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17
18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA

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

22 Plaintiffs,
23 v.

24 ARNOLD SCHWARZENEGGER, Governor, State
of California, MATTHEW L. CATE, Secretary,
California Department of Corrections and
25 Rehabilitation (CDCR); DAVID RUNNELLS,
Undersecretary, CDCR; BERNARD WARNER,
26 Chief Deputy Secretary of the Division of Juvenile
Justice; CAROLINA GARCIA, Director, Division of
27 Juvenile Parole; DENNIS DULAY, Acting Deputy
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28 Operations; MARTIN HOSHINO, Executive

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Case No. 2:06-CV-02042-LKK-GGH

**JOINT MOTION FOR FINAL
APPROVAL OF STIPULATED
ORDER FOR PERMANENT
INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

HEARING

Date: October 6, 2008
Time: 10:00 a.m.
Courtroom: 4
Judge: Hon. Lawrence K. Karlton

A/72649295.5

1 Director of the Board of Parole Hearings (BPH);
2 JAMES DAVIS, Chair of the BPH; JOYCE
3 ARREDONDO, PAUL CHABOT, JOSEPH
4 COMPTON, SUSAN MELANSON, THOMAS
5 MARTINEZ, ASKIA ABULMAJEED, and CHUCK
6 SUPPLE, Commissioners and Board
7 Representatives, CDCR; DIVISION OF JUVENILE
8 JUSTICE; BOARD OF PAROLE HEARINGS; and
9 the JUVENILE PAROLE BOARD,

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Defendants.

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 6, 2008, at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Lawrence K. Karlton, United States District Judge, Eastern District of California, Sacramento Division, the parties will and hereby do jointly move the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for an Order granting final approval of the Stipulated Order for Permanent Injunctive Relief entered into by the parties. This hearing date was previously set by the Court in its June 17, 2008 Order.

This motion is made on the grounds that the settlement is fair, reasonable and adequate.

This motion is based on this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the Declaration of Gay Grunfeld, the entire complete files and record in this action and the related case of *Valdivia v. Schwarzenegger*, No. CIV. S-94-671 LKK/GGH, and oral arguments to be presented by counsel.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 13, 2008, Plaintiffs and Defendants submitted to this Court a Stipulated Motion
4 for Preliminary Approval of Class Action Settlement. The parties’ Motion sought preliminary
5 approval of their Stipulated Order for Permanent Injunctive Relief (“Stipulated Order” or
6 “Injunction,” attached herewith as Exhibit A to the Declaration of Gay Grunfeld (“Grunfeld
7 Decl.”)). Finding that the Stipulated Order “falls within the range of possible approval,” and that
8 it was “the product of arm’s-length, serious, informed and non-collusive negotiations between
9 experienced and knowledgeable counsel who have actively prosecuted and defended this
10 litigation,” this Court granted preliminary approval of the Stipulated Order on June 17, 2008,
11 directed that notice be provided to the class, and set the final approval hearing pursuant to Rule
12 23(e) for the Federal Rules of Civil Procedure for October 6, 2008. *See* Order Granting
13 Stipulated Motion for Preliminary Approval of Class Action Settlement and Scheduling Hearing
14 on Final Settlement Approval, dated June 17, 2008 (Docket No. 415) (“June 17, 2008 Order”).
15 On July 28, 2008, Defendants affirmed that notice had been provided to the Class pursuant to the
16 Court’s June 17, 2008 Order, and notice was also posted on the defendants’ web site. No class
17 member objected¹ or sought to intervene, and several class members responded to the notice by
18 voicing support for the settlement.

19 The proposed settlement was made possible only after Plaintiffs had conducted extensive
20 fact and expert discovery and prevailed on key motions for summary judgment, the appointment
21 of a special master, and a preliminary injunction. It was achieved through extensive, arm’s-
22 length negotiations over an extended period of time. Under the terms of the proposed settlement,
23 Defendants will make unprecedented changes to California’s current juvenile parole revocation
24 system which will confer substantial benefits to the class. These changes, along with the other

25 _____
26 ¹ As further discussed below, two objections were received from class members not on fairness
27 grounds but on the perceived ground that the Injunction does not, but should, apply to them.
28 This is an issue in dispute and may need to be resolved by the Special Master or the Court. If
Plaintiffs’ position prevails, then the objections are moot.

1 provisions of the proposed settlement, will overhaul completely California’s current
2 unconstitutional and outdated juvenile parole revocation system. Among the most significant
3 reforms are that all juvenile parolees will now be represented by counsel in the revocation
4 process, they will not be subjected to parole holds of 60 days or more with no hearing, they will
5 receive preliminary probable cause hearings, and their revocation terms will be fixed, not
6 indeterminate. The latter reform is particularly significant because previously juvenile parolees
7 were subjected to “time-adds” extending their incarceration for lengthy periods.² In addition,
8 juvenile parolees will receive the ADA and effective communication rights adult parolees have.

9 The proposed settlement sets forth the overall framework for change, and the specific
10 implementing policies and procedures are currently being negotiated and drafted. Plaintiffs’
11 counsel have been full participants in that process and will zealously advocate on behalf of the
12 class (with the oversight of the Court, if necessary) throughout the implementation and
13 monitoring stages of the settlement.

14 Accordingly, the parties respectfully submit this joint motion for final approval of the
15 Stipulated Order for Permanent Injunctive Relief.

16 **II. HISTORY OF THE LITIGATION**

17 **A. Claims Asserted by the Plaintiff Class**

18 This action was filed on September 13, 2006. Grunfeld Decl. ¶ 3. The case was filed as
19 a class action alleging that California’s juvenile parole revocation procedures violated juvenile
20 parolees’ due process and other rights. Plaintiffs, on behalf of themselves and the class they
21 represent, challenged the constitutionality of the juvenile Parole Revocation process conducted
22 by the California Board of Parole Hearings (“BPH”), the Division of Juvenile Justice (“DJJ”),
23 the Juvenile Parole Board (“JPB”) and the California Department of Corrections and
24 Rehabilitation (“CDCR”). Grunfeld Decl. ¶ 3. Plaintiffs’ complaint contained claims for
25

26 ² By including the end to time-adds for revoked parolees and requiring due process in revocation
27 extensions in the Stipulated Injunction, significant relief was provided to the Plaintiff class
28 without further burdens and delays.

1 violations of due process, equal protection, the Americans with Disabilities Act
2 (“ADA”)/Rehabilitation Act, and denial of the right to counsel.

3 **B. Fact and Expert Discovery**

4 Discovery in this litigation was hard fought and intense. Over the period from February
5 2007 – April 2008, Plaintiffs took 29 depositions of DJJ and JPB personnel, and Defendants took
6 the depositions of three named Plaintiffs. In addition, Defendants produced over 150,000 hard
7 copy documents and about 100,000 electronic documents. Over the course of seeking discovery,
8 Plaintiffs filed several motions to compel, resulting in two sanctions orders from Magistrate
9 Judge Hollows. *See* Order of September 21, 2007; Docket No. 202; Order of May 14, 2008,
10 Docket No. 362.

11 In February 2008, Plaintiffs disclosed their experts and filed four expert reports with this
12 Court, describing the due process and ADA violations in defendants’ parole revocation process.
13 Defendants disclosed two rebuttal experts. Expert depositions were underway at the time of the
14 settlement.

15 **C. Relevant Procedural History**

16 The Court certified this case as a class action by order dated February 28, 2007. Grunfeld
17 Decl. ¶ 4. The Plaintiff class consists of the following persons: Juvenile Parolees in or under the
18 jurisdiction of California, including all Juvenile Parolees with Disabilities, as that term is defined
19 in Section 504 of the Rehabilitation Act and the ADA, who are: 1) in the community under
20 parole supervision or who are at large; 2) in custody in California as alleged parole violators, and
21 who are awaiting revocation of their parole; or 3) in custody, having been found in violation of
22 parole and returned to custody. Grunfeld Decl. ¶ 4.

23 On September 19, 2007, this Court granted partial summary judgment in favor of
24 Plaintiffs, holding that California’s juvenile parole revocation system violates the due process
25 rights of the Plaintiff class under *Morrissey v. Brewer*, 408 U.S. 481 (1972), *Gagnon v. Scarpelli*,
26 411 U.S. 778 (1973), and related authority. The Court held that California’s juvenile Parole
27 Revocation system violated the due process clause of the Fourteenth Amendment by “allowing a
28 delay of up to sixty days or more before providing the parolee an opportunity to be heard

1 regarding the reliability of the probable cause determination.” *L.H. v. Schwarzenegger*, 519 F.
2 Supp. 2d 1072, 1085 (E.D. Cal. 2007). The Court denied Plaintiffs injunctive relief, but ordered
3 Defendants to tender a remedial plan meeting constitutional standards within thirty days. Plans
4 and objections were filed over the ensuing three months. *See* Docket Nos. 201, 207 & 214.

5 On January 29, 2008, the Court granted Plaintiffs’ subsequent motion for preliminary
6 injunction, ordering Defendants to begin appointing counsel to represent Juvenile Parolees at
7 Parole Revocation Proceedings by February 15, 2008, to provide counsel with access to
8 necessary files sufficiently in advance of the hearing to allow adequate preparation, and to
9 develop sufficiently specific draft Policies and Procedures to ensure continuous compliance with
10 all of the requirements of the Americans with Disabilities Act. The draft ADA Policies and
11 Procedures were to be submitted to the Court no later than March 15, 2008. Additionally, Chase
12 Riveland was appointed to serve as settlement referee in the case. Grunfeld Decl. ¶ 5. In late
13 March 2008, frustrated by the slow pace of reform, Plaintiffs moved for enforcement orders and
14 appointment of a Special Master. In response, Defendants began holding probable cause
15 hearings for some juvenile parolees. The Court later granted Plaintiffs’ motion to appoint Chase
16 Riveland as Special Master and entered the Order of Reference on May 22, 2008. Grunfeld
17 Decl. ¶ 9.

18 On May 16, 2008, Plaintiffs filed a Motion for Summary Judgment and Permanent
19 Injunction Regarding Attorney Appointment For Juvenile Parolees. Plaintiffs filed separate
20 motions for summary judgment regarding Defendants’ routine use of mechanical restraints and
21 requiring Defendants to comply with Due Process and the ADA in the Revocation Appeals
22 Process on May 18, 2008 and May 19, 2008, respectively. On May 18, 2008, Plaintiffs also filed
23 a second Motion for Remedial Order. Grunfeld Decl. ¶ 8.

24 Hearings in all five motions were set originally for June 16, 2008. Grunfeld Decl. ¶ 8.
25 These motions were still pending at the time the parties entered into the settlement, and were
26 later taken off the Court’s calendar.

27 Settlement negotiations occurred over the period from June 13, 2007, when the parties
28 first met at JAMS, continued regularly during the summer of 2007, and occurred periodically

1 from that time through and after the Court’s order of January 29, 2008 appointing Chase
2 Riveland as settlement referee. During the almost one-year period of settlement discussions, the
3 parties engaged in multiple conferences and revisions of draft settlement injunctions, all leading
4 up to the June 4, 2008 Stipulated Order. Grunfeld Decl. ¶ 12.

5 As part of the Stipulated Order, the parties stipulated that this is not a “civil case with
6 respect to prison conditions,” as those terms are defined and applied in the Prison Litigation
7 Reform Act (“PLRA”), 18 U.S.C. § 3626.

8 The parties submitted a Stipulated Motion for Preliminary Approval of Class Settlement
9 on June 13, 2008. The Court signed an Order on June 17, 2008 granting the Stipulated Motion.
10 The Court found that the Stipulated Order “falls within the range of possible approval,” and that
11 it was “the product of arm’s-length, serious, informed and non-collusive negotiations between
12 experienced and knowledgeable counsel who have actively prosecuted and defended this
13 litigation.” As part of the Order, the Court approved the Proposed Class Notice and ordered that
14 it be disseminated to the Class. Defendants confirmed on July 25, 2008 in a declaration filed
15 with this court that Notice had been provided to the Class in accordance with the Court’s June
16 17, 2008 Order. Declaration of Shelly Jones Affirming That Defendants Have Published Notice
17 of Class Action As Directed By The Court’s Order, dated July 25, 2008 (Docket No. 421).

18
19 **III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE
AND MERITS THE COURT’S FINAL APPROVAL**

20 The settlement presented to the Court for final approval represents a fair and reasonable
21 resolution of this dispute, as it provides constitutional and ADA reforms to California’s juvenile
22 parole system.

23 **A. Legal Standard Regarding Final Approval of Settlement**

24 Federal Rule of Civil Procedure 23(e) provides that “[t]he court must approve any
25 settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified
26 class.” The Court may approve a settlement on a finding that it is “fair, reasonable, and
27 adequate.” Fed.R.Civ.P. 23(e)(1)(C). *See also In Re Mego Financial Corporation Sec. Lit.*, 213
28 F.3d 454, 458 (9th Cir. 2000); *Torrissi v. Tucson Electric Power Co.*, 8 F.3d 1370, 1375 (9th Cir.

1 1993) (court held settlement properly approved because settlement was fundamentally fair,
2 reasonable and adequate).

3 The Ninth Circuit has set forth several factors for courts to consider when determining
4 whether a proposed settlement is fair, adequate and reasonable, including: (1) the adequacy of
5 the proposal; (2) the extent of discovery completed and the stage of the proceedings; (3) the lack
6 of fraud or collusion among the negotiating parties; (4) the experience and views of counsel; (5)
7 the strength of the plaintiffs' claims; (6) the risk, expense, complexity, and likely duration of
8 further litigation; and (7) the reaction of the class members to the proposed settlement. *See In Re*
9 *Mego Financial Corp. Sec. Lit.*, 213 F.3d 454, 458 (9th Cir. 2000); *Hanlon v. Chrysler Corp.*,
10 150 F.3d 1011, 1026 (9th Cir. 1998); *Torrissi*, 8 F.3d at 1375. This list is not exclusive and
11 different factors may predominate in different factual contexts. *Torrissi*, 8 F.3d at 1376.
12 However, “[i]t is the settlement taken as a whole, rather than the individual component parts, that
13 must be examined for overall fairness.” *Hanlon*, 150 F.3d at 1026 (citation omitted).

14 **B. The Stipulated Order is Fair, Adequate and Reasonable**

15 As set forth below, an analysis of each of these factors weighs in favor of a determination
16 that the proposed settlement is fair, adequate and reasonable and should be approved by the
17 Court.

18 **1. Adequacy of the Injunction**

19 The settlement embodied in the Stipulated Order for Permanent Injunctive Relief
20 (attached to the Grunfeld Declaration as Exhibit A), taken as a whole, addresses all of the
21 constitutional violations alleged by Plaintiffs. It confers on the class significant benefits, some of
22 which (such as the end of time-adds for revoked parolees) Plaintiffs may not have been able to
23 achieve if had they litigated and prevailed at trial.

24 The settlement provides for broad changes in the parole revocation process for the Class
25 and the implementation of significant new due process protections for the benefit of class
26 members facing parole revocation and extensions of their revocation sentencing periods. These
27 reforms are to be developed and put into practice over a relatively short timeframe under the
28 settlement. The Stipulated Order requires Defendants to fully implement the due process

1 reforms to their Revocation Process within 180 days after the signing of the Stipulation, and no
2 later than December 15, 2008. Grunfeld Decl. Ex. A. The Stipulated Order requires Defendants
3 to fully implement ADA reforms to the revocation process no later than 90 days after the signing
4 of the Stipulation, *i.e.*, by September 4, 2008. To ensure these reforms are effective, the
5 Stipulated Order requires extensive training of the staff responsible for the juvenile parole
6 revocation proceedings, as well as development of Policies and Procedures and revision of
7 outdated forms and regulations.

8 The significant advantages to the class include the following requirements under the
9 Stipulated Order:

10 **a. Right to Counsel**

11 The Stipulated Order provides that Defendants must develop and implement policies and
12 procedures to implement the due process protections and meet certain enumerated requirements
13 in the juvenile parole revocation process. These requirements include, among other things, that
14 “Defendants shall appoint counsel to represent each and every Juvenile Parolee in the
15 Revocation Process” and that “Defendants shall not accept any written admissions to a violation
16 of condition of parole, or waivers of hearing rights, or the right to counsel made prior to the
17 Juvenile Parolee’s first meeting with his or her counsel.” Grunfeld Decl. Ex. A, at 6:11-12. The
18 Stipulated Order also provides that a juvenile parolee may be represented by counsel of his or her
19 own choosing, including the public defender who represented the parolee at the time of
20 commitment, or private counsel at the parolee’s expense. *Id.* Ex. A at 6:27-7:6.

21 The appointment of counsel will take place early in the process—no later than 8 business
22 days after imposition of the Parole Hold. *Id.* Ex. A at 6:14-15. “At the time of appointment,
23 counsel shall be provided with all of the evidence in the State’s possession that the State intends
24 to rely upon or that may be exculpatory. . . Evidence or documents not provided to the Juvenile
25 Parolee’s counsel at least 48 hours prior to the hearing shall not be admitted or considered in the
26 hearing unless Defendants can show good cause for the delay.” *Id.* Ex. A at 7:7-14.

27 The Stipulated Order also provides that class members are entitled to counsel when
28 Defendants seek to extend the sentencing period that has been imposed after a parole revocation

1 proceeding. “A Juvenile Parolee who faces a Revocation Extension Hearing shall be represented
2 by counsel at the hearing and have all of the same rights articulated in ¶¶ 41, 42, and 43.” *Id.* Ex.
3 A at 11:25-27.

4 This Court confirmed the Juvenile Parolees’ right to counsel in revocation proceedings in
5 its January 29, 2008 Order. However, that right has not been tested or affirmed on appeal. At
6 the time the settlement was reached, this Court had not yet heard or resolved the issue of the
7 right to counsel in Revocation Extension proceedings or appeals. The Stipulated Order ensures
8 that each Juvenile Parolee will be provided counsel in parole revocation and revocation
9 extension proceedings and appeals from these proceedings.

10 **b. Nature and Timing of Proceedings**

11 The Stipulated Order offers parity with the adult system for timing and other due process
12 protections in the revocation process, requiring that “Defendants shall provide a live hearing to
13 determine probable cause no later than 13 business Days after the Parole Hold is placed.” *Id.* Ex.
14 A at 10:12-13. “For all Juvenile Parolees who do not waive or seek a continuance of a timely
15 Parole Revocation Hearing, Defendants shall provide a live, in-person, face-to-face final
16 Revocation Hearing on or before the 35th calendar Day after the Parole Hold is placed absent
17 good cause.” *Id.* Ex. A at 10:19-22. “All Parole Revocation Hearings shall be held within a 50-
18 mile radius of the alleged violation. The location of hearings shall be accessible to and usable by
19 Juvenile Parolees with Disabilities.” *Id.* Ex. A at 12:3-5.

20 Whereas parole revocation sentencing was previously indeterminate and could extend
21 until a Juvenile Parolee “aged out” of the juvenile system at age 25, the Stipulated Order limits
22 the amount of time that a Juvenile Parolee may be returned to custody for a parole violation to
23 one year. The Stipulated Order requires that Defendants “develop a matrix of ranges of
24 revocation terms for specific violations.” *Id.* Ex. A at 11:12-14. Defendants are also required to
25 “consider whether alternatives to incarceration are warranted.” *Id.* Ex. A at 27:15-19. While
26 Defendants previously added time to a Juvenile Parolee’s sentence without a formal hearing, the
27 Stipulated Order provides that a Juvenile Parolee’s revocation period may be extended only after
28 Defendants hold a Revocation Extension Hearing, with due process and counsel provided,

1 “which shall take place before a Juvenile Parole Board hearing Officer at the earliest practical
2 time after the alleged conduct that is grounds for the charge.” *Id. Ex. A* at 11:19-20.

3 The Stipulated Order also ensures important Confrontation Clause rights in revocation
4 proceedings. “The use of hearsay evidence in Parole Revocation Hearings and Revocation
5 Extension Hearings shall be limited by the Juvenile Parolee's confrontation rights in the manner
6 set forth in controlling legal authority.” *Id. Ex. A* at 12:6-8.

7 In addition, the Stipulated Order eliminates the prior practice of Temporary Detentions,
8 which allowed Defendants to hold Juvenile Parolees for up to 30 days with no hearing. *Id. Ex. A*
9 at 12:18-19. The Stipulated Order also mandates that the “Parolee shall be released as soon as
10 practically possible, but no later than 3 business Days after the hearing” “[i]n the event that the
11 hearing officer/decision-maker decides to revoke parole, but imposes an amount of revocation
12 time that is less than the amount of time the Juvenile Parolee has been detained.” *Id. Ex. A* at
13 12:11-14. The Stipulated Injunction also prohibits discrimination in parole placements and
14 referrals to services. *Id. Ex. A* at 9:21-22.

15 In sum, the Stipulated Order confers upon the class of Juvenile Parolees important due
16 process rights and other protections, as well as new limitations on the term of incarceration,
17 some of which may not have been obtainable had the matter been litigated through trial.

18 **c. ADA and Effective Communication Accommodations**

19 The Stipulated Order’s ADA protections are significant, requiring, among other things,
20 that Defendants “ensure that Juvenile Parolees with limited English skills, effective
21 communication needs, and/or Disabilities are provided with accommodations needed to
22 communicate effectively, including but not limited to language interpreters, sign language
23 interpreters, assistive listening devices, simplified forms, large print forms, forms translated to
24 Spanish, and Galileo readers.” *Id. Ex. A* at 14:26-15:2. Moreover, “[p]rior to serving any
25 notices upon a Juvenile Parolee and prior to all revocation proceedings, Defendants shall take
26 reasonable steps to identify and track Juvenile Parolees with Disabilities or effective
27 communication needs.” *Id. Ex. A* at 15:14-16.

28 The Stipulated Order mandates that Defendants “make accommodations for Juvenile

1 Parolees with Disabilities and effective communication needs in order to assist them in preparing
2 for Revocation Proceedings. Such accommodation shall include up to three additional hours of
3 representation by appointed counsel.” *Id.* Ex. A at 15:3-6. “[A] prompt and effective grievance
4 procedure” shall be developed and implemented by Defendants “for processing any complaints
5 of denials of requests for accommodations;” all such grievances requesting reasonable
6 accommodations at a scheduled hearing shall be decided as soon as possible before the hearing,
7 and the hearing shall not be delayed as a result unless Defendants can show there is good cause.”
8 *Id.* Ex. A at 16:5-10. Furthermore, the Stipulated Order requires that “[a]ll forms provided to
9 Juvenile Parolees shall be readily available in alternative formats, including, but not limited to,
10 large print, Braille and audio tape. Whenever Juvenile Parolees with effective communication
11 needs or disabilities are given forms that they cannot understand, they shall be provided a
12 reasonable accommodation to enable them to understand the forms to the best of their abilities.”
13 *Id.* Ex. A at 16:15-20. The Stipulated Order thus ensures the provision of a broad array of
14 legally required accommodations to class members with physical or mental disabilities or
15 effective communication needs in the parole revocation process.

16 **d. Right to Appeal**

17 The Stipulated Order re-affirms the right of Juvenile Parolees to a prompt appeal of a
18 parole revocation decision, and requires Defendants to promulgate a fair appeals process that
19 includes, among other elements, “The Juvenile Parolee must be informed at the hearing of
20 his/her right to appeal the parole revocation decision;” “the appeal will be decided by the
21 Executive Officer of the Juvenile Parole Board or his or her designee within 10 business Days of
22 receipt of the appeal, and served on the Juvenile Parolee within 5 business Days of the appeal
23 decision;” “if the Executive Officer or his designee decides to grant a new hearing, that hearing
24 must be held within 10 business Days of the issuance of the appeal decision;” and “Juvenile
25 Parolees have the right to assistance by counsel in preparing an administrative appeal and at any
26 new hearing granted pursuant to an appeal.” *Id.* Ex. A at 13:7-26. It is uncertain if such broad
27 rights of appeal, including the right to counsel on appeal, could have been achieved had the case
28 been litigated through trial.

1 Finally, pursuant to the terms of the Stipulated Order, “Defendants shall not use any
2 blanket policy of requiring mechanical restraints for all juvenile parolees in parole revocation
3 hearings.” *Id.* Ex. A at 15:14-16.

4 **e. Unresolved Issue**

5 The settlement resolves all the claims in this case. The most significant issue
6 remaining is the scope and details of the monitoring process to confirm and enforce compliance
7 with the Injunction, including the role of Plaintiffs’ counsel in the monitoring process. The
8 parties will attempt to resolve that issue prior to full implementation of the Stipulated Order.

9 **2. The Case Settled After Discovery**

10 In addition to the benefits of the proposed settlement, courts consider the status of the
11 litigation at the time of settlement. This case had been aggressively litigated for nearly two
12 years, with over 400 docket entries reflecting Plaintiffs’ vigorous advocacy and Defendants’
13 thorough defense. As noted above, when the final round of settlement negotiations began,
14 discovery was closed and the parties had undertaken extensive expert and fact discovery.
15 Plaintiffs had already prevailed on their motion for partial summary judgment and their motion
16 for preliminary injunction. Grunfeld Decl. ¶ 5. A second round of motions for summary
17 judgment were pending at the time the Stipulated Order was agreed to by the parties. *Id.* ¶ 8.

18 **3. There Was No Fraud or Collusion.**

19 The requirement that a settlement be fair is designed to protect against collusion among
20 the parties. *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F.Supp. 1379, 1383 (D. Md. 1983).
21 There is usually an initial presumption that a proposed settlement is fair and reasonable when it
22 was the result of arm’s-length negotiations. *See 4 Newberg on Class Actions*, § 11.41 at 90 (4th
23 ed. 2002); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74
24 (S.D.N.Y. 2000), *aff’d D’Amato v. Deutsche Bank*, 236 F.3d 78 (2nd Cir. 2001).

25 The settlement was the result of arm’s-length negotiations by experienced class action
26 lawyers. The negotiations occurred over the period from June 13, 2007, when the parties first
27 met at JAMS, continued regularly during the summer of 2007, and periodically from that time
28 through and after the Court’s order of January 29, 2008 appointing Chase Riveland as settlement

1 referee. During that time, the parties engaged in multiple conferences and revisions of draft
2 settlement injunctions, all leading up to the June 4, 2008 Stipulated Order. Grunfeld Decl. ¶ 12.

3 **4. Class counsel have extensive experience in prisoner and**
4 **parolee class action litigation and believe that the**
5 **settlement is in the best interest of the class.**

6 Plaintiffs' Counsel — Rosen, Bien & Galvan, Bingham McCutchen, the Youth Law
7 Center and the Prison Law Office — have extensive experience in class action litigation on
8 behalf of prisoners and parolees (as well as many other types of class action lawsuits). Grunfeld
9 Decl., ¶¶ 13-16. Each of these firms has served as lead or lead co-counsel in major cases
10 representing classes of prisoners and parolees or juveniles in actions resulting in systemic
11 injunctive relief and the development of policies and procedures to implement such relief.
12 Grunfeld Decl. ¶ 13. Plaintiffs' Counsel also have considerable expertise in monitoring and
13 enforcing complex post-judgment remedial policies and procedures concerning the rights of
14 large classes of prisoners and parolees or juveniles. Grunfeld Decl. ¶ 14.

