an assault occurring.

## The pilot

The executive leadership of the Department agreed to a proposal to commence with a proof of concept trial and evaluate the impact of OBCs on the rate and severity of violence against staff over a six month period in 2014. The trial was established in two locations; a high security 'pod' style unit at Rimutaka Prison and a maximum security unit at Auckland Prison. The OBC was also to be used by the Auckland Prison drug detection dog handler. During the trial period approximately 30 staff and over 300 prisoners were exposed to the OBCs in the two pilot environments. Overall, there was 26 hours of recorded footage across 157 events, where the officer had activated their camera for safety or evidential reasons.

In recognition of the very high privacy risks associated with the collection, use, and storage of audio-visual filming, the Department developed a privacy impact assessment for the pilot programme. To ensure that its intended processes adequately mitigated any perceived privacy risks, the Department also consulted with the Office of the Privacy Commissioner.

These privacy risks were mitigated by ensuring there was appropriate **pre-pilot awareness, limited access to the database** and the Department ensured that the footage was used for the intended purposes described in the privacy impact assessment: assessment of the effectiveness of the tool in minimising harm, staff training and skill development, and for evidential purposes. (Some footage was also shown to the Law and Order Select Committee, and later released to the media, however, faces were pixelated to ensure personal privacy was not compromised).

Adequate processes were developed for responding to Privacy Act requests for access to, and correction of, personal information. No such requests were received during the pilot.

## Trial findings

The trial sought to test the theory that equipping officers with the devices would improve their safety during normal duties. The trial was considered a success and feedback from custodial officers using the equipment, and prisoners exposed to it, indicated there was an increase in actual and perceived personal safety. The trial produced some evidence to suggest that when custodial officers are equipped with OBCs there are reductions in frequency and intensity of assaults, and fewer occasions when physical force is used to resolve incidents.

During the trial, there were no serious assaults and five non serious/non injury assaults. Although this figure is relatively low, there were nine recorded events where the prisoner either de-escalated in the presence of the camera or clearly stated they would have struck the officer if the camera was not there. In many of these cases the prisoner involved had previously assaulted staff or had demonstrated aggressive behaviour.

Analysis of all incidents over 12 months prior to the trial and during the six months of the trial itself showed an overall reduction of incidents of between 15 and 20 percent. The analysis also demonstrated a reduction in the severity of incidents, and this was supported by feedback from corrections officers using the OBCs as the following comments demonstrate:

- *"It creates a safer environment."*
- *"The on body cameras have worked very well. We have utilised them in many ways to enhance the work we do in and around the unit. The presence of these alone has helped draw a positive outcome to most incidents that may have before escalated further."*
- *"I think they are a positive for staff safety. Prisoners mostly de-escalate once cameras have been activated. Prisoners aside, we have had other peripheral benefits with them like recording evidence/crime scenes etc. Wouldn't like to see them go to be honest."*
- *"Prisoners think twice about acting in an aggressive manner around staff whether it be to staff or another prisoner, also it has been said by prisoners that it can reassure them too. Since the cameras came into our unit I have not had a single negative comment from prisoners. If we remain professional*

*at our job we have nothing to worry about. I have heard some staff saying that they will be used against us but these comments in my view would make me question as to why they would think this, if they are doing their job in a professional manner they have nothing to worry about."*

## Conclusion

Analysis of the trial results identified the following high level findings:

- The frequency and intensity of assault events is reduced and the likelihood of physical force being required to resolve incidents is reduced
- The presence of the cameras has a calming effect on the wider unit
- Staff feel safer and more confident when equipped with an on body camera
- A feeling of ownership of the camera has a positive effect on uptake by officers
- Camera footage has supported internal misconducts and external prosecutions
- The cameras have provided officer training and development opportunities
- The cameras have provided prisoner coaching opportunities where footage has been used to challenge prisoner behaviour
- The cameras' effectiveness to modify behaviour is dependent on how they are applied
- The cameras keep officers professionally safe (preventing false accusations and complaints)
- Costs associated with injuries sustained by staff when managing prisoners are reduced.

Whilst they do not replace positive interactions and pro-social modelling between staff and prisoners, OBCs are a tool that supports that approach.

The findings of the trial were accepted by the Corrections Executive Leadership Team and a decision made to proceed to a wider roll-out of OBCs in our high risk areas. The Department is now engaged in a process to implement the most appropriate solution.

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*\*CCTV does not physically prevent the crime, but the perception of being caught reduces the likelihood of it being committed.*

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