

1 DANIEL J. BRODERICK, CSB #89424
 Federal Defender
 2 MONICA KNOX, CSB #84555
 DAVID M. PORTER, CSB #127024
 3 Assistant Federal Defenders
 801 I Street, 3rd Floor
 4 Sacramento, CA 95814
 Telephone: (916) 498-5700
 5 monica_knox@fd.org
 david_porter@fd.org

6 CARTER C. WHITE, CSB # 164149
 7 U.C. Davis Civil Rights Clinic
 One Shields Avenue, Building TB-30
 8 Davis, CA 95616-8821
 Telephone: (530) 752-5440
 9 ccwhite@ucdavis.edu

10 Attorneys for Plaintiffs
 RICHARD M. GILMAN, et al.

11
 12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14
 15 **RICHARD M. GILMAN, et al.,**
 16 Plaintiffs,

17 v.

18 **ARNOLD SCHWARZENEGGER, et**
 19 **al.,**
 20 Defendants.

No. Civ. S 05-830 LKK GGH

**PLAINTIFFS' MOTION TO ADMIT
 EXHIBITS, ORDER**

Judge: Hon. Lawrence K. Karlton

21
 22 The following exhibits were referenced during the April 6, 2011 evidentiary hearing
 23 in this case, but were not moved into evidence: Exhibits 43-48 and 59. In addition, Exhibits
 24 63-64, although admitted, have been expanded as outlined below and need to be readmitted.
 25 Defendants' counsel has been contacted and stated they have no objections to this motion.
 26 All of these exhibits, as well as the other exhibits introduced during the hearing, have been
 27 copied onto discs and provided to the court and to counsel.

28 / /

1 Exhibits 43-48

2 These exhibits concern the following examples of prisoner requests to advance: James
3 Alexander, Na Her, Joel Kyne, Daniel Rees, Frank Salas, and Edward Sanders. At the
4 evidentiary hearing, the only marked exhibits were one page summaries of information about
5 various aspects of each prisoner’s parole suitability history. Witness Monica Knox testified
6 about all the relevant portions of these summaries; therefore, plaintiffs are not seeking to
7 move these one page summaries into evidence. Instead, plaintiffs have copied packets of the
8 materials referenced by Ms. Knox as to each prisoner and move this court to permit these
9 packets to be introduced as evidence. These packets contain information derived either from
10 discovery, the *Rutherford* database, public records, or parole suitability hearing transcripts.
11 The packets have been disclosed to counsel. The exhibit numbers assigned to each packet
12 would be the same number assigned to the one page summaries: James Alexander (#43), Na
13 Her (#44), Joel Kyne (#45), Daniel Rees (#46), Frank Salas (#47), and Edward Sanders (#48).

14 Each of these packets contains the prisoner’s request to advance a hearing, along with
15 any supporting documentation. This information is identified as confidential and subject to
16 the protective order in this case. However, the packets would be incomplete if part of them
17 was removed and separately sealed. In addition, the pages marked confidential in these
18 packets have already been ordered sealed by this court; these are mere copies of those pages
19 containing information already referenced during the hearing and that are being disclosed
20 solely to the court and counsel. An additional sealing order is not required.

21 Exhibit 59

22 This exhibit is the “Road to Release” summary chart that was also blown up onto a
23 static chart. At the time it was first referenced in court, it was used for demonstrative
24 purposes, as Ms. Knox’s explanatory testimony had not occurred. After Ms. Knox completed
25 her testimony as to the information summarized on this chart, Plaintiff’s counsel neglected
26 to move this exhibit into evidence under Federal Rule of Evidence 1006 (Summary Evidence).
27 In order to have a complete record of all the evidence reviewed at the hearing, plaintiffs move
28 for the admission of Exhibit 59. *See United States v. Gardner*, 611 F. 2d 770, 776 (9th Cir.

1 1980)(within discretion of court to admit chart initially employed as testimonial aid by
2 witness subject to cross examination as to information on chart).

3 Exhibits 63, 64

4 These exhibits concern the parole suitability histories of Henry Bratton and Billy
5 Counts. The summaries of these histories have been admitted into evidence. As indicated at
6 the hearing, however, plaintiffs have now copied the packet of materials from which these
7 summaries were drawn and move to admit these packets as part of each exhibit. The packet
8 involving Henry Bratton would be added to exhibit 63 and the packet involving Billy Counts
9 would be added to exhibit 64.

10 Each of these packets contains the prisoner's request to advance a hearing, along with
11 any supporting documentation. This information is identified as confidential and subject to
12 the protective order in this case. However, the packets would be incomplete if part of them
13 was removed and separately sealed. In addition, the pages marked confidential in these
14 packets have already been ordered sealed by this court; these are mere copies of that
15 information that contain information already referenced during the hearing and that are being
16 disclosed solely to the court and counsel. An additional sealing order is not required.

17
18 Dated: April 8, 2011

19
20 Respectfully submitted,

21
22 /s/ Daniel J. Broderick
23 DANIEL J. BRODERICK
24 Federal Defender
25 MONICA KNOX
26 DAVID PORTER
27 Assistant Federal Defenders
28 CARTER WHITE
U.C. Davis Civil Rights Clinic

Attorneys for Plaintiffs
RICHARD M. GILMAN, et al.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA

3
4 **RICHARD M. GILMAN, et al.,**

5 Plaintiffs,

6 v.

7 **ARNOLD SCHWARZENEGGER, et**
8 **al.,**

9 Defendants.
10

No. Civ. S 05-830 LKK GGH
ORDER

11 The evidentiary hearing concerning Plaintiffs' *ex post facto* claim was conducted on
12 April 6, 2011. After conclusion of this hearing, plaintiffs moved to admit or amend exhibits
13 referenced during this hearing. This motion is hereby granted as to the following exhibits:


14 1. The summaries previously identified as exhibits 43-48 shall not be admitted. The
15 packets of parole suitability information are admitted and assigned the following exhibit
16 numbers: James Alexander (#43), Na Her (#44), Joel Kyne (#45), Daniel Rees (#46), Frank
17 Salas (# 47), and Edward Sanders (#48);

18 2. Plaintiffs' summary chart identified as exhibit #59 is admitted;

19 3. The parole suitability packet involving Henry Bratton shall be added to exhibit 63
20 and the packet involving Billy Counts shall be added to exhibit 64.

21 **IT IS SO ORDERED.**

22
23 April 8, 2011

24
25 
26 LAWRENCE K. KARLTON
27 SENIOR JUDGE
28 UNITED STATES DISTRICT COURT