

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, ALFRED YANCY,
and HOSSIE WELCH, on their own
behalf and on behalf of the class
of all persons similarly situated,

Plaintiffs,

NO. CIV. S-94-671 LKK/GGH

v.

O R D E R

GRAY DAVIS, Governor of the State
of California, et al.,

Defendants.

_____/

Plaintiffs, on behalf of themselves and a class of
California parolees, filed this action on May 2, 1994,
challenging the constitutionality of parole revocation
procedures by the California Board of Prison Terms ("BPT") and
the California Department of Corrections ("CDC"). This matter
is before the court on plaintiffs' motion for an order to show
cause why defendant Hickman should not be found in civil
contempt of the court's Permanent Injunction Order. I decide
the motion based on the papers and pleadings filed herein and

1 after oral argument.

2 I.

3 **PROCEDURAL BACKGROUND**

4 On June 13, 2002, plaintiffs were granted partial summary
5 judgment on their claim that California's unitary parole
6 revocation hearing system violated their due process rights
7 under Morrissey v. Brewer, 408 U.S. 481 (1972) and Gagnon v.
8 Scarpelli, 411 U.S. 778 (1973). See Valdivia v. Davis, 206
9 F.Supp.2d 1068 (E.D. Cal. 2002) ("June 13th Order"). The court
10 held that California's parole revocation system violated the Due
11 Process Clause of the Fourteenth Amendment by "allowing a delay
12 of up to forty-five days or more before providing the parolee an
13 opportunity to be heard regarding the reliability of the
14 probable cause determination." Id. at 1078.

15 On October 18, 2002, the court ordered the defendants to
16 file a proposed remedial plan addressing the violations
17 identified in the June 13th Order. On March 17, 2003, the
18 defendants provided plaintiffs with their proposed Valdivia
19 Remedial Plan ("VRP"), to which plaintiffs filed two objections.
20 While the parties continued to engage in settlement negotiations
21 over remaining claims not adjudged, defendants requested that
22 the court provide guidance as to the sufficiency of their VRP.
23 The court in response examined the VRP and ordered that
24 defendants file a revised remedial plan to meet specific
25 criteria. See Order dated July 23, 2003. On August 21, 2003,
26 the defendants filed a revised VRP. In November 2003, before a

1 final hearing on the revised VRP, the parties filed a Stipulated
2 Proposed Order for Permanent Injunctive Relief. Pursuant to
3 their settlement negotiations, the proposed order required
4 California's BPT and the CDC to develop and implement new parole
5 revocation processes to remedy pervasive constitutional
6 violations in the State's then-existing procedures. The revised
7 VRP was referenced in and attached to the proposed permanent
8 injunction order. The parties sought preliminary approval from
9 the court that the settlement was sufficiently fair, reasonable
10 and adequate, and that it justified issuing notices to the class
11 and scheduling a final hearing. See Fed. R. Civ. P. 23(e). The
12 parties made their preliminary showing of fairness via a joint
13 Stipulated Motion for Preliminary Approval of Class Action
14 Settlement, filed on November 24, 2003. On March 9, 2004, the
15 court granted the parties' permanent stipulated injunction and
16 granted final approval of that Stipulated Permanent Injunction
17 on March 17, 2004 ("Order").

18 The plaintiffs now allege that the defendants are in direct
19 violation of specific terms of the Permanent Injunction.

20 **II.**

21 **STANDARD**

22 A district court has continuing jurisdiction to enforce its
23 injunction. Crawford v. Honig, 37 F.3d 485 (9th Cir. 1994).
24 The movant has the burden of proving by clear and convincing
25 evidence that the defendants are in violation of the court's
26 order. Wolfard Glassblowing Co. v. Vanbragt, 118 F.3d 1320,

1 1322 (9th Cir. 1997). To be enforceable by contempt, the
2 injunction must clearly describe prohibited or required conduct.
3 Gates v. Shinn, 98 F.3d 463, 468 (9th Cir. 1996). A defendant
4 should not be held in contempt for actions that "appear[] to be
5 based on a good faith and reasonable interpretation of the
6 court's order" Vertex Distributing, Inc. v. Falcon Foam
7 Plastics, Inc., 689 F.2d 885 (9th Cir. 1982).

