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15 Attorneys for Plaintiffs
16

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA
19

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

22 Plaintiffs,

23 v.

24 ARNOLD SCHWARZENEGGER, Governor,
State of California, JAMES E. TILTON,
25 Secretary (A), California Department of
Corrections and Rehabilitation (“CDCR”);
26 KINGSTON “BUD” PRUNTY,
Undersecretary, CDCR; BERNARD
27 WARNER, Chief Deputy Secretary of the
Division of Juvenile Justice; JOE MONTES,
28 Director, Division of Juvenile Parole; DENNIS

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

**FIRST AMENDED CIVIL CLASS
ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 DULAY, Acting Deputy Director of the
2 Division of Juvenile Parole Operations; JOHN
3 MONDAY, Executive Director of the Board of
4 Parole Hearings (“BPH”); JAMES DAVIS,
5 Chair of the BPH; JOYCE ARREDONDO,
6 PAUL CHABOT, JOSEPH COMPTON,
7 SUSAN MELANSON, and CHUCK SUPPLE,
8 Commissioners of the BPH assigned to hear
9 juvenile matters; CDCR; DIVISION OF
10 JUVENILE JUSTICE; and BOARD OF
11 PAROLE HEARINGS,

12 Defendants.

13 NATURE OF ACTION

14 1. Plaintiffs are a class of over 4000 juveniles who have been or are at imminent
15 risk of being wrongfully and unconstitutionally deprived of their liberty in connection with the
16 granting, extending and/or revoking of their parole in California. The members of the plaintiff
17 class are being denied due process under the Fourteenth Amendment to the United States
18 Constitution, as interpreted in *Morrissey v. Brewer*, 408 U.S. 471 (1972) and related decisions.
19 In addition, members of the plaintiff class are being denied their right to counsel under the
20 United States Constitution, as interpreted in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) and
21 related decisions. The members of the plaintiff class are also being denied the equal protection
22 of the laws under the Fourteenth Amendment to the United States Constitution.

23 2. The unconstitutional treatment of juvenile parolees in California is particularly
24 deplorable given that adult offenders in California receive the right to counsel in parole
25 revocation hearings, as well as significant due process protections in revocation proceedings,
26 pursuant to a Stipulated Order for Permanent Injunctive Relief entered in *Valdivia v.*
27 *Schwarzenegger*, No. S-94-0671 (E.D. Cal.) (Karlton, J.) (hereinafter “*Valdivia*”) on March 9,
28 2004 (the “*Valdivia* Permanent Injunction”). Many of the same defendants who agreed to be
bound by the *Valdivia* Permanent Injunction as to adult parolees routinely ignore its provisions
with regard to juvenile parolees. For example, all adult parolees in California receive a state-
appointed, state-compensated, and trained attorney for parole consideration and revocations,
whereas the vast majority of juveniles – who by their nature are younger, more vulnerable, and

1 less able to understand the parole revocation process and represent themselves – do not. This
2 is a nonsensical and unfair system, lacking any rational basis or compelling justification.

3 3. Juvenile parolees in California have an extremely high recidivism rate, with
4 approximately 70 percent arrested within 36 months of release. Many of the returns to custody
5 are for technical violations. Statistics from the California Department of Corrections and
6 Rehabilitation’s Division of Juvenile Justice report that, of 3,599 parole violation actions
7 handled in 2005, 490 were for being absent without leave (AWOL), and of those, 132 (27.0%)
8 resulted in revocation or recommitment; 1,415 were for other technical violations, and of those,
9 1,135 (80%) resulted in revocation or recommitment; 238 were for law violations in which the
10 person was not prosecuted or found not guilty, and of those, 94 (39.5%) resulted in revocation
11 or recommitment.

12 4. Juvenile parolees are arrested without lawful standards. After their arrests, they
13 are routinely subject to lengthy parole holds violating even the unconstitutional timelines
14 dictated by defendants’ existing policies. While on a parole hold, a juvenile parolee cannot be
15 released from custody. In contravention of the *Valdivia* Court’s holding that the procedure is
16 unconstitutional, defendants do not provide a prompt preliminary hearing for juveniles held in
17 custody based on an alleged parole violation.

18 **A. CHARACTERISTICS OF JUVENILE PAROLEES**

19 5. Because of their youth, juvenile parolees demonstrate limited cognitive and
20 emotional development, which can impair their ability to comprehend complex procedures and
21 to make rational decisions. In addition, juvenile parolees demonstrate significant rates of
22 educational deficiencies, limited knowledge of English, educational and cognitive disabilities,
23 mental health disorders, and other disabilities affecting communication. In light of these
24 factors, juvenile parolees are particularly ill-equipped to represent themselves adequately in
25 revocation proceedings.

26 6. It has been estimated that among juvenile detainees in the United States, nearly
27 60 percent read at or below a fifth-to-sixth-grade level, with 32 percent reading at or below a
28 fourth-grade level. The overall grade level of wards tested in California is between eighth and

1 ninth grade.

2 7. The educational achievement level of wards in California, while already low, is
3 actually declining over time. Through a report by the Office of the Inspector General,
4 California has admitted serious deficiencies in its education services for juvenile detainees. At
5 representative facilities, the percentage of achievement test scores below the 25th national
6 percentile grew from 68 to 88 percent between 1998 and 2004 in one case study, and from 67
7 to 78 percent between 2002 and 2004 in another.

8 8. Wards are not receiving the minimum four hours a day of education mandated by
9 state law. Recent high school effectiveness rates at Division of Juvenile Justice (“DJJ”)
10 (formerly California Youth Authority (“CYA”)) facilities are dismal and getting worse. The
11 Inspector General found that only 30% of wards received the minimum required instruction
12 time at one institution in 2003-2004, down from 37% the previous year, and only 40% received
13 the minimum amount at another institution.

14 9. With class closures and absenteeism at DJJ facilities increasing drastically in
15 recent years, wards are denied the opportunity to make academic progress while in custody.
16 Classes and required treatment programs are frequently cancelled for lack of enough teachers
17 and psychologists. Juveniles with disabilities are disproportionately negatively affected by this
18 lack of consistency in the educational and treatment process. When paroled, wards leave with
19 significant educational disadvantages compared to the general population.

20 10. Juvenile detainees nationwide have rates of educational disabilities and mental
21 health treatment needs far exceeding those found in the general population of children and
22 youth. The percentage of juvenile detainees identified for special education programs before
23 incarceration is at least three to five times the percentage of the public school population
24 identified for such programs. One national study found that approximately 12.6% of juvenile
25 offenders had developmental disabilities, approximately 35.6% had learning disabilities, and
26 approximately 22% had significant mental health problems. Another U.S. Department of
27 Justice survey found learning disabilities in nearly 50% of juveniles in custody. These figures
28 show that incarcerated youth are much more likely than the general population to have

1 disabilities – and associated deficits in reasoning ability, attention, and appropriate affect – that
2 limit their ability to serve as advocates for themselves.

3 11. In California, as many as half of the wards in DJJ custody – or possibly more –
4 have mental, emotional, or learning disabilities. Approximately 25% of all wards within DJJ
5 are registered with Special Education and assigned individualized education plans (“IEPs”).

6 12. Among the wards assigned to special education classes at one representative DJJ
7 facility, only 30 percent received the prescribed services between 2000 and 2003. Compared
8 with the already dismal 38 percent rate revealed in a previous audit, that figure reveals that
9 delivery of special education within DJJ is becoming even less effective over time.

10 13. The prevalence of mental and emotional problems among incarcerated youth
11 nationwide is very high, with one report estimating that as many as 60 or 70 percent have
12 diagnosable mental disorders. DJJ wards have much higher prevalence rates of mental health
13 disorders than same-age juveniles from the general population, or even from other juvenile
14 incarceration settings.

15 14. Despite the high rate of mental health problems among wards, DJJ’s mental
16 health care delivery services have been understaffed and deprived of resources, resulting in a
17 lack of continuity of care and specialized treatment. What few resources are available are
18 wasted on inefficient program delivery.

19 15. Juvenile parolees who lack adequate knowledge of spoken and written English
20 are also unable effectively to represent themselves in revocation proceedings. Approximately
21 one out of every four members of the DJJ population requires English Language Learner
22 services.

23 16. The Office of Civil Rights of the U.S. Department of Education recently found
24 “significant compliance concerns” with the English Language Learner program in DJJ. Staff
25 are not adequately trained to identify students with a primary language other than English, and
26 there is no structured program in place to improve such students’ knowledge of English. In
27 other words, wards whose communicative abilities are hampered by limited knowledge of
28 English are not consistently identified, and once identified, they are not provided an

1 opportunity to gain skills while in custody.

2 17. The DJJ's policies and procedures do not meet accepted standards of care for
3 medical and mental health treatment programs, educational activities, and other program areas.
4 All wards are negatively affected by these deficiencies, but wards with disabilities are
5 disproportionately negatively affected.

6 18. DJJ wards with vision impairments, hearing impairments, mobility impairments,
7 and disabilities related to diseases or limiting health conditions number in the hundreds.
8 Accommodations and modifications for wards with disabilities are limited in scope and
9 inconsistently provided. Accommodations provided for wards with hearing and vision
10 impairments are ineffective and do not allow wards with those disabilities to participate in
11 programs at the same level as other wards.

12 19. Aside from disabilities and other preexisting conditions impeding juvenile
13 parolees' ability to represent themselves, the time spent within the violent and dysfunctional
14 prison setting of DJJ leaves all youth exiting custody less able to participate meaningfully in
15 subsequent parole revocation proceedings.

16 20. As defendants acknowledged in a recently disseminated report, DJJ institutions
17 are characterized by unusually high levels of violence and unsafe conditions for youth.
18 According to DJJ's report, after spending time in DJJ, "no doubt some [youth] leave worse off
19 than when they arrived."

20 21. California is in a minority of jurisdictions in the United States in that its juvenile
21 corrections agency is administered from within an adult corrections agency. DJJ embodies the
22 hazardous combination that its own report called "[a]n adult corrections agency with an
23 adult/juvenile mix." As defendants have acknowledged, DJJ staff lack appropriate knowledge
24 and training in contemporary standards of care and practice in juvenile correctional agencies.
25 Likewise, on information and belief, a number of the defendants responsible for juvenile parole
26 revocation have no background or training in juvenile parole matters.

27 22. The average age of DJJ wards is 19 years old. The average length of stay for
28 males in California's juvenile system is 25.9 months, nearly three times as long as the average

1 for 19 states surveyed. These long stays can hinder the educational and emotional
2 development of juvenile parolees, leaving them with a lower level of maturity and reasoning
3 skills than the same-age general population or even same-age parolees in other jurisdictions.

4 23. As defendants have admitted in the DJJ report, the necessary reform efforts to
5 reduce violence and improve programming within DJJ institutions “will take years” to achieve.
6 Suggested reforms to transition and aftercare services for juvenile parolees will not even enter
7 the planning stage until a few years from now. Until both conditions of incarceration and re-
8 entry planning have been totally reformed, parolees exiting DJJ institutions will be especially
9 vulnerable and unable to advocate effectively for themselves in revocation proceedings.

10 **B. DENIAL OF DUE PROCESS IN REVOCATION PROCEEDINGS**

11 24. The process of imposing parole holds and parole consideration and revocation
12 for juveniles is an opaque system lacking clear rules or standards to guide staff, juvenile
13 parolees, attorneys, and parents. As demonstrated by defendants’ inadequate and confused
14 response to a Public Records Act request by plaintiffs’ counsel concerning parole procedures,
15 even defendants are unable to articulate the way the system is intended to function.

16 25. Defendants’ failure to promulgate straightforward parole regulations prevents
17 wards, juvenile parolees, and their representatives from being able to challenge their
18 confinement through administrative or court proceedings. Recent legislative enactments have
19 changed the structure and duties of the agencies responsible for juvenile parole matters, and
20 many of the regulations governing juvenile parole matters do not reflect the recent legislative
21 changes. Upon information and belief, defendants have also failed to make, publish, and
22 enforce rules related to the operation of the juvenile parole system as required by recent
23 legislation.

24 26. The lack of accurate, available regulations prevents juvenile parolees and their
25 representatives from being able to understand and vindicate their rights. Decoding the
26 statutory and administrative scheme underlying juvenile parole matters is immensely difficult.
27 It has taken plaintiffs’ attorneys numerous hours of research and a Public Records Act request
28 to gain even a basic understanding of some of the most fundamental parole issues, including,

1 but not limited to, who is in charge of parole matters, whether a juvenile parolee is entitled to
2 an attorney and in what types of hearings such a right might apply, provision of
3 accommodations for parolees with disabilities, and how a juvenile parolee can appeal a denial
4 or revocation of parole. Despite those efforts, many policies and practices of defendants
5 remain unclear. It defies reason to suggest that a juvenile parolee, particularly a juvenile
6 suffering from educational or other disabilities, would be able to understand this system, let
7 alone be able to successfully challenge or appeal adverse decisions. The arbitrariness of
8 conducting revocation proceedings in which youths' liberty interest is at stake without any
9 enunciated procedures itself violates the guarantee of due process of law.

10 27. Lengthy parole holds are routinely being imposed without proper and timely
11 notice to the parolees of the reasons for the detention. Juvenile parolees frequently do not
12 receive notice of the charges against them, let alone a hearing, until they have been in custody
13 for weeks or often months, even though the *Valdivia* Permanent Injunction requires that adult
14 parolees be provided with a notice of charges and notice of rights and time frames within three
15 days of their arrest. In at least one of the most egregious cases, a juvenile parolee was detained
16 more than five months without a hearing. On information and belief, juvenile parolees do not
17 receive credit for time served in custody prior to their parole revocation hearing. Adult
18 parolees receive credit for time served from the date the parole hold is placed.

19 28. Preliminary hearings regarding the cause of a juvenile parolee's detention are not
20 being conducted in California. In almost all cases, no hearing is held regarding the basis for
21 the detention or the charges themselves until the final revocation hearing, which may not be
22 scheduled until weeks or even months after the arrest. In those rare cases in which preliminary
23 hearings are held, they are not held promptly and are not subject to any deadline. Many of the
24 defendants herein or their predecessors have had notice since a June 14, 2002 published order
25 in the *Valdivia* case, 206 F.Supp.2d 1068 (E.D.Cal. 2002), that a unitary parole revocation
26 hearing system without prompt probable cause hearings is unconstitutional, yet those same
27 defendants continue to operate a juvenile parole system that violates the *Valdivia* court's
28 ruling.

1 29. In stark contrast to this treatment of juveniles, under the *Valdivia* Permanent
2 Injunction adults have the right to a preliminary probable cause hearing ten days after receiving
3 the notice of charges. There is also a provision for an expedited hearing for adult parolees
4 upon a sufficient offer of proof. At the probable cause hearing, adults are entitled to present
5 documentary evidence and hearsay testimony, and their right to confront adverse witnesses
6 limits the use of hearsay testimony against them. A written record of the hearing and the basis
7 for decisions made therein must be kept. Juvenile parolees are afforded none of these
8 protections, even though many of the same defendants who agreed to extend these protections
9 to adults are now responsible for juveniles' revocation proceedings.

10 30. The time spent in custody during these parole holds, lasting weeks or even
11 months, without any determination of probable cause, can be extremely disruptive of juvenile
12 parolees' reintegration efforts, including employment and family life. The extended holds
13 often cause them to lose their jobs, even if parole is not ultimately revoked or there was no
14 basis for the charges.

15 31. These lengthy parole holds for juveniles are routinely imposed without any
16 sufficient mechanism to appeal the detentions.

17 32. Final revocation hearings for juvenile parolees are not held in a timely manner;
18 instead, they routinely occur many weeks or months after the parolee's arrest. In contrast,
19 defendants in *Valdivia* agreed that final revocation hearings for adult parolees must be held a
20 maximum of 35 calendar days after the parole hold in all cases.

21 33. The lack of a prompt final revocation hearing severely prejudices juveniles'
22 ability to defend against charges of parole violations. Because there is no preliminary hearing
23 and the final revocation hearing is often held long after the alleged violation, witnesses are
24 often unavailable and recollections become stale.

25 34. It is particularly difficult for juvenile parolees to ensure that favorable witnesses
26 can attend a revocation hearing because, on information and belief, the hearings are routinely
27 held more than fifty miles from the juvenile parolee's residence and/or place of arrest. In
28 contrast, under the *Valdivia* Permanent Injunction, parole revocation hearings for adults must

1 be conducted within fifty miles of the alleged violation.

2 35. The parole revocation hearings themselves do not afford due process to juvenile
3 parolees. At revocation hearings, it is defendants' pattern and practice to deny or illegally limit
4 plaintiffs' right to have testimony adduced on their behalf from live, percipient witnesses.
5 Witnesses who are and should be notified of the proposed hearing and should be allowed and
6 required to testify at the hearing are frequently neither notified of the hearing, nor allowed to
7 testify. In violation of due process, only adverse witnesses are generally compelled to attend
8 such hearings by subpoena. Witnesses identified by the parolee are not subpoenaed unless the
9 parolee specifically requests the issuance of subpoenas, rather than the attendance of witnesses.
10 Even then, witnesses favorable to the parolee are rarely compelled to attend, and are often not
11 permitted to testify. Yet many of the defendants herein, based on their agreement to be bound
12 by the *Valdivia* Permanent Injunction, allow adult parolees to subpoena and present witnesses
13 and evidence to the same extent and under the same terms as the state. Adult parolees in
14 California are also permitted to present documentary evidence and their own testimony
15 (including hearsay) at probable cause hearings to defend or mitigate against the charges.

16 36. On information and belief, the failure of adverse witnesses (including parole
17 agents) to attend the revocation hearing is routinely overlooked, or the hearing is continued so
18 that adverse witnesses can be present without the advance knowledge or consent of the parolee
19 or the parolee's witnesses. During such delays, the parolee remains in custody. Such
20 continuances are unfairly burdensome for witnesses who are favorable to the parolee because
21 they, unlike subpoenaed witnesses, receive no compensation for their attendance. Moreover,
22 absent subpoena authority over favorable witnesses, there is insufficient assurance that these
23 witnesses can or will be able to attend a rescheduled revocation hearing. Again, even though
24 many of the defendants herein are required by *Valdivia* to allow adult parolees to subpoena and
25 present witnesses and evidence to the same extent and under the same terms as the state,
26 juveniles are denied these rights.

27 37. In addition, defendants limit or refuse live adverse testimony, thereby denying
28 juvenile parolees their constitutional right to confront and cross-examine the witnesses and

1 evidence proffered against them.

2 38. At parole consideration, revocation, and other hearings, decisionmakers are not
3 guided by any discernable standards concerning parole release or revocation. Hearing officers
4 rely on documentary and other evidence that is not produced to the juvenile parolees, and they
5 arbitrarily ignore other evidence and reports that are favorable to the parolees.

6 39. At parole consideration, revocation, and other hearings, juvenile parolees are not
7 informed that they may obtain written or recorded records of their hearings, nor are they
8 informed that they may appeal adverse decisions. Even when juvenile parolees or their
9 representatives request information concerning records or the appeal process, they are not
10 provided with accurate information or recorded tapes of their hearings.

11 40. Throughout parole revocation proceedings, juvenile parolees are presented with a
12 variety of complex written documents requiring a high level of literacy. These complex forms
13 are not translated into languages other than English and are not made available on audiotape, in
14 Braille, or in any other alternative formats. The complexity of the DJJ forms often makes it
15 impossible for juvenile parolees to understand and exercise their rights and to meet deadlines.
16 The forms pose even bigger obstacles for the large number of juvenile parolees who have
17 disabilities and/or have difficulty communicating effectively.

18 41. In contrast, adult parolees' appointed counsel must be notified of communicative
19 disabilities and other barriers to participation in revocation proceedings. Under the *Valdivia*
20 Permanent Injunction, adult parolees are also required to have access to forms that have been
21 simplified and reviewed for accuracy, Spanish translations of forms, and language
22 interpretation services. All forms and notices for adult parolees must be readily available in
23 alternative formats, including large print, Braille, and audio tape. In addition, adult parolees
24 with disabilities must be provided accommodations to enable them to understand the forms to
25 the best of their abilities. The same defendants who agreed to extend these important
26 protections to adult parolees consistently and illegally deny them to juveniles.

27 42. On information and belief, forms and notices concerning the revocation process
28 are not provided to wards completely and consistently from one case to the next, with the result

1 that not all juvenile parolees receive the same set of forms.

2 43. At the revocation hearings, it is the pattern and practice of defendants to deny
3 juvenile parolees with disabilities effective communication of the proceedings and their right to
4 fully participate and understand the proceedings. On information and belief, there is no
5 mechanism to determine whether juvenile parolees with mental illness or cognitive or other
6 developmental or communicative disabilities require assistance with reading or comprehending
7 complex forms and proceedings, nor whether juvenile parolees who are illiterate require
8 assistance in understanding written communications. There is also no procedure to determine
9 whether juvenile parolees with limited or no knowledge of English require interpreters to allow
10 them to give testimony or to understand witnesses and their own attorneys. On information
11 and belief, accommodations such as sign language interpreters are not routinely made available
12 for juvenile parolees with hearing impairments, and facilities where hearings are held may not
13 be fully accessible to juveniles with mobility impairments.

14 44. There is no grievance procedure for juvenile parolees who have been denied
15 accommodation of their disabilities in connection with revocation hearings. In contrast, some
16 of these same defendants were ordered to implement a grievance procedure, separate from the
17 existing appeal procedure, to process complaints of denials of requests for accommodations by
18 adult parolees. Those adult grievances must be decided before the hearing occurs.

19 45. On information and belief, defendants hold various other hearings with regard to
20 juveniles under DJJ jurisdiction, including parole consideration, “time-add,” extension, YAAC,
21 and other proceedings related to the granting, continuing, or revoking of parole (“parole
22 proceedings”).

23 46. During these parole proceedings, juvenile parolees are permitted to waive their
24 rights to hearings and their rights to present evidence and confront witnesses, all without
25 representation by counsel. On information and belief, juvenile parolees consistently make
26 waivers that are not knowing, voluntary, or intelligent, because they are unable to understand
27 the meaning of the forms or the nature of the rights they are giving up. According to
28 defendants’ own reports, DJJ does not provide juveniles with adequate information or access to

1 legal materials and law libraries, leaving juveniles no means of understanding their rights.

2 47. Defendants also impose “temporary detentions,” taking juvenile parolees into
3 custody for extended periods even when there has been no alleged parole violation.

4 48. These parole proceedings and temporary detentions, all of which affect juvenile
5 parolees’ fundamental right to liberty, are conducted without regard to juveniles’ constitutional
6 right to due process of law, without adequate standards or guidelines, and in disregard of
7 federal laws designed to prevent discrimination against persons with disabilities and to ensure
8 effective communication of the conditions of parole and the basis for its revocation.

9 49. Juvenile parolees are not provided with adequate pre-release and re-entry
10 counseling and other services to assist their return to the community, thereby increasing the
11 likelihood that they will be subjected to further unconstitutional conditions of confinement and
12 parole proceedings.

13 50. On information and belief, parents and guardians of minors in custody for
14 alleged parole violations are consistently denied any involvement in revocation and other
15 parole proceedings. Parents are not given notice of hearings and other legal proceedings, are
16 not permitted to provide retained counsel for their children, and are denied the right to appear
17 as witnesses at hearings and to assist in legal decisionmaking. This is the case despite
18 defendants’ acknowledgment in a recently distributed report that “[t]he research consistently
19 shows that positive outcomes for youth are more likely when the family is involved in
20 treatment. . . . Continuing and increasing family involvement is especially important on
21 parole.” Parents have an interest in their minor children’s parole proceedings because of their
22 participation in and responsibility for, among other things, their children’s housing and
23 financial support. They should be provided notice of, and permitted to assist and participate in,
24 all stages of their children’s revocation proceedings.

25 **C. DENIAL OF THE RIGHT TO COUNSEL**

26 51. On information and belief, defendants’ policy is to determine a juvenile parolee’s
27 entitlement to counsel only if the juvenile parolee affirmatively requests counsel. No steps are
28 taken to ensure that juveniles understand they can request an attorney, or to advise them of the

1 criteria used to determine attorney appointment. In fact, juveniles are frequently pressured by
2 staff to waive their rights to counsel and a hearing. In the event a juvenile parolee fails to
3 waive his or her rights, and instead presses for the right to counsel and a hearing, it is the
4 pattern or practice of defendants to deny the request for counsel in virtually all such cases on
5 constitutionally invalid grounds or to offer no grounds at all for the denial of counsel, and in
6 some cases to record incorrectly that the parolee has “waived” the right to an attorney.

7 52. On information and belief, in the unusual case in which a juvenile parolee is
8 advised of the denial of his or her request for counsel, he or she is not routinely and promptly
9 advised of the right to appeal that decision, and there is no mechanism for prompt, fair and
10 adequate presentation of such an appeal.

11 53. On information and belief, juvenile parolees are granted counsel in only
12 approximately 10 percent of revocation cases. In contrast, all adult parolees in California are
13 entitled to appointed counsel beginning early in the revocation case, six days after being served
14 with a notice of charges and notice of rights. This is despite the fact that juvenile parolees, as a
15 group, display a much greater eligibility for attorney representation under the standard set out
16 in *Gagnon* than their adult counterparts. The characteristics of juvenile parolees suggest that
17 the vast majority of them are constitutionally entitled to appointed counsel by virtue of their
18 youth and low maturity levels alone. The denial of counsel in almost all cases is even more
19 intolerable given juvenile parolees’ low literacy rates and educational achievement, lack of
20 familiarity with spoken and written English, mental and emotional disorders, communicative
21 and cognitive disabilities, and other conditions hindering their ability to represent themselves
22 in complex proceedings.

23 54. At the very least, the fact that juvenile parolees are by definition younger than
24 adult parolees makes them presumptively less able to represent themselves without assistance.
25 First, many juvenile parolees are children, whose educational experience and reasoning skills
26 are less than those of adults. Second, both minors and older youth on parole have suffered the
27 severe setback of having spent time in the custody of DJJ, a dangerous, inadequately staffed
28 prison system, without the benefit of proper educational services, counseling, or programming.

1 Juvenile parolees are further disadvantaged by this lost time: most of the time they spend in
2 custody is devoted to bare survival instead of education and cognitive and emotional
3 development.

4 55. In those rare cases in which counsel is appointed, counsel participate only in final
5 revocation hearings. On information and belief, juveniles are denied representation of counsel
6 with respect to many other types of parole proceedings, including preliminary hearings, board
7 hearings at the conclusion of revocation terms, “time-adds,” parole consideration hearings, and
8 important decisions concerning waivers of various proceedings. Juvenile parolees are
9 permitted and encouraged to waive their rights to hearings, and to defend against charges by
10 presenting evidence and confronting witnesses, without any representation by counsel.

11 56. When counsel is appointed, the pay scale and criteria for attorney representation
12 set by defendants render any right to counsel that is afforded meaningless, by making unduly
13 burdensome or impossible the fair, full and reasonable representation of juvenile parolees. On
14 information and belief, the hourly rate of pay and limit on hours for attorneys representing
15 juvenile parolees is intended to and does discourage meaningful representation of parolees.
16 Moreover, reasonable and supplemental legal services, such as the perfecting of administrative
17 and judicial review, are not compensated.

18 57. On information and belief, even when a juvenile parolee intends to retain his or
19 her own non-state-appointed attorney, defendants’ practice is to refuse to allow juvenile
20 parolees access to counsel.

21 58. On information and belief, defendants interfere with, restrict, and monitor
22 juvenile parolees’ attempts to communicate with attorneys regarding their revocation hearings.

23 59. Attorneys, like witnesses, are often prohibited from speaking at revocation
24 hearings, severely obstructing their ability to represent juvenile parolees effectively.

25 60. In contrast to the lack of standards or training for counsel representing juvenile
26 parolees, many of the defendants herein have agreed to be bound by the *Valdivia* Permanent
27 Injunction to develop standards, guidelines, and training for effective assistance of state-
28 appointed counsel for all adult parolees.

1 61. Under the *Valdivia* Permanent Injunction, in cases involving adult parolees who
2 have difficulty communicating or participating in revocation proceedings, including but not
3 limited to mental illness, other cognitive or communication impairments, illiteracy, limited
4 English-language proficiency, and the need for a foreign language interpreter, appointed
5 counsel must be informed of the nature of the difficulty and allowed adequate time to represent
6 the parolee properly at each stage of the proceeding. Juvenile parolees are not extended any
7 such protections.

8 **D. INEFFECTIVENESS OF ADMINISTRATIVE APPEALS**

9 62. Defendants’ recent restructuring and reorganization have led to disarray in the
10 statutory and regulatory scheme that makes it difficult for juvenile parolees and their
11 representatives to pursue appeals or utilize administrative remedies.

12 63. On information and belief, many juvenile parolees are not given notice of their
13 right to appeal revocation decisions, making the administrative process arbitrary and
14 inaccessible.

15 64. On information and belief, in those cases in which appeal forms are provided to
16 juvenile parolees, the forms do not clearly list deadlines for appealing decisions, leading
17 appeals to be rejected as untimely. In contrast, the *Valdivia* Permanent Injunction requires that
18 adult parolees be served with a written notice of rights, including time frames.

19 65. On information and belief, juveniles serving revocation terms sometimes do not
20 receive responses to appeals until after their revocation terms have expired. Additionally, on
21 information and belief, filing appeals can delay disposition of revocation proceedings and
22 therefore increase juveniles’ time in custody.

23 66. On information and belief, juveniles who appeal revocation decisions frequently
24 become victims of retaliation, in some cases because information concerning their alleged
25 offenses becomes available to custody officers, compromising confidentiality and safety. On
26 information and belief, the fear of retaliation leads most juvenile parolees to forgo their right to
27 appeal, grieve, or complain of revocation decisions.

28 67. On information and belief, appointed counsel are not available to assist juvenile

1 parolees in the administrative appeal process.

2 **JURISDICTION**

3 68. Jurisdiction of this court is invoked pursuant to the provisions of Title 28 U.S.C.
4 section 1331 and section 1343(a)(3). The individual defendants, sued in their official
5 capacities, are persons who have deprived and continue to deprive plaintiffs of their federally
6 guaranteed constitutional and civil rights under color of state law, in violation of Title 42
7 U.S.C. section 1983 and Title 29 U.S.C. section 794. The institutional defendants are entities
8 that deny reasonable accommodation to plaintiffs in violation of the Americans with
9 Disabilities Act and/or the Rehabilitation Act, in violation of Title 42 U.S.C. sections 12101 *et*
10 *seq.*, and Title 29 U.S.C. sections 701 *et seq.*

11 69. Declaratory judgment and prospective injunctive relief are sought under the
12 terms of Title 28 U.S.C. sections 1343, 2201 and 2202. Members of the plaintiff class, on an
13 ongoing basis, are being irreparably harmed by defendants' illegal actions, rules, practices and
14 procedures, and there is no sufficient alternative remedy to redress plaintiffs' complaint.

15 **VENUE**

16 70. Venue is properly in this Court, pursuant to Title 28 U.S.C. section 1391(b)(1), in
17 that this judicial district is the residence of one or all of the defendants in this civil action, and
18 all of the defendants are residents of the State of California.

19 **PARTIES**

20 71. Plaintiffs' actual names are not disclosed because each plaintiff has personally
21 experienced or witnessed retaliation resulting from other juvenile parolees' filing or expression
22 of grievances concerning the parole revocation process, and each plaintiff therefore fears that
23 retaliation could result from the filing of this Complaint. Additionally, California juvenile
24 court has long recognized the importance of limiting disclosure of information about juvenile
25 cases out of concern that the youth be able to move forward with their lives without the stigma
26 attached to criminal convictions. (See Cal. Welf. & Inst. Code §§ 203, 1772.) Each plaintiff's
27 underlying offense occurred when he or she was a minor, and proceeding anonymously is
28 appropriate to respect the privacy of the juvenile offenders.

1 72. L.H. is a 23-year-old DJJ parolee, who spent approximately five years in DJJ fire
2 camp and other facilities, including Heman G. Stark Youth Correctional Facility. He was
3 paroled and then placed under a parole hold (arrested) for being under the influence of alcohol
4 while living at a residential substance abuse center. L.H. did not receive a preliminary hearing.
5 After more than a month in custody, on the date appointed for his parole revocation hearing,
6 the parole officer assigned to the case failed to bring the file, resulting in an additional three
7 weeks of delay. L.H. was therefore in DJJ custody without a probable cause or revocation
8 hearing for more than two months.

9 73. When such a hearing finally occurred, someone other than L.H.'s parole officer
10 presented the case. L.H. was denied his right to be represented by counsel under *Gagnon* and
11 the due process clause. He was not offered counsel, and did not request counsel because he did
12 not believe he had such a right. As a result of this unfair hearing, L.H. was sentenced to serve
13 several additional months in DJJ custody.

14 74. L.H. has been a special education student since childhood and requires assistance
15 with reading. He was placed in special education classes in DJJ facilities. L.H. suffered
16 developmental delays attributable to premature birth and a head injury during early
17 adolescence. DJJ clinical staff were made aware that L.H. has a possible mental disorder.
18 L.H. has had problems with substance abuse, including use of alcohol and marijuana, since
19 childhood. L.H. received fewer than 10 academic credits while in custody at DJJ, where his
20 classes were often cancelled. He has neither a high school diploma nor a G.E.D. and missed a
21 great deal of school prior to commitment. On remand from the Court of Appeal, a juvenile
22 court found him to be an individual with exceptional needs. L.H. is an individual with a
23 disability as that term is defined in Section 504 of the Rehabilitation Act of 1973, ("Section
24 504"), 29 U.S.C. section 705(20), and the Americans with Disabilities Act ("ADA"), 42 U.S.C.
25 section 12102(2).

26 75. Although currently on parole until 2008, L.H., like the vast majority of juvenile
27 court parolees in California, is at imminent risk of being subjected again to DJJ's unfair and
28 unconstitutional revocation procedures.

1 76. A.Z. is a 22-year-old DJJ parolee, who recently served a six month parole
2 revocation term. A.Z. has been subjected to DJJ’s unconstitutional revocation proceedings on
3 three occasions, most recently in a hearing in February 2006. That hearing, like the previous
4 ones, was conducted without an attorney to represent A.Z. A.Z. has consistently been denied
5 his right to be represented by counsel under *Gagnon* and the due process clause. Every time
6 his parole is revoked, A.Z. asks for counsel, but the BPH agent or other representative informs
7 him that counsel is unlikely to be appointed. The February 2006 hearing, like the previous
8 ones, occurred more than 50 miles from A.Z.’s residence, making it difficult or impossible for
9 him to present witnesses in his favor. That hearing, like the previous ones, did not occur until
10 A.Z. had been in custody for one and a half to two months. A.Z. has not received prompt
11 preliminary hearings following his arrests for parole violations.

