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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**DECLARATION OF ELDON VAIL 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

REDACTED

Case No. C94 2307 CW

DECL. OF ELDON VAIL ISO MOTION TO STOP DEFS. FROM ASSAULTING, ABUSING & RETALIATING
AGAINST PEOPLE W/ DISABILITIES AT R.J. DONOVAN CORR. FACILITY—**REDACTED**

1 I, Eldon Vail, declare:

2 1. I have personal knowledge of the matters set forth herein, and if called as a
3 witness, I could and would competently so testify. I make this declaration in support of
4 Plaintiffs' Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against
5 People With Disabilities at R.J. Donovan Correctional Facility.

6 **Assignment**

7 2. I prepared this declaration at the request of Plaintiffs' counsel. I have been
8 asked by Plaintiffs' counsel to offer my opinion on the following topics:

9 (a) Whether there is a systemic problem at Richard J. Donovan
10 Correctional Facility (RJD) with staff misconduct against incarcerated people, especially
11 against incarcerated people with disabilities (including people with mental illness) and
12 other vulnerable incarcerated people.

13 (b) Whether the systemic problems with staff misconduct against
14 incarcerated people at RJD, if any, affect the ability of people with disabilities to request
15 needed disability accommodations.

16 (c) Whether the systemic problems with staff misconduct against
17 incarcerated people at RJD, if any, affect the ability of people with disabilities to complain
18 about staff misconduct, including staff refusing to provide needed disability
19 accommodations.

20 (d) What effects the systemic staff misconduct is having on the ability of
21 the California Department of Corrections and Rehabilitation (CDCR) to run its prison and
22 in particular meet the needs of people with disabilities.

23 (e) Whether the investigations conducted by CDCR into allegations of
24 staff misconduct at RJD have been adequate.

25 (f) Whether the Armstrong accountability order is working to address
26 staff misconduct against people with disabilities.

27 (g) Whether steps taken by CDCR at RJD have been sufficient to remedy
28 any systemic problems with staff misconduct against incarcerated people.

1 (h) What steps should CDCR take to address systemic staff misconduct
2 like the kind that has occurred at RJD?

3 Summary of Qualifications

4 3. I am a former correctional administrator with 35 years of experience working
5 in and administering adult institutions. Before becoming a corrections administrator, I
6 held various line and supervisory level positions in a number of adult prisons and juvenile
7 facilities in the State of Washington. I have served as the Superintendent (Warden) of
8 three adult institutions, including facilities that housed people classified as maximum,
9 medium and minimum-security. Two of those facilities housed men and one housed
10 women.

11 4. I served for seven years as the Deputy Secretary for the Washington State
12 Department of Corrections (WDOC), responsible for the operation of prisons and
13 community corrections. I briefly retired, but was asked by former Governor of
14 Washington, Chris Gregoire, to come out of retirement to serve as the Secretary of the
15 Department of Corrections in the fall of 2007. I served as the Secretary for four years,
16 until I again retired in 2011. In sum, I served for a total of eleven years in the top one or
17 two positions over the agency.

18 5. As a Superintendent, Assistant Director of Prisons, Assistant Deputy
19 Secretary, Deputy Secretary, and Secretary, I was progressively responsible for the safe
20 and secure operations of adult prisons in the State of Washington, a jurisdiction that saw
21 and continues to see a significant downward trend in prison violence. In the last fifteen
22 years in the WDOC, violent incidents have decreased over 30%, due in part to improved
23 treatment of incarcerated people with mental illness and reduced use of segregation. When
24 I became Secretary the rate of violent infractions throughout the prison system was 1.23
25 events per 100 persons confined. When I left it was 0.66 per 100, a 46% reduction in 4
26 years. This was largely accomplished by the use of data and the study of patterns of
27 violence to determine interventions by institution, by living unit, by shift, by staffing posts
28

1 and by individual officer behavior. Increasing incentives for people incarcerated also
2 proved to be a productive tactic to reduce violence.

3 6. My opinions are based upon my thirty-five years of work in corrections as a
4 practitioner with substantial experience running correctional institutions and presiding over
5 a statewide prison system for more than a decade, a system that successfully addressed the
6 challenges created by the rapid influx of people with mental illness into the prison
7 environment as well as the growth of prison gangs. I am experienced in sound correctional
8 practice.

9 7. Since my retirement I have served as an expert witness and correctional
10 consultant for cases and disputes over 50 times in multiple jurisdictions—state, local and
11 federal—in twenty-one different states. As an expert witness and correctional consultant, I
12 have been retained to evaluate and offer my opinions on a variety of issues in the
13 correctional environment.

14 8. Specifically, over the last few years, I have testified in the following cases:

15 ***Coleman, et al. v. Brown, et al.***

16 No. 2:90-cv-0520 LKK JMP,
17 United State District Court, Eastern District of California,
18 Testified, October 1, 2, 17 and 18, 2013

19 ***Graves v. Arpaio***

20 CV-77-00479-PHX-NVW,
21 United States District Court of Arizona
22 Testified, March 5, 2014

23 ***Corbett v. Branker***

24 No. 5:13 CT-3201-BO
25 United States District Court, Eastern District of North Carolina,
26 Western District
27 Special Master appointment November 18, 2013
28 Testified, March 21, 2014

C.B., et al. v. Walnut Grove Correctional Authority, et al.

No. 3:10-cv-663 DPS-FKB,
United States District Court for the Southern District of Mississippi,
Jackson Division
Testified, April 1, 2 and 27, 2015

Fontano v. Godinez

No. 3:12-cv-3042
United States District Court, Central District of Illinois, Springfield Division
Testified, June 29, 2016

Doe v. Wolf

Case 4:15-cv-00250-DCB

United States District Court for the District of Arizona

Testified, November 14, 2016 and January 13, 14 and 22, 2020

Braggs, et al. v. Dunn, et al.

No. 2:14-cv-00601-WKW-TFM

United States District Court, Middle District of Alabama

Testified, December 22, 2016, January 4, 2017, February 21, 2017 and
December 5, 2017

Wright v. Annucci, et al.

No. 13-CV-0564 (MAD)(ATB)

United States District Court, Northern District of New York

Testified, February 13, 2017

Padilla v. Beard, et al.

Case 2:14-CV-1118 KJM-CKD

United States District Court, Eastern District of California,
Sacramento Division

Testified April 19, 2017

Cole v. Livingston

Civil Action No. 4:14-cv-1698

United States District Court, Southern District of Texas, Houston Division

Testified, June 20, 2017

Holbron v. Espinda

Civil No. 16-1-0692-04 RAN

Circuit Court of the First Circuit, State of Hawai'i

Testified, December 20, 2017

Dockery v. Hall

No. 3:13-cv-326 TSL JMR

United States District Court for the Southern District of Mississippi,
Jackson Division

Testified March 5-7, 2018

9. A complete copy of my resume, detailing my work experience as a
practitioner and as an expert witness/correctional consultant is attached to this declaration
as **Exhibit 1**.

Bases for My Opinions

10. I have reviewed a variety of documents in preparation for this report. They
include the declarations of 54 class members about their experiences at RJD,
correspondence between Plaintiffs' counsel and Defendants, internal CDCR
correspondence, CDCR policies, transcripts from the depositions of Defendants' persons
most knowledgeable, and the transcript from the deposition of a current CDCR

1 psychologist at RJD. A complete list of the materials I reviewed is attached to this report
2 as **Exhibit 2**.

3 11. I also rely on my own substantial experience as a correctional administrator,
4 including presiding over a statewide prison system for more than a decade, and my
5 knowledge of other prison systems that I have gained during my career in corrections and
6 as a consultant and expert witness.

7 12. I have performed work as an expert in litigation related to CDCR. Working
8 for Plaintiffs' counsel in 2013 and 2014 in the *Coleman* case, I inspected four CDCR
9 prisons,¹ authored four declarations,² and testified at trials regarding use of force (UOF)
10 against and disciplinary hearings for patients with mental illness on October 1, 2, 17 and
11 18, 2013. Working for Plaintiffs in the *Mitchell v. Cate* case in 2013 I inspected three
12 other CDCR prisons³ and authored three declarations. From these activities, I am familiar
13 with the operation and culture of CDCR facilities.

14 **Summary of Opinions**

15 13. There is a pattern of physical violence against class members in this case as
16 well as class members in *Coleman v. Newsom* who are housed at RJD. This includes
17 unnecessary and excessive use of force, including closed fist punches and kicks, that result
18 in serious injury to the class members far beyond the norm found in other institutions or
19 jurisdictions of which I am aware. What is startling in the records reviewed is the
20 frequency of broken bones and stitches required for class members after a use of force
21 incident at RJD. The level of threat used to cause such injuries in these incidents does not
22 match the age, disability, or behavior of the class members in their conflicts with RJD

23
24
25 ¹ Kern Valley State Prison; California State Prison, Corcoran; California State Prison, Los
Angeles County; San Quentin State Prison (twice)

26 ² Dkt. 4385, filed 3/14/13; Dkt. 4638-1, filed 05/29/13; Dkt. 4766-2, filed 8/23/13; Dkt.
27 5065-1, filed 02/12/14

28 ³ Salinas Valley State Prison; California State Prison, Solano; High Desert State Prison

1 staff. In my experience broken bones and stitches are very rare in use of force incidents
2 and their prevalence at RJD is inherently of concern.

3 14. The failure of staff to recognize and accommodate class members'
4 disabilities has led to the use of force in multiple cases.

5 15. Several of the class members with disabilities report that CDCR staff fail to
6 account for their mobility impairments when opening and closing their cells doors and
7 when restraining a class member.

8 16. Class members are afraid to report allegations of staff misconduct due to
9 direct threats from CDCR staff that if they do so, they will suffer retaliation. Class
10 members who do report frequently describe the retaliation they suffer.

11 17. There are multiple accusations from the class members that CDCR staff use
12 other incarcerated people to attack and punish them, often because a class member files a
13 complaint about the abusive practices at RJD. When this occurs, class members report that
14 staff often "look the other way", encourage, and, in some cases, facilitate the attacks.

15 18. Class members who receive related Rule Violation Reports (RVR's) are
16 subject to a hearings process that discounts their testimony and fails to interview witnesses,
17 resulting in punishment, loss of privileges and sentencing credits.

18 19. To date, CDCR appears to be incapable of changing the staff culture at
19 CDCR—a culture more representative of gang behavior than professional corrections
20 staff—despite having a wealth of information from credible sources about the nature and
21 depth of the problem of staff misconduct. Investigations of staff misconduct rarely, if
22 ever, result in staff being held accountable for misbehavior.

23 20. The result is that prisoners at RJD are subject to an ongoing serious risk of
24 substantial harm and sometimes, actual serious harm.

25 21. A number of additional remedies must be put in place immediately to protect
26 the class members at RJD in order to reduce the risk of harm.

27
28

Opinions

Excessive and Unnecessary Use of Force is Common in RJD

22. From the records I have reviewed there are multiple examples of use of force events that appear to be unnecessary or excessive.

23. In a very recent incident, Mr. [REDACTED] an *Armstrong* class member who is fully deaf, arrived at RJD on December 20, 2019. He is also a *Coleman* class member at the Enhanced Outpatient (EOP) level of care. He suffers from depression and auditory hallucinations. He also experiences seizures and migraines.⁴ The day after his arrival at RJD he immediately had a problem with the officers in his assigned living unit. In his own words:

As soon as I got into the building, I walked over to Officer [REDACTED] who was standing nearby the podium. Officer [REDACTED] and Officer [REDACTED] started yelling at me. Because I am Deaf, I could not understand anything they were saying. They looked very angry. I think they were getting angry at me because they thought that I was not listening to them. I could tell they were screaming at me, and they kept pointing in various directions. One of the officers was pointing up, towards the upper tier, which I interpreted as him saying that I was supposed to be housed in a cell on the upper tier. This made me very worried, because I am not supposed to be housed on an upper tier due to my seizure disorder that puts me at a high risk of falling.⁵

Mr. [REDACTED] was wearing his bright yellow hearing impaired vest, indicating to staff that he has a hearing disability. The officers continued to yell so he walked away and the officers then grabbed him and he pulled away. He pointed towards his ears and made a writing motion with his hand, in an apparent attempt to give the officers a way to communicate with him.⁶ In his declaration he describes what happened next.

Then, all of a sudden, Officer [REDACTED] took a few steps forward and punched me in the face with his right hand. Right before he punched me, he continued to yell at me and he looked very angry. His punch was extremely forceful. He

⁴ Declaration of [REDACTED], 01-31-20, page 1, line 14 – page 2, line 2

⁵ *Ibid.*, page 2, line 19 – page 3, line 1

⁶ *Ibid.*, page 3, line 10 – page 4 line 23

1 wound up his arm and closed his right fist when he punched
 2 me. His closed fist hit my face in my left cheek. I fell
 3 backwards in shock from the punch because I was
 4 expecting it at all. I was so surprised by Officer [REDACTED]'s
 5 conduct because I had never experienced this kind of treatment
 6 from staff in a prison. He punched me with so much force that
 7 my face immediately started hurting. The pain was a sharp,
 8 stinging pain.⁷

9 Mr. [REDACTED] is Deaf. There is nothing in this incident that suggests that any use of
 10 force was necessary, let alone a punch to the face. The officer's failure to acknowledge
 11 and accommodate his disability gave rise to the use of force.

12 Mr. [REDACTED] wound up receiving an RVR (Rule Violation Report) for this incident
 13 for resisting a peace officer in the course of his duties. He was found guilty and lost 90
 14 days of time served from his sentence.⁸ I would conclude that the hearings officer paid no
 15 mind to how Mr. [REDACTED]'s disabilities led to the problem with the officers in the unit.

16 24. Ten months ago, Mr. [REDACTED] who is an *Armstrong* and a *Coleman* class
 17 member, was the victim of staff misconduct on April 24, 2019. He says:

18 Once I passed through the gate that separates the sally port
 19 from the dayroom, three officers-Officer [REDACTED] Officer
 20 [REDACTED] and Officer [REDACTED] – quickly entered the sally
 21 port from outside the building. They rushed toward me.
 22 Officer [REDACTED] who was in front of the other two officers, said
 23 "I'm gonna kick your ass." I tried to back up to get away from
 24 them, but the gate that separates the sally port from the
 25 dayroom was already closed so I was trapped in the sally port
 26 with the officers. Officer [REDACTED] had closed the gate behind
 me, but I had not heard it close because of my hearing
 impairment. I told the officers, "I'm not gonna fight you."
 Officer [REDACTED] said again, "I'm gonna kick your ass." Officer
 [REDACTED] then took a fighting stance, but somehow tripped or
 slipped and fell to the ground. While Officer [REDACTED] was on the
 ground, the other two officers started kicking me in my chest
 until I fell to the ground. I fell to a seated position with my
 back against the sally port gate. Officer [REDACTED] then got back to
 his feet and started hitting my face repeatedly. He hit me about
 50 times. At one point Officer [REDACTED] paused and stopped
 hitting me, I took that opportunity to tell him I had a
 pacemaker. He said, "So what, bitch" and started hitting me
 again. At the same time that Officer [REDACTED] was punching me

27 ⁷ *Ibid.*, page 4, lines 3 – 11

28 ⁸ *Ibid.*, page 7, lines 8 - 11

1 Officer [REDACTED] was stomping and kicking me in my chest,
2 legs and my left arm. The officers attacked me for about two
minutes...⁹

3 The officers beat me up very badly. I had a number of serious
4 injuries from the attack. I was crying from the pain. The
5 officers broke my left arm, which swelled up immediately.
6 The officers also hit my head so hard and so many times that
7 they broke my jaw. The officers' punches to my head also
caused a large cut to my tongue; it felt like the inside muscle of
my tongue was leaking out into my mouth. My clothes were
covered in blood. I also had a number of large bruises and cuts
on my head and chest.¹⁰

8 Mr. [REDACTED] then describes his attempts to seek medical attention.

9 Once inside Building 2, I went to Nurse Sanchez, who worked
10 in the building. I told her that I had been beaten up by officers
and that I thought my arm was broken. I asked her to give me
11 a pass to the Triage and Treatment Area ("TTA") or to push
her alarm to call for emergency medical assistance. She
12 refused, stating that Officer [REDACTED] and another officer told
her not to give me a pass.

13 I then went to talk to Officer [REDACTED] and another officer who
14 was on the dayroom floor. I asked them for a pass to the TTA.
They refused and ordered me to go back to my cell.

15 At about 7:00 p.m., my cell door opened for evening dayroom.
16 I again asked Nurse Sanchez to provide me with medical
assistance or a pass to the TTA. At this point my broken arm
17 continued to swell and was causing extreme pain. She again
refused, telling me that the officers told her not to give me a
pass.

18 I then asked Officer [REDACTED] if he would give me a pass to go
19 to the TTA. He refused and told me that "You shouldn't have
been talking shit." He also said that "nothing happened, so you
20 don't need medical care." Other people, including [REDACTED]
[REDACTED], also tried,
21 without success, to convince Officer [REDACTED] and Nurse
Sanchez that I needed urgent medical attention for my broken
22 arm and other injuries. Instead, Officer [REDACTED] told me that I
had to go back to my cell because I was inciting a riot in the
23 building. I went back to my cell to avoid any additional
problems with the officers...¹¹

24 At about 1:00 a.m. on April 25, 2019, a nurse from the TTA
25

26 ⁹ Declaration of [REDACTED], 01-07-20, page 2, lines 9 – 23

27 ¹⁰ *Ibid.*, page 3, lines 5 - 10

28 ¹¹ *Ibid.*, page 4, line 8 – 27

1 came to my cell and took me to the TTA. I was ultimately
2 diagnosed with a fracture to my arm and a fracture to my jaw.¹²

3 On that same day Mr. [REDACTED] reported this staff misconduct, first to a clinician,
4 Dr. Valaskatnjis. He then filed a complaint on May 15, 2019.¹³ According to his
5 declaration, the last word he heard about his complaint was on October 23, 2019 and that it
6 had been referred to the Office of Internal Affairs (OIA) for further investigation¹⁴, some
7 five months after he filed his complaint and six months after the event occurred.

8 In a letter dated May 31, 2019 Plaintiffs' counsel notified CDCR of Mr. [REDACTED] s
9 allegations. In that letter they offer the names of witnesses to the attack on Mr. [REDACTED].¹⁵
10 They supplemented that letter with another dated July 12, 2019.¹⁶ In this second letter they
11 identify additional witnesses and other potential lines of investigative inquiry and express
12 their concern about the conduct of the related investigation to date may have put some of
13 the potential witnesses at risk. As of this writing, the only response from CDCR to these
14 serious allegations came in the form of a letter dated December 30, 2019 that says little
15 more than there is an open OIA investigation.¹⁷ It is deeply disturbing that this is the only
16 response from CDCR, some eight months after the event and seven months after the
17 complaints were filed. In the meantime, the officers accused of such serious misconduct
18 presumably remain on their assigned posts.

19 In his declaration, Mr. [REDACTED] speculates as to the cause of his assault. He says:

20 I am not certain but I think I may have been attacked because I
21 sometimes file 602 grievances about officers. In particular, I
22 think that the attack on April 24, 2019 was in retaliation for a
23 602 I filed against Officer [REDACTED] for stealing my property. I
believe the at [REDACTED] lated because earlier that day out on the
yard, Officer [REDACTED] told me "They're gonna kick your ass."

24 ¹² *Ibid.*, page 5, line 8 - 10

25 ¹³ *Ibid.*, page 5, lines 11 - 13

26 ¹⁴ *Ibid.*, page 5, lines 16 - 19

27 ¹⁵ [REDACTED] Advocacy, 5-31-19

28 ¹⁶ [REDACTED] Supplemental Advocacy, 7-12-19

¹⁷ [REDACTED] Response, 12-30-19

1 I interpreted his statement as meaning that officers were going
2 to beat me up.¹⁸

3 Also in his declaration, Mr. [REDACTED] describes the fear he was experiencing being
4 in the proximity of the officers who assaulted him.

5 I still regularly see some of the of [REDACTED] re involved in
6 attacking me. I have seen Officer [REDACTED] on Facility A a
7 number of times since the attack. Officer [REDACTED] is a regular in
8 Building 1, so I see him on the yard frequently. Officer
9 [REDACTED] still works regularly in the tower in Building 2 during
10 Third Watch.

11 Since the attack, I am much more reluctant to ask staff for any
12 type of help that I might need for mental illness or for my
13 disabilities. I am afraid that if I interact with staff, it will cause
14 them to beat me up again.¹⁹

15 In my opinion, such fear is completely understandable. Mr. [REDACTED] states that that
16 the officers never sounded an alarm or provided him with a Rules Violation Report
17 regarding this incident, which strongly suggests that the use of force was unreported by the
18 involved officers. In my experience, when a use of force is unreported, it indicates that the
19 use of force was unwarranted or excessive. Furthermore, whatever reason CDCR may
20 give for use of force in this incident, the extent of the class member's injuries—a broken
21 arm—makes clear that the force was excessive. This class member has a hearing problem
22 that interferes with his balance. He has been diagnosed with paranoid schizophrenia. He
23 is 64 years old and has a pacemaker. It has been 8 months since the incident occurred and
24 there is still no resolution. Officers appear to have deliberately delayed his ability to
25 receive medical attention, illustrating the custody staff domination over medical care—and
26 the class member believes the assault was retaliation for previously filing a complaint. It
27 would be terrifying to be in the environment he is in, fearing that more retaliation may be
28 coming for once again filing a complaint against CDCR staff.

¹⁸ Declaration of [REDACTED], 01-07-20, page 3, line 24 – page 4, line 2

¹⁹ *Ibid.*, page 5, line 25 – page 6, line 5

25. In another recent incident Mr. [REDACTED] an *Armstrong* and *Coleman* class member at the acute level of care, describes his experience at RJD. On January 13, 2020 he was viewed masturbating in his cell (he was diagnosed with an exhibitionistic disorder in 2005 by CDCR). When he was instructed to do so, he stopped. About a half hour later several officers came to his cell door and brought him out. He then reports that officer proceeded to “trash” his cell. Mr. [REDACTED] told the officers he felt suicidal and that he had safety concerns. He was then told to cuff up and placed his hands in front of his body in order to be cuffed but the officer told him he would be cuffed in the back, even though he told the officer he had a waist-chain chrono (which would require cuffing in the front).²⁰ In his own words Mr. [REDACTED] then says:

Officer [REDACTED] then grabbed my right wrist and put one of his feet in front of my feet. He tripped me and slammed me into the ground. I hit my head on the ground and blacked out.

When I woke up, the officers were punching and kicking me in the head, ribs, and legs. As they hit me, the officers were yelling “Stop Resisting! Stop Resisting!” I was not resisting at all. I could hear other incarcerated people kicking their doors and yelling “that’s enough, that’s enough!” as the officers beat me. The officers assaulted me for around a minute. I felt one of the officers put his knee in my back and press my body hard into the ground.²¹

Mr. [REDACTED] was not at RJD when he wrote his declaration. But he describes his fear should he have to return.

If I was sent back to RID, I would be very afraid to ask officers to front-cuff me after what they did to me. I am afraid that if I asked for that accommodation, officers would beat me again. I would also not ask officers for other disability accommodations. If my walker was broken, I wouldn’t tell officers and ask them to fix it. I would be too afraid that they would beat me up again for asking.

If I was sent back to RID, I would be afraid to file an 1824 requesting a disability accommodation because of what officers might do to me. To be honest, if I was sent back to RID, I would be afraid to file any appeal asking for anything at all. I

²⁰ Declaration of [REDACTED] page 1, line 12 – page 3, line 12

²¹ *Ibid.*, page 3, lines 3 – 11

1 would be afraid to use the appeal process in any way, shape, or
2 form if I was sent back to RID.²²

3 This is an example of extreme and excessive force. In this example it appears that
4 the officers were simply punishing Mr. [REDACTED] for behavior that they deemed
5 unacceptable, and which directly related to his disabilities.

6 26. In another example, Mr. [REDACTED] is an *Armstrong* and a *Coleman* class
7 member at the EOP level of care. He is 59 years old and has a mobility disability and
8 requires a wheelchair for longer distances. On November 8, 2017 he was returned to RJD
9 from an outside hospital, where he had received treatment for a broken foot, and found he
10 had been assigned a new cell and a new cellmate. He requested a different cell assignment
11 and when he did so, was placed in cuffs and placed in a cage in the gym. Officer [REDACTED]
12 came to the gym and tried to talk Mr. [REDACTED] into changing his mind but was unsuccessful.
13 Mr. [REDACTED] then describes in his declaration what happened next.²³

14 A few minutes later, Officers [REDACTED]
15 and [REDACTED] entered the gym. They forced me out of the cage, on
16 to the floor, and then unloaded multiple cans of pepper spray
17 directly to my face. I became temporarily blind and started
18 choking. Then, the officers started kicking, punching, and
19 stomping my head, face, neck, body, and legs. At one point
20 one of the staff members asked me which foot of mine was
21 previously injured. I told them my right foot. Someone then
22 started kicking my right foot.

23 I suffered a broken foot, a broken finger, cuts, bruises swelling,
24 internal bleeding in my stomach, and a broken tooth as a result
25 of the attack. I also suffered anxiety and nightmares following
26 the incident.²⁴

27 In this incident CDCR staff are accused of using extreme use of force techniques
28 such as punching and kicking. But the behavior in this incident raises another concern
including a clear violation of the CDCR policy regarding controlled use of force.

22 *Ibid.*, page 4, lines 19 – 27

23 Declaration of [REDACTED], 01-08-20, page 1, line 7 – page 2, line 7

24 *Ibid.*, page 2, lines 8 - 16

1 Controlled use of force is defined in the CDCR DOM as:

2 A controlled use of force is the force used in an
3 institution/facility setting, when an inmate's presence or
4 conduct poses a threat to safety or security and the inmate is
5 located in an area that can be controlled or isolated. These
6 situations do not normally involve the imminent threat to loss
7 of life or imminent threat to institution security.²⁵

8 If the person is locked in a cage, it meets the threshold of "located in an area that
9 can be controlled and isolated." When that condition is met, the following language from
10 the DOM must apply.

11 All controlled uses of force shall be preceded by a cool down
12 period to allow the inmate an opportunity to comply with
13 custody staff orders. The cool down period shall include
14 clinical intervention (attempts to verbally counsel and persuade
15 the inmate to voluntary exit the area) by a licensed mental
16 health practitioner and may include similar attempts by custody
17 staff if authorized by the on-site manager.²⁶

18 In this incident it is possible Officer [REDACTED] attempted a verbal intervention but there
19 is no evidence that a mental health clinician was called to the scene.

20 The DOM also requires that a controlled use of force be video recorded.²⁷ There is
21 no indication of a video camera was made available to document this incident.

22 There are also requirements in the DOM that limit the amount of spray that can be
23 used in a controlled use of force situation, such as the one Mr. [REDACTED] describes. The DOM
24 says:

- 25 • MK-9 OC Vapor – limited to a single burst of 1-3 seconds in duration per
26 application with a maximum of two applications
- 27 • MK-9 OC Fogger – limited to a single burst of 1-5 seconds in duration per
28 application with a maximum of four applications
- MK-9 OC Foam – limited to a single burst of 1-5 seconds in duration per
application with a maximum of four applications²⁸

25 CDCD Department Operations Manual (DOM), 51020.4, Definitions

26 *Ibid.*, 51020.12

27 *Ibid.*, 51020.12.3

28 *Ibid.*, 51020.15.1

1 Mr. [REDACTED] describes being sprayed with “multiple cans”, which would be far in
2 excess of the limitations of the DOM.

3 These policy requirements in the DOM exist to protect the person from unnecessary
4 or excessive use of force. In this situation it appears all of these policy requirements (and
5 more²⁹) were ignored and Mr. [REDACTED] suffered as a result.

6 But the problems for Mr. [REDACTED] went beyond the use of force event. He received an
7 RVR for assaulting staff but denies this occurred and was found guilty.³⁰ He then filed a
8 complaint alleging staff assault and challenging the RVR finding. After serving his
9 segregation sentence he returned to the living unit and found:

10 Staff in my housing unit continued to take my privileges away
11 from me including yard time, phone, canteen, and day room.
12 The loss of privileges was not part of my sentence, which had
13 been served. I believe the additional loss of privileges was
14 done by staff in retaliation for my filing a staff complaint about
15 the assault.³¹

14 Mr. [REDACTED] describes the impact the incident (and others) had on him. In his
15 declaration he says:

16 In my time at RJD, there have been a few times that I needed
17 help but didn’t ask for it because I was afraid of what would
18 happen to me. I am intimidated by the officers because of what
19 I have witnessed and experienced. For example, about three or
20 four times I needed help with a wheelchair pusher and staff
21 refused to call someone to help me. I end up just wheeling
22 myself because I did not want risk getting into an altercation
23 with staff.³²

21 27. Mr. [REDACTED] is an *Armstrong* and *Coleman* class member. He uses a walker
22 to get around and sometimes experiences psychotic symptoms. On August 21, 2018, after
23 informing Officer [REDACTED] that he could not carry a large box of legal material to his living
24

25 ²⁹ *Ibid.*, see section 51020.12, which details the requirements for a controlled use of force
in great detail

26 ³⁰ Declaration of [REDACTED], 01-08-20, page 2, lines 17 – 20

27 ³¹ *Ibid.*, page 2, lines 23 - 26

28 ³² *Ibid.*, page 4, lines 21 - 26

unit due to his disability, he told the officer he planned to file a staff misconduct report if the officer would not assist him. Mr. [REDACTED] then says the officer called him a “crippled motherfucker”, sprayed him in the face with pepper spray, hit him in the face with the spray canister, was then thrown to the ground and was kicked and stomped by the officer and his glasses were broken.³³

Mr. [REDACTED] says that Officer [REDACTED] alleges the class member spat on him.³⁴ Even if true, such an act by the class member would not justify striking him with the spray canister or kicking and stomping him. Again here, the failure of staff to recognize and accommodate his disability appears to have led to the use of force incident.

Mr. [REDACTED] received an RVR, was found guilty and was given a sentence in segregation.³⁵

28. In May of 2019, [REDACTED] a *Coleman* class member, had a conflict in the dining hall, believing he did not receive the same food as others. He attempted to resolve the situation by talking to the staff. This was unsuccessful so he got back in line to get another tray. In his declaration he then reports the following:

I walked over to the food window and asked for another tray. Without warning, the two officers I had just been talking with charged at me from behind, grabbed my hands, and pulled both of my hands and arms high up behind my back. They lifted my hands and arms so high that I had to go on my tiptoes. They then forcefully escorted me to the exit of the dining hall. Although I was in pain from the way they positioned my arms, I was not resisting at all. Nonetheless they yelled at me to stop resisting.

When we reached the door, they used their control over my body to slam my head against the doorframe twice, once on each side of the doorframe. They then led me for a few steps out of the doorway. All of a sudden and without any warning, they lifted me by my arms, which were still behind my back, completely off the ground. One of the officers then began yanking and twisting my left arm until I heard a snap and felt something pop in my forearm. I felt an excruciating, sharp

³³ Declaration of [REDACTED], 02-07-20, page 2, lines 1 – 19

³⁴ *Ibid.*, page 2, lines 20 – 23

³⁵ *Ibid.*

1 pain. I knew the officer had just broken my arm.³⁶

2 According to the declaration, the physical abuse continued.³⁷ Medical staff then
3 confirmed his arm was broken and he was taken to the prison medical clinic and then to an
4 outside hospital.³⁸ However, the treatment received at the outside hospital was not
5 sufficient and the he continued to suffer severe pain. When he attempted to get additional
6 medical care corrections officers told medical staff that he was “faking it” and not to
7 provide him treatment. The medical staff deferred to the officers. This happened at least
8 three times. Finally the class member feigned chest pains and he got some medical
9 attention.³⁹

10 First of all, trying to get a second food tray is no justification for the need for
11 immediate force, as it is defined in CDCR policy. That policy says:

12 Immediate use of force is the force used to respond without
13 delay to a situation or circumstance that constitutes an
14 imminent threat to institution/facility security or the safety of
persons. Employees may use immediate force without prior
authorization from a higher official.

15 Immediate force may be necessary to subdue an attacker,
16 overcome resistance or effect custody.⁴⁰

17 Second, the restraining tactic used, raising the restrained persons arms so far behind
18 his back and above his head so that he was lifted off the ground is completely
19 inappropriate and far outside any use of force training curriculum I have ever seen. This is
20 abusive, unnecessary and excessive.

21 The class member received an RVR related to this incident for “delaying an officer
22 in the performance of his duties”.⁴¹ When told by the hearing officer, “Yes, I will find you

23
24 ³⁶ Declaration of [REDACTED] 01-08-20, page 2, lines 9 - 21

25 ³⁷ *Ibid.*, page 2, line 22 – page 3, line 8

26 ³⁸ *Ibid.*, page 3, lines 9 - 18

27 ³⁹ *Ibid.*, page 4, line 6 - 18

28 ⁴⁰ CDCR Department Operations Manual, 51020.4, Definitions

⁴¹ Declaration of [REDACTED], 01-08-20, page 5, lines 9 & 10

1 guilty either way”, out of frustration the class member went ahead and pled guilty and lost
2 60 days of credit.⁴²

3 Finally, the class member filed a formal complaint about what happened to him. He
4 reports two members of the Investigative Services Unit (ISU) interviewed him. They
5 showed him one photo of an officer and the class member told him that was not the officer
6 that assaulted him. He then asked to see the officer assignments for the day he was
7 assaulted but his request was denied. He also provided the ISU officers the names of
8 others in the dining hall that witnessed the assault. The response to his third level appeal,
9 dated December 30, 2019, indicated his complaint was referred to the OIA but, as of the
10 time of his declaration, he had heard nothing from that office regarding the investigation.⁴³

11 This example is important in that it hits upon many of the opinions I expressed in
12 my summary of opinions above. This use of force event was unnecessary. It was
13 excessive and resulted in a serious injury. Officers interfered in him receiving medical
14 treatment. The hearing for the RVR he received appears to have a pre-determined
15 conclusion. And in the investigation of his complaint he was refused access to information
16 that may have helped to identify the officers who committed the misconduct. Nor were his
17 named witnesses pursued. Last, this event is now nine months old and as of January 8,
18 2020, he had yet to hear from OIA investigators and the officers involved presumably
19 remain in their assignments.

20 29. In another example, Mr. [REDACTED] is 63 years old and is an *Armstrong* and
21 *Coleman* class member. He reports that in November of 2018 Officer [REDACTED] punched him
22 in the face⁴⁴ and that Officer [REDACTED] kicked him.⁴⁵ He was threatened that if he reported
23 this event he would be charged with staff assault.⁴⁶ He did report the incident to a mental

24 ⁴² *Ibid.*, page 5, lines 14 - 20

25 ⁴³ *Ibid.*, page 5, line 21 – page 6, line 2

26 ⁴⁴ Declaration of [REDACTED], 01-08-20, page 2, line 27 – page 3, line 1

27 ⁴⁵ *Ibid.*, page 3, lines 15 & 16

28 ⁴⁶ *Ibid.*, page 3, lines 25 & 26

1 health clinician who called for a Sergeant and Lieutenant who interviewed him on video.
 2 In his declaration he reports the following:

3 After the video-interview finished, I continued talking to the
 4 clinician about what had happened. At some point, the clinician
 5 told me that staff misconduct seems to be an ongoing problem
 6 at RJD. He stated that there were a number of people in the
 CMC MHCB population who were alleging the same things as
 me: that staff had assaulted them, causing them to become
 suicidal and leading to their transfer to a CMC MHCB.⁴⁷

7 It is heartening that the clinician listened to him but very troublesome that the
 8 clinician appears to understand staff misconduct is a systemic problem at the RJD.

9 Mr. [REDACTED] received an RVR for resisting an officer, a charge he denies. At his
 10 hearing he asked to bring witnesses. He reports the hearing officer told him, "What can
 11 they tell me that I don't already know? You're guilty."⁴⁸ In the deposition of a clinical
 12 psychologist, she indicates eleven class members reported to her they had witnessed the
 13 beating of Mr. [REDACTED] a fact that should not be ignored in any subsequent investigation.⁴⁹

14 Mr. [REDACTED] did file a complaint alleging staff misconduct about 3 weeks after the
 15 event occurred in November of 2018. As of the date of his declaration in January of 2020
 16 he has yet to receive any response.⁵⁰

17 30. The examples above of unnecessary and excessive uses of force, including
 18 multiple examples of closed fist punches and kicks, are but a few of what is in the record.
 19 There is a clear pattern and practice of physical abuse of *Armstrong* and *Coleman* class
 20 members in RJD. The staff misconduct, both in terms of its scope and severity, is highly
 21 concerning and much more systemic than what I have seen in any other correctional
 22 system or facility. Further, there is a pattern of staff failing to recognize and accommodate
 23 the disability that leads to the use of force incident.

24
 25 ⁴⁷ *Ibid.*, page 5, lines 4 – 8

26 ⁴⁸ *Ibid.*, page 6, lines 5 – 8

27 ⁴⁹ Depo Transcript – [REDACTED] page 159, line 18 – page 161, line 3

28 ⁵⁰ Declaration of [REDACTED] 01-08-20, page 6, lines 10 - 16

1 31. Punching someone in the face or kicking someone is not typically authorized
 2 as a first response in a use of force situation. Steve Martin is an attorney and a use of force
 3 expert who his highly respected in his field. He was Defendants' expert in the *Coleman*
 4 case in which I testified. Writing in the Journal of Law and Policy, he addresses the issue
 5 of punches and kicks. Mr. Martin said:

6 I have been involved in numerous cases in which staff
 7 members' fists and feet were employed either prematurely or
 8 needlessly to vulnerable areas of the body such as the head,
 9 groin and kidneys when other, less injurious control tactics
 10 could have been more effectively employed to control,
 11 neutralize or immobilize a disruptive prisoner. The routine use
 12 of needlessly injurious, hard-impact strikes to the head of a
 13 prisoner in those instances in which some level of control is
 14 necessary is no less an abuse of use of force standards or legal
 15 constraints than when they are employed solely for
 16 punishment. In other words, if a self-defense tactic such as
 17 non-blunt force can effectively neutralize a disruptive prisoner,
 18 it is not appropriate to strike the prisoner with blunt force to the
 19 head, especially when such strikes often do not actually
 20 neutralize the aggressing inmate. In fact, such tactics often
 21 create a purely retaliatory cycle of violence in which both the
 22 officer and prisoner sustain injuries and the degree of injuries
 23 sustained is more serious.⁵¹

24 I agree with Mr. Martin. The frequency of punches and kicks in the records I have
 25 reviewed causes me to believe that these tactics are used primarily to inflict pain and not to
 26 intervene to control a situation. I am deeply concerned that this does not appear to be an
 27 issue of concern for CDCR staff at RJD.

28 32. Mr. Martin's 2006 paper speaks to the UOF issues at RJD. From that paper:

It is not uncommon for ostensibly lawful applications of
 physical force to mask the intentional infliction of punishment,
 retaliation or reprisal on prisoners. Manufacturing or
 exaggerating the need to physically control a prisoner is one
 means by which staff pretextually use force for inflicting
 punishment on a prisoner. An application of force that is
 legitimately initiated but which escalates to a level of force
 disproportionate to the objective risks presented by the inmate
 can likewise be used pretextually by correctional personnel to
 punish prisoners. On those occasions in which unnecessary or

⁵¹ *Staff Use of Force in United State Confinement Settings*, Steve J. Martin, Journal of
 Law & Policy Volume 22:145, page 3

disproportionate force is applied for the primary purpose of inflicting punishment, retaliation, or reprisal, rather than control, such application of force constitutes de facto corporal punishment regardless of its ostensible justification. Often times the subjects of such force are mentally ill offenders whose behavior, as viewed by inadequately trained officers, is to be punished rather than treated.⁵²

33. Beyond the issue of punches and kicks utilized primarily for punishment, such UOF techniques are dangerous and carry a high risk of injury. Human Rights Watch published a report regarding UOF practices in the United States. The report said, “Punches, kicks, or blows to the head, neck, face, or groin carry a high risk of injury”.⁵³ The report goes on to say:

According to the American Bar Association these types of force should not be used except in highly unusual circumstances in which a prisoner poses an imminent threat of serious bodily harm. American Bar Association, ABA Standards of Criminal Justice (3rd ed.): Treatment of Prisoners, June 2011, p. 132. Recent settlements of lawsuits restrict the use of such types of force. For example, part of the settlement of a lawsuit alleging widespread inmate abuse, the Los Angeles Sheriff’s Department must develop use of force policies whereby “striking an inmate in the head or kicking an inmate who is on the ground, or kicking an inmate who is not on the ground anywhere above the knees is prohibited unless the inmate is assaultive and presents an imminent danger of serious injury...” See, e.g. *Rosas v. Baca*, United States District Court for the Central District of California, case no. 00:12-CV-00428, Implementation Plan, 2.6., filed on December 17, 2014.⁵⁴

In order to protect the class members at RJD, CDCR must examine and seek to limit the use of punches and kicks on the persons incarcerated at that facility. In my own experience in Washington, punches and kicks were not unauthorized but were limited to situations where other UOF methods had failed and/or the officer was in a situation that they could not control any other way and they believed they were in great danger. I have not had an opportunity to review CDCR’s UOF curriculum for officers but I am curious

⁵² *Ibid.*, page 4

⁵³ *Callous and Cruel, Use of Force Against Inmates with Mental Disabilities in US Jails and Prisons*, Human Rights Watch, 2015, page 58

⁵⁴ *Ibid.*

1 how or if this issue is addressed in the training of their correctional officers.

2 34. The examples above of unnecessary and excessive use of force, including
3 multiple examples of closed fist punches and kicks, has not only been documented in the
4 class member's declarations but in reports from other sources.

5 35. The Office of the Inspector General (OIG) has an oversight function over
6 CDCR.⁵⁵ The OIG, Roy Wesley was recently deposed for this case. In his deposition he is
7 asked about UOF at RJD. This is what he said.

8 Q. You testified earlier that you had concerns about staff
9 misconduct at Richard J. Donovan Correctional Facility as a
10 result of you monitoring of that prison. Specifically, you
11 indicated that you felt that correctional officer behavior incited
12 some of the actions that led to the need to use force at the
13 prison, is that correct?

14 A. Yes. That wasn't the only reason I had concerns at
15 RJD, though.

16 Q. And what are some of the other reasons that you had
17 concerns about RJD?

18 A. So under our statute, we take complaints from the
19 public, that includes inmates, family, and very large numbers
20 of complaints come out of RJD. And—and have some sort of
21 the same theme about officer misconduct, unreasonable use of
22 force, tends to be in a couple of the same yards. And we, of
23 course, don't investigate, we simply have to turn that
24 information over to the Department, so —

25 Q. Have you turned that information over to the
26 Department?

27 A. Yes.

28 Q. Do you know whether or not the Department has taken
any specific action at RJD to address the complaints you've
turned over to them?

A. They haven't taken any specific action. They told me
that they are aware of problems on those yards and they are
watching them.⁵⁶

Q. You said that the complaints that you receive, the
citizen complaints that you receive from RJD, are similar in

⁵⁵ Depo Transcript – Roy Wesley, 02-22-20, page 8 line 25 – page 9, line 2

⁵⁶ *Ibid.*, page 73, line 7 – page 74, line 9

1 nature to one another. Can you explain what you mean by
2 that?

3 A. We've received a lot of complaints of unreasonable and
4 unnecessary use of force, and the same names keep coming up.
5 And we've passed that on to the Department to be aware that a
6 lot of these complaints are involving the same officers. And as
7 far as I know, I don't know what they've done. Maybe they
8 are looking carefully at those officers. I don't know. I
9 continue to get complaints.⁵⁷

10 I submit that it is far past the time to be "watching", it is time for action to stop the
11 abuse and I will illustrate later in this report that the problem of unnecessary and excessive
12 use of force has continued throughout the past year. I also submit that in the class member
13 declarations the same officer names continue to come up and that the problematic
14 correctional officers are frequently named.

15 ***Other Examples of Verbal and Physical Abuse of Class Members***

16 36. There are a number of examples of RJD officers failing to account for class
17 member disabilities.

18 37. Mr. [REDACTED] an *Armstrong* class member who uses a wheelchair, said:

19 He told me to put my hands behind my back so that he could
20 hand cuff me. I told him that I could not do that because I
21 would fall as a result of my disability. I have a chrono for
22 special cuffing in front of my body so that I can always hold on
23 to something to maintain my balance. Without saying another
24 word, Officer [REDACTED] grabbed my left wrist off of my walker
25 using his left hand and pulled it behind my back...⁵⁸

26 Once on the ground, Officer [REDACTED] cuffed me behind my back
27 in violation of my cuffing chrono. The cuffing caused me
28 significant pain, especially because he made the cuffs very
tight.⁵⁹

38. Class member [REDACTED] an *Armstrong* class member who also uses a
wheelchair said:

⁵⁷ *Ibid.*, page 74, line 15 – page 75, line 1

⁵⁸ Declaration of [REDACTED] 01-08-20, page 2, lines 4 – 9

⁵⁹ *Ibid.*, lines 16 - 18

On July 21, 2019, on Facility B in Building 9, staff denied me access to a shower during my typical time slot in the morning. When my cell door opened later that day, I approached a floor officer to let him know I needed to take a shower. The officer started running towards me and screaming, "Get back in your fucking cell!" I stopped in my tracks. I attempted to explain to him that I wanted to take a shower. He stated that I was not getting a shower that day and ordered me back to my cell. I told him that I thought he was in violation of policy. Next, he started yelling at me, "You don't fucking know who you are dealing with! You are on my list now! I am going to fuck you up!" I feared for my safety.⁶⁰

39. Class member [REDACTED] who is an *Armstrong* and *Coleman* class member who uses a walker and cane to get around said:

I would estimate that staff endanger me by closing the cell door while I am still in the doorway a few times a week. I have been regularly bruised from falling down due to staff closing my cell door on me. Time and again, I tell staff that I need more time to get into and out of my cell, but they do not always listen. Due to the frequency of these incidents, I have learned how to fall against my cell wall as safely as possible, because I know that staff will not give me enough time to get into or out of my cell.⁶¹

40. Mr. [REDACTED] an *Armstrong* and *Coleman* class member who uses a wheelchair said:

Officers have closed cell doors on me multiple times. I have seen staff close cell doors on other incarcerated people many times. Sometimes I have seen staff laugh at incarcerated people when this happens.⁶²

41. Mr. [REDACTED] a *Coleman* class member at the EOP level of care, said:

After I was hand cuffed, I told staff, including Office [REDACTED] who was escorting me, that I was feeling suicidal and I wanted to talk to my clinician. I was feeling very upset about the way staff treated me and I was fed up. I wanted to end my life. Instead of taking me to my clinician, the officers put me back in my cell in C-14. When I got to my cell Officer [REDACTED] said to me, "Go ahead and cut your wrist". The other officer who was with him said, "We'll give you a razor." This made me

⁶⁰ Declaration of [REDACTED], 01-07-20, page 2, line 25 – page 3, line 6

⁶¹ Declaration of [REDACTED], 01-07-20, page 2, lines 8 - 14

⁶² Declaration of [REDACTED] 01-08-20, page 1, lines 23 - 25

upset and angry. I was looking around my cell but couldn't find something to cut myself.

Two weeks later Sergeant [REDACTED] came and asked me, "What's this about you saying that [REDACTED] told you to cut your wrists?" I told Sergeant [REDACTED] that Officer [REDACTED] did say that. Next Sergeant [REDACTED] had me sign a piece of paper saying that I do not have a problem with Officer [REDACTED]. I signed the paper because I was very stressed out about it and he said that if I did not sign it they would move me. I was very worried I would lose my property. I felt pressured so I signed it.⁶³

42. The materials I have reviewed contain several more similar examples. It is very clear that officers at RJD do not demonstrate a basic understanding of the challenges facing the class members in their care. This is an example of lack of training, or training that did not work. It is also an example of the lack of proper supervision of the officers as these examples are so prevalent that there is no way they can go unnoticed by RJD supervisors.

Officers Enlist Other Incarcerated People to Commit Assaults Against Class Members

43. There are consistent reports that officers use some prisoners to assault class members. This is similar to historical abuses in United States prisons where some incarcerated persons are delegated the authority of the staff, in this case to assault their incarcerated peers. It is shocking to hear of such a practice in 2020 in a CDCR facility.

44. Mr. [REDACTED] is a 74-year old *Armstrong* class member. While out of the unit for a medical appointment on August 23, 2018 he returned to find his personal property missing. His cellmate told him that Officer [REDACTED] paid him to take the property and sell it to others in the living unit. Mr. [REDACTED] then filed a staff misconduct complaint against the officer and his complaint was denied. A few weeks later Mr. [REDACTED] witnessed another incarcerated person be handed a note by Officer [REDACTED]. Shortly thereafter a note appeared on Mr. [REDACTED]'s cell door telling him to "leave the unit or else." About three weeks later while in the shower Mr. [REDACTED] was sucker punched in the face by the same

⁶³ Declaration of [REDACTED], 01-08-20, page 2, lines 3 – 16

1 person that put the note on his door, resulting in a tear to his cornea. That person said to
 2 Mr. [REDACTED] "This is from [REDACTED]".⁶⁴

3 45. Mr. [REDACTED] was an *Armstrong* and *Coleman* class member. He was being
 4 treated with chemotherapy. He said:

5 In February 2018, I filed a staff misconduct lawsuit against
 6 [REDACTED]. After I filed that lawsuit, an incarcerated
 7 person named [REDACTED] who was a friend of mine, told me that
 8 Officer [REDACTED] was offering \$1000 to anyone who would
 9 attack me.

10 [REDACTED] stated that he was present when money was offered to
 11 incarcerated people on the yard who were known to engage in
 12 such attacks on behalf of staff members. [REDACTED] also stated
 13 that he was present when two incarcerated people who agreed
 14 to work for Officer [REDACTED] directed others to orchestrate an
 15 attack on me because I was "homosexual."...⁶⁵

16 I feared for my life so I sought protection from a former well
 17 known gang leader who I knew who was also incarcerated on
 18 the same yard at RJD. He protected me and I am deeply
 19 indebted to him. I owe him my life. On a daily basis I see
 20 what happens to other people who do not have the benefit of
 21 having this kind of protection in prison. They are regularly
 22 attacked by other incarcerated people and suffer grave
 23 consequences.⁶⁶

24 It is very tragic that this class member had to resort to the protection of gangs when
 25 he felt threatened by the staff that should have been his protectors. I am informed that
 26 Mr. [REDACTED] was attacked in his cell on February 4, 2020 and has since died. These
 27 words from his declaration are haunting:

28 After [REDACTED] told me that information, I lived in fear that any
 29 day my cell door would be popped open by staff and
 30 incarcerated people would be let in to attack me.

31 I have seen officers at RJD look the other way and allow
 32 incarcerated people to attack other incarcerated people without
 33 intervening to stop the violence.⁶⁷

34 ⁶⁴ Declaration of [REDACTED] 01-08-20, page 1, line 15 – page 2, line 8

35 ⁶⁵ Declaration of [REDACTED] 01-08-20, page 3, lines 13 -19

36 ⁶⁶ *Ibid.*, page 3, line 24 – page 4, line 2

37 ⁶⁷ *Ibid.*, page 3, lines 20 – 23

1 46. Mr. [REDACTED] is an *Armstrong* and a *Coleman* class member at the EOP level
 2 of care. In August of 2018, members of the Plaintiffs' team and CDCR's Office of Audits
 3 and Court Compliance (OACC) interviewed him. A month later Lieutenant [REDACTED]
 4 interviewed him and asked if he had been interviewed during the audit and whether or not he
 5 had any general complaints about staff, specifically about Officer [REDACTED].
 6 Mr. [REDACTED] told the Lieutenant that he had not made any formal complaints. About a
 7 month later, on October 4, 2018 he was stabbed multiple times. He spent twelve days in
 8 the hospital, three of them in intensive care. Upon his return to RJD, Mr. [REDACTED] reports
 9 the following:

10 One of the prisoners who stabbed me, told me, "It's nothing
 11 personal, bro. This was just business." He then told me that he
 12 had been paid to stab me. A week later, I was being taken to
 13 the medical building behind the B7 Unit when I saw this
 14 prisoner in the yard cages. I asked him "Who [paid you to stab
 15 me]?" and signaled that was asking who paid to stab me. He
 16 responded "[Officer] [REDACTED] and then made a phone gesture,
 17 which I took to mean he had been paid with a cell phone."⁶⁸

18 47. Mr. [REDACTED] is an *Armstrong* and a *Coleman* class member at the EOP level
 19 of care and requires the full time use of a wheelchair. In his declaration he says:

20 On a number of occasions, I have witnessed Officer [REDACTED]
 21 instruct incarcerated people who work for him to assault other
 22 people who are causing trouble for Officer [REDACTED]."
 23 Sometime in June or July 2019, there was an incident in which
 24 a person on drugs was acting out of line in Section A of the
 25 housing unit.

26 This person was running around the housing unit with his pants
 27 down, screaming, slamming on people's cell doors, and
 28 kicking down trashcans. Based on his behavior, I believe that
 29 this person was under the influence of drugs at the time. While
 30 this man was causing trouble, I observed Officer [REDACTED] walk
 31 over to talk to a porter who works for him in the housing unit.
 32 This porter is named [REDACTED] and he is known to be a member
 33 of the [REDACTED] gang. I heard Officer [REDACTED] tell
 34 [REDACTED] that he should, "Shut him [referring to the disruptive
 35 person] down, and stop him." Moments later, I saw [REDACTED] and
 36 another incarcerated person walk over to the disruptive person,
 37 grab him, and drag him to his cell. They entered the person's

⁶⁸ Declaration of [REDACTED], 12-16-19, page 1, line 23 – page 3, line 6

cell with him. I then witnessed [REDACTED] and the other person assault the person who was on drugs, punched and kicking him until he stopped screaming. Officer [REDACTED] was in the housing unit the whole time this happened, and I did not see him intervene at any point.⁶⁹

48. Mr. [REDACTED] is an *Armstrong* and *Coleman* class member. He is currently at the Intermediate Care Facility (ICF) level of care. After speaking to CDCR investigators in February 2019 about pervasive staff misconduct that he witnessed on Facility C at RJD, Mr. [REDACTED] returned to his housing unit. After he walked in, he says:

Officer [REDACTED] saw me and called out "Hey [REDACTED] how was your attorney visit?" As he said "attorney visit", he made an air quote sign with his fingers. I stopped, worried about what was about to happen. Officer [REDACTED] said "We already know that you weren't out there talking to your attorney. You were talking to OIA." He then ran his finger along his badge and said "Did you spell my name right?" All of the officers laughed. I was terrified...

I returned back to the C15 Unit after dinner [the next day]. As I started to walk to my cell, Officer [REDACTED] motioned at me to come over. Officer [REDACTED] demanded to know what I had told the investigators. He asked me "What did they want to know, what were they asking?" I was not sure what to say and just stammered that I hadn't said anything. Officer [REDACTED] asked "Just tell me, what did they want to know?" Under pressure, I told him that they wanted to know about staff misconduct on C-Yard. He asked me "What did you tell them?" I told him that I told them nothing. Officer [REDACTED] then told me "Go back to your cell." As I started walking away, he said "Stop. Are you coming out for dayroom later?" I told him I was. He then told me to go back to my cell.

At approximately 7:00 pm that night, I came out for dayroom. I went to a table and sat down to tutor another incarcerated person. Almost immediately, someone came up behind me and began striking me in the head with his fists, knocking me to the floor. As I fell on the ground, I was repeatedly kicked and stomped in the head. I blacked out...

After I returned from the hospital the second time, another incarcerated person, Mr. [REDACTED] came up to me in my unit. He told me that he had seen Mr. [REDACTED] talking to Officer [REDACTED] and Officer [REDACTED] immediately before the officers let us out for dayroom. He told me that he saw the officers hand Mr. [REDACTED] a pair of black gloves. He said it looked like they were giving Mr. [REDACTED] some sort of instructions.

⁶⁹ Declaration of [REDACTED], 01-06-20, page 4, lines 9 - 24

1 He told me that he then saw Mr. [REDACTED] pacing back and
 2 forth in the dayroom, swinging his arms and throwing punches
 3 in the air in an apparent attempt to warm up. It is my belief
 4 that officers asked or ordered Mr. [REDACTED] to assault me.⁷⁰

4 49. There are other similar examples in the record. Such a practice at a
 5 correctional facility undermines the legitimacy of the authority for the entire institution. It
 6 is unconscionable. If I had this information as a prison Superintendent or as the Secretary,
 7 I would have referred these allegations to outside law enforcement for a criminal
 8 investigation.

9 *Investigations and Tracking of Investigations Are Inadequate*

10 50. The OIG sent a letter to the CDCR Secretary, Ralph Diaz, dated January 17,
 11 2020 addressing advocacy letters received from *Coleman* and *Armstrong* Plaintiffs’
 12 counsel since January of 2019. The OIG says, “The purpose of this letter is to report what
 13 action we were able to determine that the department took upon receiving these
 14 complaints.”⁷¹ The letter goes on to say:

15 In summary, our review of the department’s handling of these
 16 advocacy letters revealed a pervasive lack of timely follow
 17 through by the department after being informed of potential
 18 staff misconduct. Even in the few cases when the department
 19 did take action, they ignored many of the allegations in the
 20 letters...⁷²

19 Overall, we determined that the department, for the most part,
 20 did not thoroughly review the issues raised in the advocacy
 21 letters. The advocacy letters raised 31 allegations that were
 22 previously unknown to the department. Of those 31 additional
 23 allegations, the department conducted an inquiry into only
 24 three.⁷³

22 The letter then goes on to provide some detail on the allegations that were not
 23 addressed, most of which were related to UOF issues. It is particularly disappointing that
 24 even when attorneys for the Plaintiffs were making the inquiry CDCR did not thoroughly

25 ⁷⁰ Declaration of [REDACTED] 02-10-20, page 11, line 14 – page 13, line 11

26 ⁷¹ Letter to Ralph Diaz, 01-17-20, page 1

27 ⁷² *Ibid.*

28 ⁷³ *Ibid.*, pages 2 – 3

1 investigate information provided to them regarding staff misconduct. It does not speak
2 well for class members who are not represented by the protection of counsel.

3 51. During the deposition of the OIG in responding to a line of questioning about
4 investigations being conducted by people outside the institution, the OIG said:

5 Q. You also stated that having inquiries conducted by
6 personnel from outside of the prison would have introduced
much needed transparency in those issues, is that correct?

7 A. Yes.

8 Q. Can you explain what you mean by that?

9 A. So the – first of all, I do understand the Department is
10 not obligated to do outside inquiries. They have people
assigned to the prison to do those. Our experience in the past
11 has been that these people at the prison are not particularly well
trained to do staff misconduct inquiries. And that, at any rate,
12 having people at the local institution do a staff misconduct
inquiry oftentimes raises an issue of bias because these are the
13 people that they work with.⁷⁴

14 Given the depth of the problems that the RJD faces regarding their ongoing pattern
15 of staff misconduct, the opinions offered by the OIG here are important. First, he indicates
16 that local investigators are not well trained to do staff misconduct investigations. Then he
17 indicates the problem of having local staff do such investigations and the perception of the
18 reality of bias this creates. I concur that if outside investigations were adopted it would
19 likely improve investigations.

20 52. It is my understanding from reviewing the transcript from the deposition of
21 Kimberly Seibel that CDCR recently put in place a process for outside investigators,
22 housed within the Office of Internal Affairs, to conduct some investigations into staff
23 misconduct at RJD.⁷⁵ Such a change is a step in the right direction for addressing the
24 serious problems with staff misconduct at RJD. However, from the OIG's deposition
25 testimony, I understand that it is possible that investigations into staff misconduct that

26 _____
27 ⁷⁴ Depo Transcript – Roy Wesley, 01-22-20, page 16, line 18 – page 17, line 7

28 ⁷⁵ Depo Transcript – Kim Seibel, 01-29-20, page 226, line 5 – page 227, line 10

1 relate to a reported use of force incident, including allegations of use of force, would still
 2 be conducted by local Investigative Services Unit staff, rather than the investigators from
 3 the OIA. Many of the staff misconduct allegations in the declarations involve excessive
 4 use of force that was part of a reported use of force. Outside investigators should conduct
 5 investigations into all allegations of staff misconduct in order to overcome the biases and
 6 lack of training of the local investigators discussed by the OIG. Given the scope of the
 7 problems at RJD, CDCR must take all available steps to remedy the situation.

8 53. The OIG is then asked about the testimony of inmates during the CDCR
 9 investigation process at another facility. From his deposition:

10 Q. In this report you found an apparent bias and hostility
 11 against inmate testimony and evidence by CDCR attorneys
 12 charged with litigating employee misconduct cases before the
 13 State Personnel Board.

14 A. I did.⁷⁶

15 54. The OIG further addresses inmate testimony and opines on the value of
 16 video camera in the investigation process.

17 Q. How common is it for a staff misconduct case to rest on
 18 inmate testimony?

19 A. I don't think it is very common at all. I think most of
 20 the time there is other evidence from other officers, there's
 21 video, there's – you name it. I think it is relatively uncommon.

22 Q. Do you think video is an important component of staff
 23 misconduct investigations and inquiries?

24 A. I think it can be, but it's not available in most cases.

25 Q. And why is it not available in most cases?

26 A. There's no camera in most prisons.

27 Q. Would installing cameras in prisons assist in providing
 28 important evidence in the staff misconduct inquiry and
 investigation process?

A. Based on the research I've done, yes, I think it would.

⁷⁶ Depo Transcript – Roy Wesley, 01-22-20, page 21, lines 5 - 9

1 There are a number of jurisdictions that have cameras in their
 2 jails and prisons. And they seem to have a better process for
 3 the staff misconduct. There are at least two prisons in the
 4 California system that have a very good video camera system,
 and in those case – in those places we don't have nearly as
 many problems as in other prisons where there are no
 cameras.⁷⁷

5 55. I agree with the OIG. In my experience camera footage is extremely
 6 valuable in UOF investigations. I used it frequently in my roles as prison Superintendent,
 7 Assistant Director of Prisons, and as Deputy Secretary. In the records I have reviewed
 8 there is a startling lack of available video evidence at RJD. But there are a couple of
 9 examples that illustrate the value of cameras.

10 56. In an interview conducted with incarcerated person Mr. [REDACTED] on January 22,
 11 2019 by Sergeant [REDACTED] he asks Mr. [REDACTED] “if anything happened on the yard the morning
 12 before (January 21, 2019), in the chow hall.” Mr. [REDACTED] said:

13 Well, yeah, this guy that always seems to be into some stuff
 14 was thrown to the ground and roughed up a little bit...

15 He was grabbed off his walker and thrown to the ground, but
 16 on the other hand this guy has been going through this stuff
 with them (officers) for weeks, he's on a hunger strike and all
 that, and he talks shit and he's miserable.

17 The record then identifies the incarcerated person in question as [REDACTED]⁷⁸

18 57. In the subsequent OIA investigation a line of inquiry is pursued about the
 19 difference between the written statements of three correctional officers involved in this
 20 event and the available video record. The allegations were:

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

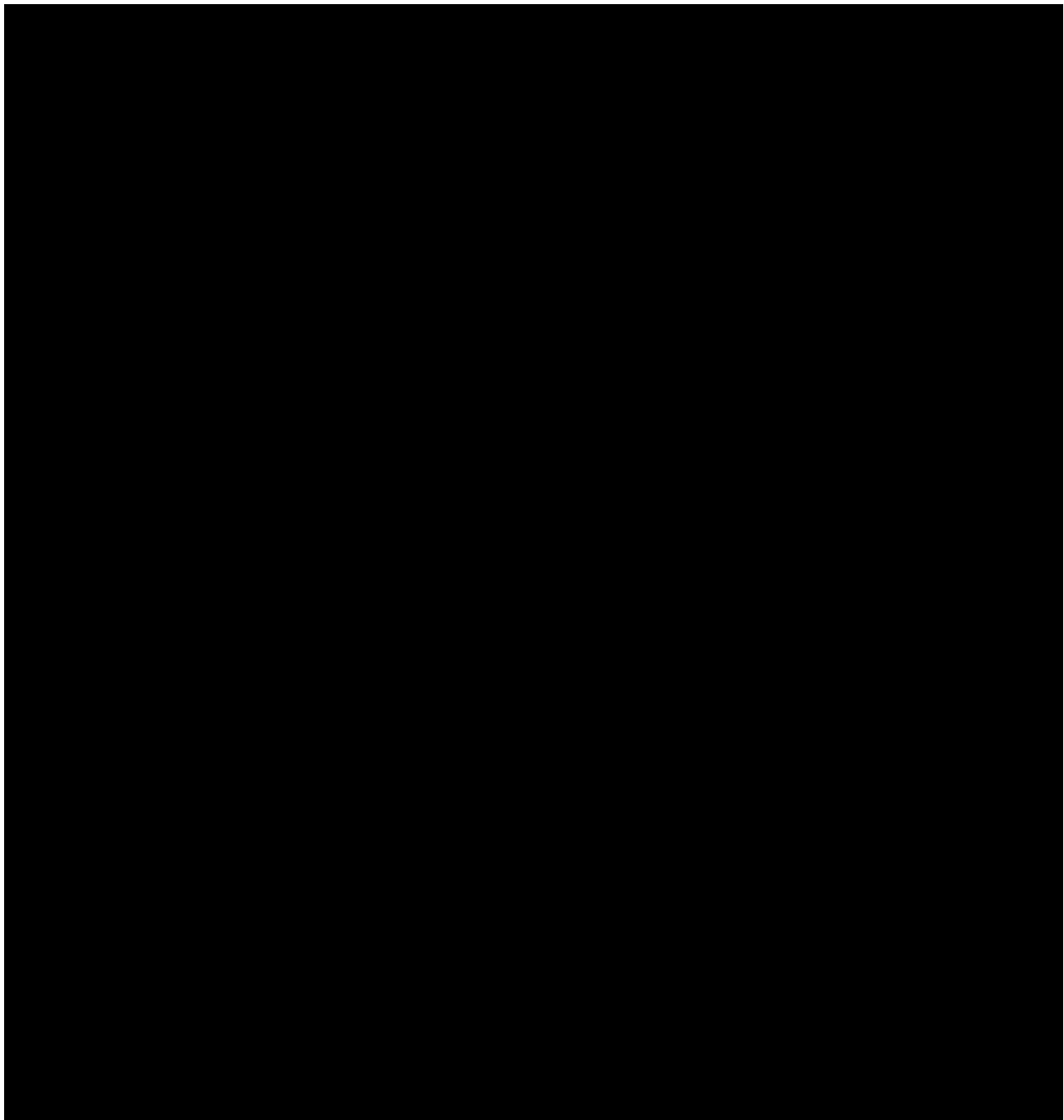
25 [REDACTED]

26 [REDACTED]

27 ⁷⁷ *Ibid.*, page 22, line 20 – page 23, line 18

28 ⁷⁸ Memo from [REDACTED] to P. Covello re Further Investigations Needed, page 1

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⁷⁹ Internal Affairs Investigation Report re [REDACTED] Incident – prod at 2-4-20, pages 1 & 2
⁸⁰ Internal Affairs Investigation Report – Supp re [REDACTED] Incident – prod at 2-4-20, page 2
⁸¹ Internal Affairs Investigation Report re [REDACTED] Incident – prod at 2-4-20, page 3
⁸² *Ibid.*, page 5
⁸³ *Ibid.*, page 6
⁸⁴ *Ibid.*, pages 8 & 9
⁸⁵ *Ibid.*, page 11

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The conclusion of this investigation is that all three officers had their cases referred to the hiring authority (the Warden), for disciplinary action. It is important to note that all three of these officers reported that the class member first threw himself to the ground and then later resisted when cuffs were being applied. They were all asked if they corroborated

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, page 12

⁸⁸ *Ibid.*, page 14

⁸⁹ *Ibid.*, pages 15 & 16

⁹⁰ Internal Affairs Investigation Report – Supp re [REDACTED] Incident – prod at 2-4-20

⁹¹ *Ibid.*, page 6

1 in writing their reports, which they all denied. This testimony seems to stretch credulity in
 2 that the all the officers reported the same thing that was refuted by the actual video record.
 3 The importance of the video footage is confirmed in Associate Director Seibel's
 4 deposition, resulting in the dismissal of these three officers.⁹² As a result of the video
 5 footage these three officers were dismissed. In my review of the records, staff misconduct
 6 is not found unless there is video evidence or counter testimony from a staff member.
 7 Without that video record this incident would have disappeared and no one would have
 8 been held accountable.

9 58. What this example illustrates is the power of video evidence when
 10 allegations of staff misconduct are made. The testimony of the OIG and the example
 11 above illustrate the problems with investigations into staff misconduct at RJD and within
 12 the CDCR. RJD needs to have and use video camera evidence to protect the class
 13 members in their charge. RJD must expand its use of video, a recommendation I will
 14 elaborate on at the end of this declaration.

15 59. In another case, illustrating the value of staff counter testimony, Officer
 16 [REDACTED] kicked Mr. [REDACTED] a *Coleman* class member, in the face.⁹³ Because there was a
 17 mental health staff person who observed the event and was willing to report what was
 18 witnessed, the correctional officer was terminated from employment.⁹⁴ All staff at RJD
 19 should be so courageous and it must be clarified that doing so is the explicit expectation
 20 for each and every employee.⁹⁵

21 60. But it hasn't been easy for that mental health staff person, Clinical
 22 Psychologist [REDACTED] to report witnessing the physical abuse of [REDACTED] In her
 23 deposition she describes witnessing Mr. [REDACTED] being kicked twice in the face as
 24

25 ⁹² Confidential portion of Kim Seibel deposition, page 66, line 21 – page 67, line 6

26 ⁹³ [REDACTED] Advocacy, 10-4-19, page 2

27 ⁹⁴ Depo Transcript – Kimberly Seibel, page 273, lines 12 – 19

28 ⁹⁵ DOM 31140.5

1 “traumatic” for her.⁹⁶ She describes her personal response to what she saw and what she
2 believed would follow, as she knew she had to report what she had witnessed.

3 I think at that point I just started to become really overwhelmed
4 with my own sort of physiological responses. I got really hot.
5 I was—my heart started to pound. I was really upset. I mean,
6 I started to cry in my off—in my supervisor’s office. In part
7 because I knew that I had to report it, but I know that I was
8 gonna go through this. I knew I was gonna go through a lot
9 afterwards. I knew it was gonna be really hard and that it
10 wasn’t gonna stop that day.⁹⁷

11 As it turns out, she was correct. Later in her deposition she describes multiple ways
12 in which she experienced retaliation for reporting what she saw. She gives examples of
13 officers no longer responding to simple greetings of good morning or assisting her in
14 locating a patient.⁹⁸ She says her office was broken into, following her filing a report
15 regarding Mr. [REDACTED] an act she suspects was retaliation for her reporting.⁹⁹ And then she
16 describes an officer filing a false report about her attendance, an action she says she had
17 not heard of before—a custody officer tracking attendance for mental health staff.¹⁰⁰ And
18 finally, she predicts retaliation in the workplace in the future as a result of sitting for her
19 deposition.¹⁰¹ While cameras offer objective evidence that is difficult for CDCR to deny in
20 a UOF investigation, like in the [REDACTED] case, for staff to come forward and do the right
21 thing by reporting what they saw, there is a price to pay. This is indicative of a very
22 diseased culture and RJD is unlikely to change until that culture is addressed.

23 61. Also regarding investigations, according to the Chief of the OIA, Ms. Ramos
24 said in her deposition that OIA does not track whether or not a person is an *Armstrong*

25 ⁹⁶ Depo Transcript – [REDACTED] page 53, lines 11 & 12

26 ⁹⁷ *Ibid.*, page 55, lines 16 – 24

27 ⁹⁸ *Ibid.*, page 130, line 25 – page 131, line 19

28 ⁹⁹ *Ibid.*, page 134, line 10 – 14

¹⁰⁰ *Ibid.*, page 141, lines 18 – 23 and page 142, line 12 – 17

¹⁰¹ *Ibid.*, page 152, lines 12 – 19

1 class member when investigating a complaint.¹⁰² She also tells us in her deposition that
 2 OIA investigators do not receive *Armstrong* training.¹⁰³ These are significant errors in the
 3 process if investigators are not trained and aware that a person might suffer from a
 4 disability when conducting an investigation and how that fits in the context of the
 5 *Armstrong* Remedial Plan.

6 62. Plaintiffs' counsel did not have investigation reports for all incidents
 7 reported in the declarations at the time I drafted this report. Investigations I did review
 8 appear to be of poor quality.

9 63. For example, Mr. [REDACTED] who is an *Armstrong* and a *Coleman* class member
 10 at the EOP level of care, in April 2019, was instructed to move to another building. He
 11 told the officers he was afraid to move to the building where he was to be assigned. He put
 12 his hands behind his back in order to be cuffed, assuming, I believe, that refusing housing
 13 would result in him being placed in segregation. The officers did not cuff him.¹⁰⁴

14 Mr. [REDACTED] reports what happened next:

15 Next thing I know, an officer pepper-sprayed me directly in the
 16 face. I immediately collapsed to the ground, and then, while I
 17 lay on the ground, Officer [REDACTED] punched me in the face. The
 18 officers surrounding me then joined in, stomping on my chest
 19 and kicking me over and over again in the face and in my ribs.
 I recall in particular that Officer [REDACTED] kicked me multiple
 times after I was restrained and on the ground. I don't
 remember how long the beating lasted, but it was at least a few
 minutes.¹⁰⁵

20 Mr. [REDACTED] was severely injured in this incident, including broken bones, and was
 21 taken to an outside hospital.

22 Medical staff then sent me to Scripps-Mercy Hospital, where I
 23 was admitted and stayed for four days. After conducting a CT
 24 scan, doctors there diagnosed me with three broken ribs on my
 left side. Doctors at Scripps-Mercy also stitched up a deep

25 ¹⁰² Depo Transcript – Tricia Ramos, page 122, lines 19 – 22 and page 125 line 23 – page
 126, line 1

26 ¹⁰³ *Ibid.*, page 51, lines 11 – 17

27 ¹⁰⁴ Declaration of [REDACTED], 01-29-20, page 2, lines 3 – 18

28 ¹⁰⁵ *Ibid.*, lines 20 – 25

1 laceration on my lip. I was also diagnosed with an acute closed
2 head injury, facial contusions, abrasions, and hematoma, and
blunt abdominal trauma.¹⁰⁶

3 Mr. [REDACTED] received an RVR for this event for spitting on staff while in the gym, an
4 allegation he denies and says it would have been impossible since the officers put a spit
5 mask on him during the entire time he was in the gym and until he was transported to the
6 hospital. He also received an RVR for threatening staff in the housing unit, an allegation
7 he also denies.¹⁰⁷

8 Mr. [REDACTED] describes the impact this incident and his experience at RJD has had on
9 him.

10 I believe I was targeted by staff because of my disability. I
11 believe that because I was in a wheelchair, I was singled out as
12 an easy target by staff. I do not think staff would have done
13 that to me if I was not a wheelchair user. That's why I gave
14 my wheelchair back to staff about a month ago —I do not want
to be identified as vulnerable and in a wheelchair. My back
hurts every day, and I still have the same medical problems
that are helped by a wheelchair, but I do not want to deal with
being in a wheelchair and being assaulted.¹⁰⁸

15 On February 3, 2020, Defendants sent a “Closure Letter” regarding this case. The
16 letter describes the investigation into this incident and concludes the “the staff misconduct
17 allegations made by Mr. [REDACTED] were not supported by the evidence”.¹⁰⁹ The letter reveals
18 several problems with the investigation.

19 Mr. [REDACTED] denies any spitting occurred and says he received an RVR for spitting on
20 officers while he was in the gym. The letter says there was “a video recording of the time
21 Mr. [REDACTED] was in a holding cage in Facility C Gymnasium.”¹¹⁰ There is no indication that
22 the discrepancy in what Mr. [REDACTED] says about spitting and what is in the investigation
23 about when the spit mask was applied was investigated by viewing the above referenced

24 ¹⁰⁶ *Ibid.*, 3, line 14 – 18

25 ¹⁰⁷ *Ibid.*, page 4, lines 10 – 17

26 ¹⁰⁸ *Ibid.*, page 5, lines 1 - 7

27 ¹⁰⁹ Closure Letter [REDACTED], 02-03-20, page 3

28 ¹¹⁰ *Ibid.*, page 2.

1 video.

2 Four incarcerated people were interviewed as part of the investigation but two of
3 them said they saw nothing. One of them, Mr. [REDACTED] said he saw Mr. [REDACTED] rush the
4 officers. But Mr. [REDACTED]'s cellmate at the time, Mr. [REDACTED] essentially confirms Mr. [REDACTED]'s
5 account of what happened.¹¹¹ In my opinion, the discrepancy between what Mr. [REDACTED] and
6 Mr. [REDACTED] said should have required more incarcerated people who saw the incident
7 should have been interviewed to see if the discrepancy could be resolved.

8 Further, the three incarcerated people who were selected by staff as witnesses used
9 oddly similar language in their statements, each stating clear disdain for Mr. [REDACTED] and
10 some version of him being a “piece of shit” who “got what he deserved.”¹¹² This suggests,
11 in my opinion, that the interviews may not have been conducted in a confidential,
12 professional manner and, of course, that staff failed to identify unbiased interviewees.

13 In the case of Mr. [REDACTED] he alleged that on March 28, 2019, his cell door was
14 opened by staff who let at least two other incarcerated people enter his cell. These
15 incarcerated people then attacked him and took his television, radio, and canteen items.¹¹³
16 He saw the officers watch the attack in progress and then walk away.¹¹⁴ He had multiple
17 facial fractures, which required two surgeries to repair.¹¹⁵ In response to Mr. [REDACTED]'s
18 allegations, CDCR conducted interviews of three incarcerated people, in addition to
19 Mr. [REDACTED] and three custody staff members who all reported that they never heard or
20 saw anything unusual on that day.¹¹⁶ Based on these statements, and with no explanation
21 of how Mr. [REDACTED] obtained such serious injuries including broken bones on that day,
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23

24 ¹¹¹ DOJ00001370

25 ¹¹² DOJ00001370 – DOJ00001371

26 ¹¹³ Declaration of [REDACTED] 01-07-20, page 2, lines 12- 27

27 ¹¹⁴ *Ibid.*, page 3, lines 6-11

28 ¹¹⁵ *Ibid.*, page 4, lines 6-10

¹¹⁶ DOJ00012972 – DOJ00012976

1 CDCR concluded that no misconduct occurred.¹¹⁷ The investigation should have gone
2 further to resolve this inconsistency.

3 Based on the few cases I reviewed from RJD, it appears that in staff misconduct
4 inquiries staff only rely on statements from incarcerated people to exonerate staff and
5 never rely on such statements to find staff guilty, except where video evidence or staff
6 member statements corroborate such statements.

7 Whatever a more serious investigation might have revealed, what these incidents
8 show is that it is very likely that, if there were more cameras in RJD, these investigations
9 would have been more complete. They are further examples of the need for video at RJD.

10 64. Based on my review of statements made by CDCR officials during
11 depositions, I conclude that CDCR has no reliable means of tracking incidents of
12 misconduct.¹¹⁸ Such a system is necessary to identify the scope of problems and also to
13 track staff who are repeat offenders of misconduct in order to take appropriate disciplinary
14 action. An effective tracking system can serve as an invaluable early warning system to
15 assist in identifying problematic officers, times of day (including times of mass
16 movement), and problematic locations, throughout a prison system.

17 ***Class Members Fear and Experience Retaliation if They File Complaints***

18 65. In the analysis of Mr. [REDACTED]'s situation described earlier in this report he
19 believes the incident was caused as a result of him previously filing complaints against the
20 staff at the RJD. Mr. [REDACTED] case, also cited above, describes the retaliation he suffered
21 after he filed a staff complaint. This is a common theme in the declarations of the class
22 members. For example:

- 23 • Mr. [REDACTED] believes he was “targeted” because he had previously filed
24 complaints against staff.¹¹⁹

25 ¹¹⁷ DOJ00012976 – DOJ00012979

26 ¹¹⁸ Depo Transcript – Kim Seibel, pages 205-7, lines 7 – 20; Depo Transcript – Tricia
27 Ramos, page 103, lines 6 – 24, pages 144-160, lines 4-25.

28 ¹¹⁹ Declaration of [REDACTED] 01-06-20, page 4, lines 3 & 4

- 1 • Mr. [REDACTED] believes he suffers retaliation for filing complaints against staff.¹²⁰
- 2 • Mr. [REDACTED] did not file a complaint after officers threatened retaliation
- 3 against him if he were to do so.¹²¹
- 4 • Mr. [REDACTED] believes he suffered retaliation for filing a complaint.¹²²
- 5 • Mr. [REDACTED] says he lied to medical staff about how he was injured after he
- 6 was threatened by officers should he report that they were the cause of his
- 7 injury.¹²³
- 8 • Mr. [REDACTED] said he feared retaliation for filing a report should he be returned
- 9 to Facility C at RJD.¹²⁴
- 10 • Mr. [REDACTED] reports he suffered retaliation for filing complaints of staff
- 11 misconduct.¹²⁵
- 12 • Mr. [REDACTED] says staff assaulted him immediately after he said he was
- 13 going to file a complaint.¹²⁶
- 14 • Mr. [REDACTED] said he “was hit by an officer.” He then said, “They took me to
- 15 the hospital and they were questioning me about what happened and if I
- 16 wanted to say anything about it but I told them I didn’t want to talk to
- 17 anyone because I didn’t want to get hurt again.”¹²⁷
- 18 • Mr. [REDACTED] said, “Initially I was going to file my appeal but I see how many
- 19 inmates were getting their asses beat by cops and if not by cops then other
- 20 inmates...”¹²⁸
- 21 • Mr. [REDACTED] says he was left [REDACTED] in cuffs for two days. When he was
- 22 asked for help from Officer [REDACTED] the officer refused and told him,
- 23 “Don’t file PREA (Prison Rape Elimination Act) reports”. He reports that
- 24 Officer [REDACTED] said the same. He then said, “Based on these comments, I
- 25 believe I was intentionally left handcuffed in my cell for days in retaliation
- 26 for having filed PREA reports against RJD staff members.”¹²⁹

20 ¹²⁰ Declaration of [REDACTED] 01-08-20, page 2, lines 10 – 16

21 ¹²¹ Declaration of [REDACTED], 01-07-20, page 2, lines 1 – 5 and page 3, lines 15 – 18

22 ¹²² [REDACTED] Advocacy, 10-04-19, page 5

23 ¹²³ Declaration of [REDACTED] 12-17-19, page 3, lines 11 – 17

24 ¹²⁴ [REDACTED] Advocacy, 11-09-18, page 3

25 ¹²⁵ [REDACTED] Advocacy, 2-26-19, page 1

26 ¹²⁶ 1-26-19 – Memo from [REDACTED] to P. Covello re Further Investigation Needed, page 3

27 ¹²⁷ *Ibid.*, page 5

28 ¹²⁸ 1-26-19 - Memo from [REDACTED] to P. Covello re Non-Referrals, page 2

¹²⁹ Declaration of [REDACTED], 01-29-20, page 2, lines 22 – 25

- 1 • Mr. [REDACTED] said, “When I asked one of the officers why they were harassing
2 me, he said, “Because of you, something is going to happen to Officer
[REDACTED] and that’s messed up because he’s a good guy.”¹³⁰
- 3 • Mr. [REDACTED] describes his fear of asking for an accommodation after what
4 he has already experienced at RJD.
- 5 • Mr. [REDACTED] says that, after talking to CDCR investigators about staff
6 misconduct at RJD, he was confronted by multiple officers in his housing
7 unit who mocked and threatened him. The next day, he reports he was
8 violently assaulted by another incarcerated person, leading to his
hospitalization. After returning from the hospital, he reports that another
9 incarcerated person informed him that his assailant was seen talking with
10 officer [REDACTED] warming up for what appeared to be a fight immediately before
11 Mr. [REDACTED] was assaulted.¹³¹

12 66. There are other, similar statements in the record. In December of 2018 a
13 CDCR team was deployed to RJD “with the purpose of conducting a series of inmate
14 interviews in an attempt to find facts related to a serious complaint brought forward by
15 plaintiffs’ attorneys during recent tours of the facility.” Further focus of this inquiry was:

- 16 • Inmates complaining of inappropriate force being used by staff members.
- 17 • Inmates alleging these staff are targeting “vulnerable” inmates for such
18 assaults.
- 19 • Inmates alleging that although these incidents of serious force originate with
20 staff, the incidents are turned into allegations by staff that the inmates
21 assaulted staff first, and resulted in disciplinary action against the inmates.
- 22 • The above behaviors were largely isolated to RJD’s Facility C.¹³²

23 67. I have had the opportunity to review notes taken by the CDCR team of their
24 interviews with 82 different incarcerated persons, many of whom have not filed
25 declarations in this case, in other words people who had not filed formal complaints.¹³³
26 The notes are remarkably consistent in describing the culture of physical brutality and fear
27 of retaliation if incarcerated persons report staff misconduct at RJD. These interview notes
28

29 ¹³⁰ Declaration of [REDACTED], 01-24-20, page 6, lines 20 – 22

30 ¹³¹ Declaration of [REDACTED], 02-10-20, page 11, line 9 – page 13, line 11

31 ¹³² 12-10-18 – Memo from AW Bishop to K. Seibel, page 1

32 ¹³³ 01_DOJ00003827 – 83_DOJ00004499

1 offer powerful evidence of the pervasive fear of retaliation the people incarcerated at are
 2 RJD experiencing. Here are but a few samples:

- 3 • Report of misconduct is not kept confidential and does not get followed
 4 through. Inmates do not feel comfortable reporting...not willing to provide
 names due to fear of retaliation.¹³⁴
- 5 • Recanted statement via form 22 to avoid harassment...retaliation can be
 6 expected by either officers or by inmates.¹³⁵
- 7 • I wouldn't file. I make a point not to...(you will) get a weapon planted on
 8 you. Take your property.¹³⁶
- 9 • The cops will search the house, spread rumors, turn inmates on each other.¹³⁷
- 10 • The paperwork might disappear. He would expect retaliation and get treated
 11 worse.¹³⁸
- 12 • What can an inmate at RJD expect when filing a complaint, or coming
 forward to make an allegation of unnecessary or excessive force? "See the
 bottom of a boot".¹³⁹

13 Nearly every one of the interview notes contains similar comments. In addition, the
 14 interview team selected 150 prisoners, or 20% from Facility C at RJD to be interviewed.
 15 Nearly a third refused to participate in the interviews, another indicator that there is
 16 widespread fear of retaliation and as Ms. Seibel says, adds credibility to the allegations.¹⁴⁰
 17 There is clearly a pattern of threats of retaliation and actual retaliation at RJD when people
 18 incarcerated at that facility file complaints about staff misconduct. This problem must be
 19 addressed.

23 ¹³⁴ DOJ00003860

24 ¹³⁵ DOJ00003943, 3944

25 ¹³⁶ DOJ00004088

26 ¹³⁷ DOJ00004436

27 ¹³⁸ DOJ00004478

28 ¹³⁹ DOJ00004304

¹⁴⁰ Confidential portion Kim Seibel Depo, page 43, line 11 – page 44, line 17

RVR's Findings Are Faulty

68. In the examples I have listed above and in several others in the materials I have reviewed, there are frequently questionable findings in RVRs that class members have received.

69. One shocking example is for Mr. [REDACTED], the person who was kicked in the head by an officer who was ultimately terminated (pending appeal) for that misconduct. Mr. [REDACTED] received an RVR for that incident for assaulting an officer. A psychologist who witnessed the incident filed an incident report that was used to establish that the officer used excessive force. At her deposition, the psychologist testified that Mr. [REDACTED] never used any force against the officers. She testified that before the officers pepper sprayed Mr. [REDACTED] Mr. [REDACTED] was standing and yelling at officers with his fists clenched.¹⁴¹ Based on her testimony, it appears that the officers fabricated the RVR in an effort to cover up the excessive use of force

70. The declarations contain a number of additional examples of potentially false RVRs or problematic RVR hearings.

- Mr. [REDACTED]'s profound deafness does not appear to have been considered by the hearing officer.¹⁴²
- It appears that the outcome of Mr. [REDACTED]'s RVR hearing was predetermined.¹⁴³
- Mr. [REDACTED] received an RVR for staff assault that he denies and indicates he was the one who was assaulted.¹⁴⁴
- Mr. [REDACTED] received an RVR for resisting an officer. He reports, "When I went to the hearing for my RVR, the hearing officer, Lieutenant [REDACTED] told me, 'I believe my staff and I'm gonna find you guilty.'" When I asked to bring witnesses to the hearing, he replied, "What can they tell me that I don't already know? You're guilty." I was ultimately found guilty, and I

¹⁴¹ Depo Transcript – [REDACTED] page 37, lines 11 – page 38, line 13

¹⁴² Declaration of [REDACTED], 01-31-20, page 7, line 8 – 14

¹⁴³ Declaration of [REDACTED], 01-08-20, page 5, line 18

¹⁴⁴ Declaration of [REDACTED] 02-07-20, page 2, lines 20 – 24

was sanctioned with 90 days of credit loss.”¹⁴⁵

- Mr. [REDACTED] says he believes he received a false RVR for reporting staff misconduct. He was found guilty of the RVR and reports the hearing officer refused his request to interview witnesses or review the defense he had prepared. He quotes the hearing officer saying, “I believe my officer, I am going to find you guilty. If you don’t like it, 602 it.”¹⁴⁶
- Ms. [REDACTED] says that at her RVR hearing, her questions were not answered and she was not allowed to call her cellmate or anyone else as a witness.¹⁴⁷

71. Returning to the OIG’s deposition, he testifies about the weight of inmate testimony in CDCR.

Q. What weight should be given inmate testimony during the staff misconduct inquiry and investigation process?

A. Well, I think the case law is pretty clear, inmate testimony is to be looked at with some suspicion, but it needs to be corroborated. And when it is corroborated, it certainly is as valid as any other testimony....¹⁴⁸

Q. So, properly corroborated inmate testimony should be afforded weight, in your opinion?

A. Yes.

Q. Do you believe bias against inmate testimony is a pervasive problem in staff misconduct investigation in CDCR?

A. I believe that, yes.

Q. Can you explain why you believe that?

A. I’ve seen a lot of they’re (sic) called RVR hearings, they’re (sic) rules violation hearings where inmates are told, “I don’t care what you tell me, I’m going to believe the officer.”

Q. Are statements like that misconduct by the hearing officers?

A. I don’t think they’re properly doing their job. I don’t know whether it’s misconduct.

Q. And what should hearing officers be doing in order to

¹⁴⁵ Declaration of [REDACTED], 01-08-20, page 6, lines 5 – 9

¹⁴⁶ Declaration of [REDACTED], 01-07-20, page 4, lines 12 - 24

¹⁴⁷ Declaration of [REDACTED], 01-08-20, page 4, lines 18 -22

¹⁴⁸ Depo Transcript – Roy Wesley, page 22, lines 4 – 11

properly do their job?

A. They should be affording due process.¹⁴⁹

72. Each of the RVRs listed above, and there are others, are connected to allegations of staff misconduct. Given the pervasive allegations of staff misconduct at RJD these RVRs must be viewed in that context and it is very unlikely that CDCR provided adequate due process to these class members. Many of the individuals lost sentence credits as a result of the RVRs. In my opinion, given the specific evidence of problems with the RVR process at RJD, all of the RVRs issued to declarants related to instances of staff misconduct must be reviewed.

Other Remedies Have Failed

73. The results of this review conducted by the December 2018 team were summarized in an Executive Summary and go beyond the issue of retaliation.

- Abuse of authority, and excessive/unnecessary force being used and not reported.
- Custody staff inhibiting all inmate avenues for redress of grievances, filing a staff complaint, or requesting help with a safety concern.
- Unchecked Security Threat Group (i.e. gang) activity.
- Mentally disordered offenders, developmentally disabled offenders, sex offenders and homosexual/transgender offenders being targeted for assault and/or abuse by staff.
- Gang-like activity among custody staff.
- Inadequate, insufficient, and absent supervisory and managerial oversight.
- Physical plant design flaws, contributing to the above problems.¹⁵⁰

The report also indicates that 82% of those interviewed, “provided meaningful information alleging one of more of the core concerns of this review”,¹⁵¹ a clear indicator

¹⁴⁹ *Ibid.*, page 25, line 15 – page 26, line 8

¹⁵⁰ Memo from AW Bishop to K. Seibel, pages 1 – 2

¹⁵¹ *Ibid.*, page 3

1 of the depth of the problem. Ms. Seibel called this information “very concerning”.¹⁵² I
 2 concur with her opinion, as it is entirely consistent with my review of the class member’s
 3 declarations and the material made available to me in this case.

4 74. But the work done in December 2018 is not the first time the systemic
 5 problems were brought to the attention of CDCR top officials. In an email from Sara
 6 Malone, Chief, Office of Ombudsman to Associate Director Seibel and Director of the
 7 Division of Adult Institutions Gibson, Chief Malone makes reference to a review done in
 8 September, presumably 2018. In the email she says:

9 The results of these interviews (from December 2018) were no
 10 different than the results of my teams tour 9/11-14. If you refer
 11 to that report and/or the information provided by Eric Joe in his
 12 exit, there has been little to no progress since September. My
 13 concern is waiting for a January report is the inmates shared
 that person information is being gathered by staff to “deal with
 it” if nothing happens soon to address the issues...I am not
 typically an alarmist, but again, I have never heard such
 despair, hopelessness, and fear from inmates...¹⁵³

14 Earlier in this email chain, Chief Malone describes her experience in the December
 15 2108 audit of RJD.

16 We completed the interviews today and what we heard was
 17 overwhelming accusations of abuse by the Officers with Sgt’s
 18 and Lt’s looking in the other direction. I have never heard
 19 accusations like these in all my years. I would strongly suggest
 20 placing a strike team on the yard immediately. Many of the
 21 inmates express fear of what will happen to provide support on
 22 that yard tomorrow...This is a very serious situation and needs
 immediate attention. If there is any means of installing
 cameras immediately I would strongly suggest it, at least in the
 blind spots and the back door of the gym. A review of the
 appeal process, RVR’s and staff complaints off that yard also
 needs to take place ASAP.¹⁵⁴

23 75. A month after the above email was written, in January of 2019 two ISU
 24 Sergeants and a Lieutenant were sent to RJD to do additional research into the problem.

25
 26 ¹⁵² Confidential portion of Kim Seibel Depo, page 45, line 24 – page 25, line 1

27 ¹⁵³ 12-05-18 – Email Chain re December 2018 Audit

28 ¹⁵⁴ *Ibid.*

1 They identified eight cases that, in their opinion, required additional investigation. Each
 2 one involved unnecessary and/or excessive use of force. They wrote a report to document
 3 their findings.¹⁵⁵

4 76. One of those cases involved class member [REDACTED] The interviewers
 5 report:

6 Inmate [REDACTED] was asked to describe in detail the allegations
 7 he made during an interview on December 5, 2018, regarding
 8 an inmate getting pulled out of his wheelchair and beat up.
 9 Inmate [REDACTED] stated, "Yeah that was me, I got beat. I was
 10 going for me (sic) kosher meal and I was told I was going the
 11 wrong way, they told me to go the other way. When I was
 12 going the other way a CO [REDACTED] was calling me a retard and
 13 stuff like that, I told him I was going to report him. He said
 14 what did you say, I said I was going to report you, and before
 15 the words could even come out of my mouth, I got pepper
 16 sprayed in the face and pulled out of my chair, and beat up a
 17 little bit. It was Officer [REDACTED] he said he was going to write me
 18 up. So I just dropped it, I don't want any problems. I just want
 19 to do my program and go home." Inmate [REDACTED] was asked
 20 if he filed a 602 inmate appeal, he stated he did and then he
 21 withdrew it.¹⁵⁶

22 In a nutshell, this describes the too frequent nature of the on-going problem at RJD.
 23 Class members suffer from staff misconduct, file a complaint and then are intimidated into
 24 silence and drop the complaint.

25 77. Another example from the same report involved Mr. [REDACTED]. A different
 26 incarcerated person, Mr. [REDACTED] said he witnessed staff misconduct against Mr. [REDACTED]
 27 Mr. [REDACTED] is reported to have said:

28 Oh, you're talking about Inmate [REDACTED]¹⁵⁷, in the kitchen; it was
 by CO [REDACTED] I was right there. We were in the chow hall and
 [REDACTED] had some altered pants. [REDACTED] was like get your ass out
 of the kitchen you can't be in here like that. [REDACTED] was like
 please I just want to eat I don't have any other pants. [REDACTED]
 put him on the wall and he said something in his ear, then he
 threw him on the ground and he slapped him, hit him in the

¹⁵⁵ 1-26-19 – Memo from [REDACTED] to P. Covello re Further Investigation Needed

¹⁵⁶ *Ibid.*, page 3

¹⁵⁷ *Ibid.*, page 4 clarifies this was Mr. [REDACTED] Inmate [REDACTED] was identified as Inmate
 [REDACTED]

1 head and kicked him.¹⁵⁸

2 There was a second incarcerated person witness to the staff misconduct against
3 Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] was interviewed about what he saw. The report says,
4 in part:

5 Yeah [REDACTED] he got beat up in the chow hall. He had his pants
6 cut at the bottom, the officers told him not to come in the chow
7 hall like that, and he had been doing it for a couple days.
8 Inmate [REDACTED] yelled at [REDACTED] saying he didn't have any other
9 pants. Officer [REDACTED] grabbed him and threw him up against
10 the wall socked him up a few times threw him on the ground
11 and then socked him a few more times. This was in front of
12 the whole chow hall, everyone seen it. Then he (Officer
13 [REDACTED] kicked him in the head and then told him to get back in
14 line.¹⁵⁹

15 Finally, Mr. [REDACTED] was also interviewed. He said:

16 Yes, I was hit by an officer. I approached the chow hall, and
17 the guy told me you aren't supposed to be wearing pants like
18 that. The pants were like shorts on me. I cut the pants and
19 made them like shorts. He told me I had to go back to the
20 building, but I refused to go back because I didn't have any
21 other pants to wear. He told me if you don't go back to the
22 building I'm going to hit you, and he hit me and I fell down.
23 Another inmate helped me get up. I was thinking about what
24 happened while I was eating and I got mad and threw the tray
25 up against the wall and I ran out of the chow hall. They chased
26 me out of the chow hall and tackled me down to the ground,
27 and everything else they said was true.¹⁶⁰

28 Sadly, Mr. [REDACTED]'s final response during the interview illustrates the depth of the
fear class members at RJD experience if they were to report staff misconduct.

“They took me to the hospital and they were questioning me about what
happened and if I wanted to say anything about it, but I told them I didn't
want to talk to anyone because I didn't want to get hurt again.” Inmate
[REDACTED] was asked if he filed an appeal he stated he didn't because he didn't
want to get hurt or anyone else to get hurt.¹⁶¹

There is now apparently another witness to the assault on Mr. [REDACTED] that should be

¹⁵⁸ *Ibid.*, page 3

¹⁵⁹ *Ibid.*, page 4

¹⁶⁰ *Ibid.*, page 5

¹⁶¹ *Ibid.*

1 explored in any subsequent investigation. The related report includes the witness reporting
 2 the staff misconduct to both a Sergeant and a Lieutenant but he was ignored.¹⁶² The fact
 3 that these mid-level supervisors ignored the witness is indicative of the depth of the
 4 problem at RJD.

5 78. The same group of CDCR ISU staff submitted a second report; largely
 6 attempting to indicate some complaints did not require follow-up investigations.¹⁶³ I have
 7 some disagreement with their conclusions.

8 79. Mr. [REDACTED] was interviewed about witnessing an assault by officers on a
 9 person identified only by the nickname of "[REDACTED]". The report says:

10 Inmate [REDACTED] was asked to describe in detail the
 11 allegations he made during an interview on December 4,
 12 2018¹⁶⁴, regarding an inmate getting his teeth knocked out by
 13 staff. Inmate [REDACTED] stated, "I can't really remember that,
 14 I can't really remember details. I don't even remember how
 15 long ago it was," Inmate [REDACTED] was asked if he could
 16 remember the inmate's name, he stated, "I just remember he
 17 went by a name '[REDACTED]', he was mixed black and white, he
 18 lived in C14, and he's gone now, I don't remember the staff
 19 involved."¹⁶⁵

16 It is not surprising to me that Mr. [REDACTED] was reluctant to provide testimony
 17 about staff misconduct to another set of CDCR staff interviewers. But the interviewers
 18 prematurely reach the following conclusion.

19 Inmate [REDACTED]'s accounts of the said incidents are either
 20 hearsay or in a manner which show lack of evidence to
 21 substantiate his claims. It is recommended no further action
 22 necessary.¹⁶⁶

22 The investigators ignore that a housing unit was identified that might help identify
 23 the true name of the person nicknamed "[REDACTED]". Additional class member declarations

24 ¹⁶² Declaration of [REDACTED] 02-10-20, page 7, line 21 – page 8, line 25

25 ¹⁶³ 1-26-19 – Memo from [REDACTED] to P. Covello re Non-Referrals

26 ¹⁶⁴ See Memo from AW Bishop to K. Seibel, page 16

27 ¹⁶⁵ 1-26-19 – Memo from [REDACTED] to P. Covello re Non-Referrals, page 6

28 ¹⁶⁶ Ibid

1 now exist that speak to the same incident, with two class members believing that officers
 2 contributed to the death of “[REDACTED]”¹⁶⁷ It is clear regarding this incident that more
 3 investigation was/is needed.

4 80. This same report indicates that two people refused to come out for interviews
 5 in January 2019¹⁶⁸, even though they made allegations of staff misconduct when they were
 6 interviewed in December 2018.¹⁶⁹ From the interviews that took place in December of
 7 those selected, 19 refused to even come to the interview and 29 refused to cooperate once
 8 they got there for a total of 48.¹⁷⁰ This is not surprising, given the culture of fear of
 9 retaliation at RJD.

10 81. In the above referenced memo written to CDCR Associate Director
 11 Kimberly Seibel from Associate Warden J.L. Bishop, from the California Institution for
 12 Men, there are a number of recommendations to increase accountability at RJD that get to
 13 the issue of remedy. I summarize them as follows:

- 14 • Improve camera coverage in areas of limited or obstructed visibility
- 15 • *Prompt* (emphasis added) review should be made of all actionable
 16 information brought forward by inmate interviewees
- 17 • Conduct a comprehensive STG (Security Threat Group) review
- 18 • Increase supervisor and management presence of Facility C during all hours,
 but particularly during mass movement and non-business hours
- 19 • Restrict rank-and-file custody staff from areas of low visibility, by removing
 20 keys or changing locks
- 21 • Enforce the uniform policy so that officers cannot wear matching
 headscarves
- 22 • Mandatory training for custody staff, including supervisors, in effective
 23 communication for mentally disordered and developmentally disabled
 offenders

24
 25 ¹⁶⁷ Declaration of [REDACTED] 01-08-20, page 2, line 18 – page 3, line 12 and
 Declaration of [REDACTED] 01-08-20, page 4, lines 9 - 25

26 ¹⁶⁸ 1-26-19 – Memo from [REDACTED] to P. Covello, page 8, [REDACTED]

27 ¹⁶⁹ Memo from AW Bishop to K. Seibel, pages 16 & 17

28 ¹⁷⁰ *Ibid.*, page 3.

- Change the local practice of collecting inmate appeals to be more secure and without involving custody staff¹⁷¹

These are remarkable recommendations from high level CDCR staff that speak volumes about the lack of confidence in the professional integrity of the officers at the RJD. The recommendations include more supervision since current supervision is not adequate; adding more cameras so any abuse that occurs is better documented; promptly paying attention to class member complaints to ensure that their written complaints are not subverted or destroyed by custody staff; and, retraining staff so that they can improve the skills and understand the expectations for them in managing the *Armstrong* and *Coleman* class members.

82. In the two memos written b [REDACTED] to P. Covello dated January 26, 2019 there are also some recommendations for improved accountability that mirror some of the recommendations in the memo of Associate Warden Bishop to Associate Director Seibel. They include:

- Check key access to Appeal boxes
- Rekey/restrict access to gymnasium
- Job change Facility C management positions
- Place cameras inside buildings and rotundas
- Rehouse or transfer Security Threat Group inmates¹⁷²

83. It is remarkable to see that CDCR's own investigators have concluded that RJD officers must have some keys taken away so that they cannot access areas of the prison where class members may have been abused. I have never seen that before. Equally important is the recommendation to change key access to the appeal boxes so that appeals don't disappear or are viewed by unauthorized staff. And for me, this entire situation cries out for installation of more cameras, a protective factor that in my

¹⁷¹ Memo from AW Bishop to K. Seibel, pages 12 & 13

¹⁷² 1-26-19 – Memo from [REDACTED] to P. Covello re Non-Referrals, page 8 & 9 and Memo to E. Allen to P. Covello re Further Investigation Needed, page 8

1 experience is one of the single most important things a prison can do to dramatically
2 reduce staff misconduct.

3 84. What is puzzling to me is why the Bishop report and the two Allen memos
4 focus their inquiries only on Facility C. By my own count of the complaints made in class
5 member declarations, 15 complaints are from Facility A; 8 are from Facility B; 16 are from
6 Facility C; 7 are from Facility D; and, 3 are from Facility E. For the rest of the
7 declarations, it is not clear where the allegations of staff misconduct occurred. I feel
8 confident in saying the problems at RJD are not confined to Facility C but instead
9 permeate the prison. Every facility at RJD and every shift when class members are out of
10 their cells are in need of reform and better supervision.

11 85. If I was writing this a year ago, based on the above recommendations and the
12 statement below from Associate Warden Bishop, I would think that CDCR had carefully
13 examined the problem of the culture and related staff misconduct at RJD.

14 The review team notes numerous positive changes have
15 already been implemented in recent months by prison
16 administrators to combat these issues. Notably among these
17 has been a complete change in numerous leadership positions
including Associate Warden, Captain, ISU lieutenant, Appeals
Coordinator, and Litigation Coordinator.¹⁷³

18 But unfortunately it is clear that the problems have continued into 2019 and 2020.
19 Including the examples I cite from 2019 in the above, there is additional information
20 available that illustrate the complaints of staff misconduct are continuing.

21 86. Since the time Associate Warden Bishop's letter was dated—December 10,
22 2018—from just the material I have reviewed, I can identify the following allegations of
23 staff misconduct since the date of the Associate Warden's letter:

Name	Incident Date(s)
[REDACTED]	December 14 & 17, 2018 ¹⁷⁴

24
25
26
27 ¹⁷³ Memo from AW Bishop to K. Seibel, page 11

28 ¹⁷⁴ [REDACTED] Advocacy, 2-26-19

Name	Incident Date(s)
[REDACTED]	December 16, 2018 & January 26, 2019 ¹⁷⁵
Elderly ADA Inmate	January 21, 2019 ¹⁷⁶
[REDACTED]	February 11, 2019 ¹⁷⁷
	February 15, 2019 ¹⁷⁸
	February 19 & 21, 2019 ¹⁷⁹
	Multiple days February 2019 ¹⁸⁰
	March 17, 2019 ¹⁸¹
	March 2019 ¹⁸²
	April 6 & 23, 2019 ¹⁸³
	April 23, 2019 ¹⁸⁴
	April 23, 2019 ¹⁸⁵
	April 24, 2019 ¹⁸⁶
	April 24, 2019 ¹⁸⁷
	April 24, 2019 ¹⁸⁸

¹⁷⁵ [REDACTED] Advocacy, 02-26-19 & Declaration of [REDACTED], 01-30-20

¹⁷⁶ Elderly ADA Advocacy, 2-20-19

¹⁷⁷ Declaration of [REDACTED] 02-10-20

¹⁷⁸ Declaration of [REDACTED] 01-26-20

¹⁷⁹ Declaration of [REDACTED], 01-07-20

¹⁸⁰ [REDACTED] Advocacy, 06-28-19 & Declaration of [REDACTED] 01-07-20

¹⁸¹ Declaration of [REDACTED] 01-07-20

¹⁸² Declaration of [REDACTED] 01-07-20

¹⁸³ Declaration of [REDACTED] 01-08-20

¹⁸⁴ [REDACTED] Advocacy, 05-24-19 & Declaration of [REDACTED], 01-29-20

¹⁸⁵ Declaration of [REDACTED] 01-08-19

¹⁸⁶ [REDACTED] Advocacy, 5-31-19 & Declaration of [REDACTED], 01-07-20

¹⁸⁷ Declaration of [REDACTED] 12-18-19

¹⁸⁸ Declaration of [REDACTED] 01-07-20

Name	Incident Date(s)
	April 24, May 21 & June 2019 ¹⁸⁹
	April, 2019 ¹⁹⁰
	May & December 9, 2019 ¹⁹¹
	May 14, 2019 ¹⁹²
	May 30, 2019 ¹⁹³
	May 30, 2019 ¹⁹⁴
	June 4, 2019 ¹⁹⁵
	June 19 & November 19, 2019 ¹⁹⁶
	June 21, July 27 & December 5, 2019 ¹⁹⁷
	June, August & December 10, 2019 ¹⁹⁸
	July 1, 2019 ¹⁹⁹
	July 14, 2019 ²⁰⁰
	August 3 & November 21, 2019 ²⁰¹
	August 6, 2019 ²⁰²

¹⁸⁹ Declaration of [REDACTED], 01-07-20

¹⁹⁰ Declaration of [REDACTED], 01-08-20

¹⁹¹ Declaration of [REDACTED], 01-07-20

¹⁹² Declaration of [REDACTED], 01-01-20

¹⁹³ Declaration of [REDACTED], 01-08-20

¹⁹⁴ Declaration of [REDACTED], 01-07-20

¹⁹⁵ Declaration of [REDACTED], 01-25-20

¹⁹⁶ Declaration of [REDACTED], 01-07-20

¹⁹⁷ Declaration of [REDACTED], 01-07-20

¹⁹⁸ Declaration of [REDACTED], 01-06-20

¹⁹⁹ Declaration of [REDACTED], 01-07-20

²⁰⁰ Declaration of [REDACTED], 01-29-20

²⁰¹ Declaration of [REDACTED], 01-08-20

²⁰² Declaration of [REDACTED], 01-07-20

Name	Incident Date(s)
	August 1919 ²⁰³
	August & October 1919 & January 13, 2020 ²⁰⁴
	September 1, 1919 ²⁰⁵
	September 6 & 10, 1919 ²⁰⁶
	September 1919 ²⁰⁷
	November 2, 10, & 11, 1919 ²⁰⁸
	November 27, 1919 ²⁰⁹
	November 1919 ²¹⁰
	June, July & November 1919 ²¹¹
	December 3, 1919 ²¹²
	December 4, 1919 ²¹³
	December 5, 1919 ²¹⁴
	December 7, 1919 ²¹⁵
	December 8 & 9, 1919 ²¹⁶

²⁰³ Declaration of [REDACTED] 01-08-20

²⁰⁴ Declarations of [REDACTED] 01-08-20 & 1-30-20

²⁰⁵ [REDACTED] Advocacy, 10-29-19 and Declaration of [REDACTED] 01-07-20

²⁰⁶ F [REDACTED] dvocacy, 10-10-19 and Declaration of [REDACTED] 01-24-20

²⁰⁷ Declaration of [REDACTED] 1-07-20

²⁰⁸ Declaration of [REDACTED] 01-08-20

²⁰⁹ Declaration of [REDACTED] 01-29-20

²¹⁰ Declaration of [REDACTED] 01-07-20

²¹¹ Declaration of [REDACTED] 01-08-20

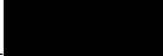
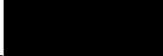
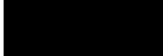
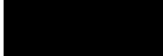
²¹² Declaration of [REDACTED] 01-07-20

²¹³ Declaration of [REDACTED]

²¹⁴ Declaration of [REDACTED] 01-07-20

²¹⁵ Declaration of [REDACTED] 01-07-20

²¹⁶ Declaration of [REDACTED] 01-07-20

Name	Incident Date(s)
	December 10, 2019 ²¹⁷
	December 21, 2019 ²¹⁸
	October 11, 2019 & January 7, 2020 ²¹⁹
	January 13, 2020 ²²⁰

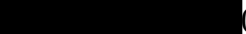
This is a total of at least 48 incidents of abuse reported by declarants that either they personally suffered or witnessed other persons suffering. Many of these sources contain more than one example of abuse. In my opinion this causes me to conclude that the oversight and recommendations from over a year ago have not effectively been able to change the culture at the RJD and that additional remedies are necessary.

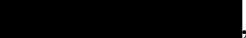
87. Furthermore, according to the testimony of Ms. Seibel, Defendants have not implemented all of the remedies recommended by its own staff. According to her deposition, CDCR has not completed investigations into all of the allegations presented by the interviewees in December 2018.²²¹ The vast majority of RJD, including many of the areas where staff misconduct occurs, still does not have any camera coverage.²²² CDCR has not increased supervisory coverage on any of the yards. And CDCR has not conducted any robust training of officers or supervisors to attempt to address the problems at RJD.

Remedies

88. This is a prison in a state of crisis. The brutality exhibited by the officers is deeper and more systemic than I have ever seen. Officers send a message of intimidation through verbal abuse and unnecessary use of force. Class members in the facility are

²¹⁷ Declaration of  1-08-20

²¹⁸ Declaration of  01-31-20

²¹⁹ Declaration of  01-08-20

²²⁰ Declaration of 

²²¹ Confidential Portion of Kim Seibel Depo, page 156, lines 13 – 23

²²² *Ibid.*, page 108, line 9 – page 109, line 10

1 terrorized, yet several take the risk of filing formal complaints, even though it sometimes
 2 results in retaliation. Given the frequent retaliation that people face at RJD when they
 3 complain about staff misconduct, the declarants have little to gain and much to lose by
 4 describing the misconduct they have experienced or witnessed and specifically identifying
 5 the officers who engaged in misconduct. If the officers ever became aware of the
 6 declarations, the declarants would be at serious risk of retaliation. In my opinion, the fact
 7 that the declarants submitted their declarations notwithstanding this risk adds significantly
 8 to the declarants' credibility.

9 89. RJD is in a crisis that requires extraordinary remedies. It is my
 10 understanding from Plaintiffs' counsel that, since January 1, 2017, the hiring authority at
 11 RJD has only attempted to dismiss five officers for misconduct that involved an
 12 incarcerated person as a victim. Given my understanding of the scope of the misconduct at
 13 RJD, the number of dismissals is far too low. The small number of dismissals suggests a
 14 systemic failure to take allegations of staff misconduct seriously. CDCR must be creative
 15 and take every available step as quickly as possible. CDCR must spotlight the prison and
 16 focus their efforts from their central office to bring substantial change to RJD to include
 17 making certain officers who use unnecessary or excessive use of force are disciplined and,
 18 in some cases, dismissed from employment. I also recommend the OIG get more
 19 involved. In his deposition he demonstrated a good understanding of the problems at RJD,
 20 especially regarding investigations into staff misconduct. It may even be necessary for
 21 CDCR to transfer some of the most vulnerable class members so they could be safe in
 22 another institution.

23 90. In my declarations and in my trial testimony in the *Coleman* case I opined in
 24 what I saw in the CDCR during my inspections. In my trial testimony I said:

25 Well, their duty belts are extraordinary. I don't think that is
 26 news to anybody, but there are large canisters of OC, batons,
 27 some of them have grenades, OC grenades on their belts.
 28 That's just not what I've seen certainly seen in Washington
 prisons or any other prisons that I've ever been in. I think it
 creates a climate of fear and violence that contributes to the
 level of violence and use of force that they do have in their

1 system.²²³

2 91. The Court later asked:

3 Q. Of course. But when you say there was this element of
4 force and fear, is that more exaggerated in the California, in
5 your view, than other prison systems and other prison systems
6 that you went in?

7 A. Absolutely, yes.²²⁴

8 92. I also said:

9 Well this case is about use of force in the mentally ill, and:
10 again, as a layperson, but prison administrator, I've been
11 schooled that use of force incidents with mentally ill can
12 exacerbate and worse their mental health illness. A lot of them
13 have trauma in their background. I could give a longwinded
14 answer, but the short answer is you don't want to do anything
15 to make that person worse if you absolutely don't have to. So
16 avoidance of use of force needs to be a primary value of the
17 organization when you're dealing with mentally ill inmates.²²⁵

18 Based on my review of the records in this case, little has changed regarding
19 unnecessary and excessive use of force, at least at RJD. The orientation of the officers
20 who work with incarcerated people with disabilities can accurately be described as I did
21 above as creating, "a climate of fear and violence". This description is confirmed in the
22 deposition of Clinical Psychologist [REDACTED] who describes Facility A as having a "culture
23 of fear".²²⁶ It has been greatly disappointing to me to look at the records of a California
24 prison almost seven years since I offered my declarations and trial testimony in the
25 *Coleman* case regarding use of force against patients with mental illness. The only
26 difference in this review is that we are talking about not just *Coleman* class members who
27 are at risk of harm but *Armstrong* class members as well.

28 93. I support the remedies suggested in 2018 by CDCR's own staff, including
the ones described in the Seibel deposition transcript. However, if it is clear they have not

²²³ UOF_DR Transcript 10-01-13, page 88, line 20 – page 89, line 3

²²⁴ *Ibid.*, page 90, lines 14 -18

²²⁵ UOF_DR Transcript, 10-02-13, page 139, lines 15 – 24

²²⁶ Depo Transcript – [REDACTED] page 147, line 23 – page 148, line 2

1 been successful or fully implemented, solutions that actually change the culture must be
 2 found and external oversight must be increased. I make the following recommendations as
 3 if RJD was under my command and I was faced with the challenge of putting an end to the
 4 widespread staff misconduct at the prison.

5 94. Additional cameras must be immediately installed in all areas to which
 6 incarcerated people have access. This is an urgent priority. In my experience it is a very
 7 effective intervention. I have interviewed hundreds of incarcerated people in dozens of
 8 prisons and jails in several different states working as a corrections expert or consultant
 9 during the last several years. Rarely in a single prison have I encountered such a volume
 10 of reports of physical and verbal abuse as is evident in the RJD. It must be required in
 11 policy and practice that camera footage must be retained and accessed in every use of force
 12 investigation or staff misconduct complaint.

13 95. During a prison inspection in another state the Deputy Director of the
 14 department was at the prison with me. I took him aside and told him what I had been
 15 hearing from the incarcerated people in his prison during my interviews about unnecessary
 16 and excessive UOF, primarily physical beatings by officers. He acknowledged he was
 17 aware of the problem and had the funding to install surveillance cameras in the area where
 18 most of the abuse was occurring. A year later I inspected the same facility and the Deputy
 19 was again present. He took me to the areas of concern raised in my previous inspection
 20 and showed me the new cameras. I then interviewed people incarcerated at the facility and
 21 their reports of physical abuse had all but been eliminated.

22 96. Several of the staff misconduct complaints could have been resolved if video
 23 footage existed. To list just a few cases where in my opinion cameras may well have
 24 provided critical evidence and that I have cited in this declaration:

- 25 • Mr. [REDACTED] standing near the podium in the living unit
- 26 • Mr. [REDACTED] in the sally port
- 27 • Mr. [REDACTED] in the holding cell in the gym
- 28 • Mr. [REDACTED] in the work change area outside of the living unit

- 1 • Mr. [REDACTED] outside the dining hall
- 2 • Mr. [REDACTED] in the dayroom
- 3 • Mr. [REDACTED] waiting in line for medication

4 97. In addition, due to the serious nature of physical abuse occurring at RJD, I
 5 recommend they move to require all custody staff to wear body-worn cameras. Body-
 6 worn cameras have audio capacity so the conversations between officers and class
 7 members are preserved and can be very helpful in any subsequent investigation. And
 8 although I strongly support the addition of multiple surveillance cameras, sometimes the
 9 positions of people and the distance from the camera limit their use. Body-worn cameras
 10 record much closer to an incident and sometimes reveal much more. For example, did or
 11 did not a person spit? Was there threatening language by officer or class member? What
 12 happened in that cell? They can be invaluable in investigations. Although relatively new
 13 to corrections, they are being implemented in some jurisdictions, including the one
 14 referenced in the above paragraph where those incarcerated reported on the impact of more
 15 surveillance cameras. During my interviews with people confined in that jurisdiction at
 16 several different prisons they consistently reported to me that body-worn cameras were
 17 also helping to keep them safe from unnecessary and excessive UOF. The staff
 18 misconduct problem at RJD is a crisis that requires all available measures, including body-
 19 worn cameras.

20 98. Although I am informed that CDCR rejected body-worn cameras as too
 21 expensive, the federal Department of Justice runs a grant program that may be able to
 22 defray the cost of body worn cameras. I have also been informed the Governor's 2020-21
 23 Budget proposes spending \$13.4 billion for CDCR, including \$21.4 million to implement
 24 various initiatives to improve various correctional staff training (although the Legislative
 25 Analyst believes \$6.7 million of this spending is not justified). CDCR should be able to
 26 find the funds to cover video and body-worn cameras. Their presence will defray the costs
 27 that come from staff misconduct such as outside hospitalization.

28 99. In my trial testimony in *Coleman* I said the following:

1 Q. Are there videos taken of immediate use of force
2 currently in California?

3 A. No, they are not.

4 Q. Should they?

5 A. Well, some other jurisdictions, including my own – and
6 I recently received some videos from another state that I've
7 been watching. It's rare that you can have the camera there
8 when it's immediate because it kind of doesn't meet the
9 definition. But there is a couple of ways to get around that.
10 One is to draw on your surveillance cameras to see what they
11 show. And the other practice, which I am quite found of, is
12 that once an incident gets kicked off, that somebody goes and
13 gets a camera. Even though the inmate might be in cuffs, to
14 put the camera on him at that moment and watch the rest of the
15 procedure, whether it's decontamination, whether it's a
16 medical examination, or escort to a cell, it has that same
17 controlling effect on everybody's behavior that it would if it
18 had been there from the beginning.²²⁷

12 Prior to implementation of body cameras at RJD, I recommend that policy require
13 that hand held cameras be brought to the scene of an immediate use of force.

14 100. I have also reviewed a report regarding the implementation of a pilot
15 program to install cameras at High Desert State Prison. My understanding, based on this
16 report, is that cameras were not installed in all areas of the prison. In areas where cameras
17 were installed, there was a 50% reduction in violence.²²⁸ This is a significant reduction in
18 violence and, given that CDCR has proof of concept with this report, it is unconscionable
19 that they did not immediately implement cameras throughout their prisons. This is
20 especially true at RJD but is also true at any prison showing high levels of violence,
21 incident reports, allegations of misconduct, or other indicators of problems that should be
22 tracked and reviewed.

23 101. It also needs to be required in written policy that video must be consulted by
24 anyone investigating a use of force event or staff misconduct complaint at RJD. It also
25 needs to be required in policy that if there is no video available that this fact must be

26 ²²⁷ UOF_DR Transcript, 10-17-13, page 438, line 8 – page 9, line 1

27 ²²⁸ *The Effect of Camera Installation on Violence at High Desert State Prison*, Matsuda,
28 Hess, Turner, and Credo, 2018, pages 8-9.

1 documented, including the reasons why. The purpose would be to collect information
 2 about use of force events and staff misconduct that are not on camera, should rogue
 3 officers adjust to the location of the newly installed cameras and a pattern emerges of
 4 officers avoiding camera locations.

5 102. Also regarding use of force, in a declaration I wrote for the *Coleman* case, I
 6 recommended, as did the Defendants' expert Steve Martin, to "Weigh [pepper spray]
 7 canisters before and after use to determine whether the amount of spray used was
 8 appropriate for the situation."²²⁹ I renew that recommendation here for RJD. There is
 9 frequently in the record a great discrepancy in the accounts of the officers who report using
 10 a few second burst of pepper spray and the class member accounts that significantly longer
 11 than a few seconds. In my experience this creates a controlling effect on the officer using
 12 the spray.

13 103. Staffing and supervision are critical to cultural change in a correctional
 14 facility. I recommend that CDCR assign additional supervisors to each living unit. These
 15 supervisors should be non-uniformed employees fully empowered to supervise the
 16 correctional staff in the living unit, with a focus on improving the relationships between
 17 uniformed staff and class members and between custody staff and medical and mental
 18 health staff. I recommend that they be identified and assigned from outside of RJD. At a
 19 minimum, CDCR must assign multiple additional supervisory staff to each yard during
 20 second and third watch. The documents I reviewed, including the report by AW Bishop
 21 and the declarations from incarcerated people, strongly indicate that there are insufficient
 22 numbers of supervisory staff at RJD to fix the problems and keep incarcerated people safe
 23 from staff.

24 104. I acknowledge and support the administrative changes made at RJD based on
 25 the memo from CDCR to Plaintiffs' counsel dated January 24, 2020.²³⁰ But these are

26 _____
 27 ²²⁹ Declaration of Eldon Vail, Document 4638-1, Filed 05/29/13, page 18

28 ²³⁰ Email from R. Boyd to G. Grunfeld dated January 24

1 primarily changes at the administrative level and not on the ground in the living units and
2 yards where class members actually live and have experienced the abuse. Additional
3 supervisory staff who have a clear understanding of the depth of the problems at RJD must
4 be regularly in the living units to guide and monitor the officers to make certain they are
5 taking into account the disabilities of the population. These additional supervisors must be
6 given clear instruction that their mission is to change the culture. If the culture is to
7 change, it must happen in the living units and yards themselves. I would hope that
8 additional administrators do a better job at detecting staff misconduct when it occurs but
9 that does not address the need to improve the skill level of officers working with a disabled
10 population.

11 105. In my declarations in *Coleman*, I was repeatedly critical of the custody
12 domination in the operation of the living units housing class members with mental illness.
13 At RJD there is a parallel with *Armstrong* class members. One of the differences in this
14 case is the frequency of the use of immediate force when it does not meet the policy
15 threshold of imminent threat. In my opinion this is due to the officers not having the skills
16 to work people with disabilities, some of whom suffer from mental illness and include
17 some who can be very difficult in the correctional environment. In experience as a
18 practitioner and as an expert I have seen solutions to this dilemma.

19 106. When I was the Superintendent of the Washington Corrections Center for
20 Women (at that time the only prison for women in Washington), I had a few people with
21 mental illness and disabilities who seemed to be constantly in a cycle of acting out
22 resulting in self-harm and use of force incidents. Out of frustration I met with mental
23 health staff to look for solutions. What we tried was to have a clinical psychologist
24 assigned to our highest security living unit where the problems were occurring, not so
25 much to study the persons who were acting out, but to study how our officers were
26 responding. She determined that the response of our officers to such events was creating a
27 cycle of negative reinforcement, akin to throwing gasoline on a fire. What we did was
28 create a behavior plan, not for the people acting out, but for the officers. The guidance she

1 provided was successful and problems decreased as officer behavior changed. The
 2 officers, in turn, came to rely on her to help them guide their own behavior in managing
 3 other difficult cases and this changed the relationship between custody and mental health
 4 staff. Mental health professionals were no longer a “back office” function but worked in
 5 partnership in the living unit with custody to improve our handling of difficult cases.

6 107. As the Superintendent of McNeil Island Corrections Center in the early 90’s
 7 I used a different approach but once again, focused on blurring the lines between custody
 8 and treatment with people with mental illness. In my first declaration in *Coleman* I said,

9 The program was staffed with a hybrid of custody and mental
 10 health personnel. Line officers were replaced by a new job
 11 category, correctional mental health counselors, who were part
 12 of the treatment team. About two thirds of them had
 13 experience as correctional officers and one third were hired
 14 from the community. Additional staff included psychiatrists,
 15 psychologists, and nurses. Administration and operation of the
 16 unit was shared between corrections administrators and mental
 17 health professionals with the operational leads in jobs entitled
 18 Correctional Mental Health Program Manager and Correctional
 19 Mental Health Unit Supervisor—titles that made clear that
 20 their role was to blend the knowledge and wisdom of good
 21 custody with the knowledge and wisdom of good mental health
 22 treatment...²³¹

23 The program worked, as evidenced by the attached report,²³²
 24 one of many written about this program. Infraction (RVR’s in
 25 CDCR parlance) rates for the population went down, and the
 26 symptoms inmates suffered before arriving in the program
 27 were more stable after its completion. Most significantly, the
 28 majority of program participants were able to move into
 general population and function adequately enough to stay
 there.²³³

108. I have seen similar success in blurring the lines between those who are
 experts at working with people with disabilities and custody staff. I have served at
 Plaintiffs’ monitor in the *Peoples* case in New York’s Department of Corrections and
 Community Supervision since 2016. I travel to that state twice a year to evaluate

²³¹ Declaration of Eldon Vail, Document 4385, Filed 03/14/13, page 37, lines 11 - 20

²³² See *Evaluating the Effectiveness of Residential Treatment for Prisoners With Mental Illness*, Lovell, D., et al., Criminal Justice and Behavior, Vol. 28, No. 1, February 2001

²³³ *Ibid.*, page 38, lines 1 - 5

1 compliance with the terms of the settlement agreement. In one of those inspections in
2 2016 I visited the CAR program at the Sullivan Correctional Facility, a program for the
3 developmentally disabled population. Due to strong leadership from the treatment side of
4 the house the program was transformed as treatment staff brought their expertise to the
5 operation of the living unit. I both witnessed that while on site and discovered it in my
6 interviews with *Peoples* class members. I sat in on bi-weekly treatment team meetings that
7 discussed the progress of individual class members that was attended by treatment staff
8 and custody staff. I witnessed robust conversations from both sides of the house about the
9 detail of individual class member behavior and plans that were made to address emerging
10 issues. I inspected the living unit and was lucky enough to see a custody officer and a
11 treatment staff deescalate a potential use of force situation. Treatment staff are not always
12 assigned to work in the living unit but by all accounts it was a frequent occurrence. It was
13 a most impressive program.

14 109. At the Washington Corrections Center in my home state, Cedar Hall has long
15 been a housing unit for the men with developmental disabilities. Staffed like other units
16 with Correctional Officers, Sergeants and Counselors, it is supervised by a non-uniformed
17 Correctional Unit Supervisor, who is ranked slightly above a Correctional Lieutenant. But
18 in Cedar Hall, psychology associates and other mental health staff have been added and
19 assigned to the unit to assist the custody staff to help manage this population that can
20 sometimes be challenging in the correctional environment. All of these staff work together
21 under the supervision of a single supervisor and the living unit itself is used to practice the
22 skills that are learned in the treatment program. It makes no sense to learn skills in a
23 classroom when they are not understood and reinforced by the officers in the living unit.

24 110. I am convinced that the successful management of people with disabilities
25 and mental health issues is best achieved when the treatment professionals are allowed out
26 of their offices and into the living unit. Some configuration of such an approach would be
27 the change agent that RJD needs to reduce the risk of harm at that prison.

28

111. Officers need to be trained (or re-trained) in how to manage populations with mental illness, disabilities, and transgender people. The additional supervisors identified in the above should participate in the training so that they can measure whether or not it is being practiced on the job.

112. The content of any additional training must include instruction that *Armstrong* (and *Coleman*) class members are also patients and what that means for supervision of those class members in the workplace. CDCR has been sorely lacking in this area.

According to one legal analyst who looked at correctional materials used in the California academy, “[t]he curriculum training materials used in the California training academy, “[t]he curriculum consists of training in the areas of firearms, chemical agents, nonlethal impact weapons, and arrest and control techniques’ (SpearIt, 2009, p. 291). Despite the fact that the state was mired in decades of litigation and long-standing court intervention over its poor treatment of mentally ill prisoners (*Brown v. Plata*, 2011), out of some 176 hours of instruction, less than 10% (15 hours) was devoted to a “monitoring psychological and physical health,” which ranged only briefly over a number of complex issues, including legal, mental health, suicide, substance abuse and assisting in the distribution of medication (SpearIt, 2009, p. 291).²³⁴

The stress correctional officers face is tremendous, especially when their training focuses so much on hard custody skills (which are vitally important) but do not give similar emphasis to the soft custody skills, such as understanding persons with disabilities and verbal communication skills (which are also vitally important). De-escalation training to defuse potential use of force situations is vital to class member and officer safety and is now widely use in police and corrections departments around the country. Officers at RJD need more training about the prisoners in their charge than what they have demonstrated they have received to date at RJD.

²³⁴ *Mechanisms of Moral Disengagement and Prisoner Abuse*, Joanna Well and Craig Haney, *Analyses of Social Issues and Public Policy*, Volume 17, No. 1, 2017, pages 303 - 304

1 113. Medical and mental health staff should not be left out of any re-training
 2 effort at RJD. [REDACTED]s courageous reporting and testimony should serve as an
 3 example of what should be expected of all staff when they witness staff misconduct. It
 4 must be emphasized that the class members receiving treatment are first and foremost
 5 patients and medical and mental health staff have an obligation to keep them protected by
 6 reporting when they see staff misconduct occur or when they are well aware of it
 7 permeating the culture from their treatment sessions with their patients. This will not
 8 happen unless top correctional administrators tell health care administrators that this is
 9 what they expect and then support them when professional staff comes forward.

10 114. Medical staff has a unique opportunity at helping change RJD. They are best
 11 placed to know what kind of injuries the class members are experiencing. Each of them
 12 must be instructed to analyze those injuries to see if they are consistent with the report of
 13 the incident that caused the injury. This data should be collected and shared, similar to
 14 what I recommend below for use of force and staff misconduct complaints. If this
 15 happens, detail on specific incidents and trends in general will be available to assist
 16 administrators in combating the problem of persistent abuse at RJD. Facing similar
 17 problems at Rikers Island in New York City, they developed a protocol.

18 Going into 2013, we decided to take a more structured
 19 approach toward the epidemiology of brutality. We committed
 20 to having one of the senior physicians review each serious
 21 injury during use of force to ensure that the appropriate care
 22 had been provided and information collected and relayed to
 23 investigators.²³⁵

24 Our analysis also revealed the systematic underreporting of
 25 injuries that was rampant in NYC jails. There appeared to be
 26 two systemic flaws: some injuries were never reported, and
 27 others were reported as much less serious than they really
 28 were. The most basic issue we found in this work was that the
 patients we saw often told us that they had been threatened
 with violence or solitary confinement if they told medical staff
 what has happened to them. In some cases, patients were even

²³⁵ *Life and Death in Rikers Island*, Homer Venters, 2019, page 32

1 told that they would be beaten just for seeking care.²³⁶

2 There is no need to reinvent the wheel. This practice from Rikers should be
3 implemented at RJD as an important tool to change the culture.

4 115. Collecting and analyzing data for staff misconduct complaints (to include
5 dates and time for any related investigation), use of force events and incidents involving
6 self-harm or suicide attempts is critical. This data needs to be studied and analyzed by
7 shift, by living unit, by location and by individual staff members to identify problems and
8 trends relative to the *Armstrong* and *Coleman* class members.²³⁷

9 116. A Consent Decree in a New Orleans jail offers a concrete example of what I
10 believe needs to happen at RJD for collecting UOF data. It is called an Early Intervention
11 System (EIS). Here is a bit of detail from that decree:

12 OPSO shall develop, within 120 days of the Effective Date, a
13 computerized relational database (“EIS”) that will document
14 and track staff members who are involved in use of force
15 incidents and any complaints related to the inappropriate or
16 excessive use of force, in order to alert OPSO management to
17 any potential problematic policies or supervision lapse or need
18 for retraining or discipline. The Chief of Operations Deputy,
supervisors, and investigative staff shall have access to this
information and shall review on a regular basis, but not less
than quarterly, system reports to evaluate individual staff,
supervisor, and housing area activity. OPSO will use the EIS
tool for correcting inappropriate staff behavior before it
escalates to more serious misconduct.²³⁸

19 A similar system should be developed to track class member complaints of staff
20 misconduct and self-harm and suicide attempts. One of the things painfully obvious at
21 RJD is the frequency with which the same officer’s names are reported. Prison

22
23 ²³⁶ *Ibid.*, page 36

24 ²³⁷ I took a similar approach with every institution when I was Secretary of the Washington
25 DOC and believe it was primarily responsible for the 46% reduction in violence during my
26 tenure. We found a number of problems that required individual solutions. Sometimes it
was as simple as where an officer was posted. Other times we found we needed an
additional officer. Other times we found performance problems with individual Sergeants
or Officers.

27 ²³⁸ New Orleans Parish Prison Consent Judgment, *Jones v. Gusman*, Eastern District of
28 Louisiana, 2:12-cv-00859, 12/11/12, pages 10 & 11

1 administrators are negligent in their responsibilities when problematic staff members are
2 not identified, retrained, disciplined, or in some cases referred for criminal prosecution.

3 117. The reports of retaliation or threats to retaliate are pervasive in RJD.
4 Protection needs to be provided to class members who report staff misconduct. The PREA
5 (Prison Rape Elimination Act) has a relevant standard that should be adopted to apply
6 when allegations of staff misconduct occur at RJD.

- 7 • For at least 90 days following a report of sexual abuse, the agency shall
8 monitor the conduct and treatment of inmates or staff who reported the
9 sexual abuse and of inmates who were reported to have suffered sexual abuse
10 to see if there are changes that may suggest possible retaliation by inmates or
11 staff, and shall act promptly to remedy any such retaliation. Items the
12 agency should monitor include any inmate disciplinary reports, housing, or
13 program changes, or negative performance reviews or reassignments of staff.
14 The agency shall continue such monitoring beyond 90 days if the initial
15 monitoring indicates a continuing need.
- 12 • In the case of inmates, such monitoring shall also include periodic status
13 checks.
- 14 • If any other individual who cooperates with an investigation expresses a fear
15 of retaliation, the agency shall take appropriate measures to protect that
16 individual against retaliation.²³⁹

16 A similar system, including documentation of these activities, should be created in
17 RJD. I have seen this standard in operation in other jurisdictions for those who have filed
18 PREA complaints. Individual staff members are assigned to each case and review the
19 records and interview the person who filed the complaint periodically during the 90-day
20 period. That way if it appears retaliation is occurring it can be identified early on and be
21 addressed.

22 118. The danger to class members is very real and the risk of harm is ever present
23 today. To date, despite some good efforts by CDCR staff, their efforts to reform the
24 institution have failed. A system similar to the New Orleans EIS would provide
25 information to Plaintiffs' counsel on a regular basis. Increased oversight of RJD by the
26

27 ²³⁹ PREA Standards for Prisons and Jails, 115.67, c - e
28

1 CDCR headquarters must be required, using this same data and any other system that they
2 have in place.

3 119. But before I end this declaration, I want to include some comments about the
4 difficult work of corrections and the impact on employees. The work is very difficult,
5 especially when done well. Being in charge of multiple individuals with a myriad of
6 problems—physical, mental and behavioral—is a challenge that can cause corrections
7 workers to become numb, complacent, or worse, angry. Complicating the situation at RJD,
8 exposure to pervasive staff misconduct takes a toll on employee mental health,
9 productivity, and attendance. [REDACTED] testimony clearly illustrates the risk involved
10 of coming forward to do the right thing.

11 120. In order to respond to the pressures of the work, which can include the
12 stresses of shift work and mandatory overtime, being a witness to violence, or a suicide or
13 natural death, or participating in a use of force event, in Washington we funded six
14 positions of mental health professionals dedicated solely to provide assistance to the staff.
15 We called them staff counselors. Following a critical incident they were deployed to de-
16 brief the staff and help them process what they had seen and participated in. The program
17 was so valued by the staff that six mental health professionals could not keep up with the
18 demand. They then suggested and the agency supported their idea to train peer counselors
19 of senior, competent staff who could help to deliver the service. Given all that needs to be
20 changed at RJD, such a program could assist in making that change happen.

21 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct, and that this declaration is executed at Olympia,
23 Washington this 24 day of February, 2020.

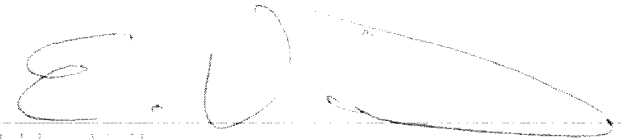
24
25 
26 Eldon Vail

Exhibit 1

ELDON VAIL

1516 8th Ave SE
 Olympia, WA. 98501
 360-349-3033
Nodleliav@comcast.net

WORK HISTORY

Nearly 35 years working in and administering adult and juvenile institutions, and probation and parole programs, starting at the entry level and rising to Department Secretary. Served as Superintendent of 3 adult institutions, maximum to minimum security, male and female. Served as Secretary for the Washington State Department of Corrections (WADOC) from 2007 until 2011.

▪ Secretary	WADOC	2007-2011
▪ Deputy Secretary	WADOC	1999-2006
▪ Assistant Deputy Secretary	WADOC	1997-1999
▪ Assistant Director for Prisons	WADOC	1994-1997
▪ Superintendent	McNeil Island Corrections Center	1992-1994
▪ Superintendent	WA. Corrections Center for Women	1989-1992
▪ Correctional Program Manager	WA. Corrections Center	1988
▪ Superintendent	Cedar Creek Corrections Center	1987
▪ Correctional Program Manager	Cedar Creek Corrections Center	1984-1987
▪ Juvenile Parole Officer	Division of Juvenile Rehabilitation	1984
▪ Correctional Unit Supervisor	Cedar Creek Corrections Center	1979-1983
▪ Juvenile Institution Counselor	Division of Juvenile Rehabilitation	1974-1979

SKILLS AND ABILITIES

- Ability to analyze complex situations, synthesize the information and find practical solutions that are acceptable to all parties.
- A history of work experience that demonstrates how a balance of strong security and robust inmate programs best improves institution and community safety.
- Leadership of a prison system with very little class action litigation based on practical knowledge that constitutional conditions are best achieved through negotiation with all parties and not through litigation.
- Extensive experience as a witness, both in deposition and at trial.
- Experience working with multiple Governors, legislators from both political parties, criminal justice partners and constituent groups in the legislative and policymaking process.

- Skilled labor negotiator for over a decade. Served as chief negotiator with the Teamsters and the Washington Public Employees Association for Collective Bargaining Agreements. Chaired Labor Management meetings with Washington Federation of State Employees.

HIGHLIGHTS OF CAREER ACCOMPLISHMENTS

- Reduced violence in adult prisons in Washington by over 30% during my tenure as Secretary and Deputy Secretary even though the prison population became more violent and high risk during this same time period.
- Long term collaboration with the University of Washington focusing on improving treatment for the mentally ill in prison and the management of prisoners in and through solitary confinement.
- Implemented and administered an extensive array of evidence based and promising programs:
 - Education, drug and alcohol, sex offender and cognitive treatment programs.
 - Implemented sentencing alternatives via legislation and policy, reducing the prison populations of non-violent, low risk offenders, including the Drug Offender Sentencing Alternative and, as the Secretary, the Parenting Sentencing Alternative. <http://www.doc.wa.gov/corrections/justice/sentencing/parenting-alternative.htm>
 - Pioneered extensive family based programs resulting in reductions in use of force incidents and infractions, as well as improved reentry outcomes for program participants.
 - Established Intensive Treatment Unit for mentally ill inmates with behavioral problems.
 - Established step down programs for long-term segregation inmates resulting in significant reduction in program graduate returns to segregation.
- Initiated the Sustainable Prisons Project <http://blogs.evergreen.edu/sustainableprisons/>
- Improved efficiency in the agency by administrative consolidation, closing 3 high cost institutions and eliminating over 1,200 positions. Housed inmates safely at lowest possible custody levels, also resulting in reduced operating costs.
- Increased partnerships with non-profits, law enforcement and community members in support of agency goals and improved community safety.
- Successful settlement of the Jane Doe class action law suit, a PREA case regarding female prisoners in the state's prisons for women.

- Resolved potential class action lawsuit regarding religious rights of Native Americans.
<https://www.seattletimes.com/opinion/a-precedent-for-native-americans-religious-freedom-in-washington-prisons/>
- Led the nation's corrections directors to support fundamental change in the Interstate Compact as a result of the shooting of 4 police officers in Lakewood, WA.
- Dramatically improved media relations for the department by being aggressively open with journalists, challenging them to learn the difficult work performed by corrections professionals on a daily basis.

EDUCATION AND OTHER BACKGROUND INFORMATION

- Bachelor of Arts - The Evergreen State College, Washington – 1973
- Post graduate work in Public Administration - The Evergreen State College, Washington - 1980 and 1981
- National Institute of Corrections and Washington State Criminal Justice Training Commission - various corrections and leadership training courses
- Member of the American Correctional Association
- Associate member, Association of State Correctional Administrators (ASCA)
- Guest Speaker, Trainer and Author for the National Institute of Corrections (NIC)
- Instructor for Correctional Leadership Development for the National Institute of Corrections
- Author of *Going Beyond Administrative Efficiency—The Budget Crisis in the State of Washington*, published in Topics of Community Corrections by NIC, 2003
- Consultant for *Correctional Leadership Competencies for the 21st Century*, an NIC publication
- Consultant for Correctional Health Care Executive Curriculum Development, an NIC training program, 2012
- Commissioner, Washington State Criminal Justice Training Commission 2002-2006, 2008-2011
- Member, Washington State Sentencing Guidelines Commission 2007-2011

- Advisory Panel Member, *Correctional Technology—A User's Guide*
- Co-chair with King County Prosecutor Dan Satterberg, *Examining the Tool Box: A Review of Supervision of Dangerous Mentally Ill Offenders*
- Guest lecturer on solitary confinement, University of Montana Law School in 2012
- On retainer for Pioneer Human Services from July 2012 - July 2013
- On retainer for BRK Management Services from September 2012 – April 2013
- Guest Editorials, Seattle Times, February 22, 2014 and April 5th, 2019
<http://www.seattletimes.com/opinion/guest-opinions-should-washington-state-abolish-the-death-penalty/>
<https://www.seattletimes.com/opinion/washington-state-is-ready-to-put-an-end-to-the-death-penalty/>

CURRENT ACTIVITIES

- Serve on the Board of Advisors for Huy, a non-profit supporting Native American Prisoners
- Serve on the Board of Directors for HEAL for Reentry, a non-profit supporting Native Americans' transition to the community from prison
- Retained as an expert witness or correctional consultant in the following:
 - ***Mitchell v. Cate***
No. 08-CV-1196 JAM EFB
United States District Court, Eastern District of California,
Declarations, March 4, May 15 and June 7, 2013
Deposed, July 9, 2013
Case settled, October 2014
 - ***Ananachescu v. County of Clark***
No. 3:13-cv-05222-BHS
United States District Court, Western District of Tacoma
Case settled, February 2014
 - ***Gifford v. State of Oregon***
No. 6:11-CV-06417-TC
United States District Court, For the District of Oregon,
Eugene Division,
Expert report, March 29, 2013
Case settled, May 2013

- ***Parsons, et al v. Ryan***
No. CV 12-06010 PHX-NVW,
United States District Court of Arizona
Declarations and reports, November 8, 2013,
January 31, February 24 and September 4, 2014
Deposed, February 28 and September 17, 2014
Case settled, October 2014
- ***Coleman, et al v. Brown, et al***
No. 2:90-cv-0520 LKK JMP,
United State District Court, Eastern District of California,
Declarations, March 14, May 29 and August 23, 2013;
February 11, 2014
Deposed, March 19 and June 27, 2013
Testified, October 1, 2, 17 and 18, 2013
- ***Peoples v. Fischer***
No. 1:11-cv-02694-SAS,
United States District Court, Southern District of New York
Interim settlement agreement reached February 19, 2014
Case settled, March 2016
Continuing assignment monitoring for the Plaintiffs
- ***Dockery v. Hall***
No. 3:13-cv-326 TSL JMR,
United States District Court for the Southern District of
Mississippi, Jackson Division
Reports, June 16, 2014, December 29, 2016;
March 23, 2017; November 16, 2018
Deposed, April 7, 2017
Testified March 5-7, 2018
- ***C.B., et al v. Walnut Grove Correctional Authority, et al***
No. 3:10-cv-663 DPS-FKB,
United States District Court for the Southern District of
Mississippi, Jackson Division
Memo to ACLU and Southern Poverty Law Center,
March 14, 2014, filed with the court
Reports, August 4, 2014 and February 10, 2015
Testified, April 1, 2 and 27, 2015
- ***Wright v. Annucci, et al***
No. 13-CV-0564 (MAD)(ATB),
United States District Court, Northern District of New York
Reports, April 19 and December 12, 2014
Testified, February 13, 2017

- ***Graves v. Arpaio***
No. CV-77-00479-PHX-NVW,
United States District Court of Arizona
Declarations, December 15, 2013, April 1, 2016,
December 22, 2017; February 9 and October 22, 2018;
August 19 and 30, 2019
Testified, March 5, 2014
- ***Corbett v. Branker***
No. 5:13 CT-3201-BO,
United States District Court, Eastern District of North Carolina,
Western District
Special Master appointment November 18, 2013
Expert Report, January 14, 2014
Testified, March 21, 2014
- ***Fontano v. Godinez***
No. 3:12-cv-3042,
United States District Court, Central District of Illinois,
Springfield Division
Report, August 16, 2014
Testified June 29, 2016
Case settled June 30, 2016
- ***Atencio v. Arpaio***
No. CV12-02376-PHX-PGR,
United States District Court of Arizona
Reports, February 14 and May 12, 2014
Deposed, July 30, 2014
Case settled, March 2018
- ***Larry Heggem v. Snohomish County***
No. CV-01333-RSM,
United States District Court,
Western District of Washington at Seattle
Report, May 29, 2014
Deposed, June 27, 2014
- ***Doe v. Michigan Department of Corrections***
No. 5:13-cv-14356-RHC-RSW,
United States District Court, Eastern District of Michigan,
Southern Division
Declarations, September 12, 2018 and September 30, 2019
Deposed, October 17, 2019

- ***Disability Rights, Montana, Inc. v. Richard Oppen***
No. CV-14-25-BU-SHE,
United State District Court for the District of Montana,
Butte Division
- ***Padilla v. Beard, et al***
Case 2:14-at-00575,
United States District Court, Eastern District of California,
Sacramento Division
Declaration, February 26, 2016
Deposed June 3, 2016
Testified April 19, 2017
Case settled, April 24, 2017
- ***Braggs, et al v. Dunn, et al***
No. 2:14-cv-00601-WKW-TFM,
United States District Court, Middle District of Alabama
Declarations, September 3, 2014, April 29, 2015,
June 3, 2015
Expert Report, July 5, 2016
Declarations, February 9 and October 19, 2017
Expert Report, July 1, 2018
Deposed August 21, 2016
Testified, December 22, 2016, January 4, February 21, December
5, 2017; February 13, October 23, November 29, 2018; April 3,
2019
- ***Sassman v. Brown***
No. 2:14-cv-01679-MCE-KJN,
United States District Court, Eastern District of California,
Sacramento Division
Declaration, August 27, 2014; Report, December 5, 2014
Deposed, December 15, 2014
- ***Robertson v. Struffert, et al***
Case 4:12-cv-04698-JSW,
United States District Court, Northern District of California
Declaration, March 16, 2015
Deposed May 4, 2015
Case settled, October 2015
- ***Commonwealth of Virginia v. Reginald Cornelius Latson***
Case No: GC14008381—00,
General District Court of the County of Stafford
Report, January 12, 2015
Pardon granted

- ***Flores v. United States of America***
Civil Action No 14-3166,
United States District Court, Eastern District of New York
Report, August 14, 2015
- ***Latson v. Clarke***
No. 1:16-cv-00447-GBL-MSN,
United States District Court, Eastern District of Virginia
Reports, November 16, 2016 and January 6, 2017
Deposed, December 13, 2016
Case settled, May 2, 2017
- ***Latson v. Clarke***
Civil No. 1:16-cv-00039,
United States District Court, Western District of Virginia,
Abingdon Division
Report, September 29, 2017
Deposed, December 28, 2017
- ***Star v. Livingston***
Case No: 4:14-cv-03037,
United States District Court, Southern District of Texas,
Houston Division
Reports, March 3, 2015 and October 12, 2016
Case settled, March 2018
- ***Doe v. Wolfe***
Case 4:15-cv-00250-DCB,
United States District Court for the District of Arizona
Reports, December 4, 2015; March 10, 2016;
September 23 and November 20, 2017
Deposed, January 5, 2018
Testified, November 14, 2016 and January 13, 14 and 22, 2020
- ***Redmond v. Crowther***
Civil No. 2:13-cv-00393-PMW,
United States District Court, Central Division,
State of Utah
Report, April 28, 2015
Deposed, July 28, 2015
- ***Fant v. The City of Ferguson***
Case No. 415-cv-00253 E.D. MO,
United States District Court, Eastern District of Missouri
Report, January 8, 2016

- ***Cole v. Livingston***
Civil Action No. 4:14-cv-1698,
United States District Court, Southern District of Texas,
Houston Division
Reports, August 5, 2015 and April 28, 2017
Deposed, December 2, 2015
Testified, June 20, 2017
Case settled, March 2018
- ***State of Arizona, Appellee, v. Pete J. Van Winkle, Appellant***
No. CR-09-0322-AP,
Testified, March 28, 2016
- ***Rasho v. Godinez***
Civil Action No. 07-CV-1298,
United States District Court, Central Division of Illinois,
Peoria Division
Case settled, December 2015
- ***Morgal v. Williams***
No. CV 12-280-TUC-CKJ,
United States District Court for the District of Arizona
Report, February 1, 2016
Deposed, February 25, 2016
- ***Sacramento County Sheriff***
Retained by Sacramento County Sheriff to evaluate housing units
in the Sacramento County jails, including maximum custody,
segregation and protective custody
Report, June 27, 2016
Case settled, June 2019
- ***Community Legal Aid Society, Inc. v. Robert M. Coupe***
Case No. 1:15-cv-00688,
United States District Court for the District of Delaware
Report, March 31, 2016
Case settled, August 2016
- ***C-Pod Inmates of Middlesex County Adult Correction Center, et al. v. Middlesex County***
Civil Action No. 15-7920 (PGS),
United States District Court for the District of New Jersey
Report, July 29, 2016
Case settled, September 2018

- ***Williams v. Snohomish County***
Case No. 15-2-22078-1 SEA,
Superior Court for the State of Washington, King County
- ***P.D. v. Middlesex County***
Case No. MID-L-3811-14,
Superior Court of New Jersey
Report, July 29, 2016
- ***Gould v. State of Oregon, et al***
Case No. 2:15-cv-01152-SU,
United States District Court for the District of Oregon
Case settled, October 2016
- ***Johnson v. Mason County***
NO. 3:14-cv-05832-RBL,
United States District Court, Western District of Washington at
Tacoma
Declaration, April 5, 2016
Deposed, October 26, 2016
Case settled, March 2017
- ***United States Department of Justice***
Retained by DOJ to join a team investigating conditions for
LGBT inmates including sexual harassment, sexual abuse and
sexual assaults by inmates and staff in the Georgia Department of
Corrections
Report, October 2016
- ***Daniel Evans v. Management and Training Corporation, et al***
NO. 3:15-cv-770-DPJ-FKB,
United States District Court, Southern District of Mississippi,
Northern Division
Report, October 17, 2016
Case settled, January 2017
- ***Webb v. Collier***
Civil Action NO. 6:13cv711,
United States District Court, Eastern District of Texas,
Tyler Division
Report, March 13, 2017
Deposed, May 5, 2017
Case settled, March 2018

- ***Holbron v. Espinda***
Civil No. 16-1-0692-04 RAN,
Circuit Court of the First Circuit, State of Hawai'i
Reports, February 1 and November 20, 2017
Testified, December 20, 2017
- ***Carruthers v. Israel***
Case No. 76-6086-civ-Middlebrooks,
United States District Court, Southern District of Florida
- ***Dahl v. Mason County***
Case 3:16-cv-05719.
United States District Court,
Western District of Washington at Tacoma
Report, August 21, 2017, Declaration, December 4, 2017
Case settled, August 2018
- ***Adams, James, Hudson v. Livingston***
Civil Action No. 4:14-cv-03326,
United States District Court, Southern Division of Texas
Houston Division
Report, June 15, 2017
Case settled, March 2018
- ***Ashker v. Governor of the State of California, et al***
Case No. 4:09 CV 05796 CW,
United States District Court, Northern District of California,
Oakland Division
Declaration, December 6, 2017
- ***Togonidze v. Livingston***
Civil Action No. 3:13-cv-229,
United States District Court, Southern District of Texas,
Galveston Division
Report, October 3, 2017
Case settled, March 2018
- ***Martone v. Livingston***
Civil Action No 4:13-CV-3369,
United States District Court, Southern Division of Texas,
Houston Division
Case settled, March 2018

- ***Cody v. City of St. Louis***
Case 4:17-cv-02707-AGF,
United States District Court, Eastern District of Missouri,
Eastern Division
Affidavit, August 30, 2018, Report September 27, 2019
- ***Sabata v. Nebraska Department of Correctional Services***
Case No. 4:17-CV-3107,
United States District Court for the State of Nebraska
Declarations, August 24, 2018, February 14, 2019 and
June 26, 2019
Deposed, April 9, 2019
- ***Pickens v. Management & Training Corporation***
Civil Action No. 3:16cv-913-CWR-FKB,
United States District Court for the Southern District of
Mississippi, Northern Division
Report, December 19, 2018
Case settled, January 2019
- ***Davis v. Baldwin***
Case No. 3:16-cv-600,
United States District Court, Southern Division of Illinois
Report, September 6, 2019
Deposed, November 13, 2019
- ***Amos v. Taylor***
No. 4:20-cv-00007-DMB-JMV,
United States District Court, Northern District of Mississippi,
Greenville Division
Declarations, January 31, February 2 and 8, 2020

Exhibit 2

EXHIBIT 2**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

California Code of Regulations, Title 15, Division 3, Rules and Regulations of Adult Institutions, Programs, and Parole, Department of Corrections and Rehabilitation, updated through June 1, 2018
CDCR Department Operations Manual (DOM), updated through January 1, 2019
Fiscal year 2020-21 CDCR Budget Change Proposal: Correctional Video Surveillance/Drug Interdiction Project Continuation
U.S. Department of Justice, “Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies FY 2019 Competitive Grant Announcement”, release date April 5, 2019
Bureau of Justice Assistance, U.S. Department of Justice, “Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies FY 2019 Competitive Grant, Frequently Asked Questions”, last updated March 14, 2019
Kristy N. Matsuda, Jim Hess, Susan F. Turner, and Adrienne Credo, Center for Evidence-Based Corrections, <i>The Effect of Camera Installation on Violence at High Desert State Prison</i> , revised May 9, 2018
Court Ordered Remedial Plan, <i>Armstrong v. Davis</i> , USDC Northern District Case No. C 94-2307 CW, Amended January 3, 2001 (“ <i>Armstrong</i> Remedial Plan”)
CDCR form 1845 Disability Placement Program Verification (DPPV) (Rev. 2/14)
Letter from Gay Crosthwait Grunfeld to Russa Boy and Nicholas Weber, CDCR Office of Legal Affairs, re: Staff Misconduct at Richard J. Donovan Correctional Facility, with enclosures, dated November 13, 2019 (“Demand Letter”)
Email from Russa Boyd to Gay Crosthwait Grunfeld, Michael Freedman, Penny Godbold, and Ed Swanson re: RJD updates, dated January 24, 2020
RBGG chart entitled “RJD Staff Misconduct against <i>Armstrong</i> and <i>Coleman</i> Class member: Advocacy Letters from Plaintiffs’ Counsel and CDCR Responses,” last updated January 14, 2020 (“RJD SM Advocacy Letter & Response Chart”)

EXHIBIT 2**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Plaintiffs' Advocacy Letters and CDCR responses listed in the above-referenced RJD SM Advocacy Letter & Response Chart, last updated January 14, 2020 as follows:

Date of Plaintiffs' Counsel Advocacy Letter	Subject of Letter	Date of Defendants Letter in Response (if any)
March 2, 2018	<div></div>	
March 14, 2018		June 12, 2018
November 9, 2018		
November 14, 2017		
January 8, 2019		July 17, 2019
February 26, 2019		November 1, 2019
February 26, 2019		October 23, 2019
February 26, 2019		
March 21, 2019		July 31, 2019
April 18, 2019		July 25, 2019
May 24, 2019		
May 31, 2019		December 30, 2019
June 28, 2019		January 9, 2020
July 12, 2019		
July 12, 2019		December 30, 2019
July 17, 2019		November 19, 2019
October 4, 2019		December 26, 2019 and October 11, 2019 acknowledgment
October 10, 2019		October 30, 2019
October 23, 2019		
October 29, 2019		
Letter from Ursula Stuter, Office of Legal Affairs, to Penny Godbold re Advocacy Letter re <i>Armstrong</i> and Coleman Class Member, <div></div> dated February 3, 2020		

EXHIBIT 2**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Documents produced in *Armstrong v. Newsom* relating to investigation in connection with advocacy for [REDACTED] at Bates Nos:

- DOJ00001360 – 1380 (Highly Confidential – Attorneys Eyes Only)
- DOJ00003364
- DOJ00003365 – 3368
- DOJ00003386 – 3389
- DOJ00003390

Documents produced in *Armstrong v. Newsom* relating to investigations as follows:

- DOJ00000913 - 999
- DOJ00001260 – 1280 (designated Highly Confidential – Attorneys Eyes Only)
- DOJ00003683 – 3690 (designated Highly Confidential – Attorneys Eyes Only)
- DOJ00012971 – 12983 (designated Confidential)

Documents produced by CDCR PMK Tricia Ramos in February 4, 2020 deposition in *Armstrong v. Newsom* as follows:

- Handwritten notes by Tricia Ramos re investigation Log No. S-RJD-086-19-A
- Internal Affairs Investigation Report – Confidential - by Special Agent Richard P. Lee to Marcus Pollard, Warden (A), RJD, re Case Number S-RJD-096-19-A, dated November 27, 2019
- Internal Affairs Investigation Report – Supplemental Report Confidential - by Special Agent Richard P. Lee to Marcus Pollard, Warden (A), RJD, re Case Number S-RJD-096-19-A, dated January 7, 2020

Transcript of Deposition of OIG Roy Wesley, taken January 22, 2020 in *Armstrong v. Newsom*

Office of the Inspector General, “Monitoring the Use of Force” (Exhibit 8 to the Transcript of the Deposition of Roy Wesley), issued June 2019

Office of the Inspector General, “Monitoring the Internal Investigations and Employee Disciplinary Process of the California Department of Corrections and Rehabilitation, Semiannual Report January-June 2019, issued November 2019

EXHIBIT 2**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Transcript of the Deposition of Kimberly Seibel, taken January 29, 2020 (both confidential and non-confidential portions) in <i>Armstrong v. Newsom</i>
Confidential Exhibit 13 to Deposition of Kimberly Seibel, taken January 29, 2020
Transcript of the Deposition of Patricia Ramos, taken February 4, 2020 in <i>Armstrong v. Newsom</i>
Transcript of the Deposition of [REDACTED] taken February 13, 2020 in <i>Armstrong v. Newsom</i>
Memorandum dated December 10, 2018 from J.L. Bishop, Associate Warden, California Institution for Men, to Kimberly Seibel, Associate Director Reception Center Mission, CDCR, entitled "Findings of Inmate Interviews at Richard J. Donovan Correction Facility, December 4-5, 2018, produced in <i>Armstrong v. Newsom</i> at DOJ00000358-374 and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
Memorandum dated January 26, [2019] from [REDACTED] Correctional Sergeant, Investigative Services Unit, California Institution for Men, to P. Covello, Acting Warden, Richard J. Donovan Correctional Facility, re: Richard J. Donovan Correctional Facility, Facility C, further investigation/referral, produced in <i>Armstrong v. Newsom</i> at DOJ00000050-57 and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
Memorandum dated January 26, [2019] from [REDACTED] Correctional Sergeant, Investigative Services Unit, California Institution for Men, to P. Covello, Acting Warden, Richard J. Donovan Correctional Facility, re: Richard J. Donovan Correctional Facility, Facility C, non-referrals, produced in <i>Armstrong v. Newsom</i> at DOJ00000418-426 and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
<p>RJD Inquiry, Inmate Interview Worksheets, for interviews conducted December 4-5, 2018, produced in <i>Armstrong v. Newsom</i> at Bates Nos. beginning:</p> <ul style="list-style-type: none"> • DOJ00003827-3832 • DOJ00003833-3838 • DOJ00003839-3844 • DOJ00003845-3850

EXHIBIT 2

**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

- DOJ00003851-3856
- DOJ00003857-3862
- DOJ00003863-3868
- DOJ00003869-3874
- DOJ00003875-3880
- DOJ00003881-3886
- DOJ00003887-3892
- DOJ00003893-3898
- DOJ00003899-3904
- DOJ00003905-3910
- DOJ00003911-3916
- DOJ00003917-3922
- DOJ00003923-3826
- DOJ00003923-3928
- DOJ00003929-3934
- DOJ00003935-3940
- DOJ00003941-3946
- DOJ00003947-3952
- DOJ00003953-3958
- DOJ00003959-3964
- DOJ00003965-3970
- DOJ00003971-3976
- DOJ00003977-3982
- DOJ00003983-3988
- DOJ00003989-3994
- DOJ00003995-4000
- DOJ00004001-4006
- DOJ00004007-4012

EXHIBIT 2

**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

- DOJ00004013-4018
- DOJ00004019-4030
- DOJ00004031-4036
- DOJ00004037-4042
- DOJ00004043-4048
- DOJ00004049-4054
- DOJ00004055-4060
- DOJ00004061-4066
- DOJ00004067-4072
- DOJ00004073-4078
- DOJ00004079-4084
- DOJ00004085-4090
- DOJ00004091-4096
- DOJ00004097-4102
- DOJ00004103-4108
- DOJ00004109-4114
- DOJ00004115-4294
- DOJ00004295-4300
- DOJ00004301-4306
- DOJ00004307-4312
- DOJ00004313-4318
- DOJ00004319-4324
- DOJ00004325-4330
- DOJ00004331-4336
- DOJ00004331-4354
- DOJ00004337-4342
- DOJ00004343-4348
- DOJ00004349-4330

EXHIBIT 2

**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

- DOJ00004355-4360
 - DOJ00004361-4366
 - DOJ00004367-4372
 - DOJ00004373-4378
 - DOJ00004379-4384
 - DOJ00004385-4390
 - DOJ00004391-4396
 - DOJ00004397-4402
 - DOJ00004403-4408
 - DOJ00004409-4414
 - DOJ00004415-4420
 - DOJ00004421-4426
 - DOJ00004427-4432
 - DOJ00004433-4438
 - DOJ00004439-4444
 - DOJ00004445-4450
 - DOJ00004451-4456
 - DOJ00004457-4462
 - DOJ00004463-4468
 - DOJ00004469-4474
 - DOJ00004475-4480
 - DOJ00004481-4486
 - DOJ00004487-4492
 - DOJ00004493-4498
 - DOJ00004499-4504
- and designated HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY

EXHIBIT 2**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Email string dated December 5 – December 11, 2018 between Sara Malone, Connie Gipson, Jeff MacComber, Sandra Alfaro re: RJD, produced at DOJ00013199 – 13202 in *Armstrong v. Newsom*

Signed Confidential Declarations from *Armstrong* and *Coleman* class members as follows [Last Name, CDCR Number, date signed]:

- [REDACTED], January 8, 2020
- [REDACTED], January 31, 2020
- [REDACTED], February 18, 2020
- [REDACTED], January 29, 2020
- [REDACTED], January 29, 2020
- [REDACTED], January 25, 2020
- [REDACTED], January 8, 2020
- [REDACTED], January 7, 2020
- [REDACTED], January 7, 2020
- [REDACTED], January 8, 2020
- [REDACTED], January 6, 2020
- [REDACTED], January 24, 2020
- [REDACTED], December 18, 2019
- [REDACTED], January 7, 2020
- [REDACTED], January 5, 2020
- [REDACTED], January 8, 2020
- [REDACTED], January 8, 2020
- [REDACTED], February 7, 2020
- [REDACTED], January 8, 2020
- [REDACTED], January 8, 2020
- [REDACTED], January 7, 2020
- [REDACTED], January 8, 2020
- [REDACTED], January 7, 2020

EXHIBIT 2

**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

•	[REDACTED]	December 17, 2019
•	[REDACTED]	0, January 7, 2020
•	[REDACTED]	February 10, 2020
•	[REDACTED]	January 6, 2020
•	[REDACTED]	January 8, 2020
•	[REDACTED]	, January 30, 2020
•	[REDACTED]	, January 8, 2020
•	[REDACTED]	January 7, 2020
•	[REDACTED]	January 7, 2020
•	[REDACTED]	January 7, 2020
•	[REDACTED]	January 8, 2020
•	[REDACTED]	436, December 16, 2019
•	[REDACTED]	49, January 7, 2020
•	[REDACTED]	0, January 19, 2020
•	[REDACTED]	January 30, 2020
•	[REDACTED]	January 7, 2020
•	[REDACTED]	, January 7, 2020
•	[REDACTED]	, February 6, 2020
•	[REDACTED]	, January 7, 2020
•	[REDACTED]	January 7, 2020
•	[REDACTED]	1, January 29, 2020
•	[REDACTED]	January 6, 2020
•	[REDACTED]	January 26, 2020
•	[REDACTED]	, January 1, 2020
•	[REDACTED]	4, January 7, 2020
•	[REDACTED]	, January 7, 2020
•	[REDACTED]	January 7, 2020
•	[REDACTED]	January 7, 2020

EXHIBIT 2**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

<ul style="list-style-type: none"> • [REDACTED] January 7, 2020 • [REDACTED] January 8, 2020 • [REDACTED] January 7, 2020 • [REDACTED] December 16, 2019
Document created by Rosen Bien Galvan & Grunfeld entitled “List of Repeat Staff Offender Implicated in <i>Armstrong</i> and <i>Coleman</i> Class Member Declarations
Reporter’s Transcripts re: Evidentiary Hearing in <i>Coleman v. Brown</i> , USDC Eastern District Case No. CIV-S-90-0520 LKK, for hearings conducted October 1, 2 and 17, 2013
Order granting in part motion for enforcement of court orders and affirmative relief related to use of force and disciplinary measures and granting in part motion for enforcement of judgment and affirmative orders related to segregated housing, in <i>Coleman v. Brown</i> , USDC Eastern District Case No. CIV-S-90-0520 LKK, filed April 10, 2014
Settlement Agreement Between the United States of America and Hinds County, Mississippi Regarding the Hinds County Jail, in <i>United States of America v. Hinds County, et al.</i> , United States District Court, Southern District of Mississippi, Northern Division, Case No. 3:16cv489 WHB-JCG, filed July 19, 2016
Consent Judgment in <i>Jones, et al. v. Gusman</i> , United States District Court, Eastern District of Louisiana, Civil Action No. 2:12-cv-00859-LMA-ALC, filed June 6, 2013
Weill and Haney, <i>Mechanisms of Moral Disengagement and Prisoner Abuse</i> , Analyses of Social Issues and Public Policy, Vol. 17, No., 2017, pp. 286-318
Steve J. Martin, <i>Staff Use of Force in United States Confinement Settings</i> , 22 Wash. U. J.L. & Pol’y 145 (2006)
Jane Kahn, <i>Safety Concerns of a Prisoner Rights Lawyer</i> , Los Angeles Daily Journal, February 4, 2011
Excerpt from Venters, <i>Life and Death in Rikers Island</i> (2019)
<i>Evaluating the Effectiveness of Residential Treatment for Prisoners With Mental Illness</i> , Lovell, D., et al., Criminal Justice and Behavior, Vol. 28, No. 1, February 2001

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**COMPLETE LIST OF DOCUMENTS REVIEWED
BY ELDON VAIL IN PREPARATION OF DECLARATION**

Callous and Cruel, Use of Force Against Inmates with Mental Disabilities in US Jails and Prisons, Human Rights Watch, 2015