8 **III.**

9 **ANALYSIS**

10 On April 11, 2005, defendant Roderick Hickman, Youth and
11 Adult Correctional Authority Secretary, issued a memorandum
12 ("Hickman Memo") to state parole agents with a directive
13 prohibiting the use of certain remedial sanctions in lieu of
14 probation revocation. Decl. of Ernest Galvan ("Galvan Decl."),
15 Exh. 2. The memorandum provides, in relevant part, that:
16 "Electronic In-Home Detention ("EID"), Community Correctional
17 Reentry Centers ("Halfway Back" Program) and the Substance Abuse
18 Treatment Control Units ("SATCU") were clearly designed to
19 provide intermediate sanctions in lieu of parole revocation
20 Effective immediately, these programs will no longer be
21 used."¹

22 Plaintiffs contend that the change in policy and practice
23 as commanded by the Hickman Memo is in direct contravention of

24
25 ¹ SATCUs are residential facilities, often within prisons or
26 jails, into which parolees can voluntarily accept detention for a
period of up to 90 days in lieu of parole revocation. See Cal.
Health & Safety Code §§ 11560, 11561, 11563.

1 this court's Order. The Permanent Injunction, they argue,
2 created procedures for, and ensured the use of, remedial
3 sanctions in place of parole revocation and imprisonment when
4 parole officers determine that such measures will best benefit
5 both the community and the parolee. According to plaintiffs,
6 the Hickman Memo effectively obliterates the remedial sanctions
7 provisions. In response, the defendants acknowledge that a
8 remedial sanctions plan is contained in the VRP. They argue,
9 however, that the court may not find them in violation of the
10 Permanent Injunction because remedial sanctions are not part of
11 that Order. I examine the parties' contentions below.

12 **A. PLAIN READING OF THE PERMANENT INJUNCTION**

13 The court must first determine whether the language of the
14 Permanent Injunction Order incorporates remedial sanctions as
15 contended by plaintiffs.

16 As a general matter, principles of state law govern the
17 interpretation and enforcement of settlement agreements. Jeff
18 D. v. Andrus, 899 F.2d 753, 759 (9th Cir. 1989); see also Gates
19 v. Rowland, 39 F.3d 1439, 1444 (9th Cir. 1994) ("The rules of
20 contract interpretation of the situs state govern interpretation
21 of the consent decree."). "This is true even when the
22 underlying cause of action is federal in nature." United
23 Commercial Ins. v. Paymaster Corp., 962 F.2d 853, 856 (9th Cir.
24 1992).

25 California law dictates that "[t]he language of a contract
26 is to govern its interpretation[] if the language is clear and

1 explicit" Cal. Civ. Code § 1638. The intention of
2 parties must therefore be gathered from the plain language on
3 the face of contract. Pacific States Corp. v. Hall, 166 F.2d 668
4 (9th Cir. 1948).

5 Section IV of the permanent injunction, entitled "Policies,
6 Procedures, Forms, and Plans," sets forth the prospective and
7 mandatory requirements for defendants. Paragraph 11(a) directs
8 the defendants to "develop and implement sufficiently specific
9 Policies and Procedures" to ensure compliance with "all of the
10 requirements of [the permanent injunction] Order." It specifies
11 that "[t]he Policies and Procedures will provide for
12 implementation of the August 21, 2003 Remedial Outline (attached
13 hereto as Exhibit A), as well as the requirements set forth
14 below in Paragraphs 12-24." PI Order, ¶11(a). As indicated by
15 the language, the VRP is indeed attached to the order.
16 Accordingly, the plain language of the Permanent Injunction
17 clearly and explicitly incorporates the VRP and orders the
18 defendants to comply with and implement it.² Defendants are
19 therefore bound by the terms of the VRP.

20 ////

21
22 ² Paragraph 12 reiterates that the Policies and Procedures
23 shall ensure that, in addition to the Remedial Plan Outline, the
24 requirements set forth in paragraphs 13-24 are met. The
25 requirements in those paragraphs concern the parolee's appointed
26 counsel's ability to adequately represent the parolee,
confidentiality of parolee's files, transparency and communication
between the involved parties during the parole revocation process,
and evidence used at the probable cause and final revocation
hearings.

1 **B. THE FOUR CORNERS RULE**

2 Despite the plain language of the permanent injunction
3 incorporating and directing compliance with the VRP, defendants
4 insist that, because remedial sanctions "are not mentioned in
5 the body of the injunction" itself, they cannot be a part of the
6 Order under the "four corners" rule. Def's Opp. Br. at 5.
7 Defendants' understanding of the four corners rule is mistaken.
8 It is well-established that reliance upon references or
9 documents expressly incorporated in a settlement agreement for
10 construction purposes "does not in any way depart from the 'four
11 corners' rule." United States v. ITT Continental Baking Co.,
12 420 U.S. 223, 238 (1975) (construing agreement containing consent
13 order and attached appendix as three "parts of the same
14 agreement" under "four corners" rule). Rather, the terms
15 contained in a document attached to an injunction bind the
16 parties just as much as the terms contained in the injunction
17 itself. See California v. Campbell, 138 F.3d 772, 783 (9th Cir.
18 1998) (holding that enjoined defendants bound by terms of
19 document attached to injunction); see also Davis v. City and
20 County of San Francisco, 890 F.2d 1438, 1450 (9th Cir. 1989).

21 Further, although Rule 65(d) of the Federal Rules of Civil
22 Procedure provides that every order granting an injunction
23 "shall describe in reasonable detail, and not by reference to
24 the complaint or other document, the act or acts sought to be
25 restrained . . .," the rule does not necessarily preclude
26 incorporation by reference. State of Cal., on Behalf of

1 California Dept. of Toxic Substances, 138 F.3d 772 (9th Cir.
2 1998).

3 The Ninth Circuit has explained that "the rationale behind
4 the incorporation-by-reference language in Rule 65(d) [i]s a
5 safeguard to 'ensure adequate notice to defendants of the acts
6 prohibited.'" Id. at 783 (quoting Henry Hope X-Ray Prods., Inc.
7 v. Marron Carrel, Inc., 674 F.2d 1336, 1343 (9th Cir. 1982)).

8 Here, it cannot be said that the defendants were unaware of the
9 incorporation and contents of the VRP, since the Stipulated
10 Order for Permanent Injunction, including the VRP, were
11 submitted by the parties themselves pursuant to their settlement
12 negotiations.³ The Order's reference to and attachment of the
13 VRP therefore conforms with the "four corners rule" as well as
14 with Rule 65(d).

15 **C. THE VRP AND REMEDIAL SANCTIONS**

16 As contended by the plaintiffs, a review of the VRP
17 demonstrates that remedial sanctions are included at nearly
18 every step of the new revocation process created by the parties
19 pursuant to their settlement negotiations. The VRP is a six-

20
21 ³ Other evidence unambiguously demonstrates the defendants'
22 own understanding that remedial sanctions are part of the Permanent
23 Injunction. The defendants posted class member notices, approved
24 by the court, in every jail, prison and parole office in
25 California. The short notice explicitly states that, "[u]nder the
26 agreement, by early 2004, some parolees will be sent to community-
based programs, instead of prison." Galvan Decl., Exh. 8,
attachments. The longer notice provides that "the Permanent
Injunction will require many changes in the revocation system,"
including that "the BPT and CDC will use alternatives to parole
revocation, such as treatment in the community, for some parolees
who would otherwise be arrested on parole violation charges." Id.

1 page document along with a flow chart. The second section of
2 the VRP, entitled "Remedial Sanctions," provides that, "as part
3 of the overall reform of the revocation process, the Parole and
4 Community Services Division of the Department of Corrections
5 will begin using remedial sanctions/community based treatment
6" VRP at 1. It explains that "some of the remedial
7 sanctions/community based treatment programs that will be used
8 are the Substance Abuse Treatment Control Units, Electronic
9 Monitoring, Self-Help Outpatient/aftercare programs, and
10 alternative placement in structured and supervised
11 environments." Id. Emphasized in bold and capital letters, the
12 VRP provides that if, shortly after the alleged parole violation
13 occurs, "remedial sanctions are deemed inappropriate and a
14 parole hold is placed on the parolee, a probable cause
15 determination/review will take place" According to the
16 VRP, officials will then again consider remedial sanctions
17 during the probable cause determination. That procedure was
18 apparently put into place "in an attempt to take a second look
19 at those individuals who have been placed into custody to
20 determine if the 'present danger to public safety' concern still
21 exists or if remedial sanctions/community based treatment is
22 possible at th[at] juncture." Id. at 2. If remedial sanctions
23 are deemed inappropriate, the parolee is given notice of charges
24 and a probable cause hearing shall be conducted within ten
25 business days of when the notice is provided. The VRP explains
26 that remedial sanctions/community based treatment must again be

1 considered twice before the probable cause hearing. VRP at 3,
2 4.⁴ Finally, the "Deputy Commissioner/Parole Administrator
3 shall have the complete range of options to resolve the case,"
4 including "remedial sanctions/community based treatment." Id. at
5 5.

