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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA (FRESNO DIVISION)

JANINE CHANDLER; KRYSTAL GONZALEZ;
TOMIEKIA JOHNSON; NADIA ROMERO,
individuals; and WOMAN II WOMAN, a
California non-profit corporation,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION;
KATHLEEN ALLISON, Secretary of the
California Department of Corrections and
Rehabilitation, in her official capacity; MICHAEL
PALLARES, Warden, in his official capacity;
MONA D. HOUSTON, Warden, in her official
capacity; and DOES 1-10, inclusive,

Defendants.

Case No. 1:21-cv-01657-JLT-HBK

**DECLARATION OF CANDICE
JACKSON**

Before: Hon. Jennifer L. Thurston
Complaint Filed: 11/17/21
Trial Date: None

I, Candice Jackson, hereby declare:

- 1 1. I make this declaration based on my own personal knowledge. I am over the age of 18 and
2 competent to testify. If called to testify, I could and would do so as follows:
- 3 2. I am one of the attorneys representing the Plaintiffs in this case, and I make this
4 declaration in support of Plaintiffs' Motion for Leave to File Opposition to Intervention.
- 5 3. Attached hereto as Exhibit A is the "Meerkamper Email," which I received from Shawn
6 Meerkamp at or around the date and time indicated on the email's header. The
7 Meerkamper Email (Exhibit A hereto) refers to a declaration, and did attach a copy of that
8 declaration. However, because the declaration was marked "Confidential" under "Rule
9 408" I am not including that declaration document as part of Exhibit A.
- 10 4. Attached hereto as Exhibit B is the email I sent in response to the Meerkamp Email, on the
11 date and time indicated on the email's header.

12 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
13 UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.

14 SIGNED IN NOVATO, CALIFORNIA ON JULY 5, 2022.

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_____/s/Candice Jackson_____
Candice Jackson

EXHIBIT A

Candice Jackson

From: Shawn Meerkamper <shawn@transgenderlawcenter.org>
Sent: Thursday, June 30, 2022 1:20 PM
To: Candice Jackson; Lauren Adams; Preeti Bajwa; Anthony Corso
Cc: Nora Huppert; Arias, Elizabeth
Subject: Chandler v. CDCR | Decl. of Asia Davis and Meet & Confer Request
Attachments: 2022.06.24 - Declaration of Asia Davis DRAFT[60].pdf

Caution: This email originated from outside of the FMG organization. **Do not click links or open attachments** unless you recognize the sender and know the content is safe.

Dear Candice, Lauren, Preeti, & Anthony:

We intend to file a Motion for Leave to File a Supplemental Reply in support of CDCR's Motion to Strike because we believe it is important that the Court be made aware of the attached Declaration of Asia Davis, the "A.D." who Plaintiffs claim was the victim of the "May 2022 Alleged Rape." As you'll see, Ms. Davis declares in no uncertain terms that this incident simply did not happen.

Please let us know your position on our intended motion. Alternatively, if you would prefer to meet and confer over phone, please provide some availability.

Candice and Lauren, in addition to your position on our motion, and in light of Ms. Davis declaration, please also let us know whether or not you intend to honor your duty of candor to the Court by withdrawing and correcting the false statements in your prior filings, per FRCP 11.

Thank you,
-Shawn

Shawn Thomas Meerkamper

pronouns: they/them/their

Senior Staff Attorney | Transgender Law Center

Based in Durham, North Carolina

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Transgender Law Center

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EXHIBIT B**Candice Jackson**

From: Candice Jackson
Sent: Thursday, June 30, 2022 9:09 PM
To: Shawn Meerkamper; Lauren Adams; Preeti Bajwa; Anthony Corso
Cc: Nora Huppert; Arias, Elizabeth
Subject: RE: Chandler v. CDCR | Decl. of Asia Davis and Meet & Confer Request

Dear Shawn,

We appreciate your meet and confer communication concerning your filing of a motion for leave to file a “supplemental reply” in which our understanding is that you intend to file the Davis declaration in order to argue that Plaintiffs’ declarations should be stricken. None of the statements contained in the Davis declaration constitute newly discovered facts since the alleged incident first occurred on May 19, nor since Plaintiffs filed opposition to the State’s MTD and declarations, on May 31. Further, while declarant Davis’ statements dispute that she was sexually assaulted, her statements do not negate the statements of other inmates who reported to CDCR, and have described in their own statements, what they saw and heard that placed them in fear that assault had occurred. Moreover, declarant Davis was not present to witness (and thus does not address in her declaration) inmate Robertson threatening to rape a group of women, as described in declarations submitted in support of Plaintiffs’ May 31 opposition brief. Most importantly, the particular alleged sexual incident involving inmate Davis is simply one illustration of the factual basis for Plaintiffs and other women’s legal contentions that SB 132 is placing them in reasonable fear of sexual violence and deprivation of equal protection of the law. For these reasons, we do not see a basis for Proposed Intervenor to file a “supplemental reply” brief.

Lauren and I are keenly aware of the Rule 11 obligations placed upon us, as upon all officers of the court. There are no false statements in our filings; factual statements that are disputed by other parties or witnesses simply raise contested facts to be resolved throughout a litigation process. We are therefore not clear as to what statements in our prior filings that you are characterizing as “false statements.” Inmate Davis’ statements to various people have been inconsistent and evolving since the date of the initial reported incident with inmate Robertson. Our filings have therefore consistently conveyed to the court that occurrence of a rape by inmate Robertson against “A.D.” (whom we did not name in any of our filings or declarations) was an “Alleged” incident.

CDCR PREA policies, DOM Section 54040.7.3 (and Section 54040.7, and PREA regulations, 28 CFR 115.54), specifically permit third-party PREA reporting, including by attorneys or outside advocates (DOM Section 54040.7.2). DOM Section 54040.7 specifically authorizes: “Offenders may report violations of this policy to any staff member verbally or in writing, utilizing the Inmate Appeals Process, through the sexual assault hotline, *or through a third party.*” The inmate Davis/inmate Robertson alleged sexual incident involves such third-party PREA reporting, by various inmates and ourselves as attorneys. We are following our moral and ethical obligation to ensure that PREA incidents (particularly conduct that may be criminal in nature) is reported even based on or via third-party reports. The significance of this particular alleged sexual incident to Plaintiffs and many other female inmates in CCWF has been that the reasonable suspicion of a sexual attack, combined with inmate Robertson’s threats to rape multiple women (which threats are not controverted by any party or by any evidence including the Davis declaration), constituted sexual harms and risks of harms that would not be imposed on these women but for SB 132’s mandate to house male inmates with penises alongside female inmates.

We have spoken with inmate Davis as well, after we were informed that she met in a legal call on June 17 with Jennifer Orthwein, an attorney who has represented Jonathan Robertson, and Michelle Calvin, in prior matters. The specter of an alleged perpetrator’s lawyer interviewing and obtaining a sworn statement from an alleged victim raises concerns as to whether undue pressure or influence was exercised. Our presumption was that Ms. Orthwein was acting solely on behalf of her past or current client, inmate Robertson, and we did not until your email this afternoon realize that Ms. Orthwein (not an attorney of record for any Party or Proposed

Intervenor in this lawsuit) was interviewing her client's alleged victim for the purpose of Transgender Law Center or other Proposed Intervenor obtaining a sworn statement from the reported victim. We are not certain that this is procedurally appropriate involvement in litigation (essentially engaging in discovery) by entities or persons who are not granted party status in this lawsuit.

In any event, your clients desire to rely on declarant Davis' statements, and our clients desire to rely on numerous statements from other inmates, some of whom observed events and circumstances involving declarant Davis and inmate Robertson. This illuminates the existence of competing narratives concerning the state of affairs for women incarcerated alongside male inmates with penises, and buttresses Plaintiffs' contentions that whether SB 132's mandates are compatible with CDCR's obligation to protect all inmates from sexual violations in prison is very much an open question that warrants judicial scrutiny.

A pattern seems to be emerging that CDCR is taking retaliatory disciplinary measures against our Plaintiffs and other women who are participating in this lawsuit, for the purpose of punishing female inmates for daring to raise legal challenges to SB 132, file 602 grievances, or otherwise describe their own perceptions of safety risks presented by a prison housing law that forces women to be incarcerated with male inmates with penises. We trust that Proposed Intervenor join us in desiring to ensure that our respective incarcerated clients, as well as other inmates whose views of SB 132 are relevant to this lawsuit, do not experience retaliation or retribution for participating in this lawsuit or for raising concerns about their own safety in the prison environment. As the variety of statements concerning the alleged sexual incident between inmate Davis and inmate Robertson shows, it is important that our respective incarcerated clients, and other incarcerated individuals, are protected from retaliation so that the court has the benefit of robust participation and perspectives from all affected groups and individuals.

Our position, then, is that we do not believe that a "supplemental reply" by Proposed Intervenor is warranted, and if a motion for leave is filed, our position would be that the effort to submit additional controverted factual evidence only weighs in favor of the court exercising discretion to consider all of the parties' and Proposed Intervenor's evidence by evaluating Defendants' motion to dismiss under Rule 56 standards. Alternatively to a motion by Proposed Intervenor to file a "supplemental reply," we would consider stipulating to a joint request by all parties/potential parties that the court schedule oral argument on the Defendants' motion to dismiss and Defendants' motion to strike, with all parties/Proposed Intervenor first having opportunity by a date certain to submit any additional evidence relevant to Plaintiffs' declarations submitted with Plaintiffs' May 31 opposition brief, which again, involves both specific incidents and overarching perceptions of safety concerns over housing female and male inmates together.

Sincerely,

Candice Jackson and Lauren Adams

Candice Jackson

Freeman Mathis & Gary, LLP

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Legal Assistant: Naj Shams, (916) 472-3304, nshams@fmglaw.com

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[Please read this important notice and confidentiality statement](#)

From: Shawn Meerkamper <shawn@transgenderlawcenter.org>

Sent: Thursday, June 30, 2022 1:20 PM

To: Candice Jackson <CJackson@fmglaw.com>; Lauren Adams <legal@womensliberationfront.org>; Preeti Bajwa <Preeti.Bajwa@doj.ca.gov>; Anthony Corso <Anthony.Corso@doj.ca.gov>

Cc: Nora Huppert <nhuppert@lambdalegal.org>; Arias, Elizabeth <earias@omm.com>

Subject: Chandler v. CDCR | Decl. of Asia Davis and Meet & Confer Request

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Shawn Thomas Meerkamper

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