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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA
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14
 15 **JERRY VALDIVIA, et al.,**

16 Plaintiffs,

17 v.

18 **ARNOLD SCHWARZENEGGER, et al.,**

19 Defendants.
 20

NO. CIV-S-94-0671 LKK GGH P

**STIPULATION AND
 AMENDED ORDER RE
 SPECIAL MASTER ORDER
 OF REFERENCE**

21 On May 23, 2005, upon Defendants' motion, this Court ordered that a Special Master
 22 be appointed in this case. The Court's order was memorialized in the Minutes as follows:

23 The Court instructs the parties to meet and confer and to file within 30 days a
 24 proposed reference. And to the extent that they cannot agree, to provide the
 25 Court with those portions of the reference which they disagree with. The
 26 parties are also directed to suggest to the Court the means by which a special
 master shall be selected. The Court wishes to emphasize that the master is
 supplemental to the methods set forth in the decree and is not intended to
 displace those procedures.

27 (Docket No. 1213.) Pursuant to the Court's order, the parties have met and conferred regarding
 28 the proposed terms of reference, and the court now ORDER as follows:

1 **I. Selection of the Special Master**

2 A. The parties shall promptly meet and confer and seek to agree on a qualified candidate
3 to submit for the Court's approval as Special Master. If within thirty (30) days after this
4 stipulation is filed by the parties, the parties have not agreed on one qualified candidate, each side
5 shall file and serve a list of no more than three candidates for appointment. Within ten days of
6 submission, each side may veto one candidate on the other side's list. The candidates shall be
7 submitted to the Court with their resumes and brief descriptions of their qualifications. The
8 Court will select and appoint a Special Master from one of the candidates submitted by the
9 parties, or such other person as the Court shall find has sufficient experience and expertise. If the
10 Court selects as Special Master a person who is not proposed by a party, the Court will allow the
11 parties twenty (20) days in which to make written objections to the Court's selection. Thereafter,
12 the Court will appoint its selection or submit to the parties a new candidate for their comment.

13 i. The candidates' experience in due process, mediation, alternative dispute resolution,
14 corrections, re-entry and parole supervision shall be considered in the selection. If a Special
15 Master is chosen who does not have experience in corrections, re-entry or parole supervision, the
16 Special Master is encouraged, but not required, on an as-needed basis to retain and consult
17 persons with expertise in such fields by the procedures provided for in Section III.G, below.

18 B. In the event the Special Master becomes unable to fulfill his or her duties and is
19 relieved by the Court, or becomes permanently unavailable due to death or other unforeseen
20 circumstances, a new Special Master shall be selected in the same manner provided in
21 Paragraph 1.

22 **II. Duties of the Special Master**

23 The Special Master shall have the following duties:

24 A. To receive periodic compliance reports from Defendants that set forth progress
25 towards implementation of the Permanent Injunction, and compliance with its requirements. The
26 format and content of these compliance reports is within the discretion of Defendants, except that
27 the Special Master may require Defendants to include additional information or change the
28 format at his or her discretion. A designated representative of Plaintiffs' counsel shall receive a

1 copy of all such compliance reports at the same time as the Special Master. The Special Master
2 shall give the Defendants 60 days notice to complete a compliance report.

3 B. To prepare and file with the Court reports on the status of the Defendants'
4 compliance with the Permanent Injunction. These reports shall be issued by the special master
5 every three to six months. These reports shall contain the Special Master's assessment of
6 Defendants' progress towards implementation and compliance with the Permanent Injunction.
7 The Special Master shall attach a copy of any report or document used as evidence, referenced, or
8 relied upon by the Special Master in issuing the compliance report, except for material already
9 available or accessible to the parties, provided the report includes sufficient citation for the
10 parties to access the report or document referred to. Such status reports are separate and distinct
11 from any findings of fact, conclusions of law, orders, or recommendations resulting from the
12 dispute resolution processes described in Section IV, below. No later than thirty (30) days prior
13 to filing a status report with the Court, the Special Master shall serve a draft report on one
14 designated representative of counsel for Plaintiffs, and one designated representative of counsel
15 for Defendants, and shall afford counsel twenty (20) days to submit specific written objections.
16 Thereafter, the Special Master shall serve and file his periodic status report in accordance with
17 Rule 53(f) of the Federal Rules of Civil Procedure. The Special Master's reports shall be final
18 unless, no later than twenty (20) days after service of the final report, a party files written
19 objections with the Court. If any party files objections, the opposing party shall have twenty (20)
20 days to file a reply to the objections with the Court. If objections are filed, the Court will
21 consider the matter and issue an order adopting the report in full or as modified, or rejecting the
22 report.

23 C. To assist the parties and the Court in addressing disputes regarding
24 implementation of the Court's March 9, 2004 Stipulated Order for Permanent Injunctive Relief
25 ("Permanent Injunction") including, but not limited to: monitoring, development of policies and
26 procedures, and compliance with the Permanent Injunction. This duty shall be exercised
27 according to the procedural requirements set forth below.

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1 D. To assist the parties in drafting standards for what constitutes substantial
2 compliance with the Permanent Injunction.

3 E. To advise the Court concerning any modification to the Permanent Injunction that
4 appears necessary to effectuate the injunction.

5 F. The duties set forth herein may be further specified, expanded or modified only by
6 Order of this Court.

7 **III. Powers of the Special Master**

8 The powers of the Special Master are to be used only as necessary to perform his or her
9 duties as the special master in this case and shall be limited to the following:

10 A. To enter, at any reasonable time with or without notice, any part of any facility,
11 institution, prison, parole office, records office, headquarters office, jail, Decentralized
12 Revocation Unit or other location necessary to monitor Defendants' compliance with the
13 Permanent Injunction.

14 B. To interview, on a confidential basis or otherwise, staff, employees, contractors or
15 appointees of the California Department of Corrections and Rehabilitation ("CDCR"); staff,
16 employees, contractors, and appointees of any facility or institution where parolee class members
17 are held or reside or are offered programs or services as well as staff, employees, appointees and
18 contractors for the Institute of Administrative Justice at McGeorge School of Law, California
19 Parole Advocacy Project, for purposes of performing the duties of the Special Master under this
20 Order. Defendants shall provide suitable facilities and arrange for such interviews to be
21 conducted under conditions suitable to the Special Master. In addition, the Special Master may
22 engage in informal conferences with CDCR staff, employees, contractors, and appointees, and
23 such persons shall cooperate with the Special Master and respond to inquiries related to the
24 performance of the Special Master's duties, including requests for the compilation or
25 communication of oral, written or electronic information that is not protected by the attorney-
26 client or other appropriate privilege. Any documents or electronic information provided by
27 Defendants to the Special Master shall also be copied to a designated representative of Plaintiffs'
28 counsel.

1 C. To interview, confidentially or otherwise, parolee class members, provided they
2 consent. Defendants shall cooperate with the Special Master to arrange such interviews at CDCR
3 institutions and non-CDCR institutions where such class members may be incarcerated. For
4 class members who are not in custody, Defendants shall provide available contact information to
5 the Special Master in order to facilitate such interviews.

6 D. To attend formal meetings of any task force or implementation group of the
7 CDCR, or its appointees, designees and contractors, regarding Permanent Injunction
8 implementation, at the Special Master's discretion.

9 E. To have access to the records, files and papers that are maintained by Defendants
10 to the extent that such access is related to the performance of the Special Master's duties, and are
11 not privileged. Such access shall include all CDCR records, and inmate/parolee records,
12 including but not limited to, central files, medical records, parole field files, logs, as well as
13 databases, tracking systems such as RSTS (any version), DDPS (any version), and OBIS (any
14 version).

15 F. To attend, at the Special Master's discretion, any monitoring tour conducted by
16 counsel or employees of any party regarding implementation of the Permanent Injunction.

17 G. To retain or employ assistants, administrative support staff, or any other person
18 whose advice or assistance the Special Master deems necessary to the effective fulfillment of the
19 Special Master's duties. The special master shall inform the parties in writing at least 14 days
20 before he or she petitions the Court to employ such persons. The requirements of Rule 706 of the
21 Federal Rules of Evidence shall apply if the Special Master retains persons who are to provide
22 substantive or expert assistance, consultation, investigation, reporting or testimony. The parties
23 shall submit their opposition to the Court 14 days after receiving the special master's notice that
24 he or she intends to retain such persons. All such persons, as well as the nature of their
25 compensation, shall be approved by the Court in advance of their retention or employment.

26 H. To meet with counsel for the parties, and other representatives of the parties, in
27 person or in a telephonic conference, to discuss Defendants' compliance with the Permanent
28 Injunction.

