

ROSEN, BIEN & GALVAN, LLP
MICHAEL W. BIEN – 096891
GAY C. GRUNFELD – 121944
MEGHAN R. LANG – 221156
MARIA V. MORRIS – 223903
SHIRLEY HUEY – 224114
NURA MAZNAVI – 232008
SARAH M. LAUBACH – 240526
315 Montgomery Street, Tenth Floor
San Francisco, California 94104
Telephone: (415) 433-6830

BINGHAM McCUTCHEN LLP
GEOFFREY HOLTZ – 191370
KRISTEN A. PALUMBO – 215857
BRIANA LYNN ROSENBAUM – 239977
Three Embarcadero Center
San Francisco, California 94111-4067
Telephone: (415) 393-2000

Attorneys for Plaintiffs

EDMUND G. BROWN JR.
DAVID S. CHANEY
FRANCES T. GRUNDER
ROCHELLE C. EAST
WILLIAM C. KWONG, State Bar No. 168010
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5724
Fax: (415) 703-5843
Email: William.Kwong@doj.ca.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, Governor, State
of California, MATTHEW L. CATE, Secretary (A),
California Department of Corrections and
Rehabilitation (“CDCR”); DAVID RUNNELLS,
Undersecretary, CDCR; BERNARD WARNER,
Chief Deputy Secretary of the Division of Juvenile
Justice; CAROLINA GARCIA, Director, Division of
Juvenile Parole; DENNIS DULAY, Acting Deputy
Director of the Division of Juvenile Parole
Operations; MARTIN HOSHINO, Executive
Director of the Board of Parole Hearings (“BPH”);
JAMES DAVIS, Chair of the BPH; JOYCE
ARREDONDO, PAUL CHABOT, JOSEPH
COMPTON, SUSAN MELANSON, THOMAS
MARTINEZ, ASKIA ABULMAJEED, and CHUCK
SUPPLE, Commissioners and Board Representatives,
CDCR; DIVISION OF JUVENILE JUSTICE;
BOARD OF PAROLE HEARINGS; and the
JUVENILE PAROLE BOARD,

Defendants.

YOUTH LAW CENTER
SUSAN L. BURRELL – 074204
CAROLE SHAUFFER – 100226
CORENE KENDRICK – 226642
200 Pine Street, 3rd Floor
San Francisco, CA 94104
Telephone: (415) 543-3379

PRISON LAW OFFICE
DONALD SPECTER – 83925
SARA NORMAN – 189536
1917 Fifth Street
Berkeley, California 94710-1916
Telephone: (510) 280-2621
Facsimile: (510) 280-2704

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

**STIPULATED ORDER FOR
PERMANENT INJUNCTIVE RELIEF**

1 The parties hereby stipulate that they shall ask the Court to ADJUDGE,
2 DECLARE, AND DECREE as follows:

3 **INTRODUCTION**

4 1. This action was filed on September 13, 2006. Plaintiffs, on behalf of
5 themselves and the class they represent, challenge the constitutionality of the juvenile
6 Parole Revocation process conducted by the California Board of Parole Hearings
7 (“BPH”), the Division of Juvenile Justice (“DJJ”), the Juvenile Parole Board (“JPB”), and
8 the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiffs’ First
9 Amended Complaint contains claims for violation of due process, equal protection, the
10 Americans with Disabilities Act (“ADA”)/Rehabilitation Act, and denial of the right to
11 counsel. Plaintiffs’ claims regarding proceedings leading up to and including Parole
12 Revocation Hearings are resolved through this Stipulated Order for Permanent Injunctive
13 Relief (“Injunction”). The role of Plaintiffs in monitoring is not resolved through this
14 Injunction and will be resolved separately.

15 2. The Court certified this case as a class action by Order dated February 28,
16 2007. The Defendants are state agencies and state officials responsible for the policies,
17 procedures, and practices by which California conducts juvenile parole revocation
18 hearings. This Court issued an Order granting partial summary judgment on
19 September 19, 2007, and a preliminary injunction on attorney appointment and ADA
20 accommodations issued on January 29, 2008.

21 3. The parties stipulate that this is not a “civil action with respect to prison
22 conditions,” as those terms are defined and applied in the Prison Litigation Reform Act
23 (“PLRA”), 18 U.S.C. § 3626, and that, therefore, this case and this Injunction are not
24 governed by the PLRA.

25 **I. PARTIES**

26 4. The Plaintiff Class consists of the following persons: Juvenile Parolees in
27 or under the jurisdiction of California, including all Juvenile Parolees with Disabilities, as
28 that term is defined in Section 504 of the Rehabilitation Act and the ADA, who are: (i) in

1 the community under parole supervision or who are at large; (ii) in custody in California
2 as alleged parole violators, and who are awaiting revocation of their parole; or (iii) in
3 custody, having been found in violation of parole and returned to custody. The fact that
4 they have attained majority does not exclude them from the Class. They remain Class
5 members until they are discharged from the jurisdiction of the DJJ.

6 5. The Defendants are state agencies and state officials responsible for the
7 policies, procedures, and practices by which California conducts Juvenile Parole
8 Revocation Hearings and other proceedings. Defendant Arnold Schwarzenegger is
9 Governor of the State of California and Chief Executive of the state government.
10 Defendant Matthew L. Cate is the Secretary of the California Department of Corrections
11 and Rehabilitation ("CDCR"). David Runnels is the Undersecretary of CDCR.
12 Defendant Bernard Warner is the Chief Deputy Secretary of the Division of Juvenile
13 Justice ("DJJ"). Defendant Carolina Garcia is the Acting Director, Division of Juvenile
14 Parole. Defendant Chuck Supple is the Executive Officer of the Juvenile Parole Board
15 ("JPB"). Defendants Joyce Arredondo, Joseph Compton, Susan Melanson, Thomas
16 Martinez, Askia Abdulmajeed and Chuck Supple are Commissioners and Board
17 Representatives of Defendant JPB. This Injunction is binding on all successor agencies to
18 Defendants CDCR, DJJ, and JPB. County governments and local law enforcement
19 agencies are not parties to this action and are not bound by the terms of this stipulated
20 injunction.

21 **II. DEFINITIONS**

22 6. The following terms when used in this Injunction shall have the meanings
23 specified below:

- 24 a. "Day(s)" shall mean calendar days, unless otherwise specified.
- 25 b. "Probable Cause Hearing" shall mean a hearing in which the Juvenile
26 Parolee appears and at which it is determined whether there is
27 probable cause to believe that the Juvenile Parolee has violated a
28 condition of parole and, if so, whether the Juvenile Parolee should be

1 detained during the Revocation Process.

- 2 c. "Revocation Hearing" shall mean a hearing in which the Juvenile
3 Parolee appears and at which it is determined whether the
4 preponderance of the evidence shows that the Juvenile Parolee
5 violated a condition of parole.
- 6 d. "Revocation Process" or "Revocation Proceedings" shall mean all
7 stages of the process by which a Juvenile Parolee may be returned to
8 or retained in custody following an alleged parole violation and a
9 Welfare and Institutions Code section 1767.3 hold has been placed up
10 to and including the Revocation Hearing or administrative appeals
11 thereof. This term also includes Revocation Extension Hearings,
12 defined below at section (j).
- 13 e. "Parole Hold" shall mean any invocation by Defendants of their
14 authority to involuntarily detain a Juvenile Parolee for Revocation
15 Proceedings and/or commence Revocation Proceedings pursuant to
16 Welfare and Institutions Code section 1767.3. This term shall not
17 apply to the detention of a parolee who has absconded from the State
18 of California until he or she is physically returned to the State of
19 California and is in custody.
- 20 f. "Temporary Detention" is the detention of a parolee for 30 Days or
21 less for treatment purposes, to redefine the conditions of parole and/
22 or to find placements for Juvenile Parolees.
- 23 g. "Disability" and "Disabilities" shall be defined in the same manner as
24 to include all persons considered to have a Disability under the
25 Americans with Disabilities Act and/or Rehabilitation Act.
- 26 h. "Corrective Action Plan" shall be defined as a program of treatment
27 or supervision in the community in lieu of incarceration in the DJJ.
- 28 i. "Revocation Extension Hearing" shall mean a hearing in which the

Juvenile Parolee appears before the Juvenile Parole Board, at which it is determined whether the preponderance of the evidence shows that the Juvenile Parolee committed willful program failure or serious in-custody misconduct, and in which a Juvenile Parolee's parole revocation period may be extended. A parolee's parole revocation period may not be extended because of Defendants' failure to provide a recommended program at all or in a timely manner.

- j. "Not in Custody Hearing" (NIC) is a revocation hearing for a parolee whose is no longer under a parole hold.

III. FINDINGS

7. On September 19, 2007, this Court granted partial summary judgment in favor of Plaintiffs, holding that California's Juvenile Parole Revocation system violates the due process rights of the Plaintiff class under *Morrissey v. Brewer*, 408 U.S. 481 (1972), and related authority.

8. On January 29, 2008 this Court held that Defendants' failure to appoint counsel for all Juvenile Parolees under *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) is violative of the due process rights of the Plaintiff class

9. In the court order dated January 29, 2008, the Court also found that Defendants' policies and practices violated the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

10. The remedy provided in this Injunction is narrowly drawn, extends no further than necessary to correct the violation of federal rights, and is the least intrusive means necessary to correct the violation of the federal rights. Nothing in this injunction is an admission by Defendants of the establishment of a new constitutional standard for parole revocation proceedings.

IV. POLICIES, PROCEDURES, REGULATIONS, AND PLANS

11. Within 90 days of the parties signing this Stipulated Injunction, and no later

1 than September 15, 2008, Defendants shall develop sufficiently specific draft Policies,
2 Procedures, and Plans ("Policies and Procedures") that will ensure that Revocation
3 Proceedings are in continuous compliance with all of the requirements of the Constitution
4 and applicable statutes. The Policies and Procedures will also address a method for
5 accurately tracking the timeliness of hearings and other proceedings in the Parole
6 Revocation Process, the timely provision of accommodations for Juvenile Parolees'
7 disabilities and effective communication needs, NIC hearings, dual commitments, parole
8 exit meetings, and promulgation of any Rules and Regulations needed to implement this
9 Injunction. The Policies and Procedures will further address disputed implementation
10 issues such as telephonic Probable Cause Hearings, what circumstances may constitute
11 good cause for delayed hearings and remedies for untimely hearings. As soon as
12 reasonably possible, Defendants will post notice of the material terms of the settlement of
13 the class action lawsuit on their web site, in institutional living units and libraries, in the
14 Office of the Ombudsman, and shall make them available to the public upon request.
15 Defendants will undertake a review of existing regulations, rules and procedures and
16 ensure that they are consistent with this agreement and the policies and procedures that
17 implement this agreement.

18 12. For all Policies and Procedures developed under this Injunction, the parties
19 shall use the following process: Defendants shall submit all draft Policies and Procedures
20 to Plaintiffs and to Special Master Chase Riveland prior to their implementation. The
21 parties shall meet and confer in good faith with the Special Master at least one time within
22 fourteen business days of Defendants' submission to Plaintiffs. If the parties reach an
23 impasse on any particular issues, either party may bring the disputed issues to the Court in
24 a motion to be heard on shortened time, or the parties may agree to use the dispute
25 resolution process set forth in the Order of Reference. Defendants shall submit the initial
26 draft Policies and Procedures required by this Injunction to Plaintiffs' counsel no later
27 than 90 days after the parties sign this Stipulated Injunction. Defendants shall file their
28 proposed Policies and Procedures with the Court no later than 150 days after the parties

1 sign this Stipulated Injunction. The Court will resolve any remaining disputed issues by
2 noticed motion.

3 13. Defendants shall incorporate the Juvenile Parole Board revocation hearing
4 business process requirements within the existing Revocation Scheduling and Tracking
5 System within six months of the signing of this Stipulation.

6 **V. DUE PROCESS REQUIREMENTS**

7 14. No later than 180 days of the signing of this Stipulation, and no later than
8 December 15, 2008, Defendants shall have fully implemented the reforms to their
9 Revocation Process by making the changes described in ¶¶ 15 to 46 below.

10 **A. Right to Counsel**

11 15. Commencing on or before February 15, 2008, Defendants shall appoint
12 counsel to represent each and every Juvenile Parolee in the Revocation Process as
13 described below.

14 16. For Probable Cause Hearings and Parole Revocation Hearings, counsel shall
15 be appointed no later than 8 business Days after imposition of the Parole Hold. At the
16 time of appointment, counsel shall be notified of the date, time, and location of the
17 hearing and the name of parolee, and shall receive a copy of all the evidence in the State's
18 possession on which the State intends to rely or which may be exculpatory, and relevant
19 educational, mental health and disability identification, and source documents to be
20 agreed upon through the development of Policies and Procedures. Defendants shall take
21 all reasonable steps to enable counsel to meet with the Juvenile Parolee at least 24 hours
22 prior to the Probable Cause Hearing.

23 17. Defendants shall not accept any written admissions to a violation of a
24 condition of parole, or waivers of hearing rights, or the right to counsel made prior to the
25 Juvenile Parolee's first meeting with his or her counsel. Waivers are further detailed at
26 Paragraph 31.

27 18. At the request of the Juvenile Parolee, he or she may decline to be
28 represented by appointed counsel in Revocation Proceedings and may instead be

1 represented by counsel of his or her own choosing at his or her own cost, including his or
2 her public defender or other appointed counsel, retained counsel, or pro bono counsel.
3 Such counsel shall have the same rights under this Injunction, except as to compensation,
4 as counsel appointed by Defendants. Defendants shall develop a process for timely
5 notifying a Juvenile Parolee's counsel of record or public defender of the imposition of a
6 Parole Hold.

7 19. At the time of appointment, counsel shall be provided with all of the
8 evidence in the State's possession that the State intends to rely upon or that may be
9 exculpatory as defined in paragraph 16. After appointment of counsel, if Defendants
10 receive or learn of such additional evidence or documents, they shall produce them to the
11 Juvenile Parolee's counsel as soon as possible thereafter. Evidence or documents not
12 provided to the Juvenile Parolee's counsel at least 48 hours prior to the hearing shall not
13 be admitted or considered in the hearing unless Defendants can show good cause for the
14 delay.

15 20. A Juvenile Parolee's counsel shall not be denied reasonable access to all of
16 their clients' files. Defendants shall develop Policies and Procedures that detail how
17 counsel shall timely access and obtain copies of relevant information in a Juvenile
18 Parolee's files.

19 21. Defendants shall develop standards, guidelines, and training for effective
20 assistance of state-appointed counsel in the Revocation Process that shall include
21 standards for panel administration, training and continuing education, quality assurance,
22 independence, statewide oversight and individual representation.

23 22. Defendants' Policies and Procedures shall ensure that at the time of
24 appointment, counsel appointed to represent Juvenile Parolees who have difficulty in
25 communicating or participating in Revocation Proceedings because of Disabilities or
26 effective communication needs shall be informed of the nature of the difficulty, including
27 but not limited to mental illness, other cognitive or communication impairments,
28 illiteracy, limited English-language proficiency, and the need for a foreign language

1 interpreter.

2 23. Counsel shall be given reasonably adequate time to represent the Juvenile
3 Parolee properly at each stage of the proceeding, including administrative appeals.
4 Defendants shall not unreasonably limit the amount of time an attorney spends with his or
5 her client, nor shall they unreasonably delay or prevent an attorney's access to the client
6 consistent with institutional safety and security. Defendants shall provide reasonable
7 space for attorneys to meet with clients in confidence and, in the event that there is a
8 physical barrier between attorneys and their clients, provide a mechanism for attorneys to
9 confidentially share documents with their clients consistent with institutional safety and
10 security. Defendants shall make available necessary reasonable accommodations,
11 including, but not limited to, sign language interpreters, language interpreters, magnifying
12 glasses, and hearing devices for attorney interviews with their clients, and unmonitored
13 confidential telephone calls between attorneys and their clients. Anytime a DJJ staff
14 person, for the purposes of institutional safety and security, is observing a parolee on the
15 telephone with his or her attorney, or observing an attorney-parolee meeting, the DJJ staff
16 person must not be any individual who will play a role in the current Revocation
17 Proceedings or in preparing recommendations for the parole board in the current
18 Revocation Proceedings. Such DJJ staff person is strictly forbidden from sharing any
19 information he or she may have inadvertently heard or seen from the attorney-client
20 meeting except for new crimes or new parole violations that occur during the course of the
21 observation. The presence of DJJ staff near an in-person or telephonic attorney-client
22 meeting does not waive attorney-client privilege.

23 24. State-appointed counsel for Juvenile Parolees shall be appropriately
24 compensated for preparation for the hearings, and representation during the hearings, and
25 for filing and pursuing administrative appeals of the hearing decision, as described in ¶ 43.

26 **B. Nature and Timing of Proceedings**

27 25. Parole violations that consist of Level I or Level II behaviors may be
28 resolved by the Parole Agent and Supervising Parole Agent at the field unit level without

1 requiring final approval by the Juvenile Parole Board. Nothing in this injunction shall
2 preclude the referral of Level I or Level II behaviors for parole revocation.

3 26. Defendants shall provide an expedited Probable Cause Hearing within 10
4 business Days of the Parole Hold upon a sufficient offer of proof by a Juvenile Parolee's
5 counsel that there is a complete defense to all parole violation charges that are the basis of
6 the Parole Hold. Counsel shall be provided with telephone and email or fax access to a
7 decision maker who can receive requests for expedited Probable Cause Hearings. Such
8 requests may be made by counsel at any time. Defendants shall respond to such requests
9 no later than 1 business Day after they are made. If such requests are denied, the basis for
10 denial shall be stated in writing.

11 27. No later than two business Days after the Parole Hold is placed, the Parole
12 Agent and Supervising Parole Agent will confer to: 1) determine whether probable cause
13 exists to continue the Parole Hold and the detention of the Juvenile Parolee pending a
14 formal Probable Cause Hearing, and will document their determination in writing on a
15 form to be developed in accordance with ¶ 55 below, and 2) consider whether alternatives
16 to incarceration are warranted. The advisability of alternatives to incarceration shall be
17 considered again at the Probable Cause Hearing and at the Revocation Hearing. Nothing
18 in this Injunction obligates Defendants to offer alternatives to incarceration to any
19 particular Juvenile Parolee at any time. Any determination of probable cause at this stage
20 shall not be considered in any manner at the Probable Cause Hearing. Defendants shall
21 comply with all anti-discrimination laws in making parole placements or referral to
22 programs, activities, or services.

23 28. If the Juvenile Parolee remains in custody, no later than 3 business Days
24 after the placement of the Parole Hold, the Parolee shall be served with actual notice of
25 the alleged parole violation, including a short factual summary of the charged conduct and
26 written notice of the Juvenile Parolee's rights regarding the Revocation Process and
27 timeframes.

28 29. If the Juvenile Parolee remains in custody, no later than 9 business Days

1 after the placement of a Parole Hold, a Return to Custody Assessment (RTCA)/CAP shall
2 be made by a hearing officer.

3 30. If the Juvenile Parolee remains in custody, no later than 10 business Days
4 after the placement of a Parole Hold, the RTCA/CAP offer shall be communicated to the
5 Juvenile Parolee's appointed attorney.

6 31. A Juvenile Parolee who wishes to waive the right to, or seek a continuance
7 of, a timely Probable Cause Hearing and/or a Parole Revocation Hearing may elect to do
8 so. Waiver may be effectuated only upon written consent of the Juvenile Parolee after he
9 or she has had an opportunity to meet with his or her attorney, and such writing is made in
10 the presence of his or her attorney.

11 32. For all Juvenile Parolees who do not waive or seek a continuance of a timely
12 Probable Cause Hearing, Defendants shall provide a live hearing¹ to determine probable
13 cause no later than 13 business Days after the Parole Hold is placed. The Juvenile
14 Parolee, represented by counsel, shall be present and permitted to speak at this hearing
15 and to present documentary evidence. Nothing in this injunction either allows the
16 Juvenile Parolee or requires Defendants to have any witness or witnesses at the Probable
17 Cause Hearings. Defendants shall develop a mechanism for accurately tracking the
18 timeliness of the Probable Cause Hearings and reasons proffered for any delays.²

19 33. For all Juvenile Parolees who do not waive or seek a continuance of a timely
20 Parole Revocation Hearing, Defendants shall provide a live, in-person, face-to-face final
21 Revocation Hearing on or before the 35th calendar Day after the Parole Hold is placed
22 absent good cause.³ The Juvenile Parolee, represented by counsel, shall have the right to

23 ¹ The Plaintiff Class contends that such hearings should be live, in person, and face-to-
24 face, and expressly reserves its rights to litigate the issue of a telephonic or
25 videoconferencing substitution for Probable Cause Hearings. Defendants contend that
26 telephonic or videoconferencing used at Probable Cause Hearings complies with
27 minimum due process requirements.

28 ² Defendants shall develop Policies and Procedures defining when prejudice is presumed
after a certain length of delay in providing a Probable Cause Hearing or a Parole
Revocation Hearing.

³ Defendants shall develop Policies and Procedures defining good cause and remedies for
time frame violations, in accordance with ¶ 12.

1 present evidence, including through the testimony of live witnesses. The charged Juvenile
2 Parolee shall have the same right to subpoena witnesses and present evidence to the same
3 extent and on the same terms as Defendants, including the right to question witnesses
4 through their attorney. Defendants shall develop a mechanism for accurately tracking the
5 timeliness of the Revocation Hearings and reasons proffered for any delays.

6 34. All charges arising from the conduct for which the Juvenile Parolee was
7 taken into custody shall be adjudicated at the final Revocation Hearing within 35 calendar
8 Days from the placement of the Parole Hold absent good cause. Charges may not be split
9 going beyond 35 days in the absence of good cause, including any attempts to evade the
10 35 calendar Day timeline; all known charges arising from conduct known to Defendants
11 must be brought at a reasonable time prior to the hearing.

