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13
 14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE EASTERN DISTRICT OF CALIFORNIA
 16 SACRAMENTO DIVISION
 17

18
 19 **SAM JOHNSON,**

20 Plaintiff,

21 v.

22 **JENNIFER SHAFFER, et al.,**

23 Defendants.
 24

2:12-cv-01059-KJM

STIPULATED SETTLEMENT

Courtroom: 3
 Judge: The Hon. Kimberly Mueller
 Action Filed: April 20, 2012

25 The parties enter into this Settlement to address Plaintiffs' claims regarding the Board of
 26 Parole Hearings' (Board) forensic assessment protocols and to settle this case.

27 The Plaintiffs are prisoner Sam Johnson and a certified class consisting of California state
 28 prisoners who are serving life sentences and are eligible for parole consideration after having

1 served their minimum terms. The Defendants include the Executive Officer of the Board, Chief
2 Psychologist of the Board, a Board Psychologist, the Secretary of the California Department of
3 Corrections and Rehabilitation, and California Governor Edmund G. Brown Jr., who are sued in
4 their official capacities as state officials.

5 The action was originally filed on April 20, 2012. After the original Complaint was
6 dismissed, an Amended Complaint was filed on November 15, 2012. The Court certified the case
7 as a class action on March 31, 2014, and has granted partial summary judgment in favor of
8 Defendants – as to claims four, five, nine and twelve in the First Amended Complaint. All other
9 claims in the Amended Complaint remain. There have been two discovery periods, the first
10 closing before the class was certified. Discovery was reopened, beginning with the exchange of
11 initial disclosures in August 2014. The parties then conducted additional discovery, which
12 included depositions of Board officials, and Board psychologists involved in the forensic
13 assessment protocols and parole process, and disclosure of training materials, reports and other
14 documents.

15 The parties have conducted extensive negotiations over several months to resolve Plaintiffs’
16 demands concerning Board protocols used in comprehensive risk assessments prepared in
17 anticipation of parole consideration hearings. Those negotiations have been undertaken at arms’
18 length and in good faith between Plaintiffs’ counsel, Defendants’ counsel and Defendant Jennifer
19 Shaffer, Executive Officer of the Board. As a result of settlement negotiations the Board
20 commenced reforming the forensic assessment protocols. The parties have reached agreement on
21 changes to Defendants’ forensic assessment protocols to settle Plaintiffs’ claims for declaratory
22 and injunctive relief. The parties freely, voluntarily, and knowingly, with the advice of counsel,
23 enter into this Settlement for that purpose.

24 All parties and their counsel recognize that, in the absence of an approved settlement, they
25 face lengthy and substantial litigation, including trial and potential appellate proceedings, all of
26 which will consume time and resources and present the parties with ongoing litigation risks and
27 uncertainties. The parties wish to avoid these risks, uncertainties, and consumption of time and
28 resources through the terms and conditions of this Settlement.

1 ACCORDINGLY, without any admission or concession by Defendants of any past or
2 present and ongoing violations of a federal right, all claims in the First Amended Complaint shall
3 be finally and fully compromised, settled, and released, subject to the terms and conditions of this
4 Settlement, which the parties enter into freely, voluntarily, knowingly, and with the advice of
5 counsel.

6 A. JURISDICTION AND VENUE

7 The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1343. Venue is
8 proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs'
9 claims occurred in the Eastern District of California.

10 B. CLASS CERTIFICATION

11 On March 31, 2014, the Court certified a class consisting of California state prisoners who
12 are serving life sentences and are eligible for parole consideration after having served their
13 minimum terms.

14 C. TERMS AND CONDITIONS

15 1. Consistent with the terms negotiated with Plaintiffs, the Board of Parole Hearings
16 submitted a Budget Change Proposal for additional funding to administer Comprehensive Risk
17 Assessments (CRAs) every three years. The budget change was approved. As such, the Board
18 will begin preparing new CRAs every three years for hearings scheduled to occur on or after June
19 1, 2016, if the CRA is older than three years. For hearings advanced as a result of a petition to
20 advance or the Board's administrative review process under Penal Code section 3041.5 (b)(4) or
21 (d)(1), a new CRA will be conducted if the prisoner's most recent CRA is more than three years
22 old at the time of the advanced hearing; if the most recent CRA is less than three years old at the
23 time of the advanced hearing, a new CRA will not be completed. The Board will revise its
24 regulations to reflect this process.

25 2. Before the regulatory change in Paragraph 1 is submitted to the Office of
26 Administrative Law (OAL), the Board will provide class counsel with a draft of the proposed
27 regulation. Class counsel shall have thirty days to review the draft and provide written comments
28 and suggestions to the Board. The Board will provide a written response to class counsel's

1 written comments within thirty days. When the proposed regulation is presented to the Board's
2 commissioners for review and a vote, class counsel may submit additional comments and
3 suggestions through the Board's public comment process. Once the regulation is submitted to the
4 OAL, class counsel may again submit additional comments and suggestions through the OAL
5 public comment process.

6 3. In accordance with Paragraph 1, the Board will no longer conduct Subsequent Risk
7 Assessments.

8 4. If, before December 31, 2016, the Board proposes any changes in how or whether the
9 CRA, including the HCR-20 Version 3, PCL-R, or Static 99-R will be administered, or proposes
10 using a risk-assessment tool other than the HCR-20 Version 3, PCL-R, and Static 99-R, class
11 counsel may present an expert to discuss the proposed changes to the Board's commissioners in
12 open session. The expert will be allowed to speak and answer questions for up to two hours. The
13 expert must have experience with the use of risk assessments in a correctional setting.

14 5. The Board's Chief Psychologist will again provide a presentation to the Board's
15 commissioners in open session regarding the recidivism rates for long-term offenders. The
16 information presented to the commissioners will be provided in a text document and made
17 available to class members through class counsel, on the Board's web site
18 (www.cdcr.ca.gov/BOPH), and will be emailed to all attorneys on file with the Board who are
19 currently representing life prisoners.

20 6. The Board's Chief Psychologist will again provide a presentation to the Board's
21 commissioners in open session regarding when and how the Board uses the Static 99-R, a risk-
22 assessment tool used to predict an offender's risk of sexual recidivism. This presentation will
23 include a discussion of how the Static 99-R accounts for an offender's age and other factors that
24 can change over time. The information presented to the commissioners will be provided in a text
25 document and made available to class members through class counsel, on the Board's web site
26 (www.cdcr.ca.gov/BOPH), and will be emailed to all attorneys on file with the Board who are
27 currently representing life prisoners.

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1 7. The Board will formalize a process for prisoners or their counsel to lodge timely
2 written objections asserting factual errors in a CRA (to be defined in the regulations) before their
3 parole consideration hearing occurs. If the Board receives a timely written objection in advance
4 of a parole hearing, the Board will provide a written response within a reasonable period of time.
5 The Board will submit draft regulations to reflect this process to the OAL by July 1, 2016.

6 8. Before the regulatory change in Paragraph 7 is submitted to the OAL, the Board will
7 provide class counsel with a draft of the proposed regulation. Class counsel shall have thirty days
8 to review the draft and provide written comments and suggestions to the Board. The Board will
9 provide a written response to class counsel's written comments within thirty days. Class counsel
10 will have additional opportunities to provide comments during the Board's and OAL's regular
11 public comment periods.

12 9. When the Static 99-R is used, the CRA will inform the reader that the Static 99-R
13 score alone generally does not assess dynamic characteristics that may mitigate or elevate a
14 prisoner's risk.

15 10. All future CRAs will clarify that the Overall Risk Rating is relative to other life
16 prisoners.

17 11. CRAs will inform the reader of the report that, generally speaking, the current
18 recidivism rates for long term offenders are lower than those of other prisoners released from
19 shorter sentences.

20 12. Plaintiffs will promptly dismiss all Defendants from this action except Defendant
21 Jennifer Shaffer, the Board's Executive Officer.

22 D. TERMINATION OF CASE

23 13. The Court will retain jurisdiction over this case until January 1, 2017.

24 14. If within 30 days after January 1, 2017, Plaintiffs believe that Defendants have not
25 submitted regulations to the OAL, completed the agreed upon presentations to the Board, and
26 provided language to Board psychologists with instructions to include it in CRAs, Plaintiffs may
27 seek an extension of the Court's jurisdiction over this matter for a period not to exceed 12
28 months. To receive an extension of the Court's jurisdiction, Plaintiffs must demonstrate by a

1 preponderance of the evidence that Defendants have not materially complied with the terms of
2 this agreement. Defendants shall have an opportunity to respond to Plaintiffs' request and present
3 their own evidence. If Plaintiffs do not seek an extension of the Court's jurisdiction within the
4 period noted above, or the Court denies Plaintiffs' request for an extension, this agreement and
5 the Court's jurisdiction shall automatically terminate, and the claims in this case shall be
6 dismissed with prejudice.

7 15. Notwithstanding Paragraphs 13 and 14, Defendants may at any time after preliminary
8 approval of this agreement by the Court seek termination of this case and the Court's jurisdiction
9 under the Prison Litigation Reform Act, 18 U.S.C. § 3626(b)(1)(A).

10 16. It is the intention of the parties in signing this Settlement that upon completion of its
11 terms it shall be effective as a full and final release from all claims asserted in the First Amended
12 Complaint.

13 E. JOINT MOTION AND STAY OF PROCEEDINGS

14 The parties will jointly request that the Court preliminarily approve this Settlement, require
15 that notice of the proposed settlement be sent to the class, and schedule a fairness hearing. The
16 parties will also file a proposed order granting preliminary approval of this Settlement. With this
17 Motion the Parties will also jointly request that the Court stay all other proceedings in this case
18 pending resolution of the fairness hearing. Following the close of the objection period, the Parties
19 will jointly request that the Court enter a final order containing all of the elements included in a
20 proposed order, approving this Settlement, retaining jurisdiction to enforce it, and continuing the
21 stay of the case pending the completion of this Settlement's terms.

22 F. ATTORNEYS' FEES

23 Defendants agree to pay Plaintiffs' counsel attorney's fees for work reasonably performed
24 on this case until preliminary approval of this Settlement at the hourly rate set forth under the
25 Prison Litigation Reform Act, 42 U.S.C. § 1997e(d). Plaintiffs shall have sixty days from the
26 entry of a preliminary order approving this Settlement to file their motion for attorneys' fees for
27 work reasonably performed before preliminary approval of this settlement. Defendants will not
28 oppose a motion for reasonable attorney's fees and costs that does not exceed \$120,000.

1 The notice to the class members shall explain that Plaintiffs will file a motion for attorneys'
2 fees following entry of a final order approving this Settlement.

3 G. CONSTRUCTION OF SETTLEMENT

4 This Settlement reflects the entire agreement of the parties and supersedes any prior written
5 or oral agreements between them. No extrinsic evidence whatsoever may be introduced in any
6 judicial proceeding to provide the meaning or construction of this Settlement. Any modification
7 to the terms of this Settlement must be in writing and signed by a Board representative and
8 attorneys for Plaintiffs and Defendants to be effective or enforceable.

9 This Settlement shall be governed and construed according to California law. The parties
10 waive any common-law or statutory rule of construction that ambiguity should be construed
11 against the drafter of this Settlement, and agree that the language in all parts of this Settlement
12 shall in all cases be construed as a whole, according to its fair meaning.

13 This Settlement shall be valid and binding on, and faithfully kept, observed, performed, and
14 be enforceable by and against the parties, their successors and assigns.

15 The obligations governed by this Settlement are severable. If for any reason a part of this
16 Settlement is determined to be invalid or unenforceable, such a determination shall not affect the
17 remainder.

18 The waiver by one party of any provision or breach of this Settlement shall not be deemed a
19 waiver of any other provision or breach of this Settlement.

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2 Settlement is determined to be invalid or unenforceable, such a determination shall not affect the
3 remainder.

4 The waiver by one party of any provision or breach of this Settlement shall not be deemed a
5 waiver of any other provision or breach of this Settlement.

6 **IT IS SO STIPULATED.**

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8 Dated: __September 10, 2015

/s/ Jennifer Shaffer

Jennifer Shaffer, Chief Executive Officer
Board of Parole Hearings

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12 Dated: September 10, 2015

/s/ Jessica N. Blonien

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17 Dated: September 10, 2015

/s/ Keith Wattley

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