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16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19

20 JOHN ARMSTRONG, et al.,

21 Plaintiffs,

22 v.

23 GAVIN NEWSOM, et al.,

24 Defendants.

Case No. C94 2307 CW

**REPLY DECLARATION OF DONALD  
SPECTER 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 DONALD SPECTER ISO PLS.' MOTION TO STOP DEFS. FROM ASSAULTING, ABUSING,  
& RETALIATING AGAINST PEOPLE WITH DISABILITIES AT RJD

1 I, Donald Specter, declare:

2 1. I am an attorney duly admitted to practice before this Court. I am the  
3 Director of the Prison Law Office, counsel of record for Plaintiffs. I have personal  
4 knowledge of the facts set forth herein, and if called as a witness, I could competently so  
5 testify. I make this reply declaration in support of Plaintiffs' Motion to Stop Defendants  
6 from Assaulting, Abusing, and Retaliating Against People with Disabilities at R.J.  
7 Donovan Correctional Facility ("Plaintiff's Motion").

8 2. I have reviewed Defendants' Response to Plaintiffs' Motion as well as the  
9 Declaration of CDCR Secretary Ralph Diaz. I am aware that Defendants claim that  
10 "CDCR has existing policies and processes in place to support ... investigations and  
11 discipline of employees who commit staff misconduct." Defendants' Response at 34.  
12 Defendants also assert that "[b]ecause CDCR policies were established and implemented  
13 as a result of *Madrid* [*v. Gomez*, Case No. 90-3094-TEH (N.D. Cal.)] and are working to  
14 address many of the allegations that plaintiffs raise here, CDCR is confident this system  
15 addresses inmates who are subjected to staff misconduct including inappropriate or  
16 excessive force of employees who commit staff misconduct." *Id.*; *see also* Declaration of  
17 Secretary Diaz in Support of Defendants' Response at ¶ 12. Mr. Diaz relies on *Madrid* to  
18 conclude that "CDCR believes that the policies in place are sufficient to investigate and  
19 discipline employees in a fair, consistent, and unbiased manner." *Id.*

20 3. The *Madrid v. Gomez* litigation began when Alejandro Madrid filed his  
21 lawsuit on October 26, 1990 in the federal district court for the Northern District of  
22 California. The case was assigned to the Honorable Thelton E. Henderson. The Prison  
23 Law Office associated into the case on February 29, 1992. From that time until the case  
24 was dismissed on March 21, 2011, Steven Fama, who is also an attorney at the Prison Law  
25 Office, and I represented Mr. Madrid and later the certified class of incarcerated people  
26 housed at Pelican Bay State Prison.

27 4. In *Madrid*, Plaintiffs challenged the constitutionality of a broad range of  
28 conditions and practices. They alleged that at Pelican Bay defendants (1) condoned a

1 pattern and practice of using excessive force against incarcerated people, (2) failed to  
2 provide them with adequate medical care, (3) failed to provide them with adequate mental  
3 health care, (4) imposed inhumane conditions in the Security Housing Unit, (5) utilized  
4 cell assignment procedures that exposed them to an unreasonable risk of assault from other  
5 incarcerated people, (6) failed to provide adequate procedural safeguards when segregating  
6 prison gang affiliates in the Security Housing Unit, and (7) failed to provide them with  
7 adequate access to the courts. 889 F. Supp. 1146, 1156 (N.D. Cal. 1995).

8         5.       After a lengthy trial with multiple experts, the court found a conspicuous  
9 pattern of excessive force at Pelican Bay. *Id.* at 1161.

10       6.       To remedy these and other violations, the court ordered the parties to  
11 collaborate in developing and implementing a remedial plan. As the court found, “[a]  
12 system that adequately monitors and regulates the use of force consists of five  
13 components: (a) written policies that clearly identify for line staff when and how much  
14 force is appropriate under different circumstances; (b) training of correctional officers  
15 regarding the proper use of force; (c) supervision of the use of force to ensure that it is  
16 consonant with departmental and institutional policies and procedures; (d) investigation of  
17 possible misuses of force; and (e) officer discipline for the misuse of force.” *Id.* at 1181  
18 (citations omitted). The court opined: “Each of these interrelated components builds upon  
19 and reinforces the others. Thus, adequate written policies provide the necessary  
20 framework for properly training staff and evaluating subsequent conduct. Yet, written  
21 policies alone serve little purpose unless staff are trained as to their content. Adequate  
22 supervision and investigation are necessary to ensure that, in practice, staff are properly  
23 implementing written policies and principles learned through training. Finally, a  
24 meaningful disciplinary system is essential, for if there are no sanctions imposed for  
25 misconduct, the prison’s ‘policies and procedures ... become a dead letter.’ ... The  
26 evidence shows that the system for controlling use of force at Pelican Bay suffers from  
27 serious deficiencies, particularly with respect to the supervisory and investigatory  
28

1 components described above. The Court also finds that these deficiencies, known and  
 2 tolerated by defendants, are a significant cause of the misuse of force at Pelican Bay.” *Id.*

3 7. The court concluded that CDCR’s use of force policies were too vague,  
 4 especially with regard to Tasers and the use of lethal force. The court further found that  
 5 CDCR’s Internal Affairs division investigations were “invariably a counterfeit  
 6 investigation pursued with one outcome in mind: to avoid finding officer misconduct as  
 7 often as possible. ... Not only are all presumptions in favor of the officer, but evidence is  
 8 routinely strained, twisted or ignored to reach the desired result.” *Id.*

9 8. The court ordered that the parties develop a remedial plan to address the  
 10 constitutional violations and appointed a Special Master to assist in the formulation and  
 11 execution of the remedy. The case then entered a lengthy remedial phase, in which the  
 12 Special Master monitored Pelican Bay’s provision of medical and mental health care, as  
 13 well as its supervision of an investigation into the use of force.

14 9. My Prison Law Office colleague Steve Fama and I were intimately involved  
 15 in the *Madrid* remedial phase. It was extremely time consuming. We were among other  
 16 things provided monthly production of use of force incidents and investigation and  
 17 discipline records related to allegations of staff misconduct related thereto. Mr. Fama also  
 18 went to Pelican Bay regularly, including every month for a period of time, to meet with the  
 19 Special Master and Defendants including regarding use of force and internal affairs  
 20 investigation matters.

21 10. On March 21, 2011, Judge Henderson issued an order terminating *Madrid*’s  
 22 force related orders and dismissing the case. In that order, the court reiterated that  
 23 “effective investigation and discipline systems” are considered “the final cornerstone of  
 24 Defendants’ use-of-force remedy.” *See* Dkt. 2200 at 2. The court also pointed out that  
 25 Defendants’ statewide use-of-force policy had been adopted and implemented. *Id.*  
 26 Plaintiffs did not oppose termination of force-related orders and dismissal of this case.  
 27 However, “At the hearing and in papers filed with the Court, Plaintiffs and the OIG  
 28 expressed concern about the sustainability of the *Madrid* reforms. Plaintiffs stated that

1 BIR [Bureau of Independent Review] oversight is critical to maintaining the progress made  
 2 during the long history of this case and expressed concern about Defendants' commitment  
 3 to BIR oversight. However, they acknowledged that the conditions at Pelican Bay do not  
 4 currently violate the constitution." *Id.* at 2-3.

5 11. The court's termination order further states: "This Court, too, is concerned  
 6 about a reversion to the unconstitutional practices that once existed at Pelican Bay. The  
 7 Court is proud of the work done during the life of this case. Pelican Bay was once a place  
 8 where prison officials used force 'for the very purpose of inflicting punishment and pain.'  
 9 *Madrid*, 889 F. Supp. at 1200. BIR's oversight of prison personnel investigations and  
 10 discipline helped change these conditions. The Court hopes that CDCR will honor its  
 11 commitment to continue working with BIR, and that it will oppose any effort to dismantle  
 12 BIR's oversight. The Court is confident that should the *Madrid* protocols be abandoned  
 13 and conditions at Pelican Bay devolve to unconstitutional levels, counsel will come  
 14 forward to challenge those conditions...." *Id.* at 3.

15 12. As Plaintiffs and the OIG predicted, the *Madrid* remedy has not proved  
 16 sustainable. In the nine years since Judge Henderson dismissed the case, I have observed  
 17 tremendous backsliding by CDCR and defunding of the *Madrid* remedial process. I have  
 18 particularly observed CDCR's failure to address use of force and staff misconduct against  
 19 people with disabilities, first at High Desert State Prison, then at Salinas Valley State  
 20 Prison, and now at Richard J. Donovan Correctional Facility and the other prisons that are  
 21 the subject of Plaintiffs' Motions. *See* Declaration of Gay Crosthwait Grunfeld in Support  
 22 of Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing, and Retaliating  
 23 Against People with Disabilities at R.J. Donovan Correctional Facility, Dkt. 2922-1, ¶¶ 65-  
 24 69.

25 13. The improvements made via *Madrid* depended on an effective and engaged  
 26 neutral monitor and use of force expert reviewing use of force and staff misconduct  
 27 documents, observing the use of force reviews, and discussing related misconduct  
 28 investigations and discipline with prison officials, including the hiring authority. That

1 process was very effective in reducing uses of excessive and staff misconduct at Pelican  
 2 Bay. The OIG's BIR process was intended to replicate the review by the monitor,  
 3 Plaintiffs' counsel and the use of force expert.

4 14. Unfortunately, as the evidence in this case and the OIG reviews at High  
 5 Desert and Salinas Valley demonstrate, the OIG BIR process has not been effective in  
 6 preventing substantial amounts of staff misconduct and harm to people with disabilities.  
 7 Many serious allegations of staff misconduct are never reviewed by the OIA and the  
 8 Allegation Inquiry Management Section ("AIMS") is fundamentally flawed as I explained  
 9 during my testimony at the hearing of the California Assembly Budget Subcommittee  
 10 No. 5 on March 2, 2020. *See* Declaration of Gay Crosthwait Grunfeld in Support of  
 11 Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against People with  
 12 Disabilities, Dkt. 2948-1, ¶ 30 & Ex. N. Further, AIMS alone is not enough to combat the  
 13 abuses contained in Plaintiffs' Motions. Policies and procedures adopted as a result of  
 14 *Madrid* improved CDCR's accountability for staff misconduct and excessive force. But  
 15 far more is needed now to address the epidemic of staff misconduct and violence against  
 16 people with disabilities that is occurring throughout the state. Therefore, the Court should  
 17 adopt the remedies requested in Plaintiffs' motion.

18 I declare under penalty of perjury under the laws of the United States of America  
 19 that the foregoing is true and correct, and that this declaration is executed at the County of  
 20 Sonoma, California this <sup>26<sup>th</sup></sup> ~~27~~ day of July, 2020.

21  
 22   
 23 Donald Specter