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13
14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16
17 JERRY VALDIVIA, et al.,

18 Plaintiffs,

19
20 v.

21 ARNOLD SCHWARZENEGGER, et al.,

22 Defendants.
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No. Civ. S-94-0671 LKK/GGH

**STIPULATED ORDER FOR
PERMANENT INJUNCTIVE RELIEF**

COPY

1 **I. INTRODUCTION**

2 1. This action was filed on May 2, 1994. Plaintiffs, on behalf of themselves
3 and the class they represent, challenged the constitutionality of parole revocation
4 procedures conducted by the California Board of Prison Terms (“BPT”) and the
5 California Department of Corrections (“CDC”).

6 2. The Court certified this case as a class action by order dated December 1,
7 1994. The Plaintiff class consists of the following persons: (1) California parolees who
8 are at large; (2) California parolees in custody as alleged parole violators, and who are
9 awaiting revocation of their state parole; and (3) California parolees who are in custody,
10 having been found in violation of parole and sentenced to prison custody.

11 3. The Defendants are state officials responsible for the policies and
12 procedures by which California conducts parole revocation proceedings.

13 4. On June 13, 2002, this Court granted partial summary judgment in favor of
14 Plaintiffs, holding that California’s unitary parole revocation system violates the due
15 process rights of the Plaintiff class under Morrissey v. Brewer, 408 U.S. 481 (1972),
16 Gagnon v. Scarpelli, 411 U.S. 778 (1973), and related authority. The Court held that
17 California’s parole revocation system violated the due process clause of the Fourteenth
18 Amendment by “allowing a delay of up to forty-five days or more before providing the
19 parolee an opportunity to be heard regarding the reliability of the probable cause
20 determination.” Valdivia v. Davis, 206 F. Supp. 2d 1068, 1078 (E.D. Cal. 2002).

21 5. The parties stipulate that this is not a “civil case with respect to prison
22 conditions,” as those terms are defined and applied in the Prison Litigation Reform Act
23 (“PLRA”), 18 U.S.C. § 3626, and that therefore this Order is not governed by the
24 PLRA.

25 6. The parties hereby stipulate that the Court shall ADJUDGE, DECLARE,
26 AND DECREE as follows:
27
28

1 **II. PARTIES**

2 7. The Plaintiff class consists of the following persons: (1) California
3 parolees who are at large; (2) California parolees in custody as alleged parole violators,
4 and who are awaiting revocation of their state parole; and (3) California parolees who
5 are in custody, having been found in violation of parole and sentenced to prison
6 custody.

7 8. The Defendants are state officials responsible for the policies and
8 procedures by which California conducts parole revocation proceedings. Defendant
9 Arnold Schwarzenegger is Governor of the State of California and Chief Executive of
10 the state government. Defendant Roderick Q. Hickman is the Secretary of the
11 California Youth and Adult Correctional Agency. Defendant Edward S. Alameida, Jr.,
12 is Director of the California Department of Corrections. Defendant Richard Rimmer is
13 Deputy Director of the California Department of Corrections, Parole and Community
14 Services Division (“P&CSD”). Defendant Carol A. Daly is a Commissioner and Chair
15 of the Board of Prison Terms (“BPT”). Defendants Alfred R. Angele, Sharon Lawin,
16 Booker T. Welch, Jones M. Moore, and Kenneth L. Risen are Commissioners of the
17 BPT. Defendant Kenneth E. Cater is Chief Deputy Commissioner of the BPT.

18
19 **III. DEFINITIONS**

20 9. The following terms when used in this Order shall have the meanings
21 specified below:

- 22 (a) “Parolee(s)” shall mean any member of the Plaintiff class.
- 23 (b) “Day(s)” shall mean calendar days, unless otherwise specified.
- 24 (c) “Revocation process” or “revocation proceedings” shall mean all stages of the
25 process by which parole may be revoked, including placement of a parole hold, notice,
26 waivers, service of Return to Custody Assessments, and hearings.
- 27 (d) “Return to Custody Assessments” (“RTCAs”) shall mean the practice by
28 which Defendants offer a parolee a specific disposition in return for a waiver of the

1 parolee's right to a preliminary or final revocation hearing, or both.

