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15 Attorneys for Plaintiffs

16  
17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA  
19

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

22 Plaintiffs,

23 v.

24 ARNOLD SCHWARZENEGGER, Governor,  
State of California, JAMES E. TILTON,  
25 Secretary (A), California Department of  
Corrections and Rehabilitation (“CDCR”);  
26 KINGSTON “BUD” PRUNTY,  
Undersecretary, CDCR; BERNARD  
27 WARNER, Chief Deputy Secretary of the  
Division of Juvenile Justice; DENNIS  
28 DULAY, Acting Deputy Director of the

No. Civ. \_\_\_\_\_

**CIVIL CLASS ACTION  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1 Division of Juvenile Parole Operations; JOHN  
2 MONDAY, Executive Director of the Board of  
3 Parole Hearings ("BPH"); JAMES DAVIS,  
4 Chair of the BPH; JOYCE ARREDONDO,  
5 PAUL CHABOT, JOSEPH COMPTON,  
6 SUSAN MELANSON, and CHUCK SUPPLE,  
7 Commissioners of the BPH assigned to hear  
8 juvenile matters; CDCR; DIVISION OF  
9 JUVENILE JUSTICE; and BOARD OF  
10 PAROLE HEARINGS,

11 Defendants.

### 12 NATURE OF ACTION

13 1. Plaintiffs are a class of over 4000 juveniles who have been or are at imminent  
14 risk of being wrongfully and unconstitutionally deprived of their liberty in connection with the  
15 granting, extending and/or revoking of their parole in California. The members of the plaintiff  
16 class are being denied due process under the Fourteenth Amendment to the United States  
17 Constitution, as interpreted in *Morrissey v. Brewer*, 408 U.S. 471 (1972) and related decisions.  
18 In addition, members of the plaintiff class are being denied their right to counsel under the  
19 United States Constitution, as interpreted in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) and  
20 related decisions. The members of the plaintiff class are also being denied the equal protection  
21 of the laws under the Fourteenth Amendment to the United States Constitution.

22 2. The unconstitutional treatment of juvenile parolees in California is particularly  
23 deplorable given that adult offenders in California receive the right to counsel in parole  
24 revocation hearings, as well as significant due process protections in revocation proceedings,  
25 pursuant to a Stipulated Order for Permanent Injunctive Relief entered in *Valdivia v.*  
26 *Schwarzenegger*, No. S-94-0671 (E.D. Cal.) (Karlton, J.) (hereinafter "*Valdivia*") on March 9,  
27 2004 (the "*Valdivia* Permanent Injunction"). Many of the same defendants who agreed to be  
28 bound by the *Valdivia* Permanent Injunction as to adult parolees routinely ignore its provisions  
with regard to juvenile parolees. For example, all adult parolees in California receive a state-  
appointed, state-compensated, and trained attorney for parole consideration and revocations,  
whereas the vast majority of juveniles – who by their nature are younger, more vulnerable, and  
less able to understand the parole revocation process and represent themselves – do not. This

1 is a nonsensical and unfair system, lacking any rational basis or compelling justification.

2 3. Juvenile parolees in California have an extremely high recidivism rate, with  
3 approximately 70 percent arrested within 36 months of release. Many of the returns to custody  
4 are for technical violations. Statistics from the California Department of Corrections and  
5 Rehabilitation's Division of Juvenile Justice report that, of 3,599 parole violation actions  
6 handled in 2005, 490 were for being absent without leave (AWOL), and of those, 132 (27.0%)  
7 resulted in revocation or recommitment; 1,415 were for other technical violations, and of those,  
8 1,135 (80%) resulted in revocation or recommitment; 238 were for law violations in which the  
9 person was not prosecuted or found not guilty, and of those, 94 (39.5%) resulted in revocation  
10 or recommitment.

11 4. Juvenile parolees are arrested without lawful standards. After their arrests, they  
12 are routinely subject to lengthy parole holds violating even the unconstitutional timelines  
13 dictated by defendants' existing policies. While on a parole hold, a juvenile parolee cannot be  
14 released from custody. In contravention of the *Valdivia* Court's holding that the procedure is  
15 unconstitutional, defendants do not provide a prompt preliminary hearing for juveniles held in  
16 custody based on an alleged parole violation.

17 **A. CHARACTERISTICS OF JUVENILE PAROLEES**

18 5. Because of their youth, juvenile parolees demonstrate limited cognitive and  
19 emotional development, which can impair their ability to comprehend complex procedures and  
20 to make rational decisions. In addition, juvenile parolees demonstrate significant rates of  
21 educational deficiencies, limited knowledge of English, educational and cognitive disabilities,  
22 mental health disorders, and other disabilities affecting communication. In light of these  
23 factors, juvenile parolees are particularly ill-equipped to represent themselves adequately in  
24 revocation proceedings.

25 6. It has been estimated that among juvenile detainees in the United States, nearly  
26 60 percent read at or below a fifth-to-sixth-grade level, with 32 percent reading at or below a  
27 fourth-grade level. The overall grade level of wards tested in California is between eighth and  
28 ninth grade.

1           7.     The educational achievement level of wards in California, while already low, is  
2 actually declining over time. Through a report by the Office of the Inspector General,  
3 California has admitted serious deficiencies in its education services for juvenile detainees. At  
4 representative facilities, the percentage of achievement test scores below the 25th national  
5 percentile grew from 68 to 88 percent between 1998 and 2004 in one case study, and from 67  
6 to 78 percent between 2002 and 2004 in another.

7           8.     Wards are not receiving the minimum four hours a day of education mandated by  
8 state law. Recent high school effectiveness rates at Division of Juvenile Justice (“DJJ”)  
9 (formerly California Youth Authority (“CYA”)) facilities are dismal and getting worse. The  
10 Inspector General found that only 30% of wards received the minimum required instruction  
11 time at one institution in 2003-2004, down from 37% the previous year, and only 40% received  
12 the minimum amount at another institution.

13           9.     With class closures and absenteeism at DJJ facilities increasing drastically in  
14 recent years, wards are denied the opportunity to make academic progress while in custody.  
15 Classes and required treatment programs are frequently cancelled for lack of enough teachers  
16 and psychologists. Juveniles with disabilities are disproportionately negatively affected by this  
17 lack of consistency in the educational and treatment process. When paroled, wards leave with  
18 significant educational disadvantages compared to the general population.

19           10.    Juvenile detainees nationwide have rates of educational disabilities and mental  
20 health treatment needs far exceeding those found in the general population of children and  
21 youth. The percentage of juvenile detainees identified for special education programs before  
22 incarceration is at least three to five times the percentage of the public school population  
23 identified for such programs. One national study found that approximately 12.6% of juvenile  
24 offenders had developmental disabilities, approximately 35.6% had learning disabilities, and  
25 approximately 22% had significant mental health problems. Another U.S. Department of  
26 Justice survey found learning disabilities in nearly 50% of juveniles in custody. These figures  
27 show that incarcerated youth are much more likely than the general population to have  
28 disabilities – and associated deficits in reasoning ability, attention, and appropriate affect – that

1 limit their ability to serve as advocates for themselves.

2 11. In California, as many as half of the wards in DJJ custody – or possibly more –  
3 have mental, emotional, or learning disabilities. Approximately 25% of all wards within DJJ  
4 are registered with Special Education and assigned individualized education plans (“IEPs”).

5 12. Among the wards assigned to special education classes at one representative DJJ  
6 facility, only 30 percent received the prescribed services between 2000 and 2003. Compared  
7 with the already dismal 38 percent rate revealed in a previous audit, that figure reveals that  
8 delivery of special education within DJJ is becoming even less effective over time.

9 13. The prevalence of mental and emotional problems among incarcerated youth  
10 nationwide is very high, with one report estimating that as many as 60 or 70 percent have  
11 diagnosable mental disorders. DJJ wards have much higher prevalence rates of mental health  
12 disorders than same-age juveniles from the general population, or even from other juvenile  
13 incarceration settings.

14 14. Despite the high rate of mental health problems among wards, DJJ’s mental  
15 health care delivery services have been understaffed and deprived of resources, resulting in a  
16 lack of continuity of care and specialized treatment. What few resources are available are  
17 wasted on inefficient program delivery.

18 15. Juvenile parolees who lack adequate knowledge of spoken and written English  
19 are also unable effectively to represent themselves in revocation proceedings. Approximately  
20 one out of every four members of the DJJ population requires English Language Learner  
21 services.

22 16. The Office of Civil Rights of the U.S. Department of Education recently found  
23 “significant compliance concerns” with the English Language Learner program in DJJ. Staff  
24 are not adequately trained to identify students with a primary language other than English, and  
25 there is no structured program in place to improve such students’ knowledge of English. In  
26 other words, wards whose communicative abilities are hampered by limited knowledge of  
27 English are not consistently identified, and once identified, they are not provided an  
28 opportunity to gain skills while in custody.

1 17. The DJJ's policies and procedures do not meet accepted standards of care for  
2 medical and mental health treatment programs, educational activities, and other program areas.  
3 All wards are negatively affected by these deficiencies, but wards with disabilities are  
4 disproportionately negatively affected.

5 18. DJJ wards with vision impairments, hearing impairments, mobility impairments,  
6 and disabilities related to diseases or limiting health conditions number in the hundreds.  
7 Accommodations and modifications for wards with disabilities are limited in scope and  
8 inconsistently provided. Accommodations provided for wards with hearing and vision  
9 impairments are ineffective and do not allow wards with those disabilities to participate in  
10 programs at the same level as other wards.

11 19. Aside from disabilities and other preexisting conditions impeding juvenile  
12 parolees' ability to represent themselves, the time spent within the violent and dysfunctional  
13 prison setting of DJJ leaves all youth exiting custody less able to participate meaningfully in  
14 subsequent parole revocation proceedings.

15 20. As defendants acknowledged in a recently disseminated report, DJJ institutions  
16 are characterized by unusually high levels of violence and unsafe conditions for youth.  
17 According to DJJ's report, after spending time in DJJ, "no doubt some [youth] leave worse off  
18 than when they arrived."

19 21. California is in a minority of jurisdictions in the United States in that its juvenile  
20 corrections agency is administered from within an adult corrections agency. DJJ embodies the  
21 hazardous combination that its own report called "[a]n adult corrections agency with an  
22 adult/juvenile mix." As defendants have acknowledged, DJJ staff lack appropriate knowledge  
23 and training in contemporary standards of care and practice in juvenile correctional agencies.  
24 Likewise, on information and belief, a number of the defendants responsible for juvenile parole  
25 revocation have no background or training in juvenile parole matters.

26 22. The average age of DJJ wards is 19 years old. The average length of stay for  
27 males in California's juvenile system is 25.9 months, nearly three times as long as the average  
28 for 19 states surveyed. These long stays can hinder the educational and emotional

1 development of juvenile parolees, leaving them with a lower level of maturity and reasoning  
2 skills than the same-age general population or even same-age parolees in other jurisdictions.

3 23. As defendants have admitted in the DJJ report, the necessary reform efforts to  
4 reduce violence and improve programming within DJJ institutions “will take years” to achieve.  
5 Suggested reforms to transition and aftercare services for juvenile parolees will not even enter  
6 the planning stage until a few years from now. Until both conditions of incarceration and re-  
7 entry planning have been totally reformed, parolees exiting DJJ institutions will be especially  
8 vulnerable and unable to advocate effectively for themselves in revocation proceedings.

9 **B. DENIAL OF DUE PROCESS IN REVOCATION PROCEEDINGS**

10 24. The process of imposing parole holds and parole consideration and revocation  
11 for juveniles is an opaque system lacking clear rules or standards to guide staff, juvenile  
12 parolees, attorneys, and parents. As demonstrated by defendants’ inadequate and confused  
13 response to a Public Records Act request by plaintiffs’ counsel concerning parole procedures,  
14 even defendants are unable to articulate the way the system is intended to function.

15 25. Defendants’ failure to promulgate straightforward parole regulations prevents  
16 wards, juvenile parolees, and their representatives from being able to challenge their  
17 confinement through administrative or court proceedings. Recent legislative enactments have  
18 changed the structure and duties of the agencies responsible for juvenile parole matters, and  
19 many of the regulations governing juvenile parole matters do not reflect the recent legislative  
20 changes. Upon information and belief, defendants have also failed to make, publish, and  
21 enforce rules related to the operation of the juvenile parole system as required by recent  
22 legislation.

23 26. The lack of accurate, available regulations prevents juvenile parolees and their  
24 representatives from being able to understand and vindicate their rights. Decoding the  
25 statutory and administrative scheme underlying juvenile parole matters is immensely difficult.  
26 It has taken plaintiffs’ attorneys numerous hours of research and a Public Records Act request  
27 to gain even a basic understanding of some of the most fundamental parole issues, including,  
28 but not limited to, who is in charge of parole matters, whether a juvenile parolee is entitled to

1 an attorney and in what types of hearings such a right might apply, provision of  
2 accommodations for parolees with disabilities, and how a juvenile parolee can appeal a denial  
3 or revocation of parole. Despite those efforts, many policies and practices of defendants  
4 remain unclear. It defies reason to suggest that a juvenile parolee, particularly a juvenile  
5 suffering from educational or other disabilities, would be able to understand this system, let  
6 alone be able to successfully challenge or appeal adverse decisions. The arbitrariness of  
7 conducting revocation proceedings in which youths' liberty interest is at stake without any  
8 enunciated procedures itself violates the guarantee of due process of law.

9         27. Lengthy parole holds are routinely being imposed without proper and timely  
10 notice to the parolees of the reasons for the detention. Juvenile parolees frequently do not  
11 receive notice of the charges against them, let alone a hearing, until they have been in custody  
12 for weeks or often months, even though the *Valdivia* Permanent Injunction requires that adult  
13 parolees be provided with a notice of charges and notice of rights and time frames within three  
14 days of their arrest. In at least one of the most egregious cases, a juvenile parolee was detained  
15 more than five months without a hearing. On information and belief, juvenile parolees do not  
16 receive credit for time served in custody prior to their parole revocation hearing. Adult  
17 parolees receive credit for time served from the date the parole hold is placed.

18         28. Preliminary hearings regarding the cause of a juvenile parolee's detention are not  
19 being conducted in California. In almost all cases, no hearing is held regarding the basis for  
20 the detention or the charges themselves until the final revocation hearing, which may not be  
21 scheduled until weeks or even months after the arrest. In those rare cases in which preliminary  
22 hearings are held, they are not held promptly and are not subject to any deadline. Many of the  
23 defendants herein or their predecessors have had notice since a June 14, 2002 published order  
24 in the *Valdivia* case, 206 F.Supp.2d 1068 (E.D.Cal. 2002), that a unitary parole revocation  
25 hearing system without prompt probable cause hearings is unconstitutional, yet those same  
26 defendants continue to operate a juvenile parole system that violates the *Valdivia* court's  
27 ruling.

28         29. In stark contrast to this treatment of juveniles, under the *Valdivia* Permanent



1 Injunction adults have the right to a preliminary probable cause hearing ten days after receiving  
2 the notice of charges. There is also a provision for an expedited hearing for adult parolees  
3 upon a sufficient offer of proof. At the probable cause hearing, adults are entitled to present  
4 documentary evidence and hearsay testimony, and their right to confront adverse witnesses  
5 limits the use of hearsay testimony against them. A written record of the hearing and the basis  
6 for decisions made therein must be kept. Juvenile parolees are afforded none of these  
7 protections, even though many of the same defendants who agreed to extend these protections  
8 to adults are now responsible for juveniles' revocation proceedings.

9         30. The time spent in custody during these parole holds, lasting weeks or even  
10 months, without any determination of probable cause, can be extremely disruptive of juvenile  
11 parolees' reintegration efforts, including employment and family life. The extended holds  
12 often cause them to lose their jobs, even if parole is not ultimately revoked or there was no  
13 basis for the charges.

14         31. These lengthy parole holds for juveniles are routinely imposed without any  
15 sufficient mechanism to appeal the detentions.

16         32. Final revocation hearings for juvenile parolees are not held in a timely manner;  
17 instead, they routinely occur many weeks or months after the parolee's arrest. In contrast,  
18 defendants in *Valdivia* agreed that final revocation hearings for adult parolees must be held a  
19 maximum of 35 calendar days after the parole hold in all cases.

20         33. The lack of a prompt final revocation hearing severely prejudices juveniles'  
21 ability to defend against charges of parole violations. Because there is no preliminary hearing  
22 and the final revocation hearing is often held long after the alleged violation, witnesses are  
23 often unavailable and recollections become stale.

24         34. It is particularly difficult for juvenile parolees to ensure that favorable witnesses  
25 can attend a revocation hearing because, on information and belief, the hearings are routinely  
26 held more than fifty miles from the juvenile parolee's residence and/or place of arrest. In  
27 contrast, under the *Valdivia* Permanent Injunction, parole revocation hearings for adults must  
28 be conducted within fifty miles of the alleged violation.

1           35.    The parole revocation hearings themselves do not afford due process to juvenile  
2 parolees. At revocation hearings, it is defendants' pattern and practice to deny or illegally limit  
3 plaintiffs' right to have testimony adduced on their behalf from live, percipient witnesses.  
4 Witnesses who are and should be notified of the proposed hearing and should be allowed and  
5 required to testify at the hearing are frequently neither notified of the hearing, nor allowed to  
6 testify. In violation of due process, only adverse witnesses are generally compelled to attend  
7 such hearings by subpoena. Witnesses identified by the parolee are not subpoenaed unless the  
8 parolee specifically requests the issuance of subpoenas, rather than the attendance of witnesses.  
9 Even then, witnesses favorable to the parolee are rarely compelled to attend, and are often not  
10 permitted to testify. Yet many of the defendants herein, based on their agreement to be bound  
11 by the *Valdivia* Permanent Injunction, allow adult parolees to subpoena and present witnesses  
12 and evidence to the same extent and under the same terms as the state. Adult parolees in  
13 California are also permitted to present documentary evidence and their own testimony  
14 (including hearsay) at probable cause hearings to defend or mitigate against the charges.

15           36.    On information and belief, the failure of adverse witnesses (including parole  
16 agents) to attend the revocation hearing is routinely overlooked, or the hearing is continued so  
17 that adverse witnesses can be present without the advance knowledge or consent of the parolee  
18 or the parolee's witnesses. During such delays, the parolee remains in custody. Such  
19 continuances are unfairly burdensome for witnesses who are favorable to the parolee because  
20 they, unlike subpoenaed witnesses, receive no compensation for their attendance. Moreover,  
21 absent subpoena authority over favorable witnesses, there is insufficient assurance that these  
22 witnesses can or will be able to attend a rescheduled revocation hearing. Again, even though  
23 many of the defendants herein are required by *Valdivia* to allow adult parolees to subpoena and  
24 present witnesses and evidence to the same extent and under the same terms as the state,  
25 juveniles are denied these rights.

26           37.    In addition, defendants limit or refuse live adverse testimony, thereby denying  
27 juvenile parolees their constitutional right to confront and cross-examine the witnesses and  
28 evidence proffered against them.

1           38.    At parole consideration, revocation, and other hearings, decisionmakers are not  
2 guided by any discernable standards concerning parole release or revocation. Hearing officers  
3 rely on documentary and other evidence that is not produced to the juvenile parolees, and they  
4 arbitrarily ignore other evidence and reports that are favorable to the parolees.

5           39.    At parole consideration, revocation, and other hearings, juvenile parolees are not  
6 informed that they may obtain written or recorded records of their hearings, nor are they  
7 informed that they may appeal adverse decisions. Even when juvenile parolees or their  
8 representatives request information concerning records or the appeal process, they are not  
9 provided with accurate information or recorded tapes of their hearings.

10          40.    Throughout parole revocation proceedings, juvenile parolees are presented with a  
11 variety of complex written documents requiring a high level of literacy. These complex forms  
12 are not translated into languages other than English and are not made available on audiotape, in  
13 Braille, or in any other alternative formats. The complexity of the DJJ forms often makes it  
14 impossible for juvenile parolees to understand and exercise their rights and to meet deadlines.  
15 The forms pose even bigger obstacles for the large number of juvenile parolees who have  
16 disabilities and/or have difficulty communicating effectively.

17          41.    In contrast, adult parolees' appointed counsel must be notified of communicative  
18 disabilities and other barriers to participation in revocation proceedings. Under the *Valdivia*  
19 Permanent Injunction, adult parolees are also required to have access to forms that have been  
20 simplified and reviewed for accuracy, Spanish translations of forms, and language  
21 interpretation services. All forms and notices for adult parolees must be readily available in  
22 alternative formats, including large print, Braille, and audio tape. In addition, adult parolees  
23 with disabilities must be provided accommodations to enable them to understand the forms to  
24 the best of their abilities. The same defendants who agreed to extend these important  
25 protections to adult parolees consistently and illegally deny them to juveniles.

26          42.    On information and belief, forms and notices concerning the revocation process  
27 are not provided to wards completely and consistently from one case to the next, with the result  
28 that not all juvenile parolees receive the same set of forms.

1           43. At the revocation hearings, it is the pattern and practice of defendants to deny  
2 juvenile parolees with disabilities effective communication of the proceedings and their right to  
3 fully participate and understand the proceedings. On information and belief, there is no  
4 mechanism to determine whether juvenile parolees with mental illness or cognitive or other  
5 developmental or communicative disabilities require assistance with reading or comprehending  
6 complex forms and proceedings, nor whether juvenile parolees who are illiterate require  
7 assistance in understanding written communications. There is also no procedure to determine  
8 whether juvenile parolees with limited or no knowledge of English require interpreters to allow  
9 them to give testimony or to understand witnesses and their own attorneys. On information  
10 and belief, accommodations such as sign language interpreters are not routinely made available  
11 for juvenile parolees with hearing impairments, and facilities where hearings are held may not  
12 be fully accessible to juveniles with mobility impairments.

13           44. There is no grievance procedure for juvenile parolees who have been denied  
14 accommodation of their disabilities in connection with revocation hearings. In contrast, some  
15 of these same defendants were ordered to implement a grievance procedure, separate from the  
16 existing appeal procedure, to process complaints of denials of requests for accommodations by  
17 adult parolees. Those adult grievances must be decided before the hearing occurs.

18           45. On information and belief, defendants hold various other hearings with regard to  
19 juveniles under DJJ jurisdiction, including parole consideration, "time-add," extension, YAAC,  
20 and other proceedings related to the granting, continuing, or revoking of parole ("parole  
21 proceedings").

22           46. During these parole proceedings, juvenile parolees are permitted to waive their  
23 rights to hearings and their rights to present evidence and confront witnesses, all without  
24 representation by counsel. On information and belief, juvenile parolees consistently make  
25 waivers that are not knowing, voluntary, or intelligent, because they are unable to understand  
26 the meaning of the forms or the nature of the rights they are giving up. According to  
27 defendants' own reports, DJJ does not provide juveniles with adequate information or access to  
28 legal materials and law libraries, leaving juveniles no means of understanding their rights.

1 47. Defendants also impose "temporary detentions," taking juvenile parolees into  
2 custody for extended periods even when there has been no alleged parole violation.

3 48. These parole proceedings and temporary detentions, all of which affect juvenile  
4 parolees' fundamental right to liberty, are conducted without regard to juveniles' constitutional  
5 right to due process of law, without adequate standards or guidelines, and in disregard of  
6 federal laws designed to prevent discrimination against persons with disabilities and to ensure  
7 effective communication of the conditions of parole and the basis for its revocation.

8 49. Juvenile parolees are not provided with adequate pre-release and re-entry  
9 counseling and other services to assist their return to the community, thereby increasing the  
10 likelihood that they will be subjected to further unconstitutional conditions of confinement and  
11 parole proceedings.

12 50. On information and belief, parents and guardians of minors in custody for  
13 alleged parole violations are consistently denied any involvement in revocation and other  
14 parole proceedings. Parents are not given notice of hearings and other legal proceedings, are  
15 not permitted to provide retained counsel for their children, and are denied the right to appear  
16 as witnesses at hearings and to assist in legal decisionmaking. This is the case despite  
17 defendants' acknowledgment in a recently distributed report that "[t]he research consistently  
18 shows that positive outcomes for youth are more likely when the family is involved in  
19 treatment. . . . Continuing and increasing family involvement is especially important on  
20 parole." Parents have an interest in their minor children's parole proceedings because of their  
21 participation in and responsibility for, among other things, their children's housing and  
22 financial support. They should be provided notice of, and permitted to assist and participate in,  
23 all stages of their children's revocation proceedings.

24 **C. DENIAL OF THE RIGHT TO COUNSEL**

25 51. On information and belief, defendants' policy is to determine a juvenile parolee's  
26 entitlement to counsel only if the juvenile parolee affirmatively requests counsel. No steps are  
27 taken to ensure that juveniles understand they can request an attorney, or to advise them of the  
28 criteria used to determine attorney appointment. In fact, juveniles are frequently pressured by

1 staff to waive their rights to counsel and a hearing. In the event a juvenile parolee fails to  
2 waive his or her rights, and instead presses for the right to counsel and a hearing, it is the  
3 pattern or practice of defendants to deny the request for counsel in virtually all such cases on  
4 constitutionally invalid grounds or to offer no grounds at all for the denial of counsel, and in  
5 some cases to record incorrectly that the parolee has “waived” the right to an attorney.

6 52. On information and belief, in the unusual case in which a juvenile parolee is  
7 advised of the denial of his or her request for counsel, he or she is not routinely and promptly  
8 advised of the right to appeal that decision, and there is no mechanism for prompt, fair and  
9 adequate presentation of such an appeal.

10 53. On information and belief, juvenile parolees are granted counsel in only  
11 approximately 10 percent of revocation cases. In contrast, all adult parolees in California are  
12 entitled to appointed counsel beginning early in the revocation case, six days after being served  
13 with a notice of charges and notice of rights. This is despite the fact that juvenile parolees, as a  
14 group, display a much greater eligibility for attorney representation under the standard set out  
15 in *Gagnon* than their adult counterparts. The characteristics of juvenile parolees suggest that  
16 the vast majority of them are constitutionally entitled to appointed counsel by virtue of their  
17 youth and low maturity levels alone. The denial of counsel in almost all cases is even more  
18 intolerable given juvenile parolees’ low literacy rates and educational achievement, lack of  
19 familiarity with spoken and written English, mental and emotional disorders, communicative  
20 and cognitive disabilities, and other conditions hindering their ability to represent themselves  
21 in complex proceedings.

22 54. At the very least, the fact that juvenile parolees are by definition younger than  
23 adult parolees makes them presumptively less able to represent themselves without assistance.  
24 First, many juvenile parolees are children, whose educational experience and reasoning skills  
25 are less than those of adults. Second, both minors and older youth on parole have suffered the  
26 severe setback of having spent time in the custody of DJJ, a dangerous, inadequately staffed  
27 prison system, without the benefit of proper educational services, counseling, or programming.  
28 Juvenile parolees are further disadvantaged by this lost time: most of the time they spend in

1 custody is devoted to bare survival instead of education and cognitive and emotional  
2 development.

3 55. In those rare cases in which counsel is appointed, counsel participate only in final  
4 revocation hearings. On information and belief, juveniles are denied representation of counsel  
5 with respect to many other types of parole proceedings, including preliminary hearings, board  
6 hearings at the conclusion of revocation terms, "time-adds," parole consideration hearings, and  
7 important decisions concerning waivers of various proceedings. Juvenile parolees are  
8 permitted and encouraged to waive their rights to hearings, and to defend against charges by  
9 presenting evidence and confronting witnesses, without any representation by counsel.

10 56. When counsel is appointed, the pay scale and criteria for attorney representation  
11 set by defendants render any right to counsel that is afforded meaningless, by making unduly  
12 burdensome or impossible the fair, full and reasonable representation of juvenile parolees. On  
13 information and belief, the hourly rate of pay and limit on hours for attorneys representing  
14 juvenile parolees is intended to and does discourage meaningful representation of parolees.  
15 Moreover, reasonable and supplemental legal services, such as the perfecting of administrative  
16 and judicial review, are not compensated.

17 57. On information and belief, even when a juvenile parolee intends to retain his or  
18 her own non-state-appointed attorney, defendants' practice is to refuse to allow juvenile  
19 parolees access to counsel.

20 58. On information and belief, defendants interfere with, restrict, and monitor  
21 juvenile parolees' attempts to communicate with attorneys regarding their revocation hearings.

22 59. Attorneys, like witnesses, are often prohibited from speaking at revocation  
23 hearings, severely obstructing their ability to represent juvenile parolees effectively.

24 60. In contrast to the lack of standards or training for counsel representing juvenile  
25 parolees, many of the defendants herein have agreed to be bound by the *Valdivia* Permanent  
26 Injunction to develop standards, guidelines, and training for effective assistance of state-  
27 appointed counsel for all adult parolees.

28 61. Under the *Valdivia* Permanent Injunction, in cases involving adult parolees who

1 have difficulty communicating or participating in revocation proceedings, including but not  
2 limited to mental illness, other cognitive or communication impairments, illiteracy, limited  
3 English-language proficiency, and the need for a foreign language interpreter, appointed  
4 counsel must be informed of the nature of the difficulty and allowed adequate time to represent  
5 the parolee properly at each stage of the proceeding. Juvenile parolees are not extended any  
6 such protections.

7 **D. INEFFECTIVENESS OF ADMINISTRATIVE APPEALS**

8 62. Defendants' recent restructuring and reorganization have led to disarray in the  
9 statutory and regulatory scheme that makes it difficult for juvenile parolees and their  
10 representatives to pursue appeals or utilize administrative remedies.

11 63. On information and belief, many juvenile parolees are not given notice of their  
12 right to appeal revocation decisions, making the administrative process arbitrary and  
13 inaccessible.

14 64. On information and belief, in those cases in which appeal forms are provided to  
15 juvenile parolees, the forms do not clearly list deadlines for appealing decisions, leading  
16 appeals to be rejected as untimely. In contrast, the *Valdivia* Permanent Injunction requires that  
17 adult parolees be served with a written notice of rights, including time frames.

18 65. On information and belief, juveniles serving revocation terms sometimes do not  
19 receive responses to appeals until after their revocation terms have expired. Additionally, on  
20 information and belief, filing appeals can delay disposition of revocation proceedings and  
21 therefore increase juveniles' time in custody.

22 66. On information and belief, juveniles who appeal revocation decisions frequently  
23 become victims of retaliation, in some cases because information concerning their alleged  
24 offenses becomes available to custody officers, compromising confidentiality and safety. On  
25 information and belief, the fear of retaliation leads most juvenile parolees to forgo their right to  
26 appeal, grieve, or complain of revocation decisions.

27 67. On information and belief, appointed counsel are not available to assist juvenile  
28 parolees in the administrative appeal process.



1 **JURISDICTION**

2 68. Jurisdiction of this court is invoked pursuant to the provisions of Title 28 U.S.C.  
3 section 1331 and section 1343(a)(3). The individual defendants, sued in their official  
4 capacities, are persons who have deprived and continue to deprive plaintiffs of their federally  
5 guaranteed constitutional and civil rights under color of state law, in violation of Title 42  
6 U.S.C. section 1983 and Title 29 U.S.C. section 794. The institutional defendants are entities  
7 that deny reasonable accommodation to plaintiffs in violation of the Americans with  
8 Disabilities Act and/or the Rehabilitation Act, in violation of Title 42 U.S.C. sections 12101 *et*  
9 *seq.*, and Title 29 U.S.C. sections 701 *et seq.*

10 69. Declaratory judgment and prospective injunctive relief are sought under the  
11 terms of Title 28 U.S.C. sections 1343, 2201 and 2202. Members of the plaintiff class, on an  
12 ongoing basis, are being irreparably harmed by defendants' illegal actions, rules, practices and  
13 procedures, and there is no sufficient alternative remedy to redress plaintiffs' complaint.

14 **VENUE**

15 70. Venue is properly in this Court, pursuant to Title 28 U.S.C. section 1391(b)(1), in  
16 that this judicial district is the residence of one or all of the defendants in this civil action, and  
17 all of the defendants are residents of the State of California.

18 **PARTIES**

19 71. Plaintiffs' actual names are not disclosed because each plaintiff has personally  
20 experienced or witnessed retaliation resulting from other juvenile parolees' filing or expression  
21 of grievances concerning the parole revocation process, and each plaintiff therefore fears that  
22 retaliation could result from the filing of this Complaint. Additionally, California juvenile  
23 court has long recognized the importance of limiting disclosure of information about juvenile  
24 cases out of concern that the youth be able to move forward with their lives without the stigma  
25 attached to criminal convictions. (See Cal. Welf. & Inst. Code §§ 203, 1772.) Each plaintiff's  
26 underlying offense occurred when he or she was a minor, and proceeding anonymously is  
27 appropriate to respect the privacy of the juvenile offenders.

28 72. L.H. is a 23-year-old DJJ parolee, who spent approximately five years in DJJ fire

1 camp and other facilities, including Heman G. Stark Youth Correctional Facility. He was  
2 paroled and then placed under a parole hold (arrested) for being under the influence of alcohol  
3 while living at a residential substance abuse center. L.H. did not receive a preliminary hearing.  
4 After more than a month in custody, on the date appointed for his parole revocation hearing,  
5 the parole officer assigned to the case failed to bring the file, resulting in an additional three  
6 weeks of delay. L.H. was therefore in DJJ custody without a probable cause or revocation  
7 hearing for more than two months.

8 73. When such a hearing finally occurred, someone other than L.H.'s parole officer  
9 presented the case. L.H. was denied his right to be represented by counsel under *Gagnon* and  
10 the due process clause. He was not offered counsel, and did not request counsel because he did  
11 not believe he had such a right. As a result of this unfair hearing, L.H. was sentenced to serve  
12 several additional months in DJJ custody.

13 74. L.H. has been a special education student since childhood and requires assistance  
14 with reading. He was placed in special education classes in DJJ facilities. L.H. suffered  
15 developmental delays attributable to premature birth and a head injury during early  
16 adolescence. DJJ clinical staff were made aware that L.H. has a possible mental disorder.  
17 L.H. has had problems with substance abuse, including use of alcohol and marijuana, since  
18 childhood. L.H. received fewer than 10 academic credits while in custody at DJJ, where his  
19 classes were often cancelled. He has neither a high school diploma nor a G.E.D. and missed a  
20 great deal of school prior to commitment. On remand from the Court of Appeal, a juvenile  
21 court found him to be an individual with exceptional needs. L.H. is an individual with a  
22 disability as that term is defined in Section 504 of the Rehabilitation Act of 1973, ("Section  
23 504"), 29 U.S.C. section 705(20), and the Americans with Disabilities Act ("ADA"), 42 U.S.C.  
24 section 12102(2).

25 75. Although currently on parole until 2008, L.H., like the vast majority of juvenile  
26 court parolees in California, is at imminent risk of being subjected again to DJJ's unfair and  
27 unconstitutional revocation procedures.

28 76. A.Z. is a 22-year-old DJJ parolee, who recently served a six month parole

1 revocation term. A.Z. has been subjected to DJJ's unconstitutional revocation proceedings on  
2 three occasions, most recently in a hearing in February 2006. That hearing, like the previous  
3 ones, was conducted without an attorney to represent A.Z. A.Z. has consistently been denied  
4 his right to be represented by counsel under *Gagnon* and the due process clause. Every time  
5 his parole is revoked, A.Z. asks for counsel, but the BPH agent or other representative informs  
6 him that counsel is unlikely to be appointed. The February 2006 hearing, like the previous  
7 ones, occurred more than 50 miles from A.Z.'s residence, making it difficult or impossible for  
8 him to present witnesses in his favor. That hearing, like the previous ones, did not occur until  
9 A.Z. had been in custody for one and a half to two months. A.Z. has not received prompt  
10 preliminary hearings following his arrests for parole violations.

