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 Edward T. Furnace
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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

14 EDWARD T. FURNACE,
 15 Plaintiff,
 16 v.
 17 K. NUCKLES, et al.,
 18 Defendants.

Case No. C 09-6075 MMC (EDL)

**STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING MEDIATION**

Hon. Maxine M. Chesney

Initial Complaint Filed: December 30, 2009
 Operative Complaint Filed: July 10, 2010

Trial Date: None

1 WHEREAS, Plaintiff Edward T. Furnace (“Plaintiff”) and Defendants K. Nuckles, J.J.
2 Rodriguez, W. Rasley, D. Bittner, J. Celaya, J. Rodriguez, A. Butt, R. Lipps, M. Kircher, J.
3 Sensel, M. Atchley, J. Mora, O. Ponce, and J. Delaney (collectively, “Defendants”), by and
4 through counsel, have scheduled a mediation with the Hon. James Ware (Ret.) of JAMS for
5 Wednesday, September 9, 2015 from 9:00 a.m. PDT to 5:00 p.m. PDT;

6 WHEREAS, Plaintiff is a life-without-parole inmate who is scheduled to be transferred
7 from Kern Valley State Prison to the Special Housing Unit (“SHU”) at Pelican Bay State Prison
8 on September 1, 2015;

9 WHEREAS, due in part to the transfer and in part to Plaintiff’s prison programming,
10 Plaintiff’s counsel, O’Melveny & Myers LLP (“O’Melveny”) has been unable to arrange for a
11 legal phone call with Plaintiff in advance of the mediation in order to discuss matters of strategy
12 and Plaintiff’s views on settlement;

13 WHEREAS, having Plaintiff available by telephone before and during the mediation on
14 September 9, 2015 will allow him to provide his counsel with insights and information and weigh
15 any settlement offers in real time, and such input would be valuable and increase the chances the
16 parties will reach a resolution;

17 WHEREAS, Plaintiff has previously participated by telephone in settlement conferences
18 with Mag. Judge Nandor Vadas in this case without incident;

19 WHEREAS, defense counsel have no objections to (1) a pre-mediation legal phone call,
20 (2) Plaintiff’s participation by telephone in the JAMS mediation with Judge Ware on September
21 9, 2015, and (3) Plaintiff receiving a vegetarian meal during the mediation.

22 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff
23 and Defendants, through their respective undersigned counsel of record, that the parties jointly
24 request that the Court enter the attached Proposed Order.

25 IT IS SO STIPULATED.
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Dated: September 2, 2015

KATHERINE L. WAWRZYNIAK
O'MELVENY & MYERS LLP

By: /s/ Katherine L. Wawrzyniak
Katherine L. Wawrzyniak

Attorneys for Plaintiff
EDWARD T. FURNACE

Dated: September 2, 2015

DENISE SERRA
MCNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP

By: /s/ Denise Serra
Denise Serra

Attorneys for Defendants W. Rasley, D.
Bittner, J. Celaya, J. Rodriguez, A. Butt, R.
Lipps, M. Kircher, J. Sensel, M. Atchley, J.
Mora, O. Ponce, and J. Delaney

Dated: September 2, 2015

SUSAN E. COLEMAN
BURKE, WILLIAMS & SORENSEN, LLP

By: /s/ Susan E. Coleman
Susan E. Coleman

Attorneys for Defendants K. Nuckles and J.J.
Rodriguez

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ATTESTATION OF FILING

Pursuant to L.R. 5-1(i)(3), I, Katherine L. Wawrzyniak, hereby attest that concurrence in the filing of this Joint Stipulation and [Proposed] Order Regarding Mediation has been obtained from Defendants’ counsel, Denise Serra and Susan E. Coleman.

Dated: September 2, 2015

KATHERINE L. WAWRZYNIAK
O’MELVENY & MYERS LLP

By: /s/ Katherine L. Wawrzyniak
Katherine L. Wawrzyniak

Attorneys for Plaintiff
EDWARD T. FURNACE

1 **[PROPOSED] ORDER**

2 The Court, having considered the Joint Stipulation and [Proposed] Order Regarding
3 Mediation, and good cause appearing:

4 1. The Stipulation is approved; in part, as follows:

5 2. The Court orders that Pelican Bay State Prison, or the correctional institution that
6 presently has custody of Plaintiff Edward T. Furnace, arrange a pre-mediation legal telephone call
7 between O'Melveny and Plaintiff to occur no later than September 8, 2015 at a time mutually
8 convenient to Plaintiff, Plaintiff's counsel, and the correctional institution. The correctional
9 institution shall allow at least one hour for the call.

10 3. The Court further orders that Plaintiff shall be available by telephone from 9:00
11 a.m. to 5:00 p.m. on September 9, 2015, for the mediation. Plaintiff shall connect with the JAMS
12 mediation session by dialing 1-866-285-2458 and entering the code 4159848947. ~~Plaintiff's~~
13 ~~institution shall provide Plaintiff with a vegetarian meal during the mediation session.~~

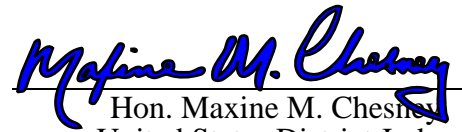
14 4. To the extent the parties seek an order directing the correctional institution
15 to "provide Plaintiff with a vegetarian meal during the mediation session," the stipulation
16 is not approved, for the reason that the parties have made no showing that Plaintiff is on
17 the institution's list of individuals who are to receive vegetarian meals, or that the
18 institution should be required to provide such meals other than in accordance with its
ordinary procedures.

19 5. Plaintiff shall serve this order forthwith upon the appropriate correctional
20 institution.

21 **IT IS SO ORDERED.**

22 Dated: September 3, 2015

23
24 By:


25 Hon. Maxine M. Chesney
26 United States District Judge