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 Attorneys for Plaintiffs
 6 SHERIE LEMIRE individually and as personal representative for the ESTATE OF
 ROBERT ST. JOVITE; GERARD CHARLES ST. JOVITE and NICOLE ST. JOVITE

7
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14 Attorneys for Defendants
 15 Alcaraz, Cahoon, California Department of Corrections and Rehabilitation, Carey, Chua, Dusay,
 Hak, Hicks, Holliday, LaBonte, Martinez, Nuehring, Noriega, Orrick, Schwarzenegger, Sisto,
 16 Soliz, Tilton, Traquina, Wade, and Wong

17 IN THE UNITED STATES DISTRICT COURT
 18 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION

19 SHERIE LEMIRE individually and) Case No. 2:08-CV-00455-GEB-EFB
 20 as personal representative for the ESTATE OF)
 ROBERT ST. JOVITE; GERARD CHARLES) STIPULATION AND ORDER TO FILE
 21 ST. JOVITE and NICOLE ST. JOVITE) FOURTH AMENDED COMPLAINT
 22)
 Plaintiffs,)
 23 vs.)
 24)
 ARNOLD SCHWARZENEGGER, et al.)
 25)
 Defendants.)
 26)

27
 28
 Case No. 2:08-CV-00455-GEB-EFB
 STIPULATION AND [PROPOSED] ORDER TO FILE FOURTH AMENDED COMPLAINT

1 Pursuant to Local Rule 83-143 the parties stipulate as follows:

2 Pursuant to Stipulation, Plaintiffs amended their complaint on January 1, 2009. Since that
3 time, Plaintiffs have served all those Defendants they have named except Defendants Thor, Hill,
4 and Harris. On or about October 21, 2009, the parties stipulated to allow Plaintiffs to file the
5 Third Amended Complaint which did not seek to add any new defendants, merely to clarify the
6 alleged involvement of the already named defendants. The Court so ordered, and Plaintiffs filed
7 the Third Amended Complaint on October 27, 2009. The Court ordered Defendants to respond to
8 the amended complaint by November 26, 2009.
9
10

11 In a meet and confer discussion with defense counsel, it became apparent that Plaintiff had,
12 through computer and operator error, inadvertently and mistakenly e-filed the wrong complaint,
13 which added parties not intended to be added and deleted others. The parties therefore stipulate
14 to the filing of the attached Fourth Amended Complaint to correct these errors.
15

16 Concomitant with this filing, the parties agree to the dismissal of Defendants Haviland,
17 Cate, Hill, Harris, Thor, Soliz and LaBonte and all allegations and claims against them. The
18 parties further agree and stipulate that these Defendants will seek no costs or attorney's fees and
19 that no costs or fees will be awarded.
20

21 The proposed Fourth Amended Complaint re-inserts the erroneously removed Defendant
22 then-Warden D. K. Sisto as a defendant, who had already appeared in this action, and defense
23 counsel agrees to continue to accept service on his behalf.

24 Accordingly, the parties agree to allow Plaintiffs to file the attached Fourth Amended
25 Complaint in order to properly clarify the parties and remedy the errors.
26

27 ///

28 The parties further agree that Defendants will be excused from responding to the Third
Amended Complaint, and Defendants will respond to the Fourth Amended Complaint within the

1 time provided under Federal Rule of Civil Procedure 15.

2 IT IS SO STIPULATED.

3
4 Dated: November 19, 2009

Respectfully submitted,

5
6 LAW OFFICES OF GERI LYNN GREEN_{LC}

7 By: /S/ [Redacted] [Redacted] [Redacted]

8 Geri Lynn Green (State Bar No. 127709)
9 Attorneys for Plaintiffs

10 Dated: November 19, 2009

OFFICE OF THE ATTORNEY GENERAL

11 By: /S/ [Redacted] [Redacted]

12 Attorney for Defendants

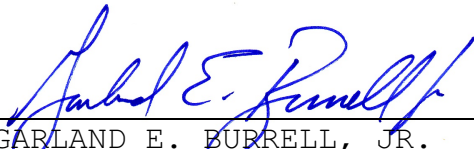
13 **ORDER**

14 Plaintiffs are hereby allowed to file the Fourth Amended Complaint and that amended
15 complaint must be filed no later than three days from the date of this order. Defendants are
16 excused from responding to the Third Amended Complaint and shall file their response to the
17 Fourth Amended Complaint within the time specified under Federal Rule of Civil Procedure 15.

18
19 Defendants Haviland, Cate, Hill, Harris, Thor, Soliz and LaBonte are hereby dismissed with
20 prejudice, and each party shall bear its own costs and fees.

21 IT IS SO ORDERED.

22
23 Dated: November 25, 2009

24 
25 _____
26 GARLAND E. BURRELL, JR.
27 United States District Judge
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