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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.

_____ /

Pending before the court is plaintiffs' motion for reconsideration of the court's July 2, 2013 order finding this case moot. (Plaintiffs' Motion for Reconsideration ("Motion"), ECF No. 1849; Order, July 2, 2013 ("July 2 Order"), ECF No. 1845.) The court previously took this motion under submission. Plaintiffs' arguments are considered in turn; for the reasons set forth below, their motion will be granted in part and denied in part.

I. STANDARD

Plaintiffs seek reconsideration under Federal Rule of Civil

1 Procedure 60(b), subsections (1) and (6).

2 Rule 60(b)(1) allows for relief from an order for "mistake,
3 inadvertence, surprise, or excusable neglect." Plaintiffs seek
4 reconsideration on the basis of mistake. Errors of law may be
5 corrected by the district court under this subsection. Liberty
6 Mutual Ins. Co. v. EEOC, 691 F.2d 438, 441 (9th Cir. 1982).

7 Rule 60(b)(6) allows for relief from an order for "any other
8 reason that justifies relief." Extraordinary circumstances are
9 required to justify relief under this portion of the rule. See
10 Ackermann v. U.S., 340 U.S. 193, 202 (1950) ("Neither the
11 circumstances of petitioner nor his excuse for not appealing is so
12 extraordinary as to bring him within . . . Rule 60(b)(6)."); see
13 also 11 Charles Alan Wright & Arthur R. Miller, Federal Practice
14 and Procedure: Civil § 2857 (3d ed. 2013) ("'[E]xtraordinary
15 circumstances' should only be required under catchall clause (6)
16 of the rule.").

17 **II. ANALYSIS**

18 **A. Alleged error in finding mootness**

19 Plaintiffs' central argument is that this court erroneously
20 "re-defined" the parole revocation process as beginning only when
21 a petition for parole revocation is filed with the state court,
22 rather than when a parolee is detained for suspected parole
23 violations. Plaintiffs argue that, as a matter of law, "the parole
24 revocation process begins, for the purposes of constitutional
25 analysis, when a parolee is arrested and incarcerated for allegedly
26 violating parole." (Motion 6.) In support of their argument,

1 plaintiffs make much of the following sentence in the July 2 Order:

2 [The California Department of Corrections and
3 Rehabilitation's ("CDCR") Division of Adult Parole
4 Operations ("DAPO")] initiates the parole revocation
5 process by filing a petition with the state court, which
6 must include "a written report that contains additional
7 information regarding the petition, including the
8 relevant terms and conditions of parole, the
9 circumstances of the alleged underlying violation, the
10 history and background of the parolee, and any
11 recommendations." (Order 13.)

12 Plaintiffs assert that, "[i]n light of DAPO's continuing (even
13 expanded) role in parole revocations, it was a mistake for this
14 Court to find that 'parole revocation process' begins only after
15 DAPO files a petition with the state courts." (Motion 7.)

16 To be clear, this court has never found, nor is it of the
17 view, that the parole revocation process begins only when a parole
18 revocation petition is filed with the state court. California Penal
19 Code section 3000.08(f) provides, in pertinent part, that "[i]f the
20 supervising parole agency has determined, following application of
21 its assessment processes, that intermediate sanctions . . . are not
22 appropriate, the supervising parole agency shall . . . petition
23 [the appropriate state court] **to revoke parole**" (emphasis added).
24 It was in reference to the text of this provision that the court
25 used the phrase "initiates the parole revocation process" in the
26 sentence, quoted above, that is relied upon by plaintiffs as
evidence of this court's purported error.

It is of course well-settled that, as a matter of law, an
individual is constitutionally entitled to due process protections
from the moment that he or she is arrested on a suspected parole

1 violation. See Morrissey v. Brewer, 408 U.S. 471, 485 (1972) (“In
2 analyzing what [process] is due, we see two important stages in the
3 typical process of parole revocation . . . The first stage occurs
4 when the parolee is arrested and detained . . . The second occurs
5 when parole is formally revoked.”).

6 But, as discussed at length in the July 2 Order, California
7 has, in enacting Realignment, created a new system for handling
8 both stages of the parole revocation process. Any Constitutional
9 infirmities must be addressed by considering the new system’s
10 functioning as an organic whole. The fact that the Valdivia
11 defendants play significant roles in the post-Realignment system
12 is insufficient to justify the court’s continued exercise of
13 jurisdiction over the defendants, as plaintiffs desire.