2 (e) "Parole hold" shall mean any invocation by Defendants of their authority to
3 involuntarily detain a parolee for revocation proceedings under Section 3056 of the
4 California Penal Code. This term shall not apply to the detention of a parolee who has
5 absconded from the State of California until he or she is physically returned to the State
6 of California and is in its custody.

7
8 **IV. POLICIES, PROCEDURES, FORMS, AND PLANS**

9 10. For all policies, procedures, forms, and plans developed under this Order,
10 the parties shall use the following process: Defendants shall meet periodically with
11 Plaintiffs' counsel to discuss their development of policies, procedures, forms, and
12 plans. In preparation for such meetings, Defendants will provide Plaintiffs' counsel
13 with copies of the proposed policies, procedures, forms, and plans in draft form no later
14 than 7 days before the meeting. If the parties reach an impasse on any particular issues,
15 they may bring the disputed issues to the Court in a motion to be heard on shortened
16 time.

17 11. Using the procedure set forth above in Paragraph 10, Defendants shall do
18 the following:

19 (a) Defendants shall develop and implement sufficiently specific Policies and
20 Procedures that will ensure continuous compliance with all of the requirements of this
21 Order. The Policies and Procedures will provide for implementation of the August 21,
22 2003 Remedial Plan Outline (attached hereto as Exhibit A), as well as the requirements
23 set forth below in Paragraphs 12–24. Defendants shall submit the completed Policies
24 and Procedures to the Court no later than July 1, 2004.

25 (b) By July 1, 2004, Defendants shall begin implementing the following steps
26 in the parole revocation process, which shall be completely implemented by January 1,
27 2005:

28 (i) Defendants shall appoint counsel for all parolees beginning at the

1 RTCA stage of the revocation proceeding. Defendants shall provide an expedited
2 probable cause hearing upon a sufficient offer of proof by appointed counsel that there
3 is a complete defense to all parole violation charges that are the basis of the parole hold.

4 (ii) No later than 48 hours after the parole hold, or no later than the next
5 business day if the hold is placed on a weekend or holiday, the parole agent and unit
6 supervisor will confer to determine whether probable cause exists to continue the parole
7 hold, and will document their determination.

8 (iii) If the parole hold is continued thereafter, no later than 3 business days
9 after the placement of the hold, the parolee will be served with actual notice of the
10 alleged parole violation, including a short factual summary of the charged conduct and
11 written notice of the parolee's rights regarding the revocation process and timeframes.

12 (iv) For all parolees who do not waive or seek a continuance of a final
13 revocation hearing, Defendants shall provide a final revocation hearing on or before the
14 35th calendar day after the placement of the parole hold.

15 (c) By July 1, 2004, Defendants shall serve on counsel for Plaintiffs an
16 assessment of the availability of facilities and a plan to provide hearing space for
17 separate probable cause hearings.

18 (d) By July 1, 2005, in addition to the steps listed above, for all parolees who
19 do not waive or seek a continuance of a probable cause hearing, Defendants shall
20 provide a hearing to determine probable cause no later than 10 business days after the
21 parolee has been served with notice of the charges and rights (at the 3rd business day
22 after the placement of the hold).

23 (e) Defendants shall complete implementation of the Policies and Procedures
24 by July 1, 2005.

25 12. In addition to the provisions of the August 21, 2003 Remedial Plan Outline,
26 the Policies and Procedures shall ensure that the following requirements are met:

27 13. At the time of appointment, counsel appointed to represent parolees who
28 have difficulty in communicating or participating in revocation proceedings, shall be

1 informed of the nature of the difficulty, including but not limited to: mental illness,
2 other cognitive or communication impairments, illiteracy, limited English-language
3 proficiency, and the need for a foreign language interpreter. The appointment shall
4 allow counsel adequate time to represent the parolee properly at each stage of the
5 proceeding.

