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DEC 3 2003

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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DEC - 3 2003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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

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

**[PROPOSED WITH DATES] ORDER
GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, AND
SCHEDULING HEARING ON FINAL
SETTLEMENT APPROVAL**

HEARING

**Date: December 1, 2003
Time: 1:30 p.m.**

721

1 Rule 23(b)(2), Federal Rules of Civil Procedure, with a class consisting of: 1) California
2 parolees who are at large (all California parolees who are not in custody); 2) California
3 parolees in custody as alleged parole violators, and who are awaiting revocation of their state
4 parole; and 3) California parolees who are in custody, having been found in violation of parole
5 and sentenced to prison custody.

6 6. A short and long written notice attached hereto shall be disseminated to the class.

7 7. Within **28** days after the Court orders Preliminary Approval, or as soon thereafter
8 as practicable, the Notice shall be disseminated to the Class, substantially in the forms attached
9 hereto by the following means:

10 (1) For the portion of the class consisting of California
11 parolees who are at large (all California parolees who are not in
12 custody), the short written notice shall be posted in all parole field
13 offices. Copies of the long written notice, the Stipulated Order for
14 Permanent Injunctive Relief, and large print and audio copies of the
15 short and long written notices shall be available in all parole field
16 offices. Parolees who are not required to report to the parole office
17 during the notice period, shall receive the short written notice by
18 first class mail, or shall be provided with the short notice in person
19 by their parole agent, and may come to the field office to read the
20 long notice and the Stipulated Order for Permanent Injunctive
21 Relief.

22 (2) For members of the class who are California parolees in
23 custody as alleged parole violators, the short written notice shall be
24 (a) posted in all California prisons, reception centers, jails and
25 other facilities where Defendants require parolees to be held in
26 such a manner as to make the notice visible to all parolees in
27 custody; (b) posted in each room where revocation serves and
28 hearings take place; (c) served on parolees who are being served
with revocation charges and/or screening offers during the notice
period as part of their revocation documents; and (d) served on
parolees who appear for parole revocation hearings. Copies of the,
long notice, the Stipulated Order for Permanent Injunctive Relief,
and large print and audio copies of the short and long written notice
shall be made available in each facility, in locations such as prison
and jail libraries, where Defendants require parolees to be held.

1 11. A final approval hearing pursuant to Rule 23(e), Federal Rules of Civil
2 Procedure, will be in the Courtroom of the undersigned on **March 8, 2004**, at 10:00 a.m. in
3 the United States District for the Eastern District of California, Sacramento Division, to
4 determine whether the proposed settlement is fair, reasonable and adequate, and whether it
5 should be finally approved by the Court. The hearing may be continued from time to time
6 without further notice.

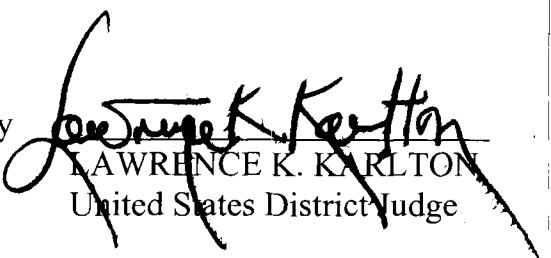
7 12. Briefs in support of final approval shall be filed on or before **February 19, 2004**.

8 13. Plaintiffs' motion for reasonable attorneys' fees and expenses shall be filed and
9 served no later than **April 2, 2004**. Defendants' response to the fees motion shall be filed and
10 serve no later than **April 30, 2004**. Plaintiffs' reply shall be filed and served no later than **May**
11 **28, 2004**. A hearing on the motion for attorneys' fees and expenses shall be held on **June 7,**
12 **2004**.

13 14. A status conference is set for **March 1, 2004** at 2:30 p.m. for the parties to report
14 to the Court on the two unresolved issues regarding administrative appeals and revocation
15 extensions.

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17 **IT IS SO ORDERED**

18 Dated: December 3, 2003

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20 By 
21 LAWRENCE K. KARLTON
22 United States District Judge
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Valdivia v. Schwarzenegger, E.D. Cal. No. Civ. S-07-0671 LKK/GGH

Deadline for Comments On Fairness of Settlement: _____, 2004

Valdivia v. Schwarzenegger is a statewide class action challenging the California parole revocation system under the 14th Amendment of the U.S. Constitution. This notice explains the proposed settlement, how you can read it, and how you can tell the court about whether you think it is fair. If you are a California parolee, you are part of the Valdivia class, whether you are out on parole, being held on revocation charges, or serving a revocation term. The Valdivia lawsuit seeks federal court orders to change the parole revocation system. No money damages were asked for, and none will be awarded in this class action case. The settlement does not affect your ability to sue for money damages or to petition for a writ of habeas corpus.

You can read about the changes in parole revocations in a longer version of this notice and in the Valdivia "Stipulated Order for Permanent Injunctive Relief." You can find this document in the prison law library, jail library, or parole office.

Under the agreement, by early 2004, some parolees will be sent to community-based programs, instead of prison. Starting between July 2004 and January 2005, all parolees will be appointed counsel for screening offers and revocation hearings. Parolees will receive faster notice of the charges against them. Parolees in some circumstances will receive expedited hearings on probable cause. Final revocation hearings must be held within 35 calendar days of the arrest. Parolees' attorneys will have better access to witnesses and evidence.

By July 2005, parolees held on revocation charges will receive probable-cause hearings within 10 business days after notice of the charges

The court will keep jurisdiction to enforce the requirements of the settlement. The court will hold a hearing on the fairness of the settlement on _____, 2004, ____ a.m./p.m., at the United States Courthouse in Sacramento, Courtroom 4.

The attorneys who brought the class action will ask the Court to have defendants pay for their attorneys' fees and expenses. The Court will decide the amount of these fees.

<p>Parolees can write to the federal court about whether the settlement is fair and whether they object to the award of attorneys' fees. Comments MUST include at the top of the first page the case name, <u>Valdivia v. Schwarzenegger</u>. <i>Comments must be postmarked no later than _____, and sent to the address at right.</i></p>	<p>Clerk of the Court United States District Court Eastern District of California 501 "I" Street Sacramento, CA 95814</p>
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For more information, you may contact the attorneys for the class:

<p>Rosen, Bien & Asaro, LLP 155 Montgomery St., 8th Flr. San Francisco, CA 94104 Tel: (415) 433-6830</p>	<p>Prison Law Office General Delivery San Quentin, CA 94964.</p>	<p>Bingham McCutchen Three Embarcadero Center San Francisco, CA 94111</p>
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IMPORTANT NOTICE

SETTLEMENT OF CLASS ACTION – PAROLE REVOCATION

Valdivia v. Schwarzenegger, E.D. Cal. No. Civ. S-94-0671
LKK/GGH

Deadline for Comments On Fairness of Settlement:
_____, 2004

Hearing on Fairness of Settlement:
_____, 2004, _____ a.m./p.m.
United States Courthouse in Sacramento, Courtroom 4.

Valdivia v. Schwarzenegger is a statewide class-action lawsuit that seeks to change the way California treats persons who are arrested on parole violations. A proposed settlement has been reached. The federal court must now decide if the settlement is fair. This notice explains the settlement, how you can read it, and how you can write to the court about whether you think it is fair.

The Valdivia v. Schwarzenegger class action was filed in 1994. If you are a California parolee, you are a member of the Valdivia class, whether you are out on parole, being held in jail or prison on revocation charges, or serving a revocation term. The lawyers for the parolees are Bingham & McCutchen; Prison Law Office; Stephen J. Perrello, Jr.; Alex Landon; and Rosen Bien & Asaro, 155 Montgomery Street, Suite 800, San Francisco, CA, 94104.

The individual defendants in this case are: Arnold Schwarzenegger, Governor of the State of California and Chief Executive of the state government; Roderick Q. Hickman, the Secretary of the California Youth and Adult Correctional Agency; Edward S. Alameida, Jr., Director of the California Department of Corrections; Richard Rimmer, Deputy Director of the California Department of Corrections, Parole and Community Services Division (“P&CSD”); Carol A. Daly, Commissioner and Chair of the Board of Prison Term (“BPT”); Alfred R. Angele, Sharon Lawin, Booker T. Welch, Jones M. Moore, and Kenneth L. Risen, BPT Commissioners; and Kenneth E. Cater, Chief Deputy Commissioner of the BPT.

The defendants include state officials in charge of the Board of Prison Terms (“BPT”) and the California Department of Corrections (“CDC”). The BPT and CDC officials are represented by Thomas Patterson, Deputy Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102.

The Valdivia lawsuit challenges violations of parolees’ rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The lawsuit asked the federal court to order the BPT and CDC to change parole revocation procedures to comply with the Constitution. No money damages were asked for, and none will be awarded in this class action case.

The Valdivia lawsuit claims that the BPT and CDC violated the Constitution in the following specific ways:

- The BPT and CDC arrest and hold parolees for weeks without any hearings to find out whether there is probable cause to hold them.
- The BPT and CDC do not tell parolees the charges against them or their rights before making parolees decide whether to accept a “screening offer.” The BPT and CDC do not give parolees enough notice of the charges against them before the revocation or “Morrissey” hearing.
- The BPT and CDC use forms in parole revocation that are too hard to read.
- The BPT and CDC do not provide attorneys to represent parolees who should get attorneys under the Due Process Clause. When the BPT and CDC do provide attorneys, the attorneys do not get enough time to represent the parolee, and do not get enough information from the BPT and CDC.
- The BPT and CDC do not provide enough help for parolees with mental illness or other problems that make it hard for them to decide on screening offers or participate in revocation hearings.
- The BPT and CDC sometimes do not allow parolees to present witnesses and evidence needed to defend themselves at revocation hearings.
- The BPT and CDC sometimes do not allow parolees to cross-examine persons who provide evidence against them.

- The BPT's system for parole revocation appeals is unfair.

In June 2002, the federal court ruled on a pre-trial motion (motion for summary judgment) that the BPT and CDC violate parolees' constitutional rights by holding parolees for weeks, and sometimes months, without any hearings to find out whether there is enough evidence ("probable cause") to arrest the parolee. This order was published. You can find it in the law library at 206 F. Supp. 2d 1068, or Page 1068 of Volume 206 of the Federal Supplement. All of the other issues in the case have not yet been decided. The settlement means that these issues will not go to trial, except for two issues (BPT appeals and revocation extension hearings) that are not part of the settlement, and that may go to trial.

On November 18, 2003, the attorneys for both sides gave the federal court a negotiated plan in the form of a "Permanent Injunction," which would settle the lawsuit, and require the BPT and CDC to change the parole revocation procedures to fix the problems listed above. If approved by the court, the Permanent Injunction will require many changes in the revocation system. Here are some of the most important changes.

- The BPT and CDC will use alternatives to parole revocation, such as treatment in the community, for some parolees who would otherwise be arrested on parole violation charges.
- The BPT and CDC must give the parolees notice of the charges within 3 business days of the placement of a parole hold.
- All parolees will receive attorneys in the revocation process. Attorneys will help the parolees decide on any screening offers, and will represent parolees at any hearings.
- The BPT and CDC must provide attorneys with all non-confidential information they intend to use against the parolee. Due process limits what information the BPT and CDC can call confidential.
- Parolees' attorneys will be able to review parolees' field files.
- Attorneys will be provided with training on how to represent parolees effectively.

- If the attorney can show that there is no basis to continue holding the parolee, the BPT and CDC must provide an expedited (faster) hearing, six to eight business days after the parolee receives notice of the charges.
- Final revocation hearings must be held on or before the 35th calendar day after placement of the parole hold.
- Parolees' attorneys will be able to subpoena and present witnesses and documents for final revocation hearings, under the same way that the state can subpoena and present witnesses.
- Beginning July 1, 2005, the BPT and CDC must provide a preliminary hearing within 10 business days after the parolee has received notice of the charges, to find out if there is probable cause to hold the parolee. Parolees' attorneys will still be able to get a faster, expedited hearing, if they can show that there is no basis to hold the parolee.
- At the preliminary probable cause hearing, parolees will be allowed to present evidence to defend against the charges, or to show that revocation is not appropriate. The parolee and parolee's attorney will be allowed to present such evidence through the parolee's testimony, or through written documents.
- The BPT and CDC will not be permitted to use hearsay evidence against a parolee in a manner that violates the parolees' right to confront his or her accusers.
- The federal court will keep jurisdiction to enforce these requirements, and plaintiffs' counsel in Valdivia will monitor how the BPT and CDC comply.
- The settlement does not cover claims involving BPT appeals, and involving parole revocation extension hearings. These claims may still go to trial.

The settlement does not affect parolees' ability to sue the BPT and CDC for money damages regarding parole revocation, or to petition for a writ of habeas corpus. However, in any case asking for class or systemic relief, BPT and CDC officials may argue that the lawsuit should be dismissed because of the Valdivia settlement.

As part of this settlement, the attorneys for the parolees will ask the Court to have defendants' pay for attorneys' fees and expenses. The amount of these fees will be decided by the Court.

The Valdivia v. Schwarzenegger proposed settlement is set forth in a "Stipulated Order for Permanent Injunctive Relief." You can read this document at the prison law library, jail library, or parole office.

Comments On the Fairness of the Settlement Are Due _____.

Parolees can write to the federal court about whether the settlement is fair and whether they object to attorneys' fees. The federal court will consider written comments when deciding whether to approve the settlement. Comments about the fairness of the settlement **MUST** include at the top of the first page the case name, Valdivia v. Schwarzenegger.

Comments must be received by _____, and must be sent to the following address:

Clerk of the Court
United States District Court
Eastern District of California
501 "I" Street
Sacramento, California 95814

The Court has scheduled a hearing on the fairness of the settlement for _____, 2004, _____ a.m./p.m. at the United States Courthouse in Sacramento, at the above address, in Courtroom 4.

For more information regarding this settlement, you may contact the parolees' lawyers at the following address and phone number:

Rosen, Bien & Asaro, LLP
155 Montgomery St., Eighth Floor
San Francisco, CA 94104
Telephone: (415) 433-6830

Prison Law Office
General Delivery
San Quentin, CA 94964

Bingham McCutchen
3 Embarcadero Center
San Francisco, CA 94111

Large print and audio tape versions of this document are available in the prison law library, jail library and parole office.

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PROOF OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the City and County of San Francisco, California, and not a party to the within action. My business address is 155 Montgomery Street, 8th floor, San Francisco, California 94104. On the date specified below, I served a true copy of the following document(s):


[PLAINTIFFS' PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SCHEDULING HEARING ON FINAL SETTLEMENT APPROVAL

on the parties in said action by causing same to be delivered in the manner listed below:

BY U.S. MAIL

Thomas S. Patterson
Deputy Attorney General
Office of the California Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of December, 2003, at San Francisco, California.



James I. Dye, Jr.

United States District Court
for the
Eastern District of California
December 3, 2003

* * CERTIFICATE OF SERVICE * *

2:94-cv-00671

Valdivias

v.

Wilson et al

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 3, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

William Vernon Cashdollar
Attorney General's Office
1300 I Street, Suite 125
Sacramento, CA 94244-2550

AR/LKK

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Jack L. Wagner, Clerk

BY: 
Deputy Clerk