12 35. A Juvenile Parolee may be returned to custody for up to one year for a
13 parole violation. Defendants will develop a matrix of ranges of revocation terms for
14 specific violations. A Juvenile Parolee's revocation period shall not be extended beyond
15 the one-year period except in circumstances of willful program failure or serious in-
16 custody misconduct. A parolee's parole revocation period may not be extended because
17 of Defendants' failure to provide a recommended program at all or in a timely manner.
18 Defendants may extend a Juvenile Parolee's revocation period only after a Revocation
19 Extension Hearing which shall take place before a Juvenile Parole Board Hearing Officer
20 at the earliest practical time after the alleged conduct that is grounds for the charge. In the
21 event that the alleged conduct that is grounds for the charge occurs within 30 days prior to
22 the Juvenile Parolee's revocation release date, the Revocation Extension Hearing must
23 occur at the earliest practical time after the alleged conduct, but, in any event, no later
24 than 35 days after his or her revocation release date, absent good cause for going beyond
25 that time. A Juvenile Parolee who faces a Revocation Extension Hearing shall be
26 represented by counsel at the hearing and have all of the same rights articulated in ¶¶ 41,
27 42, and 43 . Defendants agree to modify or rescind all regulations or policies and
28 procedures that are inconsistent with the terms of this provision, including Treatment and

1 Training Time-Adds, DDMS, and parole consideration hearings as they relate to the
2 Parole Revocation and Revocation Extension process.

3 36. All Parole Revocation Hearings shall be held within a 50-mile radius of the
4 alleged violation. The location of hearings shall be accessible to and usable by Juvenile
5 Parolees with Disabilities.

6 37. The use of hearsay evidence in Parole Revocation Hearings and Revocation
7 Extension Hearings shall be limited by the Juvenile Parolee's confrontation rights in the
8 manner set forth in controlling legal authority. The Policies and Procedures developed
9 pursuant to this Injunction shall include guidelines and standards that comport with
10 controlling legal authority.

11 38. In the event that the hearing officer/decision-maker decides to revoke
12 parole, but imposes an amount of revocation time that is less than the amount of time the
13 Juvenile Parolee has been detained, the Parolee shall be released as soon as practically
14 possible, but no later than 3 business Days after the hearing. If the hearing officer/
15 decision-maker decides to continue the Parolee on parole, the Juvenile Parolee shall be
16 released as soon as practically possible, but no later than 3 business Days after the
17 hearing.

18 39. Defendants shall no longer impose Temporary Detentions and shall
19 immediately rescind Title 15, California Code of Regulations § 4985.

20 40. At a Probable Cause Hearing, a written statement shall be made by the fact
21 finders as to the evidence relied upon to find that probable cause exists for any and/or all
22 of the charges against parolee. At every Parole Revocation Hearing and Revocation
23 Extension Hearing, the Juvenile Parolee shall receive a written decision at the conclusion
24 of the hearing.

25 41. At every Parole Revocation Proceeding, the Juvenile Parolee shall be
26 informed of the right to receive an audible copy of the audio recording of the hearing.
27 Defendants shall take necessary steps to ensure that such proceedings are appropriately
28 recorded, and shall maintain and replace recording equipment as necessary. Probable

1 Cause Hearings may not be recorded.

2 42. Within 10 business Days of the receipt of a written request, which can be
3 made at the hearing, the Juvenile Parolee shall be provided an audible copy of the
4 recording of the Parole Revocation Hearing. If the Juvenile Parolee is appealing the result
5 of the Parole Revocation Hearing and the audio recording is inaudible, he shall be entitled
6 to a new hearing. This hearing shall take place as soon as practically possible.

7 43. Defendants shall promulgate Policies, Procedures, and Regulations that
8 clarify the appeals process applicable to Revocation Proceedings covered by this
9 Injunction, including the applicability of or modifications to procedures currently set forth
10 in Title 15, California Code of Regulations, sections 4935 through 4940. The appeals
11 process Defendants promulgate must include, at a minimum, the following elements:

12 1) The Juvenile Parolee must be informed at the hearing of his/her right to appeal the
13 parole revocation decision; 2) there will be only one level of appeal; 3) the Juvenile
14 Parolee must file his/her appeal with the Executive Officer of the Juvenile Parole Board
15 within 20 business Days of receipt of the written hearing decision; 4) the appeal will be
16 decided by the Executive Officer of the Juvenile Parole Board or his or her designee
17 within 10 business Days of receipt of the appeal, and served on the Juvenile Parolee
18 within five business Days of the appeal decision; 5) the Executive Officer or his designee
19 has discretion to immediately reverse a decision and grant appropriate relief, including
20 release, discharge, or continuation on parole; 6) if the Executive Officer or his designee
21 decides to grant a new hearing, that hearing must be held within 10 business Days of the
22 issuance of the appeal decision; 7) Juvenile Parolees have the right to assistance by
23 counsel in preparing an administrative appeal and at any new hearing granted pursuant to
24 an appeal; and 8) Juvenile Parolees with effective communication needs and/ or
25 Disabilities have the right to reasonable accommodations throughout every step of the
26 administrative appeals process.

27 44. The parties incorporate by reference the Parole Revocation Flowchart,
28 attached to this Injunction as Exhibit A. The flowchart does not create any rights beyond

1 those expressly set forth in ¶¶ 1 to 57.

2 45. Defendants shall promulgate Policies and Procedures that address the
3 circumstances under which a parole agent determines that a Juvenile Parolee has
4 committed an act that constitutes a violation of parole, but has also determined that the
5 Parolee does not need to be placed in custody. For these “not in custody” cases,
6 Defendants’ Policies and Procedures shall ensure that Juvenile Parolees nonetheless
7 receive due process and ADA protections during the Revocation Process, consistent with
8 this Injunction, including but not limited to the appointment of counsel and a timely
9 revocation hearing, to be held no later than 60 Days after service of the Notice of
10 Violation or similar document commencing the Revocation Process. Defendants shall
11 also develop policies and procedures to address dual commitments, where a parolee is
12 held on a parole hold and on other charges, such as a criminal or juvenile proceeding
13 concerning new charges, or on adult parole violation charges.

14 46. Defendants shall not use any blanket policy of requiring mechanical
15 restraints for all juvenile parolees in parole revocation hearings. Defendants shall develop
16 policies, procedures and training concerning the use of mechanical restraints which are
17 consistent with the Americans with Disabilities Act and the Rehabilitation Act, the due
18 process clause and Title 15 California Code of Regulations section 4034.4.

19 **VI. EFFECTIVE COMMUNICATION AND ADA REQUIREMENTS**

20 47. Within 90 days of the signing of this Stipulated Injunction, Defendants shall
21 have fully implemented the steps outlined in ¶¶ 48 to 57 below to comply with due
22 process, Title II of the ADA, and the Rehabilitation Act.

23 **A. Identification and Accommodation**

24 48. Defendants shall provide timely and reasonable accommodations for
25 effective communication to Juvenile Parolees at all Revocation Proceedings. Defendants
26 shall ensure that Juvenile Parolees with limited English skills, effective communication
27 needs, and/or Disabilities are provided with accommodations needed to communicate
28 effectively, including but not limited to language interpreters, sign language interpreters,

1 assistive listening devices, simplified forms, large print forms, forms translated to
2 Spanish, Braille, and Galileo readers.

3 49. Defendants shall make accommodations for Juvenile Parolees with
4 Disabilities and effective communication needs in order to assist them in preparing for
5 Revocation Proceedings. Such accommodation shall include up to three additional hours
6 of representation by appointed counsel.

7 50. The Juvenile Parolee's request for a particular type of accommodation shall
8 be given primary consideration and shall be granted unless the request is unreasonable for
9 specific articulated reasons allowable under Title II of the ADA.

10 51. Defendants shall implement appropriate Policies and Procedures to ensure
11 that no Revocation Proceedings are delayed or postponed in order to provide
12 accommodations and access to Juvenile Parolees with Disabilities or effective
13 communication needs.

14 52. Prior to serving any notices upon a Juvenile Parolee and prior to all
15 Revocation Proceedings, Defendants shall take reasonable steps to identify and track
16 Juvenile Parolees with Disabilities or effective communication needs. Policies and
17 Procedures will be developed to ensure identification and tracking of Juvenile Parolees
18 with Disabilities or effective communication needs. Identification and tracking shall
19 include, but not be limited to:

20 a. Checking relevant computer systems and information to determine
21 whether the Defendants have previously identified the Juvenile
22 Parolee as having a Disability or effective communication need(s),
23 and promptly taking the appropriate steps to provide effective
24 communication and accommodations without delay.

25 b. Reviewing relevant and reasonably available information in the
26 Juvenile Parolee's field file.

27 **B. Equipment**

28 53. Defendants shall ensure that appropriate equipment is available to Juvenile

1 Parolees who need such equipment to communicate effectively at Parole Proceedings.
2 Such equipment shall include, but not be limited to, assistive listening devices and
3 magnification devices.

4 **C. Grievances**

5 54. Defendants shall develop and implement a prompt and effective grievance
6 procedure for processing any complaints of denials of requests for accommodations
7 separate from the appeal procedure described above in ¶ 43. All grievances requesting
8 reasonable accommodations at a scheduled hearing shall be decided as soon as possible
9 before the hearing, and the hearing shall not be delayed as a result unless Defendants can
10 show there is good cause. All other ADA-related or effective communication grievances
11 shall be decided within 15 Days of Defendants' receipt of the grievance form.

12 **VII. FORMS**

13 55. Defendants will ensure that all BPH, DJJ, JPB and CDCR forms provided to
14 Juvenile Parolees shall be reviewed for accuracy and simplified to a sixth grade reading
15 level. All forms will also be translated into Spanish. All forms provided to Juvenile
16 Parolees shall be readily available in alternative formats, including, but not limited to,
17 large print, Braille and audio tape. Whenever Juvenile Parolees with effective
18 communication needs or disabilities are given forms that they cannot understand, they
19 shall be provided a reasonable accommodation to enable them to understand the forms to
20 the best of their abilities.

21 **VIII. TRAINING AND STAFFING**

22 56. All JPB Commissioners, JPB Deputy Commissioners, JPB hearing officers,
23 Board Coordinating Parole Agents, JPB Wards with Disabilities Program ("WDP")
24 coordinators, DJJ Parole Agents, DJJ correctional counselors, and other JPB and DJJ
25 personnel who have direct or supervisory responsibility for communicating with or
26 making decisions affecting Juvenile Parolees in connection with Revocation Proceedings
27 shall receive comprehensive annual training on the general requirements of Title II of the
28 ADA and effective communication needs, this Injunction's requirements, the due process

1 rights of Juvenile Parolees, and the Policies and Procedures developed pursuant to this
2 Injunction. Such trainings shall be tailored to the job classification(s) and responsibilities
3 of the staff present at the training sessions. All training required by this Injunction shall
4 occur within 180 days of the parties signing this agreement, and shall be repeated at a
5 minimum annually.

6 57. Defendants shall develop an appropriate compliance and self-monitoring
7 team to ensure compliance with the terms of this Injunction, and compliance with the
8 Policies and Procedures developed pursuant to this Injunction.

9 **IX. ENFORCEMENT**

10 58. The Court shall retain jurisdiction to enforce the terms of this Injunction.
11 The Court shall have the power to enforce the terms of this Injunction through specific
12 performance and all other remedies permitted by law or equity.

13 59. If Plaintiffs' counsel have reason to believe that Defendants are not
14 complying with any part of this Injunction, or Policies and Procedures issued pursuant to
15 it, they shall notify Defendants in writing of the facts supporting their belief. The parties
16 shall attempt to resolve the issues informally. If the issue is not resolved informally,
17 Plaintiffs' counsel may move the Court for any relief permitted by law or equity.

18 **X. ATTORNEY'S FEES AND COSTS**

19 60. Plaintiffs are the prevailing party on all issues covered by this Injunction.
20 Plaintiffs' counsel may move for an award of reasonable attorney's fees, litigation
21 expenses, and costs for obtaining relief for the Plaintiff class pursuant to 42 U.S.C.
22 § 1988, the ADA, the Rehabilitation Act, or any other applicable law.

23 61. Plaintiffs' counsel are also entitled to seek reasonable attorneys' fees,
24 litigation expenses, and costs for post-judgment work performed in conjunction with this
25 Injunction.

1 IT IS SO STIPULATED.

2 Dated: June 3, 2008

ROSEN, BIEN & GALVAN, LLP

3
4 By:


MICHAEL W. BIEN


5
6 BINGHAM McCUTCHEN LLP

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8 By:


GEOFFREY HOLTZ

9
10 YOUTH LAW CENTER

11
12 By:


SUSAN L. BURRELL

1 Dated: June __, 2008

EDMUND G. BROWN JR, Attorney General
of the State of California,
DAVID S. CHANEY, Chief Assistant
Attorney General,
FRANCES T. GRUNDER, Senior Assistant
Attorney General,
ROCHELLE C. EAST, Supervising Deputy
Attorney General

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7 By: _____
WILLIAM KWONG
Deputy Attorney General
Attorneys for Defendants

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9
10 Dated: June __, 2008

By: _____
MATTHEW L. CATE, Secretary,
California Department of Corrections

11
12
13 Dated: June __, 2008

By: _____
BERNARD WARNER
Chief Deputy Secretary,
California Department of Corrections

14
15
16 Dated: June __, 2008

17 By: _____
CHUCK SUPPLE, Executive Officer,
Juvenile Parole Board

18
19 Dated: June __, 2008

20 By: _____
CAROLINA GARCIA, Director of
Juvenile Parole

21
22 Dated: June __, 2008

23 By: _____
JOYCE ARREDONDO, Board
Representative of the Juvenile Parole
Board

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IT IS SO ORDERED.

LAWRENCE K. KARLTON
Chief Judge, Emeritus