6 14. At the time of appointment, counsel shall be provided with all non-
7 confidential reports and any other documents that the state intends to rely upon at the
8 probable cause or final revocation hearing. After appointment, if the state learns of
9 additional evidence or documents, and intends to rely on such additional evidence or
10 documents, it shall produce them to counsel as soon as practicable before the hearing.

11 15. Defendants shall develop and implement policies and procedures for the
12 designation of information as confidential that are consistent with the requirements of
13 due process.

14 16. Non-confidential portions of parolees' field files shall be available to
15 parolees' counsel unless good cause exists for failure to provide access to such files.
16 Field file information shall be withheld from counsel as confidential only in accordance
17 with the policies and procedures referenced in Paragraph 15.

18 17. Defendants shall develop standards, guidelines, and training for effective
19 assistance of state appointed counsel in the parole revocation process.

20 18. Defendants will ensure that parolees receive effective communication
21 throughout the entire revocation process.

22 19. Defendants will ensure that all BPT and CDC forms provided to parolees
23 are reviewed for accuracy and are simplified to the extent possible through a procedure
24 similar to that used to revise forms in Armstrong v. Davis, C94-2307 CW (N.D. Cal.).
25 This process will include translation of forms to Spanish. Revised forms will be
26 submitted to Plaintiffs' counsel for review prior to finalization, dissemination, or
27 modification.

28 20. Upon written request, parolees shall be provided access to tapes of parole

1 revocation hearings.

2 21. Parolees' counsel shall have the ability to subpoena and present witnesses
3 and evidence to the same extent and under the same terms as the state.

4 22. At probable cause hearings, parolees shall be allowed to present evidence
5 to defend or mitigate against the charges and proposed disposition. Such evidence shall
6 be presented through documentary evidence or the charged parolee's testimony, either
7 or both of which may include hearsay testimony.

8 23. Final revocation hearings shall occur within 35 calendar days of the parole
9 hold.

10 24. The use of hearsay evidence shall be limited by the parolees' confrontation
11 rights in the manner set forth under controlling law as currently stated in United States
12 v. Comito, 177 F.3d 1166 (9th Cir. 1999). The Policies and Procedures shall include
13 guidelines and standards derived from such law.

14
15 **V. STAFFING LEVELS**

16 Defendants shall maintain sufficient staffing levels in the CDC and BPT to meet
17 all of the obligations of this Order.

18
19 **VI. MONITORING**

20 25. The parties shall cooperate so that Plaintiffs' counsel has access to the
21 information reasonably necessary to monitor Defendants' compliance with this Order
22 and the Policies and Procedures adopted in response thereto. Such information shall
23 include but not be limited to: access to documents, tours, observation of parole
24 revocation proceedings, observation of training sessions, interviews of staff, and
25 interviews with parolees. Plaintiffs' counsel may notice depositions under the Federal
26 Rules of Civil Procedure either: (1) if Plaintiffs' counsel are unable to obtain relevant
27 information through interviews and informal document requests, or (2) after notifying
28 Defendants of non-compliance with this Order under Section VII, below. Before

1 noticing a deposition, Plaintiffs' counsel must consult with opposing counsel about the
2 deposition schedule so that the convenience of counsel, witnesses, and parties may be
3 accommodated, if possible.

4 26. The parties shall meet regularly, and at least once every 90 days, to discuss
5 implementation issues. At least once every 90 days, Defendants shall provide Plaintiffs'
6 counsel with a report on hold-to-hearing time in substantially the same form, and with
7 the same content as that currently used in Defendants' weekly "RSTS" meetings.

8 27. The parties shall agree on a mechanism for promptly addressing concerns
9 raised by Plaintiffs' counsel regarding individual class members and emergencies.
10

11 **VII. ENFORCEMENT**

12 28. The Court shall retain jurisdiction to enforce the terms of this Order. The
13 Court shall have the power to enforce the terms of this Order through specific
14 performance and all other remedies permitted by law or equity.

15 29. If Plaintiffs' counsel believe that Defendants are not complying with any of
16 the acts required by this Order, the Remedial Plans, or Policies and Procedures produced
17 pursuant to it, they shall notify Defendants in writing of the facts supporting their belief.
18 Defendants shall investigate the allegations and respond in writing within 30 days. If
19 Plaintiffs' counsel are not satisfied with Defendants' response, the parties shall conduct
20 negotiations to resolve the issue(s). If the parties are unable to resolve the issue(s)
21 satisfactorily, Plaintiffs may move the Court for any relief permitted by law or equity.
22

23 **VIII. ATTORNEY'S FEES AND COSTS**

24 30. Plaintiffs are the prevailing party in this action. Plaintiffs' counsel may
25 move for an award of reasonable attorney's fees and costs for obtaining relief for the
26 Plaintiff class pursuant to 42 U.S.C. § 1988 or any other applicable law. Defendants
27 shall pay Plaintiffs' counsel reasonable attorney's fees for work performed in
28 connection with monitoring and enforcing this Order. The parties reserve the right to

1 address at a future date whether 42 U.S.C. § 1997e(d) applies to an award of attorney's
2 fees in this suit.

3 **IX. RESOLUTION OF CLAIMS**

4 31. This stipulated order resolves all the claims in this case, except the
5 following, to the extent that they are alleged in the Fifth Amended Complaint, if at all:

6 (a) Appeals. Plaintiffs assert that Defendants' administrative-appeals system
7 for parole-revocation and revocation-extension decisions violates the Due Process and
8 Equal Protection Clauses of the Fourteenth Amendment.

9 (b) Revocation-Extension Proceedings. Plaintiffs assert that Defendants'
10 policies, procedures, and practices for extending parole revocations based on alleged
11 rules violations while in custody violate the Due Process Clause.

12 32. The parties anticipate that these issues will be resolved informally, without
13 need for the Court's intervention. The parties will inform the Court if this does not
14 occur.

15
16 **IT IS SO STIPULATED.**

17
18 Dated: November 12, 2003

ROSEN, BIEN & ASARO

19
20 By Michael W. Bien
MICHAEL BIEN

21
22
23 Dated: November 12, 2003

PRISON LAW OFFICE

24
25 By Donald Specter
DONALD SPECTER

26
27 Attorneys for Plaintiffs
28

1
2 Dated: November 17, 2003

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ROBERT R. ANDERSON, Chief
Assistant Attorney General,
FRANCES T. GRUNDER, Senior
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10 By Thomas S. Patterson
11 THOMAS S. PATTERSON,
12 Deputy Attorney General
Attorneys for Defendants

13 Dated: November 17, 2003

14 By Roderick Q. Hickman
15 RODERICK Q. HICKMAN
16 Secretary, Youth and Adult
Correctional Agency

17
18 Dated: November 17, 2003

19 By Edward S. Almeida, Jr.
20 EDWARD S. ALAMEIDA, JR.
21 Director, California Department of
Corrections

22 Dated: November 17th, 2003

23 By Carol A. Daly
24 CAROL A. DALY
25 Chair, California Board of Prison
Terms

1 **ORDER**

2 The Court finds that this is not a "civil case with respect to prison conditions," as
3 those terms are defined and applied in the Prison Litigation Reform Act ("PLRA"), 18
4 U.S.C. § 3626, and that therefore this Order is not governed by the PLRA. Defendants,
5 their agents, employees, and successors in office are ordered to comply with all the
6 terms stated above.

7 **IT IS SO ORDERED**

8
9 Dated: _____, 2003

10 _____
11 LAWRENCE K. KARLTON
12 Chief Judge, Emeritus
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EXHIBIT A