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JUN -1 2005

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_

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14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA  
16

17 JERRY VALDIVIA, et al.,  
18 Plaintiffs,  
19 v.  
20 ARNOLD SCHWARZENEGGER, et al.,  
21 Defendants.  
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No. Civ. S-94-0671 LKK/GGH

**[PROPOSED] STIPULATED ORDER  
REGARDING POLICIES AND  
PROCEDURES FOR DESIGNATING  
INFORMATION AS CONFIDENTIAL  
IN PAROLE REVOCATION  
PROCEEDINGS**

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1           1.     On January 13, 2005, Plaintiffs filed a Notice of Motion and Motion on  
2 Shortened Time for Order Enforcing the Terms of the Permanent Injunction and  
3 Memorandum of Points and Authorities, challenging Defendants' failure to develop and  
4 implement policies and procedures for the designation of information as confidential that  
5 are consistent with due process as required by the Stipulated Order for Permanent Injunctive  
6 Relief, entered by this Court on March 9, 2004.

7           2.     On January 24, 2005, Defendants filed the Defendants' Opposition to  
8 Plaintiffs' Motion to Enforce Terms of Permanent Injunction and a motion for protective  
9 order, and on March 7, 2005, the Defendants' Supplemental and Superseding Opposition to  
10 Plaintiff's Motion to Enforce Terms of Permanent Injunction, and amended motion for  
11 protective order.

12           3.     On March 14, 2005, Plaintiffs filed their Reply in Support of Plaintiffs'  
13 Motion for Order Enforcing the Terms of the Permanent Injunction and Plaintiffs'  
14 Opposition to Defendants' Amended Motion for Protective Order.

15           4.     On March 14, 2005, after a telephonic conference with the parties, the Court  
16 took the matter off-calendar pending a settlement conference before Magistrate Judge  
17 Moulds.

18           5.     On April 14, 2005, the parties appeared before Magistrate Judge Moulds for a  
19 settlement conference.

20           6.     The parties hereby stipulate and request that Court shall ADJUDGE,  
21 DECLARE, AND DECREE as follows:

22  
23 **A. Witness Contact Information**

24           7.     Defendants shall not withhold from the parolee's attorney the telephone  
25 number or address of any witness unless the witness declares himself or herself to be  
26 fearful. For any witness who declare himself or herself to be fearful, defendants shall  
27 provide the parolee's attorney with a telephone number but not an address at which the  
28 witness can be contacted by the parolee's attorney. If the witness does not provide

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1 Defendants with any contact information, Defendants are not obligated under this paragraph  
2 to procure contact information for transmittal to the parolee's attorney.

3 8. If a witness declares himself or herself to be fearful, the parolee's attorney  
4 shall not disclose the witness's telephone number, or cause the number to be disclosed, to  
5 the parolee. The attorney shall not disclose the fearful witness's telephone number to any  
6 individual except those persons involved in the parole revocation process who are to be  
7 described in the protective order. The parolee's attorney shall be bound by a protective  
8 order binding him or her to the terms of this paragraph.

9 9. If a witness declares himself or herself to be fearful, the parolee's attorney  
10 shall not attempt to use the telephone number to discover the witness's home address, place  
11 of residence, or other physical location information. The attorney shall not engage in any  
12 efforts to make unconsented in-person contact with the fearful witness. The parolee's  
13 attorney shall be bound by a protective order binding him or her to the terms of this  
14 paragraph.

15 10. Paragraphs 7 to 9 above pertain to fearful witnesses only.  
16

17 **B. Parole Outpatient Clinic (POC) Information Designated Confidential Under**  
18 **California Health and Safety Code § 123115**

19 11. The parties did not reach an agreement on their dispute over Parole Outpatient  
20 Clinic (POC) information that is designated confidential under California Health and Safety  
21 Code § 123115.

22 12. This issue will be submitted for decision by this Court. The parties waive oral  
23 argument unless it is requested by the Court.  
24

25 **C. Information Designated Confidential By Another Agency**

26 13. When incriminating or exculpatory information relevant to parole violation  
27 charges is contained in a document designated confidential by another government agency,  
28 Defendants will require a parole agent to review and redact only such information that

Received at: 3:01PM, 5/24/2005

1 would create a risk of harm to any person and then provide the redacted document  
2 containing exculpatory or incriminating information to the parolee's attorney.

3 14. Defendants are not required by this Order to provide the parolee or the  
4 parolee's attorney with information designated as confidential by another agency if that  
5 information concerns that parolee's activities as a confidential informant and is relevant  
6 only to mitigation.

7  
8 **D. "Purge" of Medical Information from the Field File**

9 15. Defendants will instruct parole agents not to purge the field file of medical  
10 information already in the file that is related to parole supervision.

11 16. Defendants will revise the language in the Memorandum titled "Confidential  
12 Section of Field File" that instructs parole agents that field files are not the appropriate place  
13 for medical information. The revised language will direct parole agents to keep in the field  
14 file that medical information which is related to the supervision of the parolee. All other  
15 medical information will be forwarded to the appropriate records department for safe  
16 keeping in the medical file.

17  
18 **E. Procedure to Challenge Confidential Designations**

19 17. Defendants shall make available at the probable cause hearing a procedure for  
20 the parolee to challenge the designation by Defendants of a witness as a confidential  
21 informant. The determination shall be based on the facts contained in the revocation packet  
22 only, and whatever other facts the parolee or counsel may offer. For this determination at  
23 the probable cause hearing, the presence of the field file and the parole agent who made the  
24 confidential designation are not required.

25 18. Defendants shall make available at the final revocation hearing a procedure  
26 for all challenges to the withholding of other information and documents as confidential.

27 19. The California Parole Advocacy Program (CalPAP) will be compensated for  
28 bringing petitions for habeas corpus and other applicable writs or appeals to challenge

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1 decisions made at the probable cause and revocation hearings on the designation of  
2 information and witnesses as confidential. In providing such compensation, Defendants are  
3 not required to exceed the total contract amount with CalPAP for this year. Compensation  
4 to CalPAP for such writs may be revisited by Defendants and CalPAP in the negotiation of  
5 future contracts. Plaintiffs and Defendants have reached no agreement regarding the  
6 compensation of writs brought on other issues.

7  
8 **F. Information Provided to Challenge Withholding of Information as Confidential**

9 20. Defendants will fill out CDC Form 1030-X to give the parolee or the parolee's  
10 attorney notice whenever information is designated confidential for the purpose of a  
11 revocation proceeding. Defendants will use CDC Form XXX as an attachment on the  
12 outside of the confidential section of the parolee's field file.

13  
14 **G. Review of the Field File**

15 21. Defendants will remove the language prohibiting review of the field file at the  
16 revocation hearing from the Memorandum titled "Confidential Section of Field File" issued  
17 to Regional Parole Administrators, Headquarters Parole Administrators, District  
18 Administrators, and Unit Supervisors and replace it with the policy outlined in Paragraph 22  
19 of this Stipulation.

20 22. If the parolee's attorney intends to review the parole field file, such review  
21 should normally occur prior to the revocation hearing. However, upon request by the  
22 parolee or parolee's attorney to review the field file at the revocation hearing, the presiding  
23 Deputy Commissioner will decide on a case-by-case basis whether to allow such review on  
24 a prima facie showing by the parolee or parolee's attorney of the need to review the file,  
25 considering factors such as the possibility of new information in the file, other information  
26 written in the file relevant to the proceeding, and factors related to the time, burden,  
27 inconvenience, and expense of visiting the parole office, such as distance.

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1 **II. Review of Field Files By Attorneys' Designees**

2       23. Defendants shall include in their list of persons authorized to conduct a review  
3 of the field file at the parole office: the parolee's attorney, CalPAP employees, certified law  
4 students, paralegals working for CalPAP or the parolee's privately retained counsel, law  
5 clerks for CalPAP or privately retained counsel, and legal secretaries for CalPAP or  
6 privately retained counsel. Such designees shall present written authorization to review the  
7 field file from the attorney on the attorney's letterhead, or on CalPAP's letterhead. The  
8 term "employee" as used above should be interpreted in good faith to achieve the goals of  
9 this settlement. If this list is considered unduly restrictive, this matter will be revisited  
10 within a year.

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ROSEN BIEN ASARO

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1 I. Criminal Identification and Information "Rap Sheet"

2 24. The issue relating to disclosure of the Criminal Identification and Information  
3 (CI&I) Sheet is deferred pending resolution of Senate Bill 647 in the California State  
4 Legislature, which as of April 28, 2005, has been passed by the California State Senate, and  
5 is being considered on an urgency basis by the California State Assembly.

6  
7  
8 **IT IS SO STIPULATED.**

9 Dated: May 24, 2005

BILL LOCKYER, Attorney General  
of the State of California,  
ROBERT R. ANDERSON, Chief Assistant  
Attorney General,  
FRANCES T. GRUNDER, Senior  
Assistant Attorney General,  
STEPHEN P. AQUISTO, Supervising  
Deputy Attorney General

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14 By Benjamin T. Rice  
Benjamin T. Rice,  
Deputy Attorney General  
Attorneys for Defendants

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17 Dated: \_\_\_\_\_, 2005

ROSEN, BIEN & ASARO, LLP

18  
19 By \_\_\_\_\_  
Ernest Galvan,  
Attorneys for Plaintiffs

20  
21  
22 **IT IS SO ORDERED.**

23  
24 DATED: \_\_\_\_\_

25 By: \_\_\_\_\_  
The Honorable Lawrence K. Karlton  
Chief Judge Emeritus  
United States District Court

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**I. Criminal Identification and Information "Rap Sheet"**

24. The issue relating to disclosure of the Criminal Identification and Information (CI&I) Sheet is deferred pending resolution of Senate Bill 647 in the California State Legislature, which as of April 28, 2005, has been passed by the California State Senate, and is being considered on an urgency basis by the California State Assembly.

**IT IS SO STIPULATED.**


Dated: \_\_\_\_\_, 2005

**BILL LOCKYER**, Attorney General  
of the State of California,  
**ROBERT R. ANDERSON**, Chief Assistant  
Attorney General,  
**FRANCES T. GRUNDER**, Senior  
Assistant Attorney General,  
**STEPHEN P. AQUISTO**, Supervising  
Deputy Attorney General

By \_\_\_\_\_  
**Benjamin T. Rice**,  
Deputy Attorney General  
Attorneys for Defendants


Dated: May 24, 2005

**ROSEN, BIEN & ASARO, LLP**

By  \_\_\_\_\_  
**Ernest Galvan**,  
Attorneys for Plaintiffs

**IT IS SO ORDERED.**

DATED: 6/1/05

By:   
**The Honorable Lawrence K. Karlton**  
Chief Judge Emeritus  
Senior United States District Court Judge

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