

EDMUND G. BROWN JR.
 Attorney General of California
 MIGUEL A. NERI
 FIEL D. TIGNO
 Supervising Deputy Attorneys General
 KAREN KIYO HUSTER
 BONNIE J. CHEN
 Deputy Attorney General
 State Bar No. 219394
 1515 Clay Street, 20th Floor
 P.O. Box 70550
 Oakland, CA 94612-0550
 Telephone: (510) 622-2113
 Fax: (510) 622-2121
 E-mail: Bonnie.Chen@doj.ca.gov
*Attorneys for Defendants CDCR, David Mandel,
 David Archambault, Timothy McCarthy, Jo Ann Van
 Valkenburgh, Maureen McLean*

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

BRENDA DAVIS and DAVID ROY,

Plaintiffs,

v.

**STATE OF CALIFORNIA,
 DEPARTMENT OF CORRECTIONS AND
 REHABILITATION; DAVID MANDEL,
 Ph.D.; TIMOTHY McCARTHY, Ph.D.;
 JOANN VAN VALKENBURGH;
 MAUREEN McLEAN and DOES 1-100,**

Defendants.

Case No. C 08-4481 SBA

**STIPULATED ORDER PARTIALLY
 GRANTING DEFENDANTS' MOTION
 TO DISMISS FIRST AMENDED
 COMPLAINT**

Date: December 8, 2009
 Time: 2:00 p.m.
 Courtroom: 1, 4th Floor
 Judge: The Honorable Sandra B.
 Armstrong
 Trial Date: April 12, 2010
 Action Filed: September 24, 2008

1 This Court having considered Defendants' Motion to Dismiss the First Amended
2 Complaint, the papers filed, and arguments made in support and in opposition thereof, and good
3 cause appearing,

4 IT IS HEREBY ORDERED that Defendants' Rule 12(b)(5) & 12(b)(6) Motion to Dismiss
5 the First Amended Complaint (Docket No. 51) is GRANTED in part and DENIED in part.

6 (1) Defendants' Motion to Dismiss is GRANTED with regard to Plaintiff Davis's FEHA
7 (third) claim. The Court finds that Plaintiff Davis has failed to exhaust her administrative
8 remedies with regard to Plaintiffs Archambault, McCarthy, McLean and Van Valkenburgh.
9 Plaintiffs Archambault, McCarthy, McLean, and Van Valkenburgh are dismissed with prejudice
10 and without leave to amend from the third claim.

11 (2) Defendants' Motion to Dismiss is GRANTED with regard to dismissing the State of
12 California. The California Department of Corrections and Rehabilitation remains a defendant.

13 (3) Defendants' Rule 12(b)(5) Motion to Dismiss based on insufficiency of service of
14 process is withdrawn.

15 (4) Defendants' Motion to Dismiss is DENIED with regard to Plaintiffs' equal protection
16 (4th & 5th) claims. The Court finds that each of the individually named defendants is being sued
17 in their individual capacity only. Defendants are not being sued in their official capacity.

18 (5) In response to Defendants' Motion to Dismiss the whistleblower (6th claim), the
19 Court stays this entire action pending the resolution of the ongoing companion State Personnel
20 Board administrative proceedings. The parties are encouraged to consider a global settlement at
21 the settlement conference scheduled by the State Personnel Board.

22 (6) Defendants are ordered to e-file an answer to the remainder of the First Amended
23 Complaint (Docket No. 48) within 30 days of this order.

24 (7) The clerk is ordered to make the following modifications to the deadlines listed in the
25 Court's January 26, 2009 Order for Pretrial Preparation (Docket No. 24):

26 (a) The current discovery cut-off date of January 11, 2010 is vacated.

27 (b) The current expert designation date of January 11, 2010 is vacated.

28 (c) The current expert rebuttal disclosure date of February 11, 2010 is vacated.

- 1 (d) The current dispositive motion cut-off date of February 23, 2010 is vacated.
- 2 (e) The current March 1-12, 2010 mandatory settlement conference date is vacated.
- 3 (f) The current pre-trial preparation deadline of March 16, 2010 is vacated.
- 4 (g) The current motions in limine and objections to evidence deadline of March 23,
- 5 2010 is vacated.
- 6 (h) The current pre-trial conference date of April 6, 2010 is vacated.
- 7 (i) The current trial dates of April 12-20, 2010 are vacated.
- 8 (j) Fact discovery remains open and a new fact discovery cut-off date shall be set
- 9 for May 3, 2010.
- 10 (k) A telephonic case management conference date shall be set for June 2, 2010,
- 11 2:30 p.m. Plaintiff's counsel is to set up the conference call with all the parties on the line and
- 12 call chambers at (510) 637-3559. The Court shall re-set the trial date, pre-hearing conference
- 13 date, expert designation cut-off date, expert rebuttal deadline, and dispositive motion cut-off date
- 14 at this case management conference. The parties shall file a joint case management statement by
- 15 May 24, 2010. In this statement, the parties shall report the status of: (1) whether the parties have
- 16 reached global settlement of the administrative and federal actions and (2) whether the SPB
- 17 administrative proceedings have been completed.
- 18 ///
- 19 ///
- 20 ///
- 21 ///
- 22 ///
- 23 ///
- 24 ///
- 25 ///
- 26 ///
- 27 ///
- 28 ///

1 (8) Defendants' Ex Parte Application (Docket No. 61) is DENIED, as it is rendered moot
2 by this order.

3
4
5 Dated: December 10, 2009

Respectfully submitted,

6 EDMUND G. BROWN JR.
7 Attorney General of California

8 /s/ BONNIE J. CHEN

9

BONNIE J. CHEN
10 Deputy Attorney General
11 *Attorneys for Defendants CDCR, Mandel,*
Archambault, McCarthy, Van Valkenburgh
& McLean

12 ABRAHAM N. GOLDMAN & ASSOCIATES, LTD.


13 /s/ ABRAHAM N. GOLDMAN

14

ABRAHAM N. GOLDMAN, ESQ.
15 *Attorneys for Plaintiffs Brenda Davis and*
David Roy

16 **IT IS SO ORDERED.**

17
18
19
20 Dated: _12/17/09

21 
22

THE HON. SAUNDRA B. ARMSTRONG
23 United States District Judge

24 OK2008900526
25 90132867.doc