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15 **Attorneys for Plaintiffs**

16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 California State Foster Parent Association,  
California State Care Providers Association, and  
21 Legal Advocates for Permanent Parenting,

22 Plaintiffs,

23 v.

24 JOHN A. WAGNER, Director of the California  
Department of Social Services, in his official  
25 capacity; MARY AULT, Deputy Director of the  
Children and Family Services Division of the  
26 California Department of Social Services, in her  
official capacity,

27 Defendants.  
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Case No. C 07-5086 WHA

**STIPULATION AND [PROPOSED]  
ORDER REFERRING MATTER TO  
SPECIAL MASTER MARC  
BERNSTEIN PURSUANT TO FED.  
R. CIV. P. 53.**

**STIPULATION AND REFERENCE TO SPECIAL MASTER**

The parties have conferred and hereby stipulate as follows:

WHEREAS, on December 19, 2008, Plaintiffs filed a motion for attorneys' fees;

WHEREAS, on February 6, 2009, the Court issued an order that Plaintiffs were the prevailing party in the action, vacating the previously calendared hearing date for Plaintiffs' motion for attorneys' fees, and setting forth a procedure for determining the appropriate fee award to be followed by the parties;

WHEREAS, on March 19, 2009, the parties filed a Joint Report regarding the motion for attorneys' fees; and

WHEREAS, on May 14, 2009, the Court appointed Special Master Marc Bernstein to hear Plaintiffs' motion for attorneys' fees and ordered the parties to file a proposed form of reference;

THE PARTIES THEREFORE respectfully request that the Court adopt the following proposed form of reference:

**1. Appointment of the Special Master.**

The Court, having given the parties notice and an opportunity to be heard, has nominated Marc Bernstein, of the Bernstein Law Group, 555 Montgomery St., Suite 1650, San Francisco, CA, 94111, 415-765-6633, as the Special Master to hear Plaintiffs' motion for attorneys' fees pursuant to Fed. R. Civ. P. 53. Following the filing of an affidavit by Mr. Bernstein, pursuant to Fed. R. Civ. P. 53(b)(3), the Court will order his appointment subject to the following terms.

**2. Payment of the Special Master.**

Plaintiffs shall collectively bear 50% of the reasonable fees and expenses associated with the Special Master, and Defendants shall collectively bear the remaining 50%. Each Party, however, will bear all expenses associated with its own participation in any proceedings before the Special Master or the Court (including, but not limited to, its own attorneys' fees and costs of witnesses).

### 3. Authority of the Special Master.

The Special Master is appointed to hear and rule upon Plaintiffs' pending motion for attorneys' fees, as directed by the Courts' May 14, 2009 Order. In connection with that motion, the Special Master may hold hearings, receive testimony, and conduct a reasonable investigation into the underlying factual matters. The Special Master may review privileged communications and documents *in camera*, and doing so will not constitute any waiver of privilege by the proffering party or parties, and the Special Master may communicate *ex parte* with the parties in connection with any such *in camera* review only to the extent necessary to resolve questions or matters arising from privileged communications or documents under review. The Special Master shall have all powers granted by Federal Rule of Civil Procedure 53(c).

### 4. Plaintiffs' Motion for Attorneys' Fees

Promptly following the issuance of the Court's order appointing the Special Master, the Special Master will initiate a conference with the parties to discuss the papers relevant to Plaintiffs' December 19, 2008 motion for attorneys' fees; any factual or legal matters in dispute; a reasonable schedule for briefing any legal matters not already addressed in the parties' papers; a reasonable schedule for investigating any factual matters in dispute; and setting a date for hearing Plaintiffs' motion for attorneys' fees. Following the hearing on Plaintiffs' motion for attorneys' fees, the Special Master shall issue and file an order that states the Special Master's ruling and any underlying legal or factual findings.

### 5. Proceedings Before the Special Master

Prior to initiating proceedings with the Special Master, a party must make a good faith effort to resolve the issue with the opposing party. Any Party seeking to initiate proceedings with the Special Master shall give written notice thereof to the other Party. Such notice will state that it is a notice initiating the Special Master procedures; describe briefly the nature of the dispute; describe briefly the notifying Party's claim or position in connection with the dispute; confirm that reasonable attempts have been made to resolve the issue and describe the matters remaining in dispute and identify the matters resolved by the parties, if any; and state an agreed briefing and hearing schedule. The Special Master shall promptly advise the parties of the briefing and

1 hearing schedule for the proceedings. Following the hearing, the Special Master shall issue and  
2 file an order that states the Special Master's ruling and any underlying legal or factual findings.

3 **SO STIPULATED.**

4 Dated: May 21, 2009

MORRISON & FOERSTER, LLP

6 By: /s/ Kimberly N. Van Voorhis

Kimberly N. Van Voorhis  
Attorneys for Plaintiffs

8 Dated: May 21, 2009

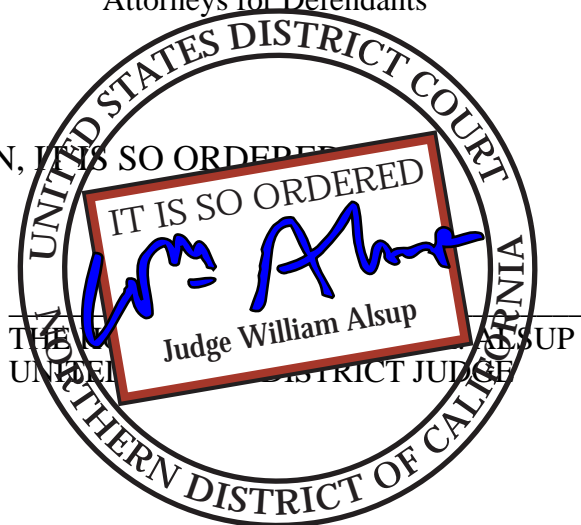
OFFICE OF THE CALIFORNIA ATTORNEY  
GENERAL

10 By: /s/ George Prince

George Prince, Deputy  
Attorneys for Defendants

14 PURSUANT TO STIPULATION, IT IS SO ORDERED

16 Dated: May 22, 2009



1 GENERAL ORDER 45 ATTESTATION

2 I, Kimberly N. Van Voorhis, am the ECF user whose ID and password are being used to  
3 file this Stipulation. In compliance with General Order 45, X.B., I hereby attest that George  
4 Prince of the Office of the California Attorney General, has concurred in the filing of this  
5 document with his electronic signature.

6 Dated: May 21, 2009

7 By: /s/ Kimberly N. Van Voorhis

8 Kimberly N. Van Voorhis  
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