15 In their work on this and other cases, Plaintiffs' Counsel have also had extensive contacts
16 with prisoners, parolees, and juveniles. Grunfeld Decl. ¶ 15. Plaintiffs' Counsel have discussed
17 and corresponded with many parolees (and parole revocation defense attorneys) regarding their
18 experiences in the parole revocation system. *Id.*

19 In evaluating the fairness of the proposed settlement, Plaintiffs' Counsel have also
20 communicated with class members, including the named class representatives, to the extent they
21 were able to locate them. Grunfeld Decl. ¶ 16.

22 As described more fully in the declaration of Gay Grunfeld, based on the experience of
23 Plaintiffs' Counsel, their contacts with class members, experts and other professionals in the
24 field, and careful consideration of the objections to the settlement submitted to the Court,
25 Plaintiffs' Counsel believe the proposed settlement is fair, adequate and reasonable, is in the best
26 interest of the class, and confers significant advantages to the class. Grunfeld Decl. ¶ 16.
27
28

1 **5. Strength of plaintiffs’ claims and risk, expense,**
2 **complexity, and likely duration of further litigation**

3 Based on the discovery taken in this case, Plaintiffs believe their claims are very strong
4 and that they would prevail on all issues at trial. The strength of Plaintiffs’ claims is further
5 evidenced by the fact that their first summary judgment motion and motion for preliminary
6 injunction were not only successful, but led the parties into serious settlement discussions which
7 resulted in a proposed settlement that confers significant benefits to the class. Nonetheless, as
8 discussed above, further litigation would have delayed implementation of the due process and
9 ADA protections obtained as a result of this settlement. This is particularly true of the time-add
10 issue, which this Court held may have required the filing of a second lawsuit. In addition,
11 Plaintiffs risked the delay and uncertainty of the appellate process. The benefits to the Class
12 from immediate implementation of the Injunction’s reforms are even more critical due to the fact
13 that class members “age out” of the defendants’ jurisdiction at age 25.

14 **6. Reaction of the class members and others to the**
15 **proposed settlement**

16 “Courts have taken the position that one indication of the fairness of a settlement is the
17 lack of or small number of objections.” 4 Newberg on Class Actions § 11.48 (4th ed. 2008); *see*
18 *also In re Milken and Associates Securities Litigation*, 150 F.R.D. 46, 56 (S.D.N.Y.,1993)
19 (holding the absence of objections from a class of more than 11,750 persons was a “significant
20 factor” in granting final approval of settlement). Here, Plaintiffs’ counsel have received no
21 response to the settlement notice from any member of the class objecting to the fairness of the
22 settlement, nor have there been any third party objections. Grunfeld Decl. ¶ 16. Nor has any
23 class member sought to intervene and oppose the settlement. In fact, one group of Juvenile
24 Parolees has written this Court in full support of the settlement. *See* Letter to Court from Jose M.
25 Luis dated September 2, 2008 (with signatures from sixteen other Juvenile Parolees agreeing
26 with the settlement) (Docket No. 423). Others also responded to voice support for the
27 settlement. (Docket No. 428).

28 The only correspondence received in response to the class notice that could be considered

1 an objection is based on one particular aspect of the Injunction. Two class members objected
2 that the Stipulated Order's end to time-adds for revoked parolees and the one-year maximum for
3 a revocation term might not apply to them because they were revoked prior to the
4 implementation date. This is an issue in dispute between the parties, and one that Plaintiffs may
5 seek to remedy through the Special Master or the Court. If Plaintiffs' position prevails, then
6 these issues are moot because the Injunction will apply to these class members.

7 **IV. CONCLUSION**

8 The terms of the Stipulated Order plainly meet the standards for finding that the
9 settlement is "fair, reasonable, and adequate." For the foregoing reasons, the parties respectfully
10 request that their motion be granted and that this Court issue an order granting final approval of
11 the settlement agreement entered into by the parties, and that the Court sign and enter the
12 Stipulated Order.

13
14 Respectfully submitted,

15 DATED: September 22, 2008

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16
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19 DATED: September 22, 2008

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