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 13 UNITED STATES DISTRICT COURT,
 14 NORTHERN DISTRICT OF CALIFORNIA

15
 16 CARLOS PEREZ, et al.,
 17
 18 Plaintiffs,
 19
 20 v.
 MATTHEW CATE, et al.,
 21
 22 Defendants.

Case No. C05-5241 JSW

CLASS ACTION

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

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 24
 25
 26
 27 STIPULATION AND ~~PROPOSED~~ ORDER
Perez v. Cate, C-05-5241 JSW

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

4 Plaintiffs and Defendants STIPULATE as follows:

5 1. Pursuant to the *Perez* Periodic Fees Order, "Plaintiffs may file a yearly
6 motion to compel payment of disputed items, if necessary, not later than sixty days after
7 the parties meet and confer with respect to the statement covering the fourth quarter of
8 each year." April 10, 2007 Stipulation and Order for Periodic Payment of Attorneys' Fees
9 and Costs (attached as Appendix A). The sole fee issue remaining in dispute for 2009 is the
10 rate or rates defendants must pay plaintiffs for work performed by paralegals and by
11 nonparalegal litigation assistants

12 2. On July 8, 2010, the parties agreed to stay Plaintiffs' motion to compel
13 regarding the rate to be paid paralegals pending final resolution of *Perez, et al. v. Cate, et al.*,
14 Court of Appeals Docket No. 09-17185, United States Court of Appeals for the Ninth
15 Circuit, including any petitions for panel or en banc rehearing, or final resolution in the
16 United States Supreme Court (hereinafter "Perez appeal"). Docket No. 525. The parties
17 agreed, however, that plaintiffs would move to compel based on defendants' refusal to pay
18 any fees for work performed by nonparalegal litigation assistants. *Id.*

19 3. Plaintiffs now withdraw their motion to compel payment for work performed
20 by nonparalegal litigation assistants (Docket No. 526), as defendants agree to pay these fees,
21 at a reduced rate. The parties agree to stay Plaintiffs' motion regarding the final rate to be
22 paid nonparalegal litigation assistants pending final resolution of the *Perez* appeal, including
23 any petitions for panel or en banc rehearing, or final resolution in the United States Supreme
24 Court.

25 4. In the interim, defendants agree to pay nonparalegal litigation assistant fees at
26 the hourly rate of \$82.50. For 2009, defendants will pay plaintiffs, within 30 days of the

1 passage of the California state budget for 2010/2011, \$3902 for the 47.3 hours that
2 defendants had previously refused to compensate. In so doing, Plaintiffs do not waive and
3 will enforce their right to interest in accordance with the provisions set forth in the April 10,
4 2007 Periodic Fees order. Nothing in this Stipulation may be deemed a waiver or concession
5 of any party's legal arguments regarding this issue.

6 5. If the Ninth Circuit rules in the *Perez* appeal that the Prison Litigation Reform
7 Act governs paralegal fees, then the PLRA also governs nonparalegal litigation assistant fees.

8 6. If the requested stay is granted, the parties will meet and confer regarding
9 the nonparalegal rate issue, as well as the paralegal rate issue, within 10 days after the
10 mandate issues in the *Perez* appeal. If the parties are still unable to resolve this issue,
11 Plaintiffs will re-file a motion to compel within 60 days of the completion of the meet and
12 confer.

13 **IT IS SO STIPULATED.**

14 Date: August 25, 2010

14 /s/
15 _____
16 Alison Hardy
17 Prison Law Office
18 Attorney for Plaintiffs

17 Date: August 25, 2010

17 /s/
18 _____
19 Phillip Lindsay
20 Deputy Attorney General
21 Attorney for Defendants

20 I, Alison Hardy, attest that Phillip Lindsay signed this document on August 25, 2009.

21 The hearing on September 10, 2010 at 9:00 a.m. on the motion to
22 compel is VACATED, and the parties shall appear at 1:30 p.m. for
23 the status conference.

22 **IT IS SO ORDERED.**

23 Dated: August 27, 2010

23 
24 _____
25 JEFFREY S. WHITE
26 United States District Court
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APPENDIX A

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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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