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 7
 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION
 11

12
 13 **CARLOS PEREZ,**
 14 Plaintiff,
 15 v.
 16 **MATTHEW CATE, et al.,**
 17 Defendants.
 18
 19
 20

C 05-05241 JSW

**STIPULATION AND [PROPOSED]
 ORDER TO STAY PLAINTIFFS'
 MOTION TO COMPEL PAYMENT
 OF REASONABLE PARALEGAL
 FEES FOR WORK PERFORMED
 DURING 2009 UNTIL THE
 RESOLUTION OF PEREZ V. CATE
 APPEAL NO. 09-17185**

1
2 **STIPULATION TO STAY PLAINTIFFS' MOTION TO COMPEL**
3 **PAYMENT OF REASONABLE PARALEGAL FEES FOR WORK**
4 **PERFORMED DURING 2009 UNTIL THE RESOLUTION OF**
5 ***PEREZ V. CATE* APPEAL NO. 09-17185**

6 Plaintiffs and Defendants STIPULATE as follows:

7
8 1. Pursuant to the *Perez* Periodic Fees Order, "Plaintiffs may file a yearly
9 motion to compel payment of disputed items, if necessary, not later than sixty days after
10 the parties meet and confer with respect to the statement covering the fourth quarter of
11 each year." April 10, 2007 Stipulation and Order for Periodic Payment of Attorneys' Fees
12 and Costs (attached as Appendix A). The only remaining, disputed issues from 2009 are:
13 (1) Defendants' refusal to pay for any work performed by staff who are not "paralegals"
14 as defined by California Business & Professions Code § 6450, and; (2) Defendants'
15 refusal to pay more than \$135 per hour or \$82.50 per hour for paralegal work on the case.

16 2. Plaintiffs' counsel will file a motion to compel regarding the first issue
17 identified above.

18 3. With respect to the second issue, Defendants' refusal to pay more than \$135
19 per hour or \$82.50 per hour for paralegal work, the parties agree to stay Plaintiffs' motion
20 on this issue pending final resolution of *Perez, et al. v. Cate, et al.*, Court of Appeals
21 Docket No. 09-17185, United States Court of Appeals for the Ninth Circuit, including any
22 petitions for panel or en banc rehearing, or final resolution in the United States Supreme
23 Court (hereinafter "*Perez* appeal"). In so doing, Plaintiffs do not waive and will enforce
24 their right to interest in accordance with the provisions set forth in the April 10, 2007
25 Periodic Fees order. Nothing in this Stipulation may be deemed a waiver or concession of
26 any party's legal arguments regarding this issue.

27 4. If the requested stay is granted, the parties will meet and confer regarding
28 the paralegal rate issue within 10 days after the mandate issues in the *Perez* appeal. If the
parties are still unable to resolve this issue, Plaintiffs will file a motion to compel within
60 days of the completion of the meet and confer.

1 AGREED TO BY THE PARTIES:

2 Date: July __, 2010

3 _____
/s/
Alison Hardy
Attorney for Plaintiffs

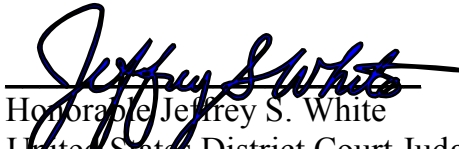
5 Date: July __, 2010

6 _____
/s/
Phillip Lindsay
Deputy Attorney General
Attorney for Defendants

9 I, Alison Hardy, attest that Phillip Lindsay signed this document on _____, 2010.

12 IT IS SO ORDERED.

14 Date: July 8, 2010

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15 
Honorable Jeffrey S. White
United States District Court Judge

Appendix A

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14 Attorneys for Defendants

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16 **IN THE UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18

19
20 CARLOS PEREZ, et al.,

21 Plaintiffs,

22 v.

