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June 4, 2024

VIA CA LEGISLATURE POSITION LETTER PORTAL

California Senate Committees
Public Safety
Elections & Constitutional Amendments

California Assembly Committees
Public Safety
Appropriations

Re: ACA 8; Ending Slavery and Involuntary Servitude in California

Dear Senators and Assemblymembers:

In advance of the Senate Public Safety Committee hearing scheduled for June 11, 2024, we write to express our strong support for ACA 8. It is time for California to end involuntary servitude (slavery by another name).

Our organizations, Rosen Bien Galvan & Grunfeld LLP, and the Prison Law Office, represent every individual incarcerated in California's Department of Corrections and Rehabilitation adult institutions ("CDCR") as plaintiffs in the *Armstrong*, *Clark*, *Coleman*, and *Plata* class actions. We also represent certified and putative classes of people incarcerated in numerous jails across the state, including Alameda, Contra Costa, Fresno, Monterey, Orange, Riverside, Sacramento, San Bernardino, Santa Barbara, Santa Clara, San Diego, and Yuba counties.

Through our litigation on behalf of incarcerated people, we pursue rehabilitation and decarceration. These goals will be advanced by closing the constitutional loophole that currently permits involuntary servitude to persist legally in California.

I. There is a Growing Movement to Close the Federal and State Loopholes That Permit Legal Slavery/Involuntary Servitude.

While the Thirteenth Amendment to the U.S. Constitution prohibits slavery and involuntary servitude for some, it contains a loophole that permits both practices "as a

punishment for crime.” U.S. Const. amend. XIII. U.S. Senators Jeff Merkley (D-OR) and Cory Booker (D-NJ) and U.S. Representative Nikema Williams (D-GA-05) have reintroduced the Abolition Amendment (S.J.Res.33; H.J.Res.72) to close the federal loophole. Given the need for a two-thirds majority of the U.S. Congress and ratification by three-fourths of the states, closing the federal loophole will not soon come to fruition.

Many state constitutions contain similar clauses, including California’s, which prohibits “slavery” but provides: “Involuntary servitude is prohibited except to punish crime.” *See* Cal. Const., art. I, § 6. Passing ACA 8 would give our voters the opportunity in November to amend California’s constitution to ban slavery without exception.

By passing ACA 8, California would join a growing movement of both red and blue states that recently closed their slavery and involuntary servitude loopholes by a collectively overwhelming popular majority. In 2018, over 66% of voters in **Colorado** approved of closing the loophole, followed in 2020 by over 80% of voters in **Utah** and over 68% in **Nebraska**, followed in 2022 by over 76% of voters in **Alabama**, over 55% in **Oregon**, over 79% in **Tennessee**, and over 88% in **Vermont**. Many additional state legislatures are considering legislation or have already referred the issue to the ballot for 2024, including **Nevada** where the legislature in February 2023 unanimously referred Question 4 to its voters for this November’s election.

Given the history and implications of involuntary servitude, the California Senate should join the Assembly in passing ACA 8.

II. California’s and Other States’ Use of the Slavery and Involuntary Servitude Constitutional Loopholes is Deeply Harmful.

Following the Civil War, the federal and state constitutional loopholes allowed newly freed Black people to be forced into chain gangs, reinstating involuntary servitude through criminal prosecution. That history is still with us. As Michelle Alexander demonstrated in her seminal book, *The New Jim Crow*, our criminal legal system has perpetuated a racial caste system through mass incarceration. During the first thirty years of the “War on Drugs,” U.S. prison populations swelled from under 300,000 to over 2 million people. Today, prisons are disproportionately filled with people of color and those who grew up poor. No other nation in the world imprisons such a large percentage of its racial or ethnic minorities, nor of its overall population. California is no exception, with people of color making up a much higher percentage of the incarcerated population than the State’s overall population.

By law, CDCR forces many of the 93,000 people incarcerated in its facilities to work. California demands that “every able-bodied prisoner” shall work “as many hours of faithful labor in each day and every day during his or her term of imprisonment” as required by CDCR rules and regulations. Cal. Penal Code § 2700. Those regulations provide for both paid and unpaid assignments, including “any work deemed necessary to maintain and operate the institution and its services in a clean, safe and efficient manner.” 15 Cal. Code Regs. § 3040.

Incarcerated workers in California receive a paltry \$0.16 to \$0.74 per hour cleaning the toilets and mopping the floors of California’s 32 prisons. *See* 15 Cal. Code Regs. § 3041.2 (in April 2024 these pay ranges doubled from the prior range of \$0.08 to \$0.37). The minimum wage for incarcerated workers (\$0.16/hour) is one-hundredth of the California minimum wage (\$16.00/hour). This inequality would be striking in any state, but will be especially so in California, where the State recently announced its intention through the “California Model” to “bring life in prison as close as possible to life outside of prison.” *See* California Model, <https://www.cdcr.ca.gov/the-california-model/#faq/> (last visited June 4, 2024). Continuing CDCR’s use of involuntary servitude ensures that the Department will fail this mandate.

Only about 5% of people incarcerated in CDCR work in vocational positions through the California Prison Industry Authority (CALPIA), earning between \$0.35 to \$1.00 per hour. 15 Cal. Code Regs. § 8006. The CALPIA jobs are hard to obtain, especially for people with disabilities who face significant discrimination when seeking such assignments. CALPIA workers produce a wide range of services to support the basic functioning of the prisons such as laundry and groundskeeping, and manufacture goods such as food, furniture, healthcare equipment, and clothing used in the prison system and other state agencies, and license plates issued by the DMV. This forced labor defrays the cost of mass incarceration by eliminating the need to hire employees at honest wages for the dirty work of maintaining and operating prisons, and providing cheap labor that benefits free Californians. A few incarcerated people also work in assignments with private employers through CALPIA’s Joint Venture Program, where they earn minimum wage. In 2022, CALPIA reported only twenty-seven such positions filled.

Incarcerated people also work as firefighters, and have died protecting our communities from California’s largest and deadliest fires. Starting in April 2024, CDCR regulations increased the pay scale for these people to between \$5.80 and \$10.24 per *day*. *See* 15 Cal. Code Regs. § 3041.2(1)(2) (this is double the prior pay range of \$2.90 to \$5.12 per day). CDCR’s website still lists the lower pay range and also reports CalFire adds \$1.00 per hour of work on the fire lines. Incarcerated firefighters receive special credits for each day worked, reducing the length of their prison sentences. Unlike the free firefighters

working those same dangerous jobs, incarcerated firefighters receive no pension or life insurance for their families. Due to their convictions, they typically have not been able to obtain work as a firefighter upon release, although a change in 2021 allowed a subset of formerly-incarcerated firefighters to ask a court for criminal record expungement, which may smooth the path toward employment for some. *See* Cal. Penal Code § 1203.4b.

This work is not voluntary. *See* 15 Cal. Code Regs. § 3044. CDCR punishes people who refuse to work by placing them in “Privilege Group C” and denying them good conduct credits, thereby lengthening the amount of time they remain in prison. CDCR also sharply curtails “privileges” for people who do not work, limiting their family visits, telephone calls, recreation, entertainment, outdoor exercise, and canteen (food and sundries) access. These are necessities for physical and mental well-being while incarcerated. Failure to work can also result in disciplinary writeups that prevent parole grants at the Board of Parole Hearings.

III. California Should Close its Involuntary Servitude Loophole.

Many people in prison want to work. But they should have meaningful opportunities, not involuntary servitude. It is dehumanizing to force people to work for essentially no pay. It perpetuates the cycles of poverty that contribute to racial inequity and fuel overincarceration.

CDCR can and should have meaningful programs or jobs for everyone. The goal should be to prepare people for release and allow them to earn money needed in prison, where they typically pay market or higher rates for sending messages to family, accessing media, and purchasing items like toiletries, food, and stationary. People also want and should be allowed to contribute meaningfully to their families and society, including through child support and paying court-ordered victim restitution.

Honest pay for voluntary work will make CDCR safer and reduce recidivism. For decades, CDCR has required oversight by multiple judges in class actions seeking to stop staff abuse, suicide, and disability discrimination. A federal court ordered California’s prisons to deploy body-worn and audio-visual cameras to increase accountability for retaliation and abuse. *Armstrong v. Newsom*, 94-cv-02307 2021 WL 933106 (N.D. Cal. March 11, 2021); *Armstrong v. Newsom*, 484 F. Supp. 3d 808 (N.D. Cal. 2020). Despite these measures, nothing will change until CDCR reforms its culture. Fair pay shows respect for incarcerated people and would allow them to save money to get back on their feet after returning to society.

In the long run, reductions in recidivism and decreases in sentence lengths from not punishing people who refuse assignments will save money. Media reports state that CDCR

estimates it will save \$778 million next year because reductions in the prison population have allowed California to close or schedule the closure of three prisons, terminate its lease with its last private prison, and close portions of numerous prisons statewide.

Passing ACA 8 is a necessary first step toward reforming California's broken prison system. We also need a statutory and regulatory framework to implement the constitutional language. While California has ceded leadership on this issue to the seven states that already closed their constitutional slavery loopholes in recent years, California can become a leader by enacting a strong companion bill to ACA 8. Slavery abolitionists are already working with members of the legislature to develop that framework.

Slavery and involuntary servitude are wrong; we must do better. We urge you to move promptly to pass ACA 8 and give the voters an opportunity to close the loophole.

DATED: June 4, 2024

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld
By: */s/ Marc J. Shinn-Krantz*

Gay Crosthwait Grunfeld
Marc J. Shinn-Krantz

DATED: June 4, 2024

PRISON LAW OFFICE

/s/ Margot Mendelson
By: */s/ Jacob Hutt*

Margot Mendelson
Jacob Hutt

MSK

cc: Sen. Aisha Wahab (Chair, Public Safety Committee)
Sen. Kelly Seyarto (Vice Chair, Public Safety)
Sen. Steven Bradford (Public Safety)
Sen. Nancy Skinner (Public Safety)
Sen. Scott Wiener (Public Safety)
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