11 77. At A.Z.'s most recent revocation hearing, the hearing officer asked if he had  
12 been "harmed" by the parole department's inability to find a police report of his arrest. A.Z.,  
13 without the benefit of counsel, replied no, when in fact he was harmed because he had to serve  
14 an additional 30 days in county jail while parole representatives searched for the police report.  
15 In addition, at the last minute and without any notice or explanation, A.Z.'s parole agent  
16 changed the recommendation from continue on parole to return to custody. The hearing officer  
17 revoked A.Z.'s parole, refusing to give him credit for the 30 days served in county jail. A.Z.  
18 promptly attempted to appeal that decision, but his appeal was initially "lost" and only granted  
19 after his attorney wrote to defendants.

20 78. A.Z.'s case was particularly complex because criminal charges were made in  
21 addition to parole revocation charges, but the related police report was lost for 30 days.

22 79. A.Z. spent four years in CYA and received his high school degree from YA's  
23 inadequate system. Since fourth grade, A.Z. has been periodically suspended from school, and  
24 only sporadically attended school after seventh grade. DJJ has failed to provide A.Z. with  
25 adequate education or counseling or treatment for his known substance abuse.

26 80. Although currently on parole until 2008, A.Z., like the vast majority of juvenile  
27 court parolees in California, is at imminent risk of being subjected again to DJJ's unfair and  
28 unconstitutional revocation procedures.

1           81. D.K. is a 23-year-old currently released on parole supervision who has been  
2 subjected to DJJ's unconstitutional parole revocation proceedings. After being released on  
3 parole in June 2005, he was arrested by his parole agent on or about August 15, 2005 for an  
4 alleged "dirty" drug test and was brought to DeWitt Nelson Correctional Center. He did not  
5 receive a copy of the drug test results, and he did not receive a preliminary hearing. On or  
6 about September 1, 2005, D.K. received notice that he would have a parole revocation hearing  
7 on September 8, making it difficult or impossible to obtain witnesses or evidence in his favor.  
8 Despite the short notice, his mentor, who helped D.K. find employment when he was released  
9 on parole, appeared for the hearing. However, this important witness was not permitted to  
10 speak. D.K. was denied his right to be represented by counsel under *Gagnon* and the due  
11 process clause. The hearing was conducted without an attorney to represent D.K., despite his  
12 request for assistance. Per his parole agent's recommendation, the BPH continued D.K. on  
13 parole. He was released to parole supervision on or about September 15, 2005, but he lost his  
14 job as a result of the month in custody.

15           82. D.K. has a history of drug and alcohol abuse and has participated in substance  
16 abuse counseling beginning before his release from custody. He does not have a high school  
17 diploma or G.E.D., and he made very little academic progress during his five and a half years  
18 in CYA custody. At the time of his arrest and revocation hearing, his DJJ file contained  
19 diagnoses of mental disorders. D.K. is an individual with a disability as that term is defined in  
20 Section 504, 29 U.S.C. section 705(20), and the ADA.

21           83. Although currently on parole until 2007, D.K., like the vast majority of juvenile  
22 court parolees in California, is at imminent risk of being subjected again to DJJ's unfair and  
23 unconstitutional revocation procedures.

24           84. D.R. is a 23-year old DJJ parolee, who was first committed to DJJ five years ago.  
25 D.R. paroled in January 2004, and was living in the community. In or around December 2004,  
26 D.R. was arrested and placed in custody on three alleged parole violations: use of marijuana,  
27 driving on a suspended/revoked license, and failure to report a police contact to his parole  
28 agent. D.R. received notice of the alleged charges over a month after he was taken into

1 custody, a mere four days before his revocation hearing. D.R. did not receive a preliminary  
2 hearing.

3 85. For his revocation hearing, D.R. requested two evidentiary witnesses, neither of  
4 whom was called by Defendants. D.R. was never shown the laboratory results upon which the  
5 marijuana charge was based. D.R. did not request an attorney because he was informed that he  
6 was not eligible for appointed counsel.

7 86. D.R.'s parole was revoked in January 2005 by the Board of Parole Hearings  
8 ("BPH"). He immediately appealed the decision, stating that his due process rights were  
9 violated by Defendants' failure to provide sufficient notice of the hearing and the failure to call  
10 his witnesses. BPH denied the appeal in April, over three months later. D.R. requested, but  
11 never received, a copy of his hearing tape.

12 87. D.R. spent 21 months in custody and went to four Parole Consideration Hearings  
13 before the BPH finally ended his parole revocation term and released him. D.R. requested, but  
14 never received, copies of two of his Parole Consideration Hearing tapes.

15 88. D.R. has a history of mental health concerns, and attempted suicide while in  
16 custody for his parole revocation. DJJ failed to provide D.R. with adequate treatment or  
17 counseling, yet at one of his parole consideration hearings, BPH expressly denied parole to  
18 D.R. due to his need for mental health treatment. After that hearing, D.R. did not see a mental  
19 health professional again for months.

20 89. Although currently on parole until 2007, D.R., like the vast majority of juvenile  
21 court parolees in California, is at imminent risk of being subjected again to DJJ's unfair and  
22 unconstitutional revocation procedures.

23 90. Each of the representative plaintiffs' constitutional rights to due process of law,  
24 to equal protection of the laws, and/or to counsel were violated by defendants' patterns and  
25 practices, as alleged more fully herein.

26 91. DEFENDANT ARNOLD SCHWARZENEGGER. Defendant is Governor of  
27 the State of California and the Chief Executive of the state government. He is sued herein in  
28 his official capacity. As Governor, Mr. Schwarzenegger is responsible for the appointment of

1 defendant Secretary of the California Department of Corrections and Rehabilitation (“CDCR”),  
2 defendant Undersecretary of the CDCR, defendant Chief Deputy Secretary of the Division of  
3 Juvenile Justice, and, subject to State Senate confirmation, every member of the Board of  
4 Parole Hearings (“BPH”). The Governor also appoints the Executive Director of the BPH.  
5 The Governor, in union with those whom he appoints, and by and through those persons  
6 employed by the other defendants, controls and regulates the custody of the plaintiff class.  
7 Pursuant to California Welfare & Institutions Code section 1767.3, defendant Schwarzenegger,  
8 by and through those whom he appoints and/or those they employ, has power to revoke the  
9 parole of any juvenile prisoner, just as the parole authority has such power. On information  
10 and belief, defendant Schwarzenegger is responsible for the creation and enforcement of  
11 policies and practices whereby the rights, privileges and immunities of the plaintiff class are  
12 adversely affected, in violation of the United States Constitution and of other laws. Through  
13 his Attorney General, Defendant Schwarzenegger stipulated on November 17, 2003 to the  
14 *Valdivia* Permanent Injunction requiring implementation of constitutional parole revocation  
15 procedures for adult parolees in California.

16       92.     DEFENDANT JAMES E. TILTON. Defendant Tilton is Acting Secretary of the  
17 CDCR. He is sued herein in his official capacity. Defendant Tilton serves as Secretary to  
18 defendant Schwarzenegger in charge of defendant CDCR, which funds all costs and employs  
19 and directs all staff for executing all actions complained of herein. Except as otherwise alleged  
20 herein, Mr. Tilton is responsible for the appointment and employment of necessary officers and  
21 employees of the Department, with the express or implied approval of defendant  
22 Schwarzenegger. Defendant Tilton is appointed by defendant Schwarzenegger and is entitled  
23 to exercise the authority vested in the Governor in respect to defendant CDCR. Mr. Tilton is  
24 advisor to the Governor and assists in establishing major policy and program matters affecting  
25 the CDCR. Defendant Tilton has immediate supervisory authority over the CDCR. Defendant  
26 Tilton also has immediate supervisory authority over the BPH, which is an executive agency  
27 within the CDCR. Defendant’s predecessor as Secretary, Roderick Q. Hickman, stipulated on  
28 November 17, 2003 to the *Valdivia* Permanent Injunction requiring implementation of

1 constitutional parole revocation procedures for adults in California.

2 93. DEFENDANT KINGSTON "BUD" PRUNTY. Defendant Prunty is the  
3 Undersecretary of the CDCR, reporting to defendant Tilton. He is sued herein in his official  
4 capacity. The Undersecretary is appointed by defendant Schwarzenegger, subject to Senate  
5 confirmation. In his capacity as Undersecretary, Mr. Prunty acts under the direction and  
6 control of defendants Schwarzenegger and Tilton and implements CDCR's policies by and  
7 through his employees and in collaboration with other officers of the CDCR.

8 94. DEFENDANT DIVISION OF JUVENILE JUSTICE. The California Youth  
9 Authority was an entity established by the State of California to confine juvenile wards of the  
10 state. Effective July 1, 2005, a Reorganization Plan was enacted pursuant to which the  
11 California Youth Authority was abolished, and its duties were transferred to the defendant  
12 Division of Juvenile Justice ("DJJ") (sometimes referred to as the Division of Juvenile  
13 Facilities), a division of defendant CDCR. (Chapter 10, Statutes of 2005 (SB 737).) The DJJ  
14 operates all state-level juvenile correctional institutions and purports to provide education,  
15 training and treatment services for youthful offenders. The statutory purpose of DJJ is "to  
16 protect society from the consequences of criminal activity" and to provide "correction and  
17 rehabilitation [to] young persons who have committed public offenses." (Cal. Welf. & Inst.  
18 Code § 1700.) DJJ currently houses approximately 3000 wards, ranging in age from 12 to 25,  
19 in seven separate youth correctional facilities, two youth conservation camps, and a reception  
20 center located throughout the state of California.

21 95. The Youth Offender Parole Board ("YOPB") was replaced by the Youth  
22 Authority Board as part of S.B. 459, effective April, 2003. Thereafter, the July 2005  
23 Reorganization Plan transferred the juvenile parole duties to DJJ and defendant Board of  
24 Parole Hearings ("BPH"). Currently, the DJJ assumes the functions of returning wards to their  
25 court of commitment for redispotion; discharges commitment; grants parole and sets  
26 conditions of parole; revokes or suspends parole; recommends treatment programs; and returns  
27 nonresident wards to their state of jurisdiction. The DJJ conducts these functions, including  
28 specifically the revocation of parole, through the BPH.

1           96.    DEFENDANT BOARD OF PAROLE HEARINGS. The BPH consists of 17  
2 commissioners, five of whom are required to be trained in juvenile parole matters. On  
3 information and belief, the BPH currently has only three or four commissioners trained in  
4 juvenile parole matters. In addition to parole revocation, the BPH makes determinations about  
5 juveniles' readiness for parole and may impose "special conditions" of parole, in addition to  
6 requiring that juveniles pay restitution, maintain contact with their parole agent, submit to  
7 searches, and not leave the state without permission.

8           97.    DEFENDANT BERNARD WARNER. Defendant Warner is Chief Deputy  
9 Secretary of DJJ. He is sued herein in his official capacity. The Chief Deputy is responsible  
10 for the operation of all DJJ staff and facilities, including decisions concerning the budget, staff  
11 deployment, programming, and staff training that directly affect plaintiffs and the plaintiff  
12 class.

13           98.    The BPH works with the Division of Juvenile Parole Operations and DJJ to  
14 determine whether a violation of juvenile parole has occurred. On information and belief,  
15 DEFENDANT JOSEPH R. MONTES is the Acting Director of the Division of Juvenile Parole  
16 Operations. He is sued herein in his official capacity. The Division of Juvenile Parole  
17 Operations provides parole supervision to DJJ wards on parole.

18           99.    On information and belief, DEFENDANT DENNIS DULAY is the Acting  
19 Deputy Director of the Division of Juvenile Parole Operations. He is sued herein in his official  
20 capacity. The Division of Juvenile Parole Operations provides parole supervision to DJJ wards  
21 on parole.

22           100.   DEFENDANT JOHN MONDAY. Defendant Monday is Executive Director of  
23 the BPH of the State of California. He is sued herein in his official capacity. On information  
24 and belief, Mr. Monday was nominated as Executive Director by defendant Schwarzenegger,  
25 and his nomination was confirmed by the Senate of the State of California. On information  
26 and belief, Mr. Monday was appointed Executive Director of the BPH by defendant  
27 Schwarzenegger. Mr. Monday has overall executive authority over the operation of the BPH,  
28 which is currently the principal parole revocation authority of the State of California for adult



1 and juvenile parolees and is responsible for implementing the provisions of the *Valdivia*  
2 Permanent Injunction. The Executive Director is the administrative head of the Board and has  
3 the responsibility to exercise all duties and functions necessary to insure that the  
4 responsibilities of the Board are successfully discharged, including oversight of the revocation  
5 of juvenile parole.

6 101. DEFENDANT JAMES DAVIS. Defendant Davis is Chair of the BPH. He is  
7 sued herein in his official capacity. On information and belief, defendant Davis was nominated  
8 to that position by defendant Schwarzenegger, and was confirmed by the Senate. Carol A.  
9 Daly, the former Chair of the Board of Prison Terms – the predecessor organization to the BPH  
10 – stipulated on November 17, 2003 to the *Valdivia* Permanent Injunction requiring  
11 implementation of constitutional parole revocation procedures for adult parolees in California.

12 102. DEFENDANTS JOYCE ARREDONDO, PAUL CHABOT, JOSEPH  
13 COMPTON, SUSAN MELANSON, and CHUCK SUPPLE. Defendants Joyce Arredondo,  
14 Paul Chabot, Joseph Compton, Susan Melanson, and Chuck Supple are Commissioners of the  
15 BPH of the State of California, assigned to hear juvenile matters. They are sued herein in their  
16 official capacities. On information and belief, defendants Arredondo, Chabot, Compton,  
17 Melanson, and Supple were appointed to their positions by defendant Schwarzenegger and  
18 were confirmed by the Senate. As Commissioners, these defendants are responsible for the  
19 operation and policy making of the BPH, including the juvenile parole revocation function.

#### 20 CLASS ACTION ALLEGATIONS

21 103. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this suit is brought  
22 on behalf of the named plaintiffs on their own behalf and on behalf of all other persons  
23 similarly situated.

24 104. This is a civil rights proceeding. The relief requested is declaratory and  
25 injunctive; damages for individual plaintiffs are not sought in these proceedings.

26 105. The class is composed of the following persons, subject to defendants' dominion  
27 and control: (1) juvenile parolees in California who are in the community under parole  
28 supervision or who are at large; (2) juvenile parolees in custody in California as alleged parole

1 violators, and who are awaiting revocation of their parole; and (3) juvenile parolees in  
2 California who are in custody, having been found in violation of parole and returned to  
3 custody. The plaintiff class includes numerous "individuals with disabilities" as that term is  
4 defined in Section 504 of the Rehabilitation Act of 1973, ("Section 504"), 29 U.S.C. section  
5 705(20), and the Americans with Disabilities Act ("ADA"), 42 U.S.C. section 12102(2).

6 106. The members of the class are so numerous that joinder of all members is  
7 impracticable. The size of the class is estimated to be nearly 3500 juveniles on parole and not  
8 in custody, and hundreds of other juveniles serving time as parole violators in custody.

9 107. The instant suit involves questions of law or fact common to all the members of  
10 the class, and the relief sought will apply to all of them. The allegations made herein are that  
11 the defendants, among other things, are engaged in a pattern and practice of remanding  
12 juvenile parolees to custody without due consideration of the right to counsel and without  
13 affording them a fair opportunity to present their position, in violation of the Fourteenth  
14 Amendment to the United States Constitution's guarantees of due process and equal protection  
15 of the law. The defendants' alleged illegal pattern and practice of violation of law is generally  
16 applicable to all members of the plaintiff class.

17 108. The claims of the representative plaintiffs are typical of the claims of the class.

18 109. The representative plaintiffs are capable, through counsel, of fairly and  
19 adequately protecting and representing the interests of the class.

20 110. The common questions of law and fact generally described herein predominate  
21 over questions affecting only individual members, and a class action is superior to other  
22 methods for adjudicating the controversy. Upon information and belief, there are few or no  
23 class members who have the financial means to fund litigation such as this. Moreover, there is  
24 a risk of inconsistent or varying adjudications which might be obtained by individual members  
25 of the class which would establish incompatible standards of conduct for the defendants.  
26 Further, the success of any individual litigant would not necessarily provide any relief to the  
27 thousands of other members of the class who were similarly entitled to relief, but who are  
28 unable to seek such redress. Finally, the equitable remedy available to any individual juvenile

1 parolee presents the prospect of mootness, because such a remedy (if afforded) would be  
2 granted, if at all, only after an individual juvenile parolee had served most, if not all, of his or  
3 her illegal custody. Because of the nature and duration of the constitutional violation, which  
4 often comes more than once to the same individual and occurs between an alleged parole  
5 violation and the end of a revocation proceeding or a revocation term, the harm is one capable  
6 of repetition yet evading review.

7 111. Defendants have acted or refused to act on grounds generally applicable to the  
8 class, making appropriate injunctive and declaratory relief with respect to the class as a whole.  
9 A declaration and a general, final injunction will serve to redress the claims of the members of  
10 the class against the illegal actions of the defendants.

11 112. The attorneys for plaintiffs in this proceeding are able to fairly and adequately  
12 represent the plaintiff class, because they are experienced and knowledgeable regarding  
13 criminal and constitutional law, juvenile justice, and prisoners' rights and remedies.

#### 14 STATEMENT OF CLASS CLAIMS

15 113. The named defendants, individually and/or in union, have control of juvenile  
16 parolees while they are serving their initial term, while they are on parole after release from  
17 their initial term, while charged with a violation of parole, during parole revocation  
18 proceedings, and after any disposition is made returning the juvenile parolee to DJJ custody.