14 Plaintiffs point to the fact that, under section 3000.08, “a
15 parolee may waive, in writing, his or her right to counsel, admit
16 the parole violation, waive a court hearing, and accept [a]
17 proposed parole modification or revocation” prior to the filing of
18 a revocation petition with the state court. (Motion 7.) Plaintiffs
19 contend that the ability “to present ‘screening offers’ and to take
20 uncontested waivers of rights *prior* to the filing of any petition
21 with the state court . . . was a central feature of the system that
22 existed prior to the Valdivia Injunction.” (Motion 7.) That may
23 very well be true. Nevertheless, California must be given an
24 opportunity to operate its “Realigned” parole revocation system
25 without premature interference by federal courts. If, in practice,
26 it turns out that CDCR, the state courts, and parolees’ defense

1 attorneys prove incapable of safeguarding the due process rights
2 of suspected parole violators at any stage in this new system, then
3 the system may again be challenged as unconstitutional. But to
4 implement the remedy proposed by plaintiffs – the establishment of
5 an eight-month-long “transition period,” in which DAPO is required
6 to provide parolees with notices of charges and rights within 3
7 days, and to file violation petitions with state courts within 7
8 days, and in which monitoring by the parties and the Special Master
9 will be ongoing for at least the first six months – is to presume
10 *ex ante* that the “Realigned” parole revocation system will fail to
11 provide parolees with due process safeguards absent significant
12 judicial intervention. The court declines to make such a
13 presumption. Plaintiffs’ motion on this ground is therefore denied.

14 **B. Persons arrested before July 1, 2013 for alleged parole**
15 **violations**

16 Plaintiffs argue that the injunctive relief previously ordered
17 in this matter (“Valdivia Injunction”) ought to remain in effect
18 for those alleged parole violators who were arrested prior to July
19 1, 2013, but whose revocation hearings have not yet been
20 adjudicated by the Board of Parole Hearings (“BPH”). Plaintiffs are
21 also correct that defendants’s opposition includes “no evidence
22 that the hearings scheduled for the days up to and including July
23 26 [*i.e.*, the date on which defendants earlier stated that the last
24 parole revocation hearing was scheduled to occur] actually
25 happened, and no evidence concerning the number of pre-July 1
26 arrestees still in custody but unrevoked.” (Reply 8.) The court

1 agrees that Valdivia is not moot as to these individuals, and will
2 modify its July 2 Order accordingly.

3 However, the court declines to go as far as to order that the
4 Valdivia Injunction be maintained "until the last of the pre-July
5 1, 2013 [*sic*] has been released from any custody imposed as a
6 result of the parolees arrested pre-July 1 parole violation
7 charges." (Motion 18.) Plaintiffs' counsel argues that their
8 ethical obligation to parolees in custody "persist until every
9 parolee is released at the end of his or her revocation term."
10 (Reply 9.) According to plaintiffs' counsel, they have "notified
11 Defendants of overdetention problems in County Jails in recent
12 weeks and months. Dismissing the case now would remove that avenue
13 of recourse for the thousands of parolees now in custody, serving
14 revocation terms which may last beyond the end of 2013." (Id.) In
15 support, plaintiffs cite to their objections to the Special
16 Master's Thirteenth Report, in which they detailed several
17 instances in which parolees were erroneously detained beyond their
18 scheduled release dates in Alameda, Contra Costa, Fresno, Los
19 Angeles, and San Mateo counties. (Id.)

20 The court is nevertheless unconvinced that the Valdivia
21 Injunction must be maintained until the last of the parolees
22 arrested before July 1, 2013 is released from custody, rather than
23 until their alleged parole violations have been disposed of. As
24 defendants argue, "Plaintiffs also fail to explain which provisions
25 of the Injunction would even apply to parolees serving revocation
26 terms as a result of a pre-July 1, 2013 arrest. Indeed, none of the

1 provisions apply. All charges against these parolees have been
2 adjudicated." (Opposition 7.) The principal concern articulated by
3 plaintiffs in their objections to the Special Master's Thirteenth
4 Report are failures of information systems and of interagency
5 communications. It is unclear to the court that maintaining the
6 Injunction in place would remedy these failures, rather than having
7 the opposite effect: increasing errors as the state¹ is forced to
8 keep Valdivia-mandated procedures in place for one group of inmates
9 (parolees detained prior to July 1) while implementing new
10 procedures for those parolees detained after July 1.

11 Accordingly, the Valdivia Injunction need only remain in
12 effect until the cases of all persons arrested prior to July 1,
13 2013 for suspected parole violations are disposed of, whether
14 through revocation hearings, release, or other disposition; it need
15 not remain in effect until all of these persons have been released
16 from custody.

17 **C. Notice to Valdivia class members**

18 Plaintiffs next raise the issue of notice of termination of
19 this action to the Valdivia class members, writing:

20 Plaintiffs have come to rely on the Valdivia Injunction
21 as a safeguard against overreaching by the State, and to
22 expect that they can report due process violations to
23 counsel, and obtain some measure of relief (e.g.,
24 through the Paragraph 27 process for reporting
25 individual violations of the Injunction). Dismissing the
26 case without notice to the Plaintiff class – who will
otherwise experience no change in their everyday
circumstances to alert them that the case has ended –

¹ Not to mention the individual California counties, which are
not parties to this lawsuit.

1 would foil those expectations and be ill-suited to the
2 legacy of this case. Without notice that Valdivia has
3 been terminated, individual class members risk losing
4 their claims for individual due process violations when
5 the limitations period on those claims expire. [*citation*
6 *to plaintiff's motion*] At present, class members rely on
7 Valdivia to vindicate their due process rights.
8 [*citation to plaintiff's motion*] Defendants argue that
9 this risk is insignificant, because the superior courts
10 can hear individual due process claims, [*citation to*
11 *defendant's opposition*] But again, the vast majority of
12 parolees will never encounter the superior courts under
13 Realignment – their cases will be resolved during the
14 pre-petition stages of the parole revocation process –
15 with no court involvement. And Defendants' analogy
16 ignores the fact that the Valdivia Injunction's remedies
17 exist apart from, and in addition to, the opportunity to
18 raise objections during parole proceedings. Class
19 members should be told that those remedies no longer
20 exist, and that their only recourse for violations of
21 their rights prepetition is to file an individual civil
22 suit or petition for habeas corpus. (Reply 12-13.)

23 Plaintiffs "request that the court stay final judgment in this
24 matter to allow for a notice and comment period under Rule
25 23(d)(1)(B), direct the parties to submit a stipulated proposed
26 form of notice, and establish a schedule for the Court to receive
objections and to hold a fairness hearing before any final judgment
issues." (Motion 22.)

The court sees no reason to receive objections and hold a
fairness hearing as to the propriety of decertification of the
Valdivia class and termination of this action. The mootness of this
case is settled as a matter of law. Consequently, any objections
that plaintiffs may raise at a fairness hearing are simply beside
the point. As defendants point out, "There are no individual,
factual issues that bear on the question of mootness." (Opposition
16.)

1 Nevertheless, plaintiffs are correct as to the importance and
2 appropriateness of providing notice of termination to the plaintiff
3 class. Rule 23(d) permits the court to issue orders that "require
4 – to protect class members and fairly conduct the action – giving
5 appropriate notice to some or all class members of . . . any step
6 in the action." Fed. R. Civ. P. 23(d)(1)(B)(ii).

7 Plaintiffs argue that the costs of any notice should be
8 assigned to defendants, writing:

9 Plaintiffs are a largely indigent class of 60,000
10 parolees in custody and not in custody, scattered
11 throughout the state of California. Their positions were
12 vindicated in this lawsuit in [myriad ways], and
13 Defendants have the means to finance a relatively modest
14 means of notice Assigning the cost of notice to
15 Defendants also promotes efficiency. Defendants keep
16 information concerning the location of all parolee[s] in
17 centralized databases; Plaintiffs' counsel does not. For
18 the roughly 8% of the Plaintiff class with pending
19 revocation charges . . . Defendants have the ability to
personally serving [sic] on parolees in the "notice"
stage of the revocation process, which Plaintiffs'
counsel lacks. The remainder of the class is supervised
by defendant DAPO on parole and can receive notice by
posting in parole offices and by communication (mail or
in person) with their parole agents . . . [Plaintiff's]
counsel stands to lose access to their clients once the
case is dismissed. Many County Jails, for example,
restrict legal visits to a parolee's current counsel.
(Reply 14.)

20 Defendants disagree, citing Eisen v. Carlisle & Jacquelin, 417 U.S.
21 156 (1974) (finding that district court erred in dividing costs of
22 notice of class certification between the parties) for the
23 proposition that "the responsibility and cost for [providing
24 notice] should be borne by Plaintiffs." (Opposition 16.) Eisen is
25 easily distinguished, however, because it concerned the question
26 of which side should pay for the costs of notifying potential class

1 members of class certification, a question the Supreme Court found
2 to be unambiguously decided by the text of Rule 23. The issue
3 presently before this court is who should bear the costs of
4 notifying the class of Valdivia's dismissal on mootness grounds.

5 In deciding this question, the court is also guided by
6 California Rule of Professional Conduct 3-500: "A member shall keep
7 a client reasonably informed about significant developments
8 relating to the employment or representation, including promptly
9 complying with reasonable requests for information and copies of
10 significant documents when necessary to keep the client so
11 informed." Class counsel bears an ethical responsibility to notify
12 the Valdivia class members of the action's dismissal.

