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Attorneys for Plaintiffs

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 PENNY
GODBOLD 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

REPLY DECL. OF PENNY GODBOLD ISO PLS.' MOTION TO STOP DEFS. FROM ASSAULTING, ABUSING,
& RETALIATING AGAINST PEOPLE W/ DISABILITIES AT R.J. DONOVAN CORR. FACILITY

1 I, Penny Godbold, declare:

2 1. I am an attorney duly admitted to practice before this Court. I am Of
3 Counsel to the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel of record for
4 Plaintiffs. I have personal knowledge of the facts set forth herein, and if called as a
5 witness, I could and would competently so testify. I make this reply declaration in support
6 of Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing, and Retaliating
7 Against People with Disabilities at R.J. Donovan Correctional Facility ("Plaintiffs' RJD
8 Motion").

9 2. On June 24, 2020, Plaintiffs' counsel was notified during a telephone call
10 between Tamiya Davis, attorney from California Department of Corrections and
11 Rehabilitation ("CDCR") Office of Legal Affairs, and my colleague Michael Freedman,
12 that Defendants had decided to refer the declarations filed in support of Plaintiffs' RJD
13 Motion and Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing, and
14 Retaliating Against People with Disabilities filed June 3, 2020 (collectively, "Plaintiffs'
15 Motions") to the Office of Internal Affairs ("OIA") through the Appeal Inquiry
16 Management Section ("AIMS") process. We were informed that a special team of OIA
17 investigators referred to as the Declarant Allegation Review Team ("DART") was
18 assembled for the purpose of reviewing the AIMS allegations included in the declarations
19 and that they would be conducting interviews with our clients.

20 3. Pursuant to the Order Prohibiting Retaliation, Doc. 2931, Defendants have
21 agreed not to discuss the allegations contained in our clients' declarations unless we are
22 present.

23 4. On June 25, 2020, Plaintiffs' counsel received notice, via email from Tamiya
24 Davis, of Defendants' intent to schedule the first AIMS/DART interviews. This notice
25 was received five months after the first declarations were shared with Defendants on
26 January 13, 2020. I responded via email on June 28, 2020, to confirm my participation and
27 to clarify the purpose of the AIMS/DART interviews. On June 29, 2020, I received a
28 response from Tamiya Davis stating that the purpose of the interview was to "address the

1 allegations contained in [our client's] declaration." A true and correct copy of the email
 2 from Tamiya Davis to Plaintiffs' counsel is attached hereto as **Exhibit A**.

3 5. Plaintiffs' counsel have filed over 112 declarations from incarcerated people
 4 regarding staff misconduct in support of Plaintiffs' Motions. As of the date of this
 5 declaration, Plaintiffs' counsel have received notice of only nine AIMS/DART interviews.
 6 I have been present as a representative for Plaintiffs' counsel on each of the nine
 7 AIMS/DART interviews conducted via telephone thus far.

8 6. On July 16, 2020, I was present for the AIMS interview of declarant [REDACTED]
 9 [REDACTED]). The interview lasted less than 30 minutes. Mr. [REDACTED]
 10 declaration contains serious allegations regarding correctional officers at RJD being
 11 involved in the selling of drugs and cellphones at the prison. The OIA staff members
 12 conducting the fact gathering interview did not ask one question about those serious
 13 allegations. They instead focused on other issues. Mr. [REDACTED] declaration states that
 14 he signed a document stating that the misconduct he complained about in an 1824 Request
 15 for Accommodation had been resolved, even though it had not, because he was afraid of
 16 retaliation. Regarding this point, the OIA investigator asked leading questions that
 17 appeared designed to elicit responses to exonerate staff. Mr. [REDACTED] was asked
 18 something to the effect of, "But you were not forced to sign the document, correct?" and
 19 then, "And after you signed the document things did in fact get better, right?"

20 7. On July 20, 2020, I was present for the AIMS interview of declarant [REDACTED]
 21 [REDACTED]). The interview lasted approximately 40 minutes. The vast majority of
 22 the interview consisted of questions that were already addressed in detail in Mr.
 23 [REDACTED] declaration, including questions about the staff misconduct appeal (Form 602)
 24 that Mr. [REDACTED] submitted regarding the same set of events described in his declaration.
 25 Approximately the last quarter of the interview was spent questioning Mr. [REDACTED] on
 26 alleged "inconsistencies" between the staff misconduct appeal and his declaration. For
 27 example, the interviewer stated that Mr. [REDACTED] account of why he turned around just
 28 before being assaulted was inconsistently described in the Form 602 as compared to the

1 declaration. According to the interviewer, Mr. [REDACTED] states in the Form 602 that he
2 turned when he realized he was not being escorted to the location he thought he was going
3 to. In the declaration, he states that he turned because he was in an areas of limited
4 visibility and he became worried that the officers were going to do something to him.
5 Those statements are not inconsistent. Mr. [REDACTED] was interrogated by the investigator
6 about the supposed “inconsistencies.” This type of questioning occurred with multiple
7 other statements from the declaration that either did not appear in or were described with
8 different words in the 602. This line of questioning did not appear neutral, nor aimed at
9 fact-finding or gathering information about why the documents may have used different
10 words to describe the same events. Rather, the entire line of questioning appeared aimed
11 at demonstrating Mr. [REDACTED] was not truthful.

12 8. Attached hereto as **Exhibit B** is a true and correct copy of the Supplemental
13 Declaration of [REDACTED] [REDACTED] describing his experience during the AIMS
14 interview process.

15 9. On July 20, 2020, I was present for the AIMS interview of declarant [REDACTED]
16 [REDACTED]). At the outset of the interview, the investigator stated that Mr. [REDACTED] would
17 not be questioned about the contents of his declaration, but rather only about the incident
18 he witnessed involving Mr. [REDACTED] I thought this was unusual because my understanding
19 was that the purpose of the AIMS interview was to follow up on all allegations included in
20 the declarations for the purpose of investigating misconduct and holding staff accountable.
21 It appeared to me that OIA was concerned with Mr. [REDACTED] account of the incident
22 involving Mr. [REDACTED] because that matter was currently being litigated before this Court. At
23 the end of the interview, on the record, I voiced my objection to the process, which
24 appeared aimed at questioning our client in defense of active litigation, as opposed to
25 neutral fact gathering for the purpose of investigating allegations of staff misconduct.

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1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct, and that this declaration is executed at San Francisco,
3 California this 24th day of July, 2020.

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5 /s/Penny Godbold
6 Penny Godbold
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INDEX OF EXHIBITS TO REPLY DECLARATION OF PENNY GODBOLD

Exhibit	Description
A	Email from Tamiya Davis to Plaintiffs' counsel re AIMS interviews of class members, dated July 29, 2020
B	Supplemental Declaration of [REDACTED], dated July 21, 2020

EXHIBIT A

From: Davis, Tamiya@CDCR
Sent: Monday, June 29, 2020 7:53:43 AM (UTC-08:00) Pacific Time (US & Canada)
To: Penny Godbold
Cc: Michael Freedman; Gay C. Grunfeld; Ferguson, Patricia@CDCR
Subject: RE: AIMS interviews of class members

Hi Penny,

If I previously inadvertently sent you investigators [REDACTED]' and [REDACTED]'s names and email addresses, please disregard that communication. I ask that you communicate with OLA directly regarding these interviews and not with AIMS or OIA staff.

The only interview that will be occurring today is [REDACTED], and it is still scheduled for 10 am. I will send out a revised calendar invite. The purpose of this interview is to address the allegations contained in his declaration. I have confirmed that you will have an opportunity to talk with your client 15 minutes before the start of the interview. The interviewer will call your office line (415-433-6830) around 9:45 am and asked to be routed to you. Please let me know if she should call a different number.

Thank you,

Tamiya Davis
Attorney III, Class Action Team
Office of Legal Affairs
California Department of Corrections and Rehabilitation
Phone: 916.341.6960
Cell: 916.247.5094

-----Original Message-----

From: Penny Godbold <PGodbold@rbgg.com>
Sent: Sunday, June 28, 2020 1:46 PM
To: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>
Cc: Michael Freedman <MFreedman@rbgg.com>; RAMIREZ, Gisela@CDCR <Gisela.Ramirez@cdcr.ca.gov>; Thiem, George@CDCR <George.Thiem@cdcr.ca.gov>; Gay C. Grunfeld <GGrunfeld@rbgg.com>
Subject: Re: AIMS interviews of class members

CAUTION: This email originated from outside of CDCR/CCHCS. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you Tamiya,

I will be taking these calls. I am hoping to have the opportunity to talk to each client for about 15 minutes beforehand to explain what is taking place. Please confirm.

Also, I am hoping to ask you a few questions about the purpose of these interviews and what the information will be

used for.

Thanks,
-Penny

Sent from my iPhone

> On Jun 25, 2020, at 2:49 PM, Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov> wrote:

>

> We will likely not need the entire three hours. Conference line information to follow. The interviewees are:

>

>

> [REDACTED]

> <meeting.ics>

EXHIBIT B

SUPPLEMENTAL DECLARATION OF [REDACTED]

I, [REDACTED] declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is [REDACTED]. I am currently housed at California Medical Facility ("CMF"). I am 56 years old.

3. I have previously submitted a declaration about my experiences with staff misconduct at Richard J. Donovan Correctional Facility ("RJD"), which I signed on January 26, 2020.

4. On July 20, 2020, I was called out for questioning by an Office of Internal Affairs ("OIA") investigator. Prior to my interview, I asked the investigator what this interview was regarding. He replied something to the effect of "I am here for the *Armstrong* case" and he said, in so many words, that he represented CDCR in this process. He stated that I would have an attorney present. I was very concerned when he said he was representing CDCR and I asked whether the information was going to be used for me or against me. He said again that he represented CDCR and stated that it depends on what I say during the interview. He told me that CDCR had already conducted ten such interviews and six went for CDCR and four went for the inmates. This statement made me feel like I was being put on trial and that I was going to being questioned by the opposing party. This did not feel like a neutral, fact finding investigation to me. I was reluctant to move forward with the interview but my attorney assured me it would be okay to talk to them.

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