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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, ALFRED YANCY,
and HOSSIE WELCH, on their own
behalf and on behalf of the class
of all persons similarly situated,

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

Plaintiffs,

v.

O R D E R

EDMUND G. BROWN, JR., Governor of
the State of California, et al.,

Defendants.

_____ /

The Thirteenth Report of the Special Master on the Status of
Conditions of the Remedial Order, addressing activities between
February and October 2012, was filed on December 19, 2012.
("Thirteenth Report," ECF No. 1783.) The Thirteenth Report
recommends findings of substantial compliance in thirty-five of the
forty-four requirements delineated in the court's previous orders,
and findings of partial compliance in the remaining nine.

Both plaintiffs and defendants have filed objections to the
Thirteenth Report.

1 **A. Summary of plaintiffs' objections**

2 Plaintiffs object to the Special Master's findings of
3 substantial compliance in the areas of (i) probable cause
4 determination; (ii) notice of rights and charges; (iii) appointment
5 of counsel; (iv) probable cause hearings; (v) revocation
6 extensions; (vi) remedial sanctions; (vii) translated forms; and
7 (viii) internal oversight.

8 Plaintiffs' objections are of three types: (i) that the
9 Special Master failed to "articulate or apply the applicable legal
10 standard for substantial compliance"; (ii) that in certain areas,
11 "the Special Master's findings of fact do not support his
12 conclusions of law, even under a lowered standard for substantial
13 compliance"; and (iii) that "the Special Master changed the
14 standard he applied, or even disregarded the specific terms of the
15 [Valdivia] Injunction, in order to reach a finding of substantial
16 compliance with some requirements of the Injunction." (Plaintiffs'
17 Objs., ECF No. 1794, at 11-13.)

18 Plaintiffs' overarching policy argument is that it would be
19 inadvisable to end court oversight prematurely, given the imminent
20 transfer of authority over much of the parole revocation system
21 from the state to the counties. Plaintiffs write:

22 Any unwarranted compliance findings, and the
23 accompanying withdrawal of supervision by the Special
24 Master, would come at the worst possible time for the
25 Valdivia class. Defendants are in the midst of
26 implementing a transition to the projected July 2013
transfer of part of the parole revocation process to
the Superior Courts under California's "Criminal
Justice Realignment." It is incorrect, and hazardous
to the rights of the class, to see this transition as

1 a reason to rush to find Defendants in compliance and
2 end the Special Master's scrutiny of revocation
3 procedures. To the contrary, the impending transition
4 to a new system under [Realignment] necessitates
5 continued oversight of California's parole
6 system Although Defendants remain under a
7 continuing obligation to provide notice to Plaintiffs
8 and the Special Master regarding policy and procedure
9 changes for parole revocation, they have provided no
10 policies or procedures for the July 2013 transition.
11 Under [Realignment], Defendants will remove two major
12 underpinnings of their previous compliance effort -
13 the attorneys employed by the California Parole
14 Advocacy Project (CalPAP) and the computerized
15 Revocation Scheduling and Tracking System (RSTS) - and
16 institute components, most notably flash
17 incarceration, which pose new hazards for parolees'
18 constitutional rights. (Plaintiffs' Objs., ECF No.
19 1794, at 13-14) (internal citations omitted).

11 **B. Summary of defendants' objections**

12 Defendants object that the Special Master improperly relied
13 on anecdotal evidence to reach conclusions about systemic
14 non-compliance. Defendants further object to the Special Master's
15 finding that they are only in partial compliance with the
16 requirement that probable cause hearings be held in a timely
17 fashion, contending that he has reached this conclusion based on
18 a mischaracterization of the data. Finally, defendants object to
19 the Thirteenth Report's recommendations that requirements found in
20 substantial compliance be subject to any further monitoring.
21 (Defendants' Objs., ECF No. 1790, at 2.)

22 **C. Analysis**

23 Looming over the Thirteenth Report's findings and
24 recommendations, and the parties' objections, is the anticipated
25 July 1, 2013 transfer of significant elements of the parole system
26 from the state to the counties as part of the reorganization of

1 California's criminal justice system, known as "Realignment." It
2 is the court's understanding that elements of the parole process
3 currently addressed by the March 2004 Stipulated Order for
4 Permanent Injunctive Relief and the court's further orders herein
5 (collectively, the "Valdivia Remedy") will now be handled by county
6 personnel. Among other changes, as of July 1, 2013, (i) petitions
7 for parole revocation will be filed with county Superior Courts
8 rather than with the state Board of Parole Hearings; (ii) parole
9 violations may be handled without court involvement through "flash
10 incarceration" of up to ten days in county jail; and (iii) indigent
11 parolees facing revocation will be represented by public defenders
12 (or court-appointed defense attorneys) rather than California
13 Parole Advocacy Program attorneys.

14 In particular, the court is concerned that California's post-
15 July 1, 2013 parole system may be sufficiently different from the
16 existing system so that the conditions prompting the court's
17 judgment are no longer relevant, thus requiring dismissal of this
18 case. This lawsuit, and the Valdivia Remedy, address a parole
19 system that functions largely as an administrative system under the
20 auspices of the state's Executive Branch. It appears that after
21 July 1, 2013, significant portions of the parole system will become
22 the responsibility of county authorities, with parole revocation
23 determined by the state's Judiciary. Realignment gives rise to
24 mootness concerns, as, due to these changes, this matter may no
25 longer present a live "case or controversy" under Article III, § 2
26 of the Constitution. If Realignment renders Valdivia moot, the

1 class herein will have to be decertified and this lawsuit
2 dismissed, and any concerns about due process protections in
3 California's post-July 1, 2013 parole system addressed in a
4 subsequent lawsuit.

5 While mootness is not jurisdictional, the court has an
6 obligation to determine whether it retains jurisdiction over the
7 cases in its docket. Jacobus v. Alaska, 338 F.3d 1095, 1103 (9th
8 Cir. 2003). While the court is mindful that a Justice of the
9 Supreme Court opined that "the recent Article III jurisprudence of
10 this Court in such areas as mootness and standing is creating an
11 obstacle course of confusing standardless rules to be fathomed by
12 courts and litigants . . . without functionally aiding in the
13 clear, adverse presentation of the constitutional questions
14 presented," Kremens v. Bartley, 431 U.S. 119, 140 (1977) (Brennan,
15 J., dissenting), I "cannot [maintain] jurisdiction over a claim to
16 which no effective relief can be granted." Headwaters, Inc. v.
17 Bureau of Land Mgmt., 893 F.2d 1012, 1015 (9th Cir. 1990). To the
18 extent that significant portions of the parole system will soon be
19 the responsibility of the counties and the state Judiciary, I am
20 unsure whether the Valdivia Remedy can even address due process
21 considerations arising thereunder.

22 **D. Conclusion**

23 Accordingly, the court hereby orders as follows:

24 [1] Within twenty-one (21) days of entry of this order, the
25 parties are DIRECTED to brief the court on the following:

26 ////

1 (a) As of July 1, 2013, which elements of the parole
2 system that were formerly the exclusive responsibility
3 of defendants will now be the exclusive responsibility
4 of county authorities and/or the state judiciary?

5 (b) As of July 1, 2013, which elements of the parole
6 system that were formerly the exclusive responsibility
7 of defendants will now be the shared responsibility of
8 defendants, county authorities, and the state judiciary?
9 What will defendants', county authorities', and the
10 state judiciary's respective responsibilities be as to
11 these shared elements?

12 (c) Will defendants bear responsibility for elements of
13 the parole system that are newly-created by Realignment,
14 such as "flash incarceration"?

15 (d) Is Valdivia moot as a result of Realignment?

16 (e) If Valdivia is not moot, in what ways should the
17 class definition and/or the Valdivia Remedy be altered
18 to reflect Realignment's changes to the parole system?

19 Reply briefs are due fourteen (14) days after opening briefs.
20 Opening briefs may each be no longer than thirty (30) pages
21 in length, exclusive of any accompanying documentary
22 evidence. Reply briefs may each be no more than fifteen (15)
23 pages in length. The court will at this time defer ruling on
24 the findings and recommendations in the Thirteenth Report.


25 [2] The Special Master is DIRECTED to stay filing the
26 Fourteenth Report on the Status of Conditions of the

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Remedial Order, pending further order of the court.

IT IS SO ORDERED.

DATED: May 6, 2013.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT