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FILED

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

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE 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, JAMES)
 NIELSEN, Chairman of the Board of)
 Prison Terms,)

Defendants.)

No. C-94-2307 CW

AMENDED COMPLAINT
 CLASS ACTION

A. NATURE OF ACTION

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

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

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

15 8. Plaintiff Billy Beck, H-55030, was housed at Avenal
16 State Prison in the "Well-Handicapped Program" before he paroled
17 on May 9, 1994. Mr. Beck has a hearing impairment that
18 defendants did not reasonably accommodate, inter alia, during the
19 parole revocation process.

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

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

1 11. Plaintiff Gregory Sandoval, D-86282, is currently
2 housed at California State Prison at Solano. Mr. Sandoval has a
3 hearing impairment.

4 12. Plaintiff Darlene Madison, W-46939, was housed at
5 Central California Women's Facility, and is currently on parole.
6 Ms. Madison uses a wheelchair because she has partial paralysis
7 of her left side.

8 13. Plaintiff Peter Richardson, B-77974, is currently
9 housed at California State Prison at Solano. Mr. Richardson has
10 a learning disability that defendants did not reasonably
11 accommodate, inter alia, during his parole suitability hearings.

12 14. Plaintiff Steven Hill, J-09830, was housed in the
13 reception center at San Quentin State Prison, and is currently on
14 parole. Mr. Hill has chronic renal failure requiring regular
15 kidney dialysis.

16 2) Defendants

17 15. Pete Wilson is the Governor of the State of California
18 and the Chief Executive of the state government. He is sued
19 herein in his official capacity. As Governor he is obligated
20 under state law to supervise the official conduct of all
21 executive and ministerial officers and to see that all offices
22 are filled and their duties lawfully performed. Defendant Wilson
23 has control over the monies allocated to California Department of
24 Corrections by submitting a budget and by exercising his
25 authority to veto or sign legislation appropriating funds for
26 prison construction and renovation and prison and parole
27 programs. Defendant Wilson has the authority to appoint and
28 remove the subordinate defendants named herein. Defendant Wilson

1 retains the ultimate state authority over the care and treatment
2 of the plaintiff class, and is responsible for ensuring that all
3 programs, activities and services operated by and under the
4 control of the California Department of Corrections comply with
5 Section 504 and the ADA.

6 16. Defendant Joseph Sandoval is Secretary of the Youth
7 and Corrections Agency of the State of California and is sued
8 herein in this capacity. The Youth and Corrections Agency
9 supervises the operation of the California Department of
10 Corrections.

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

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

1 existing facilities and about twenty to twenty-five conservation
2 camps throughout the state of California.

3 19. Defendant Kevin Carruth is Deputy Director of the
4 Planning and Construction Division for the California Department
5 of Corrections and is sued in that capacity. As Deputy Director,
6 Mr. Carruth is responsible for supervising the planning and
7 construction of new prisons and for renovations of existing
8 prisons. Mr. Carruth failed to perform his responsibilities
9 under Section 504 and the ADA.

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

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

24 22. Defendant James Nielsen is the Chairman of the Board
25 of Prison Terms (Board) and is sued in that capacity. As
26 Chairman, Mr. Nielson is responsible for the operations of the
27 Board and must ensure that all programs, activities and services
28 operated by the Board comply with Section 504 and the ADA.

C. JURISDICTION

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

D. VENUE

24. 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

25. 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 mobility, sight, hearing, learning and kidney 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 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;

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

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

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

10 (e) The prosecution of separate actions by individual
11 members of the class would create a risk of adjudications with
12 respect to individual members which would, as a practical matter,
13 substantially impair the ability of other members to protect
14 their interests.

15 (f) Defendants have acted or refused to act on
16 grounds generally applicable to the class, making appropriate
17 injunctive and declaratory relief with respect to the class as a
18 whole, or to particular subclasses.

19 (g) There are questions of law and fact common to the
20 members of the class including defendants' violations of the
21 Americans with Disabilities Act and Section 504 of the
22 Rehabilitation Act of 1973, because of denial of the benefit of
23 and discrimination in access to programs and activities for
24 individuals with disabilities.

25 (h) The named plaintiffs are capable, through
26 counsel, of fairly and adequately representing the class and
27 protecting its interests because they are individuals with
28 disabilities who suffer from, among other things, defendants'

1 violations of the Americans with Disabilities Act and Section 504
2 of the Rehabilitation Act of 1973, as set forth in plaintiffs'
3 statement of Class Claims.

4 **F. STATEMENT OF CLASS CLAIMS**

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

8 27. The California Department of Corrections has spent
9 billions of public dollars since the 1960's building new prisons
10 and renovating its existing facilities. Defendants built and
11 renovated almost every existing prison since state accessibility
12 laws were passed in the 1960's and since federal accessibility
13 laws were passed in the 1970's. The Planning and Construction
14 Division of the California Department of Corrections is
15 responsible for the planning and construction of these
16 institutions.

17 28. Both Section 504 and the ADA require that all new
18 building and any renovation or remodeling comply with federal
19 accessibility standards. 29 U.S.C. section 794(a); 42 U.S.C.
20 sections 12132, 12133 and 12134(b); 28 C.F.R. sections 35.149,
21 35.151, 41.57(B) and 41.58(a). Defendants built and renovated
22 prisons that fail to comply with these standards found in the
23 Uniform Federal Accessibility Standards [hereinafter referred to
24 as "UFAS"]. 41 C.F.R. Pt.101-19.6. As a result of their failure
25 to comply with federal law, defendants have expended billions of
26 dollars to build facilities that must be renovated in order to
27 meet federal accessibility standards. 28 C.F.R. section 35.151
28

1 (a)-(c). This waste of public monies was both unnecessary and
2 unconscionable.

3 29. As a result of defendants' unlawful failure to comply
4 with federal accessibility standards, plaintiffs have been
5 delayed in their transfer to institutions that can accommodate
6 their disabilities and have been excluded from the educational,
7 vocational, work furlough and work credit, recreational,
8 visiting, classification, disciplinary and emergency programs and
9 services that defendants offer to individuals under their custody
10 and control.

11 30. Despite the clear mandate of Section 504 and the ADA,
12 defendants have failed to adequately evaluate the Department's
13 and the Board's current services, policies and practices to
14 determine the extent to which modification of its services,
15 policies and practices is required, and have failed to develop
16 policies and practices for implementing such modifications. 29
17 U.S.C. section 794(a); 42 U.S.C. section 12134(b); 28 C.F.R.
18 sections 35.105, 35.150(d), 41.5(b)(2), 41.57(c) and 42.505(c).

19 31. For those individuals with disabilities who have self-
20 identified, defendants have failed to make individualized
21 assessments of their ability to participate in work, educational,
22 vocational, and recreational programs and services offered by
23 defendants, and, as a result, have excluded individuals who were
24 otherwise qualified to participate in these programs by reason of
25 their disabilities and not their abilities in violation of
26 federal law. 29 U.S.C. section 794(a); 42 U.S.C. sections
27 12112(b) and 12132; 28 C.F.R. sections 35.130 (a)-(b)(8) and
28 41.51.

1 32. Defendants have failed to make reasonable
2 accommodations to individuals with disabilities in the programs,
3 activities, services, benefits, and jobs they offer to
4 individuals under their custody and control. 29 U.S.C. section
5 794(a); 42 U.S.C. sections 12111(9) and 12132; 28 C.F.R. sections
6 35.150(b)(7) and 41.53.

7 33. Defendants continue to engage in a policy and practice
8 of violating federal accessibility requirements in the design and
9 construction of its current projects, including new and renovated
10 prison facilities in California. Defendants continue to engage
11 in a policy and practice of failing to develop adequate policies
12 and practices for providing the plaintiff class with reasonable
13 access to programs, activities and services available generally
14 to other individuals under their custody and control.
15 Defendants' conduct constitutes an ongoing and continuous
16 violation of Section 504 and the ADA and, unless restrained from
17 doing so, defendants will continue to violate the law.

18 34. Defendants have failed to furnish appropriate
19 auxiliary aids and services where necessary to afford plaintiffs
20 and members of the plaintiff class the opportunity to participate
21 in the programs, activities, services, benefits, and jobs they
22 offer to individuals under their custody and control. 29 U.S.C.
23 section 794(a); 42 U.S.C. sections 12132 and 12134(b); 28 C.F.R.
24 sections 35.160-35.163. In addition to being denied access to
25 many of defendants' programs, plaintiffs and members of the
26 plaintiff class have been endangered during emergencies in the
27 prison as a result of defendants' failure to take appropriate
28

1 steps to ensure that communications with them are as effective as
2 communications with other prisoners. Id.

3 35. By denying plaintiffs and the plaintiff class with
4 meaningful access to programs and facilities that they are
5 otherwise qualified to participate in, and by denying plaintiffs
6 and the plaintiff class the benefits of participation in programs
7 and activities that they are otherwise qualified to participate
8 in, and by failing to reasonably accommodate plaintiffs and the
9 plaintiff class, thereby subjecting them to discrimination,
10 defendants have violated Section 504 and the ADA.

11 36. By repeatedly and persistently denying plaintiffs and
12 the plaintiff class with facilities that comply with federal
13 accessibility standards, defendants have violated Section 504 and
14 the ADA.

15 **G. PRAYER FOR RELIEF**

16 WHEREFORE, plaintiffs pray that this Court:

17 A. Declare the suit is maintainable as a class
18 action pursuant to Federal Rule of Civil Procedure 23(b)(1) and
19 23(b)(2);

20 B. Adjudge and declare that the conditions,
21 practices, and omissions described above are in violation of the
22 rights of the plaintiffs and the class they represent under
23 Section 504 of the Rehabilitation Act of 1973 and the Americans
24 with Disabilities Act of 1991.

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

1 D. Order defendants to end their practices of
2 denying individuals with disabilities the benefits of, excluding
3 them from participation in, and subjecting them to discrimination
4 under programs and activities provided by the California
5 Department of Corrections;

6 E. Order defendants to reasonably accommodate the
7 special needs of individuals with disabilities;

8 F. Order defendants to make its existing and future
9 facilities in California readily accessible to and usable by
10 individuals with disabilities as required under Section 504 of
11 the Rehabilitation Act of 1973 and the Americans with
12 Disabilities Act of 1991 and the regulations promulgated
13 thereunder;

14 G Award plaintiffs, pursuant to 29 U.S.C. section
15 794(b) and 42 U.S.C. section 12205, the costs of this suit and
16 reasonable attorneys' fees and litigation expenses;

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

21 I. Award such other and further relief as the Court
22 deems just and proper.

23 Dated: November 3, 1995

24
25 PRISON LAW OFFICE

26
27 

28 DONALD SPECTER
Attorneys for Plaintiffs

DECLARATION OF SERVICE BY MAIL

Case Name: Armstrong v. Wilson

No. C-94-2307 CW

I am employed in the County of Marin, California. I am over the age of 18 years and not a party to the within entitled cause: my business address is Prison Law Office, General Delivery, San Quentin, California 94964.

On November 3, 1995, I served the attached

AMENDED COMPLAINT CLASS ACTION

in said cause, placing, or causing to be placed, a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at San Rafael, California, addressed as follows:

James Humes
Deputy Attorney General
50 Fremont Street
San Francisco, CA 94105-2239

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Rafael, California on November 3, 1995.

A handwritten signature in cursive script, appearing to read "Bonnie Cash", written over a horizontal line.

Bonnie Cash