6 Accordingly, pursuant to its mandatory language, the
7 permanent injunction requires that defendants (1) consider
8 remedial sanctions throughout the new parole revocation process,
9 and that the remedial sanctions include (2) "the Substance Abuse
10 Treatment Control Units, Electronic Monitoring, Self-Help
11 Outpatient/aftercare programs, and alternative placement in
12 structured and supervised environments." VRP at 1.

13 **D. PERMANENT INJUNCTION VIOLATIONS**

14 Having concluded that the permanent injunction clearly
15 requires the remedial sanctions procedures as set forth in the
16 VRP, I now examine whether the directives in the Hickman Memo
17 violate the court's Order.

18 The Hickman Memo creates a new policy and practice which
19 prohibit the consideration and use of Electronic In-Home
20 Detention ("EHM"), Substance Abuse Treatment Control Units, and

21
22 ⁴ Specifically, the VRP states that "On or before the fourth
23 business day, the Unit Supervisor must review the report and
24 . . . consider whether or not remedial sanctions/community based
25 treatment is appropriate in lieu of proceeding with referral to the
26 Board of Prison Terms with a recommendation that the parolee be
returned to prison." Id. at 3. "The revocation packet is reviewed
by the Parole Administrator [on or before the 4th business day] to
determine whether or not there is a sufficient basis for the case
to move forward and whether or not remedial sanctions/community
based treatment is appropriate at this juncture." Id. at 4.

1 Community Correctional Reentry Centers ("CCRCs") as sanctions in
2 lieu of parole revocation. The prohibition of the use of the
3 first two remedial sanctions offends the Permanent Injunction's
4 mandate that SATCUs and Electronic Monitoring be considered and
5 used when appropriate. The Order provides that these two
6 programs "will be used," VRP at 1(emphasis added). Defendants
7 respond that any conflict between the memorandum and the
8 permanent injunction is inconsequential because they will
9 "retool" these programs and may offer them to parolees upon
10 their release from prison, even before a parole violation
11 occurs. Def's Oppo. at 9. Although such a policy is laudable,
12 it is no substitute for that required by the permanent
13 injunction. The VRP explicitly states that the SATCUs and
14 Electronic Monitoring "will" be used in the manner described
15 therein, thus indicating a requirement or command and
16 eliminating any choice or discretion as to the matter.
17 Therefore, these programs must be made available and be
18 considered throughout the parole revocation process *after* a
19 parole violation occurs.⁵

21 ⁵ Defendants also assert that the Hickman Memorandum "did not
22 supercede the Board of Prison Term's authority under California
23 Code of Regulations, Title 15, sections 2513, 2645 and 2646."
24 Defs' Oppo. at 9. According to them, the BPT retains the
25 discretion to place a parolee in a community program rather than
26 revoke probation. This argument has no merit for two reasons.
One, the issue here is not whether the Hickman Memo violates state
law, but whether it violates the Permanent Injunction. Second, as
plaintiff point out, those sections do not require consideration
of the remedial sanctions listed in the Permanent Injunction
throughout the revocation process.

1 Whether the restriction on the use of Community
2 Correctional Reentry Centers also violates the Permanent
3 Injunction is a closer question. The VRP mandates the
4 consideration of "Self-Help Outpatient/aftercare programs" and
5 "alternative placement in structured and supervised
6 environments." Unlike the SATCU and EHD, these other remedial
7 sanctions describe types of programs, rather than specific
8 programs. Community Correctional Reentry Centers are formal,
9 controlled environments for residential drug treatment, Cal.
10 Penal Code §§ 6250.5(b), 6251, 6253(a), (b), 6258(b), and
11 therefore comport with the requirement for "placement in
12 structured and supervised environments." However, the Order
13 contemplates that other programs that qualify as structured and
14 supervised environments may also be employed. It appears, then,
15 that the prohibition of the use of CCRCs does not violate the
16 court's Order as long as the defendants offer other remedial
17 sanctions that are "Self-Help Outpatient/aftercare programs" and
18 "alternative placement in structured and supervised
19 environments." If they do not, then the removal of CCRCs as
20 available remedial sanctions would result in no "Self-Help
21 Outpatient/aftercare programs" or "alternative placement in
22 structured and supervised environments."⁶ The defendants argue

23
24 ⁶ Plaintiffs assert that the CCRCs were the "alternative
25 placement in structured and supervised environments" included in
26 defendants' policies and procedures filed to implement the
Permanent Injunction. Pls' Reply at 2. The language of the
Policies and Procedures does not support plaintiffs' assertion,
however. The language there states only that "[r]emedial sanctions

1 that they continue to provide remedial sanctions under these two
2 categories of remedial sanctions. According to defendants, they
3 will continue to utilize community based programs in the
4 disposition of parole violations when public safety is not
5 endangered. The issue then is whether any of those programs are
6 suitable under the "Self-Help Outpatient/aftercare programs" or
7 "alternative placement in structured and supervised
8 environments" categories.

