

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**L.H, et al.,**

**Plaintiffs,**

**vs.**

**NO. CIV. S-06-2042 LKK/GGH**

**EDMUND G. BROWN, JR., et al.,**

**Defendants.**

\_\_\_\_\_ /

**SEVENTH REPORT OF THE SPECIAL MASTER  
ON THE STATUS OF  
CONDITIONS OF THE STIPULATED ORDER**

**Background**

In orders dated September 19, 2007 and January 29, 2008, this Court found that California's juvenile parole revocation system violated juvenile parolees' due process rights, the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

The Court approved a Stipulation and Order for Permanent Injunctive Relief on October 7, 2008 (hereafter "Stipulated Injunction"), which sets forth detailed requirements for attorney representation, revocation system procedures, effective communication and reasonable accommodations, and consideration of alternatives to incarceration.

During implementation, stipulated orders have been entered concerning Plaintiffs'

monitoring, the tracking of parolees with disabilities and effective communication needs, policies and procedures, and the revocation extension penalty matrix.

Chase Riveland was appointed as Special Master on May 22, 2008. Virginia Morrison assumed the role effective June 1, 2010. Patricia Gray served as Deputy Special Master in 2010 and 2011, and Christine Toombs succeeded her on October 4, 2011. The Mastership has submitted six reports, and offers this seventh report assessing progress toward providing due process and complying with this Court's orders.

### **Special Master Activities**

During this Round, the Special Master's team conferred with Defendants regarding state budget issues and their effect on DJJ, and with the parties concerning self-monitoring methodology and disputed policy items. The Mastership mediated issues regarding alternatives to incarceration and plaintiffs' onsite and document monitoring.

The Mastership interviewed headquarters staff, parole agents, attorneys, and parolees. The team observed hearings at Pine Grove Youth Conservation Camp; N.A. Chaderjian Youth Correctional Facility; Watts, Inland, and Oakland parole units; Sonoma County Juvenile Detention Facility; South Bay Detention Facility; George F. Bailey Detention Facility; California Men's Colony; West Valley Detention Center; Lerdo Pre-Trial Facility; and in the jails of Merced, Alameda, Solano, Sonoma, Fresno, Los Angeles, San Diego, and San Francisco counties. The team monitored proceedings conducted by 6 hearing officers, including 19 probable cause hearings or optional waiver reviews, 15 revocation hearings, 7 not-in-custody revocation hearings, and 3 revocation extension matters.

The team observed the service of notice on 8 parolees conducted by 6 parole agents in county jails,<sup>1</sup> routine meetings of Defendants' task force, and training for hearing officers.

### **Scope and Approach**

This report discusses observations and activities spanning May through December 2011, collectively referred to as "the Round." Data includes that which became *available* during the Round, which might include activities from a somewhat earlier time.

References to the Special Master's activities frequently include the actions of a member of her team. For some requirements, the Special Master's team conducted studies based on revocation packets, hearing documents, and recordings provided in Defendants' monthly document productions, in combination with those same documents produced for the hearings observed during the team's site visits. For other requirements, the team studied records selected from the relevant population as identified by electronic reports. In other instances, the team relied on reports generated by Defendants' revocation database; Plaintiffs' monitoring summaries; and analyses, reports, or studies conducted by the CalPAP attorney panel administration, and sometimes documents underlying these sources.

This report is structured according to the following format: after these introductory remarks, the report comments on the legislative environment in which DJJ is operating. Priorities for *LH* improvements then follow, after which there is discussion of the requirements recommended for a finding of substantial compliance. A more complete discussion of the status of Stipulated Injunction compliance follows and the report concludes with recommendations for court orders.

### **The Environment**

This period concentrated on the contraction of the juvenile division as mandated by laws that went into effect in 2011. The parole operations division reviewed and discharged from parole substantial numbers of parolees it had been supervising. Parole operations was merged with the adult parole division; juvenile parole agents are receiving additional training at the academy and are employed by the adult division, but retain responsibility for juvenile parolees.

As youth leave the institution to county supervision, are discharged from parole, or serve their maximum parole terms, the population is decreasing dramatically. The total on parole as of early January 2012 was 821, of which 156 were serving revocation terms.<sup>2</sup> For these reasons, the Juvenile Parole Board is also continuing to make adjustments for its reduced activity, including staffing reductions, management functions being subsumed by another juvenile division, and transfer of some responsibilities to staff of the adult Board of Parole Hearings. The law contemplates all juvenile revocation hearings ceasing as of July 2014.<sup>3</sup>

These changes have been complex and time-consuming, involving myriad decisions, negotiation, staff preparation, and practical implementation. It is a difficult time for all of the juvenile division with much loss for many who have invested decades in managing and attempting to rehabilitate youth. The division is characterized by conscientious, caring individuals throughout its job classifications who are dedicated to the youth and to carrying out their jobs well. The pending governor's budget proposal includes a provision to eliminate juvenile facilities as well, possibly ending intake in January 2013, and the further change and uncertainty weigh heavily on staff.

These changes have also raised several concerns for Plaintiffs. With an understanding that a small number of juvenile probationers may have been sent to DJJ to serve their time, Plaintiffs are apprehensive about the scope of that practice and whether juveniles are being revoked to state facilities without benefit of the *LH* protections. Looking to the future, Plaintiffs worry that juvenile parole agents working in adult parole operations may lead to alternative programming being reduced, effective systems being dismantled, and that the pressures of high-volume offices undergoing their own transformations under new laws may affect juvenile supervision.

Remarkably, current conditions seem to have had limited effect on *LH* compliance. Staff have incorporated the operations changes while maintaining most of the *LH* gains of recent years, and some due process improvements are evident in hearing practice. These are substantial achievements and the Mastership is grateful to the management and line staff who have kept things on course.

### **Priority Issues in the Next Round**

The Special Master encourages Defendants to treat the following practices as the highest priorities for improvement in the coming Round:

- ADA accommodations and effective communication assistance during service of notice of rights and charges
- Short factual summaries in Notices of Charges
- Considering and documenting when attorneys challenge probable cause
- Parole agents' and hearing officers' role in applying the law when the State wants to introduce evidence and the person who spoke or wrote the statement is not present

### **Substantial Compliance**

To the extent that a Stipulated Injunction requirement has been conducted well for a sustained period, the Mastership will consider that requirement to be in substantial compliance. In some institutional litigation, “substantial compliance” has been used as an umbrella term for ultimate success. The *LH* Defendants argue that it should be the standard for relief from judgment in this case; Plaintiffs strongly contest that substantial compliance should serve as that standard.

As used in this report, substantial compliance indicates a sustained period of meeting a high standard. Substantially compliant items will remain within the Stipulated Injunction, but the Special Master and Plaintiffs will discontinue review of such items unless and until a significant decline in performance surfaces. Defendants are expected to continue to review these items at regular intervals to prevent such a decline.

The Special Master considers the following requirements to be in substantial compliance on the following bases.

#### Current Round

Tracking mechanism for timeframes and reasons for delay (§ 13, 32, 33): Defendants launched an information system in early 2009 to facilitate many aspects of compliance and to track performance. It captured much of the “business process” as specified by the Stipulated Injunction. It was built on the 10-year-old programming from *Valdivia*, which contained major challenges for reporting ability, completeness and apparent accuracy, and very little of the flexibility needed to address those shortcomings.

Nevertheless, Defendants and very skillful contractors effectively adapted the system to unique *LH* needs and worked continuously to correct reporting inconsistencies

and errors. They created new reports to reflect needed data and added new data capture, reports and adjustments as *LH* processes changed. The Special Master tested the updates during the last reporting period and found them to have remedied all substantial problems. Review for this report confirmed that this has been sustained.

The revocation database serves as the principal mechanism to track timeframes and reasons for delay, but it cannot perform these functions comprehensively. It is complemented by Defendants conducting quarterly reviews of the timeliness of each open case; Defendants researching monthly the causes for each case that appears to have been conducted late at any step; Defendants maintaining back-up systems to watch timeframes and ensure provision of accommodations; and CalPAP capturing, analyzing and reporting additional timeframes and key qualitative data. Each of these four systems functions extremely well. The resulting macro-system effectively fulfills this injunction requirement.

As with any system, a few glitches remain, but they do not pose major obstacles and the Special Master is confident that Defendants, their contractors and CalPAP will manage these in the ordinary course of business.

With an effective system verified for more than one year, the Special Master finds this requirement to be in substantial compliance. Given the history involved, and the centrality of this requirement to meeting many of the *LH* mandates, this is an *exceptional* accomplishment.

Level I and II behavior handled by parole units (§ 25): The Stipulated Injunction provides that “Parole violations that consist of Level I or Level II behaviors may be resolved by the Parole Agent and Supervising Parole Agent at the field unit level without

requiring approval by the Juvenile Parole Board.” Policies and procedures were revised to this effect,<sup>4</sup> and parole units have, in fact, been handling a substantial percentage of behaviors in this way long-term.

In the most recent eight months, agents instituted corrective actions plans, rather than placing holds, for 38% of the events they identified as parole violation behavior.<sup>5</sup> Additionally, during the Round, 34% of the holds placed were resolved at the unit; presumably, some of these involved Level I or II behavior.<sup>6</sup> Cumulatively, then, something approaching 70% of identified violation behavior is managed by the parole units without going to a Juvenile Parole Board hearing. Similar rates were apparent when measured in 2010,<sup>7</sup> suggesting that this practice is institutionalized.

The Special Master finds that this requirement is in substantial compliance.

Evidence on the same terms as the state (§ 33): Throughout *LH* implementation, attorneys and monitors have made no complaints of evidentiary disadvantage to the Special Master, and her team has observed parolees putting on evidence without obstacle. CalPAP reports show no objections on this basis during the Round.

The State is encouraged to work with CalPAP concerning those occasions when the parolee’s defense or mitigation relies in part on questioning his parole agent, and this is frustrated when a substitute agent appears. However, this raises issues different from the State’s evidence being privileged over the parolee’s.

The system to satisfy this requirement appears to continue to function well and the Special Master considers it to be in substantial compliance.



Revocation Extensions (¶ 35, 40): DJJ has provided a revocation extension system since 2009. In the instant Round, 15 cases were brought and all were classified as serious misconduct or willful program failure; the latter involved a parolee refusing to sign his parole conditions.<sup>8</sup> None of the cases was dropped and all concluded at the probable cause hearing. Throughout 2011, only one case was late at one step, and it did not cause subsequent steps to be late.<sup>9</sup>

In the previous Round, three cases arguably were late. Defendants addressed the most problematic issue of delayed initiation, and this has not been repeated for the last nine months.<sup>10</sup>

In this Round, nearly half of the cases occurred within the month before the parolee was set for release. Defendants expedited these hearings so that all occurred by the deadline; indeed, most were concluded before the original release date. This was also the practice in the prior Round.<sup>11</sup>

The Special Master's team analyzed four revocation extension hearings through onsite observations and recordings, and all of the Board Orders for the Round. The conduct of the hearings and their due process protections were consistent with Defendants' other hearings. Attorneys have previously affirmed that parolees subject to revocation extension receive copies of their written hearing records at the conclusion of the hearings.

The Special Master finds this requirement to be in substantial compliance.

Release within three business days if time has been served (¶ 38): Where a hearing officer's order results in a parolee having already served his or her time – that is, an order

of dismissal, continue on parole, credit for time served, or a revocation term that has been served as of the order -- the Stipulated Injunction requires that the parolee be released within three business days. Defendants studied the great majority of these cases in 2011. They found 48 relevant cases, and they verified that all had been released timely.<sup>12</sup> Additionally, a parolee was ordered released after a successful appeal, and his release was timely as well.<sup>13</sup>

With at least one year of sustained performance, the Special Master finds this requirement in substantial compliance.

Right to audio recording (§ 41): The Stipulated Injunction provides that parolees shall be informed at revocation hearings of their right to an audible recording of the hearing, and Defendants shall ensure that such recordings are made and the equipment maintained. Since early in implementation, the parties have observed recording conducted in each revocation hearing for which they were present. Defendants provide recorded hearings in a monthly document production. The Special Master previously found in substantial compliance the companion requirement that parolees receive recording copies timely and, in so doing, found that unusable copies were extremely rare. These all suggest that Defendants are fulfilling their obligations to maintain a recording system and keep it in repair.

The Mastership analyzed almost 60% of the revocation hearings in the Round, and hearing officers consistently informed parolees of their right to request recording copies. This has been the observed practice in prior Rounds and others' monitoring provided no examples to the contrary.

This requirement is in substantial compliance.

Policies and procedures governing dual commitments (§ 45): Defendants have had policies and procedures in place since 2009; these principally call for juvenile and adult parole agents to coordinate when dual commitment parolees are arrested on potential revocation charges.<sup>14</sup> While there initially were reports of difficulties in this communication, all juvenile parole agents interviewed by the Special Master in recent Rounds report ease of coordination.

The parole division indicates that it has made a concerted effort to review dual commitment cases and discharged a number of them in favor of adult parole supervision. As of this writing, Defendants report that there are 12 dual commitments, two-thirds of whom are currently pending review for discharge. During the Round, revocation was initiated for only three dual commitments. Records show that juvenile parole deferred to adult parole in all three cases, and that this was accomplished quickly and did not delay revocation processing.<sup>15</sup>

The Special Master considers this requirement to be in substantial compliance.

No delays for accommodations (§ 51): As required, Defendants implemented policies and procedures to facilitate the provision of accommodations and measures for effective communication.<sup>16</sup> Defendants' revocation database shows no delays for the purpose of providing accommodations at hearings in the last two Rounds, constituting 15 months of practice.<sup>17</sup> CalPAP records show no objections for this reason during that period and surveyed attorneys did not experience delays for accommodations.<sup>18</sup> Anecdotally, Plaintiffs' monitoring notes various accommodations provided during observed hearings, including those that require advance arrangement such as interpreters

and staff assistants, and did not indicate there were any delays.<sup>19</sup>

The Special Master's team has interviewed parole agents during notice service, who reported no delays for this purpose or any other accommodation or effective communication need. This is consistent with revocation database reports concerning notice service, which show that none of the service events that appear late were caused by the need for accommodation.<sup>20</sup>

Whether all accommodations and effective communication needs are identified and appropriately provided is a contested issue covered by other provisions of the Stipulated Injunction. On the narrow issue specified by this injunction paragraph -- whether there are delays in providing for those needs that *are* identified -- the Special Master finds there is good practice sufficient for substantial compliance.

Forms in alternative formats (§ 55): Plaintiffs retained an expert to simplify those forms given to parolees. For three Rounds, Defendants made available those forms, as well as forms in Spanish and large print. The parties agree that it appears all relevant forms are now in these formats.<sup>21</sup>

They have also agreed that, rather than providing forms in audio format, Defendants will read the forms aloud when needed. Defendants have ensured that there is equipment available at each of their facilities for parolees needing to listen to materials on recording. Plaintiffs also note that this support needs to be available to parolees housed in jails. Through three years of implementation, there have been 28 requests to review hearing recordings;<sup>22</sup> it is unknown how many of these may have been parolees in jails and whether they were able to play the recordings. While the Special Master agrees

that this is an issue requiring attention if it arises, it appears the risk is of a size that should not serve as a barrier to substantial compliance on this requirement. No complaints have come to the Special Master's attention, throughout implementation, that any of these formats was not provided when needed.

This requirement is well-established and the Special Master considers it in substantial compliance.

In previous Rounds, this Court has found the following requirements to be in substantial compliance. Defendants and CalPAP maintained these requirements at or above prior levels.

- Notice of terms posted (¶ 11): This remains in compliance. Although the Stipulated Injunction does not expressly require posting in hearing rooms, Plaintiffs assert that they should be and this has been a long-term practice. Monitors have recently noted several hearing rooms lacking this poster, and it would be good practice for Defendants to replace them.
- Timely appointment of counsel (¶ 16)<sup>23</sup>
- At the time of attorney appointment, provision of a copy of all the evidence on which the State intends to rely or which may be exculpatory; evidence not provided with at least two days' notice shall be excluded unless the state shows good cause (¶ 16, 19)<sup>24</sup>
- Attorney will be informed of Return to Custody Assessment by the 10<sup>th</sup> business day after the hold (¶ 30)
- Adequate time for representation; reasonable access to clients and files; confidential phone calls and space in which to meet; observing staff cannot participate in proceedings (¶ 20, 23)
- Provision of counsel during revocation and revocation extension proceedings (¶ 15, 35)<sup>25</sup>
- At the time of attorney appointment, provision of date, time, and location of the hearing (¶ 16)

- Defendants shall take all reasonable steps to allow counsel to meet with clients at least 24 hours prior to the probable cause hearing (§ 16)
- State-appointed counsel for juvenile parolees shall be appropriately compensated for hearings and appeals (§ 24)
- Defendants shall develop standards, guidelines, and training for effective assistance of state-appointed counsel (§ 21)
- Not accepting waivers of hearing rights or the right to counsel made prior to the juvenile parolee meeting with counsel; waivers of hearings and requests for continuance must be made in writing in the presence of counsel (§ 17, 31)
- Parolee waivers of timely hearings and continuances (§ 31)<sup>26</sup>
- Not in custody hearings within 60 days after service and with all due process and ADA protections (§ 45)<sup>27</sup>
- Parole revocation hearings to be held within a 50-mile radius of the alleged violation (§ 36)<sup>28</sup>
- Providing hearing recordings (§42)<sup>29</sup>
- Revocation may be extended only after a revocation extension hearing (no time-adds or DDMS time extensions) (§ 35)

### **Stipulated Injunction Requirements**

The Stipulated Injunction requires a variety of practice changes and a system of revocation steps in which due process must be delivered according to specified timelines. The status of implementing these requirements will be discussed in this section.

Defendants initiated 378 revocation actions during the eight-month Round, continuing the pattern of reductions of recent years. In the most recent months, the difference was striking – half as many cases were being initiated as compared to the beginning of the Round.<sup>30</sup>

Defendants continue to resolve more than one-third of these actions before

proceeding to any hearing.<sup>31</sup> It appears that those parolees are continued on parole within two weeks of the cases being initiated, and reportedly are given programming and/or additional structure when returned to their communities.

### **Policies and Regulations**

**Policies:** The parties negotiated, and Defendants have had in place long-term, policies covering most of the elements required by the Stipulated Injunction. The agreed policies went forward while a substantial number of disputed items remain. During this Round, a policy concerning due process for mentally ill parolees unable to participate in proceedings, which had been previously negotiated, was distributed.<sup>32</sup>

**Regulations:** The parties have been pursuing the circuitous path to regulatory revision for several years. After multiple rounds of Plaintiffs providing input during public comment periods and Defendants making revisions, Plaintiffs currently have the opportunity to comment in a period that closes contemporaneously with this report.<sup>33</sup> They object to the length of time that this process has taken and advocate that finalizing these regulations should be a priority for the upcoming Round.

### **Parole Agent and Supervising Parole Agent conference within two business days (¶ 27):**

*Nature of the practice:* Where a parole agent has placed a hold, the Stipulated Injunction requires him or her to confer with a supervisor, on this timeline, to determine whether there is probable cause to retain the hold and whether alternatives to incarceration are warranted, and to document these decisions. This conference has been routine practice long-term; Plaintiffs are concerned about whether it is done correctly as

they have not observed it. During this Round, Defendants added a revocation database feature for staff to record general information underlying their decisions at this step. No other information came to the Special Master's attention during the Round.

*Timeliness:* Only one in-custody case was late, and open cases were consistent with these closed cases.<sup>34</sup> Unusually, six not in custody cases were late. Taken together, this represents a 98% timeliness rate.

Some of the late not in custody cases were handled two days later, while others were delayed as much as three to four weeks. Defendants' oversight identified them and determined there were not good reasons<sup>35</sup> These did not affect incarceration time as the parolees were in the community, and it did not delay the time to hearing or other final decision. Plaintiffs object, nevertheless, to not meeting requirements.

**Notice of charges and rights within three business days** (§ 28):

*Nature of the practice:* The Mastership had an opportunity to review more notices being served than in prior Rounds and the results were surprising. There was a wide range of practice, most particularly concerning ADA accommodations and effective communication assistance. Defendants will want to bring attention to this area.

In terms of identifying and accommodating special needs, some agents worked carefully and methodically through the conditions possibly requiring assistance with an open manner encouraging asking for help. Others discussed only vision and reading, then moved on. Some did not have their kits of assistive devices; indeed, one was unaware of how to accommodate a vision or hearing impairment. Some took extra care with phrasing, pace, and explanations for parolees they knew might have difficulty, or noticed



and assessed when a parolee seemed not to be engaged. Some had parolees read aloud but none had them paraphrase it to demonstrate comprehension. Too often, agents asked closed-ended questions for the youth to affirm their understanding, or did nothing at all in this regard. While problematic practices have been observed in a small number of agents to date, their practice differed so much from Defendants' policy that it bears attention.

The need for interpreters reportedly is rare. Some agents say they have brought in-person interpreters who are available with little lead time, others know DJJ contacts for arrangements, while one would call on local jail staff, seemingly unaware of the DJJ systems.

Agents were much more consistent and accomplished when communicating parolees' rights and charges. They read through those documents thoroughly and some would supplement that with examples and explanations, an excellent practice. Youth were given all of the expected *LH* forms.<sup>36</sup>

The Mastership also reviewed a large sample of the notices of charges provided to parolees. The study looked for whether the short factual summary for each charge communicated enough for the parolee to begin preparing a defense. Short factual summaries met this expectation in only 73% of the cases,<sup>37</sup> a rate far too low for compliance and an unfortunate decline from earlier Rounds. Practice was excellent at the Sacramento parole unit; difficulties were distributed across several units but were most concentrated at Central Valley parole unit.

On the other hand, notices in this sample were almost always complete, with only two cases adding charges after the original set was served. In one case, it appears clear the agent could not have known the added charge in time to include it on the notice; in

the other case, the agent may or may not have known. Neither parolee was re-served, but the added charges were included by the time the attorneys received the violation reports.<sup>38</sup>

*Timeliness:* Service of notice occurred late in four cases, mostly the same not in custody cases that were late at the agent-supervisor conference step.<sup>39</sup> These could be very late – one to two weeks – but the parolees still had substantial time to prepare a defense and their hearings were not delayed. There were an additional three in-custody cases where the agents encountered barriers reaching the parolees; the agents diligently returned to serve once or twice per day and ultimately served these parolees one business day late. Thus, the timeliness rate was 97.5%, with half of the late cases fully excusable. Open cases were consistent with this analysis.<sup>40</sup> This remains excellent performance.

**Not accepting written admissions to a violation of parole made prior to the juvenile parolee meeting with counsel** (§ 17):

Defendants assert that they have ceased the routine practice of asking parolees to sign written admission forms. The Special Master has not encountered these forms in hundreds of revocation packets reviewed since 2009, and none has been identified by monitors. The parties disagree, however, as to whether this prohibition extends to the taking of oral statements during notice service and investigation, a common practice.

During the Mastership's observations, there was a wide range of practice in this regard. One agent preemptively warned the parolee that statements could be used in revocation proceedings. Another stopped a parolee with a similar warning. Some engaged in conversation once a parolee initiated it. Two others solicited statements. Plaintiffs

noted 16 cases in their monitoring in which agents solicited statements, although there is generally no comment in the reports as to any resulting detriment.

Plaintiffs argue that a parole agent transcribing an oral admission is effectively the same as the parolee signing an admission form and they object to conversations of this nature in the absence of counsel. Plaintiffs are troubled by what they describe as a conflict in the agent's roles as investigator and representative of the State bringing the charges, on the one hand, and trusted advisor, which may make the juvenile more vulnerable when questioned by this person.

Defendants note that parole agents have always investigated violation charges and they do not compel the parolee to give statements. They say that, when parolees are forthcoming, it helps maintain the bond and fosters taking responsibility that furthers effective parole adjustment. Defendants see the parolees' version of events, and any voluntary admission of misconduct, as potentially providing mitigation and helpful to determining whether alternatives to incarceration are appropriate.

**Violation report within six business days** (Exh. A):

*Nature of the practice:* Whether the content of violation reports satisfies due process has not yet been monitored by either party or the Special Master. The parties dispute whether this step is a requirement of the Stipulated Injunction.<sup>41</sup>

*Timeliness:* There is no direct measurement of the timeliness of violation reports.<sup>42</sup> The subsequent step – supervisor review of this work product – is timely at 99%. It thus appears that violation reports are either completed timely, or within one additional day and do not adversely affect the overall timeliness of revocation

proceedings. The Special Master is confident that parole agents are doing well in meeting this timeliness requirement.

**Supervising Parole Agent review of packet within seven business days** (Exh.

A):

*Nature of the practice:* Neither party nor the Mastership has assessed Supervising Parole Agents' practices when reviewing the revocation packet for probable cause and for completeness. On the same basis as with the violation report, the parties dispute whether this step is a requirement of the Stipulated Injunction.

*Timeliness:* It appears that only two cases were late at this step, an exceptional timeliness rate of 99%. The late cases were completed within two additional days. Open cases appeared consistent with this analysis.<sup>43</sup>

**Requirements concerning attorney representation**

At the time of attorney appointment, provision of relevant educational, mental health and disability identification and source documents (§ 16):

Defendants use a summary form, negotiated by the parties, to provide educational, mental health, and disability information to attorneys and those making use of the field files. A dispute remains about what is sufficient to satisfy the requirement to provide source documents.

Right to be represented by counsel of choice; process for timely notifying the counsel of record of the imposition of a parole hold (§ 18):

Defendants have in place a system to notify counsel of record. Previously, this system operated consistently but with significant deficiencies in timeliness. Neither the

parties nor the Special Master's team conducted a review during this Round. Reportedly, no attorneys outside of CalPAP represented youth in the revocation proceedings during the Round.<sup>44</sup>

Return to custody assessment ("RTCA") within nine business days (§ 29):

*Nature of practice:* The Special Master was unable to observe hearing officers assessing at this stage probable cause and the need for continued detention, but there were two studies contributing to an understanding of this step.

Defendants offer credible support for the effectiveness of this system in a CDCR attorney study of revocation packet materials to determine whether probable cause existed in cases that proceeded past this step.<sup>45</sup> This well-structured review found that packets established probable cause for all charges in all cases, with only one possible exception.<sup>46</sup>

The Mastership conducted a supplementary review whose results indicated strong performance, but a few areas to work on.<sup>47</sup> In the study, 92% of the revocation packets supported probable cause for all charges. The remainder showed probable cause for at least one charge but not for one or more others; this was identified at RTCA in some cases and the charges dismissed. Others proceeded to probable cause hearing and the unsupported charges were dismissed then; this could either indicate an oversight at RTCA, or checks and balances functioning well at the subsequent step. In 5% of the studied cases, however, at least one charge unsupported by probable cause, in the Mastership's judgment, survived all levels of review.

Together, these studies examined 40% of RTCAs, and are thus a significant piece

of the puzzle showing the system's workings as to determining probable cause at the Board level.

Additional material shows that 12 cases, about 5% of the total reaching RTCA, were ordered dismissed or continued on parole in the Round.<sup>48</sup> This demonstrates some consideration of both probable cause and the appropriateness of continued detention. While this is a fairly low number, it could be argued that this is the natural result of prior steps having culled the cases that can be decided on the papers, and that further decisions can most likely be made only with further evidence provided at probable cause hearing. Such a determination is not possible with the information available to the Special Master at this time.

*Timeliness:* Timeliness was very high, with every case meeting timeframes except one that concluded one day late.<sup>49</sup> This continues to be very impressive practice.

### **HEARING PRACTICE**

Management guidance to support better hearing practice – both probable cause and revocation -- has been a need long-term, particularly when the hearing officer corps does not have a background in law and it faces any given legal issue rarely, given the low volume of hearings. It is very difficult to address what hearing officers encounter in training alone.

Hearing officers do many things right. That they continue to improve even in these extremely difficult and uncertain times is a testament to their conscientiousness and integrity. The system also needs to be aware that, when dealing with unique or difficult issues, hearing officers can inadvertently create greater risks to due process. In an effort

to protect the parolee with a correct decision, they call for assistance, thereby risking the unfairness of a decision influenced by factors the parties cannot see or affect. In attempting to preserve one procedural principle, they sometimes violate another. They sometimes apply the law incorrectly.

Being able to spot these deviations and support more fair future hearing practice would remove a principal barrier to compliance, one of a handful of top priorities at this stage. DJJ has been able to take steps in this direction during the Round. The Executive Officer provides one-to-one debriefs occasionally by phone or in person. An officer of the day reviews each Board Order and sometimes hearing officers receive feedback from this. The Executive Officer is very responsive when issues surface, flagging them for training and for memos, including one emphasizing renewed focus on fundamental fairness in addition to the letter of *LH* requirements,. Good intentions have also been constrained by the State's severe budget issues, including limiting how consistently these good practices can occur, and prohibitions on the travel that would allow hearing observation and mentoring.

The Special Master encourages the State to expand its efforts in this aspect of management, as it will pay huge dividends in the ability to provide fundamental fairness and thereby convince the Court to end its supervision.

**Mechanical restraints at hearings** (§ 46):

The Stipulated Injunction requires Defendants to develop policies, procedures, and training concerning restraints that are consistent with the ADA, the Rehabilitation Act, due process standards, and Title 15 California Code of Regulations section 4034.4. It

also mandates that “Defendants shall not use any blanket policy of requiring mechanical restraints for all juvenile parolees in parole revocation hearings.” The parties negotiated these policies, which include a determination of the need for restraints based on one or more specified indicia of recent likelihood of violence or flight risk.<sup>50</sup> Defendants have held related training.

In the Special Master team’s observations and review of Board Orders, Defendants executed this policy well at DJJ institutions and at other locations whose policies permit DJJ this discretion. Plaintiffs support this practice sometimes, and disagree in other cases where they assert that the violence reflected in the violation charges alone is insufficient under the policy’s criteria. In the Mastership’s reviews this Round, where Defendants exercised discretion, 17 parolees were not handcuffed, and 3 were restrained consistent with policy standards.

A dispute remains as to Defendants’ obligations in those non-DJJ facilities where policy mandates universal use of restraints. This applies to county jails, where DJJ hearings are commonly held, and in rare proceedings at CDCR institutions. These represented just over half of the Mastership’s reviews during the Round.<sup>51</sup> Plaintiffs argue that Defendants are obligated to ensure the protections of *LH* are provided to DJJ parolees held under DJJ’s authority, regardless of hearing or housing location. Plaintiffs also object when the restraints decision is not documented in Board Orders, although improvements have reduced this to only five occurrences in Plaintiffs’ reviews this Round.

In the 21 not-in-custody-hearings, there reportedly was only one parolee who was handcuffed during the proceedings.<sup>52</sup> This addresses well a previous concern that



parolees were routinely handcuffed in this setting, and appears more consistent with the judgment already made that these parolees do not present a danger to the community or a flight risk. Additionally, the Mastership did observe Defendants following policy to protect against pregnant parolees being put in belly chains.

Hearing space:

While not a specific term of the Stipulated Injunction, concerns have been raised about using any hearing space in which a parolee is separated from other hearing participants. DJJ typically uses the same space at jails as the Board of Parole Hearings uses for adult probable cause and revocation hearings. The Board of Parole Hearings negotiated in late 2011 with five jails that had been separating parolees, and they agreed on space without such barriers. *LH* Plaintiffs observed a hearing, prior to negotiations, in which the parolee was separated, and they would object if the negotiated space was not now available to juvenile parolees. The Special Master has asked Defendants to look into this question to verify that the negotiated space is, in fact, in use for juveniles as well.

**Probable cause hearing requirements**

Expedited probable cause hearings (§ 26): There have been no requests for expedited probable cause hearings in any Round to date.<sup>53</sup>

Probable cause hearings within 13 business days after the hold is placed, including written bases for findings (§ 32, 40):

*Nature of Hearings*

Impressively, DJJ has made progress addressing each of the probable cause topics identified as high priority by the Special Master in the last Round. The cadre of hearing

officers that remains are among DJJ's strongest. In the past, some hearing officers have struggled with certain hearing practices, or those practices varied widely between hearing officers. Currently, hearing officers have mastered several of these, and hearings are more consistent and fair because of it. Some of the most important improvements are:

- Consistently good interactive interviews to determine ADA accommodations and effective communication needs, and adjustments to fulfill many of those needs
- Documenting the probable cause for detention
- Ensuring that Board Orders more closely reflect what went on in the hearing room

Interactive ADA reviews will be discussed in detail in the section titled ADA and effective communications accommodation *infra*, but hearing officers have taken important strides forward. It is now the norm to take the time needed, to assess the parolee's present ability to participate, to ask follow-up questions regarding known conditions or issues of concern in the parolee's demeanor, and to speak at a pace much more suited to facilitating understanding. Hearing officers and their leadership are to be congratulated on this very strong practice.

As in the past, hearing officers consistently set a fair procedural tone, orienting parolees to the standard of proof and what to expect and advising them of their rights. These included informing parolees of the rights to choose a revocation hearing and to appeal, two practices that had dipped in previous Rounds but were well done in this one.

One key inquiry into the health of the revocation system is whether hearing officers genuinely assess whether there is probable cause for each charge alleged. This question is of real significance in the DJJ system, in that probable cause is challenged in more than half of these hearings. The challenge is successful fairly often, with at least one charge

dismissed or amended in more than one-third of the cases in which it is raised.<sup>54</sup> In the hearings the Master's team observed, these arguments were usually assessed thoughtfully, although there were some troubling exceptions.

To be able to endorse the soundness of the system of probable cause reviews, the Mastership needs confidence that those exceptions are limited. Board Orders are of limited help in answering this question, as only a minority of applicable cases record the probable cause challenges. The more that Board Orders include the probable cause arguments made, and whether the hearing officers accepted or rejected these arguments, the more Defendants will be able to demonstrate that they are delivering due process.

The *LH* system builds in a number of safeguards to ensure there is probable cause, including two reviews by a parole unit supervisor, a hearing officer review at the Return to Custody Assessment, and the probable cause hearing itself. As described *supra*, two studies support a finding that the system is protecting against youth being incarcerated when there is no probable cause at all. The Mastership's study, however, suggests that there are still small gaps in the system's ability to identify charges that do not meet the probable cause standard.

Defendants argue that, as long as there is probable cause for at least one charge, there is no harm if there are also probable cause findings on other charges without sufficient basis. The Special Master disagrees. As an initial matter, it is an inherently unfair system if one says that the system need not concern itself with unfair charges going forward, so long as one charge is fair.

As to individuals, without a doubt, the greatest harm would exist if a parolee was wrongly incarcerated. Other types of harm exist if he is revoked on some supported and

some unsupported charges; this can cause longer revocation terms and prevent alternative placements. These risks apply not only to the instant revocation proceedings but to all future decisions based on parole adjustment, which can vary greatly if his record shows harsh crimes, a high volume of violations, or violations suggesting he is unamenable to supervision. This is unfair if charges in his record were unproven and/or he did not commit them. .

One component of probable cause analysis is identifying the evidence the hearing officer is relying upon in reaching her decision. Defendants have been very responsive to the Special Master highlighting this as a priority; much improvement was evident in the Sixth Round and it was sustained during this Round. While the specific link was not always clearly made aloud in the hearings, the corresponding Board Orders reflected this in the vast majority of observed cases, giving parolees a good basis for understanding and for appeal if necessary. Occasionally, hearing officers' comments suggested they were treating uncharged "facts," or the actions of another, as though they were charges against this parolee. They should still strive to keep this in check, but it was greatly reduced in this Round's observations.

A probable cause analysis includes a separate analysis of whether there is probable cause to detain, and there is major improvement in this practice. Defendants added a database feature that requires hearing officers to enter whether there is probable cause to detain during hearings in which the hold is retained. This has been consistently in use since September 2011.<sup>55</sup> It is a helpful tool to encourage hearing officers to conduct this analysis. Indeed, all Board Orders associated with the Special Master team

observations had a discussion of probable cause to detain in the narrative, and 80% of them did so effectively.

In addition to specifying the factual basis for findings and determining probable cause to detain, reviewed Board Orders universally recorded ADA information and restraints. Most covered consideration of alternatives to incarceration, though 17% did not. Occasionally, some of these sections were minimal or unclear, but for the most part were done well. Parolees consistently received a written hearing record at the conclusion of the hearing, an important due process right specified in *Morrissey* and provided for in the Stipulated Injunction.<sup>56</sup>

### ***Timeliness***

Probable cause hearings continue to be run with exceptional timeliness, including in cases where special handling is required. All cases following the usual procedures (“mainstream cases”) and extradition cases were timely and open cases were consistent with this.<sup>57</sup> Time waivers came back to calendar within the time waived. Postponements were generally rescheduled in a reasonable time.<sup>58</sup> Successful appeals, too, were reheard within the time prescribed by the Stipulated Injunction.<sup>59</sup> The rare timeliness exceptions<sup>60</sup> were:

1 mainstream case	1 day late
1 supplemental case	10 days late

An analogous proceeding, the optional waiver review, was also held within 13 business days, and generally much sooner, in all cases.<sup>61</sup>

Defendants’ scheduling staff have set up well-functioning systems; addressed small, problematic patterns in previous Rounds, and have maintained those improvements

during this Round for a consistent, high-performing system. They are to be congratulated.

Definition of presumed prejudice (§ 32): Defendants assert that the parties negotiated one definition to be used for both types of hearings, while Plaintiffs indicate that a definition applying to probable cause hearings remains to be developed. This remained unchanged during the Round.

**Requirements related to revocation hearings:**

Final revocation hearing on or before 35 calendar days after the parole hold is placed (§ 33, 37):

In assessing this requirement, there are a number of considerations. The system must consistently provide timely hearings in the usual course of revocation proceedings. It must also function to provide hearings timely to special populations, sometimes small groups whose circumstances dictate counting timelines differently or suspending and resuming proceedings once conditions have been met. In operation, the hearings must provide due process, satisfying questions such as fairness, opportunity to be heard, elements of the violation proved sufficient for the applicable standard, and consideration of appropriate sanctions.

In this Round, the Mastership analyzed 22 revocation hearings – 58% of those conducted – including seven that were conducted “not in custody.” There are no significant differences between revocation hearings held in the usual course, as a not in custody hearing, or in the context of a revocation extension.

*Nature of Hearings*

Hearing officers consistently honor procedural protections such as detailed advisements of hearing rights and appellate rights, including a recorded hearing copy; swearing in witnesses; and reading charges and taking pleas.<sup>62</sup> They generally describe the right to meaningful participation as protected by the ADA and the constitution, and they take steps to assess parolees' ability to participate and to provide accommodations. This is discussed more fully in the section titled ADA and Effective Communications Accommodation, *infra*.

Parolees are afforded the right to be heard and to present witnesses and documents. Counsel frequently offer legal arguments challenging the bases for one or more of the charges. Hearing officers are open to these arguments and generally consider them, sometimes agreeing and dismissing individual charges or the full case. In a minority of cases, the argument is not acknowledged, and it is unclear whether it has been taken into account.

There are greater problems in the handling of the State's evidence, and Plaintiffs voice strong objections to the practices described in the remainder of this section. Hearing officers have improved in calling for parole agents to lay the foundation, rather than reading it into the record themselves. It is a double-edged sword, however, that revocation packets are available ahead of the hearing. It undoubtedly strengthens hearing officers' ability to assimilate and make sense of complex information and reflect on the presence or absence of sufficient proof. It also leads to significant information sometimes being taken into account that has not come out at hearing, and is therefore untested, especially where Board Orders are drafted ahead.

Some of this untested information includes hearsay in the file documents, an issue on a broader scale that the hearing panels have not mastered. The Mastership observed more than half of the hearings in which a hearsay challenge arose, and reviewed the Board Orders for all such cases.<sup>63</sup> Only one included all of the factors and expressly conducted a balancing.

Most commonly, decisionmakers would reach a conclusion after conducting only the State's side of the balance,<sup>64</sup> or would treat the objection as a motion to dismiss for insufficient evidence without considering whether the statements could come in. There were also instances of using other unadmitted hearsay as corroboration, facts not in evidence for this purpose, or the statement at issue to corroborate itself, or the *corroborative evidence* was assessed for reliability rather than doing so for the challenged statements. In the middle of an analysis of one piece of potential evidence, parole agents would introduce a string of new hearsay items, muddying the waters and making it difficult for hearing officers to separate out what they could and could not take into account. At least twice, there was a spontaneous ruling without stating any basis and, occasionally, hearing officers would not record the objection at all.

It is useful to consider the types of problems this engenders. At the broadest level, if hearing officers do not understand the principles governing hearsay admission, the system risks delivering arbitrary and unpredictable results. This is an unfair system on its own. Additionally, there may be cases where that risk is not only present but actualized; there, the parolees would be revoked based on the unfair use of evidence.

It is fortunate that, in nearly every case with problematic analysis in this Round, the hearsay was not admitted or the charges were dismissed for this or other reasons. In



the Special Master's judgment, only one analysis was unsupportable in reaching the conclusion that the hearsay was admissible; nevertheless, it arguably could have come in under a correctly applied balancing test. Thus, all, or nearly all, of these particular parolees do not appear to have been harmed. However, the risk remains high for parolees being unfairly revoked if hearing officers do not possess an understanding of when it is reasonable to base a decision on this kind of evidence. Both parole agents and hearing officers need substantial guidance in understanding this component of revocation hearings.

In related practices, Defendants permit substitute agents to testify when the agent of record is unavailable; this usually occurs automatically and without a confrontation rights analysis. There are cases in which only the agent of record can answer questions necessary to proving or disproving an allegation and the parolee's right to confront that adverse evidence is foiled by the State's practice and without the State having to meet its burden under controlling case law. On the other hand, the State handled a fearful witness well under its policy balancing the right to confront with the witness' rights, in the two cases that came to the Special Master's attention during this Round, as well as in previous Rounds.<sup>65</sup>

Hearing officers' knowledge was more clearly reflected in their handling of other types of legal objections during the Round, such as lesser included charges, timeliness of evidence provision, and permissibility of special parole conditions. Likewise, objections concerning procedural issues such as *LH* timeframes were handled well.<sup>66</sup> In each observed hearing in which there was a parolee admission, the hearing officer's findings appropriately drew from independent evidence as well, an improvement from the past.

The Special Master's reports have previously commented on the practice of consulting with the Executive Officer, staff, or an attorney during a hearing and outside the presence of hearing participants. While it is understandable to want clarity about policy and legal questions, it introduces factors into the decisionmaking that the parolee and agent cannot challenge or test. This occurred several times during Plaintiffs' monitoring. There was also a postponement while testimony was underway; while this was meant to remedy a procedural mistake, it has its own problems.

Plaintiffs also take exception to the same hearing officer presiding over a probable cause and revocation hearing, or other sequential proceedings, for a parolee, citing one to two occurrences per month in the monthly productions or onsite observations. Defendants assert that neither the constitution nor the Stipulated Injunction require a different hearing officer at each stage, as the evidentiary standards are different and the hearing officers are capable of separating what occurred at the probable cause hearing from the evidence available at the revocation hearing.

Plaintiffs also find objectionable language indicating that a parolee is being returned to custody "for treatment and training" or for mental health treatment, particularly under conditions where Plaintiffs assert these services will not be forthcoming.

Fairness and due process also require that parolees be informed of the evidence on which the hearing officers are relying in reaching their conclusion. This was a common practice in the hearings the Mastership observed, with few exceptions. Moreover, this was *very* well covered in Board Orders,<sup>67</sup> an important improvement. Orders always discussed ADA considerations and about 80% of reviewed orders covered restraints use

and alternatives to incarceration. In the Mastership's reviews, a minority of cases omitted one to two objections. Plaintiffs' analyses more often identified missing objections or ADA descriptions, or incorrectly recorded pleas.<sup>68</sup> They commented on some instances where information in the order was not discussed in the hearing, though the Special Master notes that this appears much less often than in the past. This is an important improvement in response to the priorities highlighted in the Special Master's last report. Plaintiffs discuss the difficulties attendant to a system that allows modifications to orders but does not identify them; Defendants do note that such revised orders are sent to attorneys.

Onsite, the Mastership observed the Board commonly providing a written record to the parolee and attorney, with provisions for staff and/or the attorney to follow up with a copy in the rare instances when printing was not immediately possible. CalPAP data confirms that only eight orders, for any type of proceeding, were unavailable at the end of the hearing; most were provided later the same day, with two exceptions taking three and seven days.<sup>69</sup>

Discussing alternatives to incarceration, and ordering them as the disposition, was very common in revocation hearings. For more detail, please see the section titled Alternatives to incarceration, *infra*.

### ***Timeliness***

All revocation hearings were timely, an extraordinary accomplishment. All cases following the usual course in custody, and those not-in-custody, were held timely.<sup>70</sup> There was only one revocation hearing following an optional waiver activation and it was held timely.<sup>71</sup> The six cases postponed at this step were heard within a reasonable

rehearing time.<sup>72</sup> No extradition cases proceeded to revocation hearing.<sup>73</sup> Periodic reviews of open cases were consistent with this analysis.<sup>74</sup> The one case set for rehearing after a successful appeal was held only one day beyond Stipulated Injunction requirements.

The frequency of revocation hearings continued to drop to an average of 5 per month, for a total of 39.<sup>75</sup> More than half took place “not in custody.”

Supplemental charges (§ 34): During this Round, five parolees faced supplemental charges.<sup>76</sup> The times to discovery ranged from three days to one month. All were handled timely from the discovery date, and two were handled timely according to timeframes for the original charges. None resulted in a parolee being sentenced beyond the one-year maximum.

Definition of good cause for delay, remedy for timeframe violation (§ 33):

The parties have agreed on a definition of good cause for delay and day-for-day time credit remedies for probable cause hearings held after 35 days, revocation hearings, and revocation extension hearings. The Special Master verified that no probable cause hearing exceeded 35 days without a parolee-initiated waiver.<sup>77</sup> There was one late revocation hearing and the time credit was applied.<sup>78</sup>

Prejudice is presumed, and the case will be dismissed, if, absent good cause, a revocation hearing has not been held by the 90<sup>th</sup> day after the hold.<sup>79</sup> To the Special Master’s knowledge, no cases exceeded 90 days to resolution unless there was a parolee time waiver exceeding that.<sup>80</sup>

**Requirements related to disposition**

Alternatives to incarceration (§27)

The Stipulated Injunction requires Defendants to “consider whether alternatives to incarceration are warranted [at the initial case conference]. The advisability of alternatives to incarceration shall be considered again at the Probable Cause Hearing and at the Revocation Hearing.”

Alternatives to incarceration are considered and frequently given in the DJJ parole supervision and revocation systems. As discussed *supra*:

- 38% of the events that parole agents identified as violation behavior were handled with corrective action plans and were not sent into the revocation process
- among the holds placed, 34% were resolved at the parole unit and did not go to any hearing.
- at the next step, the Return to Custody Assessment, 5% of cases were continued on parole or dismissed.

While monitoring was not as comprehensive, it revealed substantial consideration and use, particularly at revocation hearings. At the probable cause hearings or optional waiver reviews the Mastership observed, just over half expressly discussed alternatives to incarceration and one parolee was placed there. Where it was not discussed, sometimes the parolee was sentenced to a new prison term or was pending local charges; while these would render immediate placement moot, it is still good practice to mention and document how they inform this disposition decision.<sup>81</sup>

At revocation hearing, however, the great majority discussed alternatives, usually at length. Only two cases failed to do so without apparent reason. Moreover, more than

one-third were granted alternatives, as well as almost one-quarter that dismissed all charges.<sup>82</sup> Plaintiffs' analysis of a variety of hearings noted 9 where alternatives were granted, two where such placements were discussed but rejected, and only one where consideration was not evident.

As noted *infra* in the section titled Prohibition of discrimination in parole placements and referrals to services, as well as in previous reports of the Special Master, Plaintiffs' counsel would like much more information about the programs in use and the criteria for, and frequency of, referral.

Limiting return to custody time to one year; use of a matrix of ranges of revocation terms (¶ 35):

Defendants have had a revocation matrix in place since 2009. To the Special Master's knowledge, no revocation terms have exceeded one year, with the exception of a handful of supplemental charges in some previous Rounds. No new information came to the attention of the Special Master during this Round.

**Requirements related to ADA and effective communication**

ADA and effective communications accommodation (¶ 23, 48, 50, 52, 53):

The Stipulated Injunction requires Defendants to identify and track disabilities and effective communication needs and to provide accommodations, including equipment, for notice service, attorney-client consultations, hearings and other aspects of parole proceedings.

As detailed in previous reports of the Special Master, Defendants have in place an

electronic database for this purpose and systems for collecting and updating relevant information in the paper files in use for revocation hearings. In equal detail, the reports have discussed the shortcomings of those systems, which generally take the form of inconsistent records, tracking of the conditions but not the preferred accommodations, and limited utility of data reports.

Plaintiffs' monitoring continues to capture dozens of problems, or potential problems, concerning ADA-related needs.<sup>83</sup> At approximately 70 examples in this Round, this constitutes a large proportion of the cases they reviewed. Most commonly, the comments focus on information not carried forward from one information source, or contradictory between two sources. Without doubt, this carries risks – that key information will be lost over time, or disregarded if it cannot be reconciled, and that in those instances perhaps accommodations would not be provided. In the current examples, however, that risk is reduced because the needed information *is* available to the parole agents and hearing officers in the database and/or revocation packet, even if it is not on *each* form in those sources, as policy requires. Staff consistently say they consult both sources before each revocation-related contact, and the thoroughness with which they cite the files' contents during the interactions the Mastership has observed supports this inference.

In a subset of reported cases, Plaintiffs are concerned that indicia of a need, such as a language interpreter, was not explored and established or ruled out, or that an accommodation provided was not sufficient. As to language interpreters, Defendants indicate that policy requires staff to record why none was provided when another primary language is in the parolee's record; Plaintiffs' monitoring suggests they encountered

instances when that policy was not followed.

As to accommodations concerns, Plaintiffs are particularly concerned that Staff Assistants are needed for parolees with certain cognitive impairments, asserting that these are DJJ staff with specialized training for this purpose. Defendants respond that parole agents are extensively trained in the ADA and effective communication. They assert that attorney assistance should be sufficient and that Staff Assistants are not required under the Stipulated Injunction.

With all of the foregoing issues, Plaintiffs do not describe observing parolees failing to understand or participate, nor receiving those complaints from parolees. It appears that the concern is that insufficient attention to these protections carries great risk that failure to understand is going undetected and that the effects of insufficient accommodation may be more apparent in the future if not addressed proactively.

In addition to files, much identification lies in the hands of DJJ staff at the different steps of the revocation process. The expectation is that parole agents and hearing officers will check the electronic and paper files before contact and conduct an interactive interview to encourage the parolee to disclose any needs for help and to assess his or her current ability to participate in the meeting or hearing. If accommodations needs are surfaced, it is also those staff's obligation to provide for them, giving preference to the type the parolee requests.

The limitations of some parole agents' practice is discussed in the section headed Notice of Rights and Charges, *supra*, and certainly needs addressing. The Special Master did not learn about whether the Board provided assistive devices and interpreters when needed for attorney-client interviews; they have been regularly available at the hearings



the Mastership has observed for several years.

Hearing officers have greatly improved their interactive interviewing and assessment, as well as adjusting their speaking styles to make communication more effective. In Plaintiffs' reviews of the current hearing officers, they found good practice in more than 75% of the cases. The Mastership's findings were similar or better. Particularly good additions include asking questions beyond the initial set that appear aimed at assessing the quality of the parolee's interaction, and a number of questions to follow up identified conditions to determine whether they are having a current effect.<sup>84</sup> Refinements will always be beneficial, but this is very good progress.

In terms of accommodations, vision assistance and speaking slowly while breaking down complex concepts and terms were most commonly needed and provided. Monitors noted a few deviations, but this occurred much less than in the past. Hearing officers are clearly making an effort to slow down the information stream, prepare parolees for what to anticipate, translate terms or give examples, and create an atmosphere in which asking for help is acceptable, all of which make information absorption easier. Most stop periodically in the hearing to ask the parolee if he understands, and some use the opportunity to ask him to paraphrase what they are discussing, an excellent practice. Several assess the parolee again if he or she seems to disengage from the proceedings or appears confused.

Of particular note was the extra attention given to two mental health patients, particularly a team effort involving the hearing officer, a staff assistant and a psychologist supporting the parolee, assessing his abilities, and making adjustments throughout an extended hearing. In a handful of other observed cases, a staff assistant participated. The

need for interpreters was rare but there were examples of employing them in this Round.

It is important to note that certain deficits require specific types of accommodations beyond speaking slowly and using simple language. The Special Master encourages Defendants to review these cases to ensure that the specified accommodations are provided and demonstrable.

Prohibition of discrimination in parole placements and referrals to services (§ 27):

It is difficult to prove discrimination in placements and services, and it is difficult to prove its absence. Defendants offer that there have never been complaints of discrimination. Plaintiffs note that discrimination may be apparent from the face of contracts or policies, or there may be discriminatory practices in the way the contract is applied by a program or Defendants.

The parties have struggled with this question. They determined that Defendants would provide their contracts that require community service providers to comply with the ADA. Defendants note that this provision is contained in a standard attachment to all contracts, and have provided several such example contracts.<sup>85</sup> Defendants have produced to Plaintiffs a list of contract service providers from the prior fiscal year and projections of contracts to be renewed or re-bid,<sup>86</sup> as well as copies of a number of provider contracts at different points during the Round – some were transmitted with the attachment with ADA language and some were not – and intend to send others as they are completed.

Plaintiffs have been very frustrated with the pace and scope of information availability. They have sought program information long-term and anticipated that the contracts would be provided soon after reaching agreement in May 2011. The parties

subsequently agreed it would be sensible to provide current contracts after they had been finalized in the new fiscal year. It is unknown why, more than halfway through that fiscal year, quite a number of contracts reportedly remain in process.

There is not yet agreement on what information and actions are sufficient for Defendants to meet their obligation to protect against discrimination in this context.

Develop an ADA grievance procedure (§ 54): Defendants have put in place an ADA grievance procedure and routinely distribute the form when parole agents serve the notice of rights and charges.<sup>87</sup> The Special Master has also observed Defendants' staff making parolees aware of the ADA grievance procedure during some hearings. Defendants report receiving no grievances raising a failure of accommodation during the Round.<sup>88</sup>

**Development of an appeal process** (§ 43):

Defendants operate an appeal process with the components required in the Stipulated Injunction. Defendants document ten appeals handled during the Round.<sup>89</sup> Among them, one appeal was granted resulting in the parolee's release, and two more were granted, in whole or in part, and given a rehearing. For the most part, reasoning was sound<sup>90</sup> and, in the case of some rehearings, was particularly conservative in ensuring that the parolee's participation was knowing and voluntary. All processing was handled timely.

There is an additional mechanism termed decision review, in which Defendants review each Board Order for mistakes of fact, law, or policy. Parolees and the Parole

division can also request that a decision be reviewed using these criteria. Where the reviewer determines a needed change is potentially adverse to the parolee, a rehearing is ordered. There reportedly were no rehearings during this Round.<sup>91</sup>

**Comprehensive annual training on ADA and effective communication, the Stipulated Injunction's requirements, policies and procedures, due process** (§ 56):

Defendants have offered training, periodically through implementation, to all types of staff in all relevant divisions. During this Round, the Board provided annual training to hearing officers on a variety of *LH*-related topics. Importantly, this year's training was very well-designed based on adult learning principles; it was engaging and covered core topics of due process very effectively. Assessment of ADA and effective communication needs was a weak point, but Defendants followed up with supplementary materials.

To the Special Master's knowledge, Facilities and Parole divisions did not conduct training during the Round, particularly because all juvenile parole agents continuing to work with the State were engaged in the academy for new adult parole agents for several months in the last quarter of 2011.

**Monitoring process**

Each year, the parties have reached agreements concerning a detailed monthly production of documents and recordings, as well as onsite visits, by which Plaintiffs may review implementation. The parties have exchanged proposals for 2012 and discussions are ongoing.

The Stipulated Injunction requires Defendants to develop self-monitoring to ensure compliance with its terms and with relevant policies and procedures (§ 57). Defendants

report that the monitors in the Office of Audits and Court Compliance responsible for *Valdivia* are adding *LH* audits to their responsibilities. Very large, detailed audit tools were finalized during the Round after adopting some of the comments from Plaintiffs and the Special Master.<sup>92</sup> The first audit under these new arrangements reportedly is underway, examining eight *LH*-related practices that occur within juvenile facilities, principally concerning attorney access and confidentiality, as well as an ADA grievance procedure.<sup>93</sup>

As described in detail in prior reports of the Special Master, Defendants continue to maintain various management oversight practices in day-to-day operations, monthly analysis and reporting of all cases late at any step, and decision review of Board Orders. For the most part, these continue to operate well although, as discussed elsewhere in this report, the occasional lapses in spotting and addressing key due process issues are of concern.

**Elimination of “temporary detentions”; immediate rescission of relevant regulation (§ 39):**

The Stipulated Injunction requires Defendants to “immediately rescind Title 15, California Code of Regulations § 4985,” which concerns this practice. Defendants report that this regulation and Title 15, California Code of Regulations § 4826 were repealed in prior Rounds and that they have reinforced repeatedly with staff that this practice is no longer permitted. In prior Rounds, Plaintiffs have raised concerns that some cases give the appearance of circumventing the prohibition. No new information came to the attention of the Mastership during the Round.

### **Recommendations**

The Defendants have demonstrated compliance with several requirements of the Stipulated Injunction. I therefore recommend that the Court order that the following requirements are substantially compliant, and that the subjects will therefore no longer be a primary focus of Plaintiffs' or the Special Master's monitoring unless and until it comes to the parties' or the Special Master's attention that there has been a significant decline in compliance. These orders should apply to the following requirements:

- Tracking mechanism for timeframes and reasons for delay (¶ 13, 32, 33)
- Level I and II behavior may be resolved at the parole units (¶ 25)
- Evidence on the same terms as the state (¶ 33)
- Revocation Extensions (¶ 35, 40)
- Release within three business days for certain dispositions (¶ 38)
- Right to hearing recordings (¶ 41)
- Dual commitments (¶ 45)
- Proceedings occur without delays when accommodations or effective communication assistance is needed (¶ 51)
- Forms in alternative formats (¶ 55)

Pursuant to the Order of Reference to the Special Master, the Special Master's reports shall be final unless, no later than twenty (20) days after service of the final report, a party files written objections with the Court. If any party files objections, the opposing party shall have twenty (20) days to file a reply to the objections with the Court.

///

If objections are filed, the Court will consider the matter and issue an order adopting the report in full or as modified, or rejecting the report.

Respectfully submitted,

/s/Virginia L. Morrison

Virginia L. Morrison  
Special Master

February 28, 2012

---

<sup>1</sup> These took place at Los Angeles and Fresno county jails, Rio Consumnes Correctional Center, Chula Vista Detention Facility, and San Diego Central Jail. Attempts to observe notice service on other occasions were unsuccessful.

<sup>2</sup> Informal communication from Defendants

<sup>3</sup> Hearings may well conclude at an earlier time if the population becomes so small that the cost of maintaining a system for them is untenable.

<sup>4</sup> CN410 Parole Violation Process, most recent revision provided to the Special Master is signed Sept. 15, 2010

<sup>5</sup> Spreadsheet titled 2012 Alternatives to Revocation (May through Dec. 2011 only); Optional Waiver CalPAP May through Dec. 2011

<sup>6</sup> Closed Case Summary and NIC Cases, each run for May through Dec. 2011

<sup>7</sup> Spreadsheet titled 2010 Alternatives to Revocation; Closed Case Summary, NIC Cases and Optional Waiver CalPAP each run for Jan. through Sept. 2010

<sup>8</sup> DJJ Rev. Extension Cases Closed for each of April through Nov. 2011

<sup>9</sup> Closed Case Summary – Revocation Extension Jan. through Dec. 2011; three associated individual records in electronic folder titled Rev Ext

<sup>10</sup> DJJ Rev. Extension Cases Closed for each of April through Nov. 2011; Closed Case Summary – Rev Extension Dec. 2011

<sup>11</sup> *Id.*; for the previous Round, please see these reports for that time period in Materials Relied Upon for the OSM 6<sup>th</sup> Report

<sup>12</sup> Defendants examined all cases with an order of dismissal, continue on parole, or credit for time served issued in 2011. It is possible that there were also orders for a revocation term that concluded on or before the date of the order, but these are highly impractical to identify and not likely to be a large group. Defendants' study, therefore, can be considered a very large sample. Spreadsheets with the electronic file names LH COP DIS Release Drill 10 3 11.xlsx and Release Compliance Drill 1-4-12 ... Final.xls, letter from J. Bole to V. Morrison Oct. 21, 2011

<sup>13</sup> Email communication from J. Bole to V. Morrison, Jan. 17, 2012

<sup>14</sup> CN410 Parole Violation Process, most recent revision provided to the Special Master is signed Sept. 15, 2010

<sup>15</sup> Dual Parole Status Report Jan. 13, 2012; document with electronic file name Duals as of 1-13-12.xls; individual records in electronic folder titled Duals

<sup>16</sup> *See, e.g.*, contents of electronic folder titled Policies as of 10-2010 (annual revise)

<sup>17</sup> Closed Case Summary – Postponement for May through Dec. 2011 and for Oct. 2010 through Apr. 2011; see also contents of electronic folder titled Timeliness

<sup>18</sup> Other Objections for each of May through Nov. 2011; for prior periods, please see this report contained in Materials Relied Upon for previous reports of the Special Master; informal communication with CalPAP

<sup>19</sup> *See, e.g.*, reports in electronic folder titled Plaintiffs' analysis

<sup>20</sup> NOR Timeliness May through Dec. 2011; Closed Case Detail for each parole unit underlying that report; all individual records associated with the latter reports

- 
- <sup>21</sup> See June 2010 memos distributing Spanish and large print forms; 23 forms and their Spanish counterparts; and email communication in the electronic folder titled “simplified & translated forms”
- <sup>22</sup> See reports of the Special Master for Rounds one through six, *LH* Document Production (itemization) for each of May through Nov. 2011.
- <sup>23</sup> DJJ Date Case Assigned Compliance Report for each of May through Nov. 2011
- <sup>24</sup> During this Round, there were six objections concerning discovery. This number of objections also occurred in the previous Round and was of concern. On examination of the cases in the instant Round, the Special Master determined that these generally are *not* objections about the State using evidence and not providing it to counsel. Rather, these are assertions that counsel finds that this evidence would be important and would like it gathered from other sources. The hearing officers’ rulings were appropriate. Other Objections for each of May through Nov. 2011; relevant individual parolee revocation packets
- <sup>25</sup> This is distinguished from the separate requirement for counsel of choice, which remains subject to full Court oversight
- <sup>26</sup> Continued compliance confirmed by informal communication with CalPAP, Jan. 2012
- <sup>27</sup> DJJ NIC Cases Closed for each of May through Nov. 2011; Closed Case Summary – NIC Cases for the same time period; seven individual hearing records in electronic folder titled OSM Observations
- <sup>28</sup> There was one case that did not meet that requirement. The hearing proceeded over the parolee’s objection. Plaintiffs concluded, after their review of the tape, that the distance contributed to the principal adverse witness not being present for cross-examination; the Special Master heard no facts to that effect in the hearing record. The parolee’s witnesses did appear. CalPAP DJJ Statistics 50 Mile Report for each of May through Nov. 2011; Other Objections DJJ Hearings Held Sept. 1-30, 2011; hearing recordings and orders for the relevant parolee; letter analyzing October document production dated Dec. 9, 2011
- <sup>29</sup> *LH* Document Production (itemization) for each of May through Nov. 2011; no appeals on this basis
- <sup>30</sup> Closed Case Summary and NIC Timeliness reports for each of May through Dec. 2011
- <sup>31</sup> Closed Case Summary May through Dec. 2011
- <sup>32</sup> Policy titled Psychiatric Suspension of Revocation Proceedings, approval date Feb. 15, 2011; Policy Bulletin 11-01; related forms; informal communication from Defendants dated Jul. 11, 2011
- <sup>33</sup> Contents of electronic folder titled Regulations
- <sup>34</sup> Closed Case Summary, and Closed Case Detail PCD late, May through Dec. 2011; individual records associated with it. While these reports show seven cases late at this step, only one was genuinely late. This was a supplemental case initiated two weeks after discovery; the parolee was already revoked on other charges, so this did not affect his time in custody. The other cases appearing late were supplemental cases handled timely, a timely case with a data entry issue, and one parolee held in Arizona whose DJJ case was later administratively closed. See also spreadsheets titled open case summary 8 4 2011.xls and open case summary 11 16 2011.xls
- <sup>35</sup> NIC Timeliness, and Closed Case Detail PCD late, May through Dec. 2011; individual records associated with it; spreadsheets titled Timeliness Report Dec. 1-31, 2011 and DJPO Timeliness Report NIC Closed Cases Nov. 1-30, 2011; informal communication with Defendants
- <sup>36</sup> There was an exception in one case in which the agent did not provide the ADA grievance form. While he said he would return with it, the parolee later confirmed that he did not.
- <sup>37</sup> The review consisted of 85 charge reports, 33% of all such reports served in the Round. Closed Case Summary, and Closed Case Summary – NIC Timeliness, both for May through Dec. 2011; Closed Case Detail PCH May through Oct. 2011 and Nov. through Dec. 2011; individual records in the electronic folder titled NORs, Charge Reports
- <sup>38</sup> Individual records in electronic folder titled NORs, Charge Reports
- <sup>39</sup> Sources for this analysis are NOR Timeliness May through Dec. 2011; NOR Timeliness Detail for each parole unit for this period; individual records associated with these reports; DJPO Timeliness Report NIC Closed Cases Nov. 1-30, 2011
- <sup>40</sup> Spreadsheets titled open case summary 8 4 2011.xls and open case summary 11 16 2011.xls
- <sup>41</sup> Defendants contend that the Stipulated Injunction expressly excluded this step as a requirement by the language “The flowchart does not create any rights beyond those expressly set forth in ¶¶ 1 to 57.” It is Plaintiffs’ position that the steps in the flowchart are part of the Stipulated Injunction because it “incorporate[d] by reference” the flowchart and the flowchart is attached as an exhibit.
- <sup>42</sup> The revocation database appears to do so, but the date entered in that field reflects different activity.



<sup>43</sup> Closed Case Summary, Closed Case Summary – NIC Timeliness, and Closed Case Detail for the late cases at this step associated with these two reports, all for May through Dec. 2011; individual cases in electronic file titled Timeliness; spreadsheets titled open case summary 8 4 2011.xls and open case summary 11 16 2011.xls

<sup>44</sup> Document Production Itemization for each of May through Nov. 2011

<sup>45</sup> The review consisted of a 20% sample of all probable cause hearings, chosen by random selection method, over a six-month period. This was a total of 32 cases.

<sup>46</sup> In that exceptional case, there was found to be probable cause for at least one charge and the others were likely supported by physical evidence cited at the hearing but not available to the reviewer. Documents with the electronic file names PC Study 11-11.xls, PC Study #2\_1 13 2012.xls; PCH Hearings (Oct-Dec 2011).doc

<sup>47</sup> Revocation packets were drawn by accidental selection method for a total of 65, or 27% of the cases reaching this step in the Round. This was supplemented by reviewing the RTCA screen and/or the probable cause Board Order when necessary. See contents of the electronic folder titled “PC violation reports”

<sup>48</sup> Spreadsheets with the electronic file names LH COP DIS Release Drill 10 3 11.xlsx and Release Compliance Drill 1-4-12 ... Final.xls; Closed Case Summary and Closed Case Summary – NIC Timeliness for May through Dec. 2011

<sup>49</sup> The cases that appeared late were not; they were generally supplemental cases that were then reviewed according to the standard timeframes after discovery. One of these supplemental cases was one day late at this step, and one other case appeared late because of a data entry issue. Open cases were consistent with this analysis. Closed Case Detail Step RTCA, May through Dec. 2011; individual records in electronic file titled Timeliness; Closed Case Summary – NIC Timeliness May through Dec. 2011; spreadsheets titled open case summary 8 4 2011.xls and open case summary 11 16 2011.xls

<sup>50</sup> CN416 Juvenile Parole Revocation Process, Juvenile Parole Board, , most recent revision provided to the Special Master is signed Oct. 7, 2010

<sup>51</sup> Only one of these occurred in CDCR. While the reviews totaled 16% of all hearings in the Round, this may not be representative as they were not randomly chosen.

<sup>52</sup> CalPAP DJJ Statistics Use of Restraints in NIC Hearings for each of May through Nov. 2011; Closed Case Summary – NIC Cases for the same time period

<sup>53</sup> CalPAP Requested Expedited Hearings, Feb. 1, 2009 through Dec. 31, 2011

<sup>54</sup> DJJ- Challenges to Probable Cause May 1, 2011 – October 31, 2011; Closed Case Summary for the same period; individual records in electronic folder titled PC challenge cases

<sup>55</sup> *See, e.g.*, the 90 probable cause hearing orders contained in the electronic folder titled “PC challenge cases”

<sup>56</sup> For a discussion of the infrequent exceptions, please see the Revocation Hearing section

<sup>57</sup> Closed Case Summary – *LH* Timeliness, Closed Case Detail – *LH* Timeliness Rules PCH, and Closed Case Summary – Extradition both for May through Dec. 2011; individual records associated with these reports; spreadsheets titled open case summary 8 4 2011.xls and open case summary 11 16 2011.xls. *Accord* DJJ Clients Transferred Late and DJJ PCH Held for each of May through Nov. 2011

<sup>58</sup> Closed Case Summary – Postponement May through Dec. 2011 and associated individual records

<sup>59</sup> *Id.*

<sup>60</sup> All other cases appearing late were timely handled as supplemental cases, postponed cases, “psych suspensions,” and the like.

<sup>61</sup> Optional Waiver CalPAP May through Dec. 2011

<sup>62</sup> For some of these practices, there were one to two exceptions during the Round in the dozens of cases reviewed by the Special Master and the Plaintiffs.

<sup>63</sup> All confrontation rights discussion in this report is based on Granted *Comito* Objections and Denied *Comito* Objections reports for each June through Nov. 2011; associated individual records in the electronic file titled “Comito+ other objections”; document with the electronic file name Email concerning May objections.docx; and Special Master team observations and recording reviews

<sup>64</sup> There can be a reasonable argument that, if there is *no* good cause on the State’s side of the balance, there is no possibility that it can outweigh the parolee’s side and no further analysis is necessary. This is different from the problematic examples cited herein, where the analysis stopped after finding the State *did* have good cause for the non-appearance.

<sup>65</sup> Cases discussed in this paragraph are found in Other Objections reports of July and Oct. 2011

<sup>66</sup> Other Objections reports for each of May through Nov. 2011

<sup>67</sup> The Board will want to take care to prevent what occurred in one case. Presumably out of a desire to create a full record, a hearing officer included a detailed description of evidence that had been excluded under a confrontation rights objection. While this can be done, it must be labeled as testimony offered but excluded to prevent misunderstanding by the parolee and/or on appeal.

<sup>68</sup> There are single, or small numbers of, instances in Plaintiffs' monitoring reports of other errors or omissions that likely have less effect. Nevertheless, it is correct to note that such mistakes inject inaccuracy into the system.

<sup>69</sup> Missing Board Orders for each of May through Nov. 2011

<sup>70</sup> *Id.* A total of four hearings appear on those printouts to be late, but they are not. In one, the parolee was granted a probable cause rehearing after a successful appeal; both the rehearing and the subsequent revocation hearing were held in a reasonable time. Two cases involved parolee time waivers and came back on calendar, or were administratively closed, within the time waived. The final case arguably was late because of a State-initiated postponement without good cause and was rescheduled in nine days.

<sup>71</sup> Optional Waiver CalPAP May through Dec. 2011

<sup>72</sup> Closed Case Summary – Postponement May through Dec. 2011; Admin Appeals Statistics for Apr. and Oct. 2011; individual records in electronic file titled Postponements

<sup>73</sup> Closed Case Summary – Extradition May through Dec. 2011

<sup>74</sup> See, *e.g.*, spreadsheets titled open case summary 8 4 2011.xls and open case summary 11 16 2011.xls

<sup>75</sup> Closed Case Summary May through Dec. 2011; Closed Case Summary – NIC Timeliness for the same time period; individual hearing record in electronic file titled Optional Waivers

<sup>76</sup> Closed Case Detail Step PCH May through Dec. 2011 (2 reports) and associated individual records in electronic folder titled Supplemental Charges

<sup>77</sup> Closed Case Summary and Closed Case Summary - Postponement each for May through Dec. 2011; associated individual records

<sup>78</sup> Closed Case Summary May through Dec. 2011; Closed Case Detail Step REVH and Closed Case Summary – NIC Timeliness for the same dates; individual records associated with the latter two

<sup>79</sup> These agreements are captured in Joint Stipulation Regarding Modifications to Division of Juvenile Justice Parole Revocation Policies and Procedures, Sept. 10, 2009. Plaintiffs maintain that the Injunction is violated whenever the 35-day timeframe is not met without a showing of good cause, and that a case should be dismissed if the hearing has not been held within 60 days after the hold.

<sup>80</sup> Closed Case Summary, Closed Case Summary – NIC Timeliness, Optional Waiver CalPAP and Closed Case Summary – Postponement, each for May through Dec. 2011, and associated individual records

<sup>81</sup> There was another set for which an alternatives discussion is not applicable because the parolee was taking a waiver, or was being returned to county jurisdiction, so disposition decisions were not yet ripe.

<sup>82</sup> It was difficult to understand the rationale of one decision finding alternatives inappropriate in that it found that the charges – violating curfew and driving without a license – demonstrated that the parolee was too dangerous for such placement. This was an exception, however, to decisions that were generally well supported.

<sup>83</sup> In this report, any reference to accommodations or effective communication needs should be understood to include both.

<sup>84</sup> Hearing officers commonly ask about vision, hearing, mobility, education, reading level, and mental health. Not every subject is covered every time, but the variations do not usually appear consequential. These are generally asked with a combination of open-ended and closed-ended phrasing.

<sup>85</sup> See description of standard language at <http://www.dgs.ca.gov/Default.aspx?alias=www.dgs.ca.gov/ols>, form CCC-307, example contracts with American Correctional Solutions, Michael Segovia and John Lewis; correspondence between L. Mehta and S. Wolff dated Nov. 14 and Nov. 23, 2011

<sup>86</sup> Spreadsheet with the electronic file name CONTRACTS RESOURCES 7 5 2011.xls

<sup>87</sup> Special Master's observations

<sup>88</sup> *LH* Document Production (itemization) for each of May through Nov. 2011

<sup>89</sup> Appeals documents within monthly document productions, and report titled DJJ Appeals Cases, for each of May through Nov. 2011

<sup>90</sup> There was one troubling example in which it appears the special parole condition was not read correctly.

<sup>91</sup> Monthly document productions May through Nov. 2011

<sup>92</sup> Spreadsheets with the electronic file names DJPO audit tool FINAL 10 13 2011.xls and JPB Review Tool (FINAL – 20111012).xls; informal communication with Defendants

<sup>93</sup> Spreadsheet with the electronic file name DJF Review Tool FINAL.xls