

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**[PROPOSED] TEMPORARY
RESTRAINING ORDER**

Judge: Hon. Claudia Wilken

1 Upon review of Plaintiffs' Notice of Ex Parte Motion and Ex Parte Motion for
 2 Temporary Restraining Order, the supporting exhibits, and the entire record in this matter,
 3 and good cause appearing, Plaintiffs' Motion for Temporary Restraining Order is
 4 GRANTED IN PART AND DEFERRED IN PART. Pursuant to Rule 65 of the Federal
 5 Rules of Civil Procedure and Civil Local Rule 65-1, the Court orders as follows:

6 The Court concludes that Plaintiffs have met their burden of demonstrating: (1) that
 7 Plaintiffs have shown a likelihood of success on the merits of their claim that Defendants
 8 and their employees have violated the March 17, 2020, order of this Court, Dkt. 2931, and
 9 the Americans with Disabilities Act ("ADA") by retaliating against two class members
 10 who are currently at the R.J. Donovan Correctional Facility ("RJD") (collectively, the
 11 "Witnesses") for their participation in Plaintiffs' motions regarding staff misconduct;
 12 (2) that Plaintiffs have shown a likelihood of success on the merits of their claim that
 13 continued detention of the Witnesses at RJD is causing and will cause irreparable harm to
 14 the Witnesses absent an injunction; (3) that the balance of equities weighs in Plaintiffs'
 15 favor; and (4) that the public interest favors issuing an injunction. Winter v. Nat. Res. Def.
 16 Council, Inc., 555 U.S. 7, 20 (2008); Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240
 17 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary
 18 restraining order standards are "substantially identical"). Accordingly, a temporary
 19 restraining order ("TRO") pursuant to Federal Rule of Civil Procedure 65 and the inherent
 20 equitable powers of this Court is warranted.

21 1. The Court finds that Plaintiffs have demonstrated that they are likely to show
 22 that Defendants and their employees have retaliated against the Witnesses for participating
 23 in this lawsuit and for supporting the Motion to Stop Defendants from Assaulting, Abusing
 24 and Retaliating Against Incarcerated People with Disabilities at R.J. Donovan Correctional
 25 Facility ("RJD Motion"), Dkt. 2922 to 2922-8, and the Motion to Stop Defendants from
 26 Assaulting, Abusing and Retaliating Against Incarcerated people with Disabilities
 27 ("Statewide Motion" and, collectively with the RJD Motion, the "Motions"), Dkt. 2948 to
 28 2948-6, in violation of this Court's March 17, 2020, order and the ADA. Specifically,

1 Plaintiffs have demonstrated that they are likely to show that Defendants and their
 2 employees have violated the provision of the March 17, 2020, order that prohibits
 3 “Defendants and their employees . . . from retaliating against the Declarants, Armstrong
 4 class members, or incarcerated people at RJD for participating in the [RJD Motion].” Dkt.
 5 2931 at 3. Plaintiffs also have demonstrated that they are likely to show that Defendants
 6 and their employees have also violated 42 U.S.C. §§ 12203(a) and (b).

7 2. The Court further finds that Plaintiffs have demonstrated that they are likely
 8 to show that Defendants and their employees have been unable or unwilling to address the
 9 safety concerns of the Witnesses in their current housing placements at RJD. In light of
 10 the death of a previous witness who submitted a declaration in support of the RJD Motion
 11 who was housed in the same unit as the Witnesses are currently, as well as the June 17,
 12 2020, assault on one of the two Witnesses and the incidents of retaliation described in the
 13 declarations of the Witnesses and another witness, Plaintiffs have demonstrated that they
 14 are likely to show that the Witnesses’ lives will remain in danger and their future
 15 participation as witnesses in this dispute will be jeopardized; that the Witnesses have
 16 already faced violent retaliation for participating in the Motions and reporting officer
 17 misconduct; and that the Witnesses have a credible fear that RJD is an extremely
 18 dangerous place for those who report misconduct.

19 3. The Court finds that the balance of equities weighs heavily in the Witnesses’
 20 favor and that there is little burden on Defendants to protect the Witnesses. Defendants
 21 have pre-existing federal and state duties to keep all incarcerated people safe from staff
 22 misconduct. See U.S. Const., Amend. 8; Farmer v. Brennan, 511 U.S. 825, 834, 847
 23 (1994); Cal. Code Regs., Tit. 15 § 3270 (“The requirement of custodial security and of
 24 staff, inmate and public safety must take precedence over all other consideration in the
 25 operation of all the programs and activities of the institutions of the department.”); Cal.
 26 Code Regs., Tit. 15 § 3271 (“Every employee, regardless of his or her assignment, is
 27 responsible for the safe custody of the inmates confined in the institutions of the
 28 department.”); CDCR Dep’t Operations Manual § 130101.3 (“CDCR employees have a

responsibility to protect the offenders in their custody”). Any burdens on Defendants are outweighed by the burdens faced by the Witnesses—death, serious injury, and ongoing violations of their federal civil rights. See Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017) (“Faced with . . . preventable human suffering, [the Ninth Circuit] ha[s] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’ favor.”) (quotation omitted).

4. The Court further finds that the need for a safe placement must also take into account the COVID-19 pandemic sweeping through California’s prisons. Both Witnesses have multiple COVID-19 risk factors, including their age and underlying health conditions.

5. Finally, the Court finds that the public has a strong interest “in enforcement of the ADA and in elimination of discrimination on the basis of disability.” Enyart v. Nat’l Conference of Bar Examiners, Inc., 630 F.3d 1153, 1167 (9th Cir. 2011); see Hernandez v. Cty. of Monterey, 110 F. Supp. 3d 929, 958 (N.D. Cal. 2015). Accordingly, an order protecting the Witnesses for the exercise of their rights under the ADA and their participation in this litigation would serve the public interest.

6. The Court hereby ORDERS:

a. No later than July 6, 2020, at 4:00 p.m., Defendants shall develop and send by electronic mail to Plaintiffs’ counsel a proposed plan for transferring the Witnesses to a custodial or community placement that:

- i. Is not at RJD;
- ii. Is not administrative segregation or any other type of punitive housing;
- iii. Is not at a higher security level than the Witnesses’ current classifications;
- iv. Provides at least equivalent access to programming opportunities, including compliance with the Coleman Program Guide;
- v. Is as safe in light of COVID-19 risks as possible; and

1 vi. If the placement is custodial, complete surveillance camera
2 coverage is preferable.

3 b. If no such placement exists within the California Department of
4 Corrections and Rehabilitation (“CDCR”), Defendants’ proposed plan must include
5 transferring the Witnesses to a placement in the community or another correctional system
6 that meets the criteria in Paragraph 6.a., including the Federal Bureau of Prisons.

7 c. No later than July 7, 2020, at noon, Defendants shall arrange for
8 Plaintiffs’ counsel to conduct separate confidential legal telephone calls with each of the
9 two Witnesses.

10 d. No later than July 8, 2020, at noon, the parties shall meet and confer
11 to attempt to resolve any objections that Plaintiffs may have regarding Defendants’
12 proposed plan.

13 e. If, following the meet-and-confer session, the parties are in agreement
14 regarding the plan, the parties shall file a joint status statement no later than July 9, 2020,
15 at midnight, attaching the agreed-upon plan under seal, and the Court will enter an order
16 adopting and mandating Defendants’ compliance with the plan.

17 f. If, following the meet-and-confer session, Plaintiffs have objections to
18 Defendants’ plan, then, no later than July 9, 2020, at midnight, the parties shall file a joint
19 status statement setting forth each side’s respective position and attaching under seal the
20 plan Defendants propose to implement. Each side’s statement of its position shall not
21 exceed five pages. The Court will rule on Plaintiffs’ motion for a temporary restraining
22 order with respect to the transfer of the Witnesses shortly upon receipt of the joint
23 statement.

24 g. These remedies are all consistent with the Prison Litigation Reform
25 Act’s requirement that the Court’s orders be narrowly drawn, extend no further than
26 necessary to correct the violation of a federal right, and be the least intrusive means
27 necessary to correct the violation. See 18 U.S.C. § 3626(a)(1)(A); Armstrong v. Brown,
28 768 F.3d 975, 985-86 (9th Cir. 2014).

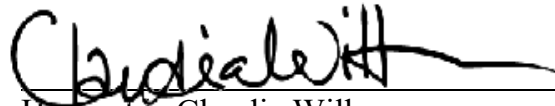
1 h. No security shall be required because the Witnesses are incarcerated
2 and presumably indigent.

3 **ORDER TO SHOW CAUSE**

4 No later than July 10, 2020, Defendants shall show cause why a preliminary
5 injunction continuing in effect this Court's temporary restraining orders should not issue.
6 Plaintiffs may file a response no later than July 13, 2020. The hearing on the order to
7 show cause will be held remotely on July 16, 2020, at 2:30 p.m.

8 IT IS SO ORDERED.

9
10 DATED: July 2, 2020



Honorable Claudia Wilken
United States District Judge