19 114. The CDCR is the governmental agency which has the immediate, day-to-day  
20 charge of management and custody of juvenile parolees. (Cal. Govt. Code §§ 12838, 12838.3;  
21 Cal. Penal Code § 6001; Cal. Welf. & Inst. Code § 1710.) The CDCR, through the DJJ, sets  
22 the conditions of parole and, within limits, the length of parole.

23 115. Collectively, the BPH has the statutory power to establish and enforce rules and  
24 regulations on the subject of juvenile parole. (Cal. Welf. & Inst. Code §§ 1719, 1725, 1766.)

25 116. Since July 1, 2005, the BPH has had the exclusive power to conduct hearings on  
26 juvenile parole proceedings and to order juvenile parolees returned to DJJ custody. Prior to  
27 that, the power was vested in the Youth Authority Board (YAB), and before that, the Youthful  
28 Offender Parole Board (YOPB). The pattern and practice of the revocation function, whether

1 in the BPH, the YAB, or the YOPB, has been and is violative of constitutional due process and  
2 equal protection and the constitutional right to counsel, as articulated in this complaint.

3 117. The BPH employs deputy commissioners or hearing officers to whom the Board  
4 may assign appropriate duties, including that of hearing parole proceedings and making  
5 decisions. Deputy Commissioners are appointed by the Chairman of the BPH and answer to  
6 the Chairman. Upon information and belief, most juvenile parole revocation proceedings are  
7 conducted by hearing officers.

8 **A. CONSTITUTIONAL RIGHT TO COUNSEL**  
9 **(Against the Individual Defendants)**

10 118. The allegations contained in Paragraphs 1 through 117 of this Complaint are  
11 incorporated herein by reference as though fully set forth.

12 119. The members of the plaintiff class have been and are continually being denied  
13 the constitutional right to counsel under the United States Constitution as interpreted in  
14 *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) and related decisions. Examples of such  
15 unconstitutional conduct include the following:

- 16 (a) defendants are following a pattern and practice of denying counsel to  
17 juvenile parolees in violation of existing constitutional standards in almost  
18 all cases of juvenile parole proceedings;
- 19 (b) when deciding whether to appoint counsel, defendants do not consider the  
20 overwhelming need for counsel among juvenile parolees due to factors  
21 including their age and maturity levels; their status as minors; lack of  
22 facility with written or spoken English; low levels of reading ability and  
23 educational achievement; learning disabilities; developmental disabilities;  
24 or any of a range of communicative, cognitive, mental, emotional and  
25 other disabilities impeding their ability to advocate for themselves;
- 26 (c) when deciding whether to appoint counsel, defendants do not consider the  
27 complexity of a juvenile parolee's case or the difficulty of developing or  
28 presenting a defense, including factors in mitigation;

- (d) purported "waivers" of counsel, of hearings, and other rights by juvenile parolees are not knowing, voluntary and intelligent;
- (e) juvenile parolees are not permitted to retain their own counsel to represent them;
- (f) when counsel is permitted, attorneys are not informed of any difficulties their clients have in communicating or participating in revocation proceedings, and they are not allowed adequate time to represent the parolee properly at each stage in light of those difficulties;
- (g) counsel are not required to be provided with juvenile parolees' files in order to prepare for hearings;
- (h) when counsel is permitted, the right to meaningful representation is denied by, among other things, the imposition of unfair and unreasonable limits on counsel's time and fees;
- (i) there are no standards, guidelines, or training for effective assistance of appointed counsel;
- (j) when counsel is permitted, attorneys are in some cases forbidden to speak at juvenile parole revocation hearings and other parole proceedings; and
- (k) juvenile parolees are denied a meaningful opportunity to appeal a denial of counsel.

120. The members of the plaintiff class also have been and are continually being denied the constitutional rights to call witnesses and present testimony and to confront adverse witnesses. Examples of such unconstitutional conduct include the following:

- (a) juvenile parolees are denied the right to be heard in person and to subpoena and present documentary evidence;
- (b) juvenile parolees are denied the right to subpoena and present witnesses in their favor; and
- (c) juvenile parolees are denied their constitutional right to confront and cross-examine witnesses against them because adverse testimony is often

1 presented in the form of hearsay.

2 121. Under *Gagnon* and related decisions, parolees must be supplied representation in  
3 revocation proceedings if they are less than fully capable of speaking effectively for  
4 themselves, the relevant facts are complex or otherwise difficult to present, they have  
5 mitigating evidence that makes revocation inappropriate, and/or they present a colorable claim  
6 that they did not commit the alleged violation. Defendants routinely deny juvenile parolees  
7 their right to counsel by failing to consider these factors, even in cases in which they know or  
8 should know of reasons why appointed counsel is necessary.

9 122. The restrictions on representation by counsel during revocation proceedings,  
10 including the refusal to allow retained counsel and to allow attorneys to speak at certain  
11 hearings, severely interfere with the duty of attorneys to represent their clients.

12 123. In addition, juvenile parolees are denied their constitutional right to confront  
13 adverse witnesses because adverse testimony is often presented in the form of hearsay.

14 124. Under California law, the constitutional questions raised by this suit cannot be  
15 raised in California administrative proceedings. While, on information and belief, there is a  
16 process of administrative review from a disposition of revocation and re-commitment after  
17 hearing, the administrative review is neither prompt nor effectual. Defendants routinely fail to  
18 notify juvenile parolees of their right to appeal, and routinely fail to promptly allow, consider  
19 and dispose of administrative appeals.

20 125. In those rare judicial challenges made to the juvenile parole revocation process,  
21 the state attorney routinely claims that administrative appeal is an avenue of relief that must be  
22 exhausted before a juvenile parolee is entitled to request judicial process.

23 126. The terms of incarceration imposed upon juvenile parolees make it essentially  
24 impossible to file a state petition for habeas corpus to relieve the unlawful confinements in  
25 individual cases, with or without first exhausting state remedies. Moreover, California state  
26 habeas corpus is an extraordinary remedy, only available in the discretion of the superior court  
27 to review an utterly baseless decision, and is not a process of administrative review.

28 127. California state habeas corpus affords a hearing and counsel to a petitioner if, but

1 only if, he or she can adequately plead a *prima facie* case of jurisdictional magnitude. A  
2 parolee who challenges defendants' denial of his or her constitutional rights to counsel and/or  
3 due process in the state courts therefore cannot secure any remedy, or any realistic remedy, as  
4 non-compliance with these federal mandates is not deemed jurisdictional.

5 128. Pursuant to California Rules of Court, a petition for habeas corpus relief will  
6 usually be pending at least 60 to 90 days before any relief will be granted. The relief provided  
7 in state habeas corpus, if the petition does not first become moot while the case is pending, is  
8 likely to be limited to a rehearing. Thus, any prior deprivation of a juvenile parolee's  
9 constitutional rights may be "cured," even if egregious, without consequence to the juvenile  
10 parolee's custody status.

11 **B. CONSTITUTIONAL DUE PROCESS**  
12 **(Against the Individual Defendants)**

13 129. The allegations contained in Paragraphs 1 through 128 of this Complaint are  
14 incorporated herein by reference as though fully set forth.

15 130. The members of the plaintiff class have been and are continually being denied  
16 constitutional due process under the Fourteenth Amendment to the United States Constitution.  
17 Examples of such unconstitutional conduct include the following:

- 18 (a) preliminary parole revocation hearings are not being conducted, thereby  
19 denying juvenile parolees, among other things, a meaningful opportunity  
20 to challenge the absence of constitutional standards leading to their arrest  
21 or the right to appeal their detention;
- 22 (b) written notice of charges and the reasons for detention are not promptly  
23 given, and juvenile parolees are denied disclosure of evidence against  
24 them;
- 25 (c) reasonable opportunity for investigation is not afforded, a problem  
26 exacerbated by the routine removal of juvenile parolees from their  
27 community of residence;
- 28 (d) waiver of hearings and other rights by juvenile parolees is fundamentally

1 unfair, because, among other things, juvenile parolees are unlawfully  
2 influenced to waive their constitutional right to due process and other  
3 rights in the adjudication and disposition of allegations of parole violation  
4 without full advance notice of those rights;

5 (e) juvenile parole revocation proceedings are held from 45 days to months  
6 after a juvenile parolee is arrested, and juvenile parolees are denied a  
7 meaningful opportunity to appeal a denial of counsel, to subpoena and  
8 present witnesses and evidence, or to confront and cross-examine adverse  
9 witnesses;

10 (f) juvenile parolees are routinely revoked and returned to DJJ facilities  
11 without full and fair consideration of alternative or remedial sanctions  
12 such as drug treatment programs and half-way houses;

13 (g) juvenile parolees are not entitled to a written record of revocation hearings  
14 and the basis for decisions made therein;

15 (h) juvenile parolees are subjected to additional parole proceedings and  
16 temporary detentions with no discernable standards or guidelines, no  
17 credit for time served in custody on a parole hold before the parole  
18 revocation hearing, no adequate opportunity to obtain records of the  
19 proceedings or to appeal decisions, and without representation by counsel;  
20 and

21 (i) juvenile parolees are not provided adequate pre-release and re-entry  
22 services to assist their return to the community, therefore increasing the  
23 likelihood that they will be subjected to further unconstitutional  
24 conditions of confinement and parole proceedings.

25 131. The *Valdivia* court has already determined that a unitary parole hearing system  
26 violates adult parolees' right to due process of law.

27 132. Through orders issued in the *Valdivia* case, the defendants herein are aware that  
28 aspects of the juvenile parole system in California are unconstitutional, including but not



1 limited to the pervasive failure to hold preliminary or probable cause hearings, long delays  
2 before preliminary hearings and great distances between the alleged parole violation and  
3 preliminary hearings, long delays before final revocation hearings, denial of appointed counsel,  
4 restrictions making appointed counsel ineffective, denial of the ability to present evidence and  
5 testimony and to confront adverse witnesses, and unavailability of remedial sanctions. Despite  
6 having agreed to implement a revocation system for adult parolees that protects their right to  
7 due process, these same defendants continue to operate an unconstitutional and arbitrary  
8 system for juveniles.

9 **C. CONSTITUTIONAL EQUAL PROTECTION**

10 **(Against the Individual Defendants)**

11 133. The allegations contained in Paragraphs 1 through 132 of this Complaint are  
12 incorporated herein by reference as though fully set forth.

13 134. The Fourteenth Amendment of the United States Constitution guarantees the  
14 right to equal protection of the laws. In violation of that provision, defendants have established  
15 a parole system that affects two or more similarly situated groups in an unequal manner.

16 135. The Welfare and Institutions Code provides that following a commitment, a  
17 juvenile may be given "liberty under supervision and upon conditions . . . best designed for the  
18 protection of the public." (Cal. Welf & Inst. Code § 1766(a)(1).) Adult parole is similarly  
19 defined as a supervised release into the community, which involves monitoring of the parolee  
20 for public safety reasons and which may reasonably restrict a parolee's liberty and privacy  
21 interests.

22 136. As such, juvenile and adult parolees are similarly situated with respect to the  
23 legitimate purpose of parole proceedings, *i.e.*, to determine whether an incarcerated offender is  
24 ready for supervised release and whether, after release, any conduct on the part of the parolee  
25 has posed a reasonable threat to public safety.

26 137. Because many of the defendants herein or their predecessors have agreed to obey  
27 the *Valdivia* Permanent Injunction, in California, adult and juvenile parolees are being afforded  
28 different rights in parole proceedings, even though they face the same consequences:

1 incarceration and loss of liberty. Adult parolees, who are arguably better educated, more  
2 intelligent and in a better position to represent themselves in revocation proceedings, are  
3 afforded the right to effective assistance of counsel in parole proceedings, the right to subpoena  
4 and present witnesses and evidence to the same extent and under the same terms as the state,  
5 and the right to timely preliminary and final revocation proceedings.

6 138. A juvenile parolee in California accused of the same parole violation as an adult  
7 is afforded none of these rights. Many juvenile parolees are, in fact, over the age of 18 and  
8 therefore legally considered adults. Nonetheless, if under DJJ jurisdiction, these adult-aged  
9 juvenile parolees receive little to no due process protection in parole proceedings.

10 139. The *Valdivia* Court has already determined that a unitary parole hearing system  
11 violates the right to due process of law, and defendants herein have agreed to abolish that  
12 system for adult parolees.

13 140. Parole proceedings affect a fundamental right – the right to liberty. Agreeing to  
14 provide due process rights and protections, including but not limited to appointed counsel in  
15 100 percent of cases, to adults, while refusing to extend those protections to juveniles is a  
16 distinction that is arbitrary, capricious, and lacking in any rational basis or compelling  
17 justification. Appointment of counsel for 100 percent of juveniles is required as a matter of  
18 equal protection because there is no rational basis or compelling justification for the  
19 distinction.

20 141. This is especially true given the conditions prevailing at most of California's  
21 juvenile facilities, as determined through the Consent Decree in *Farrell v. Hickman*, Alameda  
22 Superior Court, No. RG503079344 (formerly *Farrell v. Allen*). The horrific conditions at these  
23 juvenile facilities, which include excessive violence, use of 23-hour-a-day lockdowns, and  
24 failure to provide adequate mental health and medical care, all require that juveniles receive  
25 greater due process prior to re-commitment. Instead, they receive less than their adult  
26 counterparts, in violation of the federal guarantee of equal protection of the law.

27 142. Approximately 4100 youth are now on parole in California. This figure may be  
28 compared with the approximately 153,000 adults currently on parole. In Fiscal Year 2004-

1 2005, 941 juveniles were returned to YA institutions for parole violations. Juvenile parolees  
2 therefore make up a small proportion of the total parolees facing revocation proceedings in  
3 California. It is irrational and arbitrary for defendants to extend due process protections to  
4 adults while denying them to juveniles. Because defendants are responsible for revocation  
5 proceedings for both juveniles and adults, the federal and state guarantees of equal protection  
6 of the law require that they protect youthful parolees' constitutional rights to the same extent as  
7 adults.

8 **D. VIOLATION OF THE AMERICANS WITH DISABILITIES ACT AND**  
9 **SECTION 504 OF THE REHABILITATION ACT**

10 **(Against All Defendants)**

11 143. The allegations contained in Paragraphs 1 through 142 of this Complaint are  
12 incorporated herein by reference as though fully set forth.

13 144. At all times relevant to this action, the ADA, 42 U.S.C. section 12101 *et seq.*,  
14 was in full force and effect in the United States.

15 145. The plaintiff class includes numerous "individuals with disabilities" as that term  
16 is defined in Section 504, 29 U.S.C. section 705(20), and the ADA.

17 146. The ADA, 42 U.S.C. section 12132, prohibits public entities from discriminating  
18 against a qualified individual with a disability in the provision of services, programs, or  
19 activities.

20 147. The California Department of Corrections and Rehabilitation receives federal  
21 financial assistance as that term is used in Title 29 U.S.C. section 794.

22 148. In violation of Section 504 and the ADA, defendants have failed to develop  
23 adequate policies and practices that enable them to identify, assess or reasonably accommodate  
24 juvenile parolees with disabilities so that those individuals can fully participate in revocation  
25 and other parole proceedings. Defendants have failed to develop policies and practices for  
26 providing juvenile parolees with disabilities with reasonable modifications affording them  
27 access to programs, activities and services available generally to other individuals under their  
28 custody and control.

1 149. Members of the plaintiff class with disabilities have been and are continually  
2 being denied reasonable accommodations in parole revocation proceedings. Defendants have  
3 failed to make individualized assessments of juvenile parolees' ability to participate in and  
4 comprehend parole revocation proceedings conducted by defendants.

5 150. Defendants have failed to ensure equally effective communication and to furnish  
6 appropriate auxiliary aids and services and effective assistance where necessary to afford  
7 juvenile parolees the opportunity to participate fully in revocation and other parole proceedings  
8 to the same extent as other individuals under their custody and control.

9 151. Defendants hold parole proceedings in locations that are not accessible to  
10 juvenile parolees with mobility impairments.

11 152. Defendants' conduct constitutes an ongoing and continuous violation of Section  
12 504 and the ADA, and unless restrained from doing so, defendants will continue to violate the  
13 law.

14 **PRAAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFFS RESPECTFULLY PRAY THAT THIS COURT:

- 16 1. Assert jurisdiction over this matter;
- 17 2. Enter an Order certifying a class of all juvenile parolees in California including:  
18 (1) juvenile parolees in California who are in the community under parole supervision or who  
19 are at large; (2) juvenile parolees in custody as alleged parole violators, and who are awaiting  
20 revocation of their parole; (3) juvenile parolees who are in custody, having been found in  
21 violation of parole and returned to custody;
- 22 3. Adjudge and declare that the policies, patterns, conduct and practices described  
23 above are in violation of the rights of the plaintiffs and the class they represent under the  
24 Fourteenth Amendment to the United States Constitution, under *Gagnon* and related decisions,  
25 and under Section 504 and the ADA;
- 26 4. Preliminarily and permanently enjoin defendants, their agents, employees and all  
27 persons acting in concert with them, from subjecting plaintiffs and the class they represent to  
28 the unconstitutional and illegal policies, patterns, conduct and practices described above;

1           5.     Order defendants to end their practices of denying plaintiffs and the class they  
2 represent their constitutional rights to due process and equal protection of law;

3           6.     Award plaintiffs the costs of this suit and reasonable attorneys' fees and litigation  
4 expenses;

5           7.     Retain jurisdiction of this case until defendants have fully complied with all  
6 orders of this Court, and there is a reasonable assurance that defendants will continue to  
7 comply in the future absent continuing jurisdiction; and

8           8.     Award such other and further relief as the Court deems just and proper.  
9

10 Dated: September 13, 2006

ROSEN, BIEN & ASARO LLP

11  
12 By /s/ Michael W. Bien  
13 Michael W. Bien  
14 Attorneys for Plaintiffs  
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