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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,

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

Plaintiffs,

v.

O R D E R

ARNOLD SCHWARZENEGGER, Governor of  
the State of California, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiffs bring a motion for an order finding defendants in violation of the Stipulated Order of Permanent Injunction entered in 2003. Specifically, plaintiff argues that the defendants have violated the terms of the injunction by failing to adhere to it when revoking the parole of "Cooperative Parolees."<sup>1</sup>

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<sup>1</sup> The plaintiffs also assert that the defendants have violated the terms of the permanent injunction by failing to apply it to "Civil Addict Parolees." The court will resolve that portion of the motion after receiving the supplemental briefing requested of the parties.

1 **I. BACKGROUND AND FACTS**

2 In 1994, this Court certified a class of California parolees  
3 who brought suit against the Governor and various corrections  
4 officials, alleging violations of the plaintiffs' rights under the  
5 Due Process Clause of the Fourteenth Amendment. The certified class  
6 encompassed "(1) California parolees at large; (2) California  
7 parolees in custody, as alleged parole violators, and who are  
8 awaiting revocation of their state parole; and (3) California  
9 parolees who are in custody, having been found in violation of  
10 parole and who have been thereupon sentenced to prison custody."  
11 Order entered Dec. 1, 1994.

12 In 2002, this Court held that California's parole revocation  
13 procedures then in place violated the due process rights of the  
14 members of the plaintiff class. Valdivia v. Davis, 206 F. Supp. 2d  
15 1968 (E.D. Cal. 2002). Specifically, it was unlawful for the  
16 defendants to delay forty-five days or longer in making a probable  
17 cause determination, after having taken a parolee into custody for  
18 an alleged parole violation. Id. at 1078.

19 As a remedy, the parties stipulated to a permanent injunction  
20 against the defendants in 2003, which imposed several obligations  
21 on the defendants. First, defendants must appoint counsel to all  
22 parolees at the onset of the Return to Custody Assessment stage of  
23 the revocation proceedings. Second, no later than two days after  
24 the parolee being taken into custody, the parole agent and unit  
25 supervisor must confer to determine whether they believe probable  
26 cause exists that the parolee committed a parole violation. Third,

1 within three business days after being taken into custody, the  
2 parolee must be served with notice of the alleged parole violation.  
3 Fourth, the parole revocation hearing must be held within thirty-  
4 five days of the parolee being taken into custody, unless the  
5 parolee waives a revocation hearing. Stipulated Order for Permanent  
6 Injunctive Relief, Mar. 9, 2004, ¶ 11. The injunction supplemented  
7 these requirements with additional protections of the plaintiffs'  
8 due process rights during the revocation process. Id at ¶¶ 13-24.

9 In the instant motion, plaintiffs argue that the defendants  
10 have violated the permanent injunction by failing to abide by its  
11 terms in the revocation of the parole of those parolees who were  
12 placed on parole in other states but whose parole is being  
13 supervised in California ("Cooperative Parolees").

## 14 II.

### 15 STANDARD FOR MOTION FOR ORDER FINDING DEFENDANTS' IN VIOLATION 16 OF A PERMANENT INJUNCTION

17 When interpreting the parameters of a class, a district court  
18 should be guided by the plain language of the class definition. In  
19 re. Cement and Concrete Antitrust Litigation, 817 F.2d 1435, 1442-  
20 43 (9th Cir. 1987). In other words, the court's approach is the  
21 same that it would use when construing the language of a statute  
22 or contract. Id. at 1443. The court's interpretation also should  
23 be informed by apparent purpose of class certification and the  
24 common questions among the class members' claims. Id.

## 25 III. ANALYSIS

26 Plaintiffs argue that Cooperative Parolees are included in

1 the certified plaintiff class and therefore that the terms of  
2 this court's order in 2002 and the terms of the 2003 permanent  
3 injunction apply to this group. Because defendants have not  
4 abided by the terms of the permanent injunction with respect to  
5 these parolees, plaintiffs argue that defendants are in  
6 violation of it.

7 Below, the court concludes that parolees sentenced in other  
8 states but supervised in California per the Interstate Compact  
9 for Adult Offender Supervision are not members of the plaintiff  
10 class.

11 **A. Structure and Rules of Cooperative Parolee System**

12 California permits parolees who were convicted and  
13 sentenced in other states to serve their parole in California.  
14 This arrangement is governed by the Interstate Compact for Adult  
15 Offender Supervision. Cal. Penal Code § 11180. The compact is  
16 managed by the Interstate Commission for Adult Offender  
17 Supervision, which promulgates the rules of the compact. Id. The  
18 compact and its rules have the force of law in California. Id.

19 Under the compact, one state may send a parolee to be  
20 supervised in another state. Interstate Comm'n for Adult  
21 Offender Supervision ("Comm'n") Rule 3.101, 3.101-2. The state  
22 where the parolee was convicted and sentenced is referred to as  
23 the "sending state;" the state where the parolee resides is  
24 referred to as the "receiving state." Comm'n Rule 1.101. While  
25 in the receiving state, the parolee is supervised "in a manner  
26 determined by the receiving state" and the supervision should be

1 consistent with that of similar offenders sentenced in the  
2 receiving state. Comm'n Rule 4.101. Courts have held that this  
3 rule requires that the receiving state apply its laws, rules,  
4 and regulations concerning the supervision of parolees equally  
5 among parolees, regardless of whether the parolee was sentenced  
6 in California or in another state. See People v. Reed, 23 Cal.  
7 App. 4th 135, 143 (1994).

8         While supervising the out-of-state parolee, the receiving  
9 state must send progress reports to the sending state. Comm'n  
10 Rule 4.106. If the receiving state believes the parolees has  
11 violated the conditions of his parole, the receiving state must  
12 notify the sending state, however the receiving state does have  
13 the authority to arrest and detain the parolee by virtue of  
14 these violations. Comm'n Rule 4.109, 4.109-1. The receiving  
15 state may only terminate its supervision of the parolee on the  
16 date dictated to it by the sending state. Comm'n Rule  
17 4.112(a)(1).

18         The sending state has sole discretion to retake the  
19 parolee, unless the parolee has been charged with a subsequent  
20 criminal offense in the receiving state. Comm'n Rule 5.101(a).  
21 If the receiving state reports that the parolee repeatedly has  
22 violated the terms of his supervision, the sending state can  
23 retake the parolee. Comm'n Rule 5.103. Once the sending state  
24 decides to retake the parolee, it has thirty days to do so.  
25 Comm'n Rule 5.105.

26         A parolee is entitled to a probable cause hearing before

1 being retaken by the sending state for violation of the terms of  
2 his supervision. Comm'n Rule 5.108(a). This hearing is to be  
3 held in the receiving state and must comply with due process  
4 requirements. Id. The parolee must receive written notice of the  
5 alleged violation, disclosure of non-privileged and non-  
6 confidential evidence regarding his alleged violation, the  
7 opportunity to be heard and present witnesses and documentary  
8 evidence on his behalf, and the opportunity to confront and  
9 cross-examine adverse witnesses. Comm'n Rule 5.108(d). These due  
10 process requirements are informed by Gagnon v. Scarpelli, 411  
11 U.S. 778 (1973), and Morrissey v. Brewer, 408 U.S. 471 (1971).  
12 Comm'n Rule 5.108.

13       Within thirty calendar days of the probable cause hearing,  
14 the receiving state must submit a report to the sending state  
15 describing the hearing. Comm'n Rule 5.108(e). If the hearing  
16 officer at the probable cause hearing determines that there is  
17 sufficient cause to believe the parolee has violated the  
18 conditions of his parole, the receiving state should hold the  
19 parolee in custody. Comm'n Rule 5.108(f). Within thirty days of  
20 receiving the hearing officer's report, the sending state must  
21 notify the receiving state of what action it will take, which  
22 may include retaking the parolee. Comm'n Rule 5.108(f). If the  
23 hearing officer decides there is no probable cause to believe  
24 the parolee has committed a violation, then the receiving state  
25 must release the parolee from custody and continue its  
26 supervision of him. Comm'n Rule 5.108(g).

1 **B. Cooperative Parolees' Exclusion from the Plaintiff Class**

2 The relationship between the sending and receiving states  
3 makes clear that the sending state retains jurisdiction to  
4 revoke parole. See Comm'n Rule 5.101(a), 5.103, 5,108(f). In its  
5 advisory opinion number 2-2005, the Interstate Commission for  
6 Adult Offender Supervision described the receiving state as the  
7 agent of the sending state, and that characterization seems apt.  
8 See Comm'n Rule 4.106; see also State v. Hill, 334 N.W.2d 746  
9 (Iowa 1983). The receiving state reports the parolee's progress  
10 to the sending state, can only terminate supervision on the date  
11 authorized by the sending state, and has no authority to  
12 determine what recourse to take if the parolee is believed to  
13 have committed a parole violation. See Comm'n Rules 4.106,  
14 4.109(a), 4.112, 5.101(a), 5.103(a). Therefore, although the  
15 receiving state has authority to supervise the out-of-state  
16 parolee and must do so in a manner consistent with the  
17 supervision of those sentenced in state, this supervision  
18 responsibility does not mean the receiving state has been  
19 granted the authority to terminate or revoke the out-of-state  
20 parolee's parole. Cf. Comm'n Rule 1.101 (defining  
21 "supervision").

22 Given this, out-of-state parolees supervised in California  
23 cannot be included in the plaintiff class. The 2003 Permanent  
24 Injunction imposes requirements on the defendants for the parole  
25 revocation hearing. See Stipulated Order for Permanent  
26 Injunctive Relief, Mar. 9, 2004, ¶¶ 11(b)(iv), 20, 23; see also

1 ¶¶ 13, 17, 18 (requirements that apply to all stages of the  
2 revocation process, including the revocation hearing). Under the  
3 Interstate Compact, California does not have the jurisdiction to  
4 revoke the parole of out-of-state parolees. Therefore, although  
5 these parolees' liberty interest may be the same as that of the  
6 plaintiff class, the due process violations -- if any --  
7 committed by the defendants and subsequent remedy will  
8 necessarily be different. See In re. Cement, 817 F.2d at 1442-  
9 43.

10         Consequently, out-of-state parolees supervised in  
11 California per the Interstate Compact are not members of the  
12 plaintiff class.


13   **IV. CONCLUSION**

14         The plaintiffs' motion for finding the defendants in  
15 violation of the permanent injunction is DENIED in part.

16                 IT IS SO ORDERED.

17                 DATED: September 27, 2007.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT