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10 UNITED STATES DISTRICT COURT

11 EASTERN DISTRICT OF CALIFORNIA

12 L.H., A.Z., D.K., D.R., M.N., and R.C., on behalf of
 13 themselves and all other similarly situated juvenile
 parolees in California,

14 Plaintiffs,

15 vs.

16 ARNOLD SCHWARZENEGGER, Governor, State of
 California, MATTHEW CATE, Secretary, California
 17 Department of Corrections and Rehabilitation
 (“CDCR”); SCOTT KERNAN, Undersecretary of
 18 Operations, CDCR; BERNARD WARNER, Chief
 Deputy Secretary of the Division of Juvenile Justice;
 19 RACHEL RIOS, Director, Division of Juvenile Parole
 Operations; MARTIN HOSHINO, Executive Officer of
 20 the Board of Parole Hearings (“BPH”); ROBERT
 DOYLE, Chair of the BPH; SUSAN MELANSON,
 21 HENRY AGUILAR, ASKIA ABDULMAJEED,
 JOSEPH COMPTON, ROBERT CAMERON, JOYCE
 22 ARREDONDO, MARY SCHAMER, and TRACEY
 ST. JULIEN, Commissioners and Board
 23 Representatives; CHUCK SUPPLE, Executive Officer
 of the Juvenile Parole Board; CDCR; DIVISION OF
 24 JUVENILE JUSTICE; BOARD OF PAROLE
 HEARINGS; and the JUVENILE PAROLE BOARD,

25 Defendants.¹

Case No. 2:06-CV-02042-LKK-GGH

**JOINT STIPULATION REGARDING
 MODIFICATIONS TO DIVISION OF
 JUVENILE JUSTICE PAROLE
 REVOCATION POLICIES AND
 PROCEDURES**

26
 27
 28 ¹ The names of Defendants currently serving and their CDCR capacities have been substituted
 pursuant to Fed. R. Civ. P. 25.

1 WHEREAS, the Stipulated Order for Permanent Injunctive Relief (“Injunction”)
2 entered by this Court on October 7, 2008 requires “Defendants [to] develop sufficiently
3 specific draft Policies, Procedures, and Plans (‘Policies and Procedures’) that will ensure that
4 Revocation Proceedings are in continuous compliance with all of the requirements of the
5 Constitution and applicable statutes[.];” and

6 WHEREAS, the parties in the above-captioned case have met and conferred regarding
7 Defendants’ Policies and Procedures issued pursuant to the Injunction; and

8 WHEREAS, without prejudice to either party’s positions taken in the meet and confer
9 discussions;

10 NOW, THEREFORE, subject to the approval of this Court, the parties hereby
11 stipulate to the following changes to the Policies and Procedures issued pursuant to the
12 Injunction:

13 **I. Definition of Good Cause to Apply and Be Used in All Policies and Procedures**

14 The parties agree to modify the definition of good cause to be: “Justifiable, legitimate
15 and unforeseeable reason for the delay, asserted in good faith and caused by factors that are
16 beyond the control of the Defendants.”²

17 **II. Agreed Revisions to JPB Policies**

18 **A. Safety and Security During Hearings—Mechanical Restraints**

19 The parties agree to modify the current language regarding mechanical restraints
20 (from “The mechanical restraint decision shall be based upon” through “Pregnant
21 parolees should not be shackled or restrained in a belly chain.”) to state:

22 Staff shall not routinely restrain parolees during Parole
23 Revocation Hearings. Parolees may only be hand-cuffed or
24 shackled during Parole Revocation Hearings based on evidence
25 that the individual parolee’s present behavior, apparent emotional
26 state or other conditions present a reasonable likelihood that he
or she may become violent or attempt to escape. Other conditions
may include behavior while on parole or violent behavior during
the period of incarceration for this alleged parole violation.

