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UNITED STATES DISTRICT COURT

JUN 29 1994

FOR THE NORTHERN DISTRICT OF CALIFORNIA
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, JAMES AMAURIC, RICHARD
PONCIANO, JACK SWENSEN, BILLY BECK,
JUDY FENDT, WALTER FRATUS, GREGORY
SANDOVAL, DARLENE MADISON, PETER
RICHARDSON, STEVEN HILL, and all others
similarly situated,

Plaintiffs,

v.

PETE WILSON, Governor of the State of
California, JOSEPH SANDOVAL, Secretary
of Youth and Corrections Agency, JAMES
GOMEZ, Director of the Department of
Corrections, KYLE S. MCKINSEY, Deputy
Director for Health Care Services,
KEVIN CARRUTH, Deputy of the Planning
and Construction Division, DAVID
TRISTAN, Deputy Director of the
Institutions Division, MARISELA MONTES,
Deputy Director of the Parole and
Community Services Division,

Defendants.

No.

COMPLAINT
CLASS ACTION

694 2307

A. NATURE OF ACTION

1
2 1. This is a civil rights action, brought on behalf of
3 state prisoners and parolees with disabilities, for declaratory
4 and injunctive relief. State officials have discriminated
5 against plaintiffs and the class they represent by reason of
6 their disability. Defendants have constructed, renovated,
7 purchased or leased facilities, including approximately twenty
8 prisons, that are not accessible to prisoners or parolees with
9 mobility impairments. Defendants do not have adequate policies
10 or practices that enable them to identify, assess or reasonably
11 accommodate individuals with disabilities so that these
12 individuals can participate in the programs and activities that
13 they are otherwise qualified for. Defendants have failed to
14 provide class members with visual, hearing and other impairments
15 with auxiliary aids and services to ensure effective
16 communication so that they can participate in programs and
17 activities, including emergency services.

18 2. Plaintiffs and the class they represent bring this
19 action under 42 U.S.C. sections 12101 et seq. and 29 U.S.C.
20 section 794 against California officials who have responsibility
21 for, and complete control over, the programs and activities
22 provided to plaintiffs, and who have responsibility for, and
23 complete control over, the construction of prison facilities
24 since 1968. Defendants have repeatedly and persistently denied
25 the plaintiff class the equal access to programs and activities
26 run by defendants thereby subjecting them to unlawful
27 discrimination. Defendants have been and are engaging in a
28 policy and practice of violating federal requirements in the

1 design and construction of its new, renovated and/or remodeled
2 facilities in California. Defendants' conduct constitutes an
3 ongoing and continuous violation of federal law, and unless
4 restrained from doing so, defendants will continue to violate
5 federal law. Therefore, plaintiffs seek declaratory and
6 injunctive relief to remedy the illegal conditions to which they
7 and the class of others similarly situated are subjected.

8 **B. PARTIES**

9 (1) Plaintiffs

10 3. Plaintiffs and the class they represent are
11 individuals, under the custody and control of the California
12 Department of Corrections, who have disabilities, including but
13 not limited to, mobility, sight, hearing, learning and kidney
14 impairments, that substantially limit one or more of their major
15 life activities. They have been denied access to the programs,
16 services and activities run by defendants and are confined in or
17 use facilities operated by and under the control of the
18 California Department of Corrections, including but not limited
19 to, San Quentin State Prison, Pelican Bay State Prison, Central
20 California's Women's Facility, Avenal State Prison, California
21 Medical Facility, California State Prison at Solano, California
22 Men's Colony, Corcoran State Prison, Wasco State Prison, all of
23 the reception centers, and parole offices. All plaintiffs are
24 "individuals with disabilities" as that term is defined in
25 Section 504 of the Rehabilitation Act of 1973 [hereinafter
26 referred to as "Section 504"], 29 U.S.C. section 706(8), and the
27 Americans With Disabilities Act [hereinafter referred to as the
28 "ADA"], 42 U.S.C. section 12102(2).

1 4. Plaintiff John Armstrong, E-46263, is currently housed
2 at California Medical Facility at Vacaville. Mr. Armstrong has a
3 visual impairment.

4 5. Plaintiff James Amauric, J-12387, is currently housed
5 in the reception center at San Quentin State Prison. Mr. Amauric
6 uses a wheelchair because his legs are paralyzed.

7 6. Plaintiff Richard Ponciano, J-11227, is currently
8 housed at California Medical Facility at Vacaville. Mr. Ponciano
9 uses a wheelchair because his legs are paralyzed.

10 7. Plaintiff Jack Swensen, H-52899, is currently housed
11 at Avenal State Prison in the "Well-Handicapped Program." Mr.
12 Swensen uses a leg prosthesis because his right leg has been
13 amputated.

14 8. Plaintiff Billy Beck, H-55030, was housed at Avenal
15 State Prison in the "Well-Handicapped Program" before he paroled
16 on May 9, 1994. Mr. Beck has a hearing impairment.

17 9. Plaintiff Judy Fendt, W-25026, is currently housed at
18 Central California Women's Facility. Ms. Fendt uses a wheelchair
19 and/or a leg prosthesis because her right leg has been amputated.

20 10. Plaintiff Walter Fratus, H-41663, is currently housed
21 at Corcoran State Prison. Mr. Fratus uses a wheelchair because
22 his legs are paralyzed. Mr. Fratus also has partial paralysis of
23 his arms.

24 11. Plaintiff Gregory Sandoval, D-86282, is currently
25 housed at California State Prison at Solano. Mr. Sandoval has a
26 hearing impairment.

1 12. Plaintiff Darlene Madison, W-46939, is currently
2 housed at Central California Women's Facility. Ms. Madison uses
3 a wheelchair because she has partial paralysis of her left side.

4 13. Plaintiff Peter Richardson, B-77974, is currently
5 housed at California State Prison at Solano. Mr. Richardson has
6 a learning disability.

7 14. Plaintiff Steven Hill, J-09830, is currently housed in
8 the reception center at San Quentin State Prison. Mr. Hill has
9 chronic renal failure requiring regular kidney dialysis.

10 2) Defendants

11 15. Pete Wilson is the Governor of the State of California
12 and the Chief Executive of the state government. He is sued
13 herein in his official capacity. As Governor he is obligated
14 under state law to supervise the official conduct of all
15 executive and ministerial officers and to see that all offices
16 are filled and their duties lawfully performed. Defendant Wilson
17 has control over the monies allocated to California Department of
18 Corrections by submitting a budget and by exercising his
19 authority to veto or sign legislation appropriating funds for
20 prison construction and renovation and prison and parole
21 programs. Defendant Wilson has the authority to appoint and
22 remove the subordinate defendants named herein. Defendant Wilson
23 retains the ultimate state authority over the care and treatment
24 of the plaintiff class, and is responsible for ensuring that all
25 programs, activities and services operated by and under the
26 control of the California Department of Corrections comply with
27 Section 504 and the ADA.
28

1 16. Defendant Joseph Sandoval is Secretary of the Youth
2 and Corrections Agency of the State of California and is sued
3 herein in this capacity. The Youth and Corrections Agency
4 supervises the operation of the California Department of
5 Corrections.

6 17. Defendant James Gomez is the Director of the
7 California Department of Corrections and is sued herein in that
8 capacity. The Department of Corrections is responsible for the
9 operation of the California state prison and parole system,
10 including the construction of prison facilities and the provision
11 of accessible programs and activities to individuals with
12 disabilities.

13 18. Defendant Kyle S. McKinsey is the Deputy Director for
14 Health Care Services for the California Department of Corrections
15 and is sued in that capacity. As Deputy Director, Mr. McKinsey
16 is responsible for supervising the development and implementation
17 of a system of individual assessment of a prisoner's disability,
18 including his or her ability to perform daily living tasks and
19 job responsibilities. Mr. McKinsey was the Deputy Director of
20 the Planning and Construction Division for the California
21 Department of Corrections from 1984 to 1992. As Deputy Director,
22 Mr. McKinsey was responsible for the construction of
23 approximately fifteen new institutions, five major renovations to
24 existing facilities and about twenty to twenty-five conservation
25 camps throughout the state of California.

26 19. Defendant Kevin Carruth is Deputy Director of the
27 Planning and Construction Division for the California Department
28 of Corrections and is sued in that capacity. As Deputy Director,

1 Mr. Carruth is responsible for supervising the planning and
2 construction of new prisons and for renovations of existing
3 prisons. Mr. Carruth failed to perform his responsibilities
4 under Section 504 and the ADA.

5 20. Defendant David Tristan is Deputy Director of the
6 Institutions Division for the California Department of
7 Corrections and is sued in that capacity. As Deputy Director,
8 Mr. Tristan is responsible for ensuring that all programs,
9 activities and services operated by and under the control of the
10 California Department of Corrections comply with Section 504 and
11 the ADA.

12 21. Defendant Marisela Montes is Deputy Director of the
13 Parole and Community Services Division for the California
14 Department of Corrections and is sued in that capacity. As
15 Deputy Director, Ms. Montes is responsible for ensuring that all
16 programs, activities and services operated by and under the
17 control of the California Department of Corrections for parolees
18 comply with Section 504 and the ADA.

19 **C. JURISDICTION**

20 22. This case is brought pursuant to the Americans with
21 Disabilities Act, 42 U.S.C. section 12101 et seq. and the
22 Rehabilitation Act of 1973 section 504, 29 U.S.C. section 794.
23 This court has jurisdiction under 28 U.S.C. sections 1331 and
24 1343. Plaintiffs seek declaratory and injunctive relief under 28
25 U.S.C. sections 1343, 2201 and 2202, 29 U.S.C. section 794(a) and
26 42 U.S.C. section 12117(a).

D. VENUE

23. Venue is appropriate in this Court under 28 U.S.C. section 1391(b), because a substantial part of the events or omissions giving rise to plaintiffs' claims occurred within the Northern District of California.

E. CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(1) and Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all prisoners and parolees with disabilities, as defined in 29 U.S.C. section 706(8)(A) and 42 U.S.C. section 12102, who are now, or will in the future be, under the custody of the California Department of Corrections, except those prisoners and parolees with serious mental disorders, and those prisoners with mobility-impairments that are housed at the California Medical Facility at Vacaville.

(a) The exact size of the class is unknown to the plaintiffs but they believe there are hundreds of class members and the size of the class is so numerous that joinder of all members is impracticable;

(b) The conditions, practices and omissions that form the basis of this complaint are common to all members of the class and the relief sought will apply to all of them.

(c) The claims of the plaintiffs are typical of the claims of the entire class.

(d) The prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications which would establish incompatible standards of conduct for the defendants.

1 (e) The prosecution of separate actions by individual
2 members of the class would create a risk of adjudications with
3 respect to individual members which would, as a practical matter,
4 substantially impair the ability of other members to protect
5 their interests.

6 (f) Defendants have acted or refused to act on
7 grounds generally applicable to the class, making appropriate
8 injunctive and declaratory relief with respect to the class as a
9 whole, or to particular subclasses.

10 (g) There are questions of law and fact common to the
11 members of the class including defendants' violations of the
12 Americans with Disabilities Act and Section 504 of the
13 Rehabilitation Act of 1973, because of denial of the benefit of
14 and discrimination in access to programs and activities for
15 individuals with disabilities.

16 (h) The named plaintiffs are capable, through
17 counsel, of fairly and adequately representing the class and
18 protecting its interests because they are individuals with
19 disabilities who suffer from, among other things, defendants'
20 violations of the Americans with Disabilities Act and Section 504
21 of the Rehabilitation Act of 1973, as set forth in plaintiffs'
22 statement of Class Claims.

23 **F. STATEMENT OF CLASS CLAIMS**

24 25. The California Department of Corrections receives
25 federal financial assistance as that term is used in 29 U.S.C.
26 section 794(b)(1)(A).

27 26. The California Department of Corrections has spent
28 billions of public dollars since the 1960's building new prisons

1 and renovating its existing facilities. Defendants built and
2 renovated almost every existing prison since state accessibility
3 laws were passed in the 1960's and since federal accessibility
4 laws were passed in the 1970's. The Planning and Construction
5 Division of the California Department of Corrections is
6 responsible for the planning and construction of these
7 institutions.

8 27. Both Section 504 and the ADA require that all new
9 building and any renovation or remodeling comply with federal
10 accessibility standards. 29 U.S.C. section 794(a); 42 U.S.C.
11 sections 12132, 12133 and 12134(b); 28 C.F.R. sections 35.149,
12 35.151, 41.57(B) and 41.58(a). Defendants built and renovated
13 prisons that fail to comply with these standards found in the
14 Uniform Federal Accessibility Standards [hereinafter referred to
15 as "UFAS"]. 41 C.F.R. Pt.101-19.6. As a result of their failure
16 to comply with federal law, defendants have expended billions of
17 dollars to build facilities that must be renovated in order to
18 meet federal accessibility standards. 28 C.F.R. section 35.151
19 (a)-(c). This waste of public monies was both unnecessary and
20 unconscionable.

21 28. As a result of defendants' unlawful failure to comply
22 with federal accessibility standards, plaintiffs have been
23 delayed in their transfer to institutions that can accommodate
24 their disabilities and have been excluded from the educational,
25 vocational, work furlough and work credit, recreational,
26 visiting, classification, disciplinary and emergency programs and
27 services that defendants offer to individuals under their custody
28 and control.

1 29. Despite the clear mandate of Section 504 and the ADA,
2 defendants have failed to adequately evaluate the Department's
3 current services, policies and practices to determine the extent
4 to which modification of its services, policies and practices is
5 required, and have failed to develop policies and practices for
6 implementing such modifications. 29 U.S.C. section 794(a); 42
7 U.S.C. section 12134(b); 28 C.F.R. sections 35.105, 35.150(d),
8 41.5(b)(2), 41.57(c) and 42.505(c).

9 30. For those individuals with disabilities who have self-
10 identified, defendants have failed to make individualized
11 assessments of their ability to participate in work, educational,
12 vocational, and recreational programs and services offered by
13 defendants, and, as a result, have excluded individuals who were
14 otherwise qualified to participate in these programs by reason of
15 their disabilities and not their abilities in violation of
16 federal law. 29 U.S.C. section 794(a); 42 U.S.C. sections
17 12112(b) and 12132; 28 C.F.R. sections 35.130 (a)-(b)(8) and
18 41.51.

19 31. Defendants have failed to make reasonable
20 accommodations to individuals with disabilities in the programs,
21 activities, services, benefits, and jobs they offer to
22 individuals under their custody and control. 29 U.S.C. section
23 794(a); 42 U.S.C. sections 12111(9) and 12132; 28 C.F.R. sections
24 35.150(b)(7) and 41.53.

25 32. Defendants continue to engage in a policy and practice
26 of violating federal accessibility requirements in the design and
27 construction of its current projects, including new and renovated
28 prison facilities in California. Defendants continue to engage

1 in a policy and practice of failing to develop adequate policies
2 and practices for providing the plaintiff class with reasonable
3 access to programs, activities and services available generally
4 to other individuals under their custody and control.

5 Defendants' conduct constitutes an ongoing and continuous
6 violation of Section 504 and the ADA and, unless restrained from
7 doing so, defendants will continue to violate the law.

8 33. Defendants have failed to furnish appropriate
9 auxiliary aids and services where necessary to afford plaintiffs
10 and members of the plaintiff class the opportunity to participate
11 in the programs, activities, services, benefits, and jobs they
12 offer to individuals under their custody and control. 29 U.S.C.
13 section 794(a); 42 U.S.C. sections 12132 and 12134(b); 28 C.F.R.
14 sections 35.160-35.163. In addition to being denied access to
15 many of defendants' programs, plaintiffs and members of the
16 plaintiff class have been endangered during emergencies in the
17 prison as a result of defendants' failure to take appropriate
18 steps to ensure that communications with them are as effective as
19 communications with other prisoners. Id.

20 34. By denying plaintiffs and the plaintiff class with
21 meaningful access to programs and facilities that they are
22 otherwise qualified to participate in, and by denying plaintiffs
23 and the plaintiff class the benefits of participation in programs
24 and activities that they are otherwise qualified to participate
25 in, and by failing to reasonably accommodate plaintiffs and the
26 plaintiff class, thereby subjecting them to discrimination,
27 defendants have violated Section 504 and the ADA.
28

1 35. By repeatedly and persistently denying plaintiffs and
2 the plaintiff class with facilities that comply with federal
3 accessibility standards, defendants have violated Section 504 and
4 the ADA.

5 **G. PRAYER FOR RELIEF**

6 WHEREFORE, plaintiffs pray that this Court:

7 A. Declare the suit is maintainable as a class
8 action pursuant to Federal Rule of Civil Procedure 23(b)(1) and
9 23(b)(2);

10 B. Adjudge and declare that the conditions,
11 practices, and omissions described above are in violation of the
12 rights of the plaintiffs and the class they represent under
13 Section 504 of the Rehabilitation Act of 1973 and the Americans
14 with Disabilities Act of 1991.

15 C. Preliminarily and permanently enjoin defendants,
16 their agents, employees and all persons acting in concert with
17 them, from subjecting plaintiffs and the class they represent to
18 the illegal conditions, practices and omissions described above;

19 D. Order defendants to end their practices of
20 denying individuals with disabilities the benefits of, excluding
21 them from participation in, and subjecting them to discrimination
22 under programs and activities provided by the California
23 Department of Corrections;

24 E. Order defendants to reasonably accommodate the
25 special needs of individuals with disabilities;

26 F. Order defendants to makes its existing and future
27 facilities in California readily accessible to and usable by
28 individuals with disabilities as required under Section 504 of

1 the Rehabilitation Act of 1973 and the Americans with
2 Disabilities Act of 1991 and the regulations promulgated
3 thereunder;

4 G Award plaintiffs, pursuant to 29 U.S.C. section
5 794(b) and 42 U.S.C. section 12205, the costs of this suit and
6 reasonable attorneys' fees and litigation expenses;

7 H. Retain jurisdiction of this case until defendants
8 have fully complied with the orders of this Court, and there is a
9 reasonable assurance that defendants will continue to comply in
10 the future absent continuing jurisdiction; and

11 I. Award such other and further relief as the Court
12 deems just and proper.

13 Dated: June 29, 1994

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15 PRISON LAW OFFICE

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18 DONALD SPECTER
19 JANE E. KAHN
20 Attorneys for Plaintiff
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