1 I. To hold and conduct hearings with respect to disputes submitted under Paragraphs
2 10 through 15, below. To this end, the Special Master shall have the power to require the
3 attendance of witnesses, including but not limited to Defendants, employees or appointees of
4 CDCR, and persons confined by the CDCR, and parolee class members, as provided in Rule
5 53(d) of the Federal Rules of Civil Procedure.

6 J. The powers described herein may only be modified by order of this Court.

7 K. In exercising the powers enumerated herein, the Special Master may act by him or
8 herself, or through employees of, or assistants to the Special Master who are approved by the
9 Court. All actions of such assistants shall be supervised and coordinated by the Special Master
10 in order to accomplish the objectives of this reference.

11 L. The Special Master shall not be empowered to direct Defendants or any of their
12 subordinates to take or to refrain from taking any specific action to achieve compliance. The sole
13 power to direct compliance and punish non-compliance remains with the Court.

14 M. The Special Master may communicate ex parte with the Court or with a party,
15 subject to the limitations set forth in Section II.B, above, and Sections IV.E.2 and IV.E.6, below.

16 **IV. Dispute Resolution Procedures**

17 A. The Permanent Injunction provides several methods for resolving disputes
18 regarding the development of policies, procedures, forms, and plans, including a method for
19 bringing disputed issues to the Court on shortened time, (Permanent Injunction ¶ 10), and a
20 method for resolving disputes regarding compliance with the Permanent Injunction. Pursuant to
21 this Court's May 23, 2005, Order regarding the appointment of a Special Master, the following
22 dispute resolution methods are supplemental to the Permanent Injunction procedures and do not
23 displace them. A party seeking the assistance of the Special Master to address a dispute shall
24 notify the opposing party or parties, and the Special Master, in writing delivered by email or fax
25 to a designated attorney representative of the opposing party, which notice shall contain a
26 statement setting forth the nature of the dispute and the remedy sought. The parties shall, within
27 twenty (20) days of receipt of this notice, meet and confer with the Special Master to address the
28 procedures to be used for addressing the dispute. For each dispute, the parties shall select one, or

1 if necessary more than one, of the following procedural options, each of which is described in
2 more detail below:

- 3 1. Informal meet and confer among the parties and the Special Master and/or
4 experts.
- 5 2. Investigation and report by the Special Master and/or his or her assistants.
- 6 3. Formal mediation by the Special Master.
- 7 4. Fact-finding hearing by the Special Master with Report and
8 Recommendation to the Court, and de novo review by the District Court.

9 If the parties are unable to decide the proper procedural option to utilize for the dispute, the
10 Special Master shall choose the appropriate procedural option.

11 B. Informal meet and confer among the parties and the Special Master. The parties
12 may request the attendance of the Special Master or experts at the meet and confer sessions,
13 whether live or telephonic, described in Paragraphs 10, 26 and 29 of the Permanent Injunction.

14 C. Investigation and report by the Special Master and/or his or her assistants. The
15 parties may request that the special master investigate or direct a person hired under paragraph
16 5(g) to investigate a disputed issue and prepare a report based on that investigation. Any report
17 issued as a result of an investigation must follow the requirements for periodic status reports at
18 Section II.B, above, or fact-finding reports, at Section IV.E.6-8, below.

19 D. Formal mediation by the Special Master. The parties may initiate a formal
20 mediation by the Special Master. The Special Master may require the parties to submit
21 mediation briefs prior to the mediation session. Either party may elect to submit a confidential
22 mediation brief. The Special Master may not rely on ex parte communications received during
23 mediation as a basis for any finding of fact in a formal fact-finding hearing. Unless all parties
24 stipulate to extend the time, mediations must be complete within thirty (30) days of their
25 initiation.

26 E. Fact-finding hearing by the Special Master with Report and Recommendation to
27 the Court, and de novo review by the District Court. If the parties request, and the Special
28 Master agrees to hold the hearing, a dispute or set of disputes may be submitted to the Special

1 Master for report and recommendation to the Court. The following procedures shall apply to
2 fact-finding hearings:

3 1. Upon the conclusion of a meet and confer process or mediation, the parties,
4 upon consent by the Special Master, may initiate a formal fact-finding and report process with
5 the Special Master.

6 2. Upon the agreement to submit a dispute or set of disputes to a fact-finding
7 hearing, the Special Master, to the extent possible, to refrain from ex parte communication with
8 any party, counsel, employees or other representatives or any party, including any employees of
9 the CDCR regarding the subject of the dispute. In any event, the Special Master shall not base
10 any findings of fact, conclusions of law, orders, or recommendations regarding the dispute on ex
11 parte communications. Instead, any findings, conclusions, orders or recommendations shall be
12 supported by the record evidence in declarations and/or testimony received at evidentiary
13 hearings.

14 3. No later than twenty (20) days after the parties agree to submit a dispute to a
15 fact-finding hearing, the parties, in consultation with the Special Master, shall jointly prepare a
16 proposed schedule providing deadlines for discovery (including production of documents and
17 depositions), briefing, evidentiary hearing, findings of fact, conclusions of law and
18 recommendations to the Court. The Special Master shall promptly resolve any disputes
19 regarding procedure, and issue a management order addressing the schedule for discovery,
20 briefing, hearing, findings of fact, conclusions of law and recommendations to the Court. A
21 party may seek review of the dispute management order by noticed motion to the Court.

22 4. The parties shall be entitled to reasonable discovery relevant to the pending
23 dispute before any hearing before the Special Master, including production of documents and
24 depositions. The Special Master shall have the authority to regulate discovery as provided in
25 Rule 53(c) of the Federal Rules of Civil Procedure.

26 5. Any hearing before the Special Master shall take place in the presence of a
27 certified court reporter. The reporter's transcript and any documents or other materials accepted
28 into evidence by the Special Master shall constitute the record of the hearing.

1 6. Upon completion of briefing and hearing, the Special Master shall have thirty
2 (30) days to file with the Court and serve on an attorney designated by each party findings of fact,
3 conclusions of law, and a recommendation to the Court for resolution of the dispute. Any
4 recommendation must be supported by findings of fact. All findings of fact shall be supported by
5 evidence submitted in the record of the hearing, or by declaration. Findings of fact may not be
6 supported by ex parte communications.

7 7. The parties shall have twenty (20) days after service to file and serve
8 Objections to Court regarding the findings, conclusions and recommendation. Each party shall
9 have ten (10) days after service of the other parties' Objections to file and serve Replies. The
10 parties shall indicate in their Replies whether oral argument is requested.

11 8. Any finding of fact, conclusion of law, recommendation or procedural order
12 that is subject to objection shall be reviewed de novo by the Court.

13 9. Direct briefing of the dispute to the District Court. In cases of particular
14 urgency that are central to the purpose of the Permanent Injunction, a party may opt to bring
15 disputes directly to the District Court under Paragraphs 10, 28 and 29 of the Permanent
16 Injunction. Or both parties may consent to bypass the use of the special master if the parties
17 agree the issue should be briefed to the Court.

18 **V. Compensation of the Special Master**

19 A. The Special Master shall receive reasonable compensation at a rate to be set by
20 the Court. All reasonable expenses incurred by the Special Master in performing his or her
21 duties shall be reimbursed. The Special Master's fees and expenses shall be borne by the
22 Defendants as part of the costs of this action.

23 B. The Special Master periodically, and in no event less frequently than once every
24 three months, shall submit to the Court and serve on the designated representatives of Defendants
25 and Plaintiffs, an itemized statement of the Special Master's fees and expenses, which shall be
26 payable upon receipt.

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1 **VI. Effect of Special Master on Stipulated Permanent Injunction**

2 Pursuant to the Court’s ruling on May 23, 2005, the Special Master’s services should
3 supplement the methods set forth in the Permanent Injunction and are not intended to displace
4 them.

5 Dated: August 12, 2005

6 Respectfully submitted,

7 BILL LOCKYER
Attorney General of the State of California

8 JAMES M. HUMES
Chief Assistant Attorney General

9 FRANCES T. GRUNDER
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11 /s/ *Benjamin T. Rice*

12 BENJAMIN T. RICE
13 Deputy Attorney General
14 Attorneys for Defendants

15
16
17 Dated: August 12, 2005

18 By *Ernest Galvan*
Ernest Galvan,
19 ROSEN, BIEN & ASARO, LLP
Attorneys for Plaintiffs

20
21 **IT IS SO ORDERED**

22 Dated: August 18, 2005.

23 By /s/Lawrence K. Karlton
Hon. LAWRENCE K. KARLTON
24 Senior United States District Judge