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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 MARCIANO PLATA, et al.,

15 Plaintiffs,

16 v.

17 GRAY DAVIS, et al.

18 Defendants.  
19

No. C-01-1351 TEH

STIPULATION FOR  
INJUNCTIVE RELIEF

20 INTRODUCTION

21 1. The parties enter into this stipulation to address issues pertaining to  
22 medical care services provided by the California Department of Corrections (CDC). The  
23 plaintiffs are California state prisoners who have serious medical needs. The defendants  
24 include the Governor, Director of Finance, Youth and Adult Correctional Agency  
25 Secretary, Director of Corrections, and Deputy Director, Health Care Services Division,  
26 and are sued in their official and individual capacities as state officials responsible for the  
27 operation of the CDC and its health care delivery system.

28 2. This action was filed by plaintiffs on April 5, 2001, and an amended

FILED

FEB 4 2002

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FILED

JUN 13 2002

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

608/kd

1 complaint was filed on August 20, 2001. The action alleges that plaintiffs are not  
2 receiving constitutionally adequate medical care as required by the Eighth Amendment to  
3 the U.S. Constitution and that defendants are not complying with the Americans with  
4 Disabilities Act (ADA) and § 504 of the Rehabilitation Act.

5           3. The parties have conducted informal negotiations since July 1999, in an  
6 effort to resolve plaintiffs' demand that medical services be improved. Those  
7 negotiations have been undertaken at arm's length and in good faith between plaintiffs'  
8 counsel and high ranking state officials and their counsel. The parties have reached  
9 agreement on procedures that the parties will follow in this case for resolving disputes  
10 concerning the constitutional adequacy of medical services. The parties freely,  
11 voluntarily, and knowingly with the advice of counsel enter into this Stipulation for that  
12 purpose.

13           WHEREAS, a dispute exists between the parties as to the extent to which  
14 CDC's provision of inmate-medical care meets constitutionally-mandated minimum  
15 standards;

16           WHEREAS, this dispute arose over the course of the last fifteen years, and  
17 culminated in plaintiffs filing this statewide-medical class action;

18           WHEREAS, the Governor of the State of California over the past three  
19 years has allocated substantial new resources to improve the medical system and is  
20 committed to continuing the improvements to meet applicable standards;

21           WHEREAS, this stipulation is intended to be narrowly drawn to meet those  
22 applicable standards.

23  
24           **A. Terms and Conditions**

25           4. The CDC shall implement Health Care Services Division Policies and  
26 Procedures (Policies and Procedures), to be filed with the Court on February 15, 2002.  
27 Defendants shall make all reasonable efforts to secure the funding necessary to implement  
28 the Policies and Procedures. The Policies and Procedures are designed to meet or exceed

1 the minimum level of care necessary to fulfill the defendants' obligation to plaintiffs  
2 under the Eighth Amendment of the United States Constitution. It is the intent of this  
3 Stipulation to require defendants to provide only the minimum level of medical care  
4 required under the Eighth Amendment. Nothing in this stipulation shall be construed to  
5 require more of the defendants than is necessary to enforce the Eighth Amendment of the  
6 United States Constitution. Any disputes as to whether defendants' Policies and  
7 Procedures and the Audit Instrument will satisfy their obligations under the Eighth  
8 Amendment shall be resolved pursuant to the dispute resolution procedures set forth in ¶¶  
9 26-28

10           5. The CDC shall implement the Policies and Procedures at each prison  
11 pursuant to the following schedule, which may be rearranged for the purpose of grouping  
12 or clustering improvements pursuant to ¶ 24 below:

13  
14 Calendar Year<sup>1/</sup> 2003: Northern California Women's Facility, Valley State Prison for  
15 Women, California State Prison - Corcoran; High Desert State  
16 Prison, California State Prison - Sacramento, and Salinas  
Valley State Prison.<sup>2/</sup>

17 Calendar Year 2004: California Correctional Institution, Mule Creek State Prison,  
18 San Quentin State Prison, Substance Abuse Treatment  
Facility, and California State Prison - Solano.

19 Calendar Year 2005: Centinela State Prison, California Institute for Men,  
20 California Men's Colony, California Medical Facility, and  
North Kern State Prison - II (Delano II).

21 Calendar Year 2006: California Rehabilitation Center, Deuel Vocational Center,  
22 Folsom State Prison, California State Prison - Los Angeles  
County, and Pleasant Valley State Prison.

23  
24  
25           1. The Calendar Year begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup>.

26           2. If, pursuant to ¶ 8, below, the district court determines that prisoners at the  
27 California Institution for Women and the Central California Women's Facility are part of  
28 the plaintiff class, the Policies and Procedures shall be implemented at these prisons in  
Calendar Year 2003.

1 Calendar Year 2007: California Correctional Center, Calipatria State Prison,  
2 Chuckawalla Valley State Prison, North Kern State Prison,  
and Richard J. Donovan Correctional Facility.

3 Calendar Year 2008: Avenal State Prison, Correctional Training Facility, Ironwood  
4 State Prison, Sierra Conservation Center, and California State  
Prison - Wasco.

5 Prior to Calendar Year 2003, CDC shall initiate appropriate hiring  
6 procedures to hire medical staff for employment beginning January 1<sup>st</sup>.

7 6. Beginning January 1, 2003 defendants shall implement the following  
8 practices or procedures at each institution:

9 a. Registered Nurses shall staff the emergency clinics 24 hours  
10 per day every day.

11 b. Inter-institution transfers shall occur pursuant to the protocol  
12 established in the Policies and Procedures.

13 c. Treatment protocols set forth in the Policies and Procedures  
14 will be implemented at all institutions subject to the  
15 availability of additional resources.

16 d. A priority ducat system consistent with CDC regulations shall  
17 be instituted.

18 e. Outpatient special diets will be available for patients with  
19 liver and kidney end-stage organ failure.

20 7. The parties understand and agree that the 602/inmate-grievance  
21 procedure is an integral part of the provision of essential medical care and is integrated  
22 into the Policies and Procedures. Accordingly, the parties agree that, in the first instance,  
23 all complaints regarding medical care to an individual inmate, except those requiring  
24 urgent medical care, shall be submitted to defendants after utilizing the inmate grievance  
25 procedure. If after the appeal has reached the third director's level of review and all  
26 administrative relief has been exhausted, or the CDC has not responded to the inmate's  
27 appeal within 30 days at the Director's level of review and plaintiffs contend that the  
28 grievance process has failed to adequately address the problem, plaintiffs may bring the

1 medical care concern to the attention of defense counsel, who shall respond in writing  
2 within 30 days. Plaintiffs' counsel may also contact the Chief Medical Officers at the  
3 institutions to inquire about the care furnished to particular inmates on a monthly basis.  
4 Defendants' counsel shall be notified about such contacts.

5           8. The parties agree that this action shall be maintained as a class action  
6 pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure and that the class  
7 consists of all prisoners in the custody of the CDC with serious medical needs, except  
8 those incarcerated at Pelican Bay State Prison. The parties disagree about whether  
9 prisoners incarcerated at the California Institution for Women (CIW) and the Central  
10 California Women's Facility (CCWF), previously litigated in a class action entitled  
11 *Shumate v. Wilson* (E.D. Cal.) CIV S-95-0619 WBS JFM P, should be members of the  
12 class. To resolve this dispute defendants shall move within sixty days after this  
13 Stipulation is approved by the Court for an order determining whether prisoners at CCWF  
14 and CIW should be excluded from the class on the sole ground that they are not similarly  
15 situated to plaintiffs because of the previously litigated class action entitled. The motion  
16 will not otherwise alter the burden of proof under Rule 23 or create a presumption  
17 concerning their inclusion.

18  
19           **B. Access to Information**

20           9. Subject to the limitations set forth in this Stipulation, plaintiffs' counsel  
21 and the experts shall have reasonable access to the institutions, staff, inmates and  
22 documents necessary to properly evaluate the adequacy of the medical care delivery  
23 system and the proposed remedies therefor, including the Policies and Procedures and the  
24 Audit Instrument, the schedule and other items required by this Stipulation. The parties  
25 shall cooperate so that plaintiffs' counsel and the experts have reasonable access to  
26 information reasonably necessary to perform their responsibilities required by this  
27 Stipulation without unduly burdening defendants.

28

1           **10.** Plaintiffs' counsel and defendants shall negotiate a discovery plan for  
2 informal discovery that shall provide to plaintiffs' counsel information from the  
3 Department of Corrections' headquarters and from individual institutions about the  
4 medical services available to members of the plaintiffs' class, the adequacy of any  
5 remedial measures proposed or undertaken by defendants, and defendants' compliance  
6 with this Stipulation. Periodic monthly meetings will be scheduled between defendants'  
7 and plaintiffs' counsel to discuss stipulation implementation and access to information.

8           **11.** The discovery plan shall include, but not be limited to, access to the  
9 following documents and other material subject to a protective order agreed to by the  
10 parties:

11                   **a.** The complete medical files of members of the plaintiff class as  
12 reasonably necessary;

13                   **b.** Internal reviews and audits of the medical services provided to  
14 members of the plaintiffs' class, including QMAT and 602 survey;

15                   **c.** Non-privileged documents that relate to the amount budgeted for  
16 providing medical care to prisoners. No documents reflecting the budget for any  
17 particular upcoming budget year shall be discoverable until after the release of the  
18 Governor's Budget. This is not intended to prohibit the production of policy and  
19 planning documents.

20                   **d.** Documents maintained at individual institutions and memoranda  
21 transmitted to CDC headquarters from individual institutions that are reasonably relevant  
22 to assessing defendants' compliance, including but not limited to;

- 23                                   (1) All audits of medical care,
- 24                                   (2) Emergency Response Drill Reports,
- 25                                   (3) Summary of Emergency Responses,
- 26                                   (4) Medical Staff Vacancy Reports,
- 27                                   (5) Medical Staff Training Statistics,
- 28                                   (6) Inter-institution Transfer Log for medical transfers,

1 (7) Key indicator reports as are available,

2 (8) Medical related inmate appeals (602's) and responses, and

3 (9) Medical Log Books

4 e. Plaintiffs shall not have access to personnel files.

5 f. The parties have been unable to agree on whether plaintiffs must be  
6 provided with the minutes of continuous quality improvement  
7 meetings, including attachments, and death reviews, utilization  
8 management data logs, and other peer review documents. The  
9 parties agree the Court will decide this issue.

10 g. Plaintiffs' counsel shall be given access to CDC training related to  
11 implementation of this Stipulation for the first year that any such  
12 training is offered on any medical topic.

13 12. Plaintiffs' counsel and their medical consultants shall have the  
14 opportunity to conduct no more than one tour at an institution per calendar quarter, with a  
15 maximum of 40 tours in total for all institutions each calendar year. Tours shall be  
16 scheduled in a manner consistent with the requirements of this Stipulation and generally  
17 in accordance with the priorities established by the schedule promulgated pursuant to ¶ 5.  
18 Plaintiffs' counsel may resume tours based upon a finding of substantial noncompliance  
19 pursuant to ¶ 15 .

20 13. Tours by plaintiffs' counsel shall include reasonable access to housing  
21 units and all facilities where medical services are provided. Defendants shall make  
22 reasonable efforts to make available for interview departmental, custodial, clinical and  
23 program staff that have direct or indirect responsibility for providing medical services to  
24 class members. Defendants shall direct institution staff to reasonably cooperate with  
25 plaintiffs' counsel and the experts in obtaining the necessary information. Plaintiffs'  
26 counsel shall be able to have reasonable brief discussions with inmates during the tours  
27 and shall be able to provide business cards with their name and address for distribution to  
28 specified individual inmates. Defendants will also continuously post notices informing

1 all inmates at each institution that complaints regarding the provision of medical care may  
2 be sent to counsel for the plaintiff class in this case. Defendants also shall provide  
3 plaintiffs' counsel reasonable access to confidential interviews with inmates before or  
4 after the tours, during regular business hours without regard to regular visiting hours and  
5 days. Upon a request by plaintiffs' counsel at least two weeks prior to the tour,  
6 defendants shall make available for inspection and/or copying the medical files of  
7 specified inmates. If the need arises within one week prior to the tour, plaintiffs counsel  
8 may designate additional medical files for inspection and/or copying.

9           14. If any party fails to make himself or herself, an employee, or an agent  
10 reasonably available for interview and the parties agree, the other party may depose the  
11 party, the employee, or agent who has not been made available. If the parties are unable  
12 to agree, the court may order such deposition of the party, employee, or agent if such  
13 deposition is reasonably necessary to the conduct of the litigation.

14           15. Plaintiffs' counsel and their medical consultants will cease tours at an  
15 institution after a particular institution has been found to be in substantial compliance as  
16 set forth in ¶ 22, below. Tours may resume at a particular institution if the experts find,  
17 or in the event a party disagrees with the experts, the Court finds there has not been  
18 substantial compliance on the part of defendants, provided that such tours shall be limited  
19 to the issue or components not found to be in substantial compliance. Non-compliance  
20 may be corrected by substantial compliance with the existing Policies and Procedures or  
21 by modifying the Policies, Procedures and Audit Instrument pursuant to ¶ 24 and  
22 complying with the Policies and Procedures as modified. Any disputes about whether an  
23 institution is in substantial compliance shall be resolved pursuant to the procedures set  
24 forth in ¶¶ 26-28, below.

25  
26           **C. Independent Court Experts**

27           16. The parties agree to jointly request that the Court appoint experts  
28 pursuant to Federal Rules of Evidence, Rule 706 to advise the Court on the adequacy and



1 implementation of defendants' Policies and Procedures and any other matter that  
2 appropriately may be the subject of the experts' testimony. The parties shall propose to  
3 the Court that the experts' duties specified in Exhibit A shall be provided to the experts  
4 pursuant to Rule 706(a). The experts shall be entitled to reasonable compensation in an  
5 amount approved by the Court and the costs for each expert shall be borne by defendants.

6           17. The parties agree that the Court should appoint Joe Goldenson, M.D.,  
7 Michael Puisis and Maddie LaMarre as Rule 706 experts. In the event that any of these  
8 experts can no longer serve, the parties shall attempt to agree on a replacement(s) within  
9 30 days. In the event the parties cannot agree, they shall nominate experts in accordance  
10 with Rule 706 of the Federal Rules of Evidence. The parties understand and agree that  
11 the court may appoint a mutually agreeable fourth expert in the future. In the event that  
12 the parties are unable to agree on a fourth expert, the court may appoint a fourth expert in  
13 accordance with Rule 706 of the Federal Rules of Evidence.

14           18. With reasonable notice and subject to the limitations set forth in this  
15 Stipulation, the Court experts shall have reasonable access to all parts of any institution,  
16 all relevant documents, all individuals (including unprivileged interviews with staff or  
17 inmates), medical meetings, proceedings and programs to the extent that such access is  
18 reasonably needed to fulfill his or her obligations. If both parties agree, the court experts  
19 may hire additional personnel, at defendants' expense, to assist them in performing their  
20 duties. If both parties cannot agree, the court may authorize the hiring of additional  
21 personnel, at defendants' expense, upon a showing by the court experts that such  
22 additional personnel are reasonably necessary to the performance of their duties.

23  
24           **D. Compliance**

25           19. Defendants shall audit each prison's compliance with the Policies and  
26 Procedures consistent with the schedule set forth in ¶ 5, above.

27           20. Compliance with the Policies and Procedures shall be audited by using  
28 an Audit Instrument which will be filed on February 15, 2002. This Audit Instrument

1 will be developed by the CDC in consultation with the independent court experts and  
2 plaintiffs' counsel. The parties recognize that this instrument has not been tested and may  
3 need to be modified to properly reflect the degree of actual compliance. No later than  
4 January 15, 2004, the parties and the independent court experts shall meet and confer  
5 about the need to modify the audit instrument. If all parties agree, the instrument shall be  
6 modified. Any dispute about the need for modification shall be resolved pursuant to  
7 paragraph 18 of the Stipulation for Injunctive Relief.

8           21. The audit shall be conducted as follows:

- 9           a. No less than 180 Unit Health Records will be reviewed.  
10           b. The records shall be selected at random, but the selection shall  
11           be stratified so that each category in the audit instrument is  
12           adequately represented.  
13           c. If defendants disagree with the appropriateness of an expert's  
14           answer to any question(s) in the audit instrument relating to the  
15           quality of medical care, the question(s) shall be reviewed by  
16           both expert physicians and shall only count against compliance  
17           if both experts agree.

18           22. A prison is in substantial compliance when all of the following  
19 conditions are satisfied:

- 20           a. The prison receives a score of 85% or higher on an audit  
21           conducted by the Court experts of the implementation of the  
22           Policies and Procedures using the Audit Instrument identified in  
23           ¶ 20. No score less than 85% shall be considered to satisfy this  
24           requirement, except that the experts shall have the discretion to  
25           find a prison providing adequate medical care in compliance if  
26           it achieves a score of no less than 75%. The score shall be  
27           calculated by averaging all of the indicators in the audit  
28           instrument.

1 b. In determining substantial compliance, the experts will have to  
2 ascertain whether medical assessments or treatment plans  
3 provided to inmates comply with the Policies and Procedures.  
4 The medical assessment or treatment plan provided to the  
5 inmate shall be deemed adequate and appropriate under these  
6 policies and procedures only under any one of the following  
7 conditions:

- 8 (1) The assessment or treatment plan is consistent  
9 with guidelines specifically adopted in the  
10 policies and procedures; or  
11 (2) The practitioner documents in the medical notes  
12 that he/she is deviating from adopted policies  
13 and procedures and that such deviation is  
14 consistent with the community standard; or  
15 (3) Where no treatment guidelines are specifically  
16 adopted in these policies and procedures, the  
17 assessment or plan is consistent with the  
18 community standard.<sup>3/</sup>

19 In those instances in which a court expert finds that an  
20 assessment or treatment plan does not comply with community  
21 standards, defendants may request that the question(s) be  
22 reviewed by both expert physicians and shall only count against  
23 compliance if both experts agree.

24 c. The prison is conducting minimally adequate death reviews and  
25 quality management proceedings.

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26  
27 3. As it is used here and throughout the policies and procedures, the phrase  
28 "community standard" means the standard of care imposed under the laws of the State of  
California upon health care providers licensed to practice in California.

- 1 d. The prison generally has tracking, scheduling and medication  
2 administration systems adequately in place.
- 3 e. At least two experts have not concluded that there is a pattern  
4 or practice that is likely to result in serious problems and those  
5 problems are not being adequately addressed.

6 23. Defendants shall notify plaintiffs and the court experts in writing when  
7 they believe an institution has achieved substantial compliance. Within 60 days of such  
8 notification, the experts shall conduct an audit to determine substantial compliance. If the  
9 experts find substantial compliance, the experts shall return a year later, or as soon  
10 thereafter as possible, to determine whether the institution has maintained substantial  
11 compliance.

12

13 **E. Modification**

14 24. Defendants may modify the Policies and Procedures, and the Audit  
15 Instrument at any time, provided that as modified the Policies and Procedures and the  
16 Audit Instrument will meet or exceed the minimum level of care necessary to fulfill  
17 defendants' obligation to plaintiffs under the Eighth Amendment of the United States  
18 Constitution. Defendants will provide plaintiffs' attorneys with a copy of the original  
19 Policies and Procedures or the Audit Instrument, the modified version and a strikeout  
20 version with the changes at least 30 days prior to implementation. In an emergency or  
21 when such delay will adversely affect the provision of medical care, notice will be  
22 provided as soon as possible, but no later than the date the policy is implemented. If the  
23 plaintiffs determine that the modifications conflict with any of the provisions of this  
24 Stipulation, they shall cooperate with the defendants to reconcile the conflict. Any  
25 disputes about whether the modifications will satisfy defendants' obligations under the  
26 Eighth Amendment shall be resolved pursuant to the dispute resolution procedures set  
27 forth in ¶¶ 26-28.

28

1           25. Plaintiffs also may seek to modify the Policies and Procedures and the  
2 Audit Instrument at any time to secure the minimum level of medical care necessary to  
3 fulfill the defendants' obligation to plaintiffs under the Eighth Amendment of the United  
4 States Constitution. Plaintiffs must submit the proposed modification to defendants. Any  
5 disputes as to whether defendants' Policies and Procedures, and the Audit Instrument  
6 must be modified to satisfy their obligations under the Eighth Amendment shall be  
7 resolved pursuant to the dispute resolution provisions set forth in ¶¶ 26-28.

8  
9           **F. Dispute Resolution**

10           26. If plaintiffs contend that the Policies, Procedures and Audit Instrument,  
11 as written or as modified, or any component thereof will not provide for the minimum  
12 level of medical care necessary to fulfill the defendants' obligations to plaintiffs under the  
13 Eighth Amendment of the United States Constitution, plaintiffs shall provide defendants  
14 with a brief description of the perceived deficiencies and a request that the parties enter  
15 into negotiations to resolve the question as to whether defendants' Policies, Procedures  
16 and Audit Instrument satisfies the minimum requirements of the Eighth Amendment.  
17 Upon receipt of plaintiffs' request for negotiations, any party may inform the Court's  
18 experts of the area of disagreement and request that the experts evaluate the issue and  
19 prepare a report.

20           27. At the option of any party, the parties shall conduct negotiations on any  
21 issue in dispute. Such negotiations may include the Court's experts, and a person  
22 satisfactory to the parties may at the election of either party, mediate any unresolved  
23 issues. If the parties cannot agree on a mediator, the administrator of a private dispute  
24 resolution service, such as JAMS will choose a mediator. Defendants shall pay the cost  
25 of any private mediator. The substance of the mediation and any statements made by a  
26 party, an employee of a party, or an agent of a party are confidential and not admissible in  
27 any subsequent proceeding. The Experts' report(s) shall be admissible as evidence at the  
28 request of any party in any judicial proceeding in this case.

1           28. If the process set forth in the preceding paragraph fails to resolve the  
2 issue of whether defendants' Policies and Procedures and Audit Instrument, either as  
3 written or as modified, provides for a level of medical care sufficient to meet the  
4 minimum requirements of the Eighth Amendment of the United States Constitution,  
5 either party shall have the option of seeking relief from the Court. If the court determines  
6 that defendants' Policies and Procedures and the Audit Instrument either as written or as  
7 modified, does not provide a level of medical care sufficient to meet the minimum  
8 requirements of the Eighth Amendment of the United States Constitution, the Court may  
9 grant relief as authorized under the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. §  
10 3626(a), which provides, in pertinent part: "The court shall not grant or approve any  
11 prospective relief unless the court finds that such relief is narrowly drawn, extends no  
12 further than necessary to correct the violation of the Federal right, and is the least  
13 intrusive means necessary to correct the violation of the Federal right."  
14

15           **G. Enforcement**

16           29. The Court shall find that this Stipulation satisfies the requirements of  
17 18 U.S.C. § 3626(a)(1)(A) and shall retain jurisdiction to enforce its terms. The Court  
18 shall have the power to enforce the Stipulation through specific performance and all other  
19 remedies permitted by law. Neither the fact of this stipulation nor any statements  
20 contained herein may be used in any other case or administrative proceeding, except  
21 defendants, CDC, or employees thereof reserve the right to use this Stipulation and the  
22 language herein to assert issue preclusion and res judicata in other litigation seeking class  
23 or systemic relief. When these legal defenses are raised, defendants will send copies of  
24 such complaints to plaintiffs' counsel at the Prison Law Office.

25           30. If plaintiffs believe that defendants are not complying with some or all  
26 of the Stipulation, or any of the acts required by the Policies and Procedures produced  
27 pursuant to Stipulation, they shall notify defendants of the perceived problems.  
28 Defendants shall investigate the allegations and respond within 30 calendar days. If

1 plaintiffs are not satisfied with defendants' response, the parties shall conduct negotiations  
2 to resolve the issue. The negotiations may include the Court's experts, and a person  
3 satisfactory to the parties may at the election of either party, mediate any unresolved  
4 issues. If the parties cannot agree on a mediator, the administrator of a private dispute  
5 resolution service, such as JAMS, will choose a mediator. Defendants shall pay the cost  
6 of any private mediator. The substance of the mediation and any statements made by a  
7 party, an employee of a party, or an agent of a party shall be confidential and not  
8 admissible in any subsequent proceeding. The Experts' report(s) shall be admissible as  
9 evidence at the request of either party in any judicial proceeding in this case. If the  
10 parties are unable to resolve the issue by negotiation or mediation, the court shall  
11 determine whether defendants are substantially complying with some or all of the  
12 Stipulation, or any of the acts required by the Policies and Procedures.

#### 13 14 **H. Termination**

15 **31.** Notwithstanding the Prison Litigation Reform Act or any other law,  
16 defendants may move to vacate this Stipulation and dismiss the case on the ground that  
17 each institution subject to this stipulation has been found to be in substantial compliance  
18 under ¶¶ 22-23. Non-compliance may be corrected by compliance with the existing  
19 Policies and Procedures or by modifying the Policies and Procedures pursuant to ¶ 24 and  
20 complying with the Policies and Procedures as modified. The parties shall attempt to  
21 negotiate any disputes about defendants' compliance pursuant to ¶¶ 26-28, and either  
22 party may invoke the enforcement process set forth in ¶ 29-30. The final determination  
23 of such a dispute shall rest with the Court.

#### 24 25 **I. Attorneys Fees and Costs**

26 **32.** Plaintiffs may apply for reasonable attorney's fees to which they are  
27 entitled. Defendants shall pay plaintiffs for 90% of the work performed in connection  
28 with this Stipulation at hourly rates set forth under the PLRA, 42 USC § 1997e(d).

1 Defendants shall pay plaintiffs for 10% of the work performed in connection with this  
2 Stipulation at hourly rates set forth under the ADA and §504 of the Rehabilitation Act.

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**J. Construction of Stipulation.**

33. This Stipulation reflects the entire agreement of the parties and  
supersedes any prior written or oral agreements between them. No extrinsic evidence  
whatsoever may be introduced in any judicial proceeding to provide the meaning or  
construction of this Stipulation. Any modification to the terms of this Stipulation must be  
in writing and be signed by a representative of the Department of Corrections and  
attorneys for the plaintiffs to be effective or enforceable.

34. This Stipulation shall be governed by and be construed according to  
California law. The parties waive any common law or statutory rule of construction that  
ambiguity should be construed against the drafter of this Stipulation, and agree that the  
language in all parts of this Stipulation shall in all cases be construed as a whole,  
according to its fair meaning.

35. This Stipulation shall be valid and binding upon, and faithfully kept,  
observed, performed and be enforceable by and against the parties, their successors and  
assigns and the plaintiff class.

36. The obligations governed by this Stipulation are severable. If for any  
reason a part of this Stipulation is determined to be invalid or unenforceable, such a  
determination shall not affect the remainder.

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37. The waiver by one party of any provision or breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

**IT IS SO STIPULATED AND AGREED.**


Dated: 1-25-02

  
DONALD SPECTER  
Attorney for plaintiffs


Dated: 1-2-02

  
ROBERT PRESLEY  
Secretary for the Youth and Adult  
Correctional Agency

Dated: 1/2/02

  
EDWARD S. ALAMEDA, JR.  
Director, California Department  
of Corrections

Dated: 1-2-02

  
PETER J. SIGGINS  
Chief Deputy Attorney General  
Attorney for Defendants Davis and Gage

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Dated: 1.2.02

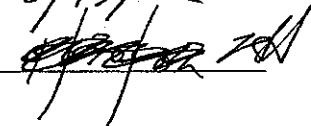
BILL LOCKYER, Attorney General  
of the State of California  
PETER J. SIGGINS, Chief  
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ROBERT R. ANDERSON, Chief  
Assistant Attorney General  
PAUL D. GIFFORD, Senior  
Assistant Attorney General




PETER J. SIGGINS  
Chief Deputy Attorney General

Attorneys for Defendants Davis, Gage,  
Presley, Alameida, and Pickett

**THE COURT SO FINDS AND IT IS SO ORDERED.**

Dated: 6/13/02  


  
THELTON E. HENDERSON  
United States District Judge