13 In light of the foregoing, it appears that the best course of
14 action is to require the parties to share the costs of notice, in
15 the manner set forth in the court's order below.

16 **D. Alleged error in taking evidence**

17 Plaintiffs argue that the court erred in taking testimony from
18 BPH's Executive Officer regarding how the state intends to handle
19 parole supervision and revocation for those inmates who will be
20 released from prison pursuant to the order of the Three Judge Court
21 in Coleman v. Brown, No. 2:90-cv-0520-LKK-JFM (E.D. Cal.) and Plata
22 v. Brown, No. 3:01-01351-TEH (N.D. Cal.). Plaintiffs argue that
23 "[a]llowing for an eight-month transition period would relieve the
24 parties and the Court from relying on predictions about how this
25 new group of parolees will be handled, and will allow the Court to
26 tailor relief as necessary in the event that these parolees are put

1 through administrative rather than judicial revocation processes.”

2 (Motion 18)

3 As explained above, the court declines to maintain the
4 Valdivia Injunction as a prophylactic remedy, for to do so would
5 be to presume the constitutional unfitness of California’s new
6 parole system. The court is even less willing to maintain the
7 Injunction in place based on the possibility that prisoners subject
8 to early release might be placed solely under defendants’
9 administrative supervision. Any Constitutional infirmities in the
10 handling of parole for these inmates will have to be addressed in
11 a separate proceeding.

12 Accordingly, plaintiffs’ motion for reconsideration on this
13 ground is denied.

14 **E. Abstention**

15 Plaintiffs argue at length that the court “misapprehended” the
16 abstention doctrine set forth in Younger v. Harris, 401 U.S. 37
17 (1971) and its progeny, and argue for reconsideration on the
18 grounds that abstention doctrines do not provide a basis for
19 dismissal herein.

20 In so arguing, plaintiffs misconstrue the substance of the
21 court’s July 2 Order. Abstention was not the basis for dismissal;
22 mootness was. The sole paragraph in the order to reference
23 abstention provided that “[a]bstention from unwarranted
24 interference with state court proceedings is a well-settled
25 principle,” and concluded, “For this court to, e.g., require
26 defendants to maintain the current system for providing parolees

1 with probable cause hearings (including, as plaintiffs request,
2 'the BPH system of hearing officers and the provision of counsel
3 through CalPAP') would certainly interfere with the system of due
4 process review envisioned by the state." (July 2 Order 24-25.)

5 In making their argument, plaintiffs have significantly
6 misconstrued a passing observation (that dismissal of this case is
7 supported by abstention/federalism principles) for a legal
8 justification (that dismissal is required under Younger
9 abstention). Mootness is a sufficient basis for dismissal, and that
10 determination would be undisturbed by a full-blown Younger
11 analysis. Reconsideration on these grounds is therefore denied.

12 **III. CONCLUSION**

13 The court hereby orders as follows:

14 [1] Defendants are DIRECTED to maintain the injunctive
15 relief previously ordered in this matter in place for those
16 alleged parole violators who were arrested prior to July 1,
17 2013, but whose alleged parole violations have not yet been
18 addressed by defendants. Defendants are FURTHER DIRECTED to
19 file a declaration no later than October 1, 2013 apprising
20 the court as to the status of these alleged parole violators'
21 cases, and to continue doing so on the first of each month
22 thereafter, until all of the outstanding cases have been
23 disposed of. Thereafter, the court will resolve the
24 outstanding motions for fees and costs, decertify the class,
25 and dismiss this case.

26 [2] Plaintiffs' counsel and defendants are to provide

1 notice of dismissal of this action to class members, using
2 the following procedures:

- 3 1. The parties are to agree on the form of notice.
- 4 2. Defendants will provide plaintiffs' counsel with
5 the last known mailing address for each individual
6 in the plaintiff class, whether incarcerated or
7 not, in an electronic form conducive to the
8 printing of mailing address labels. Defendants will
9 bear the costs of collecting this information and
10 providing it to plaintiffs' counsel.
- 11 3. Plaintiffs' counsel will mail a copy of the agreed-
12 upon notice to each class member, using the address
13 provided by defendants. Plaintiffs' counsel will
14 bear the costs of printing and mailing these
15 notices.
- 16 4. Defendants will cause large, easily-readable copies
17 of the agreed-upon notice to be placed in easily-
18 visible locations in every parole office in the
19 state. Defendants will bear the costs of printing
20 these notices and causing them to be posted.

21 The parties are DIRECTED to complete the steps above no later
22 than thirty (30) days after entry of this order.


23 [3] Plaintiff's request for reconsideration of the court's
24 prior order finding this case moot is DENIED in all other
25 respects.

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IT IS SO ORDERED.

DATED: September 10, 2013.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT