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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor, State of California, JAMES E. TILTON, Secretary (A), California Department of Corrections and Rehabilitation ("CDCR");

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Date: February 20, 2007
Time: 10:00 a.m.
Courtroom: 4 (15th Floor)
Before: Hon. Lawrence K. Karlton

KINGSTON "BUD" PRUNTY, Undersecretary, CDCR; BERNARD WARNER, Chief Deputy Secretary of the Division of Juvenile Justice; JOE MONTES, Director, Division of Juvenile Parole; DENNIS DULAY, Acting Deputy Director of the Division of Juvenile Parole Operations; JOHN MONDAY, Executive Director of the Board of Parole Hearings ("BPH"); JAMES DAVIS, Chair of the BPH; JOYCE ARREDONDO, PAUL CHABOT, JOSEPH COMPTON, SUSAN MELANSON, and CHUCK SUPPLE, Commissioners of the BPH assigned to hear juvenile matters; CDCR; DIVISION OF JUVENILE JUSTICE; and BOARD OF PAROLE HEARINGS,

Defendants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

Statutes

Other Authorities

TABLE OF AUTHORITIES
(continued)

Page

Rules

I. INTRODUCTION

Plaintiffs, on behalf of themselves and all other similarly situated juvenile parolees in California (collectively, "the Class"), sue the Governor of the State of California and various state correctional officials ("Defendants") for systematically violating the constitutional and statutory rights of juvenile parolees in parole revocation proceedings. In the First Amended Civil Class Action Complaint for Declaratory and Injunctive Relief ("FAC"), Plaintiffs, juvenile parolees who are presently under the control of the California Department of Corrections and Rehabilitation ("CDCR"), claim that Defendants' conduct: (1) systematically denies Plaintiffs and the Class due process under the Fourteenth Amendment to the United States Constitution, as interpreted in *Morrissey v. Brewer*, 408 U.S. 471 (1972), and related decisions; (2) systematically denies Plaintiffs and the Class the right to counsel under the United States Constitution, as interpreted in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and related decisions; (3) systematically denies Plaintiffs and the Class equal protection of the laws under the Fourteenth Amendment to the United States Constitution; (4) systematically violates the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*; and (5) systematically violates Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794.

The rights at issue here are basic, fundamental rights. For example, Plaintiffs seek to ensure, for themselves and for all Class members, that there is a prompt preliminary hearing at which they can challenge the basis for their detention. Currently, juvenile parolees are taken out of the community – away from jobs, school, friends, the lives they are trying to reconstruct while on parole – and made to sit in jail for weeks or months before any determination is made that there was probable cause to remove the individual from the community. L.H., for example, remained in custody for over two months before he had any hearing at all. FAC ¶ 72. A.Z. spent two and a half months in custody before he saw a hearing officer. FAC ¶ 76.

Plaintiffs seek to ensure that they, and all Class members, are not kept in custody any longer than necessary. For example, D.K. was brought into custody and held for a month until his hearing, even though his parole officer recommended that he be continued on parole.

FAC ¶ 81. By the time the Board of Parole Hearings ("BPH") finally held his hearing and released him, he had lost his job. *Id.* Even when the BPH determines that a juvenile parolee's parole should be revoked, the juvenile parolees are still directly harmed by the lengthy pre-hearing detention; juvenile parolees like L.H. and A.Z. may receive no credit toward their revocation sentence for the months they serve in custody waiting for their hearings. FAC ¶ 27.

Plaintiffs also seek to ensure that they and the Class are represented by counsel. Juvenile parolees are young people and tend to be poorly educated. FAC ¶¶ 6-11. Yet, they are required to represent themselves in parole proceedings where the process is opaque, the charges may be complex, and the stakes include the possibility of being returned to custody for months or even years. *See, e.g.*, FAC ¶ 87 (D.R.'s revocation term lasted 21 months). Even when juvenile parolees ask for an attorney, they may be told, as A.Z. was, that they are not likely to be appointed counsel. FAC ¶ 76. The lack of counsel costs juvenile parolees dearly, as can be seen from A.Z.'s failure to recognize that there was "harm" from a parole department's month-long loss of a police report, and the BPH's refusal to credit him with time served during that month. FAC ¶ 77.

Every month, dozens of class members are deprived of basic rights – including the right to a prompt preliminary hearing, the right to prompt notice of the charges against them, the right to counsel, the right to put on evidence, and the right to confront witnesses against them. Many of these rights are already guaranteed to adult parolees in California by the injunction entered by this Court in *Valdivia v. Schwarzenegger*, No. S-94-0671 (E.D. Cal.) (mandating, among other things, that all adult parolees receive counsel and prompt notice of the charges against them, and undergo timely preliminary and final revocation hearings), and by the Revised Permanent Injunction (February 11, 2002) entered by District Judge Claudia Wilken in *Armstrong v. Davis*, No. C-94-2307 (N.D. Cal. 2001) (ordering that defendants identify, track, and provide reasonable accommodations to adult parolees with disabilities at parole proceedings, and requiring that adult parolees with disabilities receive access to forms in alternate formats, to equipment and assistance to effectively communicate, and to a grievance procedure for processing denials of requests for accommodations). *See* Declaration of Karen Kennard in

Support of Plaintiffs' Motion for Class Certification ("Kennard Dec."), Exs. A and B. Juvenile parolees are even more in need of these constitutional protections. Plaintiffs and the Class are entitled to these protections. A class action is the best and probably the only way to ensure that the Defendants will put an end to their unconstitutional practices.

By this action, Plaintiffs challenge Defendants' policy and practice of denying juvenile parolees their constitutional rights to due process, equal protection and effective assistance of counsel. Plaintiffs also challenge Defendants' policy and practice of denying class members with disabilities their statutory rights under the ADA and Section 504. The challenged conduct includes:

- Failing to conduct preliminary parole revocation hearings in violation of existing constitutional standards (*see, e.g.*, FAC ¶¶ 130(a) - (i));
- Denying juvenile parolees counsel during the parole revocation process in violation of existing constitutional standards (*see, e.g.*, FAC ¶ 119(a) - (e));
- Denying juvenile parolees effective assistance of counsel, in the rare cases where counsel is appointed, by, among other things, imposing unfair and unreasonable limits on counsel's time and fees and by failing to inform counsel of any difficulties their clients may have in communicating or participating in the parole revocation proceedings (*see, e.g.*, FAC ¶¶ 55-59; 119(f) - (k));
- Conducting final parole revocation hearings in a manner that is fundamentally unfair and in violation of due process by, among other things, denying juvenile parolees their right to be heard in person and their right to confront and cross-examine witnesses (*see, e.g.*, FAC ¶ 120(a) - (c));
- Establishing a parole revocation system that treats juvenile and adult parolees, who are similarly situated, in an unequal manner by affording adult parolees due process and assistance of counsel in

parole revocation proceedings while denying this right to juvenile parolees (*see, e.g.*, FAC ¶ 137);

- Failing to develop adequate policies and practices to identify juvenile parolees with disabilities and to reasonably accommodate such individuals so that they can fully participate in parole proceedings (*see, e.g.*, FAC ¶¶ 148-151).

Defendants' system-wide practice of denying the Class their right to counsel and a fair opportunity to challenge their parole revocation violates constitutional guarantees of due process and equal protection. Also, Defendants' conduct violates the ADA and Section 504 by denying disabled class members the accommodations that are mandated so that they can participate meaningfully in the parole revocation process.

As discussed below, courts have repeatedly certified class actions where prisoners or parolees have challenged the constitutionality of parole procedures. For example, both the *Valdivia* and *Armstrong* cases concern parole revocation procedures and were certified as class actions.[1] Notably, the Ninth Circuit affirmed class certification in the *Armstrong* case. *Armstrong v. Davis*, 275 F.3d. 849, 879 (9th Cir. 2001), *cert. denied*, 537 U.S. 812 (2002). For the same reasons that led to those decisions, this case is appropriate for class certification. Accordingly, the Court should certify this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure ("Rule 23").

By this motion, Plaintiffs ask this Court for an order certifying this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The proposed class consists of juvenile parolees in California, including all juvenile parolees with disabilities as that term is defined in Section 504 of the Rehabilitation Act and the ADA, who are: (i) in the community under parole supervision or who are at large; (ii) in custody in California as alleged

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[1] The *Valdivia* case was certified as a class action on December 1, 1994. *See* Kennard Dec., Ex. C.

parole violators, and who are awaiting revocation of their parole; and (iii) in custody, having been found in violation of parole and returned to custody. *See* FAC ¶ 105.

II. CLASS CERTIFICATION IS APPROPRIATE IN THIS CASE

Courts, including this Court and the Ninth Circuit, have routinely certified class actions where prisoners or parolees have challenged the constitutionality of parole revocation procedures. *See, e.g.*, *Armstrong*, 275 F.3d at 854 (Ninth Circuit affirmed class of disabled prisoners and parolees who challenged the constitutionality of California's parole and parole revocation proceedings); *Valdivia v. Schwarzenegger*, 206 F. Supp.2d 1968, 1069 n.1 (E.D. Cal. 2002) (certifying class of prisoners and parolees who alleged that California's parole revocation procedures violated constitutional due process and the right to counsel). *See also Kellogg v. Shoemaker*, 46 F.3d 503, 505 (6th Cir. 1995) (certified class of prison inmates challenged the constitutionality of new Ohio parole revocation procedures); *Long v. Gaines*, 167 F. Supp.2d 75, 83-84 (D. D.C. 2001) (certifying class of approximately 400 District of Columbia parolees who challenged the constitutionality of the United States Parole Commission's regulations governing parole revocation procedures); *Faheem-El v. Klincar*, 600 F. Supp. 1029, 1037 (N.D. Ill. 1984) (certifying class of parolees who challenged the constitutionality of Illinois's parole revocation procedures). The appropriate class in such cases includes individuals who are presently, or who in the future may be, subject to the challenged parole procedures. *Geraghty v. United States Parole Comm'n*, 719 F.2d 1199, 1202-1203 (3d Cir. 1983); *Faheem-El*, 600 F. Supp. at 1034.

Courts have also routinely certified class actions brought under the ADA and Section 504. *Alexander v. Choate*, 469 U.S. 287 (1985) (certified class of Medicaid recipients alleged that Tennessee's reduction in the number of inpatient hospital days that state Medicaid would pay hospitals on behalf of a Medicaid recipient violated Section 504); *Armstrong*, 275 F.3d at 854 (Ninth Circuit affirmed class of disabled prisoners and parolees who alleged that California's parole and parole revocation proceedings violated the ADA and Section 504); *Kinney v. Yerusalim*, 9 F.3d 1067, 1069 (3d Cir. 1993) (certified class of disabled individuals alleged that the City of Pennsylvania's failure to install curb ramps on streets that had been resurfaced violated the ADA); *Yaris v. Special School District of St. Louis County*, 780 F.2d 724

(8th Cir. 1986) (certified class of handicapped children alleged that the State of Missouri's policy of refusing to provide more than nine months of education per year for handicapped children denied children a "free appropriate education" in violation of Section 504); *New Mexico Assn. of Retarded Citizens v. State of New Mexico*, 678 F.2d 847, 849 (10th Cir. 1982) (certified class of handicapped children alleged that the State of New Mexico violated Section 504 for failure to provide educational services); *Jose P. v. Ambach*, 669 F.2d 865, 867-868 (2d Cir. 1982) (Second Circuit affirmed class of handicapped children who alleged that the State of New York violated Section 504 for failure to provide appropriate public education); *Arnold v. United States Theatre Circuit, Inc.*, 158 F.R.D. 439, 443, 447-450 (N.D. Cal. 1994) (certifying class of disabled persons who alleged that owner of movie theater violated the ADA for failure to afford disabled persons full and equal access to its theater accommodations); *Clarkson v. Coughlin*, 145 F.R.D. 339, 346-348 (S.D.N.Y. 1993) (certifying class of hearing-impaired inmates who alleged that the State of New York violated the ADA for failure to have access to qualified sign language interpreters, equipment, and other necessary services).

A. Standards for Class Certification

For a class to be certified here, Plaintiffs must satisfy all four requirements of Rule 23(a), and one of the three categories of Rule 23(b). Fed. R. Civ. P. 23(b); *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613-614 (1997); *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001); *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). When evaluating a motion for class certification, the court must accept the allegations made in support of certification as true, and does not examine the merits of the case. *Blackie v. Barrack*, 524 F.2d 891, 901 & n. 17 (9th Cir. 1975) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-178 (1974)).

B. This Action Satisfies Rule 23(a).

Rule 23(a) requires Plaintiffs to demonstrate that four prerequisites are satisfied:

1. the class is so numerous that joinder of all members is impracticable ("numerosity");
2. there are questions of law or fact common to the class ("commonality");

3. the claims or defenses of the representative parties are typical of the claims or defenses of the class ("typicality"); and
4. the representative parties will fairly and adequately protect the interests of the class ("adequacy").

Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). In this case, Plaintiffs satisfy each of the four prerequisites set forth in Rule 23(a).

1. The Numerosity Requirement Is Satisfied.

The numerosity requirement demands only that the joinder of all individual class members be impracticable. *Arnold v. United States Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994) (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913 (9th Cir. 1964)). The exact number of potential class members need not be stated. *Arnold*, 158 F.R.D. at 448. As long as Plaintiffs demonstrate some evidence or reasonable estimate of the number of purported class members, the numerosity requirement is satisfied. *Id.*

Frequently, the size of the proposed class satisfies the numerosity requirement without any additional analysis. *See Jimenez v. Domino's Pizza, Inc.*, 238 F.R.D. 241, 247 (C.D. Cal. 2006) (with a class of 160, the court need not consider any other factors in determining whether the proposed class is sufficiently numerous). Indeed, a class of as few as 40 individuals creates a presumption that joinder is impractical. *Id.*, citing 1 Newberg on Class Actions, § 3:5 (4th Ed. 2004); *see also Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) ("numerosity is presumed at a level of 40 members"), citing 1 Newberg on Class Actions, § 3.05 (2d Ed.). The Ninth Circuit has upheld findings of adequate numerosity for classes of approximately 60 individuals. *Harik v. Cal. Teachers Ass'n*, 326 F.3d 1042, 1051-52 (9th Cir. 2003).

Where the number of proposed class members does not, by itself, satisfy the numerosity requirement, the court looks to factors such as "geographical diversity, ability of individual claimants to institute separate suits, and whether injunctive or declaratory relief is sought." *Jimenez v. Domino's Pizza, Inc.*, 238 F.R.D. at 247, quoting *Jordan v. Los Angeles County*, 669 F. 2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982). Additionally, in *Jordan*, the Ninth Circuit held that difficulty in locating potential class members

and the likelihood of a significant number of future class members both make the joinder of all class members impracticable. *Jordan*, 669 F.2d at 1319-20; *see also Pederson v. Louisiana State Univ.*, 213 F.3d 858, 868 n. 11 (5th Cir. 2000) (inclusion of future class members weighs in favor of finding joinder impracticable); *Clarkson v. Coughlin*, 145 F.R.D. 339, 348 (S.D.N.Y. 1993) (certifying a sub-class of an estimated seven hearing-impaired inmates because of fluidity of prison population and difficulties with identifying and tracking hearing-impaired inmates).

Here, the proposed class is estimated at over 4,000 individuals. FAC ¶ 1. This number includes juvenile parolees who have been or are at imminent risk of being wrongfully and unconstitutionally deprived of their liberty in connection with the revoking, subsequent granting, and extending of their parole. *Id.* The number of individuals, by itself, satisfies the numerosity requirement of Rule 23(a). *See Bafus v. Aspen Realty, Inc.*, 236 F.R.D. 652, 655 (D. Ida. 2006).

In addition, all the other factors weigh in favor of finding numerosity. The Class is spread throughout California, making joinder impracticable. *Jimenez*, 238 F.R.D. at 247. The individuals are juvenile parolees – young people in, by definition, difficult circumstances. These individuals are unlikely to institute separate suits or find counsel to represent them on an individual basis. *Id*. Plaintiffs seek injunctive and declaratory relief. *Id*.; FAC at 35. It is likely that there will be many future class members, as parolees not currently subject to parole proceedings are subjected to such proceedings in the future. As alleged in the FAC, approximately 70 percent of juvenile parolees are arrested within 36 months of release, bringing them into the parole revocation process. FAC ¶ 3. The existence of likely future class members weighs in favor of finding numerosity. Moreover, the fact that the class consists of juvenile parolees who are at large and in the community makes it difficult to identify and track such parolees.[2] Joinder of all members is therefore impracticable. *See Pederson*, 213 F.3d at 868 n.

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[2] This is also true for juvenile parolees with disabilities who are in custody. In the *Armstrong* case, Judge Wilken recently criticized the Defendants for failing to implement a reliable, comprehensive, and sufficient tracking system for adult parolees with disabilities, in violation of the Revised Permanent Injunction. Kennard Dec., Ex. D. The Defendants admitted

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11; *Phillips v. Joint Legislative Committee on Performance and Expenditure Review*, 637 F. 2d 1014 (5th Cir. 1981), *cert. denied, sub nom. Mississippi v. Phillips*, 456 U.S. 960 (1982); *Clarkson v. Coughlin*, 145 F.R.D. at 348.

Plaintiffs satisfy the numerosity requirement of Rule 23(a)(1) on the size of the proposed class alone, and based upon the additional factors that may be considered.

2. Common Issues of Law Or Fact Exist

Whether there are common issues of law or fact is construed liberally. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). If just one issue - whether legal or factual - is common to all class members, the commonality requirement of Rule 23(a)(2) is satisfied. *Id.* The common issue may involve underlying facts or legal theories common throughout the class, even if the common facts support different legal theories, or common legal theories that rest on different facts. *Id.* (certifying class of minivan owners who sued vehicle manufacturer alleging defective design of rear liftgate latch, because even though proposed class members "may possess different avenues of redress, their claims stem from the same source: the allegedly defective designed rear liftgate latch . . . .").

In a civil rights suit, the commonality requirement is satisfied where the lawsuit challenges a "system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d. 849, 868 (9th Cir. 2001) (citing *LaDuke v. Nelson*, 762 F. 2d 1318, 1332 (9th Cir. 1985)). "In such circumstance, individual factual differences among the individual litigants or groups of litigants will not preclude a finding of commonality." *Armstrong*, 275 F.3d at 868. All putative class members need not share identical claims. *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir.1994).

Here, the common issue raised by Plaintiffs and the proposed Class is whether Defendants' policies, procedures and practices violate their constitutional and statutory rights in

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to this violation. *Id.*, Ex. D at 4:18-19 ("Defendants do not dispute these violations, but rather concede them."). Thus, the Court can reasonably infer that such a system is not in place for juvenile parolees with disabilities.

parole proceedings. This is a challenge to Defendants' "system-wide practice or policy" of denying juvenile parolees their constitutional and statutory rights in parole proceedings. For example, juvenile parolees are routinely denied prompt notice of the charges against them, prompt preliminary hearings, assistance of counsel, and other constitutional protections in parole proceedings. In addition, juvenile parolees with disabilities are denied the necessary accommodations to enable them to participate meaningfully in parole proceedings. Defendants' system-wide pattern of conduct affects all of the putative class members.

Accordingly, Plaintiffs have satisfied the commonality requirement of Rule 23(a)(2).

3. The Class Representatives' Claims Are Typical Of The Claims Of The Class

The typicality requirement of Rule 23(a)(3) may be satisfied in one of several ways. First, the requirement is satisfied where class representatives have suffered deprivations alleged to have affected the entire class. *Mawson v. Wideman*, 84 F.R.D. 116, 118 (M.D. Pa. 1979); *Inmates of Lycoming County Prison v. Strode*, 79 F.R.D. 228, 233 (M.D. Pa. 1978). Under this method of satisfying the typicality requirement, it is not necessary for the class representatives' claims to be identical to those of the members of the class. *Armstrong*, 275 F.3d at 869. The rule requires only that the class representatives demonstrate that "the unnamed class members have injuries similar to those of the named plaintiffs and that the injuries result from the same, injurious course of conduct." *Id.* (citing *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

Additionally, Rule 23(a)(3) is satisfied where all members of the class would benefit by plaintiffs' action. *See Ellis v. Naval Air Rework Facility Alameda, Cal.*, 404 F. Supp. 391, 396 (N.D. Cal. 1975), *rev'd on other grounds*, 608 F.2d 1308 (9th Cir. 1979); *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968), *aff'd in part*, 417 U.S. 156 (1974).

Finally, the typicality requirement is satisfied where the claims of the named plaintiffs and other class members "arise from the same events or course of conduct and [are] . . . based on the same legal theory." *Jimenez*, 238 F.R.D. at 248; *see also Penn v. San Juan*

Hospital, Inc., 528 F.2d 1181, 1189 (10th Cir. 1975) ("[T]here may be varying fact situations among individual members of the class[;] this is all right so long as the claims of the plaintiffs and the other class members are based on the same legal or remedial theory.").

In this case, Plaintiffs satisfy the typicality requirement under all of its articulations. The deprivations alleged by Plaintiffs stem from Defendants' deficient, system-wide policies and procedures concerning juvenile parolees in parole proceedings. Therefore, these deprivations necessarily affect the entire Plaintiff class and are based on the same legal theories. Moreover, if Plaintiffs are successful in enjoining Defendants' unconstitutional polices and practices, they will necessarily benefit all current and future juvenile parolees in California who undergo the parole revocation process. Finally, Plaintiffs' claims arise out of the same course of conduct as those of the unnamed class members, namely Defendants' policies and procedures in parole proceedings. Thus, the proposed Class satisfies the typicality requirement of Rule 23(a)(3).

4. The Class Is Adequately Represented

Adequacy of representation is established by showing that: (1) Plaintiffs do not have interests antagonistic to those of the proposed class; and (2) Plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.1978).

With respect to the first part of the adequacy requirement, the interest of the named Plaintiffs in bringing CDCR policies and practices into compliance with constitutional and statutory requirements is not antagonistic to the interests of other class members who are being or will be subjected to the same policies and practices. *See Noren v. Straw*, 578 F. Supp. 1, 3 (D. Mont. 1982) (holding that the named plaintiffs, adult male prisoners, fairly represented the interests of females and juveniles for claims of violations of privacy). As discussed above, there is an extremely high recidivism rate for juvenile parolees, resulting in the majority of all juvenile parolees being subject to parole revocation proceedings one or more times. *See, supra*, Section II.B.1; *see also* FAC ¶ 3. Plaintiffs, like all juvenile parolees, have an interest in parole

proceedings that meet constitutional and statutory requirements. Plaintiffs' interests, in the context of this litigation, are perfectly aligned with the interests of the Class.

With respect to the second part of the adequacy requirement, Plaintiffs' counsel are fully competent to prosecute this class action. This Court has previously described the Prison Law Office, the Rosen, Bien & Galvan firm (formerly Rosen, Bien & Asaro), and the Bingham McCutchen firm (formerly McCutchen, Doyle, Brown & Enersen LLP) as "experienced class action counsel," based on its dealings with these firms in other prison litigation. Kennard Dec., Ex. E at 7:9-13. Moreover, in *Gates v. Gomez*, No. 87-CV-1636 LKK-JFM (E.D. Cal. 1987), a class action filed in this Court in which prisoners at the California Medical Facility-Main at Vacaville and the Northern Reception Center at Vacaville challenged the conditions of their confinement, these same defendants *agreed* in their opposition to plaintiffs' motion for class certification that the Prison Law Office, Bingham McCutchen and Michael Bien of Rosen, Bien & Galvan (then with Brobeck, Phleger & Harrison) were competent to prosecute that case as a class action.[3] Thus, this case also satisfies the second aspect of Rule 23(a)(4).

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[3] Indeed, the Prison Law Office, a non-profit corporation devoted to protecting the rights of California prisoners, has represented thousands of prisoners in individual actions and has represented plaintiff class members in a number of cases challenging various corrections-related issues at California Prisons, including *Armstrong, Valdivia, Clark v. California*, 123 F.3d 1267 (9th Cir. 1997), *Perez v. Tilton*, No. 05-5241 (N.D. Cal. 2005), *Plata v. Davis*, No. C-01-1351 TEH (N.D. Cal. 2001), *Coleman v. Wilson*, No. CIVS 90-0520 LKK-JFM (E.D. Cal. 1994), *Madrid v. Gomez*, No. C-90-3094 THE (N.D. Cal. 1990), *Gates, Marin v. Rushen*, No. C-80-0012 MHP (N.D. Cal. 1980), *Paris v. McCarthy*, No. 5-84-1699 RAR (E.D. Cal. 1986), *Toussaint v. McCarthy*, 597 F. Supp. 1388 (N.D. Cal. 1984), *aff'd in part, rev'd in part*, 801 F. 2d 1388 (9th Cir. 1986), *Thompson v. Enomoto*, No. 79-1630 SAW (N.D. Cal. 1981), *Taylor v. Rushen*, No. 80-0139 SAW (N.D. Cal. 1980), and *Farrell v. Harper*, No. RG03079344 (Alameda Super. Ct. 2003). Likewise, Bingham McCutchen has also had extensive experience litigating prisoners' rights in class action suits, including *Armstrong, Valdivia, Gates, Marin v. Rushen*, No. C-80-0012 MHP (N.D. Cal. 1980), *Coleman*, and *Stone v. City and County of San Francisco*, No. C-78-2774 WHO (N.D. Cal. 1978). In addition, Rosen, Bien & Galvan has litigated numerous class action and prisoners' rights lawsuits, such as *Armstrong, Valdivia, Gates, Coleman*, and *Toussaint*. Finally, the Youth Law Center has particular expertise in issues affecting juveniles and has litigated many class actions and juvenile rights lawsuits, such as *Nick O. Terhune*, No. CVS 89-0755 (E.D. Cal. 1989), *Steven L. v. Kern County*, No. CV-F-83-189 FDP (E.D. Cal. 1983), *Wilber v. Warner*, No. 312092 (San Francisco Super. Ct. 2000), *Hollingsworth v. Orange County*, No. 51-08-65 (Orange County Super. Ct. 1987), and *Shaw v. San Francisco*, No. 915763 (San Francisco Super. Ct. 1980).

Accordingly, as shown above, this case meets all the requirements for a class action enumerated in subsection (a) of Rule 23.

C. This Action Satisfies The Criteria Of Rule 23(b)

In order to qualify for a class action, Plaintiffs must demonstrate that, in addition to meeting all the prerequisites in Rule 23(a), the action also falls within one of the categories enumerated in Rule 23(b). Here, Plaintiffs seek certification of the class pursuant to Rule 23(b)(2), which provides that:

> An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and, in addition:
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Fed. R. Civ. P. 23(b)(2).

Plaintiffs here satisfy the criteria of Rule 23(b)(2). Rule 23(b)(2) is satisfied where there is a basic pattern of action or inaction on the part of the defendants that causes or has the potential of causing all class members to be subjected to the challenged practices and conditions.[4] *Walters v. Reno*, 145 F.3d 1032, 1046-1047 (9th Cir. 1998); *Inmates of Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24 (2d Cir. 1971). Here, Defendants' systematic deprivation of class members' constitutional and statutory rights in juvenile parole proceedings applies to all juvenile parolees under the control of the CDCR. The various state officials who implement these policies and procedures act on grounds which are generally applicable to each and every member of the class. Moreover, Defendants have failed to rectify the systemic violations of

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[4] The Advisory Committee's Note states:

> Action or inaction is directed to a class within the meaning of this subdivision even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to this class.

Fed. R. Civ. P. 23 Advisory Committee's Note.

constitutional and statutory rights in the juvenile parole revocation process, even while many of the Defendants have agreed to fix the very same problems in the adult parole revocation process. *See* Kennard Dec., Ex. A.

Class certification is also appropriate here because limited resources make it unlikely that individual juvenile parolees bringing numerous separate actions against Defendants would be in a position to demand system-wide, comprehensive injunctive relief of the type requested here, even though they would benefit from such relief. Relief unlikely to be demanded by individuals would include, for example, the development and implementation of policies and procedures for obtaining knowing, voluntary, and intelligent waivers, and the development and implementation of policies and procedures for providing juvenile parolees with disabilities with reasonable accommodations to ensure their ability to participate meaningfully in the parole revocation process.

Moreover, if individual actions were brought, different courts would be called upon to address the constitutionality of similar aspects of Defendants' policies and procedures concerning juvenile parole revocation. Different injunctions designed to remedy defects in the same polices and procedures creates the possibility of competing and inconsistent remedies.

In short, a permanent injunction enjoining Defendants from perpetuating these unlawful and unconstitutional policies and procedures is the most appropriate form of relief in this action. This case is therefore clearly one in which the requirements of Rule 23(b)(2) are satisfied.[5]

[5] Class certification in this case is also warranted under 23(b)(1)(A) and Rule 23(b)(1)(B). Rule 23(b)(1)(A) is satisfied because the prosecution of numerous separate, individual actions by members of the class could lead to inconsistent or varying adjudications resulting in incompatible standards of conduct for defendants with respect to juvenile parolees. The criterion of Rule 23(b)(1)(B) is also met, because the prosecution of separate actions by class members would as a practical matter be dispositive of the interests of other class members not party to those adjudications.

III. CONCLUSION

Plaintiffs seek to redress a system-wide problem of unconstitutional and illegal policies, procedures, and practices that affect every juvenile parolee subject to parole revocation and other parole proceedings in California. Only an injunction requiring Defendants to adhere to constitutional and statutory requirements with respect to all present and future juvenile parolees throughout the parole proceedings will adequately resolve the problems that currently infect this process. The proposed Class and named Plaintiffs satisfy the requirements for class action treatment set forth in Rule 23. This motion for class certification should therefore be granted.

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Respectfully submitted,

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