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

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

Case No. 94-cv-02307 CW
INJUNCTION REGARDING HOUSING
OF INMATE 1 AND INMATE 2
(Re: Dkt. Nos. 2978, 2979)

On July 30, 2020, the Court granted in part Plaintiffs' motion for a preliminary injunction to continue in effect the transfer of Inmate 1 and Inmate 2¹ (Witnesses) from R.J. Donovan Correctional Facility (RJD) to another facility in light of the Witnesses' concerns for their safety at RJD. Order, Docket No. 3025. In the same order, the Court stated that the preliminary injunction would remain in effect for ninety days, and that the Court would make the injunction final before the expiration of the ninety-day period "unless Defendants make a further factual showing [by September 21, 2020] that they were unable to make in

¹ The names of the inmates were identified in a separate order, Docket No. 3027, which was filed under seal to maintain the names of the inmates as confidential.

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1 opposition to the issuance of a preliminary injunction in light of
2 the expedited schedule for that proceeding.” Id. at 49-50. The
3 Court issued the preliminary injunction as a separate order.
4 Preliminary Injunction, Docket No. 3026.

5 On September 21, 2020, Defendants filed a brief in which they
6 argue that the Court should not make the injunction final unless
7 the Court provides Defendants with discretion to determine the
8 placement of the Witnesses at a non-RJD prison pursuant to CDCR’s
9 policies and procedures. The Court previously considered and
10 rejected this argument. Further, the injunction provides
11 Defendants with several avenues for transferring the Witnesses
12 should that become necessary. Accordingly, the Court hereby
13 orders that the injunction shall remain in effect until the final
14 resolution, including appeals, of the issues raised in Plaintiffs’
15 enforcement motions with respect to RJD, Docket No. 2922, and
16 seven other prisons, Docket No. 2948. The terms of the injunction
17 are as follows:

18 Inmate 1 shall remain at an Enhanced Outpatient Program
19 housing unit on Facility D at Mule Creek State Prison (MCSP), and
20 Inmate 2 shall remain at the California Health Care Facility
21 (CHCF).

22 While housed at these facilities and this injunction remains
23 in effect:

- 24 (1) Defendants shall have the ADA coordinator at the new
25 facility meet, face to face, taking appropriate Covid-
26 19 precautions, with each Witness on a bi-weekly basis
27 to discuss whether the Witness has any security
28 concerns or has faced any retaliation. The ADA

1 coordinator shall document these interactions on a Form
2 128-B, signed by the Witness, and Defendants shall
3 produce the completed Form 128-B to Plaintiffs' counsel
4 within twenty-four hours;

5 (2) Defendants shall provide on a monthly basis or sooner
6 if requested, for a confidential, attorney-client
7 telephone call between each Witness and Plaintiffs'
8 counsel;

9 (3) Defendants shall not transfer either of the Witnesses
10 to another facility other than the facilities set forth
11 above unless (1) Plaintiffs' counsel stipulate to the
12 transfer; (2) Defendants obtain an order of the Court
13 permitting the transfer; or (3) the transfer is
14 necessary on an emergency basis to protect the health
15 or safety of the Witness being transferred. If a
16 transfer is necessary on an emergency basis to protect
17 the health or safety of the Witness being transferred,
18 Defendants do not need advance approval from
19 Plaintiffs' counsel or an order of the Court. In such
20 circumstances, Defendants shall provide Plaintiffs'
21 counsel with notice of the transfer as soon as possible
22 and no later than twenty-four hours following the
23 transfer. The parties shall then meet and confer
24 within twenty-four hours to discuss the Witness's
25 placement. Transfer pursuant to this paragraph shall,
26 if possible, be to a placement consistent with the
27 criteria set forth in the Court's order of July 2,
28 2020, which are as follows: (1) the placement is not

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1 RJD; (2) the placement is not administrative
2 segregation or any other type of punitive housing; (3)
3 the placement is not at a higher security level than
4 the Witness's current classifications; (4) the
5 placement provides at least equivalent access to
6 programming opportunities, including compliance with
7 the Coleman Program Guide; (5) the placement is as safe
8 in light of COVID-19 risks as possible; (6) if the
9 placement is custodial, complete surveillance camera
10 coverage is preferable. If, pursuant to this
11 paragraph, Defendants cannot transfer the Witness to a
12 placement that meets those criteria, Defendants shall
13 take all available efforts to return the Witness to a
14 placement consistent with those criteria as soon as
15 possible.

16 (4) Defendants shall facilitate confidential legal calls
17 between each Witness and Plaintiffs' counsel as
18 requested by Plaintiffs' counsel and shall take such
19 other steps as are necessary to ensure that each
20 Witness is safely housed and is not subjected to
21 retaliation for assisting with the enforcement motions
22 or participating in these proceedings.

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1 No security shall be required because the Witnesses are
2 incarcerated and presumably indigent.

3 IT IS SO ORDERED.

4 Dated: October 7, 2020



5 CLAUDIA WILKEN
6 United States District Judge

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