9 Defendants first explain that they will use the "Substance
10 Abuse Recovery and Treatment Program" (STAR) which is "an
11 instructional-based education program designed to teach parolees
12 how to address and prevent substance abuse." Defs' Oppo. at 8.
13 Plaintiffs object that the STAR program is not a residential
14 alternative, but is rather a classroom-based educational program
15 run out of local parole offices. Pls' Reply at 13. Apparently,
16 plaintiffs believe that, because the CCRCs are residential drug
17 treatment programs, any replacement program must also be
18 residential. That position is not grounded on any authority,
19 however.⁷ In their briefs, plaintiffs also object to the
20 defendants' assertion that they will continue to use programs
21 such as "Proposition 36" community treatment centers, Community
22

23 may include but are not limited to" a "Half-way Back Program"
24 (CCRCs). Galvan Decl., Exh. 5 (Policies & Procedures) at 3.

25 ⁷ The only terms in the Permanent Injunction relating to a
26 residential program relate to the requirement that SATCUs, which
are residential facilities, be available and considered as remedial
sanctions.

1 based drug and alcohol rehabilitation centers, Parole Services
2 Network (PSN), Parolee Partnership Program, Narcotics Anonymous,
3 and Alcoholics Anonymous.

4 At oral argument, the plaintiffs conceded that there are
5 no standard definitions for the terms "Self-Help
6 Outpatient/aftercare programs" and "alternative placement in
7 structured and supervised environments" to guide the court in
8 determining whether defendants' new programs are suitable under
9 these two categories. More importantly, the plaintiffs also
10 conceded that the use of this broad language vests the
11 defendants with discretion in selecting the programs under these
12 two categories. The plaintiffs do not provide the court with
13 any information about the substitute programs upon which it can
14 find that these programs are inadequate under the Permanent
15 Injunction. Further, because this court must "accord deference
16 to the appropriate prison authorities," Turner v. Safley, 482
17 U.S. 78, 85 (1987), in their exercise of discretion regarding
18 what types of programs meet the requirements of these two
19 categories, the court will not find defendants in violation of
20 the Permanent Injunction by virtue of the elimination of CCRCs.⁸

21
22 ⁸ The plaintiffs object to the defendants' purported use of
23 "Substance Abuse Coordination Agencies" (SACAs) as remedial
24 sanctions on the grounds that those programs offer services to
25 parolees "graduating from prison substance abuse programs" and are
26 therefore not available to parole violators. Decl. Of Holly
Baldwin in Supp. of Pls' Reply, Exh. B at 21. Defendants do not
argue to the contrary. The defendants are admonished that, if it
is true that SACAs are not available for parole violators, then
they do not qualify as remedial sanctions under the Permanent
Injunction.

1 As explained above, while removal of the CCRCs does not
2 violate the Permanent Injunction, removal of Electronic
3 Monitoring and SATCUs as available remedial sanctions as
4 explained in the VRP is violative of that Order. The court,
5 however, does not believe that a contempt order is warranted at
6 this time. There is nothing before the court indicating that
7 the Hickman Memo was issued in bad faith, rather, the
8 defendants' interpretation of the Permanent Injunction, although
9 erroneous, was arguably reasonable. Further, it appears that
10 the defendants have substantially complied with the court's
11 Order. Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc.,
12 689 F.2d 885 (9th Cir. 1982) (explaining that substantial
13 compliance with the terms of a consent judgment is a valid
14 defense to and basis upon which to find against civil contempt).

15 **IV.**

16 **CONCLUSION**

17 Plaintiff's motion is GRANTED in part and DENIED in part as
18 follows:

19 1. The defendants are in violation of the Permanent
20 Injunction Order by virtue of the elimination of the remedial
21 sanctions of Electronic Monitoring and SATCUs;

22 2. The removal of the CCRCs is not in violation of
23 the Permanent Injunction Order; and

24 ////

25 ////

26 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3. Defendants will not be held in contempt.

IT IS SO ORDERED.

DATED: June 8, 2005.

/s/Lawrence K. Karlton
LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT