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SACRAMENTO COURTS
DEPT. #54

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15 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
16 COUNTY OF SACRAMENTO

18 DAVID PORTER,

19 Plaintiff,

20 v.

21 VERNE SPEIRS, Chief Probation Officer,
22 County of SACRAMENTO and DAVID
23 GORDON, Sacramento County
24 Superintendent of Schools,

Defendants.

CASE NO. 06AS03654

STIPULATED CONSENT DECREE

By Fax

STIPULATED CONSENT DECREE
CASE NO. 06AS03654

INTRODUCTION

A. Plaintiff David Porter ("Plaintiff") initiated this action as a taxpayer pursuant to California Code of Civil Procedure sections 525, 526a and 1060. Subsequently, on or about September 10, 2008, Plaintiff filed a Fourth Amended Complaint For Injunctive and Declaratory Relief ("Amended Complaint").

B. Plaintiff's Amended Complaint alleges that conditions in Sacramento County's Warren E. Thornton Youth Center, Youth Detention Facility, and the Carson Creek Boys Ranch (collectively "Juvenile Detention Facilities") violate state statutory, constitutional and regulatory law in manners set forth in six causes of action: (1) Illegal Endangerment of Physical Safety; (2) Illegal Mental and Emotional Abuse; (3) Illegal Living Conditions; (4) Illegal Conditions in Segregation Units; (5) Illegal Failure to Obtain Parental Consent For Medical Procedures; and (6) Illegal Failure to Fulfill Duties of Education and Rehabilitation.

C. The action is directed against Defendant Verne Speirs ("Defendant"), who as the Chief Probation Officer of Sacramento County is designated by state statute as operator of the Juvenile Detention Facilities.¹ This Consent Decree does not address or in any way resolve claims against Defendant David Gordon who, in his official capacity as Superintendant of Schools, is responsible for educational instruction in the Juvenile Detention Facilities.

D. On September 25, 2008, Defendant duly filed his Answer to the Fourth Amended Unverified Complaint, denying the material allegations and asserting affirmative defenses. Defendant continues to deny Plaintiff's allegations, but has agreed to enter into this Consent Decree, without admitting liability, as a compromise resolution of the issues described in the Amended Complaint and this Consent Decree. Plaintiff and Defendant hereby stipulate and consent to the injunctive and declaratory relief detailed below in order to compromise and settle

¹ The duties and obligations of this Consent Decree are placed on the Chief Probation Officer of Sacramento County in his or her official capacity and not in his or her individual capacity. This Consent Decree specifically refers to Defendant Speirs, the Chief Probation Officer of Sacramento County at the time this action was commenced. Defendant Speirs has since retired, and accordingly the duties and obligations of this Consent Decree shall apply for the term of the Consent Decree to any successor to the position of Chief Probation Officer of Sacramento County.

1 the dispute between them relating to the facts and claims alleged in the Amended Complaint.
2 Nothing herein shall constitute or be used as evidence of any admission of wrongdoing or
3 liability by Defendant.

4 E. Since the initiation of this action, the parties have engaged in formal discovery,
5 including the exchange of documents, responses to interrogatories, and depositions of detained
6 youth and representatives of the Juvenile Detention Facilities. In addition, Plaintiff has
7 conducted an inspection of the Juvenile Detention Facilities through a retained independent
8 expert. Plaintiff's counsel was also permitted to tour and inspect the Youth Detention Facility.

9 F. Nothing in this Consent Decree prevents Defendant from temporarily suspending
10 compliance with all or any part of the Consent Decree as may be necessary during an emergency.
11 Defendant shall advise Plaintiff's counsel of any such suspension in writing within 10 days of
12 the temporary or permanent suspension, describing which portion(s) of this Consent Decree
13 was/were suspended and the reasons therefor. Plaintiff may object to any suspension of this
14 Consent Decree and invoke the dispute resolution procedure set forth in Paragraph 24.

15 G. The terms of this Consent Decree shall not apply to any Juvenile Detention
16 Facility that is closed for the period that such a facility is closed.

17 **INJUNCTIVE AND DECLARATORY RELIEF**

18 **I. PREVENTING OVERCROWDING**

19 1.1 Plaintiff's Amended Complaint alleges that Defendant failed to comply
20 with maximum-capacity restrictions at Juvenile Detention Facilities in violation of Cal. Code of
21 Regs. tit. 15 § 1343. The parties hereby stipulate, and the Court hereby orders, that:

22 1.2 Defendant shall at all times operate each Juvenile Detention Facility, and
23 each unit within any Juvenile Detention Facility, with population levels at or below each
24 facility's, or each unit within a facility, "Board-Rated Capacity" regardless of any other higher
25 suitability plan limit. The Board-Rated Capacity is the operationally staffed capacity of a
26 facility, or a unit within a facility, and as determined by the Corrections Standards Authority
27 pursuant to Cal. Code of Regs. tit 15.

1 1.3 Defendant shall, in consultation and collaboration with Plaintiff's counsel,
2 develop and implement policies and procedures to prevent the population from exceeding Board-
3 Rated Capacity, including for the population of youth detained for violations of the conditions of
4 probation. Disagreements under this section shall be resolved pursuant to the dispute resolution
5 procedure set forth in Paragraph 24.

6 **2. REDUCING USE OF FORCE**

7 2.1 Plaintiff's Amended Complaint alleges that Defendant fails to provide a
8 safe and supportive homelike environment, including by reason of the illegal use of excessive
9 force against juveniles and the illegal, punitive use of physical and/or chemical restraints on
10 juveniles in violation of Cal. Wel. & Inst. Code § 851 and Cal. Code of Regs. tit. 15 §§ 1357,
11 1358, and 1390. The parties hereby further stipulate, and the Court hereby orders, that
12 Defendant:

13 2.2 **SERT/CMT:** Shall immediately disband each and every Special
14 Emergency Response Team or Crisis Management Team and shall not reconstitute either in a
15 substantially similar form.

16 2.3 **Watch Commander:** Shall designate a Watch Commander for each shift
17 at each Juvenile Detention Facility. The Watch Commander shall be a supervisor in rank and
18 shall be responsible for responding to, monitoring, and evaluating each use of force incident
19 whenever possible.

20 2.4 **Supervisor Response:** Shall ensure that a supervisor in rank responds in
21 person whenever possible to each incident involving the use of force.

22 2.5 **Video Recording:** Shall ensure that whenever possible incidents
23 involving the use of force are videotaped.

24 2.6 **Review of Recordings:** Shall conduct an Administrative Review or cause
25 an Assistant Division Chief, or other head of each Juvenile Detention Facility, to conduct an
26 Administrative Review of all video recordings of any use of force within 24 hours of such
27 incident. The Administrative Review shall ensure that the incident report specifies the type of
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force used, the persons involved, the reasons necessitating the use of force, and the names of any youth witnesses who were interviewed. The Administrative Review shall state whether any involved staff should or should not remain in contact with juveniles or be put on temporary administrative leave as well as reasons supporting the conclusion pending completion of an internal affairs investigation.

2.7 **Weekend Monitoring:** Shall assign during weekends a roaming duty officer. The roaming duty officer shall roam the facilities during weekend hours and shall speak with juveniles and write a "Weekend Institutional Report" specifying observations; conditions, including facility, unit and room cleanliness; programming; staff interactions with youth; and recommendations. The report shall indicate the duty officer's review and/or discussions surrounding any use of force that occurred prior to and or during the roaming duty officer's time at the facility and shall identify any conditions, complaints, grievances, or other issues presented by youth, regardless of whether such conditions, complaints or grievances are submitted in a formal grievance form. The Weekend Institutional Report shall be sent to and read by the Assistant Chief Probation Officer.

3. PERMANENT VIDEO RECORDING SYSTEM

The parties hereby further stipulate, and the Court hereby orders, that:

3.1 Defendant shall, on or before December 31, 2009, install and maintain video cameras and recording equipment sufficient to continuously monitor and record common areas of the Youth Detention Facility in which staff-youth interactions occur (excluding areas in which youth have a right of privacy, including without limitation showers, restrooms, individual sleeping rooms, correctional or behavioral medical areas, and interview rooms). Recordings shall be retained for at least one year.

3.2 Defendant shall, in consultation and collaboration with Plaintiff's counsel, develop a timetable for the implementation of a video camera and recording system for Juvenile Detention Facilities other than the Youth Detention Facility. Disagreements under this section shall be resolved pursuant to the dispute resolution procedure set forth in Paragraph 24.

1 **4. USE OF FORCE POLICIES**

2 The parties hereby further stipulate, and the Court hereby orders, that Defendant shall,
3 within a reasonable time period, develop and implement for each Juvenile Detention Facility use
4 of force policies and procedures such that:

5 **4.1 De-escalation First:** Staff must de-escalate incidents without force
6 whenever possible.

7 **4.2 Training of Staff:** Each new sworn employee who interacts with
8 juveniles at any Juvenile Detention Facility is given at least 40 hours of training, including
9 sufficient training with respect to the use of force that clearly stresses that the least restrictive
10 means must be used in order to minimize the use of force.

11 **4.3 Signed Statements:** Each employee signs a statement acknowledging
12 that excessive use of force may constitute a crime, including that of child abuse, before any
13 employee is permitted to interact with juveniles at any Juvenile Detention Facility.

14 **4.4 Staff Reviews:** Effective use of force reviews are conducted with each
15 sworn line staff on a regularly scheduled basis twice a year, including individual reviews for
16 sworn staff involved in the most frequent use of force incidents, that clearly address and stress
17 that the least restrictive means must be used in order to minimize the use of force.

18 **4.5 Supervisor Response:** Supervisors respond in person to all use of force
19 incidents and review taped incidents involving use of force whenever possible.

20 **4.6 Prompt Incident Review:** All use of force incidents are reviewed within
21 24 hours of the incident for the purpose of determining whether the staff should remain in
22 contact with youth or be put on administrative leave.

23 **4.7 Objective Review:** There is an independent review of complaints,
24 whether written or otherwise made, involving excessive use of force. An independent review
25 shall substantially conform to the model used by the Bureau of Independent Review of the
26 California Inspector General's Office or the County of Los Angeles Office of Independent
27 Review.

4.8 **Investigations:** There are sufficient qualified and trained personnel to adequately and timely investigate all complaints of excessive force and that each complaint of excessive force is investigated adequately and in a timely manner.

4.9 **Discipline:** Appropriate, effective, and timely discipline is taken against staff who use excessive force or who do not report an incident involving the use of force.

4.10 **Referral to District Attorney:** All instances of excessive use of force by any staff on juveniles are timely referred to the District Attorney.

5. COLLECTION, ANALYSIS, AND USE OF DATA ON USE OF FORCE

The parties hereby further stipulate, and the Court hereby orders, that Defendant:

5.1 Shall, in consultation and collaboration with Plaintiff's counsel, and within 90 calendar days of the entry of this Consent Decree, promulgate and implement an Early Warning System to monitor the use of force at each Juvenile Detention Facility. The system shall include at a minimum a means to track the (1) time of use of force, (2) location of use of force, (3) name(s) of staff using force, including a chemical agent, and (4) the name(s) of the youth(s) on whom the force was used. Disagreements under this section shall be resolved pursuant to the dispute resolution procedure set forth in Paragraph 24.

5.2 Shall on at least a monthly basis gather, review, and analyze the use of force incidents with the goal of minimizing the use of force at the facilities.

6. USE OF PEPPER SPRAY AND CHEMICAL AGENTS

The parties hereby further stipulate, and the Court hereby orders, that Defendant:

6.1 Shall promulgate and implement policies to minimize the unnecessary, improper, or excessive use of force, including the use of pepper spray and any other chemical agents.

6.2 Shall ensure that each staff member is trained in alternative intervention techniques on a regularly scheduled annual basis in order to minimize the use of force, including pepper spray and any other chemical agents.

1 6.3 Shall conduct effective use of force policy reviews with the line staff on a
2 regularly scheduled basis twice a year and clearly address and stress that the least restrictive
3 interventions are to be used in order to minimize the use of force, including the use of pepper
4 spray and any other chemical agents.

5 **7. ASSIGNMENT OF A YOUTH ADVOCATE**

6 The parties hereby further stipulate, and the Court hereby orders, that Defendant:

7 7.1 Shall create the assignment of Youth Advocate and employ or retain at
8 least one full-time equivalent person(s) within a reasonable period time, not to exceed more than
9 90 calendar days, after entry of this Consent Decree. The Youth Advocate shall work at all
10 Juvenile Detention Facilities and shall report directly to the Assistant Chief Probation Officer
11 responsible for the Juvenile Detention Facilities. The duties of the Youth Advocate shall be
12 discussed cooperatively between Plaintiff's representatives and Defendant. The duties shall
13 include, but not be limited to, assisting juveniles to prepare grievances and troubleshooting and
14 investigating complaints and problems. The Youth Advocate shall have confidential access to
15 grievance forms submitted by youth.

16 **8. PERMANENT STAFF TRAINER**

17 The parties hereby further stipulate, and the Court hereby orders, that Defendant:

18 8.1 Shall employ within 60 calendar days of entry of this Consent Decree a
19 full-time employee for the purpose of training staff on an on-going basis on the appropriate use
20 of force and other topics, such as supervision of and communication with minors, changing staff
21 culture norms, philosophy of providing a safe homelike environment, staff roles and
22 responsibilities, writing incident reports, and other policies and procedures. The training officer
23 shall have experience in a juvenile hall or a non-secure juvenile housing setting.

24 **9. JOINT EXPERT ON USE OF FORCE**

25 The parties hereby further stipulate, and the Court hereby orders, that:

26 9.1 Defendant shall, in consultation with and with the approval of Plaintiff's
27 counsel, retain one outside expert to assist in reviewing and developing policies and procedures,
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1 including but not limited to policies and procedures relating to the medical treatment and
2 reporting of use of force incidents, to reduce the use of force at the Juvenile Detention Facilities.

3 9.2 The expert shall have reasonable access to the facilities, books, records,
4 staff, and juveniles, including the ability to conduct confidential interviews, to the extent they are
5 in the control, custody or possession of the Sacramento County Department of Probation.
6 Defendant shall undertake all measures needed to ensure that the expert has access to the
7 facilities, books, records, staff, and juveniles in the control, custody or possession of the
8 Department of Probation.

9 9.3 The expert shall provide a written report within 120 calendar days of the
10 entry of this Consent Decree detailing the expert's findings and recommendations for action.
11 The expert report shall be provided to Plaintiff's counsel in full, except that any report so
12 provided shall not disclose information that is confidential pursuant to Cal. Penal Code § 832.7.
13 The report shall be admissible in any court or mediation proceedings in this action. While the
14 report may be admissible, it may be disputed or contested by any party with testimonial or
15 extrinsic evidence including expert testimony. The report shall not be admissible in any other
16 action.

17 9.4 Subject to the dispute resolution procedures set forth in section 24, after
18 receipt of the report Defendant within 30 days shall in consultation with Plaintiff's counsel (1)
19 discuss and agree upon the expert's recommended actions to implement and (2) develop
20 timelines to implement the agreed upon recommendations. Defendant shall thereafter implement
21 the recommendations with the agreed upon timelines.

22 9.5 Defendant shall pay the expert's reasonable costs and fees.

23 **10. WEAPONLESS DEFENSE TRAINING**

24 The parties hereby further stipulate, and the Court hereby orders, that:

25 10.1 Defendant shall add Jireh/Weaponless Defense and Verbal Judo training
26 to its curriculum. All sworn staff at each Juvenile Detention Facility, including staff, managers,
27 supervisors, and line staff will participate and complete Jireh Crisis Prevention Safe

1 Management Principles and Techniques and Verbal Judo training. The training shall include
2 ongoing update scenario training. The training shall emphasize verbal intervention and de-
3 escalation techniques.

4 **11. ELIMINATING VERBAL ABUSE**

5 11.1 Plaintiff's Amended Complaint alleges that Defendant does not provide
6 the "safe and supportive homelike environment" mandated by Cal. Wel. & Inst. Code §851,
7 including by reason of the illegal use of verbal or emotional abuse in violation of Cal. Code of
8 Regs. tit. 15 § 1390. The parties hereby stipulate, and the Court hereby orders, that Defendant:

9 11.2 Shall promulgate and implement a communication policy that forbids the
10 use of derogatory or profane language towards youth in any Juvenile Detention Facility.

11 11.3 Shall ensure that all staff are trained on the communications policy on a
12 regularly scheduled, annual basis.

13 11.4 Shall design and implement effective means to enforce such a
14 communications policy.

15 11.5 Shall require that each staff sign a statement stating that he or she will not
16 direct derogatory or profane language to youth.

17 11.6 Shall revise juvenile grievance procedures to allow youth to grieve
18 instances of derogatory or profane language directed by staff towards youth.

19 11.7 Shall ensure that each youth is informed of the right to grieve each
20 instance of use of derogatory or profane language by staff that is directed towards youth.

21 **12. MENTAL HEALTH**

22 The parties hereby further stipulate, and the Court hereby orders, that:

23 **Joint Expert Regarding Mental Health**

24 12.1 Defendant shall, in consultation with Plaintiff's counsel, retain one outside
25 expert to assist in reviewing and implementing processes for the quality delivery of mental health
26 care to youth at the Juvenile Detention Facilities, including but not limited to policies and
27 procedures for obtaining appropriate consents to provide mental treatment and providing
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1 information to parents who call and ask about the mental health treatment and conditions of their
2 children.

3 12.2 The expert shall have reasonable access to the facilities, books, records,
4 staff, and juveniles, including the ability to conduct confidential interviews, to the extent they are
5 in the control, custody or possession of the Sacramento County Department of Probation. To the
6 extent that relevant records, books, and staff are not in the control, custody or possession of the
7 Sacramento County Department of Probation, Plaintiff shall have the ability for the duration of
8 this Consent Decree to obtain information pursuant to California Code of Civil Procedure
9 § 2020, and to the extent required by law any confidential medical and mental health information
10 of a youth through individual consent.

11 12.3 Within 180 calendar days of the entry of this Consent Decree the expert
12 shall provide a written report without identifying minors by name detailing the expert's findings
13 and recommendations for action. The expert report shall be provided to Plaintiff's counsel in full
14 and shall be admissible in any mediation or court proceedings in this action. While the report
15 may be admissible, it may be disputed or contested by any party with testimonial or extrinsic
16 evidence including expert testimony. The report shall not be admissible in any other action.

17 12.4 Subject to the dispute resolution procedures set forth in section 24, after
18 receipt of the report Defendant within 30 days shall in consultation with Plaintiff's counsel (1)
19 discuss and agree upon the expert's recommended actions to implement and (2) develop
20 timelines to implement the agreed upon recommendations. Defendant shall thereafter implement
21 within the agreed upon timelines the recommended policies and procedures within the control of
22 the Sacramento County Department of Probation.

23 12.5 Defendant shall pay the expert's reasonable costs and fees.

24 13. REDUCING USE OF ISOLATION ROOM CONFINEMENT

25 13.1 Plaintiff's Amended Complaint alleges that Defendant illegally uses
26 extreme isolation and also fails to provide education to juveniles housed in Room Confinement
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(RC) and Administrative Room Confinement (ARC) in violation of Cal. Code of Regs. tit. 15 §§ 1370, and 1390. The parties hereby stipulate, and the Court hereby orders, that:

Joint Expert Regarding Room Isolation Practices

13.2 Defendant shall, in consultation with and with the approval of Plaintiff's counsel, retain one outside expert to assist in reviewing and developing policies and procedures governing the use of RC, ARC, and locked sleeping rooms at the Carson Creek Boys Ranch, including due process protections and time limits.

13.3 The expert shall have reasonable access to the facilities, books, records, staff, and juveniles, including the ability to conduct confidential interviews, to the extent they are in the control, custody or possession of the Sacramento County Department of Probation. Defendant shall undertake all measures needed to ensure that the expert has access to the facilities, books, records, staff, and juveniles to the extent they are in the control, custody or possession of the Department of Probation.

13.4 The expert shall provide a written report within 120 calendar days of the entry of this Consent Decree detailing the expert's findings and recommendations for action. The expert report shall be provided to Plaintiff's counsel in full and shall be admissible in any mediation or court proceedings in this action. While the report may be admissible, it may be disputed or contested by any party with testimonial or extrinsic evidence including expert testimony. The report shall not be admissible in any other action.

13.5 Subject to the dispute resolution procedures set forth in section 24, after receipt of the report Defendant within 30 days shall in consultation with Plaintiff's counsel (1) discuss and agree upon the expert's recommended actions to implement and (2) to develop timelines to implement the agreed upon recommendations. Defendant shall thereafter implement the recommendations with the agreed upon timelines.

13.6 Defendant shall pay the expert's reasonable costs and fees.

Room Isolation Practices Prior to Joint Expert Reports

1 13.7 Defendant shall, until policies and procedures are adopted and
2 implemented pursuant to the immediately prior sections, ensure that no youth is placed on RC,
3 ARC or in a locked sleeping room, for more than two hours without appropriate, documented,
4 non-punitive reasons set forth in writing by a supervisor of the Juvenile Detention Facility.

5 13.8 Defendant shall, until such policies and procedures are adopted and
6 implemented, conduct a single due process hearing in each instance a youth is placed on RC,
7 ARC, or in a locked sleeping room for more than two hours. A waiver by the youth or the
8 refusal of a youth to participate in a hearing shall not be grounds for failing to conduct a due
9 process hearing.

10 13.9 Defendant shall ensure that youth on RC or ARC or in locked sleeping
11 rooms are delivered to and attend school at the location the youth would normally attend school
12 while detained for the full schedule of the normal school day unless the presence of the student
13 in the school will jeopardize the safety of him/herself, other students, or teachers, and Probation
14 states in detail the reasons for such a finding.

15 13.10 Defendant shall not accept for room confinement or confine in the room
16 during the normal school hours any youth suspended, excused, or otherwise removed from
17 school for any disciplinary event arising while the student was in school unless the principal of
18 the school certifies in writing that the continued presence of the student in the school will
19 jeopardize the safety of the student, other students, or teachers and states in detail the reasons for
20 such a finding.

21 13.11 Defendant shall, in consultation and collaboration with Plaintiff's counsel,
22 develop and implement policies and procedures for accepting back into a unit or detention
23 facility during school hours any youth lawfully suspended, excused, or otherwise removed from
24 school for any reason other than that the continued presence of the student in the school will
25 jeopardize the safety of him/herself, other students or teachers as stated in detail. Disagreements
26 under this section shall be resolved pursuant to the dispute resolution procedure set forth in
27 Paragraph 24.

1 13.12 Defendant shall compile and maintain a report and log tracking which and
2 how many, if any, youths are absent from school for any part of the full school day and a
3 statement as to why each such youth was absent for any part of the full school day.

4 **14. REHABILITATIVE PROGRAMMING AND DISCIPLINE**

5 14.1 Plaintiff's Amended Complaint alleges that Defendant offers ineffective
6 programming to rehabilitate youth in the Juvenile Detention Facilities, in violation of Cal. Code
7 of Regs. tit. 15 §§ 1356 and 1378. The parties hereby stipulate, and the Court hereby orders,
8 that:

9 **Joint Expert Regarding Programming and Discipline**

10 14.2 Defendant shall, in consultation with and with the approval of Plaintiff's
11 counsel, retain one outside expert to assist in (1) reviewing, developing, and implementing
12 appropriate and adequate rehabilitative programming that is effective and individualized, has
13 measurable objectives, and is coordinated with the efforts of the educational staff and behavioral
14 health personnel and (2) reviewing, developing, and implementing appropriate policies and
15 practices with respect to the use of any disciplinary point or level system.

16 14.3 The expert shall have reasonable access to the facilities, books, records,
17 staff, and juveniles, including the ability to conduct confidential interviews, to the extent they are
18 in the control, custody or possession of the Sacramento County Department of Probation.
19 Defendant shall undertake all measures needed to ensure that the expert has access to the
20 facilities, books, records, staff and juveniles to the extent they are in the control, custody or
21 possession of the Department of Probation.

22 14.4 The expert shall provide a written report within 120 calendar days of the
23 entry of this Consent Decree detailing the expert's findings and recommendations for action.
24 The expert report shall be provided to Plaintiff's counsel in full and shall be admissible in any
25 mediation or court proceedings in this action. While the report may be admissible, it may be
26 disputed or contested by any party with testimonial or extrinsic evidence including expert
27 testimony. The report shall not be admissible in any other action.

14.5 Subject to the dispute resolution procedures set forth in section 24, after receipt of the report Defendant within 30 days shall in consultation with Plaintiff's counsel (1) discuss and agree upon the expert's recommended actions to implement and (2) develop timelines to implement the agreed upon recommendations. Defendant shall thereafter implement the recommendations with the agreed upon timelines.

15. ENVIRONMENTAL CONDITIONS

15.2 Defendant shall ensure that Juvenile Detention Facilities are clean and sanitary.

15.4 Defendant shall, in consultation and collaboration with Plaintiff's counsel, develop and implement appropriate and adequate policies and practices to ensure facility cleanliness, including but not limited to the policies and practices relating to access to and use of restrooms. Disagreements under this section shall be resolved pursuant to the dispute resolution procedure set forth in Paragraph 24.

The parties hereby further stipulate, and the Court hereby orders, that:

1 16.2 Pbs Li and the Department of Probation shall collect data in areas
2 including use of force; use and duration of room confinement and administrative room
3 confinement; health, mental health and suicide screening; and use and duration of confinement of
4 youth in locked sleeping rooms at Boy's Ranch. Data will be tracked by PbS Li over time, and
5 performance outcome measures will be compared to objective National Standards.

6 16.3 Pbs Li and the Department of Probation will develop Facility
7 Improvement Plans for each Juvenile Detention Facility.

8 16.4 Data collected by Pbs Li and any Facility Improvement Plans shall be
9 made available to Plaintiff's counsel upon request during the term of this Consent Decree.

10 **MONITORING, DISPUTE RESOLUTION AND CONTINUING JURISDICTION**

11 **17. Term of Consent Decree:** The duration of this Consent Decree is three years from the
12 date this Consent Decree is entered, except, subject to Paragraph 24 below, that this time period
13 shall be extended as to any provision of this Consent Decree with which Defendant is not in
14 substantial compliance for so long as substantial non-compliance persists and so long as Plaintiff
15 has reasonably given prior notice to Defendant of the deficiency.

16 **18. Monitoring:** For purposes of monitoring and enforcing compliance with this Consent
17 Decree and for a period of three years from the date this Consent Decree is entered, Plaintiff's
18 counsel shall have access to the Juvenile Detention Facilities and to any and all information,
19 documents, books, records, juveniles, and staff to the extent they are in the control, custody, or
20 possession of the County of Sacramento Department of Probation upon reasonable notice and on
21 mutually convenient dates/times, except that records and information deemed confidential
22 pursuant to Penal Code § 832.7 shall not be disclosed to Plaintiff's counsel either directly or by
23 way of any expert or other report. Subject to Paragraph 24 below, the three-year time period
24 shall be extended as to any provision of this Consent Decree with which Defendant is not in
25 substantial compliance for so long as substantial noncompliance persists so long as Plaintiff has
26 reasonably given prior notice to Defendant of the deficiency.

27 **19. Obligation To Provide Information:** The parties shall cooperatively secure from the
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1 Juvenile Court, upon appropriate petition, permission for Plaintiff and Plaintiff's counsel to
2 access information covered by Cal. Wel. & Inst. Code § 827 for purposes of monitoring and
3 enforcing this Consent Decree.

4 **20. Confidentiality:** Confidential Information exchanged for purposes of monitoring
5 compliance with this Consent Decree shall be subject to the provisions of the Protective Order
6 attached hereto as Exhibit A, which is expressly incorporated into this Consent Decree.

7 **21. Obligation To Provide Policies and Procedures:** For a period of three years from the
8 date this Consent Decree is entered or, if extended, pursuant to Paragraph 17 above, Defendant
9 shall provide Plaintiff's counsel with copies of all policies, procedures, and programs adopted or
10 modified with respect to the topics contained in this Consent Decree, within 30 calendar days of
11 their adoption or modification.

12 **22. Costs and Fees For Monitoring:** Plaintiff's counsel shall be compensated for their
13 reasonable time and reasonable expenses relating to monitoring and enforcing this Consent
14 Decree, including reasonable time and reasonable expenses in connection with efforts to resolve
15 informally any dispute related to this Consent Decree, subject to Defendant's right to dispute any
16 such request for compensation, as provided below. Defendant shall make payments within 60
17 calendar days of the receipt of an invoice from Plaintiff's counsel that contains a detailed written
18 itemization of their attorneys' fees and costs reasonably incurred by date, amount of time spent,
19 and a general description of task. Defendant shall have the right to dispute the amount of any
20 such request for compensation, as provided in Section 27 below, including the right to go back to
21 the Court of continuing jurisdiction to resolve final disputes. Should Defendant dispute any
22 portion of any such invoice, the dispute resolution provisions contained in this Consent Decree
23 shall apply and Defendant shall be entitled to withhold payment of the disputed amount until the
24 matter is resolved in accordance with the terms of this Consent Decree.

25 **23. Status Reports:** Within 180 calendar days of the effective date of this Consent Decree,
26 Defendant shall provide to Plaintiff's counsel a status report stating whether the Juvenile Hall is
27 complying with the terms of this Consent Decree. This report shall include a description of the

1 steps that Defendant and/or the Juvenile Detention Facilities have taken to implement this
2 Consent Decree. At the end of each subsequent 180-day period within three years from the date
3 this Consent Decree is entered, Defendant shall provide to Plaintiff's counsel a status report
4 addressing each item of this Consent Decree and shall specify each and every item with which
5 any Juvenile Detention Facility is not in compliance.

6 **24. Dispute Resolution:** The parties shall endeavor in good faith to resolve informally any
7 dispute that may arise relating to this Consent Decree or any request for a modification or
8 clarification of any portion of this Consent Decree. Any party may begin this informal dispute
9 resolution process by written notice to the opposing party. If, within 60 calendar days after such
10 written notice, the parties are unable to reach a mutually satisfactory resolution of the dispute,
11 the disputed matter, including disputes over fees, shall be submitted to the Court of continuing
12 jurisdiction. Plaintiff may seek attorney's fees and costs as allowed by law, and determined by
13 the Court, for their reasonable time and reasonable expenses in connection with a formal
14 submission to the Court of continuing jurisdiction to enforce this Consent Decree.

15 **25. Court's Continuing Jurisdiction:** After the effective date of this Consent Decree, the
16 Court shall retain jurisdiction to ensure that the parties fulfill their respective obligations under
17 the Consent Decree. In the event that any matter relating to this Consent Decree is brought to the
18 Court, the Court may require briefing, and any remedy within the Court's jurisdiction shall be
19 available.

20 **26. No Admission:** Neither the fact of this Consent Decree nor any statements or claims
21 contained herein shall be used in any other case, claim, or administrative proceeding, except that
22 Defendant, the County of Sacramento, and their employees and agents may use this Consent
23 Decree and any statement contained herein to assert issue preclusion or *res judicata*.

24 **27. Attorneys' Fees and Costs:** In the interest of resolving this dispute, Defendant agrees to
25 pay Plaintiff reasonable attorneys' fees and costs. Plaintiff and Defendant shall attempt to
26 negotiate reasonable fees and costs within 60 days following the filing of the Consent Decree as
27 an order of the Court, and Plaintiffs shall timely provide Defendant with a detailed written

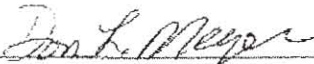
1 itemization of their attorneys' fees and costs incurred by date, amount of time spent, and task.
2 Should the parties be unable to reach agreement, Plaintiff may file a motion for attorneys' fees
3 and costs within 120 days following the entry of the Consent Decree as an order of the Court.
4 Defendant shall be entitled to file an Opposition, and the Court shall decide the reasonable
5 amount of attorneys' fees and costs.

6
7 **SO STIPULATED:**

8 Dated: December __, 2009

Dated: December 9, 2009

9
10 _____
11 David Porter, Plaintiff

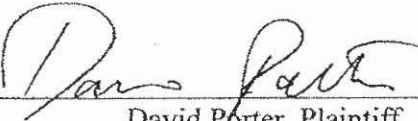

12 _____
13 Don L. Meyer, Chief Probation Officer,
14 County of Sacramento
15 Defendant
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1 itemization of their attorneys' fees and costs incurred by date, amount of time spent, and task.
2 Should the parties be unable to reach agreement, Plaintiff may file a motion for attorneys' fees
3 and costs within 120 days following the entry of the Consent Decree as an order of the Court.
4 Defendant shall be entitled to file an Opposition, and the Court shall decide the reasonable
5 amount of attorneys' fees and costs.
6

7 **SO STIPULATED:**

8 Dated: December 10, 2009

Dated: December __, 2009

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10 

11 David Porter, Plaintiff

Don L. Meyer, Chief Probation Officer,
County of Sacramento
Defendant

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1 APPROVED AS TO FORM:

2 PRISON LAW OFFICE

COUNTY COUNSEL

3 Dated: December __, 2009

Dated: December 9, 2009

4
5 By: _____

Donald Specter
Counsel for Plaintiff

By  _____

Craig E. Deutsch (#204281)
Counsel for Defendant

Deputy County Counsel
Sacramento County
Office of the County Counsel
700 "H" Street, Room 2650
Sacramento, CA 95814
Telephone: (916) 874-5544
Facsimile: (916) 874-8207
Email: deutchc@saccounty.net

8 IT IS SO ORDERED.

9 Dated: _____, 2009

Judge of the Superior Court

13 (additional counsel)

14 BINGHAM MCCUTCHEN LLP

15 DIANE BARKER #245779

Three Embarcadero Center

16 San Francisco, CA 94111-4067

Telephone: (415) 393-2000

17 Facsimile: (415) 393-2286

Email: diane.barker@bingham.com

18 LATHAM & WATKINS LLP

19 RICHARD B. ULMER JR. #124561

140 Scott Drive

20 Menlo Park, CA 94025

Telephone: (650) 328-4600

21 Facsimile: (650) 463-2600

Email: dick.ulmer@lw.com

22 CHAVEZ & GERTLER LLP

23 MARK A. CHAVEZ #90858

42 Miller Avenue

24 Mill Valley, CA 94941

Telephone: (415) 381-5599

25 Facsimile: (415) 381-5572

Email: mark@chavezgertler.com

28 STIPULATED CONSENT DECREE
CASE NO. 06AS03654

1 APPROVED AS TO FORM:

2 PRISON LAW OFFICE

COUNTY COUNSEL

3 Dated: December 10 2009

Dated: December __, 2009

4
5 By: Donald Specter
6 Donald Specter
7 Counsel for Plaintiff

By _____
Craig E. Deutsch
Counsel for Defendant

8 IT IS SO ORDERED.

9 Dated: DEC 15 2009

10
11 DEC 15 2009

SHELLEYANNE W.L. CHANG

12 _____
13 Judge of the Superior Court

14 (additional counsel)

15 BINGHAM MCCUTCHEN LLP

16 DIANE BARKER #245779

Three Embarcadero Center

17 San Francisco, CA 94111-4067

Telephone: (415) 393-2000

18 Facsimile: (415) 393-2286

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24 Mill Valley, CA 94941

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25 Facsimile: (415) 381-5572

26 Email: mark@chavezgertler.com

1 EXHIBIT A

2
3
4 SUPERIOR COURT OF THE STATE OF CALIFORNIA
5 COUNTY OF SACRAMENTO
6

7
8 DAVID PORTER,

9 Plaintiff,

Case No.: 06AS03654

STIPULATED PROTECTIVE ORDER

10 v.

11 VERNE SPEIRS, Chief Probation Officer of
12 Sacramento County, DAVID GORDON,
13 Sacramento County Superintendent of Schools,

14 Defendants.
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STIPULATED CONSENT DECREE
CASE NO. 06AS03654

1 Upon the agreement of Plaintiff David Porter and Defendant Verne Speirs (referred to
2 individually as a "Party" and collectively as the "Parties"), the Court hereby ORDERS as
3 follows:

4 **1. PURPOSES AND LIMITATIONS**

5 The Parties have entered into a Consent Decree, subject to Court approval, which will
6 resolve the above-captioned matter with respect to Defendant Speirs. The Consent Decree
7 provides for ongoing efforts to improve the practices and conditions at Sacramento County's
8 Warren E. Thornton Youth Center, Youth Detention Facility, and the Carson Creek Boys Ranch
9 (collectively "Juvenile Detention Facilities"). The Consent Decree will require Plaintiff's
10 counsel of record in this matter, and their representatives, to remain involved for the purpose of
11 monitoring compliance with the Consent Decree and for the purpose of reviewing and working
12 with experts to be retained as part of the Consent Decree.

13 To effectively perform the tasks and duties required under the Consent Decree, the
14 Parties have agreed that Plaintiff's counsel of record, and their representatives, should have
15 access to the facilities, books, records, staff, and juveniles to the extent they are in the control,
16 custody, or possession of the Sacramento County Department of Probation. Defendant has
17 agreed to make available to Plaintiff's representatives any such information for the duration of
18 the Consent Decree. This Stipulated Protective Order governs the exchange of such information
19 for the duration of the Consent Decree so as to ensure that any confidentiality of such records
20 and information is maintained.

21 **2. SCOPE**

22 The provisions of this Stipulated Protective Order apply to any information disclosed to
23 the Parties under the terms of the Consent Decree that is subject to confidentiality under
24 California constitutional, statutory, or regulatory law, including but not limited to California
25 Welf. & Inst. Code § 827, and also applies to any information copied or extracted therefrom, as
26 well as all copies in any form whatsoever, whether paper or electronic, and any other media,
27 excerpts, summaries, or compilations ("Protected Material(s)").

1
2 **3. DURATION**

3 This Stipulated Protective Order shall be continuous with the duration of the Consent
4 Decree. Thereafter, any confidential materials subject to this Stipulated Protective Order shall be
5 returned to the Sacramento County Department of Probation or destroyed, with the destroying
6 party certifying in writing as to the destruction.

7 **4. DESIGNATING PROTECTED MATERIAL**

8 4.1 Each Party that discloses information or items for protection under this Stipulated
9 Protective Order must take care to limit any such designation to specific material that qualifies
10 under an appropriate rule of law. A designating Party must take care to designate for protection
11 only those parts of material, documents, items, or oral or written communications that qualify,
12 such that other portions of the material, documents, items, or communications for which
13 protection is not warranted are not unjustifiably designated as Protected Materials.

14 If it comes to a designating Party's attention that information or items that it
15 designated for protection do not qualify for protection, such party must promptly notify all other
16 Parties that it is withdrawing the mistaken designation.

17 4.2 Manner and Timing of Designations. Material that qualifies for protection under
18 this Stipulated Protective Order must be clearly so designated before the material is disclosed or
19 produced. For information in documentary form a disclosing Party shall in some written manner
20 indicate or affix the legend "Confidential" at the top of each page that contains Protected
21 Material. If only a portion or portions of the material on a page qualifies for protection, the
22 designating Party also must clearly identify the protected portion(s) (e.g., by making appropriate
23 markings in the margins). For information produced in some form other than documentary, and
24 for any other tangible items, the disclosing Party shall affix in a prominent place on the exterior
25 of the container or containers in which the information or item is stored the legend
26 "Confidential." If only portions of the information or item warrant protection, the producing
27 Party, to the extent practicable, shall identify the protected portions.

4.3 Inadvertent Failures to Designate. Should a disclosing Party inadvertently fail to designate Protected Materials, the Party may correct such mistake by timely notifying all other Parties and producing copies of the Protected Materials marked with the appropriate designation.

5. ACCESS TO AND USE OF PROTECTED MATERIAL

5.1 Person Authorized To Use Protected Material. Plaintiff's counsel of record in this action and their in-house staff and vendors may access and use the Protected Materials. Persons assisting in any dispute resolution proceeding pursuant to section 24 of the Consent Decree may access and use the Protected Materials. Prior to being given access to Protected Material, any authorized person must first acknowledge and sign the "Confidentiality Undertaking" attached to this Stipulated Protective Order.

5.2 Use Must Be For Purpose of Fulfilling Consent Decree. A person authorized to access Protected Material pursuant to this Stipulated Protective Order may only use such Materials for purposes of furthering the goals of the Consent Decree, including, but not limited to reviewing practices and conditions at the Juvenile Detention Facilities, making recommendations, and monitoring progress and compliance with the Consent Decree.

5.3 No Further Dissemination: Neither the Protected Materials nor any portion of the Protected Materials shall be made attachments to any other documents or released or published to any non-authorized person.

6. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Party learns that, by inadvertence or otherwise, Protected Material has been disclosed to any person or in any circumstance not authorized under this Stipulated Protective Order, the Party must immediately (a) notify in writing the designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulated Protective Order.

1 **CONFIDENTIALITY UNDERTAKING**

2

3 I, _____, hereby acknowledge that:

4 (a) My current employer is _____. The address of my
5 current employer is _____. My
6 telephone number is _____.

7 (b) My current occupation or job description is:

8 _____.

9 (c) I have received and carefully read the Stipulated Protective Order dated
10 _____, and I understand its provisions. I will protect Protected Material disclosed to me
11 and will not disclose it to anyone not qualified under the Protective Order. In addition, I
12 understand that I must abide by all of the provisions of the Protective Order. I will undertake to
13 ensure that those working under my supervision abide by these requirements.

14 (d) At or before the termination of the Consent Decree in this matter, I will
15 return to the Sacramento County Department of Probation all documents and other materials,
16 including notes, computer data, summaries, abstracts, or any other materials, containing or
17 reflecting the Protected Materials that have come into my possession or destroy such Protected
18 Materials.

19 (e) I understand that I am subject to the jurisdiction of the Superior Court of
20 California, County of Sacramento, for purposes of enforcing the Protective Order, and I further
21 understand that if I violate the provisions of the Protective Order, I will be in violation of a Court
22 Order.

23

24

25 _____

26 Date

Signature

PROOF OF SERVICE

1. I am over eighteen years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 275 Battery Street, Suite 2700, San Francisco, CA 94111-4067.

2. On December 14, 2009, I served the following document(s):

☒ **STIPULATED CONSENT DECREE**

3. ☒ The names, addresses, and other applicable information about the persons served is included in the attached Service List.

4. The documents were served by the following means:

☒ **By Electronic Service (E-mail)**. Based on a court order or an agreement of the parties to accept service by electronic transmission, I transmitted the document(s) and an unsigned copy of this declaration to the person(s) at the electronic notification address(es) listed in Item 3 on **December 14, 2009** before 5:00 p.m. PST. **(add, as applicable)**

☒ I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: December 14, 2009

Signature:


Kendra R. Thompson

David Porter v. Vernon Speirs, et al.
Superior Court of the State of California, County of Sacramento
Case No. 06AS03654

SERVICE LIST

Craig E. Deutsch Deputy County Counsel Jennifer L. Lippi Rick Heyer Sacramento County Office of the County Counsel 700 "H" Street, Room 2650 Sacramento, CA 95814 Telephone: (916) 874-5544 Facsimile: (916) 874-8207 Email: deutchc@saccounty.net lippij@saccounty.net heyerr@saccounty.net embreem@saccounty.net allentr@saccounty.net	Phillip A. Trujillo Girard Vinson & Trujillo LLP 609 Gregory Lane, Suite 200 Pleasant Hill, CA 94523 Telephone: (925) 746-7660 Facsimile: (925) 935-7995 Email: trujillo@trujillovinson.com
Donald Specter Sara Norman Prison Law Office 1917 5 th Street Berkeley, CA 94710 Telephone: (510) 280-2621 Facsimile: (510) 280-2704 Email: dspecter@prisonlaw.com snorman@prisonlaw.com kknapp@prisonlaw.com zoe@prisonlaw.com	Warren E. George Diane Barker Bingham McCutchen LLP Three Embarcadero Center San Francisco, CA 94111-4067 Telephone: (415) 393-2000 Facsimile: (415) 393-2286 Email: warren.george@bingham.com diane.barker@bingham.com
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