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11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 MICHAEL DRAGOVICH, MICHAEL )  
GAITLEY, ELIZABETH LITTERAL, )  
15 PATRICIA FITZSIMMONS, CAROLYN )  
LIGHT, and CHERYL LIGHT, DAVID BEERS, )  
16 CHARLES COLE, RAFAEL V. DOMINGUEZ, )  
17 and JOSE G. HERMOSILLO, on behalf of )  
themselves and all others similarly situated, )  
18 Plaintiffs, )

**CASE NO. 4:10-CV-01564-CW**  
*Assigned to the Hon. Claudia Wilken*

**PLAINTIFFS' AND FEDERAL**  
**DEFENDANTS' STIPULATION**  
**REGARDING ATTORNEYS' FEES**  
**AND COSTS AND**  
**[PROPOSED] ORDER**

19 vs. )  
20 )

21 UNITED STATES DEPARTMENT OF THE )  
TREASURY, JACOB LEW, in his official )  
capacity as Secretary of the Treasury, United )  
22 States Department of the Treasury, INTERNAL )  
REVENUE SERVICE, JOHN KOSKINEN, in )  
23 his official capacity as Commissioner of the )  
Internal Revenue Service, BOARD OF )  
24 ADMINISTRATION OF CALIFORNIA )  
PUBLIC EMPLOYEES' RETIREMENT )  
25 SYSTEM, and ANNE STAUSBOLL, in her )  
official capacity as Chief Executive Officer, )  
26 CalPERS, )  
27 Defendants. )

1 **STIPULATION REGARDING ATTORNEYS' FEES AND COSTS**

2 WHEREAS, on July 15, 2011, this case was certified as a class action pursuant to Fed. R.  
3 Civ. P. 23(b)(2).

4 WHEREAS, on December 4, 2014, this Court denied Plaintiffs' motion for class notice  
5 and for additional discovery of the class member list from State Defendants.

6 WHEREAS, the December 4, 2014 amended judgment fully resolved the merits in this  
7 matter and is now final under FRAP 4(a)(1)(B).

8 WHEREAS, the only remaining issue in this case is Plaintiffs' motion for attorneys' fees  
9 and costs, filed March 12, 2015, and fully briefed (the "Motion") as against Federal Defendants  
10 (the United States Department of the Treasury, Jacob Lew in his official capacity as Secretary of  
11 the Treasury, the Internal Revenue Service, and John Koskinen in his official capacity as the  
12 Commissioner of the Internal Revenue Service) and intervenor Bipartisan Legal Advisory Group  
13 ("BLAG").

14 WHEREAS, on April 20, 2015, the Court took the Motion under submission without oral  
15 argument.

16 WHEREAS, pursuant to the parties' stipulation, the Court stayed consideration of the  
17 motion for 60 days from July 17, 2015.

18 WHEREAS, Plaintiffs and Federal Defendants disagree regarding Plaintiffs' entitlement  
19 to attorneys' fees and certain costs from Federal Defendants and the amount of those fees and  
20 costs.

21 WHEREAS, Plaintiffs and Federal Defendants wish to fully and finally resolve the  
22 attorneys' fees and costs issue in order to avoid further cost and expense of litigation and forever  
23 resolve all remaining issues between them in this litigation on the terms set out here.

24 1. **Complete Resolution.** This Stipulation, if approved, fully and finally resolves the  
25 remaining claims and issues in this action regarding attorneys' fees, costs and litigation expenses  
26 between Plaintiffs, on the one hand, and Federal Defendants, on the other hand. Nothing in this  
27 Stipulation shall be construed or admitted as an admission by any of the parties of any violation  
28 of its policies or procedures; any violation of federal, state or local law, ordinance or regulation;

1 or any liability or wrongdoing whatsoever. Nor will this Stipulation constitute a determination  
2 or an admission that Federal Defendants lacked substantial justification for any position taken in  
3 this action. Nor will any of the terms herein be offered or received in evidence or in any way  
4 referred to in any civil, criminal, or administrative action other than an action for breach of this  
5 Agreement.

6 The terms of this Stipulation constitute the entire agreement of Plaintiffs and Federal  
7 Defendants, and no statement, remark, agreement, or understanding, oral or written, that is not  
8 contained herein shall be recognized or enforced.

9 2. **Release.** In exchange for the payment described in paragraph 3, Plaintiffs and their  
10 attorneys agree to fully and finally release any and all claims for attorneys' fees, costs and  
11 expenses against Federal Defendants only in connection with this action, including any and all  
12 potential claims against Federal Defendants relating to any attorneys' fees, costs, or expenses  
13 Plaintiffs incurred or allegedly incurred in litigating against BLAG in this action.

14 3. **Payment.** In exchange for Plaintiffs' releases in this Stipulation, Federal Defendants  
15 agree to pay Plaintiffs an amount equal to Ninety-five Thousand Dollars and No Cents  
16 (\$95,000.00) (the "Payment"). Federal Defendants shall make this Payment as soon as  
17 practicable after the Court approves this Stipulation, as set out below, or issues any other  
18 judgment or order to effectuate this Stipulation. Federal Defendants shall make the Payment by  
19 direct deposit to Legal Aid Society-Employment Law Center in the account identified in the  
20 ACH form described below.

21 (a) Plaintiffs' attorneys shall furnish a completed Automatic Clearing House Payment  
22 Enrollment Form ("ACH Form") (SF 3881) to Federal Defendants in advance of this Payment.  
23 The IRS shall issue Form 1099 to the payee identified in the ACH Form.

24 (b) With respect to the Payment, compliance with all applicable federal, state and local  
25 tax requirements will be the sole responsibility of Plaintiffs. Nothing in this Stipulation waives  
26 or modifies federal, state or local law pertaining to taxes, offsets, levies, and liens that may apply  
27 to this Stipulation or the Payment, and Plaintiffs' counsel are executing this Stipulation without  
28 reliance on any representation by Federal Defendants as to the application of any such law.

1 (c) Plaintiffs and their attorneys acknowledge the Payment satisfies all their claims for  
2 attorneys' fees, costs and expenses against Federal Defendants in this action and forever bars any  
3 claim for additional or different fees, costs and expenses in connection with this action against  
4 Federal Defendants only, including any and all potential claims against Federal Defendants  
5 relating to any attorneys' fees, costs, or expenses Plaintiffs incurred or allegedly incurred in  
6 litigating against BLAG in this action.

7 (d) The Payment and this Stipulation are not intended to and in no way obviate the  
8 alleged liability of BLAG for Plaintiffs' attorneys' fees and costs, which are the subject of  
9 Plaintiffs' currently pending Motion, nor do they represent an admission by Federal Defendants  
10 with respect to any requirement Plaintiffs must satisfy in order to prevail on that motion. Federal  
11 Defendants and the United States reserve all rights to submit a Statement of Interest or *amicus*  
12 brief concerning BLAG's alleged liability for attorneys' fees and costs in this action.

13 4. **Withdrawal of Motion.** As of the date that the Court enters this Stipulation as an order  
14 as requested below, the Motion for Award of Reasonable Attorneys' Fees, Costs and Expenses as  
15 it relates to Federal Defendants will be deemed withdrawn as moot.

16 5. **Court Approval.** Consistent with this Court's April 27, 2015 Order on Stipulated  
17 Attorneys' Fees with respect to State Defendants (ECF No. 205), Plaintiffs and Federal  
18 Defendants request this Court's approval of this Stipulation without notice to the class.

19 THEREFORE, Plaintiffs and Federal Defendants, through their counsel, agree to and ask  
20 the Court to approve this Stipulation Regarding Attorneys' Fees and Costs.

21  
22 SO STIPULATED:

23 U.S. DEPARTMENT OF JUSTICE  
24 CIVIL DIVISION

25 Dated: October 9, 2015

26 By: /s/ Jean Lin  
27 Jean Lin,  
28 Counsel for Federal Defendants

LEGAL AID SOCIETY – EMPLOYMENT  
LAW CENTER

1 Dated: October 9, 2015

By:           /s/          William C. McNeill, III            
William C. McNeill, III, Counsel for Plaintiffs

2  
3 ZELLE HOFFMANN VOELBEL & MASON LLP

4 Dated: October 9, 2015

By:           /s/          Heather T. Rankie            
Heather T. Rankie, Counsel for Plaintiffs

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**GENERAL ORDER 45 ATTESTATION**

In accordance with General Order 45, concurrence in the filing of this document has been obtained from each of the signatories, and I shall maintain records to support this concurrence for subsequent production for the court if so ordered or for inspection upon request by a party.

/S/ William c. McNeill, III  
William C. McNeill, III

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**PROPOSED ORDER**

It is so ordered.

October 20, 2015

Dated



HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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