

1 Plaintiffs may apply for reasonable attorney’s fees to which they
2 are entitled. Defendants shall pay plaintiffs for 90% of the work
3 performed in connection with this Stipulation at hourly rates set
4 forth under the PLRA [Prison Litigation Reform Act], 42 USC
5 § 1997e(d). Defendants shall pay plaintiffs for 10% of the work
performed in connection with this Stipulation at hourly rates set
forth under the ADA [Americans with Disabilities Act] and § 504
of the Rehabilitation Act.

6 June 13, 2002 Stip. & Order ¶ 32. Notably, the parties’ stipulation does not require Plaintiffs
7 to re-establish prevailing party status at each stage of litigation or to obtain a separate
8 cognizable and successful result prior to being awarded fees. Instead, the agreement requires
9 only that Plaintiffs’ work be “in connection with” the stipulation and that the claimed
10 attorneys’ fees be reasonable.²

11 **Plaintiffs’ Work Before the Three-Judge Court**

12 Defendants first argue that the three-judge court, and not this Court, must decide
13 Plaintiffs’ request for fees and costs for work before the three-judge court. However, the
14 single case cited by Defendants in support of their argument stands only for the
15 unremarkable proposition that a court must have subject matter jurisdiction before it can
16 award fees. *See Zambrano v. I.N.S.*, 282 F.3d 1145, 1149-50 (9th Cir. 2002). There is no
17 dispute that this Court has retained jurisdiction even after the three-judge court was
18 convened. Defendants have also failed to cite any authority for the proposition that the three-
19 judge court is a separate tribunal from this Court. *See Jacobs v. Tawes*, 250 F.2d 611, 614
20 (4th Cir. 1957) (“The court of three judges is not a different court from the District Court, but
21 is the District Court composed of two additional judges sitting with the single District Judge
22”). Moreover, even if Defendants were correct that the three-judge court must decide
23 Plaintiffs’ request for fees, this Court, as a single judge sitting on the three-judge court, could
24 nonetheless resolve Plaintiffs’ request pursuant to 28 U.S.C. § 2284(b)(3).

25 ²Defendants assert that “Plaintiffs’ success at the Stipulated Injunction [seven] years
26 ago does not equate to a circumstance, where, no matter how much time and money is
27 expended, and regardless of whether the effort benefits the *Plata* class, any post-judgment
28 fees and costs claimed in this action should be paid by the government.” Opp’n at 13. This
is, of course, correct, as Plaintiffs may request only “reasonable attorneys’ fees” for work
performed “in connection with” the stipulation and order. June 13, 2002 Stip. & Order ¶ 32
(emphasis added).

1 In addition, as the three-judge court explained when rejecting Defendants’ exhaustion
2 arguments, “[t]he PLRA provisions governing three-judge court proceedings clearly
3 demonstrate that these [three-judge court] proceedings are part of preexisting civil actions,
4 not a new action.” Nov. 3, 2008 Order Denying Defs.’ Mot. for Dismissal or, Alternatively,
5 Summ. J. at 3. Plaintiffs’ work before the three-judge court is simply a continuation of their
6 work before this Court. Indeed, the PLRA precludes a single district judge from entering a
7 prisoner release order, 18 U.S.C. § 3626(a)(3)(B); thus, given Plaintiffs’ contention that
8 crowded prison conditions prevent the development of a constitutionally adequate system of
9 delivering medical care, Plaintiffs had no option but to proceed before a three-judge court.

10 The parties’ stipulation and order provided that “[t]he Court shall have the power to
11 enforce the Stipulation through specific performance *and all other remedies permitted by*
12 *law.*” June 13, 2002 Stip. & Order ¶ 29 (emphasis added). Plaintiffs’ work before the three-
13 judge court was both permitted by law – specifically, by the PLRA, 18 U.S.C. § 3626(a)(3) –
14 and in furtherance of enforcing the stipulation for injunctive relief, which was intended “to
15 require defendants to provide . . . the minimum level of medical care required under the
16 Eighth Amendment,” June 13, 2002 Stip. & Order ¶ 4; *see, e.g.*, July 23, 2007 Order
17 Granting Pls.’ Mot. to Convene Three-Judge Court at 5-10 (discussing propriety of the
18 consideration of a prisoner release order by a three-judge court to ensure constitutionally
19 adequate delivery of medical care to inmates). Consequently, Plaintiffs’ work before the
20 three-judge court was squarely “in connection with” the June 13, 2002 stipulation and order,
21 June 13, 2002 Stip & Order ¶ 32, and is therefore compensable.³

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23
24 ³The Court understands that similar motions for attorneys’ fees and costs are pending
25 before the district court in *Coleman v. Schwarzenegger*, Case No. Civ. S-90-0520 LKK JFM
26 (E.D. Cal.). Defendants in both cases raise the possibility of inconsistent rulings by the
27 *Coleman* court and this Court, and they also suggest that separate rulings on requests for
28 attorneys’ fees for work before the three-judge court may result in a windfall for Plaintiffs’
counsel. If the *Coleman* court subsequently issues a ruling inconsistent with this order, or if
Defendants can demonstrate that Plaintiffs’ counsel inappropriately claimed duplicative fees
from both courts, then this Court will entertain a motion for leave to file a motion for
reconsideration under Civil Local Rule 7-9 and may reconsider its ruling.

1 **Plaintiffs’ Opposition to the Receiver’s May 10, 2007 Motion**

2 Plaintiffs’ work opposing the Receiver’s May 10, 2007 motion to modify the June 13,
3 2002 and September 17, 2004 stipulated orders for injunctive relief and the December 1,
4 2005 order regarding clinical staffing was also firmly “in connection with” the June 13, 2002
5 stipulation and order. *Id.* In opposing the Receiver’s motion, Plaintiffs’ counsel reasonably
6 represented the interests of the class, and it is difficult to imagine how opposing a motion to
7 modify a stipulation and order would not be considered work “in connection with” that same
8 stipulation and order. Defendants argue that fees should not be awarded for this work
9 because Plaintiffs’ opposition failed to prove any constitutional violation. However, the
10 Ninth Circuit has already rejected that argument. *Webb v. Ada County*, 285 F.3d 829, 834-35
11 (9th Cir. 2002) (holding that the PLRA allows an award of fees “incurred in enforcing and
12 monitoring the court’s judgment and the consent decree,” and that an attorney seeking such
13 an award need not “demonstrate that the postjudgment fees were incurred in proving an
14 actual violation of the Constitution”). Defendants are similarly mistaken when they argue
15 that Plaintiffs’ opposition conferred no benefit on the class. Not only does the parties’
16 stipulation not require Plaintiffs to be successful before fees are awarded, but, even if such a
17 requirement were imposed, Plaintiffs’ opposition helped to ensure Plaintiffs’ counsel’s
18 “important role in monitoring progress toward achieving minimum constitutional standards,”
19 Sept. 6, 2007 Order at 9, as well as persuading the Court to reject several of the Receiver’s
20 requests for modification, *id.* at 7-14 – results that benefit the class.

21 **Adequacy of Plaintiffs’ Billing Statements**

22 Finally, Defendants raise a conclusory objection that Plaintiffs’ billing statements are
23 inadequate to allow Defendants to evaluate the reasonableness of Plaintiffs’ request.
24 However, a review of the correspondence submitted by Defendants indicates only that
25 Defendants complained of being unable to determine whether certain entries were associated
26 with the three-judge court proceedings. *See* Mar. 26, 2008 Letter from Thomas Gilevich to
27 Alison Hardy (Ex. A to Nov. 21, 2008 Gilevich Decl.). Now that the Court has ruled that
28 Plaintiffs are entitled to fees for work on those proceedings, it is unnecessary to distinguish

1 whether any of the work claimed by Plaintiffs related to the three-judge court proceedings or
2 proceedings before the individual *Plata* court. While the Court might, in the absence of
3 objections to specific billing entries, grant Plaintiffs' request for fees and costs in its entirety,
4 it will instead order the parties to meet and confer in light of the Court's rulings in this order.

5
6 **CONCLUSION**

7 With good cause appearing for the above reasons, the Court now GRANTS IN PART
8 Plaintiffs' request for disputed attorneys' fees and costs incurred during the third and fourth
9 quarters of 2007 and the first quarter of 2008. The Court finds, as a general matter and in the
10 absence of objections by Defendants to any specific billing entries, that Plaintiffs' efforts in
11 opposition to the Receiver's May 10, 2007 motion and before the three-judge court were
12 reasonable and "in connection with" the June 13, 2002 stipulated order for injunctive relief.
13 Plaintiffs' are therefore entitled to compensation for such work under the parties' agreement.
14 June 13, 2002 Stip. & Order ¶ 32. The parties shall meet and confer regarding the specific
15 amounts due to Plaintiffs pursuant to that agreement and this order establishing Plaintiffs'
16 entitlement to fees and costs for the disputed categories of work.

17 The Court will not re-visit Plaintiffs' entitlement to fees for work before the three-
18 judge court – an issue that the parties have already fully briefed in the context of the motion
19 decided today – and the parties shall therefore also meet and confer to discuss the impact of
20 this order on the motions filed by Plaintiffs on July 31 and August 18, 2009. It appears to the
21 Court that the issues remaining to be decided on those motions can be significantly narrowed
22 following this order.

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24 **IT IS SO ORDERED.**

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26 Dated: 08/26/09

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THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT