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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 JERRY VALDIVIA, ALFRED YANCY,
11 and HOSSIE WELCH, on their own
12 behalf and on behalf of the class
of all persons similarly situated,

Plaintiffs,

NO. CIV. S-94-671 LKK/GGH

13
14 v.

O R D E R

15 ARNOLD SCHWARZENEGGER, Governor of
the State of California, et al.,

16 Defendants.
17 _____/

18 On December 2, 2010, the court set a briefing schedule for
19 the parties' cross-motions following remand. In these motions,
20 the parties will seek to either modify the permanent injunction
21 or to enforce the injunction. Upon further reflection, the court
22 finds that a separate hearing shall be held prior to resolution
23 of these motions in which the court shall determine the standard
24 to apply for the cross-motions. In order to allow for this
25 separate hearing, the court continues the briefing schedule on
26 the cross-motions following remand.

1 The court, therefore, orders that the parties brief and
2 argue how the court should reconcile the Ninth Circuit's holding
3 that, "[U]nless a state law is found to violate a federal law,
4 or unless the Injunction is found necessary to remedy a
5 constitutional violation, federalism principles require the
6 reconciliation of the state law and federal injunctions,"
7 Valdivia v. Schwarzenegger, 599 F.3d 984, 995 (2010) (internal
8 citations omitted), with the Supreme Court's finding that, "[W]e
9 have no doubt that, to save themselves the time, expense, and
10 inevitable risk of litigation, petitioners could settle [a]
11 dispute over the proper remedy for the constitutional violations
12 that had been found by undertaking to do more than the
13 Constitution itself requires . . . , but also more than a court
14 would have ordered absent the settlement," Rufo v. Inmates of
15 Suffolk County Jail, 520 U.S. 367, 389 (1992) (internal
16 citations omitted). The court further instructs the parties to
17 brief and be prepared to discuss how to reconcile the Supreme
18 Court's ruling in Rufo that modification of a settlement is only
19 proper when there is a change in factual circumstances or
20 federal law, as the court explained in its March 2009 order,
21 with the Ninth Circuit's finding that a change in state law may
22 allow modification of a settlement.

23 For the foregoing reasons the court HEREBY ORDERS as
24 follows:

- 25 (1) Plaintiffs SHALL FILE an opening brief on or before
26 January 18, 2011.

1 (2) Defendants SHALL FILE a responsive brief on or before
2 February 1, 2011.

3 (3) Plaintiffs MAY FILE a reply brief on or before
4 February 8, 2011.

5 (4) Defendants MAY FILE a sur-reply brief on or before
6 February 15, 2011.

7 (5) This question SHALL BE HEARD on March 1, 2011 at 1:30
8 p.m.

9 The court FURTHER ORDERS that the briefing and hearing on
10 the cross-motions following remand is amended as follows:

11 (1) Defendants SHALL FILE a Motion Following Remand to
12 Enforce Penal Code § 3044 and to Modify the Permanent
13 Injunction on or before March 25, 2011.

14 (2) Plaintiffs SHALL FILE a Motion Following Remand to
15 Enforce the Injunction on or before March 25, 2011.

16 (3) Opposition briefs to these motions SHALL BE FILED on
17 or before April 27, 2011.

18 (4) Reply briefs MAY BE FILED on or before May 12, 2011.

19 (5) The motions SHALL BE HEARD on June 3, 2011 at 10:00
20 a.m.


21 (6) Parties may request discovery on or before April 12,
22 2011. Such requests will be treated in a similar
23 manner to requests for discovery in the summary
24 judgment context. If the Court grants a request for
25 discovery, the briefing schedule will be modified.

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IT IS SO ORDERED.

DATED: December 15, 2010.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT