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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15

16 JERRY VALDIVIA, et al.,
17 Plaintiffs,
18 v.
19 ARNOLD SCHWARZENEGGER, et al.,
20 Defendants.
21

No. Civ. S-94-0671 LKK/GGH

STIPULATION AND ORDER
REGARDING REMEDIAL
SANCTIONS

1 THE PARTIES, THROUGH THEIR RESPECTIVE COUNSEL, HEREBY STIPULATE
2 AS FOLLOWS:

3 WHEREAS:

4 1. On March 9, 2004, after notice to the class, receipt of objections, and a
5 fairness hearing, the Court approved a Stipulation for Permanent Injunctive Relief in this
6 matter (the “*Valdivia* Permanent Injunction”), requiring among other things that “as part of
7 the overall reform of the revocation process, the Parole and Community Services Division
8 of the Department of Corrections will begin using remedial sanctions/community based
9 treatment,” including “the Substance Abuse Treatment Control Units, Electronic
10 Monitoring, Self-Help Outpatient/aftercare programs, and alternative placement in
11 structured and supervised environments.” *Valdivia* Permanent Injunction, Exhibit A at 1.
12 Defendants set forth a specific goal for remedial sanctions, “to reduce the number of returns
13 to prison for violations of parole by up to 10% in 2004 and by up to 30% by 2006.” *Id.* at 2.

14 2. On June 8, 2005, after notice and a hearing, the Court ruled that “the
15 permanent injunction requires that defendants (1) consider remedial sanctions throughout
16 the new parole revocation process, and that the remedial sanctions include (2) ‘the
17 Substance Abuse Treatment Control Units, Electronic Monitoring, Self-Help
18 Outpatient/aftercare programs, and alternative placement in structured and supervised
19 environments.’” (June 8, 2005 Order at 10:7-12.) The Court held that the *Valdivia*
20 Permanent Injunction’s “reference to and attachment of the VRP [or *Valdivia* Remedial Plan
21 at Exhibit A]... conforms with the ‘four corners rule’ as well as Rule 65(d)” and found that
22 Defendants “were in violation of the Permanent Injunction Order by virtue of the
23 elimination of the remedial sanctions of Electronic Monitoring and SATCU.” (June 8, 2005
24 Order at 8:12-14; 15:19-21.)

25 3. Defendants have stated their intention to replace SATCU with In-Custody
26 Drug Treatment Programs (“ICDTP”) and Electronic Monitoring with Electronic In-Home
27 Detention (“EID”). Whether and to what extent these new programs are appropriate
28

1 substitutes, and are being implemented in a manner that substantially replaces what was lost
2 when SATCU and Electronic Monitoring were eliminated has not been determined.

3 4. On July 4, 2006, the Special Master directed Defendants to “prepare a new
4 remedial sanctions plan, to be presented to the Special Master and the Plaintiffs’ attorneys
5 no later than November 30, 2006.” Specifically, the Special Master stated that “the plan
6 should include any changes in programs, policies or courses of action that meet the spirit
7 and projected numbers of the original remedial sanctions plan,” and that “the plan must
8 include specific details concerning the programs to be offered; the populations for which
9 they are designed; the logistics required to design, fund and contract for, and oversee the
10 programs, including training of BPH and DAPO staff in using them; and anticipated
11 timelines for each of those steps.”

12 5. The parties disagree as to the scope of Defendants’ obligations pursuant to the
13 Court’s June 8, 2005 Order and the *Valdivia* Permanent Injunction, and reserve all rights to
14 resolve this disagreement either with the assistance of the Special Master dispute resolution
15 process or through litigation. The parties agree, however, that certain steps must be taken
16 immediately to ensure timely compliance with the remedial sanctions provisions of the
17 *Valdivia* Permanent Injunction. Defendants contend that the steps recited herein may bring
18 them into substantial compliance with the June 8, 2005 Order. Plaintiffs disagree, and in
19 any event, believe that full compliance with the Permanent Injunction is the important
20 target.

21 6. The parties have been meeting and continue to meet regularly with the Special
22 Master concerning remedial sanctions. The Special Master joins in the parties’ request that
23 the Court enter this Order, in furtherance of the remedial process.

24 THEREFORE, IT IS HEREBY ORDERED THAT:

25 I. In Custody Drug Treatment Program (ICDTP)

26 A. Defendants have stated that their goal is to establish 1800 ICDTP beds.
27 Plaintiffs have not agreed that there is any evidence that 1800 ICDTP beds is the
28 appropriate number to ensure that ICDTP is made reasonably available at all stages of the

1 parole revocation process. Defendants represent that approximately 288 ICDTP beds are
2 currently operating as of March 16, 2007. Defendants shall make every effort to make 1800
3 ICDTP beds available for use as remedial sanctions no later than April 1, 2008. In the
4 interim, Defendants shall take the following steps:

5 B. Defendants shall make every effort to have 150 ICDTP beds operational and
6 available for use as remedial sanctions for parole violators in Los Angeles County no later
7 than August 1, 2007, including at least 30 ICDTP beds designated for female parolees.

8 C. Defendants shall make every effort to have 90 new ICDTP beds operational
9 and available for use as remedial sanctions in Orange County no later than November 1,
10 2007, including at least 30 ICDTP beds designated for female parolees.

11 D. In addition to the 528 ICDTP beds discussed above (288 existing plus 150 in
12 Los Angeles County plus 90 in Orange County), Defendants shall take all steps necessary to
13 ensure that they reach 1800 beds by April 1, 2008 in a phased manner. Defendants shall
14 phase in the remaining 1272 beds with the following targets: by November 1, 2007, 424
15 additional beds anywhere in the state; by January 1, 2008, 200 additional beds anywhere in
16 the state; by February 15, 2008, 200 additional beds anywhere in the state; and the balance
17 of 448 beds by April 1, 2008. With the addition of these beds, by April 1, 2008, there shall
18 be no fewer than 400 ICDTP beds per Region, and no fewer than 40 ICDTP beds designated
19 for female parolees in each Region. Defendants represent that they are making and will
20 continue to make special efforts to secure ICDTP beds in underserved areas of Region IV.

21 E. The figures in this section are not intended to establish any set ratios of male
22 to female beds.

23 F. Defendants shall periodically report to the Special Master and Plaintiffs'
24 counsel on their efforts to secure the ICDTP beds described herein with the first report due
25 June 1, 2007, and with reports as needed thereafter, and at least every 60 days.

26
27 II. Electronic In Home Detention (EID)

28 By May 1, 2007, Defendants shall have 500 EID units operational, with 250 of

1 these units dedicated to use as remedial sanctions, and the remaining 250 available for use
2 either in parole supervision or remedial sanctions. CDCR will provide the minimal level of
3 telephone service required for EID as described in DAPO policy no. 07-06 at the discretion
4 of CDCR.

5
6 III. Interim Use of Residential Multi-Service Center (RMSC), Female Residential Multi-
7 Service Center (FRMSC), and Parolee Service Center (PSC)

8 A. While Defendants are building their ICDTP capacity leading up to 1800 beds
9 by April 1, 2008, Defendants shall make existing and proposed RMSC, FRMSC and PSC
10 beds available for use as remedial sanctions in the manner set forth below.

11 B. Beginning immediately, and during the above-described phase-in period for
12 ICDTP, Defendants shall make one-half (1/2) of all RMSC, FRMSC and PSC beds
13 available as remedial sanctions.

14 C. Defendants represent that they are making and will continue to make special
15 efforts to secure RMSC, FRMSC and PSC resources in the underserved areas of Region IV.

16 D. The parties shall meet and confer, on or before April 30, 2008, as to whether
17 and to what extent, the RMSC, FRMSC and PSC programs shall remain available as
18 remedial sanctions.

19 E. The intent of this section is not to give RMSC, FRMSC, and PSC the same
20 status under the *Valdivia* Permanent Injunction that ICDTP and EID may have.

21
22 IV. Distribution of Policy and Procedure Information

23 A. Defendants shall undertake to announce, publicize and train the management
24 and staff of DAPO and BPH regarding the availability of ICDTP, RMSC, FRMSC, and PSC
25 beds, as well as EID units for use as remedial sanctions in two phases: an immediate
26 interim phase, and a long-term phase.

27 1. Interim Memorandum to Field. By March 30, 2007, Defendants shall
28 provide Plaintiffs' counsel and the Special Master with a draft interim communication to the

1 field regarding the availability of ICDTP, RMSC, FRMSC, and PSC beds and EID Units for
2 use as remedial sanctions, including all information that Defendants believe is necessary to
3 facilitate immediate use of these programs as remedial sanctions, including but not limited
4 to a statement the above-listed programs are available as remedial sanctions, attachment of
5 existing policy and procedure documents regarding their use, existing inclusionary and
6 exclusionary criteria, and lists of the program names, contact information and numbers of
7 beds. The interim memorandum shall also include information regarding other readily
8 identifiable existing programs that are available as remedial sanctions, and a statement as to
9 what populations they are available for, including but not limited to the Department of
10 Addiction Recovery Services SASCA aftercare programs for qualified parolees, the
11 Community Based Coalition (CBC) program in Los Angeles County, and DAPO Day
12 Reporting Centers. The Interim Memorandum to Field shall also include appropriate
13 preliminary information on inter-county transfers, as discussed at Section VI.A, below.
14 Plaintiffs' counsel shall respond to this document no later than April 3, 2007, and
15 Defendants shall distribute it to the field and to the parolee defense panel as soon as possible
16 thereafter.

17 2. Long-Term Memorandum to Field. Defendants have represented that
18 they intend to undertake revisions to ICDTP, EID, RMSC, and PSC policies and procedures
19 to facilitate their use as remedial sanctions, including but not limited to reviewing and
20 reconsidering exclusionary criteria to make the programs more widely available.
21 (Defendants represent that FRMSC policies and procedures have not yet been written, and
22 will be written to comport with the principles stated here.) By May 1, 2007, Defendants
23 shall provide Plaintiffs' counsel and the Special Master with a draft long-term memorandum
24 to the field regarding the availability of ICDTP, RMSC, and PSC beds, as well as EID
25 Units, for use as remedial sanctions. The long-term memorandum shall also include
26 information regarding other readily identifiable existing programs that are available as
27 remedial sanctions, and a statement as to what populations they are available for, including
28 but not limited to the Department of Addiction Recovery Services SASCA aftercare

1 programs for qualified parolees, the Community Based Coalition (CBC) program in Los
2 Angeles County, and DAPO Day Reporting Centers. The Long-Term Memorandum to
3 Field shall also include information on inter-county transfers, as discussed at Section VI.A,
4 below. Plaintiffs' counsel shall respond to this document no later than May 15, 2007. The
5 parties shall meet and confer on May 31, 2007 regarding the Long-Term Memorandum.
6 Defendants shall make all reasonable efforts to distribute it to the field and to the parolee
7 defense panel no later than July 2, 2007.

8 B. Defendants shall also develop, after consultation with Plaintiffs' counsel and
9 the Special Master, no later than August 15, 2007, an implementation and training plan to
10 assure that remedial sanctions are reasonably considered at each stage of the parole
11 revocation process, and are appropriately and fairly available to parolees.

12 C. Defendants agree to evaluate remedial sanctions programs. The inclusion of
13 this requirement is not a concession by Defendants that evaluations or their criteria are
14 within the scope of the *Valdivia* Permanent Injunction.

15 16 V. Graduated Sanctions/Parole Violation Matrix

17 Defendants have represented that they are investigating the development and use of
18 a decision-making matrix to provide DAPO and BPH decision-makers with CDCR
19 supported and community-based alternatives to incarceration for response to violations of
20 parole. Defendants shall report to the Special Master and Plaintiffs on the progress and
21 results of this investigation no later than July 1, 2007, and periodically thereafter as
22 necessary, but at least every 60 days until completion of the matrix investigations or
23 resulting matrix implementation.

24 25 VI. Fair Consideration/Equal Access

26 A. County to County Transfer Policy

27 The interim and long-term memoranda described above at Section IV.A shall include
28 appropriate statements of the remedial sanctions county-to-county transfer policy. The

1 Memoranda shall explain that temporary placement of out-of-county parolees in remedial
2 sanctions is not restricted by the 5% limitation on out-of-county transfers. The Memoranda
3 shall expressly state that an otherwise eligible parolee shall not be excluded from a remedial
4 sanctions program based solely on the unavailability of that program in his or her county of
5 residence or Parole Region. The interim and long-term memoranda shall direct decision-
6 makers to inquire about the availability of an appropriate program anywhere in the state and
7 provide directions for ascertaining availability of a placement and effecting an out-of-
8 county placement. The appropriateness of a county to county transfer is within the sole
9 discretion of the CDCR.

10 B. Parolees with Mental Disabilities

11 In establishing the 1800 ICDTP beds referred to above in Section I.A, above,
12 Defendants shall make every effort to secure 20 beds in each region targeting the needs of
13 parolees with dual diagnoses of mental illness and substance abuse. These efforts shall be
14 documented in the periodic reports described above at Section I.F.

15 VII. Unresolved Subjects

16 Among the remedial sanctions subjects that are as yet unresolved, the parties agree
17 to engage in further negotiations on the following topics and to file a Status Report with the
18 Special Master on said negotiations by September 1, 2007. Among the remaining disputes
19 are whether and to what degree the issues below are within the scope of this case.

20 A. Alternative Placement in Structured and Supervised Environments:

21 Clarification regarding Defendants' currently funded, currently operating, and proposed
22 CDCR and community-based residential programs available to DAPO and BPH staff for use
23 as remedial sanctions.

24 B. Self-Help Outpatient/Aftercare Programs: Clarification regarding Defendants'
25 currently funded, currently operating, and proposed CDCR and community-based Self-Help
26 Outpatient/Aftercare Programs available to DAPO and BPH staff for use as remedial
27 sanctions.
28

1 C. Parolees with Disabilities: Defendants' plan to provide remedial sanctions to
2 parolees with disabilities that are the same or equivalent to remedial sanctions available to
3 parolees without disabilities, including the removal of any and all blanket exclusions of
4 parolees from remedial sanctions based on disabilities or past or present participation in the
5 Disability Placement Program, Developmental Disability Program, or mental health case
6 load.

7 D. Female Parolees: Defendants' plan to provide remedial sanctions to female
8 parolees that are the same or equivalent to remedial sanctions available to male parolees,
9 including the availability of PSAP or programs providing equivalent benefits to female
10 parolees.

11 E. Implementation, Training, and Supervision: Defendants' plan, including
12 timeline, for updating policies and procedures regarding remedial sanctions, conducting
13 remedial sanctions training for DAPO and BPH decision-makers, and the development of a
14 system by which every DAPO and BPH decision maker is able to determine the availability
15 of remedial sanctions statewide on any given day.

16 F. Compliance Measurement: Defendants' plan, including timeline, for the
17 modification of information systems, including RSTS and CalParole, to track the
18 consideration of remedial sanctions at each stage of the parole revocation process.

19 G. Parolee Defense Counsel: Defendants' plan to provide to parolee defense
20 counsel all policies and procedures circulated to DAPO and BPH decision-makers regarding
21 the availability of remedial sanctions statewide , including the eligibility and exclusionary
22 criteria for each program.

23 H. Remedial Sanctions Programs to Address the Needs of Parolees with Severe
24 Mental Illness: The parties have discussed and continue to discuss the problems of parolees
25 with severe mental illness whose violations are linked to their mental illness or unmet
26 mental health needs. Plaintiffs' position is that in order to be successful and meaningfully
27 available, the remedial sanctions program must include some programs specifically directed
28 at parolees with current functional impairments at levels comparable to those required at

1 Enhanced Outpatient Program, Mental Health Crisis Bed, and Department of Mental Health
2 Levels of Care in CDCR Adult Institutions.

3
4 This Stipulated Order shall be binding on the parties as of the date it is fully
5 executed by them, regardless of whether it has been entered by the Court as of that time.
6 The provisions of this Order shall remain in full force and effect until further order of this
7 Court.

8 IT IS SO STIPULATED.

9 Dated: April 2, 2007

ROSEN, BIEN & GALVAN, LLP

11 By /s/ Michael W. Bien
12 Michael W. Bien
13 Attorneys for Plaintiffs

14 Dated: April 2, 2007

OFFICE of the ATTORNEY GENERAL
of the STATE OF CALIFORNIA

16 By /s/ Katherine Nelson
17 Katherine Nelson
18 Deputy Attorney General
19 Attorneys for Defendants


20 The Special Master has reviewed this Stipulation and adopts its terms as a Recommendation
21 to the Court.

22 Dated: April 2, 2007

23 By /s/ Chase Riveland
24 CHASE RIVELAND
25 Special Master

26 IT IS SO ORDERED.

27 Dated: April 3, 2007


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT