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18
19 **SUPERIOR COURT OF CALIFORNIA**
20 **COUNTY OF ALAMEDA**

21
22 MARGARET FARRELL,
23 Plaintiff,
24 v.
25 WALTER ALLEN III, Director,
26 California Youth Authority,
27 Defendant.

No. RG 03079344

CONSENT DECREE

1 **I. INTRODUCTION**

2 1. This action is brought by a taxpayer, Plaintiff Margaret Farrell (“Plaintiff”),
3 against Defendant Walter Allen III, Director of the California Youth Authority
4 (“Defendant” or the “Director”), under California Code of Civil Procedure section 526a
5 for injunctive and declaratory relief to prohibit the illegal expenditure of taxpayer funds
6 by the California Youth Authority (the “CYA”) on policies, procedures and practices that
7 Plaintiff alleges are unlawful under state law.

8 2. The parties previously agreed to an expert review of certain conditions at the
9 CYA. The experts were selected jointly by the parties and compensated by the CYA. On
10 or about January 9, 2004, Defendant released the following reports to counsel for
11 Plaintiff and the general public: General Corrections Review of the California Youth
12 Authority (Barry Krisberg), Report of Findings of Mental Health and Substance Abuse
13 Treatment Services to Youth in California Youth Authority Facilities (Eric Trupin and
14 Raymond Patterson), Review of Health Care Services in the California Youth Authority
15 (Michael Puisis and Madie LaMarre), Education Program Review of California Youth
16 Authority (Thomas O’Rourke and Robert Gordon), and Evaluation of Sex Offender
17 Programs: The California Youth Authority (Jerry Thomas). The Report of Findings of
18 Disability Access at the California Youth Authority (Peter Robertson) was received by
19 Plaintiff’s counsel on or about February 20, 2004.

20 3. The parties agree that the facts and opinions contained in the Reports are
21 substantially correct and are sufficient to support the remedies set forth herein. The
22 parties also agree that the remedies are sufficiently specific to provide Defendant, his
23 successors, his agents and employees with notice of the actions they must take to comply
24 with this Consent Decree.

25 4. The parties desire to compromise and settle all disputes between them relating
26 to the facts and claims alleged in the Complaint herein and discharge each other from any
27 and all liability with reference to such claims, except as specifically set forth in this
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1 Consent Decree (“Decree”). Defendant agrees to take corrective action pursuant to the
2 remedial plans identified in Section III of this Decree to comply with state law.

3 5. These settlement negotiations have been undertaken at arm’s length and in
4 good faith between Plaintiff’s counsel and Defendant and other high-ranking state
5 officials and their counsel. The parties freely, voluntarily, and knowingly with the advice
6 of counsel agree to the terms set forth in this Decree.

7 6. If Defendant determines that compliance with the remedial plans required
8 under this Decree requires additional funding, he shall seek such funding in the most
9 expeditious manner possible. Any failure to comply with the remedial plans will not be
10 excused by a lack of available funding.

11 **II. INTERIM MEASURES**

12 7. The parties agree that Defendant shall take the following actions:

13 a. By November 1, 2004, Defendant shall propose to counsel for Plaintiff
14 interim measures to classify wards based on their security risks and treatment needs.
15 Defendant shall consult with Dr. Barry Krisberg when developing this proposal. The
16 parties and Dr. Krisberg shall meet and confer about the proposal by December 15, 2004.
17 Any disputes that remain after the negotiations shall be addressed through binding
18 arbitration at the earliest available date. Defendant shall implement the interim
19 classification scheme using a system of phased implementation as soon thereafter as
20 possible, but no later than 90 days after the scheme has been finalized.

21 b. By November 1, 2004, Defendant shall develop and by December 15,
22 2004, Defendant shall implement a plan to reduce violence and the need for the use of
23 force within the CYA. This plan shall include, but is not necessarily limited to, the
24 following components:

- 25 (1) new policies and procedures to eliminate the unnecessary use
26 of room extractions and chemical agents;
27 (2) training of appropriate staff on the new policies and
28 procedures. Each session of the training shall include a

1 correctional administrator with experience in reducing
2 violence at correctional facilities;

3 (3) training of appropriate correctional and clinical staff on the
4 use of non-violent offender management techniques;

5 (4) the use of de-escalation techniques to defuse planned uses of
6 force by staff involving potentially violent confrontations
7 with wards.

8 c. By November 1, 2004, Defendant shall develop policies and procedures
9 to immediately provide for the treatment and management of wards on suicide watch and
10 those with acute psychiatric needs. These policies and procedures shall be adopted to
11 provide interim treatment and management of these wards pending the development and
12 implementation of the remedial plans in this area. The policies and procedures shall be
13 in the form of criteria that institutions must meet for these wards, including number of
14 hours of clinical intervention per week and maximum number of in-room hours per day.
15 The policies and procedures shall be implemented by December 15, 2004.

16 d. By November 1, 2004, Defendant shall advertise, screen applicants, and
17 interview qualified applicants for the position of Medical Director. The Medical
18 Director shall be board-certified in either psychiatry, pediatrics, internal medicine or
19 family medicine. If a highly qualified and capable individual is identified, the Director
20 of the CYA shall recommend appointment of the applicant.

21 e. By November 1, 2004, Defendant shall evaluate special management
22 programs developed in other states and develop a plan to reduce the length of stay for
23 wards in the special management programs. The plan shall be consistent with national
24 standards and practice, and shall include a review of wards who remain in segregation
25 for long periods of time because his or her case has been referred to a district attorney for
26 prosecution.

27 f. By November 1, 2004, Defendant shall develop formal criteria for
28 accepting wards into the CYA pursuant to Welfare and Institutions Code § 736.

1 Defendant shall not accept more wards than can be materially benefitted by the CYA's
2 reformatory and educational discipline, nor shall the CYA accept wards for whom the
3 CYA does not have adequate facilities. Defendant shall comply with California Code of
4 Regulations, title 15 §§ 4171, 4184, and 4184.5.

5 g. Defendant shall retain Logan Hopper, an expert in the field of
6 programmatic access for wards with disabilities. A completed report regarding
7 programmatic access, in accordance with the Charge drafted by the parties, will be
8 provided to the parties by January 1, 2005. Mr. Hopper will supplement the disability
9 report prepared by Peter Robertson, as mentioned in Paragraph 2, with an evaluation
10 regarding programmatic access.

11 **III. REMEDIAL PLANS**

12 8. Defendant shall develop and implement detailed remedial plans to provide all
13 wards in the CYA with adequate and effective care, treatment and rehabilitative services.
14 Each plan shall be developed to address the deficiencies identified in the relevant expert
15 report. Each plan shall be developed in verbal consultation with an expert in the relevant
16 subject area, who is selected pursuant to Paragraphs 33 and 34, below. Draft language,
17 however, shall only be provided pursuant to Paragraph 16.

18 9. Each plan shall contain a schedule for implementation and a list of documents
19 that will periodically be produced to the Special Master, the relevant expert, and
20 Plaintiff's counsel. Each remedial plan shall contain a Standards and Criteria section for
21 evaluating implementation of and compliance with that remedial plan. The Standards
22 and Criteria section shall indicate which aspects of that remedial plan may be objectively
23 determined by a non-expert, along with criteria for making those objective
24 determinations.

25 10. The remedial plan for general corrections shall address the deficiencies
26 identified by the general corrections report in the following areas and shall be guided by
27 the recommendations in the report:
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- 1 a. Classification System
- 2 b. Physical Safety of Wards (including chemical and physical restraints
- 3 and use of force)
- 4 c. Restrictive Programs
- 5 d. Grievance System
- 6 e. Religious Services
- 7 f. Gang-Related Violence Issues
- 8 g. Verbal Abuse
- 9 h. Repairing or Closing Unsafe or Unusable Housing Units
- 10 i. Access to Courts
- 11 j. Acceptance of Wards. Defendant shall develop a system to
- 12 regularly determine the number of wards that can be materially
- 13 benefitted by each of its programs and, based on that information,
- 14 shall ensure that wards who will not have access within a reasonable
- 15 period of time to the treatment programs that they require are not
- 16 accepted by the CYA pursuant to Welfare and Institutions Code §
- 17 736.

18 11. The remedial plan for mental health shall address the deficiencies identified
19 by the mental health report in the following areas and shall be guided by the
20 recommendations in the report:

- 21 a. Provision of Mental Health Care
- 22 b. Adequacy of Policies and Procedures
- 23 c. Quality Assurance and Peer Review Procedures
- 24 d. Staffing
- 25 e. Sufficiency of Ancillary Staff
- 26 f. Training, Supervision and Discipline of Clinicians
- 27 g. Adequacy of Mental Health Records
- 28 h. Crisis Management and Suicide Watch Policies and Procedures

- 1 i. Use of Mechanical Restraints on Mentally Ill Wards
- 2 j. Adequacy of Mental Health Care Facilities
- 3 k. Adequacy of Mental Health Programs (including number of
- 4 programming beds)
- 5 l. Psychotropic Medications
- 6 m. Programs and Services Provided to Wards in Restricted Housing
- 7 Units
- 8 n. Initial Screenings
- 9 o. Substance Abuse Treatment

10 12. The remedial plan for medical care shall address the deficiencies identified by
11 the medical care report in the following areas and shall be guided by the
12 recommendations in the report:

- 13 a. Staffing (including number, quality, and oversight of staff)
- 14 b. Standardization of Policies and Procedures Regarding Mechanisms
- 15 of Health Care Delivery at the Facilities
- 16 c. Provision of Dental Care and Training and Supervision of Dental
- 17 Staff
- 18 d. Training of Medical Staff
- 19 e. Development of a Juvenile-Specific Health Care Policy and
- 20 Procedure Manual That Standardizes Care Statewide
- 21 f. Organization and Completeness of Medical Records
- 22 g. Initial Screening Procedures
- 23 h. Adequacy of Access to Medical Care and Sick Call
- 24 i. Adequacy and Standardization of Pharmacy Policies Regarding
- 25 Medication Administration
- 26 j. Response to Emergencies
- 27 k. Quality Assurance and Peer Review Procedures
- 28 l. Statewide Clinical, Administrative and Nursing Leadership

- 1 m. Oversight/Coordination of Care, Including Standardized Job
- 2 Descriptions and Statewide Budget and Accounting
- 3 n. Policies to Ensure That Wards Are Provided with Medical Care
- 4 Commensurate with Community Standards (including periodic
- 5 health assessments, use of medical subspecialty professionals,
- 6 preventive health programs, and a chronic illness program)

7 13. The remedial plan for education shall address the deficiencies identified by
8 the education report in the following areas and shall be guided by the recommendations
9 in the report:

- 10 a. Staffing (including a sufficient number of appropriately credentialed
- 11 teachers/specialists and substitutes in both general education and
- 12 special education)
- 13 b. Student Access to Academic and Vocational Education and Life
- 14 Survival Skills (W & I Code § 1120(a))
- 15 c. Attendance and Class Cancellations (regular and restricted
- 16 programs)
- 17 d. Curriculum Guides and Adequate Supplies (books, libraries,
- 18 technology)
- 19 e. Special Education (testing and assessment for wards with cognitive
- 20 and learning disabilities, development and implementation of IEPs,
- 21 hiring qualified and appropriately trained staff).
- 22 f. Record-keeping
- 23 g. Exit Exam

24 14. The remedial plan for sex offender treatment shall address the deficiencies
25 identified by the sex offender treatment report in the following areas and shall be guided
26 by the recommendations in the report:

- 27 a. Adequacy of CYA Sex Offender Programs (including number of
- 28 treatment beds)

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- b. Staff Training
- c. Staffing
- d. Appropriateness of Policies & Procedures
- e. Adequacy of Funding for Treatment Programs
- f. Sex Offender Classification

15. The remedial plan for wards with disabilities shall address the deficiencies identified by the disability report in the following areas (with the understanding that to the extent that the Disability Policy Report to be completed in accordance with Paragraph 7(g) of this Decree indicates that further remedial measures are necessary, this provision shall be modified in accordance with the Report's findings and recommendations):

- a. Accommodations for Wards with Disabilities
- b. Testing for Cognitive and Learning Disabilities
- c. Access for Wards with Disabilities to Programs, Services, and Activities
- d. Effective Communication for Wards with Disabilities
- e. Removal of Architectural Barriers at CYA Facilities, Camps and Institutions Designated to House Wards with Disabilities Who May Be Impacted by These Barriers
- f. Disability Related Grievances
- g. Access Coordinators
- h. Policies and Procedures on Access to Services, Programs, and Activities for Wards with Disabilities
- i. Protection for Wards with Disabilities from Harassment and Abuse Related to or Resulting from Their Disability or Perceived Disability
- j. Adequacy of Education for Wards with Disabilities
- k. Adequacy of Efforts to Integrate Wards with Disabilities
- l. Disability Awareness Training

1 16. Defendant shall provide a draft copy of the remedial plans to each relevant
2 expert. After receiving comments from the experts, Defendant may revise the remedial
3 plans. By November 30, 2004, Defendant will provide Plaintiff's counsel with copies of
4 the experts' comments and copies of the revised plans or of the original plans, if no
5 revisions are made. The parties shall meet and confer to attempt to resolve any
6 differences. Either party may request the involvement of any relevant expert or the
7 Special Master in the meet and confer process. Any disagreement regarding the
8 adequacy of the remedial plans shall be resolved pursuant to Paragraph 48, below.

9 a. This Consent Decree does not prohibit the Director from temporarily
10 suspending compliance with all or any part of this Consent Decree during a state of riot
11 or other genuine emergency. The determination by the Director that a state of emergency
12 exists shall be set forth in writing as soon as reasonably possible, shall detail briefly with
13 reasonable specificity the reasons for the determination, shall be promptly provided to the
14 Special Master and Plaintiff's counsel, and shall be subject to the mediation and
15 enforcement process provided for herein.

16 17. By January 31, 2005, Defendant shall file all the remedial plans with the
17 Court, except that any remedial plans contested in the dispute resolution procedure
18 (Section VI below) shall be filed with the Court within ten (10) days of the completion of
19 that process. The Court shall order Defendant to implement the plans.

20 **IV. MODIFICATION OF REMEDIAL PLANS**

21 18. Defendant may modify any of the provisions of any of the remedial plans at
22 any time, where the change furthers the effectiveness of the remedial plan at issue.
23 Before such modifications take effect, Defendant must file with the Court and provide
24 sixty (60) days' notice to Plaintiff's counsel and the Special Master of the proposed
25 modification(s). Within the sixty-day period, Plaintiff may object to the proposed
26 modification. Any disagreement regarding Defendant's proposed modification shall be
27 resolved pursuant to Paragraph 48.

1 19. Plaintiff's counsel may at any time request modification of any of the
2 remedial plans on the ground that the plan(s) does not comply with the terms of this
3 Consent Decree or with state law or is not an effective remedy for a violation of state
4 law. Any disagreement regarding Plaintiff's proposed modification shall be resolved
5 pursuant to Paragraph 48.

6 **V. MONITORING COMPLIANCE**

7 A. Standards for Monitoring Compliance

8 (1) Objective Standards

9 20. In evaluating and reporting on implementation and compliance with the
10 remedial plans, the Special Master and the experts shall use the Standards and Criteria
11 section for each remedial area that has been approved by the Court.

12 (2) Pattern/Practice Raising Serious Issues

13 21. In evaluating and reporting on implementation and compliance with the
14 remedial plans, the Special Master and the experts shall determine whether there exists at
15 the institution or throughout the system a pattern or practice that is likely to result in
16 serious violations of wards' rights and whether those problems are being adequately
17 addressed.

18 (3) Substantial Compliance

19 22. A facility is in substantial compliance in a subject area if any violations of the
20 relevant remedial plan(s) are minor or occasional, and are neither systemic nor serious.
21 However, if a serious violation of the relevant remedial plan occurs, the facility is in
22 substantial compliance if the facility promptly identifies the violation, and it develops
23 and implements a timely and appropriate remedy that results in compliance.

24 23. When a facility is found to be in substantial compliance on an issue for one
25 full year, and is found to remain in substantial compliance after review by the relevant
26 expert(s) one year later, expert tours regarding that issue at that facility shall end. If a
27 violation of the relevant remedial plan(s) occurs within the two-year substantial
28 compliance period that is serious or systemic but, in the opinion of the relevant expert,

1 may be fully resolved and repaired within 30 days, the period for measurement of
2 substantial compliance shall continue to run, unless the matter is not fully resolved and
3 repaired within thirty (30) days.

4 24. Any disagreements between the parties regarding substantial compliance shall
5 be resolved pursuant to Paragraph 48.

6 B. Reporting Procedures

7 25. Defendant shall provide Plaintiff's counsel and the Special Master with
8 quarterly reports regarding progress made, compliance with deadlines, and actions taken
9 in implementing this Decree. The parties, the Special Master, and the experts shall meet
10 and confer about the format of the information to be contained in this report.

11 26. The Special Master will review Defendant's quarterly reports and perform
12 spot-checks at the facilities, institutions, and camps and have access to any other
13 information necessary to confirm the accuracy and comprehensiveness of the reports.

14 C. Monitoring

15 (1) Special Master

16 27. The Court shall appoint Donna Brorby as Special Master. She shall be
17 compensated by the CYA. In the event the Special Master becomes unable to fulfill her
18 duties and is relieved by the Court, or becomes permanently unavailable due to death or
19 other unforeseen circumstances, the parties shall attempt to agree on a replacement
20 within 30 days. In the event the parties cannot agree, they shall each nominate two
21 persons for this position. The final choice of a replacement Special Master will be
22 decided by the Court.

23 28. The Special Master shall have the following duties and powers:

- 24 a. At her discretion, work with Defendant to develop the remedial
25 plans required under Paragraphs 10 through 15 of the Decree;
- 26 b. Collect information and analyses from the experts;
- 27 c. Identify inconsistencies in the expert reports;

1 d. Receive periodic compliance reports from Defendant that set forth
2 progress toward implementation of the remedial plans and compliance with those plans.
3 The format and content of these compliance reports is within the discretion of Defendant,
4 except that the Special Master may require Defendant to include additional information
5 or change the format at her discretion;

6 e. Issue quarterly reports containing the experts' findings and
7 recommendations regarding compliance with the remedial plans and the Special Master's
8 assessment of Defendant's progress towards implementation and compliance with this
9 Consent Decree;

10 f. Establish a general schedule and procedure for resolving disputes
11 between the parties regarding implementation and monitoring of the remedial plans,
12 except that the parties retain their rights to invoke the dispute resolution procedure set
13 forth in Paragraphs 48 and 49;

14 g. Provide appropriate notices to wards and employees and agents of
15 Defendant, as necessary;

16 h. Have access to all parts of the CYA's facilities upon reasonable
17 notice;

18 i. Have access to all documents and information necessary to carry out
19 her duties under the Decree;

20 j. Interview, on a confidential basis or otherwise, wards or CYA
21 employees or agents, provided they consent. Defendant shall provide a place for
22 conducting such interviews that is acceptable to the Special Master;

23 k. At her discretion, attend CYA meetings or conferences, unless
24 Defendant determines that the meeting involves staff performance reviews, in which case
25 he shall inform the Special Master in writing of that determination;

26 l. Retain or employ assistants and support staff to advise or assist in
27 the performance of the Special Master's duties, after consultation with the parties and
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1 experts. The Special Master's staff shall be responsible for monitoring the objective
2 aspects of the remedial plans in coordination with the relevant experts;

3 m. Hold and conduct conferences or hearings with respect to
4 Defendant's implementation and compliance with the remedial plans, including requiring
5 the attendance of witnesses;

6 n. Advise the Court concerning any modification to the remedial plans
7 that appears necessary to effectuate the Decree;

8 o. With the consent of the Special Master and approval of the Court,
9 perform such other duties that are mutually agreed on by the parties.

10 p. The Special Master shall not be empowered to direct Defendant or
11 any CYA employee or agent to take or refrain from taking any specific action to achieve
12 compliance. The sole power to direct compliance remains with the Court. Neither the
13 Special Master nor anyone in her employ shall intervene directly in the administrative
14 management of the CYA or its facilities.

15 q. The Special Master shall meet regularly with both parties together
16 not less than once per quarter to discuss compliance with this Decree and the remedial
17 plans.

18 29. The Special Master shall receive reasonable compensation at a rate to be set
19 by the Court. All reasonable expenses incurred by the Special Master in performing her
20 duties shall be reimbursed as costs of the mastership. The Special Master's fees and
21 expenses shall be borne by the Defendant as part of the costs of this action.

22 30. The Special Master shall periodically submit to the Clerk of the Court, with a
23 copy to Defendant's designated representative, an itemized statement of the Special
24 Master's fees and expenses, which shall be payable on receipt.

25 31. If the Special Master and Defendant have a dispute over compensation or
26 other costs and are unable to resolve the dispute, the matter shall be presented to the
27 Court for resolution.

1 (2) Experts

2 32. After consultation with Plaintiff's counsel, Defendant shall retain a consultant
3 with expertise in operating juvenile correctional systems to provide advice concerning
4 the management and operation of the CYA. Defendant shall also hire a project manager
5 to manage the remedial plans resulting from this Decree. The project manager shall be at
6 the CEA I level, or equivalent Exempt level, with support as necessary to successfully
7 manage the development and implementation of the remedial plans.

8 33. Defendant shall retain experts on each of the areas that are the subject of an
9 existing expert report to assist the CYA in developing and implementing the remedial
10 plans required by this Decree and assist the Special Master and the Court with
11 monitoring compliance with the remedial plans required by this Decree. The experts
12 shall be chosen jointly by the parties, with primary consideration given to the authors of
13 the expert reports, discussed in Paragraphs 2 and 3 above.

14 34. In the event that the parties cannot agree on an expert(s) each party shall
15 nominate two candidates and the Special Master shall choose one for each subject area.
16 The same procedure shall be used if an expert becomes unavailable for any reason.

17 35. The experts shall be entitled to reasonable compensation and the costs of each
18 expert shall be borne by Defendant.

19 36. The Special Master shall provide copies of any written reports provided to her
20 by the experts to both parties within ten (10) days of receipt. The experts' reports shall
21 contain their findings and conclusions and shall set forth the information upon which
22 they are based. These reports shall be admissible in evidence in any proceeding or
23 negotiation related to this case. At the request of the Special Master or Court or either
24 party, the experts shall attend any meetings with the parties or Court hearings.

25 37. The Special Master may direct any expert to tour any CYA facility or
26 facilities to evaluate implementation and compliance with the remedial plan. The experts
27 may also choose to tour any CYA facility or facilities on request of either party to
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1 evaluate implementation and compliance, but all tours by experts shall be coordinated by
2 the Special Master.

3 38. Tours by the experts shall include reasonable access to all housing units and
4 facilities. Defendant shall make reasonable efforts to make available for interview
5 departmental, custodial, clinical and program staff that have direct or indirect
6 responsibility for providing services to wards, provided they consent. Defendant shall
7 direct institution staff to reasonably cooperate with the experts in obtaining the necessary
8 information. The experts shall be able to have brief discussions with wards during the
9 tours, provided the wards consent. Ward-specific files, such as medical files or field files,
10 shall be made available to the experts immediately upon request during tours. With
11 respect to non-ward files, Defendant will attempt to make the information immediately
12 available. However, in the event that Defendant cannot immediately provide the
13 information, the information will be made available no later than one week following the
14 request. If the Special Master or an expert requests copies during a tour, Defendant will
15 provide such copies no later than two weeks following the request.

16 39. The experts shall be informed in writing by Defendant that although they are
17 being compensated by the CYA, they are considered independent and will be expected to
18 work with both parties. The experts shall be able to communicate freely and
19 confidentially with Defendant and Plaintiff's counsel, provided however that all formal
20 recommendations shall be disclosed in writing to both parties. The experts shall have
21 access to all facilities, documents, institutions, staff, wards and files as they believe
22 necessary to fulfill their obligations under this Decree.

23 (3) Plaintiff's Counsel

24 40. Plaintiff's counsel shall have reasonable access to the staff, institutions,
25 facilities, wards and documents necessary to properly evaluate the adequacy of the
26 remedial plans proposed by Defendant and Defendant's compliance with this Consent
27 Decree and the remedial plans. Reasonable access shall include, but is not limited to,
28 confidential interviews with wards, review of ward files, tours of institutions, camps and

1 facilities, and relevant CYA documents. Defendant shall produce the CYA files of
2 wards pursuant to the order filed herewith. Defendant may produce requested documents
3 to Plaintiff's counsel or request that Plaintiff's counsel inspect documents on site at the
4 institutions or administrative offices and request copies of selected documents.

5 41. Peer reviews and employee personnel matters that are protected from
6 disclosure by state law shall be provided only to the Special Master and the experts who
7 may report on the adequacy of those self-critical analysis systems in a manner that does
8 not disclose information that individually identifies any ward or CYA employee or agent
9 who is the subject of the review. Such information will be held in confidence by the
10 Special Master and Court experts and not disclosed to Plaintiff or any other person. This
11 provision shall not be construed to require the disclosure of any documents protected
12 under the attorney-client privilege or work product doctrine.

13 42. Plaintiff's counsel shall be entitled to conduct independent tours or to
14 accompany the experts and the Special Master on tours, subject to the following
15 limitations. Plaintiff's counsel shall be entitled to conduct twenty (20) tours of CYA
16 institutions per year, provided that no institution will be subject to a tour by Plaintiff's
17 counsel more than once per calendar quarter. The limitation of 20 tours includes any
18 tours in which Plaintiff's counsel accompanies the experts or Special Master. The
19 number of tours Plaintiff's counsel may conduct will be subject to a pro rata reduction as
20 CYA institutions are closed or obtain substantial compliance, as outlined in Paragraphs
21 20 through 24, with a total number of tours not to exceed two times the total number of
22 institutions in any calendar year.

23 43. Tours shall include access to programs, classes, classification and disciplinary
24 hearings, housing facilities, recreational yards, treatment facilities and all other areas and
25 operations of the institution normally used by wards. Plaintiff's counsel shall be able to
26 have brief discussions with wards during the tours, provided the wards consent, and shall
27 be able to provide their business cards to specific wards. Defendant agrees to meet and
28 confer regarding issues that arise regarding staff cooperation. If Defendant, his agents or

1 employees fails to be available for an interview in a reasonable time period, Plaintiff's
2 counsel may depose that person.

3 44. Plaintiff's counsel must provide reasonable notice to Defendant of any tours,
4 indicating which facility they intend to visit and the duration of the tour. Defense
5 counsel and/or CYA staff counsel may accompany Plaintiff's counsel on all tours.

6 45. Plaintiff's counsel shall not replicate studies done by the experts.

7 46. Plaintiff's counsel may raise concerns regarding Defendant's compliance with
8 the relevant experts or the Special Master. Unless the expert or Special Master deems the
9 concern to be frivolous, redundant, irrelevant or insubstantial, she shall evaluate and
10 substantively respond to the concern. Any dispute arising over a concern raised by
11 Plaintiff's counsel shall be resolved pursuant to Paragraph 48.

12 47. The CYA's ombudsperson (or other person designated by the Director) shall
13 respond to complaints raised by counsel for Plaintiff regarding serious risks to physical
14 or mental well-being to individual wards, or other serious problems which would lead to
15 injury to the ward if the matter were delayed, provided the ward consents. After
16 investigating the matter, CYA shall respond to Plaintiff's counsel with a copy to the
17 Special Master within 30 days. If Plaintiff's counsel indicates a ward may suffer serious
18 injury, the complaint shall be investigated immediately and, if found to be valid,
19 Defendant or his designee will direct immediate and appropriate action to protect the
20 ward from harm.

21 **VI. DISPUTE RESOLUTION**

22 48. The parties shall attempt to resolve any disputes that arise under the terms of
23 this Consent Decree informally. Either party may request the presence of any expert
24 and/or the Special Master in the informal discussion. If the parties are unable to resolve
25 the dispute informally, it shall be referred to binding arbitration, except that either party
26 may instead request that the Court decide the matter by giving notice to the other party
27 within ten (10) days of the conclusion of the meet and confer process. It is the intent of
28 the parties that disputes shall normally be determined by binding arbitration.

1 49. The parties shall agree on the arbitrator. If the arbitrator becomes unable to
2 fulfill his or her duties and is relieved by the Court, becomes permanently unavailable
3 due to death or other unforeseen circumstances, or one of the parties otherwise seeks a
4 different arbitrator, the parties shall attempt to agree on a replacement within 30 days. In
5 the event the parties cannot agree on the arbitrator or a replacement, each party shall
6 nominate two candidates for the position. The final choice of the arbitrator will be
7 decided by the Court.

8 **VII. TERMINATION**

9 50. Defendant may move for dismissal as to any remedial area at any facility or
10 facilities once substantial compliance has been obtained, as outlined in Paragraphs 20
11 through 24. The Court shall then order that remedial area(s) and/or facility or facilities
12 dismissed from the case.

13 **VIII. ENFORCEMENT AND JURISDICTION**

14 51. This Decree shall be submitted to the Court for its approval. The Court shall
15 retain jurisdiction to enforce the terms of this Decree and for purposes of resolving any
16 dispute regarding fees and costs. The Court shall have the authority to order compliance
17 with any of the remedial plans or specific performance with the terms of this Decree as
18 permitted by law. Reports from the experts and the Special Master will be admissible in
19 any judicial proceeding in this case.

20 52. Neither the fact of this Decree nor any statements contained herein may be
21 used in any other case or administrative proceeding, except that Defendant, the CYA, or
22 employees thereof reserve the right to use this Decree and the language herein to assert
23 issue preclusion and res judicata in other litigation seeking class or systemic relief.

24 **IX. ATTORNEYS FEES AND COSTS**

25 53. For purposes of attorneys fees, Plaintiff is the prevailing party in this action
26 and is entitled to reasonable attorneys fees and costs incurred in this action pursuant to
27 Code of Civil Procedure § 1021.5. Within 60 days of the date that this Decree is
28 approved by the Court, the parties shall attempt to negotiate the amount of the attorneys

1 fees and costs. Plaintiff's counsel is required to itemize and detail all fees and costs. If
2 the negotiations are unsuccessful, Plaintiff shall bring a motion for attorney fees and
3 costs within 120 days of the date that this Decree is approved by the Court. Only
4 statutorily allowable fees and costs shall be recovered.

5 54. The parties anticipate that further time and work shall be required by
6 Plaintiff's attorneys in connection with this Decree. Defendant shall pay Plaintiff's
7 reasonable fees and expenses for any work reasonably performed in connection with this
8 Decree pursuant to Code of Civil Procedure § 1021.5. Plaintiff's counsel shall itemize
9 and detail all fees and costs and submit them to Defendant on a quarterly basis.
10 Defendant shall have 30 days to object to Plaintiff's fee and cost request. Defendant
11 shall pay any undisputed fees within 60 days of the resolution of negotiations. The
12 parties shall negotiate regarding any disputed fees. Any disputed fees not resolved
13 through negotiation shall be resolved through an annual motion to compel by Plaintiff's
14 counsel.

15 **X. CONSTRUCTION OF TERMS**

16 55. This Decree reflects the entire agreement of the parties and supersedes any
17 prior written or oral agreements between them. No extrinsic evidence whatsoever may
18 be introduced in any judicial proceeding to provide the meaning or construction of this
19 Decree. Any modification to the terms of this Decree must be in writing and be signed
20 by a representative of the California Youth Authority and attorneys for the Plaintiff to be
21 effective or enforceable. Any modification will be submitted to the Court for approval.

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

1 57. This Decree shall be valid and binding upon, and faithfully kept,
2 observed, performed and be enforceable by and against the parties, their successors and
3 assigns.

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

7 59. This Decree is executed in compromise of disputed claims. Defendant's
8 agreement to its terms shall not be construed or used as evidence of any violation of law
9 in any other proceeding.

10 60. In furtherance of this intention, each of the parties acknowledges that they are
11 familiar with, and expressly waive, the provisions California Civil Code § 1542, which
12 provides as follows:

13 A general release does not extend to claims which the creditor does
14 not know or suspect to exist in his favor at the time of executing the
15 release which if known by him must have materially affected his
16 settlement with the debtor.

17 61. Each of the parties, on their own behalf, and on behalf of their principals,
18 agents, attorneys, successors, assigns, heirs, descendants, executors, representatives,
19 partners, and associates fully and mutually release and discharge the other parties and
20 their principals, agents, attorneys, successors, assigns, heirs, descendants, executors,
21 representatives, partners, and associates from all rights, claims, and actions which each
22 party and their successors now may have or at any time in the future may have against the
23 other parties and their successors.

24 **IT IS SO STIPULATED AND AGREED.**

25 Dated: 11-04-04

26 
27 MARGARET FARRELL
28 Plaintiff

 Dated: 11-08-04


 DONALD SPECTER
 Prison Law Office
 Attorney for Plaintiff

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Dated: 11/2/04

Richard B. Ulmer Jr.
RICHARD B. ULMER JR.
Latham & Watkins
Attorney for Plaintiff

Dated: 11/3/04

Sidney Wolinsky
SIDNEY WOLINSKY
Disability Rights Advocates
Attorney for Plaintiff

Dated: 10/28/04

Walter Allen III
WALTER ALLEN III
Director, California Youth Authority
Defendant

Dated: 11/2/04

Monica N. Anderson
MONICA N. ANDERSON
Supervising Deputy Attorney General
Attorney for Defendant

IT IS SO ORDERED.

Dated: _____

JUDGE RONALD M. SABRAW