27 _____
28 ² The parties continue to dispute how the definition of “good cause” will be interpreted in
addressing delays caused by persons not directly employed by Defendants.

1 The final determination regarding the use of mechanical
2 restraints resides with the BCPA and shall be made prior to the
3 commencement of the hearing and shall be documented in the
4 Board Order at the conclusion of the hearing. If the use of
5 restraints is determined to be appropriate, it shall be the
6 responsibility of the BCPA and/or the parole agent present at the
7 hearing to properly restrain the parolee prior to or immediately
8 upon being escorted into the hearing room. The BCPA or parole
9 agent responsible for applying the restraints shall double check
10 the restraints for proper application and to ensure that they are
11 not causing pain or loss of circulation for the parolee.

7 Any restraints shall allow the parolee limited movement of the
8 hands to read and handle documents and writings necessary to
9 the hearing. Under no circumstances should a parolee be
10 restrained using fixed restraints to a wall, floor or furniture.
11 Pregnant parolees should not be shackled in a "belly belt" around
12 the waist or in leg restraints.

10 When mechanical restraint is required, handcuffs, alone or
11 attached to a waist chain, will be the means of restraint normally
12 used. However, additional mechanical restraint, including leg
13 irons, additional chains, leather cuffs, or other specialized
14 restraint equipment may be used when the circumstances indicate
15 the need for the level of control that such devices will provide,
16 and when applied by custodial staff who have received training
17 in the proper use of such devices.

15 **B. Supplemental Charges for Parolees Pending Revocation**

16 The parties agree to replace:

17 Parolees charged with serious in-custody misconduct that occurs
18 while the parolee is in custody pending revocation proceedings
19 may be assessed up to an additional twelve (12) months, based
20 upon behaviors and relevant assessments as provided in the
21 Revocation Extension Matrix.

20 With:

21 Parolees charged with serious in-custody misconduct involving
22 violence against a person that occurs while the parolee is in
23 custody pending revocation proceedings may be assessed up to
24 an additional twelve (12) months, based upon relevant
25 assessments as provided in the Revocation Extension Matrix.

24 **C. Fearful Witnesses**

25 The parties agree to add the following section to the JPB Policies and Procedures:

26 **FEARFUL WITNESS HEARING PROCEDURES**

27 If a witness has been designated as fearful or claims to be fearful, prior to having the
28 witness testify, the Hearing Officer shall:

1 1. Inform the attorney that the witness has been designated as fearful based on the
2 witness's statement of fearfulness, and the hearing officer's determination based on objective
3 factors that face-to-face confrontation would result in significant emotional distress to the
4 witness.

5 2. Give the attorney the opportunity to object to the witness's designation

- 6 • If the attorney's objection is sustained, the Hearing Officer shall :
 - 7 i. Explain to the witness, outside of the presence of the parolee, that the
8 witness cannot be designated as fearful.
 - 9 ii. Resume the hearing and treat the witness as any other witness would
10 be treated.
- 11 • If the attorney's objection is overruled, the Hearing Officer shall:
 - 12 i. Prior to the witness entering, have the parolee removed from the
13 hearing room. The parolee will be placed in a location that prohibits
14 visual contact with the witness.
 - 15 ii. Allow the attorney a reasonable amount of time to consult with the
16 parolee regarding potential questions, prior to the testimony of the
17 fearful witness.
 - 18 iii. Continue the hearing with the parolee absent for the duration of the
19 fearful witness's testimony.
 - 20 iv. Allow the parolee's attorney to question the witness in the parolee's
21 absence.
 - 22 v. Give the attorney the opportunity to consult with the parolee to discuss
23 the testimony of the fearful witness before the witness is excused. At
24 this time the parolee shall be granted the opportunity to listen to the
25 witness's testimony as recorded and to discuss any concerns or
26 questions about the testimony with his or her attorney.
27 The Hearing Officer should permit the parolee sufficient time to
28 review the witness's testimony and to consult with his or her attorney.
 - 26 vi. Following this consultation, the attorney will be allowed to continue
27 with questioning.
 - 28 vii. Excuse the fearful witness when testimony and questioning is
 complete.

1
2 viii. Request that the parolee be returned to the hearing room after the
fearful witness has been excused.

3 ix. Upon reconvening the hearing, the Hearing Officer shall ask the
4 attorney if there is any additional information he or she wishes to add
5 in order to enhance the parolee's understanding of the testimony
provided by the fearful witness.

6 **D. Parolee's Right to Continue Hearings**

7 The parties agree to replace: "The parolee shall have the right to a continuance of a
8 timely Revocation Hearing in the absence of a good cause showing to deny such request."

9 With: "A parolee may be granted a continuance of his or her hearing for good cause shown."

10 **E. Parolee's Alleged Refusal to Attend a Hearing**

11 The parties agree to add the following sentence to each instance in which a parolee's
12 refusal to attend a hearing is discussed: "In the event that a parolee refuses to attend a hearing
13 that is taking place in a DJJ facility, the parolee's attorney shall be escorted to the housing
14 unit to confer with the parolee regarding the refusal to attend."³

15 **F. Remedies for Late Hearings**

16 The parties agree to replace:

17 If the Revocation Hearing occurs after one hundred twenty (120)
18 calendar days following the placement of a parole hold without a
19 showing of good cause, prejudice will be presumed, the case
20 shall be dismissed, the hold lifted and the parolee released as
soon as possible but no later than three (3) business days from
the one hundred twenty-first (121st) day.

21 With:

22 If the Revocation Hearing occurs after ninety (90) calendar days
23 following the placement of a parole hold without a showing of
24 good cause, prejudice will be presumed, the case shall be
25 dismissed, the hold lifted and the parolee released as soon as

26
27
28 ³ Plaintiffs do not waive their position that Defendants should also facilitate such
communications when parolees housed in county jails or CDCR institutions refuse to attend
hearings or when parolees refuse to board a bus for transport to a hearing.

1 possible but no⁴ later than three (3) business days from the ninety-
2 first (91st) day.

3 **G. Private Counsel’s Ability to Subpoena Witnesses**

4 The parties agree to add the following sentence to the JPB Policies and Procedures:

5 “A parolee’s attorney may subpoena witnesses to appear at a parole revocation hearing or
6 revocation extension hearing.”

7 **H. Exit Interview**

8 The parties agree to replace: “Additional special conditions of parole, not requested in
9 the Parole Placement Plans, may be added as appropriate and deemed necessary.” With
10 “Additional special conditions of parole, not requested in the Parole Placement Plans, that do
11 not impact the parolee’s placement may be added as appropriate and deemed necessary.”⁵

12 **I. Administrative Appeals**

13 The parties agree to eliminate the following sentence: “The final decision of whether
14 an administrative appeal should be filed in any given case rests with the attorney.”

15 **J. Legal Mail**

16 The parties agreed to add the following sentence to the section regarding
17 Administrative Appeals: “All appeals will be treated as legal mail.”

18 **III. DJPO Policies**

19 **A. Notice of NIC Hearing**

20 The parties agree to add the following sentence to the section regarding Parole Agent
21 Responsibilities for Not In Custody (NIC) Referral: “The Parole Agent shall be responsible
22 for giving notice of the date, time and location of a NIC Hearing to the parolee.”

23
24 ⁴ By stipulating to this modified language, Plaintiffs do not waive their positions that failure
25 to hold a hearing within 35 days absent good cause is a violation of the Injunction and
26 contempt, and that prejudice can be demonstrated and/or should be presumed after thirty-five
27 (35) days. In this and the other areas addressed by this Stipulation and Order, Plaintiffs’
28 agreement to revised language in a particular provision shall not be construed as
acquiescence in the validity of any aspect of Defendants’ Policies and Procedures, except as
previously agreed to.

⁵ Agreeing to this revision does not constitute a waiver of Plaintiffs’ position that no special
conditions of parole should be added at the Exit Interview.

1 **B. Supplemental Charges**

2 The parties agree to add the following language regarding Supplemental Charges:
3 “The parole agent shall review the field file for all known parole violations, except for
4 ongoing investigations as provided for in Evidence Code § 1040(b)(2), prior to completing
5 DJJ Form 3.264A. Supplemental charges may not be made based on evidence contained in
6 the field file at the time the DJJ Form 3.264A is completed.”

7 **C. Field Parole Agent Responsibilities for Exit Interviews**

8 The parties agreed to replace:
9 Conduct a review of the release packet/slough file to identify any
10 accommodation and/or effective communication needs, or
11 contact the institutional Parole Agent to discuss any
12 accommodation/effective communication needs.

13 With:
14 Conduct a review of the release packet/slough file and, if the
15 parolee is in a DJJ facility, contact the institution parole agent, to
16 identify any accommodation and/or effective communication
17 needs.

18 **IV. Facilities Revocation Extension Policies**

19 **A. Expedited Revocation Extension Procedures**

20 The parties agreed to add the following language: “If a parolee is subject to revocation
21 extension proceedings for behavior that occurs within 30 days of his or her RRD, the DDMS
22 Coordinator is responsible for expediting the revocation extension proceedings such that the
23 parolee is not held for more than 35 days past his or her RRD for purposes of completing
24 those proceedings. In the event that a parolee is detained for more than 35 days past his or
25 her RRD, he or she will be given day-for-day credit for every additional day the hearing
26 occurs beyond 35 days.”

27 **V. Revocation and Revocation Extension Matrices**

28 **A. Description of Revocation Extension Matrix**

 The parties agree to replace: “The following behaviors are Level 3 violations that may
warrant referral to the Juvenile Parole Board for revocation extension proceedings.” With:
“The following behaviors are Level 3 violations that rise to the level of serious in-custody

1 misconduct and may warrant referral to the Juvenile Parole Board for revocation extension
2 proceedings.”

3 **B. Driving Violations**

4 The parties agree to amend charge code 899 to “Other driving violations rising to the
5 level of misdemeanor or felony” in both the parole revocation charge codes and the
6 assessment matrix.

7 **C. Pressuring**

8 The parties agree to amend charge codes 3JA-3JC by adding the phrase “to violate the
9 law or a facility policy” at the end of each of these charge code titles/ descriptions.

10 **D. Exposure of Genitals**

11 The parties agree to amend charge code 3DC in the revocation extension matrix to
12 “Intentional exposure of genitals.”

13 **E. Violation 3S**

14 The parties agree to eliminate the 3S category of violations from the Revocation
15 Extension Matrix and replace it instead with “Disruptive Behavior that threatens the safety
16 and security of the facility.”

17 **F. Violation 3TD**

18 The parties agree to eliminate charge code 3TD from the Revocation Extension
19 Matrix.

20 **G. Willful Program Failure**

21 The parties agree to add a numerical charge code for Willful Program Failure in the
22 Revocation Extension Matrix.

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1 **VI. MODIFICATION**

2 Defendants may modify the Policies and Procedures outlined herein in the manner
3 provided for in Paragraph 12 of the Stipulated Order for Permanent Injunctive Relief dated
4 June 4, 2008.

5
6 IT IS SO STIPULATED.

7 Dated: September 8, 2009

ROSEN, BIEN & GALVAN, LLP

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By: /s/ Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld
Attorneys for Plaintiffs

9

10

Dated: September 8, 2009

HANSON BRIDGETT LLP

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12

By: /s/ S. Anne Johnson
S. Anne Johnson
Attorneys for Defendants
Arnold Schwarzenegger, et al.

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15 IT IS SO ORDERED.

16 Dated: September 10, 2009

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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