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14  
15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 CARLOS PEREZ, et al.,

18 Plaintiffs,

19 v.

20 RODERICK HICKMAN, Secretary, California  
21 Department of Corrections and Rehabilitation,  
22 PETER FARBER-SZEKRENYI, Chief of  
23 Correctional Health Care Services Division,  
WILLIAM KUYKENDALL, Chief Dentist,  
Adult Operations and Adult Programs,

24 Defendants.

CASE NO. CIV

**STIPULATION AND [PROPOSED]  
ORDER**

25  
26 **INTRODUCTION**

27 1. The parties enter into this stipulation to address dental care provided by the  
28 California Department of Corrections and Rehabilitation (CDCR). The Plaintiffs are California

1 state prisoners who have serious dental care needs. The Defendants are the Secretary of the  
2 California Department of Corrections and Rehabilitation, the Chief Dentist of the Adult  
3 Operations and Adult Programs, and the Chief of the Correctional Health Care Services Division,  
4 who are sued in their official capacities as state officials responsible for the operation of CDCR  
5 and its dental care delivery system.

6 2. This action was filed by Plaintiffs on December 19, 2005. The action alleges that  
7 Plaintiffs are not receiving constitutionally adequate dental care as required by the Eighth  
8 Amendment to the U.S. Constitution.

9 3. The parties have conducted informal negotiations since August 2004, in an effort  
10 to resolve Plaintiffs' demand that dental care services be improved. Those negotiations have  
11 been undertaken at arm's length and in good faith between Plaintiffs' counsel and high ranking  
12 state officials and their counsel. The parties have reached agreement on procedures that the  
13 parties will follow in this case for resolving disputes concerning the constitutional adequacy of  
14 dental care services. The parties freely, voluntarily, and knowingly with the advice of counsel  
15 enter into this Stipulation for that purpose.

16 WHEREAS, a dispute exists between the parties as to the extent to which CDCR's  
17 provision of inmate dental care meets constitutionally mandated standards;

18 WHEREAS, this dispute arose over the course of the last four years, and culminated in  
19 Plaintiffs filing this statewide dental class-action lawsuit; and

20 WHEREAS, this Stipulation is intended to be narrowly drawn to meet applicable  
21 standards.

22 **A. PARTIES.**

23 4. Plaintiff Carlos Perez is a prisoner incarcerated at Salinas Valley State Prison at  
24 Soledad, California.

25 5. Defendant Roderick Hickman is the Secretary of the California Department of  
26 Corrections and Rehabilitation. The Department of Corrections and Rehabilitation oversees the  
27 Adult Operations and Adult Programs Department (AOAP).

28 6. Defendant Peter Farber-Szekrenyi is the Chief of the Correctional Health Care

1 Services Division. As Chief, Dr. Farber-Szekrenyi is responsible for supervising the provision of  
2 dental care for all prisoners in CDCR's custody.

3 7. Defendant William Kuykendall, D.D.S., is the Chief Dentist for the AOAP. As  
4 Chief Dentist, Dr. Kuykendall is responsible for the provision of dental care for all prisoners in  
5 CDCR's custody.

6 **B. JURISDICTION.**

7 8. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

8 **C. VENUE.**

9 9. Venue is proper under 28 U.S.C. § 1391(b), because a substantial part of the  
10 events giving rise to Plaintiffs' claims occurred within the Northern District of California.

11 **D. CLASS CERTIFICATION.**

12 10. The parties agree that this action shall be maintained as a class action pursuant to  
13 Rule 23(b)(2) of the Federal Rules of Civil Procedure and that the class consists of all California  
14 state prisoners in the custody of CDCR who have serious dental care needs.

15 **E. TERMS AND CONDITIONS.**

16 11. CDCR shall implement the Health Care Services Division Dental Policies and  
17 Procedures (Policies and Procedures), which are attached to this Stipulation as Exhibit A,  
18 according to the Implementation Plan, which is attached to this Stipulation as Exhibit B.  
19 Defendants shall make all reasonable efforts to secure the funding necessary to implement the  
20 Policies and Procedures. The Policies and Procedures are designed to meet at least the  
21 minimum level of dental care necessary to fulfill Defendants' obligations under the Eighth  
22 Amendment of the U.S. Constitution. The Implementation Plan is designed to implement the  
23 Policies and Procedures in an efficient manner. It is the intent of this Stipulation to require  
24 Defendants to provide only the minimum level of dental care required under the Eighth  
25 Amendment. Nothing in this Stipulation shall be construed to require more of the Defendants  
26 than is necessary under the Eighth Amendment. Disputes whether Defendants' Policies and  
27 Procedures satisfy their obligations under the Eighth Amendment shall be resolved using the  
28 dispute resolution procedures in ¶¶ 36-38.



1 shall be given to Plaintiffs within 10 days of completion of the study. Failure to complete a state-  
2 wide staffing-needs study by June 1, 2006 shall not delay implementation of the Policies and  
3 Procedures according to the schedule set out in the Implementation Plan.

4 14. Based on the staffing-needs study referred to in ¶ 13, CDCR shall hire sufficient  
5 staff to fulfill its obligations under this Stipulation.

6 15. Defendants shall immediately implement the following practices or procedures at  
7 each institution (Mainline and Reception Centers):

8 a. Dental emergency care shall be available 24 hours per day, seven days per  
9 week. "Dental emergency care" is defined as care that is designed to  
10 prevent death, alleviate severe pain, prevent permanent disability and  
11 dysfunction, or prevent significant medical or dental complications.

12 b. It is anticipated that most dental emergencies will be handled by  
13 physicians. A dental emergency shall be treated in the following manner:  
14 Consistent with most medical emergencies, the physician may send the  
15 inmate to a local hospital for treatment. Should the physician determine  
16 that a dentist is required, the physician will call the chief dentist (or the  
17 chief dentist's back-up) for advice. If the chief dentist determines that the  
18 inmate needs treatment by a dentist, the chief dentist will go to the prison  
19 to provide that treatment. These procedures are consistent with the dental  
20 emergency procedures found in the Implementation Plan.

21 c. Inmates will have access to fluoridated toothpaste or toothpowder and  
22 floss or interdental cleaners.

23 16. By December 31, 2006, Defendants shall complete implementation of the  
24 following practices or procedures at every institution (Mainline and Reception Centers):

25 a. Tracking requests for dental treatment. Tracking will include dates  
26 requests are made, dates inmates are scheduled to be examined by dental  
27 personnel, dates inmates are actually examined by dental personnel, and

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1 documentation of cancellation or failure to appear for dental treatment or  
2 examination.

3 b. Examinations, dental treatment plans, and dental treatment shall be  
4 conducted according to the Implementation Plan and the Policies and  
5 Procedures for inmates who have dental appointments. Before the “roll-  
6 out” year (the year the prison at which the inmate is housed implements  
7 the Policies and Procedures), inmates shall receive dental treatment that is  
8 medically necessary as determined by the treating dentist.

9 c. Each mainline inmate shall receive an orientation handbook describing  
10 dental self-care education set out in the Implementation Plan and Policies  
11 and Procedures by March 31, 2006. After April 1, 2006, each inmate who  
12 arrives at a CDCR institution shall receive this orientation handbook  
13 within 14 working days of initial arrival on the mainline. A change from  
14 one mainline yard to another yard, whether at the same or a different  
15 prison, does not necessitate distribution of another handbook.

16 d. All inmates who are given a dental screening at the Reception Center or an  
17 examination while on the mainline shall have their dental care needs  
18 classified according to the priority classification system set out in the  
19 Policies and Procedures.

20 17. The parties understand and agree that the inmate grievance procedure (CDCR  
21 Form 602) is an important step in the provision of essential dental care. Accordingly, the parties  
22 agree that all complaints regarding dental care provided to an individual inmate, except those  
23 requiring emergency care or those classified as priority 1A<sup>1/</sup>, shall be submitted to Defendants  
24 after using the inmate grievance procedure. Once the appeal has received the director’s level of  
25 review and all administrative relief has been exhausted, should the individual inmate contend  
26 that the grievance procedure failed to adequately address the dental problem, Plaintiffs’ counsel  
27

28 <sup>1</sup> Priority 1A is defined in the Policies and Procedures as “Inmates requiring treatment for an acute oral or maxillo-  
facial condition, which is likely to remain acute, worsen, or become life-threatening without immediate intervention.”

1 may bring the dental care concern to the attention of appropriate headquarters staff, who shall  
2 respond in writing within 30 days.

3 18. For individual inmates who require emergency dental care or whose dental  
4 condition is classified as priority 1A, Plaintiffs' counsel may bring the concern to the attention of  
5 headquarters staff before the inmate has exhausted the grievance procedure.

6 **F. ACCESS TO INFORMATION.**

7 19. Subject to the limitations set forth in this Stipulation, Plaintiffs' counsel and the  
8 Court's experts shall have reasonable access to the institutions, staff, inmates and documents  
9 necessary to properly evaluate the adequacy of the dental care delivery system and the proposed  
10 remedies, including the Implementation Plan, the Policies and Procedures, and the Audit  
11 Instrument. The parties shall cooperate so that Plaintiffs' counsel and the Court's experts have  
12 access to information reasonably necessary to perform their responsibilities required by this  
13 Stipulation without unduly burdening Defendants.

14 20. Plaintiffs' counsel and Defendants shall negotiate a document production order by  
15 February 28, 2006 that shall provide to Plaintiffs' counsel information from CDCR's  
16 headquarters and from individual institutions about the dental services available to members of  
17 the plaintiff class, the adequacy of Defendants' remedial measures, and Defendants' compliance  
18 with this Stipulation. Defendants' and Plaintiffs' counsel shall meet monthly to discuss  
19 implementation of remedial measures and access to information.

20 21. CDCR shall provide information including, but not limited to, the following  
21 materials, subject to a protective order agreed to by the parties:

- 22 a. The dental care records in the medical files of members of the plaintiff  
23 class as reasonably necessary;
- 24 b. Internal audits of the dental services provided to members of the plaintiff  
25 class conducted according to this Stipulation;
- 26 c. Non-privileged documents relating to money budgeted for providing  
27 dental care to prisoners. No documents reflecting the budget for any  
28 particular upcoming budget year shall be provided until after the release of

1 the Governor's Budget. This is not intended to prohibit sharing policy and  
2 planning documents, at the discretion of the Defendants.

3 d. Documents maintained at individual institutions pursuant to this  
4 Stipulation. Those documents may include:

- 5 (1) Audits of dental care required by this Stipulation.
- 6 (2) Dental staff vacancy reports.
- 7 (3) Dental staff training statistics.
- 8 (4) Records reflecting scheduling and tracking of dental  
9 appointments.
- 10 (5) Dental related inmate appeals (602's) and responses.

11 e. Plaintiffs' counsel shall not have access to any personnel files.

12 f. Plaintiffs' counsel shall not be given peer review documents.

13 g. Plaintiffs' counsel shall be given CDCR training documents related to  
14 implementation of this Stipulation for the first year that any such training  
15 is offered on any dental topic. The training documents will be given to  
16 Plaintiffs' counsel once the documents are ready for use or training.

17 22. Plaintiffs may retain one dental consultant at a time, whose fees and expenses  
18 shall be paid by Defendants. Plaintiffs' counsel and their dental consultant shall be able to tour  
19 dental clinics and facilities during tours conducted pursuant to *Plata v. Schwarzenegger* (U.S.  
20 District Court, Northern District of California, case number C-01-1351 TEH). Plaintiffs' counsel  
21 shall advise Defendants when their dental consultant will accompany them on a prison tour,  
22 before that tour begins. *Plata* tours shall be lengthened as necessary to accommodate Plaintiffs'  
23 additional tour duties. In addition, Plaintiffs may schedule two tours per year at each prison that  
24 Plaintiffs are not touring under *Plata*.

25 23. Tours by Plaintiffs' counsel shall include reasonable access to housing units and  
26 all facilities where dental services are provided. Defendants shall make reasonable efforts to  
27 make available for interview departmental, custodial, clinical, and program staff that have direct  
28 or indirect responsibility for providing dental services to class members. Defendants shall direct



1 institution staff to reasonably cooperate with Plaintiffs' counsel. Plaintiffs' counsel shall be  
2 permitted brief discussions with plaintiff-class inmates about their dental care needs during the  
3 tours, and shall be able to give business cards with their name and address to plaintiff class  
4 inmates. Defendants will continuously post notices informing all inmates at each institution that  
5 complaints regarding the provision of dental care may be sent to counsel for the plaintiff class in  
6 this case. Defendants shall provide Plaintiffs' counsel reasonable access to confidential  
7 interviews with members of the plaintiff class before or after the tours, during regular business  
8 hours, without regard to regular visiting hours and days. Upon a request by Plaintiffs' counsel at  
9 least one week prior to the tour, Defendants shall make available for inspection and/or copying  
10 the dental records contained in the medical files of specified plaintiff-class inmates.

11 24. If any party fails to make himself or herself, an employee, or an agent reasonably  
12 available for interview and the parties agree, the other party may depose the party, employee, or  
13 agent who has not been made available. If the parties are unable to agree, the Court may order  
14 such deposition of the party, employee, or agent if the deposition is reasonably necessary to the  
15 conduct of the litigation.

16 25. Plaintiffs' counsel and the Court's experts will cease tours at a particular  
17 institution after that institution has been found to be in substantial compliance as set forth in ¶¶  
18 29-33. Tours may resume at a particular institution if the parties agree that, or the Court finds  
19 that, there has not been substantial compliance by Defendants, provided that such resumed tours  
20 shall be limited to the issue or components found not to be in substantial compliance. Non-  
21 compliance may be corrected by substantial compliance with the existing Policies and  
22 Procedures, or by modifying the Policies and Procedures and Audit Instrument pursuant to ¶¶ 34-  
23 35 and complying with the Policies and Procedures as modified. Any disputes about whether an  
24 institution is in substantial compliance shall be resolved using the procedures in ¶¶ 36-38.

25 **G. INDEPENDENT COURT EXPERTS.**

26 26. The parties request that the Court appoint two experts under Rule 706 of the  
27 Federal Rules of Evidence, to advise the Court on Defendants' compliance with the  
28 Implementation Plan and Policies and Procedures. The parties propose that Exhibit C be adopted

1 as the experts' duties, according to Rule 706(a). The experts shall be entitled to reasonable  
2 compensation in an amount approved by the Court and the costs for each expert shall be borne by  
3 Defendants. The parties will meet and confer in an attempt to recommend two mutually  
4 agreeable experts to the Court within 60 days after this Stipulation is signed by the Court. If the  
5 parties cannot agree upon the experts, they shall so advise the Court and each party shall submit a  
6 list of four candidates. The Court shall appoint the experts from the list of candidates.

7 27. In the event that either of the Court-appointed experts can no longer serve, the  
8 parties shall attempt to agree on a replacement within 30 days. In the event the parties cannot  
9 agree, they shall nominate experts in accordance with Rule 706 of the Federal Rules of Evidence.  
10 The parties understand and agree that the Court may appoint a mutually agreeable third expert in  
11 the future. In the event that the parties are unable to agree on a third expert, the Court may  
12 appoint a third expert in accordance with Rule 706 of the Federal Rules of Evidence.

13 28. With reasonable notice and subject to the limitations in this Stipulation, the court  
14 experts shall have reasonable access to all parts of any institution, all relevant documents, all  
15 individuals (including interviews with staff or inmates), dental meetings, dental proceedings,  
16 and dental programs to the extent that such access is reasonably needed to fulfill their  
17 obligations. If both parties agree, the court experts may hire additional support staff, at  
18 Defendants' expense, to assist them in performing their duties. If both parties cannot agree, the  
19 Court may authorize hiring additional personnel upon a showing by the court experts that such  
20 additional personnel are reasonably necessary to the performance of their duties.

21 **H. COMPLIANCE.**

22 29. Defendants shall conduct audits in accordance with the Implementation Plan.

23 30. Compliance with the Policies and Procedures shall be audited using an Audit  
24 Instrument. This Audit Instrument will be developed by CDCR in consultation with Plaintiffs'  
25 counsel and the court experts by June 30, 2006. No later than January 15, 2007, the parties and  
26 the court experts shall meet and confer about whether the Audit Instrument needs to be modified.  
27 If the parties agree, the instrument shall be modified. If the parties do not agree, the Court shall  
28 decide whether the proposed modifications shall be adopted, after consulting with the parties and

1 the court experts. No later than June 30, 2007, the court experts, in cooperation with the parties,  
2 shall determine the necessary passing score that Defendants must achieve in order to demonstrate  
3 successful implementation of the Policies and Procedures. Any disputes about the need for  
4 modification or the necessary passing score shall be resolved according to ¶¶ 36-38 of this  
5 Stipulation.

6 31. The audits shall be conducted as follows:

- 7 a. The court experts shall agree on a statistically appropriate number of  
8 inmate dental records that must be audited to assess compliance.
- 9 b. CDCR auditors will review that number of inmate dental records to  
10 determine whether an institution is in substantial compliance with the  
11 Policies and Procedures.
- 12 c. Once CDCR auditors determine that an institution is in substantial  
13 compliance, the court experts will conduct another audit at the institution  
14 within 30 days, using the same number of records.
- 15 d. Choice of Records:
  - 16 (1) Mainline Dental Care: The records shall be randomly selected  
17 from a pool of inmates who have received a dental examination  
18 and/or dental treatment during the previous six months at the  
19 mainline dental clinic.
  - 20 (2) Reception Center Dental Screening and Care: The records shall be  
21 randomly selected.
- 22 e. If, during audits conducted by the court experts, Defendants disagree with  
23 the appropriateness of an expert's answer to any question in the audit  
24 instrument relating to the quality of dental care, the question shall be  
25 reviewed by both court experts and shall count against compliance only if  
26 both experts agree.

27 32. Standards for Monitoring Compliance: In evaluating and reporting on  
28 implementation and compliance with the Policies and Procedures, the Defendants and the court

1 experts shall use the Audit Instrument. The Audit Instrument shall set out the compliance  
2 indicators for four practice areas for Reception Centers, and ten practice areas for Mainline, as  
3 follows:

4 a. Reception Center:

- 5 (1) Dental screening of newly committed inmates within 60 days of  
6 arrival at Reception Center;
- 7 (2) Consistency and completeness of screening form;
- 8 (3) Provision of emergency dental care within 24 hours of notification  
9 of emergency;
- 10 (4) Adequate provision of emergency care.

11 b. Mainline:

- 12 (1) Provision of dental self-care handbook to newly arrived inmates  
13 within 14 working days of arrival at mainline;
- 14 (2) Dental examinations within 90 calendar days of inmate's arrival at  
15 mainline;
- 16 (3) Subsequent examinations or treatment as required by the dental  
17 treatment plan;
- 18 (4) Consistency and completeness of examinations;
- 19 (5) Completion or update of dental treatment plan with each  
20 examination;
- 21 (6) Consistency and completeness of dental treatment plan;
- 22 (7) Scheduling inmates within three working days of their filing a  
23 Dental Request for Treatment;
- 24 (8) Visit with dentist within 35 calendar days of scheduling based on  
25 DRT;
- 26 (9) Provision of treatment: within 24 hours (emergency or priority  
27 1A); within 30 calendar days (priority 1B); within 60 calendar days  
28 (priority 1C); within 120 calendar days (priority 2); within one

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calendar year (priority 3);

(10) Adequacy of examinations, treatment plans, and treatment.