12 77. At A.Z.’s most recent revocation hearing, the hearing officer asked if he had
13 been “harmed” by the parole department’s inability to find a police report of his arrest. A.Z.,
14 without the benefit of counsel, replied no, when in fact he was harmed because he had to serve
15 an additional 30 days in county jail while parole representatives searched for the police report.
16 In addition, at the last minute and without any notice or explanation, A.Z.’s parole agent
17 changed the recommendation from continue on parole to return to custody. The hearing officer
18 revoked A.Z.’s parole, refusing to give him credit for the 30 days served in county jail. A.Z.
19 promptly attempted to appeal that decision, but his appeal was initially “lost” and only granted
20 after his attorney wrote to defendants.

21 78. A.Z.’s case was particularly complex because criminal charges were made in
22 addition to parole revocation charges, but the related police report was lost for 30 days.

23 79. A.Z. spent four years in CYA and received his high school degree from YA’s
24 inadequate system. Since fourth grade, A.Z. has been periodically suspended from school, and
25 only sporadically attended school after seventh grade. DJJ has failed to provide A.Z. with
26 adequate education or counseling or treatment for his known substance abuse.

27 80. Although currently on parole until 2008, A.Z., like the vast majority of juvenile
28 court parolees in California, is at imminent risk of being subjected again to DJJ’s unfair and

1 unconstitutional revocation procedures.

2 81. D.K. is a 23-year-old currently released on parole supervision who has been
3 subjected to DJJ's unconstitutional parole revocation proceedings. After being released on
4 parole in June 2005, he was arrested by his parole agent on or about August 15, 2005 for an
5 alleged "dirty" drug test and was brought to DeWitt Nelson Correctional Center. He did not
6 receive a copy of the drug test results, and he did not receive a preliminary hearing. On or
7 about September 1, 2005, D.K. received notice that he would have a parole revocation hearing
8 on September 8, making it difficult or impossible to obtain witnesses or evidence in his favor.
9 Despite the short notice, his mentor, who helped D.K. find employment when he was released
10 on parole, appeared for the hearing. However, this important witness was not permitted to
11 speak. D.K. was denied his right to be represented by counsel under *Gagnon* and the due
12 process clause. The hearing was conducted without an attorney to represent D.K., despite his
13 request for assistance. Per his parole agent's recommendation, the BPH continued D.K. on
14 parole. He was released to parole supervision on or about September 15, 2005, but he lost his
15 job as a result of the month in custody.

16 82. D.K. has a history of drug and alcohol abuse and has participated in substance
17 abuse counseling beginning before his release from custody. He does not have a high school
18 diploma or G.E.D., and he made very little academic progress during his five and a half years
19 in CYA custody. At the time of his arrest and revocation hearing, his DJJ file contained
20 diagnoses of mental disorders. D.K. is an individual with a disability as that term is defined in
21 Section 504, 29 U.S.C. section 705(20), and the ADA.

22 83. Although currently on parole until 2007, D.K., like the vast majority of juvenile
23 court parolees in California, is at imminent risk of being subjected again to DJJ's unfair and
24 unconstitutional revocation procedures.

25 84. D.R. is a 23-year old DJJ parolee, who was first committed to DJJ five years ago.
26 D.R. paroled in January 2004, and was living in the community. In or around December 2004,
27 D.R. was arrested and placed in custody on three alleged parole violations: use of marijuana,
28 driving on a suspended/revoked license, and failure to report a police contact to his parole

1 agent. D.R. received notice of the alleged charges over a month after he was taken into
2 custody, a mere four days before his revocation hearing. D.R. did not receive a preliminary
3 hearing.

4 85. For his revocation hearing, D.R. requested two evidentiary witnesses, neither of
5 whom was called by Defendants. D.R. was never shown the laboratory results upon which the
6 marijuana charge was based. D.R. did not request an attorney because he was informed that he
7 was not eligible for appointed counsel.

8 86. D.R.'s parole was revoked in January 2005 by the Board of Parole Hearings
9 ("BPH"). He immediately appealed the decision, stating that his due process rights were
10 violated by Defendants' failure to provide sufficient notice of the hearing and the failure to call
11 his witnesses. BPH denied the appeal in April, over three months later. D.R. requested, but
12 never received, a copy of his hearing tape.

13 87. D.R. spent 21 months in custody and went to four Parole Consideration Hearings
14 before the BPH finally ended his parole revocation term and released him. D.R. requested, but
15 never received, copies of two of his Parole Consideration Hearing tapes.

16 88. D.R. has a history of mental health concerns, and attempted suicide while in
17 custody for his parole revocation. DJJ failed to provide D.R. with adequate treatment or
18 counseling, yet at one of his parole consideration hearings, BPH expressly denied parole to
19 D.R. due to his need for mental health treatment. After that hearing, D.R. did not see a mental
20 health professional again for months.

21 89. Although currently on parole until 2007, D.R., like the vast majority of juvenile
22 court parolees in California, is at imminent risk of being subjected again to DJJ's unfair and
23 unconstitutional revocation procedures.

24 90. Each of the representative plaintiffs' constitutional rights to due process of law,
25 to equal protection of the laws, and/or to counsel were violated by defendants' patterns and
26 practices, as alleged more fully herein.

27 91. DEFENDANT ARNOLD SCHWARZENEGGER. Defendant is Governor of
28 the State of California and the Chief Executive of the state government. He is sued herein in

1 his official capacity. As Governor, Mr. Schwarzenegger is responsible for the appointment of
2 defendant Secretary of the California Department of Corrections and Rehabilitation (“CDCR”),
3 defendant Undersecretary of the CDCR, defendant Chief Deputy Secretary of the Division of
4 Juvenile Justice, and, subject to State Senate confirmation, every member of the Board of
5 Parole Hearings (“BPH”). The Governor also appoints the Executive Director of the BPH.
6 The Governor, in union with those whom he appoints, and by and through those persons
7 employed by the other defendants, controls and regulates the custody of the plaintiff class.
8 Pursuant to California Welfare & Institutions Code section 1767.3, defendant Schwarzenegger,
9 by and through those whom he appoints and/or those they employ, has power to revoke the
10 parole of any juvenile prisoner, just as the parole authority has such power. On information
11 and belief, defendant Schwarzenegger is responsible for the creation and enforcement of
12 policies and practices whereby the rights, privileges and immunities of the plaintiff class are
13 adversely affected, in violation of the United States Constitution and of other laws. Through
14 his Attorney General, Defendant Schwarzenegger stipulated on November 17, 2003 to the
15 *Valdivia* Permanent Injunction requiring implementation of constitutional parole revocation
16 procedures for adult parolees in California.

17 92. DEFENDANT JAMES E. TILTON. Defendant Tilton is Acting Secretary of the
18 CDCR. He is sued herein in his official capacity. Defendant Tilton serves as Secretary to
19 defendant Schwarzenegger in charge of defendant CDCR, which funds all costs and employs
20 and directs all staff for executing all actions complained of herein. Except as otherwise alleged
21 herein, Mr. Tilton is responsible for the appointment and employment of necessary officers and
22 employees of the Department, with the express or implied approval of defendant
23 Schwarzenegger. Defendant Tilton is appointed by defendant Schwarzenegger and is entitled
24 to exercise the authority vested in the Governor in respect to defendant CDCR. Mr. Tilton is
25 advisor to the Governor and assists in establishing major policy and program matters affecting
26 the CDCR. Defendant Tilton has immediate supervisory authority over the CDCR. Defendant
27 Tilton also has immediate supervisory authority over the BPH, which is an executive agency
28 within the CDCR. Defendant’s predecessor as Secretary, Roderick Q. Hickman, stipulated on

1 November 17, 2003 to the *Valdivia* Permanent Injunction requiring implementation of
2 constitutional parole revocation procedures for adults in California.

3 93. DEFENDANT KINGSTON “BUD” PRUNTY. Defendant Prunty is the
4 Undersecretary of the CDCR, reporting to defendant Tilton. He is sued herein in his official
5 capacity. The Undersecretary is appointed by defendant Schwarzenegger, subject to Senate
6 confirmation. In his capacity as Undersecretary, Mr. Prunty acts under the direction and
7 control of defendants Schwarzenegger and Tilton and implements CDCR’s policies by and
8 through his employees and in collaboration with other officers of the CDCR.

9 94. DEFENDANT DIVISION OF JUVENILE JUSTICE. The California Youth
10 Authority was an entity established by the State of California to confine juvenile wards of the
11 state. Effective July 1, 2005, a Reorganization Plan was enacted pursuant to which the
12 California Youth Authority was abolished, and its duties were transferred to the defendant
13 Division of Juvenile Justice (“DJJ”) (sometimes referred to as the Division of Juvenile
14 Facilities), a division of defendant CDCR. (Chapter 10, Statutes of 2005 (SB 737).) The DJJ
15 operates all state-level juvenile correctional institutions and purports to provide education,
16 training and treatment services for youthful offenders. The statutory purpose of DJJ is “to
17 protect society from the consequences of criminal activity” and to provide “correction and
18 rehabilitation [to] young persons who have committed public offenses.” (Cal. Welf. & Inst.
19 Code § 1700.) DJJ currently houses approximately 3000 wards, ranging in age from 12 to 25,
20 in seven separate youth correctional facilities, two youth conservation camps, and a reception
21 center located throughout the state of California.

22 95. The Youth Offender Parole Board (“YOPB”) was replaced by the Youth
23 Authority Board as part of S.B. 459, effective April, 2003. Thereafter, the July 2005
24 Reorganization Plan transferred the juvenile parole duties to DJJ and defendant Board of
25 Parole Hearings (“BPH”). Currently, the DJJ assumes the functions of returning wards to their
26 court of commitment for redispotion; discharges commitment; grants parole and sets
27 conditions of parole; revokes or suspends parole; recommends treatment programs; and returns
28 nonresident wards to their state of jurisdiction. The DJJ conducts these functions, including

1 specifically the revocation of parole, through the BPH.

2 96. DEFENDANT BOARD OF PAROLE HEARINGS. The BPH consists of 17
3 commissioners, five of whom are required to be trained in juvenile parole matters. On
4 information and belief, the BPH currently has only three or four commissioners trained in
5 juvenile parole matters. In addition to parole revocation, the BPH makes determinations about
6 juveniles' readiness for parole and may impose "special conditions" of parole, in addition to
7 requiring that juveniles pay restitution, maintain contact with their parole agent, submit to
8 searches, and not leave the state without permission.

9 97. DEFENDANT BERNARD WARNER. Defendant Warner is Chief Deputy
10 Secretary of DJJ. He is sued herein in his official capacity. The Chief Deputy is responsible
11 for the operation of all DJJ staff and facilities, including decisions concerning the budget, staff
12 deployment, programming, and staff training that directly affect plaintiffs and the plaintiff
13 class.

14 98. The BPH works with the Division of Juvenile Parole Operations and DJJ to
15 determine whether a violation of juvenile parole has occurred. On information and belief,
16 DEFENDANT JOSEPH R. MONTES is the Acting Director of the Division of Juvenile Parole
17 Operations. He is sued herein in his official capacity. The Division of Juvenile Parole
18 Operations provides parole supervision to DJJ wards on parole.

19 99. On information and belief, DEFENDANT DENNIS DULAY is the Acting
20 Deputy Director of the Division of Juvenile Parole Operations. He is sued herein in his official
21 capacity. The Division of Juvenile Parole Operations provides parole supervision to DJJ wards
22 on parole.

23 100. DEFENDANT JOHN MONDAY. Defendant Monday is Executive Director of
24 the BPH of the State of California. He is sued herein in his official capacity. On information
25 and belief, Mr. Monday was nominated as Executive Director by defendant Schwarzenegger,
26 and his nomination was confirmed by the Senate of the State of California. On information
27 and belief, Mr. Monday was appointed Executive Director of the BPH by defendant
28 Schwarzenegger. Mr. Monday has overall executive authority over the operation of the BPH,

1 which is currently the principal parole revocation authority of the State of California for adult
2 and juvenile parolees and is responsible for implementing the provisions of the *Valdivia*
3 Permanent Injunction. The Executive Director is the administrative head of the Board and has
4 the responsibility to exercise all duties and functions necessary to insure that the
5 responsibilities of the Board are successfully discharged, including oversight of the revocation
6 of juvenile parole.

7 101. DEFENDANT JAMES DAVIS. Defendant Davis is Chair of the BPH. He is
8 sued herein in his official capacity. On information and belief, defendant Davis was nominated
9 to that position by defendant Schwarzenegger, and was confirmed by the Senate. Carol A.
10 Daly, the former Chair of the Board of Prison Terms – the predecessor organization to the BPH
11 – stipulated on November 17, 2003 to the *Valdivia* Permanent Injunction requiring
12 implementation of constitutional parole revocation procedures for adult parolees in California.

13 102. DEFENDANTS JOYCE ARREDONDO, PAUL CHABOT, JOSEPH
14 COMPTON, SUSAN MELANSON, and CHUCK SUPPLE. Defendants Joyce Arredondo,
15 Paul Chabot, Joseph Compton, Susan Melanson, and Chuck Supple are Commissioners of the
16 BPH of the State of California, assigned to hear juvenile matters. They are sued herein in their
17 official capacities. On information and belief, defendants Arredondo, Chabot, Compton,
18 Melanson, and Supple were appointed to their positions by defendant Schwarzenegger and
19 were confirmed by the Senate. As Commissioners, these defendants are responsible for the
20 operation and policy making of the BPH, including the juvenile parole revocation function.

21 **CLASS ACTION ALLEGATIONS**

22 103. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this suit is brought
23 on behalf of the named plaintiffs on their own behalf and on behalf of all other persons
24 similarly situated.

25 104. This is a civil rights proceeding. The relief requested is declaratory and
26 injunctive; damages for individual plaintiffs are not sought in these proceedings.

27 105. The class is composed of the following persons, subject to defendants' dominion
28 and control: (1) juvenile parolees in California who are in the community under parole

1 supervision or who are at large; (2) juvenile parolees in custody in California as alleged parole
2 violators, and who are awaiting revocation of their parole; and (3) juvenile parolees in
3 California who are in custody, having been found in violation of parole and returned to
4 custody. The plaintiff class includes numerous “individuals with disabilities” as that term is
5 defined in Section 504 of the Rehabilitation Act of 1973, (“Section 504”), 29 U.S.C. section
6 705(20), and the Americans with Disabilities Act (“ADA”), 42 U.S.C. section 12102(2).

7 106. The members of the class are so numerous that joinder of all members is
8 impracticable. The size of the class is estimated to be nearly 3500 juveniles on parole and not
9 in custody, and hundreds of other juveniles serving time as parole violators in custody.

10 107. The instant suit involves questions of law or fact common to all the members of
11 the class, and the relief sought will apply to all of them. The allegations made herein are that
12 the defendants, among other things, are engaged in a pattern and practice of remanding
13 juvenile parolees to custody without due consideration of the right to counsel and without
14 affording them a fair opportunity to present their position, in violation of the Fourteenth
15 Amendment to the United States Constitution’s guarantees of due process and equal protection
16 of the law. The defendants’ alleged illegal pattern and practice of violation of law is generally
17 applicable to all members of the plaintiff class.

18 108. The claims of the representative plaintiffs are typical of the claims of the class.

19 109. The representative plaintiffs are capable, through counsel, of fairly and
20 adequately protecting and representing the interests of the class.

21 110. The common questions of law and fact generally described herein predominate
22 over questions affecting only individual members, and a class action is superior to other
23 methods for adjudicating the controversy. Upon information and belief, there are few or no
24 class members who have the financial means to fund litigation such as this. Moreover, there is
25 a risk of inconsistent or varying adjudications which might be obtained by individual members
26 of the class which would establish incompatible standards of conduct for the defendants.
27 Further, the success of any individual litigant would not necessarily provide any relief to the
28 thousands of other members of the class who were similarly entitled to relief, but who are

1 unable to seek such redress. Finally, the equitable remedy available to any individual juvenile
2 parolee presents the prospect of mootness, because such a remedy (if afforded) would be
3 granted, if at all, only after an individual juvenile parolee had served most, if not all, of his or
4 her illegal custody. Because of the nature and duration of the constitutional violation, which
5 often comes more than once to the same individual and occurs between an alleged parole
6 violation and the end of a revocation proceeding or a revocation term, the harm is one capable
7 of repetition yet evading review.

8 111. Defendants have acted or refused to act on grounds generally applicable to the
9 class, making appropriate injunctive and declaratory relief with respect to the class as a whole.
10 A declaration and a general, final injunction will serve to redress the claims of the members of
11 the class against the illegal actions of the defendants.

12 112. The attorneys for plaintiffs in this proceeding are able to fairly and adequately
13 represent the plaintiff class, because they are experienced and knowledgeable regarding
14 criminal and constitutional law, juvenile justice, and prisoners' rights and remedies.

15 **STATEMENT OF CLASS CLAIMS**

16 113. The named defendants, individually and/or in union, have control of juvenile
17 parolees while they are serving their initial term, while they are on parole after release from
18 their initial term, while charged with a violation of parole, during parole revocation
19 proceedings, and after any disposition is made returning the juvenile parolee to DJJ custody.

20 114. The CDCR is the governmental agency which has the immediate, day-to-day
21 charge of management and custody of juvenile parolees. (Cal. Govt. Code §§ 12838, 12838.3;
22 Cal. Penal Code § 6001; Cal. Welf. & Inst. Code § 1710.) The CDCR, through the DJJ, sets
23 the conditions of parole and, within limits, the length of parole.

24 115. Collectively, the BPH has the statutory power to establish and enforce rules and
25 regulations on the subject of juvenile parole. (Cal. Welf. & Inst. Code §§ 1719, 1725, 1766.)

26 116. Since July 1, 2005, the BPH has had the exclusive power to conduct hearings on
27 juvenile parole proceedings and to order juvenile parolees returned to DJJ custody. Prior to
28 that, the power was vested in the Youth Authority Board (YAB), and before that, the Youthful

1 Offender Parole Board (YOPB). The pattern and practice of the revocation function, whether
2 in the BPH, the YAB, or the YOPB, has been and is violative of constitutional due process and
3 equal protection and the constitutional right to counsel, as articulated in this complaint.

4 117. The BPH employs deputy commissioners or hearing officers to whom the Board
5 may assign appropriate duties, including that of hearing parole proceedings and making
6 decisions. Deputy Commissioners are appointed by the Chairman of the BPH and answer to
7 the Chairman. Upon information and belief, most juvenile parole revocation proceedings are
8 conducted by hearing officers.

9 **A. CONSTITUTIONAL RIGHT TO COUNSEL**
10 **(Against the Individual Defendants)**

11 118. The allegations contained in Paragraphs 1 through 117 of this Complaint are
12 incorporated herein by reference as though fully set forth.

13 119. The members of the plaintiff class have been and are continually being denied
14 the constitutional right to counsel under the United States Constitution as interpreted in
15 *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) and related decisions. Examples of such
16 unconstitutional conduct include the following:

- 17 (a) defendants are following a pattern and practice of denying counsel to
18 juvenile parolees in violation of existing constitutional standards in almost
19 all cases of juvenile parole proceedings;
- 20 (b) when deciding whether to appoint counsel, defendants do not consider the
21 overwhelming need for counsel among juvenile parolees due to factors
22 including their age and maturity levels; their status as minors; lack of
23 facility with written or spoken English; low levels of reading ability and
24 educational achievement; learning disabilities; developmental disabilities;
25 or any of a range of communicative, cognitive, mental, emotional and
26 other disabilities impeding their ability to advocate for themselves;
- 27 (c) when deciding whether to appoint counsel, defendants do not consider the
28 complexity of a juvenile parolee's case or the difficulty of developing or

- 1 presenting a defense, including factors in mitigation;
- 2 (d) purported “waivers” of counsel, of hearings, and other rights by juvenile
- 3 parolees are not knowing, voluntary and intelligent;
- 4 (e) juvenile parolees are not permitted to retain their own counsel to represent
- 5 them;
- 6 (f) when counsel is permitted, attorneys are not informed of any difficulties
- 7 their clients have in communicating or participating in revocation
- 8 proceedings, and they are not allowed adequate time to represent the
- 9 parolee properly at each stage in light of those difficulties;
- 10 (g) counsel are not required to be provided with juvenile parolees’ files in
- 11 order to prepare for hearings;
- 12 (h) when counsel is permitted, the right to meaningful representation is
- 13 denied by, among other things, the imposition of unfair and unreasonable
- 14 limits on counsel’s time and fees;
- 15 (i) there are no standards, guidelines, or training for effective assistance of
- 16 appointed counsel;
- 17 (j) when counsel is permitted, attorneys are in some cases forbidden to speak
- 18 at juvenile parole revocation hearings and other parole proceedings; and
- 19 (k) juvenile parolees are denied a meaningful opportunity to appeal a denial
- 20 of counsel.

21 120. The members of the plaintiff class also have been and are continually being

22 denied the constitutional rights to call witnesses and present testimony and to confront adverse

23 witnesses. Examples of such unconstitutional conduct include the following:

- 24 (a) juvenile parolees are denied the right to be heard in person and to
- 25 subpoena and present documentary evidence;
- 26 (b) juvenile parolees are denied the right to subpoena and present witnesses in
- 27 their favor; and
- 28 (c) juvenile parolees are denied their constitutional right to confront and

1 cross-examine witnesses against them because adverse testimony is often
2 presented in the form of hearsay.

3 121. Under *Gagnon* and related decisions, parolees must be supplied representation in
4 revocation proceedings if they are less than fully capable of speaking effectively for
5 themselves, the relevant facts are complex or otherwise difficult to present, they have
6 mitigating evidence that makes revocation inappropriate, and/or they present a colorable claim
7 that they did not commit the alleged violation. Defendants routinely deny juvenile parolees
8 their right to counsel by failing to consider these factors, even in cases in which they know or
9 should know of reasons why appointed counsel is necessary.

10 122. The restrictions on representation by counsel during revocation proceedings,
11 including the refusal to allow retained counsel and to allow attorneys to speak at certain
12 hearings, severely interfere with the duty of attorneys to represent their clients.

13 123. In addition, juvenile parolees are denied their constitutional right to confront
14 adverse witnesses because adverse testimony is often presented in the form of hearsay.

15 124. Under California law, the constitutional questions raised by this suit cannot be
16 raised in California administrative proceedings. While, on information and belief, there is a
17 process of administrative review from a disposition of revocation and re-commitment after
18 hearing, the administrative review is neither prompt nor effectual. Defendants routinely fail to
19 notify juvenile parolees of their right to appeal, and routinely fail to promptly allow, consider
20 and dispose of administrative appeals.

21 125. In those rare judicial challenges made to the juvenile parole revocation process,
22 the state attorney routinely claims that administrative appeal is an avenue of relief that must be
23 exhausted before a juvenile parolee is entitled to request judicial process.

24 126. The terms of incarceration imposed upon juvenile parolees make it essentially
25 impossible to file a state petition for habeas corpus to relieve the unlawful confinements in
26 individual cases, with or without first exhausting state remedies. Moreover, California state
27 habeas corpus is an extraordinary remedy, only available in the discretion of the superior court
28 to review an utterly baseless decision, and is not a process of administrative review.

1 127. California state habeas corpus affords a hearing and counsel to a petitioner if, but
2 only if, he or she can adequately plead a *prima facie* case of jurisdictional magnitude. A
3 parolee who challenges defendants' denial of his or her constitutional rights to counsel and/or
4 due process in the state courts therefore cannot secure any remedy, or any realistic remedy, as
5 non-compliance with these federal mandates is not deemed jurisdictional.

6 128. Pursuant to California Rules of Court, a petition for habeas corpus relief will
7 usually be pending at least 60 to 90 days before any relief will be granted. The relief provided
8 in state habeas corpus, if the petition does not first become moot while the case is pending, is
9 likely to be limited to a rehearing. Thus, any prior deprivation of a juvenile parolee's
10 constitutional rights may be "cured," even if egregious, without consequence to the juvenile
11 parolee's custody status.

12 **B. CONSTITUTIONAL DUE PROCESS**
13 **(Against the Individual Defendants)**

14 129. The allegations contained in Paragraphs 1 through 128 of this Complaint are
15 incorporated herein by reference as though fully set forth.

16 130. The members of the plaintiff class have been and are continually being denied
17 constitutional due process under the Fourteenth Amendment to the United States Constitution.
18 Examples of such unconstitutional conduct include the following:

- 19 (a) preliminary parole revocation hearings are not being conducted, thereby
20 denying juvenile parolees, among other things, a meaningful opportunity
21 to challenge the absence of constitutional standards leading to their arrest
22 or the right to appeal their detention;
- 23 (b) written notice of charges and the reasons for detention are not promptly
24 given, and juvenile parolees are denied disclosure of evidence against
25 them;
- 26 (c) reasonable opportunity for investigation is not afforded, a problem
27 exacerbated by the routine removal of juvenile parolees from their
28 community of residence;

- 1 (d) waiver of hearings and other rights by juvenile parolees is fundamentally
2 unfair, because, among other things, juvenile parolees are unlawfully
3 influenced to waive their constitutional right to due process and other
4 rights in the adjudication and disposition of allegations of parole violation
5 without full advance notice of those rights;
- 6 (e) juvenile parole revocation proceedings are held from 45 days to months
7 after a juvenile parolee is arrested, and juvenile parolees are denied a
8 meaningful opportunity to appeal a denial of counsel, to subpoena and
9 present witnesses and evidence, or to confront and cross-examine adverse
10 witnesses;
- 11 (f) juvenile parolees are routinely revoked and returned to DJJ facilities
12 without full and fair consideration of alternative or remedial sanctions
13 such as drug treatment programs and half-way houses;
- 14 (g) juvenile parolees are not entitled to a written record of revocation hearings
15 and the basis for decisions made therein;
- 16 (h) juvenile parolees are subjected to additional parole proceedings and
17 temporary detentions with no discernable standards or guidelines, no
18 credit for time served in custody on a parole hold before the parole
19 revocation hearing, no adequate opportunity to obtain records of the
20 proceedings or to appeal decisions, and without representation by counsel;
21 and
- 22 (i) juvenile parolees are not provided adequate pre-release and re-entry
23 services to assist their return to the community, therefore increasing the
24 likelihood that they will be subjected to further unconstitutional
25 conditions of confinement and parole proceedings.

26 131. The *Valdivia* court has already determined that a unitary parole hearing system
27 violates adult parolees' right to due process of law.

28 132. Through orders issued in the *Valdivia* case, the defendants herein are aware that

1 aspects of the juvenile parole system in California are unconstitutional, including but not
2 limited to the pervasive failure to hold preliminary or probable cause hearings, long delays
3 before preliminary hearings and great distances between the alleged parole violation and
4 preliminary hearings, long delays before final revocation hearings, denial of appointed counsel,
5 restrictions making appointed counsel ineffective, denial of the ability to present evidence and
6 testimony and to confront adverse witnesses, and unavailability of remedial sanctions. Despite
7 having agreed to implement a revocation system for adult parolees that protects their right to
8 due process, these same defendants continue to operate an unconstitutional and arbitrary
9 system for juveniles.

10 **C. CONSTITUTIONAL EQUAL PROTECTION**
11 **(Against the Individual Defendants)**

12 133. The allegations contained in Paragraphs 1 through 132 of this Complaint are
13 incorporated herein by reference as though fully set forth.

14 134. The Fourteenth Amendment of the United States Constitution guarantees the
15 right to equal protection of the laws. In violation of that provision, defendants have established
16 a parole system that affects two or more similarly situated groups in an unequal manner.

17 135. The Welfare and Institutions Code provides that following a commitment, a
18 juvenile may be given “liberty under supervision and upon conditions . . . best designed for the
19 protection of the public.” (Cal. Welf & Inst. Code § 1766(a)(1).) Adult parole is similarly
20 defined as a supervised release into the community, which involves monitoring of the parolee
21 for public safety reasons and which may reasonably restrict a parolee’s liberty and privacy
22 interests.

23 136. As such, juvenile and adult parolees are similarly situated with respect to the
24 legitimate purpose of parole proceedings, *i.e.*, to determine whether an incarcerated offender is
25 ready for supervised release and whether, after release, any conduct on the part of the parolee
26 has posed a reasonable threat to public safety.

27 137. Because many of the defendants herein or their predecessors have agreed to obey
28 the *Valdivia* Permanent Injunction, in California, adult and juvenile parolees are being afforded

1 different rights in parole proceedings, even though they face the same consequences:
2 incarceration and loss of liberty. Adult parolees, who are arguably better educated, more
3 intelligent and in a better position to represent themselves in revocation proceedings, are
4 afforded the right to effective assistance of counsel in parole proceedings, the right to subpoena
5 and present witnesses and evidence to the same extent and under the same terms as the state,
6 and the right to timely preliminary and final revocation proceedings.

7 138. A juvenile parolee in California accused of the same parole violation as an adult
8 is afforded none of these rights. Many juvenile parolees are, in fact, over the age of 18 and
9 therefore legally considered adults. Nonetheless, if under DJJ jurisdiction, these adult-aged
10 juvenile parolees receive little to no due process protection in parole proceedings.

11 139. The *Valdivia* Court has already determined that a unitary parole hearing system
12 violates the right to due process of law, and defendants herein have agreed to abolish that
13 system for adult parolees.

14 140. Parole proceedings affect a fundamental right – the right to liberty. Agreeing to
15 provide due process rights and protections, including but not limited to appointed counsel in
16 100 percent of cases, to adults, while refusing to extend those protections to juveniles is a
17 distinction that is arbitrary, capricious, and lacking in any rational basis or compelling
18 justification. Appointment of counsel for 100 percent of juveniles is required as a matter of
19 equal protection because there is no rational basis or compelling justification for the
20 distinction.

21 141. This is especially true given the conditions prevailing at most of California’s
22 juvenile facilities, as determined through the Consent Decree in *Farrell v. Hickman*, Alameda
23 Superior Court, No. RG503079344 (formerly *Farrell v. Allen*). The horrific conditions at these
24 juvenile facilities, which include excessive violence, use of 23-hour-a-day lockdowns, and
25 failure to provide adequate mental health and medical care, all require that juveniles receive
26 greater due process prior to re-commitment. Instead, they receive less than their adult
27 counterparts, in violation of the federal guarantee of equal protection of the law.

28 142. Approximately 4100 youth are now on parole in California. This figure may be

1 compared with the approximately 153,000 adults currently on parole. In Fiscal Year 2004-
2 2005, 941 juveniles were returned to YA institutions for parole violations. Juvenile parolees
3 therefore make up a small proportion of the total parolees facing revocation proceedings in
4 California. It is irrational and arbitrary for defendants to extend due process protections to
5 adults while denying them to juveniles. Because defendants are responsible for revocation
6 proceedings for both juveniles and adults, the federal and state guarantees of equal protection
7 of the law require that they protect youthful parolees' constitutional rights to the same extent as
8 adults.

9 **D. VIOLATION OF THE AMERICANS WITH DISABILITIES ACT AND**
10 **SECTION 504 OF THE REHABILITATION ACT**

11 **(Against All Defendants)**

12 143. The allegations contained in Paragraphs 1 through 142 of this Complaint are
13 incorporated herein by reference as though fully set forth.

14 144. At all times relevant to this action, the ADA, 42 U.S.C. section 12101 *et seq.*,
15 was in full force and effect in the United States.

16 145. The plaintiff class includes numerous "individuals with disabilities" as that term
17 is defined in Section 504, 29 U.S.C. section 705(20), and the ADA.

18 146. The ADA, 42 U.S.C. section 12132, prohibits public entities from discriminating
19 against a qualified individual with a disability in the provision of services, programs, or
20 activities.

21 147. The California Department of Corrections and Rehabilitation receives federal
22 financial assistance as that term is used in Title 29 U.S.C. section 794.

23 148. In violation of Section 504 and the ADA, defendants have failed to develop
24 adequate policies and practices that enable them to identify, assess or reasonably accommodate
25 juvenile parolees with disabilities so that those individuals can fully participate in revocation
26 and other parole proceedings. Defendants have failed to develop policies and practices for
27 providing juvenile parolees with disabilities with reasonable modifications affording them
28 access to programs, activities and services available generally to other individuals under their

1 custody and control.

2 149. Members of the plaintiff class with disabilities have been and are continually
3 being denied reasonable accommodations in parole revocation proceedings. Defendants have
4 failed to make individualized assessments of juvenile parolees' ability to participate in and
5 comprehend parole revocation proceedings conducted by defendants.

6 150. Defendants have failed to ensure equally effective communication and to furnish
7 appropriate auxiliary aids and services and effective assistance where necessary to afford
8 juvenile parolees the opportunity to participate fully in revocation and other parole proceedings
9 to the same extent as other individuals under their custody and control.

10 151. Defendants hold parole proceedings in locations that are not accessible to
11 juvenile parolees with mobility impairments.

12 152. Defendants' conduct constitutes an ongoing and continuous violation of Section
13 504 and the ADA, and unless restrained from doing so, defendants will continue to violate the
14 law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFFS RESPECTFULLY PRAY THAT THIS COURT:

- 17 1. Assert jurisdiction over this matter;
- 18 2. Enter an Order certifying a class of all juvenile parolees in California including:
19 (1) juvenile parolees in California who are in the community under parole supervision or who
20 are at large; (2) juvenile parolees in custody as alleged parole violators, and who are awaiting
21 revocation of their parole; (3) juvenile parolees who are in custody, having been found in
22 violation of parole and returned to custody;
- 23 3. Adjudge and declare that the policies, patterns, conduct and practices described
24 above are in violation of the rights of the plaintiffs and the class they represent under the
25 Fourteenth Amendment to the United States Constitution, under *Gagnon* and related decisions,
26 and under Section 504 and the ADA;
- 27 4. Preliminarily and permanently enjoin defendants, their agents, employees and all
28 persons acting in concert with them, from subjecting plaintiffs and the class they represent to

1 the unconstitutional and illegal policies, patterns, conduct and practices described above;

2 5. Order defendants to end their practices of denying plaintiffs and the class they
3 represent their constitutional rights to due process and equal protection of law;

4 6. Award plaintiffs the costs of this suit and reasonable attorneys' fees and litigation
5 expenses;

6 7. Retain jurisdiction of this case until defendants have fully complied with all
7 orders of this Court, and there is a reasonable assurance that defendants will continue to
8 comply in the future absent continuing jurisdiction; and

9 8. Award such other and further relief as the Court deems just and proper.

10
11 Dated: September 20, 2006

ROSEN, BIEN & ASARO LLP

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