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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

**DECLARATION OF PENNY
GODBOLD IN SUPPORT OF
MOTION TO STOP DEFENDANTS
FROM ASSAULTING, ABUSING AND
RETALIATING AGAINST PEOPLE
WITH DISABILITIES AT R. J.
DONOVAN CORRECTIONAL
FACILITY**

Judge: Hon. Claudia Wilken
Date: May 19, 2020
Time: 2:00 p.m.
Crtrm.: TBD, Oakland

Case No. C94 2307 CW

DECL. OF PENNY GODBOLD ISO MOTION TO STOP DEFS. FROM ASSAULTING, ABUSING &
RETALIATING AGAINST PEOPLE WITH 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 competently so testify. I make this declaration in support of Plaintiffs'
6 Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against People With
7 Disabilities at R. J. Donovan Correctional Facility.

8 2. I have worked as Plaintiffs' counsel and a monitor in *Armstrong v. Newsom*
9 since 2009. As a monitor, it is my responsibility to tour California prisons and parole
10 offices, interview *Armstrong* class members and prison staff members, and inspect prison
11 facilities for the purpose of monitoring and reporting on Defendants' compliance with
12 court orders, the *Armstrong* Remedial Plan, and the American's with Disabilities Act
13 ("ADA"). Prior to *Armstrong v. Newsom*, I was Plaintiffs' counsel and a monitor assigned
14 to *Clark v. California*, No. 3:96-cv-01486-CRB (N.D. Cal.), where I was also responsible
15 for monitoring and reporting on Defendants' compliance with court orders, the *Clark*
16 Remedial Plan, and the ADA with respect to people with intellectual disabilities in
17 California prisons. I have monitored ADA conditions inside California prisons for more
18 than sixteen years, since 2003. On average, I conduct seven prison tours a year and have
19 interviewed thousands of incarcerated people with disabilities and prison staff members
20 over the years.

21 3. I began monitoring R. J. Donovan Correctional Facility ("RJD") in August
22 of 2016 and conducted my first monitoring tour of that prison in September 2016. Since
23 that time, I have visited RJD a dozen times. I began hearing reports of abuse at RJD as
24 soon as I began monitoring that prison. I have reported on dozens of allegations of threats
25 and violence against class members because of their disabilities, including in multiple
26 monitoring reports and advocacy letters, since 2016.

27 4. I have also interviewed multiple class members who reported experiencing
28 or witnessing abuse at RJD but who stated that they would not share their story in an

1 advocacy letter, tour report, or a declaration to the Court out of fear of retaliation from
2 staff members. As a result of interviewing multiple people who refuse to share their story,
3 I believe the accounts of staff misconduct at RJD are significantly underreported.

4 5. As part of my responsibility as a monitor in the *Armstrong* case I am
5 assigned to collaborate with Defendants on the development of a tool and a process for the
6 parties to jointly audit California prisons. I have been involved in the joint audit process
7 since its inception in July 2013.

8 6. From August 27 through August 30, 2018, representatives from Plaintiffs'
9 counsel including myself, the California Department of Corrections and Rehabilitation
10 ("CDCR"), including members of their Office of Audits and Court Compliance ("OACC")
11 team, the California Office of the Attorney General, and the *Armstrong* Court Expert,
12 traveled to RJD for the purpose of conducting a Joint Audit.

13 7. During the August 2018 Joint Audit Tour, I was assigned to a team that
14 audited Facility C at RJD. During the course of our interviews with *Armstrong* class
15 members on Facility C my joint audit compliance team heard multiple reports of serious
16 staff misconduct. These reports were consistent with reports of misconduct that I had
17 previously heard and had been reporting to Defendants since September of 2016.

18 8. Following the August 2018 Joint Audit tour, I sent a letter to Ralph Diaz,
19 Secretary of CDCR, stating that there were reports of ongoing staff misconduct at RJD
20 during the joint audit and requesting that CDCR take immediate action to investigate
21 allegations on Facility C, a copy of which is attached to Grunfeld Declaration as Ex. F.

22 9. The Deputy Director of CDCR's OACC also produced a memo confirming
23 that, during the August 2018 Joint Audit, the compliance teams heard "multiple allegations
24 of serious staff misconduct" including reports of class members being assaulted and
25 forcefully removed from wheelchairs. A copy of the Memorandum is attached to Grunfeld
26 Declaration as Ex.G. This memo states that "[b]ecause of the nature and consistency of
27 the allegations, OACC agrees that DAI and RJD management should promptly take all
28

1 reasonable actions to ensure that these incidents do not occur in the future, and that the
2 historical allegations are thoroughly investigated.” *Id.*

3 10. On December 10, 2018, following the casewide meet and confer meeting, the
4 parties met, as requested by Plaintiffs’ counsel, so that CDCR could provide an update on
5 the status of their response to my September 20, 2018 letter and OACC’s September 20,
6 2018 memorandum. Representatives from the CDCR Office of Legal Affairs reported that
7 Defendants had sent a strike team to RJD. Defendants described the methodology of the
8 strike team interviews, but did not provide any information regarding the strike team’s
9 findings. Defendants stated that they would share the interview results with Plaintiffs’
10 counsel at a later date but that never happened.

11 11. On or around January 2, 2019, our office began copying the Office of the
12 Inspector General (“OIG”) on all advocacy letters alleging allegations of staff misconduct
13 at RJD. I also spoke with Roy Wesley, Inspector General for the State of California, on
14 multiple occasions by telephone in hopes his organization could assist us in stopping the
15 widespread violence abuse and retaliation against people with disabilities we observed at
16 RJD.

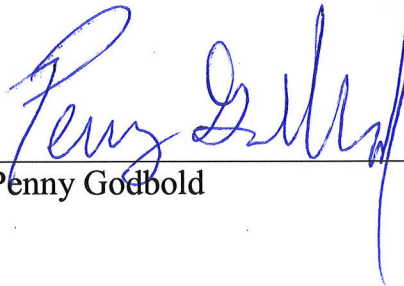
17 12. On January 17, 2020, Mr. Wesley sent a letter to CDCR Secretary, Ralph
18 Diaz, stating that the OIG had conducted a review of 16 advocacy letters for 14 different
19 incarcerated people sent by Plaintiffs’ counsel. A copy of that letter is attached as Ex. J to
20 the Grunfeld Decl.

21 13. On January 22, 2020, I deposed Mr. Wesley. When asked about misconduct,
22 Mr. Wesley testified that RJD has more problems with Use of Force than other prisons,
23 RJD has more incidents that are outside of policy, and that the OIG has found that officers
24 at RJD have acted improperly by instigating incarcerated people to the point where force
25 was used. *See* Exhibit S to the Declaration of Gay Crosthwait Grunfeld in Support of
26 Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against People with
27 Disabilities at R.J. Donovan Correctional Facility (“Grunfeld Decl.”), filed herewith, at
28 39:2-40:9.

1 14. On January 6, 2020, I travelled to RJD with my co-counsel Michael
2 Freedman to meet with CDCR officials, including three representatives from the Office of
3 Legal Affairs, and representatives from RJD including Acting Warden Marcus Pollard.
4 During this good faith effort on the part of the parties to meet at the prison, Plaintiffs'
5 counsel expected CDCR to respond to their November 13, 2019 letter by presenting a
6 concrete plan for addressing staff misconduct at RJD. CDCR did not present a concrete
7 plan for a response during the January 6 meeting and still has not done so.

8 15. In various conversations I have had with representatives from CDCR's
9 Office of Legal Affairs, I have been informed that approximately five staff members from
10 RJD were dismissed by the hiring authority in response to three cases of staff misconduct
11 against incarcerated people between January 1, 2017 and present.

12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct, and that this declaration is executed at San Francisco,
14 California this 24th day of February, 2020.

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17 Penny Godbold
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