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 California Department of Corrections and Rehabilitation  
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 12 UNITED STATES DISTRICT COURT  
 13 EASTERN DISTRICT OF CALIFORNIA  
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 16 RYAN YOUNG, individually and on behalf of )  
 those similarly situated, )

17 Plaintiff, )

18 v. )

19 DR. JEFFREY BEARD, in his capacity as the )  
 Secretary of the California Department of )  
 Corrections and Rehabilitation, )

20 Defendant. )  
 21 )

Case No. 2:11-cv-02491-KJM-JFM

**NOTICE OF WITHDRAWAL OF MOTION  
 TO COMPEL; STIPULATION RE:  
 DISCOVERY DISPUTE; ORDER**

Hearing Date: May 28, 2014  
 Time: 10:00 a.m.  
 Magistrate Judge: Hon. Allison Claire  
 Courtroom: 26, 8<sup>th</sup> Floor

[Local Rule 251]

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 23  
 24 PLEASE TAKE NOTICE defendant DR. JEFFREY BEARD, in his capacity as the Secretary  
 25 of the California Department of Corrections and Rehabilitation, hereby withdraws the Notice of  
 26 Motion and Motion to Compel Discovery. Electronic Case Filing (ECF) 93. Accordingly,  
 27 defendant requests this Court remove from calendar the hearing on defendant's motion to compel,  
 28 currently set for May 28, 2014, at 10:00 a.m., without prejudice.

1 Defendant's withdrawal is made pursuant to the Stipulation Re: Discovery Dispute as set  
2 forth below.

3 DATED: May 20, 2014

4 Respectfully submitted,

5 JOAN A. MARKOFF  
6 Chief Counsel

7 FROLAN R. AGUILING  
8 Deputy Chief Counsel

9 By: /s/ Jennifer M. Garten  
10 Jennifer M. Garten, Labor Relations Counsel  
11 Department of Human Resources

12 *Attorney for defendant Dr. Jeffrey Beard*  
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**STIPULATION RE: DISCOVERY DISPUTE**

WHEREAS, the above-entitled case is a collective action brought by eighty-six individuals who have opted in to the action, alleging violation of the Fair Labor Standards Act.

WHEREAS, the deadline to complete the second phase of discovery is June 18, 2014.

WHEREAS, on November 26, 2013, defendant propounded Set One of Requests for Admissions (RFAs), upon twenty-two of the eighty-six plaintiffs who have opted in to the action.

WHEREAS, on December 16, 2013, defendant propounded Set One of Requests for Production of Documents (RPDs) and Special Interrogatories (ROGs) upon the same twenty-two plaintiffs who received defendant's RFAs (Set One of defendant's RFAs, ROGs and RPDs hereinafter collectively referred to as "defendant's discovery requests").

WHEREAS, on February 10, 2014, and following grant of several extensions of discovery deadlines, plaintiffs served responses to defendant's discovery requests.

WHEREAS, on April 21, 2014, and following a period of meet and confer, plaintiffs served supplemental discovery responses consisting of substantive responses to defendant's discovery requests for ten of the twenty-two plaintiffs, and objections from the remaining twelve plaintiffs upon whom defendant's discovery requests were made. Plaintiffs objected on the basis the ten plaintiffs who provided substantive responses was a "meaningful representative sample of the opt-in class for the purposes of discovery" and therefore defendant's discovery requests to the remaining twelve plaintiffs were "unduly repetitive and impose[d] an unjust burden on the responding parties."

WHEREAS, on May 7, 2014, defendant noticed a motion to compel discovery responses, setting a hearing for May 28, 2014 at 10:00 a.m.

WHEREAS, on May 13, 2014, defendant served RFAs upon fifty-four additional opt-in plaintiffs;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE UNDERSIGNED COUNSEL FOR PLAINTIFFS AND DEFENDANT:

1. Defendant hereby withdraws Set One of the RFAs defendant propounded upon the fifty-four additional opt-in plaintiffs on May 13, 2014.
2. Defendant will and hereby does withdraw its Motion to Compel Further Discovery, and

1 requests the Court to remove from calendar the hearing currently set for May 28, 2014 at  
2 10:00 a.m., without prejudice.

- 3 3. Defendant may conduct ten depositions in addition to the ten depositions permitted by  
4 Rule 30(a)(2)(A) of the Federal Rules of Civil Procedure.
- 5 4. Plaintiffs shall provide substantive responses to defendant's discovery requests for three  
6 of the twelve plaintiffs who had responded with only objections to defendant's discovery  
7 requests on April 21, 2014. In the event an opt-in plaintiff who had previously provided  
8 substantive responses to defendant's discovery requests communicates to defendant an  
9 intent to opt out of the conditionally certified class, or is otherwise dismissed from the  
10 action before the close of discovery, plaintiffs shall provide substantive responses to  
11 defendant's discovery requests from an additional plaintiff.
- 12 5. Plaintiffs agree that for purposes of any pre-trial dispositive motion proceeding,  
13 including, but not limited to, a potential motion for decertification or summary judgment,  
14 plaintiffs' evidence used in support of plaintiffs' position or argument shall be limited to  
15 testimonial or documentary evidence obtained from the plaintiffs who will have provided  
16 substantive responses to defendant's discovery requests, or from the plaintiffs who will  
17 have been deposed by defendant, by the close of discovery. This provision does not  
18 prejudice plaintiffs' ability to seek or use discovery obtained from defendant in support  
19 of plaintiffs' position or argument in said pre-trial dispositive motion proceeding.

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1 SO STIPULATED:

2 DATED: May 20, 2014

3 /s/ Vincent D. Howard, Esquire

4 (as authorized on May 16, 2014)

5 Vincent D. Howard

6 Gregory H.D. Alunit

7 HOWARD LAW, PC

8 /s/ Lawrence W. Williamson, Jr., Esquire

9 (as authorized on May 16, 2014)

10 Lawrence W. Williamson, Jr.

11 WILLIAMSON LAW FIRM, LLC

12 *Attorneys for Plaintiff Young and Class*

13 DATED: May 20, 2014

14 /s/ Jennifer M. Garten

15 Jennifer M. Garten, Labor Relations Counsel

16 Department of Human Resources

17 *Attorney for defendant Dr. Jeffrey Beard*

18 **ORDER**

19 Having read the above joint stipulation regarding discovery dispute, and good cause  
20 appearing, it is hereby ordered that the above stipulation regarding discovery dispute is adopted and  
21 all parties must comply with the stipulation as set forth above.

22 **IT IS SO ORDERED.**

23 DATED: May 20, 2014

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25 ALLISON CLAIRE

26 UNITED STATES MAGISTRATE JUDGE