33. A prison is in substantial compliance when all of the following conditions are satisfied:

- a. It receives a passing score on the audit of the implementation of the Policies and Procedures which shall be conducted by the court experts using the Audit Instrument.
- b. In determining substantial compliance, Defendants and court experts will ascertain whether screenings, examinations, treatment plans, and treatment provided to inmates comply with the Policies and Procedures. The dental screenings, examinations, treatment plans, and treatment provided to the inmates shall be in substantial compliance when one of the following conditions are met:
  - (1) The screening, examination, treatment plan, or treatment is consistent with guidelines in the Policies and Procedures; or
  - (2) The practitioner documents in the dental notes that he/she is deviating from adopted policies and procedures and that such deviation is consistent with the community standard; or
  - (3) Where no treatment guidelines are specifically adopted in the Policies and Procedures, the assessment or plan is consistent with the community standard.
  - (4) "Community standard" is defined as the standard of care required by the National Commission on Correctional Healthcare or the American Correctional Association.

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1 (5) In those instances in which a court expert finds that a screening,  
2 examination, treatment plan, or treatment does not comply with  
3 community standards, Defendants may request that the question be  
4 reviewed by both court experts, and shall count against compliance  
5 only if both experts agree.

6 c. The prison is conducting quality management proceedings in  
7 conformance with the Health Care Services Division's Quality  
8 Management Committee's standards.

9 d. The prison is conducting adequate dental peer review.

10 e. The prison has tracking, scheduling, and medication administration  
11 systems in place.

12 f. The two court experts agree that no pattern or practice of dental care falls  
13 below constitutionally mandated standards that is not being addressed by  
14 CDCR.

15 **I. MODIFICATION.**

16 34. Defendants may modify the Policies and Procedures or the Audit Instrument at  
17 any time, provided that as modified the Policies and Procedures and the Audit Instrument will  
18 meet the minimum level of care necessary to fulfill Defendants' obligation to Plaintiffs under the  
19 Eighth Amendment. Defendants will provide Plaintiffs' attorneys with a copy of the original  
20 Policies and Procedures or the Audit Instrument, the modified version, and a strikeout version  
21 with the changes 30 days before implementation. In an emergency or when such delay will  
22 adversely affect the provision of dental care, copies will be provided as quickly as possible, but  
23 no later than the date the new policy is implemented. Plaintiffs shall have 30 days from the time  
24 they receive the changes to meet and confer with Defendants. Plaintiffs shall file objections, if  
25 any, through a regularly noticed motion within 90 days from the end of the meet and confer  
26 process.

27 35. Plaintiffs may also seek to modify the Policies and Procedures and the Audit  
28 Instrument at any time to secure a constitutionally mandated level of dental care for Plaintiffs.

1 Plaintiffs will provide Defendants with a copy of the original Policies and Procedures or the  
2 Audit Instrument, the modified version, and a strikeout version with proposed changes.  
3 Defendants shall have 30 days from the time they receive the proposed changes to meet and  
4 confer with Plaintiffs' counsel. Any disputes shall be resolved using the dispute resolution  
5 provisions set forth in ¶¶ 36-38.

6  
7 **J. DISPUTE RESOLUTION.**

8 36. If Plaintiffs contend that the Implementation Plan, Policies and Procedures, and  
9 Audit Instrument, as written or as modified, or any component thereof will not provide for the  
10 minimum level of dental care necessary to fulfill Defendants' obligations to Plaintiffs under the  
11 Eighth Amendment, Plaintiffs shall provide Defendants with a brief description of the perceived  
12 deficiencies and a request that the parties enter into negotiations to resolve the question as to  
13 whether Defendants' Policies and Procedures and Audit Instrument satisfy the minimum  
14 requirements of the Eighth Amendment. Upon receipt of Plaintiffs' request for negotiations, any  
15 party may inform the Court's experts of the area of disagreement and request that the experts  
16 evaluate the issue and prepare a report. Defendants will respond to Plaintiffs' concerns no later  
17 than 30 days after they receive Plaintiffs' concerns.

18 37. If the parties are unable to resolve the dispute informally, the parties shall conduct  
19 negotiations on the issue in dispute. Such negotiations may include the Court's experts, and a  
20 person satisfactory to the parties may at the election of either party, mediate any unresolved  
21 issues. If the parties cannot agree on a mediator, the administrator of a private dispute resolution  
22 service, such as JAMS, will choose a mediator. The substance of the mediation and any  
23 statements made by a party, an employee of a party, or an agent of a party are confidential and  
24 not admissible in any subsequent proceeding. The Experts' reports shall be admissible as  
25 evidence at the request of any party in any judicial proceeding in this case.

26 38. If the process set forth in the preceding paragraph fails to resolve the issue of  
27 whether Defendants' Policies and Procedures and Audit Instrument, either as written or as  
28 modified, provide for a level of dental care sufficient to meet the minimum requirements of the

1 Eighth Amendment, either party shall have the option of seeking relief from the Court. If the  
2 Court determines that Defendants' Policies and Procedures and the Audit Instrument, either as  
3 written or as modified, do not provide a level of dental care sufficient to meet the minimum  
4 requirements of the Eighth Amendment, the Court may grant relief as authorized under the  
5 Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(a).

6  
7 **K. ENFORCEMENT.**

8 39. The Court shall find that this Stipulation satisfies the requirements of 18 U.S.C. §  
9 3626(a)(1)(A) and shall retain jurisdiction to enforce its terms. The Court shall have the power  
10 to enforce the Stipulation through specific performance and all other remedies permitted by law.  
11 Neither the fact of this Stipulation nor any statements contained in it may be used in any other  
12 case or administrative proceeding, except that Defendants, CDCR, or their employees and agents  
13 may use this Stipulation to assert issue preclusion and res judicata in other litigation seeking  
14 class or systemic relief. When these legal defenses are raised, Defendants will send copies of the  
15 complaints to Plaintiffs' counsel at the Prison Law Office.

16 40. If Plaintiffs believe that Defendants are not complying with this Stipulation, the  
17 Implementation Plan, or the Policies and Procedures, the dispute resolution process in ¶¶ 36-38  
18 shall apply.

19 **L. TERMINATION.**

20 41. Notwithstanding the PLRA or any other law, Defendants may move to vacate this  
21 Stipulation and dismiss the case on the ground that each institution subject to this Stipulation has  
22 been found to be in substantial compliance under ¶¶ 29-33. Non-compliance may be corrected  
23 by compliance with the existing Implementation Plan and Policies and Procedures or by  
24 modifying the Policies and Procedures pursuant to ¶¶ 34-35 and complying with the Policies and  
25 Procedures as modified. The parties shall attempt to negotiate any disputes about Defendants'  
26 compliance pursuant to ¶¶ 36-38. Either party may invoke the enforcement process set forth in  
27 ¶¶ 39-40. The final determination of such a dispute shall rest with the Court.

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1           46.    The obligations governed by this Stipulation are severable. If for any  
2 reason a part of this Stipulation is determined to be invalid or unenforceable, such a  
3 determination shall not affect the remainder.


4           47.    The waiver by one party of any provision or breach of this Stipulation shall not be  
5 deemed a waiver of any other provision or breach of this Stipulation.

6 **IT IS SO STIPULATED.**

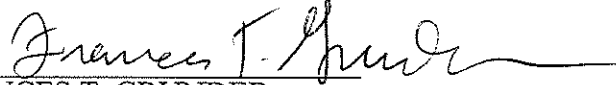
8 Dated: 12/15/05

  
DONALD SPECTER  
Attorney for Plaintiff Class

11 Dated: 12/8/05

  
RODERICK HICKMAN  
Secretary for the Department of Corrections and  
Rehabilitation

15 Dated: 12/6/05

  
FRANCES T. GRUNDER  
Senior Assistant Attorney General  
Approved as to Form for Defendants Hickman,  
Farber-Szekrenyi, and Kuykendall

19 **IT IS SO ORDERED.**

21 Dated: \_\_\_\_\_

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U.S. District Judge

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