23 JAMES TILTON, et al.,

24 Defendants.
25

No. C05-5241 JSW

**STIPULATION AND [PROPOSED]
ORDER RE PERIODIC PAYMENT
OF ATTORNEYS' FEES AND COSTS**

1 1. As permitted by Paragraph 42 of the Amended Stipulation and Order (Stipulation),
2 Plaintiff's counsel shall submit quarterly statements to Defendants' counsel for fees and costs
3 incurred in connection with Stipulation. In accordance with the Prison Litigation Reform Act
4 (PLRA), the statements will itemize the time spent, subject activity, applicable attorney and other
5 personnel billing rates, and costs with sufficient particularity to allow Defendants to identify
6 which efforts were or were not useful and necessary to ensure compliance with the Stipulation.
7 The billing rates for Plaintiffs' counsel shall be in accordance with 42 U.S.C. §1997e(d) of the
8 PLRA. The billing rates for personnel other than Plaintiffs' counsel shall be identified in the first
9 quarterly statement of each year. Unless Defendants dispute any of the fees or costs requested, the
10 billing statements submitted by Plaintiffs' counsel shall not include declarations or other
11 supporting pleadings. Plaintiffs' counsel shall serve the quarterly statements simultaneously on
12 the Attorney General's Office and the Legal Affairs Division of the California Department of
13 Corrections and Rehabilitation.

14 2. Upon receipt of Plaintiffs' quarterly statement, Defendants shall have thirty days to
15 request clarification and/or dispute item(s) on the statement. After notifying Plaintiffs' counsel of
16 such a request and/or dispute, Plaintiffs' and Defendants' counsel shall meet and confer within
17 thirty days. Following the meet and confer process, Plaintiffs' counsel shall prepare a stipulated
18 order for payment of fees not subject to Defendants' objections. Plaintiffs' counsel shall present
19 the signed stipulated payment order to the Court for entry. Defendants shall have thirty days from
20 the entry of the order by the Court to pay the undisputed fees without accruing interest. Interest
21 shall begin to accrue, at the rate provided by 28 U.S.C. § 1961, on any unpaid amounts on the
22 thirty-first day after the entry of the order by the Court.

23 3. If Defendants decline to agree to any stipulated payment order, or unreasonably fail
24 to timely process a fees request described in Paragraph 2, Plaintiffs' counsel may file with the
25 Court a proposed order for collection of fees that are not disputed, together with a certification of
26 counsel under penalty of perjury setting forth the relevant facts and circumstances. Defendants'
27 counsel may respond within five court days of filing the proposed order and certification.
28 Plaintiffs' counsel may reply within two court days after Defendants' response is filed. The

1 parties request that the Court rule on Plaintiffs' application without conducting a hearing, unless
2 the Court considers such a hearing necessary. The parties agree that this expedited process shall
3 not be used in instances where Defendants have a reasonable basis for disputing fees and expenses
4 Plaintiffs have claimed to be undisputed. If any party determines that systematic problems in the
5 meet and confer process have arisen, that party may move for further modification of this process
6 and this stipulation, by a properly noticed motion made pursuant to the Federal Rules of Civil
7 Procedure and the Local Rules of this Court.

8 4. Plaintiffs may file a yearly motion to compel payment of disputed items, if
9 necessary, not later than sixty days after the parties meet and confer with respect to the statement
10 covering the fourth quarter of each year. Such motion shall be briefed and heard pursuant to the
11 Federal Rules of Civil Procedure and the Local Rules of this Court. To the extent Plaintiffs
12 prevail on their motion to compel payment of disputed items, Defendants shall have thirty days
13 from the entry of the order by the Court to pay the amount of the order without accruing interest.
14 Interest shall begin to accrue, at the rate provided by 28 U.S.C. § 1961, on any unpaid amounts on
15 the thirty-first day after the entry of the order by the Court. If Defendants oppose any billing rates
16 proposed by Plaintiffs' counsel, Plaintiffs shall bring a motion to compel on this issue following
17 the first quarterly statement of each year.

18 5. In the event that an unusually large number of hours or a significant issue is
19 in dispute, Plaintiffs may bring a quarterly motion to compel on those issues alone. Any such
20 quarterly motion to compel will be filed no later than thirty days after the parties have met and

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