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1 **PROPOSED SCHEDULE FOR COMPLETING DISCOVERY**

2 Plaintiffs Albert G. Brown, Stevie Fields, Michael A. Morales, Mitchell Sims,
3 and Pacific News Service and Defendants Matthew Cate, Secretary of the California
4 Department of Corrections and Rehabilitation, Warden (Acting) Michael Martel, San
5 Quentin State Prison, and Governor Edmund G. Brown, submit the following joint
6 proposal for further scheduling in these consolidated actions:
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8 Acting Warden Michael Martel at San Quentin State Prison determined that he
9 needed until October 17, 2011 to select a new execution team. Notice re: Selection of
10 New Execution Team and Alternates, Oct. 5, 2011, at 2 (ECF No. 529). A new execution
11 team has now been selected.
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13 On July 15, Defendants served supplemental responses to interrogatories and
14 document requests propounded by Plaintiff Brown, initial responses to discovery
15 propounded by Pacific News Service, documents, a privilege log, and a supporting
16 declaration. On August 5, 2011 Defendants served additional documents and a privilege
17 log. Plaintiffs contend that the assertion of objections and privilege logs does not comply
18 with the Court's previous order for "[d]efendants to produce the requested documents and
19 information and to answer the interrogatories." Order, Mar. 9, 2011, at 5 (ECF No. 513);
20 *see also id.* at 2 n.1 ("grant[ing] Plaintiffs the same relief they would seek with [] motions
21 to compel."). Defendants contend that the Court's order merely resolved their motion for
22 a protective order regarding the permissible scope of discovery, and disagree with
23 Plaintiffs' contention that the objections and privileges set forth in Defendants' discovery
24 responses fail to comply with this order. The Court further ordered the parties to "resolve
25 any further disputes amicably without bringing them to the Court." *Id.* at 6. Plaintiffs
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1 and Defendants will meet and confer to attempt to resolve this dispute during the week of
2 November 7, 2011.

3 Upon review of the email documents produced by Defendants, Plaintiffs have
4 noticed that numerous attachments to emails have not been produced. Plaintiffs have
5 requested the immediate production of these documents. Plaintiffs also are awaiting
6 additional discovery responses concerning the new team's selection and training or
7 changes to the execution team personnel. Defendants will notify Plaintiffs of the creation
8 of additional documents concerning the team's training (and produce such
9 documentation) and any changes to the team personnel in a timely manner as required by
10 Rule 26(e), and in any event, within 14 days following the creation of the document or
11 the change to the team personnel, unless modified by agreement of the parties.
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13 Defendants intend to request that Plaintiffs meet and confer with them, in an
14 effort by Defendants to obtain what Defendants view as responsive answers to written
15 discovery propounded by Defendants in February 2011 to Plaintiffs Morales, Brown,
16 Sims, and Fields, and to obtain production of responsive documents from Plaintiffs.
17 Defendants will attempt to amicably resolve all discovery disputes without bringing them
18 to the Court.
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20 Plaintiffs have begun to review the documents and information received on a
21 rolling basis, in order to, *inter alia*, identify witnesses for depositions. Depositions will
22 be scheduled upon the completion of this review, and upon completion of review of any
23 other documents and information to be produced by Defendants. At this point, Plaintiffs
24 anticipate deposing witnesses with knowledge of the regulations and execution team
25 documents, document custodians, and present and former execution team managers and
26 participants. In this regard, Plaintiffs' counsel have conferred with Defendants' counsel
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1 generally about the scheduling of the depositions (*see* L.R. 30-1), and counsel are aware
2 of and understand that counsel have other professional obligations, including trials, that
3 previously have been calendared. The parties will work together to schedule depositions
4 on dates certain when the witnesses and counsel are available. L.R. 30-1.

5 If a dispute arises during a deposition regarding a party's assertion of a privilege,
6 objection, or instruction to a witness that cannot be resolved by conferring in good faith,
7 counsel will contact Judge Seeborg's chambers pursuant to Local Rule 37-1(b) to ask if
8 the Court is available to address the problem through a telephone conference during the
9 deposition, or whether counsel can be directed to a Magistrate Judge to resolve the
10 matter. Counsel will advise the Court of the deposition schedule via e-mail to Mr.
11 Kolombatovich when the depositions are set.

12 Based upon counsel for Plaintiffs' review of certain documentation produced by
13 Defendants to date, Plaintiffs believe that it may be incomplete. Plaintiffs believe that
14 these issues can be clarified during depositions. If the production of such records is in
15 fact incomplete, additional time will be required for Defendants to make complete
16 productions, for Plaintiffs' counsel to review the records, and for the parties to complete
17 the depositions.

18 Once Defendants complete their discovery obligations set forth in the Court's
19 March 11, 2011 order and all supplements thereto, and Plaintiffs complete all non-expert
20 depositions, Plaintiffs will supplement their responses to Defendants' contention
21 interrogatories in a timely manner, and in any event within 14 days, unless modified by
22 agreement of the parties. After the foregoing discovery has been completed, the parties
23 will identify expert information as required by Rule 26(a)(2), and present their experts for
24 depositions thereafter.

1 In light of this stipulated discovery schedule which has been carefully considered
2 by the parties and is entered into in a good faith attempt to meet the Court's expectations
3 that "the parties [] comply with their discovery obligations . . . and [] resolve any further
4 disputes amicably without bringing them to the Court" (Order Re Discovery and
5 Defendants' Motion to Strike, at 6 (ECF No.513)),

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7 IT IS HEREBY STIPULATED THAT:

- 8 1. The foregoing discovery will be completed by August 15, 2012; and
9 2. The parties will file a joint statement identifying any material issues of fact that
10 will require an evidentiary hearing by September 15, 2012.

11 DATED: November 2, 2011

By: /s/

12 David A. Senior
13 McBREEN & SENIOR

14 Richard P. Steinken
15 JENNER & BLOCK

16 John R. Grele
17 LAW OFFICE OF JOHN R. GRELE
18 *Attorneys for Plaintiffs*
ALBERT G. BROWN and
MICHAEL A. MORALES

19 DATED: November 2, 2011

By: /s/*

20 Michael Laurence
21 Sara Cohbra
22 HABEAS CORPUS RESOURCE CENTER
23 *Attorneys for Plaintiffs*
24 MITCHELL SIMS and STEVIE FIELDS

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DATED: November 2, 2011

By: /s/ *
Ajay S. Krishnan
KEKER & VAN NEST LLP
Attorneys for Plaintiffs
PACIFIC NEWS SERVICE

DATED: November 2, 2011

By: /s/ Michael J. Quinn*
MICHAEL J. QUINN
Deputy Attorney General
Attorneys for Defendants
BROWN, CATE, AND MARTEL

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 3, 2011


Honorable Richard Seeborg
UNITED STATES DISTRICT JUDGE